
THE ETHICS BOARD WILL HOLD THIS MEETING
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WEBINAR ID: 922 5043 0820

AGENDA

1. CALL TO ORDER – 6:30 P.M.
2. DISCLOSURE OF CONFLICTS OF INTEREST
3. PUBLIC COMMENT
4. APPROVAL OF MINUTES FROM 2/22/2021 AND 3/15/2021 MEETING
5. REVIEW ADDITIONAL DRAFT ADVISORY OPINION FOR EB 2021-01
6. CONSIDER COMPLAINTS 2021-02 AND 2021-03
7. REVIEW OF 3/24/2021 JOINT SESSION WITH COUNCIL, DISCUSSION OF NEXT JOINT SESSION
8. UPDATE ON INTERVIEWS FOR OPEN POSITIONS; APPLICATION PERIOD FOR OPENING POSITIONS
9. AGENDA FOR 5/17/2021 MEETING:
 - CONSIDER DRAFT OPINION EB 2021-02?
 - TRAINING DISCUSSION & PLANNING
 - PREPARATION FOR 5/26/2021 JOINT SESSION
10. ADJOURNMENT

COBI ETHICS BOARD

Regular Meeting

Monday, February 22, 2021

6:30 – 8:00 PM

VIA ZOOM WEBINAR

Minutes

1. Call to order — Meeting was called to order at 6:30 PM. Present were Karen Anderson, Jim Cash, Dona Keating, David Mallon, Tyler Weaver, and Andrew Tsoming.
2. Disclosure of conflict of interest — None
3. Motion to accept minutes for the January 25, 2021 meeting (regular) with corrections and February 1, 2021 meeting (special) by Tyler Weaver; 2nd by Jim Cash. Agreed.
4. Public comment — 3 members of the public commented.
5. Discussion with Mary Hancock, Dispute Resolution Center of Kitsap County on mediation as recommended as part of Article I complaints.
6. Review of determination for EB-2020-06 (Article I Complaint) — Karen Anderson has recused herself from consideration of this complaint. Motion to approve with corrections (below) and submit to City Clerk by Tyler Weaver; 2nd by David Mallon. Agreed.
 - a. Section 3 (Page 2 of 5)
Strike this paragraph:
~~In addition to the above sections, Article I, § C.2a directs Councilmembers and members of City Committees and Commissions to “...familiarize themselves with the ethical rules governing them (including Chapter 42.23 RCW and this Ethics Program) and obtain periodic education regarding such rules”. In particular, RCW 42.23.070(1) stipulates that: “No municipal officer may use his or her position to secure special privileges or exemptions for himself, herself, or others.”~~
 - b. Section 3.A (Page 3 of 5)
Strike the word “with” in:
~~The Ethics Board finds it credible that Councilmember Michael Pollock violated Article I, § B.1 by transmitting an inflammatory email with that potentially disparaged or maligned not only the Complainant but his fellow Councilmembers.~~
 - c. Determination and Recommendation (Page 5 of 5)
Insert the word “for” in:
~~The City Clerk is further directed to forward this document to the Complainant, Respondent, and to refer the complaint the mediation process as described in Article III Section A.5 of the Ethics Program.~~
7. Review of advisory opinion for EB-2007-07 (Request for Advisory Opinion) – Karen Anderson has recused herself from consideration of this complaint. Motion to approve by Tyler Weaver; 2nd by Dona Keating. Agreed.
8. Update on Annual Report Update. Report delivered on February 9, 2021. City Council considering a joint working session with the Ethics Board.
9. Search Update. Applications for vacant positions due March 19. Interviews to occur in April.

10. Training Update. Motion to appoint subcommittee (Tyler Weaver and Jim Cash) to prepare for first delivery of training to City Council in March by David Mallon; 2nd Karen Anderson. Agreed.
11. Items for next regular meeting agenda, March 15 (6:30 - 8:30 PM)
 - a. Initial consideration of EB-2021-01
 - b. Training Update
12. Adjournment at 7:43 PM

COBI ETHICS BOARD

Regular Meeting

Monday, March 15, 2021

6:30 – 8:00 PM

VIA ZOOM WEBINAR

Minutes

1. Call to order — Meeting was called to order at 6:30 PM. Present were Karen Anderson, Jim Cash, Dona Keating, David Mallon, Tyler Weaver, and Andrew Tsoming.
2. Disclosure of conflict of interest — None
3. Public comment — 1 member of the public commented.
4. Review of additional draft for EB-2007-07 (Request for Advisory Opinion) – Karen Anderson has recused herself from consideration of this complaint. Motion to approve by Jim Cash; 2nd by David Mallon. Agreed.
5. Consideration of EB-2021-01 (Article II Complaint) – Motion to find the complaint not credible and nominate a subcommittee (David Mallon, Tyler Weaver) to draft a determination letter by David Mallon; 2nd by Jim Cash. Agreed.
6. Preparation for 3/24/2021 Joint Session with Council.
7. Items for next regular meeting agenda, April 19 (6:30 - 8:30 PM)
 - a. Consideration of draft opinion for EB-2021-01.
 - b. Update on Training and other items following joint session with Council.
8. Adjournment at 7:43 PM.

DRAFT DETERMINATION LETTER

2021-01

DRAFT

April 19, 2021

DETERMINATION LETTER: EB 2021-01

Submitted to City Clerk:	February 5, 2021
Response Received:	February 22, 2021
Initial Consideration:	March 15, 2021
Final Consideration:	April 19, 2021

DETERMINATION: Dismissed

I. Summary of Complaint

This Complaint alleges a violation of Art. II, § D.1 of the City of Bainbridge Island Code of Conduct and Ethics Program, effective July 28, 2020.

The Complaint alleges that Councilmember Kirsten Hytopoulos violated Art. II, § D.1 by voting in favor of Councilmember Kol Medina's motion to tentatively amend the Ethics Board Operating Rules, subject to final Council approval. According to the Complaint, Councilmember Medina's motion was phrased as follows:

I move to amend the Operating Rules to tentatively, subject to final Council approval on November 10th, add the following language to the end of Section 4.A.ii: "The City Clerk shall not accept any complaint that does not provide the name and address of the complainant. Complaints made by a third-party on behalf of a complainant may not be accepted by the City Clerk.

The motion passed unanimously. At the time, Councilmember Medina had a complaint pending against him before the Board that had been filed by an attorney on behalf of an unnamed person. The Board previously considered a complaint against Councilmember Medina related to his actions.

The change has not been finally approved by Council as of the date of this determination letter. However, the Complaint also notes that on November 10, 2020, during farewell statements to Councilmember Medina during his last day before his resignation took effect, Councilmember Hytopoulos stated, "I hate that you're leaving with this ugly little cloud over you, and we'll ... do our best to take care of it ... after you leave, because I think ... it's B.S.."

The Complaint alleges that Councilmember Hytopoulos' actions violated Art. II, § D. I because they were an action on a matter in which she had a significant personal interest.

The Complaint also alleges that Councilmember Hytopoulos violated state ethics law by using her position to secure special privileges for herself or others.

II. Summary of Response

Councilmember Hytopoulos' response makes three primary arguments:

1. She had no "significant financial or private interest" in the outcome of the motion, and no greater interest than any other councilmember who voted on the motion.
2. The amendment was simply to clarify existing policy and would not have conferred any new benefit on Councilmember Medina.
3. Respondent's statements on November 10, 2020, are not indicative of any intent to confer a special benefit on Councilmember Medina.

III. Compliance with Art. III, § B.8

Article II, Section B.8 of the City of Bainbridge Island Code of Conduct and Ethics Program states: "The Ethics Board shall strive to complete its review within 45 business days from the date that the City Clerk forwarded the complaint to the Ethics Board. If review takes longer than 45 business days, the Ethics Board in its determination shall specify the reasons why additional time was needed."

This Determination Letter is being issued on April 19, 2021 which is more than forty-five business days after the Complaint was received by the City Clerk on February 5, 2021. Additional time was needed to issue this Determination Letter because the Board could not have considered the Complaint and Response within 45 days given its regular meeting schedule.

IV. Analysis of Complaint

The Board has reviewed the Complaint and has concluded that even if all of the allegations in the Complaint are true, the Complaint does not establish that Councilmember Hytopoulos had any significant financial or private interest in the outcome of Councilmember Medina's motion. The Complaint thus does not state a violation of Art. II, § D.1 and must be dismissed.

It is not within the Board's authority to interpret whether the Complaint has violated State law, and therefore it has made no determination under State law.

V. Determination

After review, the Ethics Board dismisses the Complaint.

ARTICLE I & II COMPLAINTS

2021-02, 2021-03

Article I (Code of Conduct)
Ethics Complaint Form

I. Introduction:

Individuals seeking to submit an ethics complaint alleging a violation of the Code of Conduct (Article I) by a Councilmember or a member of a City Committee or Commission should complete this form and submit it, along with any supporting documents, to the City Clerk at cityclerk@bainbridgewa.gov. By submitting this form, you are indicating your willingness to participate in mediation (i.e., "reconciliation") to resolve this dispute. Should mediation be offered, and you do not agree to participate, your complaint will be dismissed pursuant to Article III, Subsection A.5.b of the Code of Conduct and Ethics Program.

II. Your Contact Information:

Name: James Cash **Address:** 8323 NE Sumanee PL
Bainbridge Island, 98110

III. Article I Complaint:

A. Please provide the name of the Councilmember or the member of a City Committee or Commission who is the subject of your complaint (this individual is referred to as the "Respondent"): Rasham Nassar

B. Please identify the section(s) or subsection(s) of the Code of Conduct (Article I) that you believe were violated by the Respondent: B 2,3
C 2b

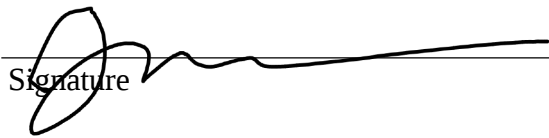
C. Please describe the facts supporting your allegation that the Respondent has violated the sections or subsections of the Code of Conduct (Article I) indicated above. If necessary, please attach additional pages. If other records exist that you believe support your allegation (e.g., emails or other documents), please attach them to this form as well. By writing the opinion, under color of authority, as a Council member, the individual is showing a personal bias, which brings into question their impartiality and integrity, which is a key tenet of the Code of Conduct. This would be fine IF the writer had not self-identified as a current Council member. In the final paragraph of the opinion, the Council member showed a lack of respect of their fellow Council members by challenging them to share their opinion by stating "...will the Council listen?"

By stating "the staunchest advocates... have left the Island, so we may never know their motivation to push so hard", infers there may have been an ulterior motives in the decision; a fact not born out in the public record. Additionally, the Council member references a prior complaint against a former Council member which was found to be without merit.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing, including any additional pages or records attached by me, are true and correct.

Date: 3/22/2021

Place: Bainbrige Island, WA

Signature 

**Article II (Code of Ethics)
Ethics Complaint Form**

I. Introduction:

Individuals seeking to submit an ethics complaint alleging a violation of the Code of Ethics (Article II) by a Councilmember or a member of a City Committee or Commission should complete this form and submit it, along with any supporting documents, to the City Clerk at cityclerk@bainbridgewa.gov.

II. Your Contact Information:

Name: James Cash **Address:** 8323 NE Sumanee PL
Bainbridge Island, 98110

III. Article II Complaint:

A. Please provide the name of the Councilmember or the member of a City Committee or Commission who is the subject of your complaint (this individual is referred to as the "Respondent"): **Rasham Nassar**

B. Please identify the section(s) or subsection(s) of the Code of Ethics (Article II) that you believe were violated by the Respondent:

D 1b

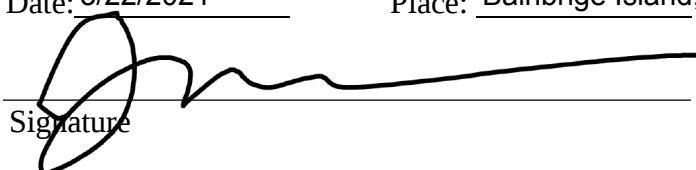
C. Please describe the facts supporting your allegation that the Respondent has violated the sections or subsections of the Code of Ethics (Article II) indicated above. If necessary, please attach additional pages. If other records exist that you believe support your allegation (e.g., emails or other documents), please attach them to this form as well.

By submitting this opinion under the color of authority as a Council member, the potential to gain significant private gain. The writer, who is up for reelection at the end of this year (12/31/2021) specifically references in the article that the elections are on the horizon. This can be construed as electioneering and pandering to gain political advantage.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing, including any additional pages or records attached by me, are true and correct.

Date: 3/22/2021

Place: Bainbridge Island, WA


Signature

Second opinion

We need to reevaluate Bainbridge Island police station

Guest Viewpoint

BY RASHAM NASSAR

The taxpayers of Bainbridge Island deserve to know the truth about why the city is on track to spend \$23 million on a police and court facility that should cost up to \$12 million.

As a council member since 2018, I have heard numerous misleading statements concerning police station costs by the city, that majorities on the City Council have unquestioningly believed. The fiction created by the city is that renovating the old Harrison Medical Center is cheaper than building a new police facility, when in fact the opposite is true.

Here are the facts: In 2018, the city paid \$511/square foot for the 17,548 square foot Harrison building when according to the city's own reports office space in Winslow was averaging \$189-\$227/square foot. In 2014, again according to the city's own report, building a new police station from the ground up would have cost around \$7.6 million, or about \$400/square foot. Adjusted for rising costs, in 2018 that equals about \$500/square foot, a cost typical of public safety buildings in the region.

Even though the city had \$12 million in reserves, it borrowed an additional \$8 million to purchase Harrison. The public is now on the hook to pay the nearly \$3 million in interest to finance that unnecessary debt. The estimated remodeling costs still to come for Harrison are about \$10 million, roughly the same cost as constructing an entirely new facility.

So why are we spending \$23 million to purchase and remodel Harrison when better alternatives exist?

Consider, for example, the Yaquina triangle property, a 2-acre unencumbered site that the city was considering for a police station in 2018. Experts estimated that total construction and land costs to build from the ground up would be around \$11.3 million in 2020 dollars. Located adjacent to Highway 305, and surrounded by two thoroughfares, that site has ready access to the highway and is functionally isolated from homes and critical areas, unlike the Harrison property, half of which falls within a critical area buffer, and is boxed in by an assisted care facility and a church.

Or consider the existing police station site, an option with broad public support. Centrally located

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near downtown, adjacent to Highway 305, next to a major public transportation hub and ample public parking, cost estimates for an 18,000 square foot or smaller facility on that site should be seriously explored and may come in well below the \$23 million benchmark.

Public opposition to remodeling Harrison as a police facility has been relentless since the idea was first proposed, primarily because it was perceived as a publicly funded bailout of an unsuccessful medical facility. Critics have also ridiculed its extraordinarily high cost, its poor location, the risk of massive cost overruns, and the damage to nearby critical areas.

So why did the city advocate paying an unjustifiable sum for the privilege of remodeling Harrison when much more suitable and affordable alternatives exist? Why did the city issue a bond to purchase a police station after the public had resoundingly defeated a

\$15 million police station bond only a few years earlier, especially when it had \$12 million in reserves?

The staunchest advocates of the Harrison remodel, including former city managers, have left the Island, so we may never know what motivated them to push so hard for this project. In the absence of transparency, speculation abounds. The public record shows that the former mayor was a primary driver in eliminating more cost-effective options, that he strongly advocated for Harrison, and that he failed to disclose his potential financial conflicts of interests between his role as mayor and as CEO of a foundation that received substantial donations from key members of the Harrison/CHI leadership team, including the then president of Harrison.

With key players long gone, project proponents are now arguing that to stop the project would be bad for employee morale, and that we've come too far to go back

to the drawing board. But that is exactly what we need to do. We need to consider whether spending another \$10 million to retrofit Harrison is in the public's best financial interest. We need to consider whether there is a wiser use for the building, such as senior/affordable housing, uses for which we can get grants and for which there is broad public support.

There is also the option of saving taxpayers the cost of funding new Park District headquarters on the nearby Sakai property by offering Parks the use of Harrison instead. And, given the Island's very low crime rate, it would be prudent to consider whether the new station really needs to be double the size of the existing police station as is currently planned.

With elections on the horizon, and a highly experienced city manager coming on board in less than two months, this is the perfect time to pause, reflect and change course toward fiscally and socially responsible decision-making. With hundreds of citizens calling for a reevaluation of the police station project, the public has spoken with great clarity. The question is: will the council listen?

Rasham Nassar is the mayor of Bainbridge Island.

Rasham Nassar
Article II Ethics Complaint – Response
April 13, 2021

Jim Cash, an ethics board member, submitted an ethics complaint against on March 22, 2021 because I wrote an editorial for the Bainbridge Review, published on March 18, 2021 (attached).

Specifically, Mr. Cash alleges that:

“By submitting this opinion under the color of authority as a council member, has the potential to gain significant private gain. The writer, who is up for reelection at the end of this year (12/31/2021) specifically references in the article that the elections are on the horizon. This can be construed as electioneering and pandering to gain political advantage.”

And that this is a violation of Article 2, Section D1.b, which states that:

“D. Conflict of Interest – General

1. Applications of Conflict of Interest

Except as permitted in Subsections D.2 or D.3 below, a Councilmember or member of **a City Committee or Commission shall not take any direct official action on a matter if they**, or a member of their immediate family:

a. Have any substantial direct or indirect contractual employment related to the matter;

b. **Have other significant financial or private interest in that matter** (which includes serving on a Board of Directors for any organization but does not, for Councilmembers, include appointing members to the Salary Commission); or

c. Are a party to a contract or the owner of an interest in real or personal property that would be significantly affected by that matter. Taking direct official action on, or regarding, legislation of general application does not “significantly affect” real or personal property within the meaning of this Subsection.”
(boldface emphasis added).

To synthesize, Mr. Cash appears to be alleging that publishing an editorial in the local newspaper can be construed as electioneering and pandering to gain political advantage, and therefore this violates section D.1.b of our ethics code because I am taking a direct official action on a matter in which I have a significant financial or private interest.

This allegation lacks reasonable credibility for several reasons:

1. By publishing an editorial in a newspaper, I am not taking a direct official action. I am simply exercising my free speech rights.

“Direct official action” is defined in Article 6 of the ethics code as follows:

“ ‘Direct official action’ means any of the following:

1. For Councilmembers and members of City Committees and Commissions, taking action, as defined by RCW 42.30.020, in an open public meeting.

2. For Councilmembers and members of City Committees and Commissions, directly, or indirectly through a proxy, doing the following: negotiating or recommending for or against a contract, purchase order, lease, concession, franchise, grant, or other similar instrument in which the City is a party.
3. For Councilmembers and members of City Committees and Commissions, directly, or indirectly through a proxy, doing the following: recommending for or against the approval of a permit, or other similar City approval or authorization, issued by the City. However, direct official action does not include the submittal, to the City, of a permit application by a Councilmember or a member of a City Committee or Commission or the appeal of a denial of such a permit application by the City. Direct official action includes actions taken by a Councilmember or a member of a City Committee or Commission to use or attempt to use their position to obtain special privileges or exemptions in the processing, or review on appeal, of their permit application.
4. For Councilmembers, appointing or terminating employees (i.e., the City Manager) or appointing or removing members of City Committees and Commissions. Direct official action does not include acts that do not affect the disposition or decision with respect to the matter. Additionally, a Councilmember or member of a City Committee or Commission who recuses herself or himself in lieu of taking action, as defined by RCW 42.30.020, in an open public meeting is not exercising direct official action.”

There is no ethics prohibition against publishing opinion pieces because this would violate state and federally guaranteed rights to free speech. It is not the duty of the ethics board to censor political opinions with which they disagree.

2. The editorial concerned a matter of significant public interest, which is the financial integrity of the City of Bainbridge Island. This is not a private interest. The wise stewardship of taxpayer dollars is of the highest public concern as well as the highest duty of an elected official.

3. “Electioneering and pandering to gain political advantage” is not an ethics violation. It is not illegal or an ethics violation to electioneer or pander. Further electioneering, (defined by Oxford Languages as taking part actively and energetically in the activities of an election campaign) is regulated by the state Public Disclosure Commission. If the complainant believes that an election campaign violation has occurred, their recourse is the PDC, not the ethics board. Further, though a relatively minor point, it is worth mentioning that I am not “up for re-election” as the complainant alleges. My term expires at the end of 2021. The time for me to decide whether to run for re-election is in May of this year. I have not made that decision. Without an election, there can be no electioneering.

4. Finally, engaging in an action that “*could be construed*” as electioneering and pandering to gain political action is not an ethics violation.

The complainant alleges that engaging in an action that “could be construed” as electioneering, etc. is an ethics violation. An action either is or is not something. It is either an ethics violation or it is not. Setting an ethics standard (or any standard) that something that “could be construed as ” is a violation is entirely unreasonable and unenforceable, because it covers the entire universe of potential actions. It is an arbitrary and capricious standard.

To summarize, the complaint is not reasonably credible. The alleged facts, if true, do not constitute an ethics violation. The only fact alleged is that I wrote an editorial for the purposes of electioneering and pandering. Even if true, this is not an ethics violation. It is an expression of

free speech. The action was not a direct official action, as defined by the ethics program. Even if it was, the action was done in the public interest, not for 'private gain' as the complainant alleges.

Rasham Nassar
4/13/2021

We need to reevaluate BI police station

- Thursday, March 18, 2021 9:18am
- [OPINION](#)

By Rasham Nassar

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As a council member since 2018, I have heard numerous misleading statements concerning police station costs by the city, that majorities on the City Council have unquestioningly believed. The fiction created by the city is that renovating the old Harrison Medical Center is cheaper than building a new police facility, when in fact the opposite is true.

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Or consider the existing police station site, an option with broad public support. Centrally located near downtown, adjacent to Highway 305, next to a major public transportation hub and ample public parking, cost estimates for an 18,000 square foot or smaller facility on that site should be seriously explored and may come in well below the \$23 million benchmark.

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