

THE ETHICS BOARD WILL HOLD THIS MEETING
IN PERSON AND USING A VIRTUAL, ZOOM WEBINAR PLATFORM

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AGENDA

1. CALL TO ORDER – 6:30 PM
2. DISCLOSURE OF CONFLICTS OF INTEREST
3. APPROVAL OF THE AGENDA
4. ACCEPTANCE OF MEETING MINUTES – October 17, 2022, Regular Meeting
5. REVIEW STATUS OF COMPLAINTS
6. PUBLIC COMMENT (Please limit comments to items other than those under consideration and under 2 minutes. Board Members may elect to refrain from responding.)
7. TRAINING SUB-COMMITTEE REPORT
8. Review draft of ANNUAL REPORT
9. NEW BUSINESS – Consideration of City Manager’s request for Advisory Opinion (Including whether the Board will Further Consider the Request and, if so, Possible Board Action Related to the Request)
10. AGENDA FOR NEXT MEETING
11. NEXT MEETING DATE: December 19, 2022 (6:30 – 8:00 PM)
12. ADJOURNMENT

COBI ETHICS BOARD

Regular Meeting
Monday, October 17, 2022
6:30 PM – 8:00 PM
In-person and Via Zoom
Minutes

1. Call to Order - Meeting was called to order at 6:30 pm. Present were: Jim Cash (Chair), Donna Davison (Deputy Chair), Rafael Escandon, Rosemary Hollinger, Doña Keating, Ben Woodruff, Andrew Tsoming (legal counsel to Ethics Board), Joe Levin (City Attorney), and Peggy Nimb (City Staff). Absent: David Mallon.
2. Disclosures of Conflict of Interest – None.
3. Approval of the Agenda - Motion to approve the agenda by Doña Keating, seconded by Ben Woodruff, and passed unanimously.
4. Acceptance of Meeting Minutes - Motion to accept the minutes of September 19, 2022 by Rafael Escandon, seconded by Ben Woodruff, and passed unanimously.
5. Review Status of Pending Complaints - No change in status of pending complaints. No new complaints.
6. Public Comment – None.
7. Training Sub-Committee Report – No action at this time.
8. Review of Operating Rules – No action at this time.
9. Planning for Annual Report – Motion to accept the volunteers and appoint Ben Woodruff, Rafael Escandon, and Jim Cash to a sub-committee for the 2022 Annual Report and 2023 Work Plan by Donna Davison, seconded by Rosemary Hollinger, and passed unanimously.
10. New Business – Consideration of request for advisory opinion by City Manager. No action at this time.
11. Agenda for Next Meeting – Training Sub-Committee Report and Request for Advisory Opinion.
12. Next Meeting Date: November 21, 2022.
13. Adjournment – Motion to adjourn by Doña Keating, second by Ben Woodruff, and passed unanimously.

Adjournment at 7:12 pm.

**City of Bainbridge Island Ethics Board
2022 Annual Report and 2023 Workplan
February, 2023**

Pursuant to Article V, § D of the City of Bainbridge Island Code of Conduct and Ethics Program (the “Program”), the Bainbridge Island Ethics Board hereby provides its annual report and workplan to the Bainbridge Island City Council.

I. Complaints and Advisory Opinions

In 2022, the Ethics Board received no complaints and no requests for advisory opinions. The three other complaints, which are related to each other, have been deferred while the Board awaits a ruling in related litigation.

II. Ethics Board Members

The Board is presently operating with three members who are serving their initial terms. The three members who are serving their initial terms are Rosemary Hollinger, Donna Davison and Rafael Escandon. Mr. Mallon and Mr. Woodruff’s terms expire in June of 2024 and Ms. Keating’s and Mr. Cash’s terms expire in June of 2023.

III. Changes to the Ethics Program

Through a joint sub-committee of City Council members and Ethics Board members, a recommendation was made to Council and subsequently approved, to modify the complaint process. Names will be redacted from complaints unless and until the complaint is found valid. This change will help stress the process is educational in nature rather than punitive.

IV. Requests and Recommendations

A. Training

In 2022, the Board presented to Council its revised plan for conducting its training and educational duties under the Program. The Council initially approved that plan.

The Board has spoken with the City Manager and related to City Council the requirements to begin the training process and is awaiting scheduling for the training to begin.

The training is structured as follows:

1. Hold a remote, Zoom-based training and informational session for Council at a designated Council meeting. We anticipate this could be completed in 5 minutes, depending on the questions and discussion generated by the presentation.
2. Hold three remote, Zoom-based training and informational sessions open to the public and all members of City Committees and Commissions. We anticipate scheduling these for different times, such as a weekday session, a weekday evening session, and a weekend session. Again, we would anticipate each of these to run about 15 minutes, depending on questions and discussion.
3. In lieu of a physical pamphlet, given the current remote nature of City meetings, a recording of at least one of these presentations and the related materials would be available for review on the City's web page for the Ethics Board.

V. Work Plan for 2023

- A. Provide Ethics Code training for Councilmembers, Committees and Commissions, with a focus on including new members, with the emphasis on the process being an educational one.
- B. Continue to respond to ethics complaints and requests for advisory opinions.
- C. Select new Ethics Board members to fill soon-to-be vacant seats.

**Advisory Opinion
Request Form**

I. Introduction:

Under Article III, Section D of the Code of Conduct and Ethics Program, only Councilmembers and members of City Committees and Commissions may submit to the City Clerk a request for an advisory opinion from the Ethics Board and only for the reasons outlined in Article II, Section D. Councilmembers and members of City Committees and Commissions seeking to submit a request for an advisory opinion should complete this form and submit it to the City Clerk at cityclerk@bainbridgewa.gov.

II. Requestor Info:

Name: Blair King, City Manager

Are you a (check one):

Date: October 20, 2022

☐ Councilmember; or

☐ Member of a Committee or Commission

III. Request for Advisory Opinion

☒ Other

A. Please check one of the following types of requests:

☒ Other.

☐ I request an advisory opinion from the Ethics Board as to whether my own behavior, described below, has violated or might in the future violate the Code of Conduct (Article I) or the Code of Ethics (Article II).

☐ I am a Councilmember and I request an advisory opinion from the Ethics Board concerning the applicability of the Code of Ethics (Article II) to the hypothetical circumstances and/or situations described below related to the actions, or potential actions, of a Councilmember or a member of a City Committee or Commission.

☐ The City Council has authorized me to request an advisory opinion from the Ethics Board regarding the City policies or practices described below in relation to the Code of Conduct (Article I) or the Code of Ethics (Article II).

☐ My Committee or Commission has authorized me to request an advisory opinion from the Ethics Board regarding the operating rules or practices described below in relation to the Code of Conduct (Article I) or the Code of Ethics (Article II).

B. Advisory opinions issued in response to either of the first two types of requests shown above will not include identifying information as to the requestor or, as applicable, the individual(s) whose conduct is the subject of the opinion unless otherwise agreed in writing by the requestor and, as applicable, the subject individual(s). If there is agreement that the opinion should include identifying information, please include, as an attachment to this request, a statement signed by you and, as applicable, all subject individuals indicating agreement that such identifying information may be included in the opinion.

C. Please provide the facts relating to your request indicated above. Please attach additional pages as needed. If other records exist that relate to your request, please attach them to this form as well.



CITY OF
BAINBRIDGE ISLAND

EXECUTIVE DEPARTMENT

MEMORANDUM

TO: Ethics Board

FROM: Blair King, City Manager

SUBJECT: Request for Advisory Opinion

DATE: October 20, 2022

As City Manager, I am making this request to the Ethics Board (“Board”) for an advisory opinion. As an initial matter, I recognize that the Ethics Program does not currently include a provision stating that such a request from the City Manager is within the scope of the Board’s purview. However, I respectfully request that the Board consider this request because, as City Manager, I value the role of the Board and I would like to utilize the Board’s expertise regarding the Ethics Program to guide me regarding this matter. From my perspective, such guidance from the Board can help build trust in the City’s government and increase transparency related to the activities of our government.

Consistent with Section III.B. of the Board’s Advisory Opinion Request Form, I am not including specifically identifying information related to the individual who is the subject of this request. That person is identified as the “Subject Individual.”

I. Statement of the Issue

Would it be a violation of the Ethics Program for the City to enter into a contract with a company in a situation in which one of the principals (“Subject Individual”) for that company formerly served on the Climate Change Advisory Committee (“CCAC”), and the contract at issue relates to a Climate Change Adaption Certification Tool to be used by the City, and the tool was recommended by the CCAC during the time in which the Subject Individual served on the CCAC?

II. Relevant Facts

As an initial note, the following description of facts is based primarily on information provided to me by the City’s Climate Mitigation & Adaptation Officer.

- The Bainbridge Island City Council established the CCAC in the spring of 2017 (Ordinance No. 2017-13. Effective May 17, 2017).
- The Subject Individual, who is the Chief Scientist and Executive Director of the company at issue (EcoAdapt), was a member of the CCAC from **2017 to April 2022**.
- The CCAC was tasked with assisting the City in implementing the climate related goals and policies of the City's Comprehensive Plan (Guiding Principle #7: Reduce greenhouse gas emissions and increase the Island's climate resilience) by undertaking several tasks as expeditiously as committee and City resources allow as outlined in Ordinance No. 2017-13. Specifically, the CCAC was tasked to: "Work with city staff, as appropriate, to complete and recommend to the city council a city climate action plan and implementation strategy."
- The draft 2019-2020 CCAC Workplan included as high priority Action 10.3: "Create tool for use in the evaluation of vulnerability of COBI and non-COBI assets and activities on Bainbridge Island: CCAC would work with City to identify, and eventually require, the use of a tool (e.g., Climate Change Adaptation Certification) for use in evaluation of climate vulnerability of any activity or investment on Bainbridge Island. This would also include training for City staff, Council, and Committees in the use of the tool. Aforementioned climate impact maps, (sic) may be used to inform these vulnerability assessments." The Subject Individual, who was a CCAC member at the time, was identified in the workplan as the CCAC lead for this action (see page 16 of the workplan).
- On **July 7, 2020**, the City Council asked the CCAC to provide their recommendation on the use of the EcoAdapt Climate Change Adaptation Certification Tool as the City's "Climate Lens" (see Section 9 of the July 7, 2020 meeting minutes).
- The CCAC discussed this issue at the committee's **July 15, 2020** and **August 19, 2020** meetings, and recommended that the City use the EcoAdapt Climate Change Adaptation Certification Tool when evaluating projects. The background, discussion, and recommendation are included in a summary document (dated August 20, 2020) shared as part of the October 6, 2020 City Council presentation packet. (See also, July 15, 2020 CCAC meeting minutes; August 19, 2020 CCAC meeting minutes).
- On **October 6, 2020**, the City Council received a presentation of the Climate Action Plan from the CCAC Chairperson. The City Council consented to move forward with the plan and consider it further at a future business meeting to allow for public comment. There was also consensus for the CCAC to identify a pilot project for the EcoAdapt Climate Change Adaptation Certification Tool (per the October 6, 2020 Council meeting minutes). See also, the October 6, 2020 Council agenda packet.
- On **November 10, 2020**, the City Council approved the Climate Action Plan ("CAP"). That plan identified use of the EcoAdapt Climate Change Adaptation Certification Tool, or similar tool, as a priority action for the first 9-12 month period (referenced in Priority Actions 5.A.1.b, 6.A.1.c, and 7.D.1.a of the CAP).
- In **May 2021** (5/17/21), I began work as the new City Manager for the City.

- In **October 2021** (10/11/21), the City’s new Climate Mitigation & Adaptation Officer (“Climate Officer”) began work for the City.
- The Climate Officer attended the **October 20, 2021** CCAC meeting which included a discussion about – and summary notes on – a summary of “draft priorities for implementing the CAP over the next 6 months.” This included feedback from four CCAC members (including the Subject Individual, as well as others on the CCAC) that the action to “Utilize the EcoAdapt Certification Tool” was a priority for consideration by the Climate Officer (see pages 67-69 of the October 20, 2021 CCAC meeting minutes).
- In **October/November 2021**, the Climate Officer began developing a 2022 work plan to implement the CAP with a focus on high priority actions identified in Table 1.2 (page 33). An action to “Use the EcoAdapt Climate Change Adaptation Certification Tool in COBI decision making” is the first action listed in the table for CAP implementation.
- In **November 2021**, the Climate Officer met with the Subject Individual to review the Climate Change Adaptation Certification Tool and discuss opportunities to train staff on use of the Tool, per the recommended CAP actions.
- A proposed 2022 Climate Officer Work Plan – which included an action and budget to “Formalize use of EcoAdapt or other tool to apply climate lens for City projects (training, tool updates, GIS mapping)” – was shared with the City Manager on **November 29, 2021** and with the City Council as part of the City Manager’s Report at the January 11, 2022 Council meeting.
- In **January 2022**, the Climate Officer began to develop a scope of work and budget to update the EcoAdapt Climate Change Adaptation Certification Tool (“Tool”) and provide staff training. This Tool was selected based on its inclusion in the CAP, the turn-key nature of the tool (as a readily available tool that could be customized for clients, it would require little time and effort to customize for the City), the estimated cost (under \$10,000 and within the City Manager’s budget authority), and a cursory search for similar tools, which are frequently customized by a consultant for use by individual municipalities at a significant cost.
 - Note: A previous version of this tool was also created for the City in 2018. The Climate Officer’s understanding is that this initial tool was funded by the Bainbridge Community Foundation and Bullitt Foundation. City staff provided input on development of the tool, which was used by City staff once prior to 2022 (by the Public Works Department for a Waterfront Park Community Center project review). Other City staff members served as City representatives who were surveyed by EcoAdapt regarding the 2018 tool (see page 7 of the 2018 document linked above).
- As part of the Climate Officer’s review of the scope of work with the Deputy City Manager, the issue of a potential conflict of interest was raised related to the Subject Individual, as that individual was a current member of the CCAC and that individual’s company would receive financial compensation for providing an updated Tool and associated staff training. Scope development was put on hold as staff reviewed next steps with the City Attorney’s Office. It

was recommended that the Subject Individual resign from the CCAC, which occurred on **April 28, 2022**.

- In **May 2022**, the Climate Officer renewed work on a draft scope of work and budget to update the Tool and provide staff training.
- On **September 21, 2022**, a \$8,900 contract with EcoAdapt was signed by the City Manager and work began to both update the Tool and schedule a staff training in November 2022.

Additional information: The following information is not related to contracting but is related to the CCAC's recommendation on use of the EcoAdapt Tool. As stated, in part, in the February 11, 2022 memo developed by CCAC members (see page 29 of the February 16, 2022 CCAC meeting minutes):

At the October 19, 2021, City Council meeting, the Council expressed an interest in discussing a proposal for defining and measuring Sustainable Transportation Plan projects. The proposal was stated as follows:

Define sustainable transportation to mean an action related to transportation that is likely to result in a reduction in greenhouse gas emissions within a ten-year time frame. This will require that the city estimate the reduction in GHGs due to a reduction in car trips/car miles traveled resulting from a sustainable transportation project. It will also require that the city estimate the GHGs embodied in the materials used in a project (e.g., concrete) and in the GHGs produced during the planning/construction process.

As a follow-up, on October 25, 2021, the Public Works Director provided a memo to the City Council on his recommendations on how to proceed.

Recommendation from Public Works Director on how to proceed

Based on the Council's discussion on October 19th this item could be referred to Climate Change Action Committee (CCAC) for consideration and development of a recommendation for the Council's future consideration.

CCAC also recommends using the Climate Change Adaptation Certification Tool developed by EcoAdapt, which is already being used by COBI in other planning efforts to ensure that planning accounts for needed adaptations to expected or likely changes in climate.

III. Additional Considerations

I offer the following additional considerations that I think are important to the Board's review of this matter, including related to the timing described above:

- As the City Manager who executed the contract at issue, I began employment with the City on May 17, 2021. I became City Manager after the City Council approved the Climate Action Plan (“CAP”). The Climate Officer began her work with the City on October 11, 2021, which was also after the Council approved the CAP. As approved, the CAP identified use of the EcoAdapt Climate Change Adaptation Certification Tool, or similar tool, as a priority action for the first 9-12 month period (referenced in Priority Actions 5.A.1.b, 6.A.1.c, and 7.D.1.a of the CAP).
- The CCAC’s role, while important, is purely advisory. The CCAC does not make decisions on behalf of the City, including related to the contract at issue.
- The Subject Individual’s role on the CCAC, while important, is not as a decision-maker, but rather as one person as a member of a larger committee.
- The CCAC did not provide specific recommendations in the City’s decision to contract with EcoAdapt in 2021 and 2022. The Climate Officer attended the October 20, 2021 CCAC meeting which included a discussion about – and summary notes on – “draft priorities for implementing the CAP over the next 6 months.” This included feedback from four CCAC Members (including the Subject Individual) that the action to “Utilize the EcoAdapt Certification Tool” was a priority for consideration by the Climate Officer (see pages 67-69 of the [October 20, 2021 CCAC meeting minutes](#)). That action is also listed as the first action in a table of “immediate” actions for implementation of the CAP, which was approved by the City Council in November 2020.
- The Climate Officer made the decision to explore contracting with EcoAdapt in November 2021, as the Climate Action Plan includes an action to “Use the EcoAdapt Climate Change Adaptation Certification Tool in COBI decision making.” This is the first action listed in the table for CAP implementation.
- The Climate Officer reached out to the Subject Individual in November 2021 to discuss the potential to use the tool and provide staff training, per the recommendations in the CAP.
- As described above, the EcoAdapt Tool was selected based on its inclusion in the CAP, the turn-key nature of the tool (as a readily available tool that can be customized for clients, it would require little time and effort to customize for the City), the estimated cost (under \$10,000, and within City Manager budget authority), and a cursory search for similar tools, which are frequently customized by a consultant for use by individual municipalities at a significant cost. For context, based on the Climate Officer’s past experience, when she worked at the City of Shoreline and worked with another consulting group in 2019 to develop a GIS-based tool and set of questions for city staff to reference when designing and implementing projects to consider climate change impacts and socioeconomic characteristics of the Census block groups at or near the project site, the cost was approximately \$80,000.
- A contract with EcoAdapt was signed by me as City Manager in September 2022.
- As the City Manager who executed the contract at issue, I was not involved in the CCAC’s recommendations related to the Tool.

- I executed the contract based on my understanding that the Tool is uniquely capable of performing the task that is described in the Climate Action Plan, and in meeting the City's needs in this regard, at a reasonable cost.
- I was in no way influenced by the Subject Individual related to executing the contract at issue.
- The contract applies to work done that occurs after the execution of the contract and as set forth in the contract, and not to work done by the Subject Individual prior to the execution of the contract.
- In order to avoid even an appearance of a conflict related to a financial interest, the City communicated with the Subject Individual, and the Subject Individual resigned from the CCAC. The resignation occurred many months before the City entered into the contract with the Subject Individual that is at issue.
- To the extent that the dollar amount of the contract at issue is important to the Board, the dollar amount is relatively low (\$8,900), although there is a potential that the amount could be increased in the future.

I appreciate the Board's consideration of this matter, and I respectfully request that the Board issue an advisory opinion based on the "Statement of the Issue" as set forth in Section I above, as well as the other information as above described.