

FAIRBANKS NORTH STAR BOROUGH

PUBLIC INFORMATION PACKET FOR CODE OF ETHICS COMPLAINTS

BOROUGH MAYOR



Office of the Borough Clerk
Fairbanks North Star Borough
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CODE OF ETHICS

The Fairbanks North Star Borough Assembly, by adopting a code of ethics for the Borough Mayor has declared that holding public office or employment is a public trust and high moral and ethical standards is essential to the conduct of government. The Code of Ethics provides guidance on acting upon personal interests in the performance of duties and improves standards of elective public service therefore strengthening faith and confidence by the public in their local government.

Citizens have a fundamental constitutional right to freedom of expression, including criticism of public officials. Public officials are also entitled to various rights, including the right to the protection of due process of law.

The FNSB Assembly establishes the following procedures for processing complaints against the Borough Mayor is covered under Chapter 6.32 of the Fairbanks North Star Borough Code. Please remember that this is a summary of Chapter 6.32 of the Fairbanks North Star Borough Code. While every effort has been made to ensure accuracy, the actual code sections, not the summary, govern the filing of complaints. The adopted code is attached.

CONFIDENTIALITY

All documents and records, including the complaint, are confidential.

CITIZEN COMPLAINT PROCEDURES

1. A complaint from a citizen must be made in writing. You may use the attached form or submit a complaint on 8 x 10 letter size paper. Complaint must be legible.
2. The complaint must contain a clear and concise statement of the details of the alleged violation(s) of Chapter 6.32 FNSB Code.
3. The complaint shall be signed under oath.
4. Complaints are filed with the Borough Clerk.

WHAT HAPPENS AFTER THE COMPLAINT IS FILED

1. The Borough Clerk will screen the complaint to determine if the complaint is sufficient.
2. The Borough Clerk may dismiss the complaint on any of the following grounds:
 - a. The complaint does not comply with FNSBC 6.32.120.
 - b. The complaint does not allege facts sufficient to constitute a violation of this chapter.
 - c. The borough has no jurisdiction over the matter.
 - d. The complaint is defective in a manner that would prevent the making of a sound determination.

If the complaint is sufficient on its face, then the Borough Clerk shall make an initial determination as to whether or not there is probable cause for a hearing. Before making a probable cause determination, the Borough Clerk shall notify both the Mayor and the complainant that the complaint has been accepted and serve a copy of the complaint on the Mayor. The notice shall also specify that the Mayor must file a response to the complaint, which shall include any challenge to the sufficiency of the complaint, within 30 calendar days from the date of the clerk's written notice. The notice shall also inform the

Mayor of the right to submit affidavits or other written evidence in support of his or her response. Misrepresentation of a material fact in a response is a violation of this chapter. Failure to timely respond may be considered an admission of the allegations in the complaint. The Borough Clerk may make her determination as to probable cause for a hearing from the written complaint and written response from the Mayor alone or she may also interview individuals and request documents if she deems necessary. If necessary, the Borough Clerk may consult with or request a legal opinion from the borough attorney as to probable cause for a hearing.

If the Borough Clerk determines that there is probable cause for a hearing, the clerk shall send the complaint to a hearing officer selected by the borough attorney.

If the Borough Clerk determines that the complaint is insufficient, has no legal basis or there is no probable cause for a hearing, the clerk shall make a written determination and shall distribute the determination to the Mayor and the complainant. The complainant shall have one opportunity within 10 business days of the date of mailing or hand delivery of the determination to amend the complaint and to re-file. If the clerk determines that the second complaint is insufficient, lacks legal basis or probable cause for a hearing or if the complainant fails to file a corrected complaint within the time set forth above, the clerk's determination is final and the clerk shall reject any attempts by the complainant or any other person on behalf of the complainant to file a complaint based upon the same or essentially similar facts and circumstances. The complainant may appeal any dismissal by the clerk to the superior court in accordance with the Alaska Rules of Appellate Procedure. (Ord. 2003-07 § 5, 2003).

ONCE A COMPLAINT HAS BEEN ACCEPTED -- WHAT THEN?

If the Borough Clerk determines the complaint is sufficient and there is probable cause that the Mayor may have violated this chapter, then the borough attorney shall select an independent hearing officer to preside over the investigation. The hearing officer shall be a private attorney or an individual trained as an administrative hearing officer. The hearing officer shall not be an employee of the Fairbanks North Star Borough.

The hearing officer shall conduct an investigation so as to be completed within 60 days of receipt of the complaint from the Borough Clerk. The hearing officer can, for good cause shown by any person, including the hearing officer, extend the time limit by 30 days.

The hearing officer has the power to:

- Consider any timely challenge to the sufficiency of the complaint or probable cause determination raised by the Mayor and dismiss the complaint if appropriate. If dismissed, both the complainant and Mayor shall receive written notice of the dismissal and the reasons for the dismissal;
- Administer oaths, hold hearings and take testimony;
- Upon application by a party to the hearing or upon his or her own order, issue subpoenas in the manner prescribed by Rule 45 of the Alaska Rules of Civil Procedure, to require the presence of witnesses and the production of records, books and papers at the hearing;
- Order testimony to be taken in person or by deposition; and

- Require any person to submit in writing such reports and answers to questions relevant to the proceedings conducted and the hearing officer may prescribe that such submission be made within a certain period of time, under oath or otherwise.

Failure or refusal to obey a subpoena issued under this chapter is punishable as contempt in the manner provided by law and court rule. The superior court may compel obedience to the subpoena in the same manner as prescribed for obedience to a subpoena issued by the court.

The hearing officer may convene a prehearing conference for the following:

- To set a time and place for the hearing;
- For stipulation as to matters of fact;
- To simplify issues;
- To identify and schedule prehearing matters including any pretrial discovery procedure usually available in civil actions; and
- To resolve other similar matters before the hearing.

The complainant or his or her representative or private counsel may participate in the hearing process and may introduce testimony or additional evidence.

The Mayor may be represented by private counsel of his or her own choosing. The Mayor shall have an opportunity to:

- Challenge the sufficiency of the complaint;
- Examine all documents and records obtained by the hearing officer or the Borough Clerk;
- Bring witnesses;
- Establish all pertinent facts and circumstances;
- Question or refute testimony or evidence including the opportunity to confront and cross-examine adverse witnesses; and
- Exercise, to the extent the hearing officer in his or her discretion determines to be just and reasonable, any pretrial discovery procedure usually available in civil actions.

The Alaska Rules of Evidence do not apply to the admission of evidence in a hearing; however, the hearing officer's findings must be based upon reliable and relevant evidence. All testimony and written evidence taken at the hearing must be preserved. Upon request, a copy of the testimony and written evidence must be furnished to the respondent.

After the hearing officer has completed the investigation, the hearing officer shall make a written findings of facts and conclusions of law. The hearing officer may take any action or combination of actions which the hearing officer deems appropriate including, but not limited to, the following:

- Dismiss the complaint for insufficiency or other grounds;
- Determine that no violation of this chapter has occurred; or
- Determine that there are facts sufficient to constitute a violation of the chapter.

If the hearing officer finds that the Mayor has violated this chapter, the hearing officer shall determine that the Mayor be subject to either or both of the following:

- Public censure;
- A civil fine of not more than \$500.00.

The hearing officer's determination is final and shall be delivered to the Mayor and mailed to the complainant within 10 working days of the final decision. An appeal from a decision of the hearing officer may be taken to the superior court in accordance with the Alaska Rules of Appellate Procedure. (Ord. 2003-07 § 5, 2003)

CONSEQUENCES OF VIOLATIONS

In addition to any disciplinary action, the Mayor, or hearing officer if the Mayor is the subject of the complaint, shall determine if any or all of the following shall be ordered:

- Voidance of any grant, contract, lease or other agreement or arrangement entered into in violation of this chapter;
- Recovery of any fee, compensation, gift or benefit given to an employee or the Mayor;
- Pursuit of any other available legal or equitable remedy; or
- Pursuit of any possible criminal actions. (Ord. 2003-07 § 6, 2003)

BOROUGH MAYOR CODE OF ETHICS -- COMPLAINT FORM



ALL DOCUMENTS AND RECORDS, INCLUDING THE COMPLAINT, ARE CONFIDENTIAL

Complainant's Name:

Address:

Contact Number(s):

Respondent's Name:

Date(s) of the alleged violation:

This complaint alleges violation(s) of (check all that apply):

- 6.32.040 Misuse of official position.
- 6.32.050 Improper gifts.
- 6.32.060 Improper use or disclosure of information.
- 6.32.070 Improper influences in borough grants, contracts, leases.
- 6.32.080 Outside employment restricted.
- 6.32.090 Aiding a violation prohibited.

This complaint must contain a clear statement of the details of the alleged violation of Chapter 6.32. Please include all-important information. (Use additional paper if necessary).

I _____, say under oath or affirm that I submit the foregoing (or attached) document and believe all statements made in the document are true.

Signature

Print Name

Subscribed and sworn to or affirmed before me at _____ on this _____ day of _____, 20__.

Signature of Officer

Title of Officer

Chapter 6.32

CODE OF ETHICS FOR MAYOR AND BOROUGH EMPLOYEES

Sections:

- 6.32.010** **Definitions.**
- 6.32.020** **Declaration of policy.**
- 6.32.030** **Scope of chapter.**
- 6.32.040** **Misuse of official position.**
- 6.32.050** **Improper gifts and required disclosures.**
- 6.32.060** **Improper use or disclosure of information.**
- 6.32.070** **Improper influence in Borough grants, contracts, or leases.**
- 6.32.080** **Outside employment restricted.**
- 6.32.090** **Aiding a violation prohibited.**
- 6.32.100** **Declaration of a potential violation or conflict.**
- 6.32.110** **Complaint procedure – Employee.**
- 6.32.120** **Complaint procedure – Mayor.**
- 6.32.130** **Initial screening.**
- 6.32.140** **Hearing Officer.**
- 6.32.150** **Consequences of violations.**
- 6.32.160** **Statute of limitations.**
- 6.32.170** **Confidentiality.**

6.32.010 **Definitions.**

In this chapter, unless the context requires otherwise,

“Benefit” means anything that is to a *person’s* advantage or self interest, or from which a *person* profits, regardless of the financial *gain*, including any dividend, pension, salary, acquisition, agreement to purchase, transfer of money, deposit, loan or loan guarantee, promise to pay, grant, contract, lease, money, goods, service, privilege, exemption, patronage, advantage, advancement, or *anything of value*;

“Business” includes a corporation, company, firm, partnership, sole proprietorship, trust or foundation, or any other individual or *entity* carrying on a *business*, whether operated for profit or nonprofit;

“Child” includes a biological *child*, an adoptive *child*, and a stepchild;

“Compensation” means any money, thing of value, or economic *benefit* conferred on or received by a *person* in return for services rendered or to be rendered by the *person* for another;

"Employee" means a permanent, probationary, seasonal, temporary, or casual *employee*, whether appointed, executive/administrative/professional, or classified, and does not *include* the *Borough Mayor*, *Borough Clerk*, deputy *Borough Clerk* or Assemblymembers;

"Financial interest" means:

1. An interest held by the *Borough Mayor* or an *employee*, or an *immediate family member*, which *includes* an involvement or ownership of an interest in a *business*, *including* a *property* ownership, or a professional or private relationship, that is a *source of income*, or from which, or as a result of which, a *person* has received or expects to receive a financial *benefit*;
2. Holding a position in a *business*, such as an officer, director, trustee, partner, *employee*, or the like, or holding a position of management;

"Gain" *includes* actual or anticipated *gain*, *benefit*, profit, or *compensation*;

"Immediate family member" means:

1. Spouse;
2. A regular member of the *person's* household;
3. *Child* (step, biological or adoptive);
4. *Parent* (step, biological or adoptive), sibling or grandparent; and
5. Father-in-law or mother-in-law;

"Official action" means a recommendation, decision, approval, disapproval, or other similar action, *including* inaction;

"Organization" *includes* a group, association, society, political party, or other *entity* made up of two or more *persons*, whether operated for profit or nonprofit;

"Parent" *includes* a biological *parent*, an adoptive *parent*, and a stepparent;

"Person" *includes* a *natural person*, a *business*, and an *organization*;

"Personal interest" means an interest held or involvement by the *Borough Mayor* or *employee*, or their *immediate family member* or *parent*, *including* membership, in any *organization*, whether social, nonprofit, for profit, charitable, or political, from which, or as a result of which, a *person* or *organization* receives a *benefit*;

"Source of income" means an *entity* for which service is performed for *compensation* or which is otherwise the origin of payment; if the *person* whose income is being reported is *employed* by another, the employer is the *source of income*; if the *person* is self-*employed* by means of a sole proprietorship, partnership, professional corporation, or a corporation in which the *person*, the *person's* spouse or *child*, or a combination of them, holds a controlling interest in, the "source" is the client or customer of the proprietorship, partnership, or corporation; if the *entity* which is the

origin of payment is not the same as the client or customer for whom the service is performed, both are considered the source;

“Substantial financial interest” means an interest that will result in immediate financial *gain* or financial *gain* which will occur in the reasonably foreseeable future. (Ord. 2019-09 § 2, 2019; Ord. 2016-40 § 39, 2016; Ord. 2006-80 § 2, 2007; Ord. 2002-08 § 2, 2002. 2004 Code § 2.25.200.)

6.32.020 Declaration of policy.

It is declared that:

- A. High moral and ethical standards among the *Borough Mayor* and *Borough employees* are essential to assure the trust, respect, and confidence of the *people* of this *Borough*;
- B. A code of ethics for the guidance of the *Borough Mayor* and *Borough employees* will:
 - 1. Discourage the *Borough Mayor* and *Borough employees* from acting upon personal or *financial interests* in the performance of their public responsibilities;
 - 2. Improve standards of public service; and
 - 3. Promote and strengthen the faith and confidence of the *people* of this *Borough* in *public officials* and *employees*;
- C. Holding public office or employment is a public trust and that as one safeguard of that trust, the *people* require the *Borough Mayor* and *Borough employees* to adhere to a code of ethics;
- D. A fair and open government requires that the *Borough Mayor* and *Borough employees* conduct the public's *business* in a manner that preserves the integrity of the governmental process and avoids conflicts of interest;
- E. In order for the rules governing conduct to be respected both during and after leaving public service, the code of ethics must be administered fairly without bias or favoritism;
- F. No code of conduct, however comprehensive, can anticipate all situations in which *violations* may occur nor can it prescribe behaviors that are appropriate to every situation; in addition, laws and regulations regarding ethical responsibilities cannot legislate morality, eradicate corruption, or eliminate bad judgment; and
- G. Compliance with a code of ethics is an individual responsibility; thus all who serve the *Borough* have a solemn responsibility to avoid improper conduct and prevent improper behavior by colleagues and subordinates. (Ord. 2002-08 § 2, 2002. 2004 Code § 2.25.010.)

6.32.030 Scope of chapter.

- A. The *Assembly* reaffirms that the *Borough Mayor* holds office as a public trust, and any effort to *benefit* a personal or *financial interest* through *official action* is a *violation* of that trust. In addition, the *Assembly* finds that, so

long as it does not interfere with the full and faithful discharge of the *Mayor's* public duties and responsibilities, this chapter does not prevent the *Mayor* from following other independent pursuits. The *Assembly* further recognizes that:

1. In a representative democracy, the representatives are drawn from society and, therefore, cannot and should not be without personal and *financial interests* in the decisions and policies of government;
 2. *People who serve as Borough Mayor* retain their rights to interests of a personal or financial nature; and
 3. Standards of ethical conduct for the *Mayor* need to distinguish between those minor and inconsequential conflicts that are unavoidable in a free society, and those conflicts of interests that are substantial and material.
- B. Unethical conduct is prohibited, but there is no substantial impropriety if, as to a specific matter, the *Mayor's*:
1. Personal or *financial interest* in the matter is insignificant, or of a type that is possessed generally by the public or a large class of *persons* to which the *Mayor* belongs; or
 2. Action or influence would have insignificant or conjectural effect on the matter. (Ord. 2002-08 § 2, 2002. 2004 Code § 2.25.110.)

6.32.040 Misuse of official position.

- A. The *Mayor* or a *Borough employee* may not use, or attempt to use, their official position for personal *gain*, and may not intentionally secure or grant unwarranted *benefits* or treatment for any *person*.
- B. The *Mayor* or a *Borough employee* may not:
1. Seek other employment or contracts through the use or attempted use of official position;
 2. Accept, receive, or solicit *compensation* for the performance of official duties or responsibilities from a *person* other than the *Borough*;
 3. Use *Borough* time, *property*, equipment, or other facilities to *benefit* personal or *financial interests*;
 4. Participate in an *official action* in which the *Mayor* or *employee* has a *substantial financial interest*;
 5. Attempt to *benefit* a personal or *financial interest* through coercion of a subordinate or require a *Borough employee* to perform services for the private *benefit* of the *Mayor* or an *employee* at any time;
 6. Solicit any assessments, contributions or services for any political party from any *employee* in the *Borough* service during working hours;
 7. Use or authorize the use of *Borough* funds, facilities, equipment, services, or another government asset or resource to *include Borough* letterhead or logo with the intent to differentially *benefit* or harm a candidate or potential candidate for elective office or a political party or group.

- C. A *Borough employee* who, during their scheduled work hours, engages in political campaign activities shall take approved leave for the period of campaigning.
- D. Nothing in this section shall affect the right of the *Mayor* or an *employee* to hold membership in and voluntarily, financially and otherwise support a political party or candidate, to vote as they choose, to express their opinions on all political subjects and candidates, to maintain political neutrality, and to attend political meetings.
- E. Nothing in this section prohibits inconsequential use of *Borough* time, *property*, equipment, or other facilities for personal purposes if the use does not interfere with the performance of official duties and the cost or value related to the use is nominal.
- F. Nothing in this section prohibits the use of a *Borough* facility by a political *organization* if the facility is available to other such *organizations* on the same terms and conditions. (Ord. 2019-09 § 2, 2019; Ord. 2002-08 § 2, 2002. 2004 Code § 2.25.120.)

6.32.050 Improper gifts and required disclosures.

- A. The *Mayor* or a *Borough employee* may not solicit, accept, or receive, directly or indirectly, a *gift*, whether in the form of money, service, loan, travel, entertainment, hospitality, employment, promise, or in any other form, that is a *benefit* to their personal or *financial interests*, under circumstances in which it could reasonably be inferred that the *gift* is intended to influence the performance of official duties, actions, or judgment or confer a *benefit* for past performance of official duties, actions or judgment.
- B. For purposes of this section an occasional, unsolicited *gift* of \$50.00 or less is presumed not to be given under circumstances in which it could be reasonably inferred that the *gift* is intended to influence the performance of official duties, actions, or judgment. For purposes of the disclosure requirements of subsections (C) and (D) of this section, "*gift*" includes a series of *gifts* from the same donor within a 12-month period.
- C. Notice of the receipt by a *Borough employee* of a *gift* valued at more than \$50.00, including the name of the giver and a description of the *gift* and its approximate value, must be provided to the *employee's* department director within 30 days after the date of its receipt:
1. If the *employee* may take or withhold *official action* that affects the giver;
 2. If the *gift* is connected to the *employee's* governmental status; or
 3. If reasonable doubt exists as to whether the *gift* is intended to influence the performance of official duties, actions, or judgment.
- D. Notice of the receipt by the *Mayor* of a *gift* valued at more than \$50.00, including the name of the giver and a description of the *gift* and its approximate value, must be provided to the *Clerk's* office for inclusion in the public record, within 30 days after the date of its receipt:
1. If the *Mayor* may take or withhold *official action* that affects the giver;

2. If the *gift* is connected to the *Mayor's* governmental status; or
3. If reasonable doubt exists as to whether the *gift* is intended to influence the performance of official duties, actions, or judgment.

E. The restrictions relating to *gifts* imposed by this section do not apply to a campaign contribution to a candidate for elective office if the contribution complies with laws and regulations governing *elections* and campaign disclosure.

F. An *employee* or the *Mayor* who knows or reasonably ought to know that a family member has received a *gift* because of the family member's connection with the *employee's Borough* employment shall report the receipt of the *gift* by the family member to the *employee's* director if the *gift* would have to be reported under this section if it had been received by the *employee* or if receipt of the *gift* by the *employee* would be prohibited under this section. (Ord. 2019-09 § 2, 2019; Ord. 2009-21 § 3, 2009; Ord. 2002-08 § 2, 2002. 2004 Code § 2.25.130.)

6.32.060 Improper use or disclosure of information.

A. A current or former *Borough Mayor* or *employee* may not disclose or use information *gained* in the course of, or by reason of, their official duties that could in any way result in the receipt of any *benefit* for the *Mayor* or *employee* or an *immediate family member*, if the information has not also been disseminated to the public.

B. A current or former *Mayor* or *employee* may not disclose or use, without appropriate authorization, information acquired in the course of official duties that is confidential by law. (Ord. 2019-09 § 2, 2019; Ord. 2002-08 § 2, 2002. 2004 Code § 2.25.140.)

6.32.070 Improper influence in Borough grants, contracts, or leases.

A. The *Borough Mayor* or an *employee*, or an *immediate family member*, may not attempt to acquire, receive, apply for, be a party to, or have a personal or *financial interest* in a *Borough* grant, contract, or lease if they take or withhold *official action* that affects the award, execution, or administration of the grant, contract, or lease.

B. To the extent this section applies to *Borough employees*, the *Mayor* may formally waive this section after determining that it is in the best interest of the *Borough* to do so. Any waiver of this section shall be in writing and shall set forth the reasons for the waiver. The waiver shall be forwarded to the *Presiding Officer*, to be confirmed by the *Assembly*. (Ord. 2019-09 § 2, 2019; Ord. 2002-35 § 2, 2002; Ord. 2002-08 § 2, 2002. 2004 Code § 2.25.150.)

6.32.080 Outside employment restricted.

A. A *Borough employee* may not render services to *benefit* a personal or *financial interest* or engage in or accept outside employment, if the outside employment or service is incompatible or in conflict with the proper discharge of official duties.

B. A *Borough employee* rendering outside services for *compensation*, or engaging in outside employment, shall report to the director of the *employee's* department as soon as possible and in no event later than January 1st of the year after which the outside services or employment began. Any change in an *employee's* outside service or employment activity must be reported to the director as soon as reasonably possible after it occurs. (Ord. 2003-07 § 2, 2003; Ord. 2002-08 § 2, 2002. 2004 Code § 2.25.170.)

6.32.090 Aiding a violation prohibited.

It is a *violation* of this chapter for the *Borough Mayor* or an *employee* to knowingly aid another *person* in a *violation* of this chapter. (Ord. 2002-08 § 2, 2002. 2004 Code § 2.25.190.)

6.32.100 Declaration of a potential violation or conflict.

A. The *Mayor* or an *employee* who is or may become involved in a matter that may result in a *violation* of a section in this chapter shall:

1. Refrain from taking any *official action* relating to the matter until a determination is made under this section; and
2. If an *employee*, immediately make a full and complete disclosure, in writing, to the director of the *employee's* department; or
3. If the *Mayor*, immediately make a full and complete disclosure, in writing, to the *Borough Attorney*.

B. The director shall make a written determination whether an *employee's* involvement would be a *violation* of this chapter and shall provide a copy of the written determination to the *employee* and to the *Borough Attorney*. The director shall review the summaries of previous determinations as set forth in subsection [\(E\)](#) of this section and may request guidance from the *Borough Attorney* before making the written determination.

C. The *Borough Attorney* shall make a written determination whether the *Mayor's* involvement would be a *violation* of this chapter and shall provide a copy of the written determination to the *Mayor*.

D. An *employee* or the *Mayor* is not liable under this chapter for any action carried out in accordance with a determination made pursuant to this section if the *employee* or *Mayor* fully disclosed all known relevant facts reasonably necessary to the determination.

E. All written determinations shall be confidential and submitted to the *Borough Attorney* for review. The *Borough Attorney* shall make available for *employee* or public review a summary of the determinations received under this section, with sufficient deletions to prevent disclosure of the *person's* identity. An indexed copy of the summaries shall be maintained by the *human resources* department for inspection by the public and *employees*. (Ord. 2003-07 § 3, 2003. 2004 Code § 2.25.191.)

6.32.110 Complaint procedure – Employee.

A. Any *person* may file a complaint under this chapter concerning an *employee* with the *human resources* director. The complaint may be filed with the *Mayor* if the *human resources* director is the subject of the complaint. A complaint shall specify the provisions of this chapter alleged to have been violated and facts alleged to constitute the *violation*.

B. All complaints under this section shall be in writing and signed and sworn to under oath by the *complaining person*. Upon request by the *complainant*, the name of the *complainant* shall be kept confidential and shall not be revealed unless for good cause shown.

C. Upon receipt of the complaint, the *human resources* director or *Mayor* shall give the *person* under investigation notice of the substance of the complaint and an opportunity to present written information or oral testimony *including* the names of any individuals the *person* wishes to have interviewed.

D. At the conclusion of an investigation, the *human resources* director or *Mayor* shall prepare a written report *including*:

1. A summary of the investigation; and
2. Recommendations for such administrative or legal action as deemed appropriate.

E. The report shall be delivered to the *person* under investigation, the *Mayor*, and the *Borough Attorney*.

F. Action on complaints and investigations shall be completed within 90 days of the filing of the complaint unless good cause is shown for an additional 30-day extension.

G. If an *employee* is found in *violation* of this chapter or found to have furnished false or misleading information during the investigation, the *employee* may be subject to reprimand, demotion, suspension, discharge or otherwise subject to disciplinary action. This section does not prohibit the review of a disciplinary action in the manner prescribed by an applicable collective bargaining agreement or personnel statute or rule.

H. All documents, records, testimony, final determination and disciplinary action relating to the investigation of the complaint are confidential and shall not be released to the public unless required by *state* law or court order. (Ord. 2016-40 § 40, 2016; Ord. 2003-07 § 4, 2003. 2004 Code § 2.25.193.)

6.32.120 Complaint procedure – Mayor.

A. Any *person* may file a complaint under this chapter concerning the *Mayor* by filing a written, signed complaint with the *Borough Clerk*. A complaint shall specify the provisions of this chapter alleged to have been violated and facts alleged to constitute the *violation*. Any *person* may file a complaint.

B. All complaints under this section shall be in writing and signed and sworn to under oath by the *complaining person*. Upon request by the *complainant*, the name of the *complainant* shall be kept confidential and shall not be

revealed unless required by *state* law, court order or for good cause shown as determined by the *Borough Clerk* or the Hearing Officer. (Ord. 2016-40 § 41, 2016; Ord. 2003-07 § 5, 2003. 2004 Code § 2.25.194.)

6.32.130 Initial screening.

A. Upon receipt of a complaint, the *Borough Clerk* shall screen the complaint and determine if the complaint is sufficient. If necessary, the *Borough Clerk* may consult with or request a legal opinion from the *Borough Attorney* as to the sufficiency of the complaint. The *Borough Clerk* may dismiss the complaint on any of the following grounds:

1. The complaint does not comply with FNSBC [6.32.120](#).
2. The complaint does not allege facts sufficient to constitute a *violation* of this chapter.
3. The *Borough* has no jurisdiction over this matter.
4. The complaint is defective in a manner that would prevent the making of a sound determination.

B. If the complaint is sufficient on its face, then the *Borough Clerk* shall make an initial determination as to whether or not there is probable cause for a hearing. Before making a probable cause determination, the *Borough Clerk* shall notify both the *Mayor* and the *complainant* that the complaint has been accepted and serve a copy of the complaint on the *Mayor*. The notice shall also specify that the *Mayor* must file a response to the complaint, which shall *include* any challenge to the sufficiency of the complaint, within 30 calendar days from the date of the *Clerk's* written notice. The notice shall also inform the *Mayor* of the right to submit affidavits or other written evidence in support of their response. Misrepresentation of a material fact in a response is a *violation* of this chapter. Failure to timely *respond* may be considered an admission of the allegations in the complaint. The *Borough Clerk* may make their determination as to probable cause for a hearing from the written complaint and written response from the *Mayor* alone or they may also interview individuals and request documents if they deem necessary. If necessary, the *Borough Clerk* may consult with or request a legal opinion from the *Borough Attorney* as to probable cause for a hearing.

C. If the *Borough Clerk* determines that there is probable cause for a hearing, the *Clerk* shall send the complaint to a Hearing Officer selected by the *Borough Attorney*.

D. If the *Borough Clerk* determines that the complaint is insufficient, has no legal basis or there is no probable cause for a hearing, the *Clerk* shall make a written determination and shall distribute the determination to the *Mayor* and the *complainant*. The *complainant* shall have one opportunity within 10 *business* days of the date of mailing or hand delivery of the determination to amend the complaint and to re-file. If the *Clerk* determines that the second complaint is insufficient, lacks legal basis or probable cause for a hearing or if the *complainant* fails to file a corrected complaint within the time set forth above, the *Clerk's* determination is final and the *Clerk* shall reject any attempts by the *complainant* or any other *person* on behalf of the *complainant* to file a complaint based upon the same or essentially similar facts and circumstances. The *complainant* may appeal any dismissal by the *Clerk* to the superior court in accordance with the Alaska Rules of Appellate Procedure. (Ord. 2019-09 § 2, 2019; Ord. 2003-07 § 5, 2003. 2004 Code § 2.25.195.)

6.32.140 Hearing Officer.

- A. If the *Borough Clerk* determines the complaint is sufficient and there is probable cause that the *Mayor* may have violated this chapter, then the *Borough Attorney* shall select an independent Hearing Officer to preside over the investigation. The Hearing Officer shall be a private attorney or an individual trained as an administrative Hearing Officer. The Hearing Officer shall not be an *employee* of the Fairbanks North Star *Borough*.
- B. The Hearing Officer shall conduct an investigation so as to be completed within 60 days of receipt of the complaint from the *Borough Clerk*. The Hearing Officer can, for good cause shown by any *person*, including the Hearing Officer, extend the time limit by 30 days.
- C. The Hearing Officer has the *power* to:
1. Consider any timely challenge to the sufficiency of the complaint or probable cause determination raised by the *Mayor* and dismiss the complaint if appropriate. If dismissed, both the *complainant* and *Mayor* shall receive written notice of the dismissal and the reasons for the dismissal;
 2. Administer oaths, hold hearings and take testimony;
 3. Upon application by a party to the hearing or upon their own order, issue *subpoenas* in the manner prescribed by Rule 45 of the Alaska Rules of Civil Procedure, to require the presence of witnesses and the production of records, books and papers at the hearing;
 4. Order testimony to be taken in *person* or by deposition; and
 5. Require any *person* to submit in writing such reports and answers to questions relevant to the proceedings conducted and the Hearing Officer may prescribe that such submission be made within a certain period of time, under oath or otherwise.
- D. Failure or refusal to obey a *subpoena* issued under this chapter is punishable as contempt in the manner provided by law and court rule. The superior court may compel obedience to the *subpoena* in the same manner as prescribed for obedience to a *subpoena* issued by the court.
- E. The Hearing Officer may convene a prehearing conference for the following:
1. To set a time and place for the hearing;
 2. For stipulation as to matters of fact;
 3. To simplify issues;
 4. To identify and schedule prehearing matters *including* any pretrial discovery procedure usually available in civil actions; and
 5. To resolve other similar matters before the hearing.
- F. The *complainant* or their representative or private counsel may participate in the hearing process and may introduce testimony or additional evidence.

G. The *Mayor* may be represented by private counsel of their own choosing. The *Mayor* shall have an opportunity to:

1. Challenge the sufficiency of the complaint;
2. Examine all documents and records obtained by the Hearing Officer or the *Borough Clerk*;
3. Bring witnesses;
4. Establish all pertinent facts and circumstances;
5. Question or refute testimony or evidence *including* the opportunity to confront and cross-examine adverse witnesses; and
6. Exercise, to the extent the Hearing Officer in their discretion determines to be just and reasonable, any pretrial discovery procedure usually available in civil actions.

H. The Alaska Rules of Evidence do not apply to the admission of evidence in a hearing; however, the Hearing Officer's findings must be based upon reliable and relevant evidence. All testimony and written evidence taken at the hearing must be preserved. Upon request, a copy of the testimony and written evidence must be furnished to the *respondent*.

I. After the Hearing Officer has completed the investigation, the Hearing Officer shall make a written findings of facts and conclusions of law. The Hearing Officer may take any action or combination of actions which the Hearing Officer deems appropriate *including*, but not limited to, the following:

1. Dismiss the complaint for insufficiency or other grounds;
2. Determine that no *violation* of this chapter has occurred; or
3. Determine that there are facts sufficient to constitute a *violation* of the chapter.

J. If the Hearing Officer finds that the *Mayor* has violated this chapter, the Hearing Officer shall determine that the *Mayor* be subject to either or both of the following:

1. *Public censure*;
2. A civil fine of not more than \$500.00.

K. The Hearing Officer's determination is final and shall be delivered to the *Mayor* and mailed to the *complainant* within 10 working days of the final decision. An appeal from a decision of the Hearing Officer may be taken to the superior court in accordance with the Alaska Rules of Appellate Procedure. (Ord. 2019-09 § 2, 2019; Ord. 2003-07 § 5, 2003. 2004 Code § 2.25.196.)

6.32.150 Consequences of violations.

In addition to any disciplinary action, the *Mayor*, or Hearing Officer if the *Mayor* is the subject of the complaint, shall determine if any or all of the following shall be ordered:

- A. Avoidance of any grant, contract, lease or other agreement or arrangement entered into in *violation* of this chapter;
- B. Recovery of any fee, *compensation*, *gift* or *benefit* given to an *employee* or the *Mayor*;
- C. Pursuit of any other available legal or equitable remedy; or
- D. Pursuit of any possible criminal actions. (Ord. 2003-07 § 6, 2003. 2004 Code § 2.25.197.)

6.32.160 Statute of limitations.

No complaint may be filed against an *employee* or a *Mayor* which alleges a *violation* of this chapter which occurred more than two years prior to the filing date of the complaint. (Ord. 2003-07 § 7, 2003. 2004 Code § 2.25.198.)

6.32.170 Confidentiality.

- A. Complaints and subsequent investigations relating to the *Mayor* prior to a final determination by the Hearing Officer that there has been a *violation*, and complaints and subsequent investigations relating to *employees* shall be confidential except as necessary to carry out the *powers* and duties set forth in this chapter or to enable another *person* or department to consider and act upon the determinations or recommendations of the *Mayor* pursuant to FNSBC [6.32.150](#) or any other section of this chapter.
- B. Any *employee* who is found to have publicly disclosed any information relating to an investigation or findings under this chapter, unless such disclosure is otherwise permitted under this chapter, shall be subject to discipline up to and *including* dismissal from employment.
- C. Except as set forth in subsections [\(D\)](#) and [\(E\)](#) of this section, any *person*, whether or not an *employee*, shall not violate the confidentiality requirements of this chapter. In addition to the disciplinary actions set forth above, a *violation* of the confidentiality provisions of this chapter shall be a *misdemeanor* subject to the provisions of Chapter [1.20](#) FNSBC.
- D. Notwithstanding subsections [\(A\)](#) through [\(C\)](#) of this section, the *human resources* director may *publish* summary opinions to inform *Borough* personnel and the public about the interpretation of provisions of this chapter relating to an investigation and determination as long as such publication does not divulge any material facts which would lead to the identity of the *person* who was the subject of the complaint.
- E. A *person* who makes public the substance of or any portion of a confidential investigation or determination of which that *person* was the subject is deemed to have waived the confidentiality of that determination and of any

records obtained or prepared in connection with that determination. (Ord. 2003-07 § 8, 2003. 2004 Code § 2.25.199.)

The Fairbanks North Star Borough Code is current through Ordinance 2022-64, passed December 15, 2022.

Disclaimer: The Borough Clerk's Office has the official version of the Fairbanks North Star Borough Code. Users should contact the Borough Clerk's Office for ordinances passed subsequent to the ordinance cited above.

[Borough Website: www.fnsb.gov](http://www.fnsb.gov)

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