


**Municipal Responsibility 101**  
**Ethics & Conflicts of Interest**

November 2021  
Matt Mead  
Landye Bennett Blumstein LLP



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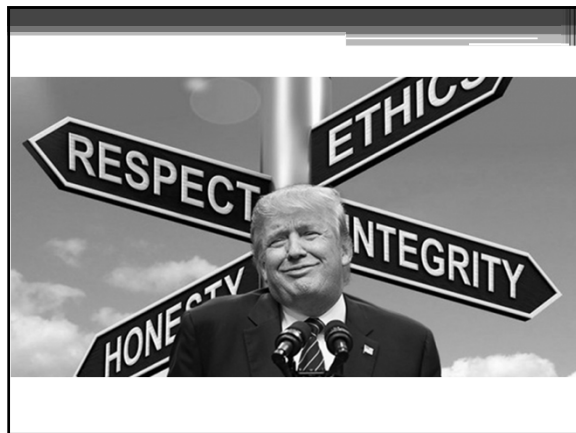
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**Disclosure & Transparency**



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## So now you're a public official... Now What?

- Held to a higher standard of public trust and integrity
- Lead by example
- You're spending the public's money
- You're here to represent the public's best interest; not your own
- What have I gotten myself into...!!??

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## Hold each other accountable!

- You are responsible for holding your fellow public officials accountable.



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## Or the voters may do it for you...

**Alleged misconduct leads to recall election Nov. 7**

Haines Assembly members survive divisive recall election

By Emily Hiles, KIRO5-Haines - August 16, 2017

Hainesville has options to include a statement on upcoming ballot

By Corinne Williams-Hennessy - September 25, 2017

**ANCHORAGE DAILY NEWS**

**Vote on recall of Unalaska mayor moves forward**

Author: Carey Restino, Bristol Bay Times-Dispatch  
Hudson Fairbanks  
Updated: January 7  
Published: January 7

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## Ethical Obligations are Driven by Two Primary Sources

- STATE LAW
  - Title 29 – Conflicts of Interest and Public Meetings
    - AS 29.20.010 – Conflicts of Interest
    - AS 29.20.600 – Oaths of Office
- MUNICIPAL CODE
  - Example: City Code Chapter 2.36, Code of Ethics
    - City Code 2.36.060, General standards of Ethical Conduct
    - City Code 2.36.070-090, Conflict of Interest provisions

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## AS 29.20.600 - Oaths of Office

- “Before taking office a municipal official shall affirm in writing that the duties of the office will be honestly, faithfully, and impartially performed by the official.”



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## AS 29.20.010 - Conflicts of Interest

- (a) Each municipality shall adopt a conflict of interest ordinance that provides that
  - (1) **a member of the governing body shall declare a substantial financial interest the member has in an official action and ask to be excused from a vote on the matter;**
  - (2) the presiding officer shall rule on a request by a member of the governing body to be excused from a vote;
  - (3) the decision of the presiding officer may be overridden by the majority vote of the governing body; and
  - (4) a municipal employee or official, other than a member of the governing body, may not participate in an official action in which the employee or official has a substantial financial interest.

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### Alaska Supreme Court Weighs In:

- Under common law, “the focus ... [is] on the **relationship between the public official's financial interest and the possible result of the official's action**, regardless of the official's intent.”

*Griswold v. City of Homer*, 925 P.2d 1015, 1026 (Alaska 1996).

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### Know and Follow Your Municipal Code.

- Hold yourself to a higher standard.
- Your constituents' perception of an ethics violation or a conflict of interest can be as damaging as the existence of an actual ethics violation or conflict of interest.

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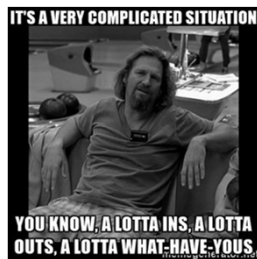
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### DO I HAVE A CONFLICT OF INTEREST??



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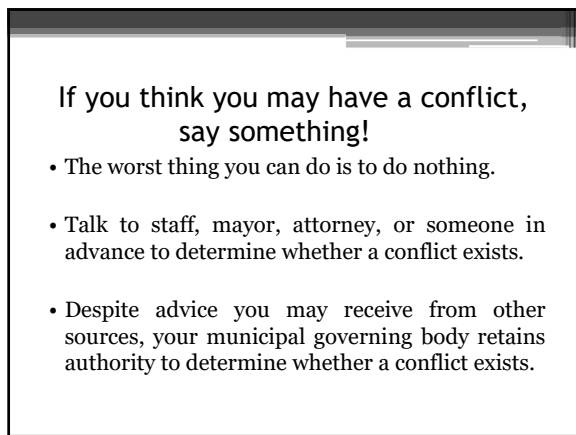
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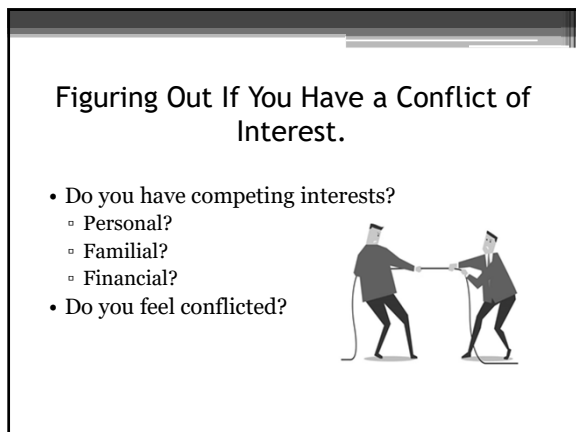
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### What if I Have a Conflict? - Step 1

- **Put it on the record.**

"Madame Chair, members of the Council, I believe I have a conflict of interest in the Council's consideration of Resolution 2019-34 because my brother is the owner of the company being considered for the road maintenance contract."




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### What if I Have a Conflict? - Step 2

- **Do not** participate in the matter being considered.
- **Do not** influence the discussion.
- **Do not** attempt to directly or indirectly influence the municipal body or an individual's consideration of the matter.

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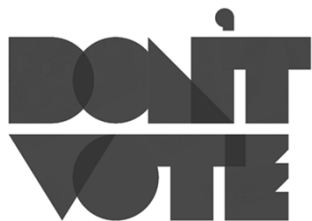
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### What if I Have a Conflict? - Step 3



No, really. **DO NOT** vote on any matter where you have a conflict.

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## Conflict of Interest: Voting.

### City Code 2.36.090

- A. **The mayor** shall declare to the council any substantial financial interest he has in an official action.
- B. **A member of the council or other city board or commission** shall declare any substantial financial interest the member or a member of their immediate family has in an official action and ask to be excused from a vote on the matter.

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## COI: Voting (cont).

- C. **The presiding officer** shall rule on a request by a member of a city body to be excused from a vote.
- D. **The decision of the presiding officer** on a request by a member of a city body to be excused from a vote **may be overridden by the majority vote of the body's membership.**

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## Conflicts of Interest: Additional Provision Options



Can your municipality have its cake AND eat it, too?

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### COI: Additional Provision Options (cont.)

- Your municipality can define what “substantial financial interest” means.
- **City Code 2.36.030:** “Substantial financial interest” means **a financial interest that is of a magnitude that it would be the primary reason for a person’s act to benefit himself or herself or a member of his or her immediate family.** A substantial financial interest does not include a financial interest of a type that is generally possessed by the public or by a large class of persons to which the public official belongs.

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### COI: Additional Provision Options (cont.)

- “Substantial Financial Interest” means “a direct or indirect pecuniary or material benefit, privilege, interest, or contractual relationship accruing as a result of the City’s consideration of a matter.”
- Define “financial interest.”

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### COI: Additional Provision Options (cont.)

- Consider defining “financial interest” to include **any** pecuniary interest:
  - a. Of a member of an official’s immediate family or employer.
  - b. In an entity in which an official or a member of the official’s immediate family has an ownership interest, or is a director, officer, or employee.

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### COI: Additional Provision Options (cont.)

A determination that a public official has a substantial financial interest in a matter shall be considered on a case-by-case basis evaluating these factors:

- a. Whether the financial interest is a substantial part of the matter under consideration.
- b. Whether the financial interest directly and substantially varies with the outcome of the matter under consideration.
- c. Whether the financial interest is monetarily significant.
- d. Whether the financial interest is beyond the type typically possessed by the public at large or a large class of persons to which the city officer belongs.

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### COI: Additional Provision Options (cont.)

- Substantial financial interest does not include:
  - a. A financial interest of such limited magnitude that it would not influence an average, reasonable person.
  - b. A financial interest in which the outcome of a decision would have only an insignificant or conjectural effect.
  - c. A financial interest which is obtained through a competitive process.

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### COI: Additional Provision Options (cont.)

- Should the conflicted city council member get to **participate** in discussions?
- Should the conflicted city council member get to remain seated with the other members **during the discussion**?

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### Conflict of Interest: DUAL OFFICES?

- Generally, dual-office holding is prohibited by basic principles of municipal law.
- **EXAMPLE:** A City of North Pole charter provision prohibiting dual-office holding, and requiring the removal of a city employee (police officer) when that employee was elected to the city council, was valid and constitutional.  
-*Acevedo v. City of North Pole*, 672 P.2d 130 (Alaska 1983).
- **CHECK YOUR CODE** to see if it prohibits you from holding dual offices.

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### Conflict of Interest: NEPOTISM?



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### COI: Nepotism (cont.)

- Nepotism is generally defined as an official granting favors to family members, specifically - jobs.
  - **Example:** a Mayor hires their child to be the Mayor's Chief of Staff, and hires their spouse to be the Director of Government Affairs.
- Alaska law prohibits legislators and executive branch employees from engaging in nepotism.
  - AS 24.60.090; AS 39.90.020
  - What about your municipal code???

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### COI: Nepotism (cont.)

- Nepotism or the appearance thereof can be a tricky issue in Alaska.
  - Alaska law doesn't directly address the issue of nepotism in municipal government.
  - Many of our Alaskan municipal communities are small, rural, and isolated.
  - Our work may require us to work alongside immediate and distant family members in order to complete our official duties.
- **CHECK YOUR MUNICIPAL CODE** to see if it addresses nepotism.

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### Conflict of Interest: Commercial Activity.



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### COI: Commercial Activity (cont.)

**City Code Example 2.36.070. Public officials should not:**

- A. Use city property or equipment for non-city purposes, unless that use is available to the general public on the same terms;
- B. Use city property, equipment, or staff to conduct campaign activity unless that use is available to the general public on the same terms;
- C. Use information within the public official's knowledge or purview to advance the personal interest of the public official or the official's immediate family;
- D. Accept any form of gift, loan or gratuity in exchange for the performance of the public official's duties;

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**COI: Commercial Activity (cont.)**

- E. Engage in business with the city, or be a party to the purchase of goods or services for the use of the city from any person or organization in which the public official or a member of the official's immediate family has a substantial financial interest, unless the financial interest is first disclosed, and the transaction or purchase is approved in advance by the city council or secured through competitive bidding;
- F. Take any action to influence the city's solicitation of any bid or proposal from a person or organization in which the public official or a member of the official's immediate family has a substantial financial interest;

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**COI: Commercial Activity (cont.)**

- H. Represent, advise or assist a person or organization for pay or other benefit to the public official in any matter involving the public official's public duty.

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- Brecksville City Councilman Jack Petsche is now facing an Ohio ethics investigation after his company, USA Roofing, was awarded and performed on a \$150,000 roofing contract on the city's new police station.
- Petsche did not adequately disclose to city leaders that his company was awarded the contract and may now face criminal charges for potentially violating state ethics law and the city charter.

**5abc NEWS 5 CLEVELAND**

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The Washington Post

**D.C. lawmaker Jack Evans fined \$20,000 in ethics case involving outside work**

- D.C. Council member Jack Evans has been fined \$20,000 by the city's ethics agency for using government resources and touting his influence as an elected official while soliciting employment from local law firms.
- Evans's contact with the law firms violated rules that prohibit the use of government resources for personal reasons and using the prestige of office for private gain.



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THE WALL STREET JOURNAL

**Bronx Councilman King Faces Second Ethics Investigation**

Andy King under scrutiny for allegedly misusing funds, involving wife in council activity; claims follow earlier sexual-harassment violation

- King accused of:
- Misusing City funds and letting wife work on council business.
- Sexual harassment.
- Previously disciplined for similar behavior.



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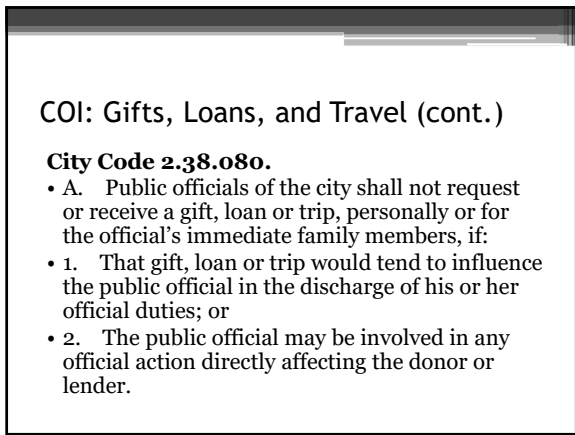
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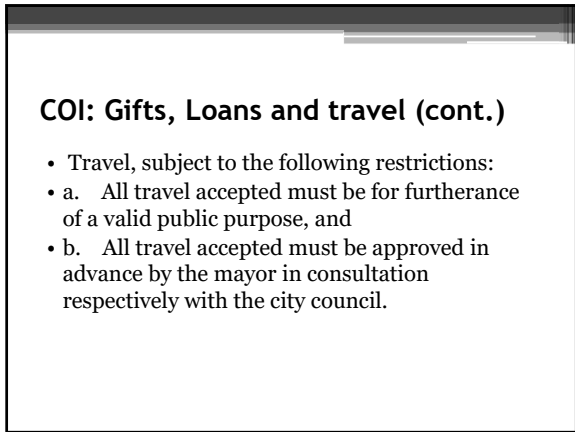
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## Unique Ethics Issues Triggered by Travel

- Whenever and wherever you travel, you are a representative of your community and of your municipal government.
- Travel should not be treated like a vacation.
- Do not extend your trip at the municipality's expense.
- If your municipal code permits you to consume alcohol while traveling, consume responsibly!

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**CITY OF WASILLA  
SAMPLE BALLOT  
SPECIAL ELECTION - FEBRUARY 7, 2012**

Completely fill in the oval next to your choice.

<b>RECALL PETITION</b> <b>AS STATED ON</b> <b>RECALL PETITION</b>	<b>STATEMENT BY THE OFFICIAL NAMED</b> <b>ON THE RECALL PETITION</b> <b>STEVE MENARD</b>
<p>"City Council Member Steve Menard traveled to Sitka, Alaska, in his official capacity as Council Member, for the purpose of attending a meeting with the Alaska Municipal League. Menard, without good cause, failed to carry out his official duties. Menard remained overnight at the Westmark Hotel and while intoxicated he inflicted substantial damage to his hotel room and directed the hotel to bill the City of Wasilla for the damage. The damage included urinating on two beds and a chair, vomiting on the carpet and setting fire to a mattress.</p> <p>The Wasilla City Council convened on August 22, 2011 and decided what action it should take regarding Menard. The Council voted to: 1) sanction Menard by prohibiting him from traveling on City business for the remainder of his term, which expires in 2013, and 2) request him to make full restitution to the City for the \$1434 cost of his travel expenses, and the \$350 the City paid for damage to the hotel room.</p> <p>The Council's action of sanctioning Menard and requiring him to make full restitution for all cost are sufficient reasons to find Menard committed Misconduct in Office."</p>	<p>"I am truly sorry for my actions and all that occurred in the Sitka hotel incident. It should be known that my lack of resignation is not a sign of expected forgiveness but rather gives measure to my continued desire to help serve and form this growing community.</p> <p>All seem to have noticed the headlines on this event, but perhaps what hasn't been noticed is this: My attendance at every council meeting has included coming prepared, engaged, staying until the ground drops, recuse myself from voting when appropriate and voting on all other issues. Perhaps what hasn't been noticed is my personal time invested at Borough and State meetings because I understand the impact of these decisions on our community. Perhaps what hasn't been noticed is my commitment and response to individual's concerns and seeking a balance between them and the City's overall needs.</p> <p>I work hard to carry out my official duties and strive to make amends when I fall short. I would appreciate your vote to complete my term.</p> <p>In closing, thank you to my family and friends for their unwavering support and the confidence it has given me to see this process through to the end."</p>

Shall Steve Menard be recalled from the office of Council Member?

☐ YES  
☐ NO

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Waskblog

## Permissible Travel or Ethics Violation?

### Treasury secretary's wife boasts of travel on government plane, touts Hermes and Valentino fashion

By Damian Paletta  
August 24, 2017



Louise Linton, wife of Treasury Secretary Steven Mnuchin, has made a few headlines during her time in the national spotlight. (Video: Elyse

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Permissible Travel and/or Gifts, or Ethics Violation?

ANCHORAGE DAILY NEWS

Politics

North Slope Borough funded basketball camp for mayor's grandkids, records show

Author: Nathaniel Herz  
Updated: September 28, 2016  
Published: July 23, 2015

The North Slope Borough paid \$8,400 to fly five of Mayor Charlotte Brower's grandchildren from Barrow to a basketball camp in California last August, according to borough documents.

The documents, contained in a response to an Alaska Dispatch News records request, show Brower's signature approving the use of borough funds for three of her grandchildren's fees and flights for the trip to the camp in Santa Barbara.

The records also detail tens of thousands of

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Permissible Gifts or Ethics Violation?

ANCHORAGE DAILY NEWS

Politics

North Slope Borough mayor's office dispensed over \$800K in gifts, violated donation policy

Author: Nathaniel Herz  
Updated: September 28, 2016  
Published: August 15, 2015

North Slope Borough Mayor Charlotte Brower's office has dispensed more than \$800,000 in gifts of public funds to local organizations, sports teams and individuals since she took office in 2011, according to borough documents.

The documents cover only one borough account from which donations were made. Still, they include more than \$100,000 for private club basketball teams not associated with popular public high school sports. One \$10,000 contribution went to a team that served food at

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Questions?

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