

Introduced by: Council Member Sigmon  
Introduction Date: March 12, 2013  
Public Hearing: March 26, 2013  
Action: Passed  
Vote: 4-1

## *CITY OF BETHEL, ALASKA*

### **Ordinance #13-04**

#### **AN ORDINANCE BY THE BETHEL CITY COUNCIL AMENDING THE BETHEL MUNICIPAL CODE TO REPEAL BMC 2.05 RESPONSIBILITIES OF CITY COUNCILMEMBERS, MUNICIPAL OFFICERS, APPOINTED OFFICIALS AND EMPLOYEES-CONFLICT OF INTEREST AND ENACT SECTION 2.05 CITY OFFICERS GENERALLY AND 2.06 BOARD OF ETHICS**

**BE IT ORDAINED** by the City Council of Bethel, Alaska, that:

**SECTION 1. Classification.** This ordinance is of permanent nature and shall be codified within the Bethel Municipal Code.

**SECTION 2. Amendment.** Amending Bethel Municipal Code by repealing BMC 2.05 Responsibilities of City Councilmembers, Municipal Officers, Appointed Officials and Employees -Conflicts of Interest and Enacting Bethel Municipal Code 2.05 City Officers Generally.

#### **Chapter 2.05**

#### **~~RESPONSIBILITIES OF CITY COUNCILMEMBERS, MUNICIPAL OFFICERS, APPOINTED OFFICIALS AND EMPLOYEES — CONFLICTS OF INTEREST~~**

Sections:

~~2.05.010~~ Conduct in office — Investigations.

~~2.05.020~~ Oath.

~~2.05.030~~ Delivery of office.

~~2.05.040~~ Reports.

~~2.05.050~~ Resignation.

~~2.05.060~~ Conflicts of interest.

~~2.05.070~~ Representative of the city of Bethel.

#### **~~2.05.010 Conduct in office — Investigations.~~**

A. Definitions.

1. ~~Municipal officers shall include the city manager, the city clerk and the city staff attorney of the city of Bethel.~~

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~~2. City employees shall include all persons employed full-time or part-time, in a permanent or temporary capacity, in an active or inactive status by the city of Bethel.~~

~~3. Appointed officials shall include all committee and commission members.~~

~~B. The city manager shall have the power to inquire into the conduct of any office, department, officer, or employee of the municipality and to make investigations into municipal affairs and require that books, papers, and other evidence be made available for inspection. Failure to obey such orders to provide books or other documents or evidence may constitute grounds for the immediate discharge or suspension of any employee in accordance with the municipality's personnel policies, applicable law, or codes of conduct. The city council, by a majority vote, shall have the power to inquire into the conduct of any municipal officer, city councilmember, or appointed official about matters pertaining or possibly pertaining to administration of their duties which affect the operation of the affairs of the municipality.~~

#### **~~2.05.020 Oath.~~**

~~All employees of the municipality shall, before entering upon the duties of their office, individually take an oath in writing to honestly, faithfully, and impartially perform and discharge the duties of his or her office and trust. This oath shall be filed in their personnel file.~~

#### **~~2.05.030 Delivery of office.~~**

~~Whenever an officer, appointed official, or employee leaves office or employment for any reason, he or she shall promptly deliver to his or her successor in office or to the mayor, manager, or other municipal official all municipal property, including books, working papers, records, money, equipment, and effects, that are in his or her custody, possession, or control.~~

#### **~~2.05.040 Reports.~~**

~~Every department head shall make a monthly report to the city council of the activities of the department for the preceding month and present a calendar of activities for the upcoming month. Subject to approval of the city manager, the department head may appoint someone familiar with the activities of the department to prepare and make the monthly report. Such monthly report shall include a report on the department's finances.~~

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## **~~2.05.050 Resignation.~~**

~~Resignations of municipal officers and appointed officials shall be made in writing and filed with the clerk. The clerk shall immediately notify the mayor or manager and city council. Appointed employees shall follow the resignation procedures in the city's personnel policies.~~

## **~~2.05.060 Conflicts of interest.~~**

### ~~A. Prohibitions.~~

~~1. No elected official, appointed municipal officer, committee or commission member or municipal employee shall use his or her office or official position for the primary purpose of obtaining financial gain for themselves or their spouse, child, parent or business with which he or she is associated or owns stock. This provision does not apply to financial gain from salary under the terms of employment.~~

~~2. No elected official (except in the case of a member of the city council where the presiding officer or city council rule otherwise as provided in subsection D of this section), appointed municipal officer, appointed official or municipal employee shall participate in any official action in which he or she has a substantial financial interest. Prohibited participation includes voting as a member of the city council, taking part in debate, soliciting the vote of a member of the city council, or encouraging any municipal official or officer to act in a certain way.~~

~~3. No elected official, appointed municipal officer, appointed official or municipal employee may accept from any other elected official, appointed municipal officer, appointed official or municipal employee or any other person, money, gifts valued at more than ten dollars (\$10), promises of future benefits, or any other thing of value, for performing any function or service that is a normal part of his or her duties, or in exchange for voting or acting in any particular way on any matter that comes before him or her in the course of his or her duties. This subsection does not prohibit any person from accepting an award or bonus authorized by the city council to be given for meritorious service.~~

~~4. No elected official, appointed municipal officer, appointed official or municipal employee, and no other person shall give or offer to give money, gifts valued at more than ten dollars (\$10), promises of future benefits, or any other thing of value to any elected official, appointed municipal officer, appointed official, or municipal employee for performing any function or service that is a normal part of his or her duties, or in exchange for voting or acting in any particular way on any matter that comes before him or her in the course of his or her duties. This subsection does not prohibit any~~

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~~person from voting for or participating in granting an award or bonus authorized by the city council to be given for meritorious service.~~

~~B. Financial Interests Which May Be Conflicts of Interest. The following is a list of examples of financial interests substantial enough that any member of the city council, appointed officer, appointed official or municipal employee who falls under any of the categories listed below should not vote or act on. The categories below are not meant to be a complete listing of all possible conflicts of interest. Any instances not covered below should come before the city council for a vote as the individual matters arise. A member of the city council, appointed officer, appointed official or municipal employee should abstain from voting or refrain from acting if:~~

- ~~1. He or she (or a member of his or her immediate family) individually, jointly, or in partnership with another has an interest in land or buildings, other than his or her residence, which will be affected by the vote or action.~~
- ~~2. He or she (or a member of his or her immediate family) is party to or beneficiary of a contract for a sum of one thousand dollars (\$1,000) or more in value that will be affected by the vote or action.~~
- ~~3. He or she (or a member of his or her immediate family) is individually, jointly, or in partnership with another the owner of a business, or has an interest in a business of one thousand dollars (\$1,000) or more that will be affected by the vote or action.~~
- ~~4. He or she (or a member of his or her immediate family) is a member of a board of directors or city council or an officer of, or holds a management position with, an organization that has financial dealings of one thousand dollars (\$1,000) or more in value with the municipality that will be affected by his or her vote or action.~~
- ~~5. He or she is an employee of an organization that has financial dealings of one thousand dollars (\$1,000) or more in value with the municipality that will be affected by his or her vote or action.~~

~~C. Conflicts of Interest and Disclosure — City Councilmembers:~~

- ~~1. Each member of the city council shall disclose any financial interest he or she may have in any matter that comes before the city council for a vote. If the member believes that the financial interest is substantial, he or she shall ask to be excused from voting on the matter.~~
- ~~2. The mayor shall rule on the request of a member of the city council to be excused from voting on a matter in which the member has or believes he or she has a~~

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~~substantial financial interest, unless the mayor is the member making the request or has the same or a similar or related financial interest in the same matter, in which case the city council shall designate another councilmember who has no financial interest in the matter to rule on the request.~~

~~3. The decision of the mayor (or designated member of the city council) on the member's request to be excused from voting may be overridden by a majority vote of the city council. Neither the councilmember making the request nor any other councilmember, who has disclosed a similar or related interest in the same matter, may rule on any member's request to be excused from voting on the matter or vote on the question of overriding such a ruling.~~

~~4. If any resident of the municipality believes that a member of the city council may have an undisclosed conflict of interest, the resident may request a confidential meeting with the mayor (or, in the event that a claimed potential conflict of interest involves the mayor, any other member of the city council chosen by the resident requesting the meeting) and the councilmember who may have a conflict of interest. If, as a result of the confidential meeting, the member of the city council with the potential conflict or the mayor decides that the financial interest must be disclosed to the city council, the member of the city council shall disclose the interest to the city council as provided in subsection (C)(1) of this section.~~

~~5. A member of the city council who has a substantial financial interest in a matter before the city council, and who has been excused from voting on that matter, may not participate as a councilmember in the debate on the matter. If the matter is discussed by the city council in executive session, the member shall be excluded during the executive session.~~

~~6. If a conflict of interest is discovered after an official action has been undertaken or completed, the city council may by a majority vote, excluding the vote of any affected member, resolve to rescind the official action or to take any other remedial steps necessary.~~

~~D. Conflicts of Interest and Disclosure—Municipal Officers, Appointed Officials, and Employees:~~

~~1. Each municipal officer, appointed official and employee shall disclose any financial interest he or she may have in any matter that has come before the municipal officer, appointed official or employee for action in the course of his or her duties. If either the municipal officer, appointed official or employee making the disclosure, the mayor (or, in the case of city employees, the city manager) concludes that the financial interest in~~

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~~question is substantial, then the municipal officer, appointed official or employee shall not act or participate in taking action on the matter.~~

~~2. Any resident of the municipality who thinks that a municipal officer, appointed official or employee may have an undisclosed conflict of interest may request a confidential meeting with the city manager (in the case of a city employee) or the mayor (in the case of a city municipal officer or appointed official) and the municipal officer, appointed official or employee who may have a conflict of interest. If, as a result of the confidential meeting, the municipal officer, appointed official or employee with the potential conflict concludes that he or she should refrain from acting on the matter, or the city manager (or the mayor) directs the municipal officer, appointed official or employee to refrain from acting on the matter, all proceedings of the meeting with the resident and the city manager (or mayor) will remain confidential. If neither the municipal officer, appointed official or employee nor the city manager (or mayor) decides that the municipal officer, appointed official or employee must refrain from acting, the resident may request the city council to consider the matter at its next regular meeting.~~

#### ~~E. Violations:~~

~~1. Any member of the city council who violates this chapter by knowingly refusing to disclose a financial interest as required by this section may be censured by the city council. Such censure shall be made upon a two thirds (2/3) majority vote of the city council. No member of the city council may vote on any question of his or her own censure, but may participate in any discussion and debate on the matter.~~

~~2. Any municipal officer who violates this chapter by knowingly refusing to disclose a financial interest as required by this section may be terminated from employment by a two thirds (2/3) vote of the city council in accordance with the municipal officer's contract with the city of Bethel. The municipal officer has the right to address the city council before any vote on the matter.~~

~~3. Any appointed official who violates this chapter by knowingly refusing to disclose a financial interest as required by this section may be suspended or permanently removed from the committee or commission. Such removal or suspension shall be made upon a two thirds (2/3) majority vote of the city council. Any suspension shall be for a period of up to ninety (90) days. The appointed official has the right to address the city council before any vote on the matter.~~

~~4. Any employee who violates this chapter by knowingly refusing to disclose a financial interest as required by this section may be terminated from employment by the city manager in accordance with the municipality's personnel policies and applicable law.~~

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~~The employee has the right to address the city manager before any decision on the matter.~~

## ~~2.05.070 Representative of the city of Bethel.~~

~~City councilmembers, municipal officers, and appointed officials of the city of Bethel shall support the direction of the city council when representing the city of Bethel or acting on behalf of the city. All such individuals shall clearly make known any personal communication or action which contradicts city council direction as representing their own personal views and/or ideas.~~

### Chapter 2.05 City Officers Generally

## 2.05.010 Definitions

As used in this chapter, the following definitions shall apply:

- A. "Appointed Body" means any municipal commission, board, or committee created by ordinance or resolution with members of the public appointed subject to the confirmation by the City council.
- B. "Appointed Official" means a board or commission member appointed by the mayor subject to confirmation by the City Council.
- C. "City Official" means a person who holds elective office under the ordinances of the City, or who is a member of a board or commission whose appointment is subject to confirmation by the City Council.
- D. "Elected Official" means a person holding an elective office subject to municipal elections under the code.
- E. "Financial Interest" includes the receipt of a pecuniary benefit or the expectation of a pecuniary benefit.
  1. A financial interest of a person includes a financial interest of any member of the person's household.
  2. A person has a financial interest in an organization if the person:
    - a. Has an ownership interest in the organization or
    - b. Is a director, officer or employee of the organization.
  3. Whether a financial interest is substantial is determined on a case-by-case basis.
- F. "Hired consultant and contractors" means a person or organization hired by the city as an independent contractor and not as an employee.
- G. "Immediate family member" means
  1. The spouse of the person;

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2. Another person cohabiting with the person in a conjugal relationship that is not a legal marriage;
  3. A child, including a stepchild and an adoptive child, of the person;
  4. A parent, sibling, grandparent, aunt or uncle of the person; and
  5. A parent or sibling of the person's spouse.
- H. "Municipal employee" means any person employed by the city, whether full time or part time, temporary or permanent, but excluding elected officials and appointed officials.
- I. "Municipal officer" includes the city manager, city attorney and city clerk.
- J. "Source of income" means an employer or other person or entity paying compensation, dividends, or interest, directly or indirectly, for services, products, or investments. If the income being reported is derived from employment by a sole proprietorship, partnership, or corporation in which the reporting person, the spouse or children, or a combination of them hold a controlling interest, that proprietorship, partnership, or corporation may be designated as the source of income without specifying clients or customers if the business is one that is normally conducted on a cash basis and typically does not keep records of individual customers. In all other cases, the clients or customers of the proprietorship, partnership, or corporation shall be listed as sources of income of the person whose income is being reported, whose spouse, children, or a combination of them hold a controlling interest.

### **2.05.020 Oath.**

All municipal officers and city officials shall, before entering upon the duties of their office, individually take an oath, in writing, to honestly, faithfully, and impartially perform and discharge the duties of his or her office and trust. This oath shall be filed in their personnel file.

### **2.05.030 Resignation.**

Resignations of municipal officers and city officials shall be made in writing and filed with the clerk. The clerk shall immediately notify the mayor or manager and city council. Municipal employees shall follow the resignation procedures in the city's personnel policies.

### **2.05.040 Conflicts of interest and Code of Ethics- Generally**

A. A person subject to the requirements of this chapter may not:

1. Use their official position or office for the primary purpose of obtaining personal financial gain or financial gain for an immediate family member or

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business with which the person is associated or in which the person owns stock. This provision does not apply to financial gain from salary under the terms of employment.

2. No city official, shall use the implied authority of office or position for the purposes of unduly influencing the decision of others, or promoting a personal interest within the community. City officials will refrain from using their title except when duly representing the city in an authorized capacity. Unless duly appointed by the council to represent the interest of the full council, councilmembers shall refrain from implying their representation of the whole by the use of their title.

3. Solicit or receive money for advice or assistance given in the course of the officer's or employee's employment or relating to that employment.

4. Represent a client before the city council for a fee, except employee members of the unions pursuant to labor agreements.

5. Solicit or accept a gift if it can be reasonably inferred that the gift is intended to influence the elected official's independence of judgment in the exercise of official duties.

- a. An item is a "gift" under this subsection if it is:
  - i. Money, an item of value, service, loan, travel or hospitality accommodation, entertainment, or employment; and
  - ii. Provided to an elected official, or to another person or entity designated by the elected official, for less than full value.
- b. Unless rebutted by other factors, food or beverage for immediate consumption is presumed not to be given under circumstances in which it could be reasonably inferred that they are intended to influence the elected official's independence of judgment in the exercise of official duties.
- c. The following unsolicited gifts are allowed, provided that if disclosure is required, the gift disclosure form is timely filed with the municipal clerk within 30 days of the receipt of the gift:
  - i. Payment for a business meal offered as a courtesy in the context of municipal duties, provided that such meals shall not be accepted on a basis so frequent from any one source or a combination of sources as to raise an appearance of the use of the person's public position for private gain. No disclosure is required.
  - ii. A discount or price available to public sector officials generally, or to a large business category of public officials to which the elected officials belongs. No disclosure is required.

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- iii. A monetary gift or award presented in recognition of meritorious, civic, or voluntary service, so long as presented by a recognized civic or non-profit charitable organization presenting such a gift or award as part of an established tradition, and not given as financial inducement for official action. An elected official shall disclose a recognition gift or award in excess of \$150.00.
  - iv. A perishable gift for immediate consumption or display, from member(s) of the public expressing general gratitude or holiday cheer. No disclosure is required.
  - v. In-state travel and hospitality discounts or accommodations offered or provided to an elected official shall be applied to any municipal expense for the travel. No disclosure is required. Out of state gifts of travel and hospitality related to providing or obtaining information primarily of matters related to the duties of the elected official are allowed. Gifts in this category in excess of \$250.00 shall be disclosed to the council prior to acceptance.
- d. Gifts that are not connected with the recipient's status as an elected official are outside the scope of this chapter and no disclosure is required.

6. No city official may vote on any question in which the member has a direct or indirect substantial financial interest. Direct or indirect financial interest shall be disclosed to the presiding officer prior to the discussion on the question, for a ruling on a request from the member with the financial interest to be excused from discussion vote. The decision of the presiding officer on a request by a member of the governing body or an appointed body to be excused from a vote may be overridden by the majority vote of the body. If there are not at least four members in attendance who are qualified to vote, the matter shall be tabled until the next regular or special meeting at which four members qualified to vote on the matter are in attendance.

7. No city official, municipal officer, appointed official or municipal employee shall participate in any official action in which he or she has a substantial financial interest. Prohibited participation includes voting as a member of the city council, taking part in debate, soliciting the vote of a member of the city council, or encouraging any municipal official or officer to act in a certain way.

8. No city official municipal officer or municipal employee may disclose information he or she knows to be confidential concerning employees of the city, city property, city government, or other city affairs, including but not limited to confidential information disclosed during an executive session, unless authorized or required by law to do so.

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B. Nothing in this section is intended to limit the scope of additional restrictions, prohibitions and disclosure requirements applicable to municipal employees, appointees and elected officials under this chapter.

### **2.05.050 Improper influence in grants, contracts, or leases.**

- A. A municipal officer or municipal employee, or immediate family member, may not attempt to acquire, receive, apply for, be a party to, or have a substantial personal or substantial financial interest in a city grant, contract, or lease if the municipal officer or public employee may take or withhold official action that affects the award, execution, or administration of the city grant, contract, or lease;
- B. The prohibition in A. of this section does not apply to a city grant, contract, or lease competitively solicited unless the employee;
  - 1. is employed by the department or division awarding the grant, contract, or lease, or is employed by the department or division for which the grant, contract, or lease is let;
  - 2. takes official action with respect to the award, execution, or administration of the grant, contract, or lease.
- C. A municipal employee shall report in writing to his/her supervisor any personal or financial interest held by the employee, or an immediate family member, in a city grant, contract, or lease that is awarded, executed, or administered by the department or division served by the employee.
- D. The city council may provide a waiver from this section as provided in BMC 4.20.240.

### **2.05.060 Representative of the city of Bethel.**

City Officials, municipal officers, and municipal employees of the city of Bethel shall support the direction of the city council when representing the city of Bethel or acting on behalf of the city. All such individuals shall clearly make known any personal communication or action which contradicts city council direction as representing their own personal views and/or ideas.

### **2.05.070 Outside employment restricted.**

Municipal employees shall not engage in any employment or self-employment which is incompatible with or in conflict with his/her public employment. A public employee who wishes to engage in other employment or self-employment shall request prior approval from the city manager. If the manager determines that the employment is not incompatible and is not in conflict with the proper discharge of official duties, the manager may give written approval. Any change in an employee's approved outside

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service or employment activities must be reported to the city manager. If the employee is the city manager, city attorney, or city clerk, the employee shall request approval from the city council, which will have the responsibility for determining compatibility, and, upon a determination that the services or employment are not incompatible or in conflict with official duties, may approve the services or employment in writing.

### **2.05.080 Report of financial and business interests.**

A. A candidate for elective municipal office shall file a statement under oath with the city clerk, at the time of filing a nominating petition and declaration of candidacy, specifying the candidate's business interests and income sources, and shall file a similar statement of income sources and business interests with the City Clerk not later than April 15 of each year that they hold office.

B. The city manager and any appointed councilmember and planning commissioner shall file a statement under oath with the city clerk, within 30 days after appointment to office, specifying sources of business interests and income.

### **2.05.090 Contents of statement.**

A. The statement filed by the city manager, elected official, planning commissioner or candidate under this chapter shall be an accurate representation of the financial affairs of the business interests and sources of income for the officer or the officer's immediate family, to the extent those sources of income or business interests are ascertainable by the officer or candidate.

B. The statement filed shall include the following information relating to the filer's immediate family living in the household excluding filer's dependent children:

1. The source of all income of \$5,000 during the preceding calendar year, including taxable capital gains, except that a source of income that is a gift must be included if the value of the gift exceeds \$250;
2. The name and address of each business entity owned or in which an interest was held during the preceding calendar year, including a statement of the nature of the interest owned or held, except that an interest held in a retirement account or an interest of less than \$5,000 in the stock of a publicly traded corporation need not be included;
3. The name and address of each business in which the filer is an officer, director, manager, or employee during the preceding calendar year;

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4. The identity and nature of each interest in real property located within the City limits, including an option to buy, owned at any time during the preceding calendar year;

5. A list of all contracts, bids, or offers to contract with the city during the preceding year, including those made through a proprietorship, partnership, or corporation in which the filer or an immediate family member, or a combination of them, hold a controlling interest.

#### **2.05.100 Modified requirements for professionals.**

Notwithstanding other provisions of this chapter, medical and psychiatric doctors, attorneys, ~~and~~ psychologists or other professionals are not required to disclose as sources of income the names of individual patients or clients who receive professional services normally considered to be confidential. This exemption shall not apply to the identity of any corporation or other business entity having a contract with the professional producing income of \$5,000 or more for services to its members or a defined group, nor to the identity of clients receiving services that do not fall within the candidate's or official's field of professional expertise.

#### **2.05.110 Administration and inspection.**

The city clerk shall administer the provisions of this chapter. The clerk shall prepare and keep available for distribution standardized forms on which the reports required by this chapter shall be filed. The city clerk may make such alterations to the forms as may be necessary.

#### **2.05.120 Records, public information.**

All statements required to be filed by this chapter are public records.

#### **2.05.130 Refusal or failure to disclose.**

A. If a candidate fails or refuses to file the statement required by this chapter, his or her filing shall be refused or, if previously accepted, shall be returned and his or her name shall be withheld or removed from the filing records of candidates.

B. A person who refuses or knowingly fails to make a required disclosure of information as provided in this chapter or who files a statement containing false or misleading information knowing it to be false or misleading, shall be guilty of a violation and upon conviction is punishable by a fine as provided for violations in BMC 1.08 and may be removed from office which they are seated.

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### **2.05.140 Application of state statutes.**

A. Nothing in this chapter is intended to curtail, modify, or otherwise circumvent the application of the Alaska Statutes to any conduct involving bribery or other offenses against public administration.

B. All municipal officers as defined by Alaska Statutes (AS) Chapter 39.50 are exempt from the provisions of AS 39.50 relating to conflicts of interest or financial disclosures.

### **2.05.150 Conflict of interest-elected city officials.**

A. Excepts as provided herein a city official may not participate in any official action in which the official or a member of the officials' immediate family has a substantial financial interest. For purposes of this section participation shall not include discussing the matter with city officials or addressing the city council as a private citizen, but shall include voting and participating in the debate as a council member.

B. A city official shall disclose any substantial financial interest in any matter before the body, prior to debating or voting upon the matter. Any official of the body may raise a question concerning another member's financial interests, in which case the member in question shall disclose relevant facts concerning the official's financial interests in the subject of the action.

C. Whether the direct or indirect financial interest is substantial shall be determined by the presiding officer on a case-by-case basis, with evaluation of these factors:

1. Whether the financial interest is a substantial part of the consideration;
2. Whether the financial interest directly and substantially varies with the outcome of the official action;
3. Whether the financial interest is immediate and known or conjectural and dependent on the factors beyond the official action;
4. Whether the financial or private interest is monetarily significant;
5. Other factors deemed appropriate by the presiding officer under the specifics of the disclosure and the nature of the action taken before the council body, or commission.

D. After a city official has made known any substantial financial interest in any question to be voted upon by the body

1. The officer shall ask to be excused from the debate and vote on the matter;
2. The presiding officer shall rule on the request;

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3. The decision of the presiding officer shall be final unless overridden by a majority vote of the body;

E. In the event that the official with a substantial financial interest is the presiding officer, the request shall be ruled upon by a vote of the body. An official may not participate in the matter if the presiding officer or a majority vote of the body determines the financial interest is substantial. Neither the city official making the request nor any other city official, who has disclosed a similar or related interest in the same matter, may rule on any member's request to be excused from voting on the matter or vote on the question of overriding such a ruling.

### **2.05.160 Conflict of interest – municipal employee.**

A municipal employee shall not participate in an official action in which the employee or a member of the employee's immediate family has a substantial financial or private interest. A municipal employee shall disclose, in written narrative form, to their supervisor the employee's financial or private interest in official action and the financial or private interest of any member of the employee's immediate family as defined in 2.05.010 E., if the employee's duties could influence the official action.

A. Whether the municipal employee is prohibited from participation in official action due to substantial financial or private interest shall be determined by the city manager with evaluation of these factors:

1. Whether the financial or private interest held by the employee or a family member is a substantial part of the official action under consideration;
2. Whether the financial or private interest varies directly and substantially with the outcome of the official action;
3. Whether the financial or private interest is monetarily significant;
4. Whether the public disclosure requirements applicable to municipal employees under this chapter have been fully met;
5. Whether public disclosure of the municipal employee's financial or private interest and management of the potential for conflict of interest are sufficient to maintain the integrity of the decision making process.

B. The determination of the city manager shall be filed with the municipal clerk as a public record.

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C. A complaint to the city manager or mayor for conflict of interest based on substantial financial or private interest in official action by a municipal employee shall be filed as a notice of potential violation under 2.05.210.

### **2.05.170 Procedure for declaring potential conflicts of interest –City Manager**

The city manager who has or may have a substantial financial interest in an official action shall disclose the facts concerning the manager's financial interests to the city council prior to taking any official action. If the city council determines the manager has a substantial financial interest in the action, the city council shall excuse the manager and assign another city employee to the matter.

### **2.05.180 Conflict with collective bargaining agreement.**

In the event any section or provision in this chapter conflicts with an applicable collective bargaining agreement for a public employee, the collective bargaining agreement shall control with respect to that employee.

### **2.05.190 Employment prohibited.**

No member of the council may be employed by the city in any capacity within a 12-month period immediately preceding or following the term of that individual unless the member is employed as a hired consultant or contractor and a waiver has been provided by the city council as described in BMC 4.20.240.

### **2.05.200 Political activity.** The following limitations shall apply to political activity:

1. Departments, boards, and commissions, of municipal government shall not:
  - a. Expend municipal funds for the support, opposition or endorsement of candidates for any elected government office.
  - b. Expend municipal funds for paid advertisement which advocates or promotes a particular position, or solicits members of the public to advocate or promote a particular position, on legislation or other action pending before the council.
  - c. Permit an administrative division of municipal government to endorse or oppose candidates for elected federal, state, municipal or other local office even if such endorsement does not include expenditure of funds. This prohibition applies to municipal employees while on duty and to the use of municipal property or facilities in a manner not made available to members of the public.

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d. Authorize that money held by the municipality be used to influence the outcome of an election, except as permitted by state law under AS 15.13.145.

e. Actively campaign or prepare, publish, broadcast, or distribute by any means material of a partisan nature on any ballot measure, this including referendums, initiatives, bond issues or other special elections.

2. Subject to restrictions in AS 15.13.145 on the use and expenditure of municipal funds to influence the outcome of a ballot proposition or question, the City Manager may designate in advance, in writing, one or more executive employees to appear before the council, appointed public bodies of the municipality, community councils, civic organizations, and media representatives in support of or in opposition to any ballot measure coming before the voters in a municipal election. The designated executive employees shall be selected from among the employees with principal responsibility for carrying out policies and programs relevant to the ballot measure.

3. The limitation against dissemination of partisan materials on bond measures does not apply to municipal employees asked to assist an elected official in the preparation of ballot measures or to respond to inquiries from an elected official concerning any ballot measure.

4. A municipal employee shall not serve as a member of the Bethel City Council or school board or in elective office of the state, federal, or another local government. A municipal employee who is elected to one of these offices shall resign immediately from municipal employment.

5. For purposes of this section, public safety volunteers are not considered municipal employees (BMC 3.64.060).

### **2.05.210 Procedures for violation reporting.**

A. Any person who believes that violation of any portion of this chapter has occurred may file a written complaint of potential violation with the city clerk's office.

B. All written complaints of potential violation submitted under this chapter shall be signed by the person submitting the complaint. A written complaint of potential violation shall state the address and telephone number of the person filing the complaint, identify the respondent, affirm to the best of the person's knowledge and belief the facts alleged in the complaint of potential violation signed by the person are true. The person filing the complaint of potential violation shall identify the section of this chapter the person believes was violated, state why the person signing the complain of potential violation believes the facts alleged constitutes a violation of that

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section and identify any documentary or testimonial evidence the person filing the complaint believes are in support of the notification of potential violation.

### **2.05.220 Conformity to law.**

If any section or provision of this chapter is held to be contrary to law by a court of competent jurisdiction or by action of the Alaska State Legislature, that section or provision shall be deemed invalid. All other sections and provision of this chapter shall continue in full force and effect.

## **2.06 Board of Ethics**

### **2.06.010 Board of ethics established – general provisions.**

A. There is hereby established a Board of Ethics.

B. The Board shall be comprised of all members of the city council. The mayor, or the vice-mayor in the mayor's absence, will serve as presiding officer of the Board. In the absence of both, the members of the Board shall elect a presiding officer from among its members.

C. The city attorney or other legal counsel for the Board may assist the Board at every stage of the proceedings, but shall have no vote.

D. A quorum of the Board shall be a majority of all members who are not excused for cause, such as being the complainant, the respondent, a witness, having a conflict of interest, or other for cause recusal. However, in no event may a quorum be less than three.

E. Decisions of the Board shall be adopted by a majority of the members who are qualified to act on the matter, where a quorum is present.

F. Unless the Board delegates such authority to another member or decides that no one shall have such authority, the presiding officer shall have authority to make procedural decisions between Board meetings on behalf of the Board. Examples of matters that may be decided by such delegate include scheduling hearings and other matters, establishing pre-hearing requirements and filing deadlines for motions, exhibits, witness lists, hearing briefs, and deciding other procedural matters.

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G. The presiding officer shall vote on every question, unless required to abstain for cause, and shall not have power to veto any action of the Board.

### **2.06.020 Function and authority.**

The Board of Ethics has authority to perform the following functions:

- A. Investigate reported violations of Chapter 2.05.
- B. Hear and decide written complaints of violations of Chapter 2.05.
- C. Hear and decide on requests for exceptions as specified in Chapter 2.05.
- D. Make findings and recommendations concerning sanctions, civil penalties and remedies for violations as provided in the code.
- E. Adopt recommended policies and procedures governing the board's conduct of business.
- F. Upon application of the complainant, respondent, or at the board's discretion, compel, by subpoena the appearance and sworn testimony at a specified time and place of a person the board reasonably believes may be able to provide information relating to a matter under investigation by the board or the production of documents, records or other items the board reasonably believes may relate to the matter under consideration.
- G. Administer oaths and receive testimony from witnesses appearing before the board.
- H. Request city agencies to cooperate with the board in the exercise of the board's jurisdiction.
- I. Request the advising attorney to seek assistance of the district or superior court to enforce the board's subpoena.
- J. Conduct investigative hearings in executive session, pursuant to notifications alleging violations of matters within the authority of the board.

### **2.06.030 Confidentiality; initial review.**

- A. Each written complaint of a violation of Chapter 2.05 received by the city manager or

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mayor shall be submitted to the clerk's office and be assigned an identification number, which shall be used in lieu of names when referring to the complaint to maintain confidentiality. The city manager, city attorney, city clerk and the board shall keep all written complaints of potential violation confidential during investigation and the board's deliberative process. Complaints of potential violation may be disclosed only to the staff members of the city clerk's office providing administrative support to the board, members of the board, and legal counsel. Upon receipt of a notification of potential violation, the board shall, at its next scheduled meeting or earlier, as determined by the board chair, review the complaint of potential violation in executive session and determine if further action on the notification of potential violation is warranted.

B. If the board determines the facts alleged in the notification of potential violation, even if proven, do not constitute a violation, or that the board lacks jurisdiction to address the complaint of potential violation, the board shall return the complaint of potential violation to the complaining party or it may recommend to the person filing the complaint that it be amended and re-filed. Notifications of potential violation returned without further action shall remain confidential.

C. If the board determines the allegation in a complaint of potential violation, if proven, may constitute a violation of a matter within the board's jurisdiction, the board shall:

1. Request and receive assistance from legal counsel to assist the board in all further deliberative processes, investigations and reports.
2. Give the respondent a copy of the complaint of potential violation, along with a copy of the outline of the board's process under this chapter, including notice that the respondent may choose to hold the proceeding in public and may be represented by legal counsel of respondent's choosing and at respondent's own expense; and
3. Notify both the person submitting the complaint of potential violation and respondent of the date(s) on which each may be requested to meet with the board, present documentary or testimonial evidence, and assist the board in resolving the potential violation.

#### **2.06.040 Disclosure of complaint of potential violation prohibited.**

A. A complaint of potential violation of Chapter 2.05 is confidential until the board completes a written report for distribution as a public record.

1. No person, including the complainant, shall knowingly disclose to another person, or otherwise make public in violation of this chapter, the contents of a complaint of

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potential violation filed with the board, unless:

i. The respondent elects to proceed in public; or

ii. The written report of the board is electronically published by the city clerk.

2. Breach of confidentiality required by any provision of this chapter is a violation of this chapter subject to punishment.

3. Any person involved with a complaint of potential violation, including the filer of the complaint, shall keep the matter confidential. The confidentiality extends from the filing of the complaint and shall continue until the matter is concluded and made public. Maintaining confidentiality is essential to allowing for a neutral investigation into the matter. If the Board finds that any person has violated the confidentiality of a complaint of potential violation, the Board shall refer the matter for investigation. If a person is found to have breached confidentiality, they shall be subject to sanctions of \$300 for a first offense, \$500 for a second offense and \$1,000 for each subsequent offense.

4. Public disclosure resulting from corrective action under this chapter is not a violation of this subsection.

#### **2.06.050 Conduct of investigation and standard of proof.**

A. The board's investigation shall be conducted in executive session, unless the respondent requests it be held in a public session. The respondent and the person who filed the complaint, and their counsel, if any, may be present in executive session while the investigation is being conducted.

1. The respondent and the person who filed the complaint of potential violation may identify other individuals and documents that each would like the board to interview and review.

2. If an individual with information bearing on the complaint of potential violation is unwilling to come forward with information, the respondent and the person who filed the complaint of potential violation may each request the board to subpoena the person and any documentary evidence.

3. Persons appearing before the board may be represented by counsel or other person serving in a representative capacity.

4. The board may question the respondent, the person who filed the complaint of

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potential violation, and other persons appearing before the board.

5. The board may solicit questions and testimony from the person filing the complaint of potential violation, the respondent and other persons appearing for the purpose of providing information to the board. The board may solicit questions from counsel present to represent persons appearing before the board, but all questions during the board's investigation shall be posed through and by a member of the board. Consistent with due process, the board may limit or prohibit questions suggested to the board by or on behalf of persons appearing before the board.

6. The standard of proof to be applied by the board in determining a violation under Chapter 2.05 is proof by a preponderance of the evidence.

7. Technical rules of evidence do not apply, but the findings of the board shall be based upon substantial evidence, which means reliable and relevant information presented to the board.

8. The board's findings shall be binding.

9. When the board's investigation is conducted in executive session, the public shall be excluded and the session shall be electronically recorded. The recording shall be available for access as a public record after publication by the city clerk of the proposed resolution and settlement under subsection 2.06.110.

#### **2.06.060 Deliberations of the board.**

A. Deliberations of the board shall be conducted in executive session.

B. The deliberations of the board shall not be recorded.

C. The respondent, the person filing the complaint, and their counsel shall be excluded from the deliberations. The Board's legal counsel may attend the deliberations.

D. The board shall reconvene in open session when deliberations are complete.

#### **2.06.070 Board member disclosures.**

When an investigation is convened in executive session to determine whether the respondent has violated Chapter 2.05, the Board members will be requested to disclose any conflict of interest, ex-parte communications, or other facts that may affect their qualification to hear the matter. After such a disclosure, the other members of the

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Board shall determine whether a member shall be excused for cause.

### **2.06.080 Duty of cooperation.**

A city official or the city manager subject to a complaint of a violation shall work cooperatively with the City Clerk to establish a hearing date and shall appear at the place and time set for the hearing, regardless of the respondent's intentions concerning defense or exercise of other rights. Failure to appear, except when failure results from a serious condition or event that prevented the respondent's appearance, is a breach of respondent's duties under this chapter and in itself may result in a summary finding of violation by the Board and imposition of remedies, penalties and disciplinary action under section 2.06.110. Nothing in this section shall prevent the rescheduling of a hearing for cause upon written request of the respondent or the complainant.

### **2.06.090 Decisions on the record.**

Using the identification number of the complaint of potential violation, the board shall vote in open session on these questions:

1. Whether the board finds by a preponderance of the evidence one or more violations within the jurisdiction of the board; and
2. Whether the board recommends further administrative or remedial actions; and
3. What specific sanctions, corrective actions or referrals, if any, the board recommends.
4. If the board does not find a violation under Chapter 2.05, the board shall prepare a confidential statement of closure listing the complainant and respondent, the assigned identification number, the allegations, the hearing date, and the finding that no allegation was substantiated by the board in whole or in part, and the date of board closure. At the sole discretion of the respondent, the board may release the statement of closure as a public document.

### **2.06.100. Timely completion.**

The board shall complete action on a complaint of potential violation and investigations within 90 days of the filing of the complaint of potential violation. By a majority vote, the board may extend the completion date for up to an additional 90 days, or longer for good cause shown.

### **2.06.110 Sanctions, civil penalties and remedies.**

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Upon conviction for any violation of Chapter 2.05 or after an investigation conducted by the Board under this chapter, the Board may impose (or recommend in the case of subsection 1.) as a sanction, penalty, or remedy any or all of the following, as appropriate to the seriousness of the violation:

1. A recommendation to the City Council that the office of a City Council member or the position of city manager be declared vacant for a serious violation that is (1) flagrant or (2) willful and knowing.
2. A member of a board or commission may be removed from the board or commission.
3. A public or private reprimand may be given to the official.
4. The official may be ordered to refrain from voting, deliberating, or participating in any matter in violation of Chapter 2.05.
5. The committee assignments of an official may be revoked.
6. An official's privilege to travel at city expense on city business may be revoked or restricted.
7. A contract, or transaction or appointment, which was the subject of an official act or action of the city that involved the violation of a provision of Chapter 2.05, may be voided or terminated.
8. The official must forfeit or make restitution of any financial benefit received as a consequence of a violation of Chapter 2.05.
9. A civil fine of not more than \$1,000 per violation may be imposed.

#### **2.06.120 Record of proceedings and public record.**

Permanent records and minutes shall be kept of Board's proceedings. Such minutes shall record the vote of each member upon every question. Every decision or finding shall immediately be filed in the office of the City Clerk, and shall be a public record open to inspection by any person. Every finding and recommendation shall be directed to the City Council at the earliest possible date.

#### **2.06.130 Settlement of complaints.**

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A. The respondent in any case accepted for investigation may propose a resolution and settlement of the complaint. A proposed resolution and settlement will include the admitted violation of Chapter 2.05; the remedial actions agreed to by the respondent subject to the city council's concurrence; any proposed preventive actions to be undertaken to avoid similar violation by respondent or others in the future; and other matters required by the board.

B. A proposed resolution and settlement is subject to approval by the Board and has no effect unless approved by the Board. The Board will give the complaining person the opportunity to review and comment on the proposed resolution and settlement prior to approving it. Until approved by the Board, a proposed resolution and settlement must be kept confidential.

C. The proposed resolution and settlement becomes public record upon final approval by the Board.

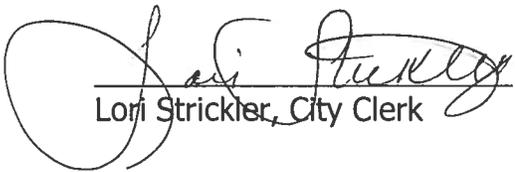
**SECTION 3. Effective Date.** This ordinance shall become effective immediately, upon passage by the City Council.

**ENACTED THIS 26 DAY OF MARCH 2013, BY A VOTE OF 4 IN FAVOR AND 1 OPPOSED.**

ATTEST:



Richard Robb, Mayor Pro Tem



Lori Strickler, City Clerk