

FAIRBANKS NORTH STAR BOROUGH

BOARD OF ETHICS

PUBLIC INFORMATION PACKET FOR CODE OF ETHICS COMPLAINTS

BOROUGH ASSEMBLY



Office of the Clerk
Fairbanks North Star Borough
907 Terminal Street
Fairbanks, Alaska 99701
(907) 459-1401 Office
(907) 459-1224 Fax
April.Trickey@fnsb.gov
Revised 01/2023

MISSION

The Board of Ethics reviews and considers complaints made against elected officials, board of commission members, and the Clerk and Deputy Clerk, that allege violations of the Code of Ethics located in Title 6 of Fairbanks North Star Borough Code. hearing officer.

CODE OF ETHICS

Holding public office or employment is a public trust and high moral and ethical standards are essential to the conduct of government. The Code of Ethics gives guidance in carrying out oaths of office to support and defend the Constitution of the United States and State of Alaska, and the laws of the Fairbanks North Star Borough. It also specifies conduct that violates public expectations that officials will honestly, faithfully, and impartially perform their duties to the best of their ability.

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 due process of law.

ASSEMBLY BOARD OF ETHICS

The Assembly Board of Ethics consists of five public members and one alternate public member, nominated by the presiding officer and confirmed by the assembly and serve terms of office of three years.

CONFIDENTIALITY

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

EX PARTE CONTACT PROHIBITED

Ex parte contact with the Board of Ethics is when a complainant (person who filed a complaint) or respondent (person who the complaint is filed against) contacts the Board without the other party's knowledge. Contact includes but is not limited to in person, by phone, e-mail or text. Board members shall be impartial in all matter, both in fact and appearance. No board member shall receive or engage in ex parte contacts. All contact with the Board of Ethics shall go through the Clerk's Office.

The following procedures are established by the FNSB Assembly Board of Ethics for processing complaints against public officials under Chapter 6.20 of the Fairbanks North Star Borough Code. This is a summary of Chapter 6.20 of the FNSB 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.

FILING A VERIFIED COMPLAINT

Any person may file a verified complaint with the clerk alleging that a public official has violated one or more provisions of Section 6.12.010. The complaint must:

- Be a written statement of the charge setting out in ordinary and precise language the acts or omissions with which the respondent is charged, so that the respondent is able to prepare a defense.
- Specify the subsection(s) of Section 6.12.010 that the respondent is alleged to have violated.
- No action may be taken on any complaint which is filed later than 2 years after a violation of this ordinance is alleged to have occurred, and a complaint alleging a violation must be filed within 2 years from the date the complainant(s) knew or should have known of the action alleged to be a violation, provided that in no event shall a hearing be initiated more than 5 years after the alleged violation occurred.
- You may use the attached form or submit a complaint on 8 ½ x 11 letter size paper. Complaint must be legible.

Form of Verification

The verification shall be substantially in the following form:

I, (complainant/respondent), have read the foregoing complaint/response, know the contents thereof, and the same are true to the best of my knowledge and belief.

The complaint/response and the verification must be signed by the complainant/respondent before a notary public.

Confidentiality

All proceedings in respect of a complaint filed under Section 6.20.010 are confidential and may not be disclosed to any person except as required for the proper processing and handling of the complaint.

It is not a violation of this section for a person to contact or retain an attorney or to participate in a criminal investigation.

All proceedings and records shall remain confidential unless the respondent requests a public hearing or until the board of ethics files with the assembly its findings of fact and conclusions of law concerning the complaint.

WHAT HAPPENS AFTER THE COMPLAINT IS FILED

The Clerk will review the complaint to determine that it complies with Section 6.20.010, that it alleges facts sufficient to constitute a violation, and that the board has jurisdiction over the matter.

If the Clerk determines that the complaint fails to comply with Section 6.20.010 or that the board does not have jurisdiction, the Clerk shall dismiss the complaint, setting forth the grounds in a written decision. The Clerk shall serve a copy of the decision on the complainant.

A complainant may appeal a dismissal of a complaint to the board by filing an appeal with the Clerk within 15 days after the date of the notice of dismissal. The appeal must state all facts and legal grounds for the appeal.

If the Clerk determines that the complaint complies with Section 6.20.010 and that the board has jurisdiction, the Clerk shall serve the complaint and notice on the respondent, personally, or by U.S. mail, certified return receipt requested.

The Clerk shall notify both the respondent and the complainant that the complaint has been accepted.

The notice shall specify the following:

- The respondent must file a response to the complaint within 30 days from the date of the Clerk's written notice;
- The respondent may file a challenge to sufficiency of the complaint, if any, within 15 days;
- The respondent has the right to submit affidavits or other written evidence in support of their response;
- Failure to submit a timely response shall be deemed an admission of the allegations in the complaint;

The complainant and respondent have the right to be represented at any hearing through out these proceedings. An attorney representing a party shall file with the Clerk an entry of appearance, to include their name, mailing address, telephone and facsimile number and email address, if any.

Response

- The respondent shall file a verified response within 30 days from the date of service of the complaint.
- If the respondent fails to respond timely, the allegations of the complaint shall be deemed admitted. The Clerk shall notify the complainant and respondent the allegations of the complaint are deemed admitted.
- The respondent may appeal to the board any deemed admission of the allegations of the complaint, for good cause, by filing an appeal with the Clerk within 15 days after the date on which the response was due. The appeal must state all facts and legal grounds for failure to respond timely.

BOARD OF ETHICS REVIEW AND DETERMINATION

The Clerk will furnish to the board the complaint and response, if any, or any appeal and schedule a meeting of the board.

All meetings of the board with respect to a complaint shall be closed and confidential, except the respondent may request a public hearing.

Board of Ethics Review and Determination

The board shall review and consider all complaints accepted by the Clerk, and timely responses, or any appeal of the dismissal of the complaint.

The board shall take any action or combination of actions which it deems appropriate and which it is lawfully empowered to take, including but not limited to the following:

- Consider any timely appeals filed pursuant to 6.20.040(E)(F). Upon granting of the appeal, it shall notify the parties.
- If the respondent has admitted the allegation or failed to respond, the board may issue Findings of Fact and Conclusions of Law based on the written record.

The board may, in its sole discretion, dismiss the complaint, or decide to proceed to resolution of the complaint if:

- The complainant seeks to withdraw the complaint at any time before the board takes final action; or
- The complainant, after notice, materially fails to cooperate in the board's review and consideration of the complaint.

Hearing Notice

If the board determines that a hearing on the complaint must be held, the Clerk shall serve on the complainant and the respondent a notice of hearing setting out the time and place of hearing and the schedule for any preliminary matters. This notice shall include a statement of the right to provide written evidence and oral testimony. The complainant and the respondent shall also be informed of the right to be represented at the hearing.

If the respondent has failed to answer the allegations of the complaint or has admitted the allegations, the board shall prepare findings of fact and conclusions of law based on the written record.

Pre-Hearing Conference

The Clerk shall furnish copies of the complaint and response, if any to the complainant, the respondent and the members of board, including the notice convening the board and setting the time and place for a pre-hearing conference upon receipt of the response, or the time has passed and respondent has failed to answer the allegation of the complaint.

The pre-hearing conference shall be held no later than 30 days after receipt of the response or the time for filing a response has run.

At the pre-hearing conference the following matters shall be considered:

- Time and place for hearing on the complaint and response.
- Any stipulations of fact.
- Any motions to be filed.
- Any simplifications of the issue.
- Scheduling motions, discovery and any other relevant matters.
- Exchange of evidence which shall not later than 10 days before the hearing
- Any other matters that the board determines will provide a fair and orderly hearing.

Hearing

All hearings shall be before the board of ethics. The chair of the board shall preside, unless another member of the board has been so designated by the board. The chair shall rule on admission and exclusion of evidence.

The board may administer oaths, hold hearings, and take testimony. Upon motion by the board or application by a party to the hearing, the board may issue subpoenas to require the presence of witnesses and the production of records, books and papers at the hearing.

The Borough Attorney, or designee, shall act as the attorney for the board and shall advise the board on matters of law.

The complainant and the respondent may each present opening statements setting out the matters they intend to prove. The complainant shall proceed first with their evidence and the respondent shall follow, setting forth their evidence. The complainant and the respondent may make closing arguments.

The board may obtain additional information by a request to the Borough Attorney or designee, to investigate the complaint and report all information to the board.

The Alaska Rules of Evidence do not apply to the admission of evidence in a hearing, but the board's findings of fact must be based on reliable and relevant evidence.

At the conclusion of the presentation of evidence and closing arguments, the board shall consider the allegations, the evidence supporting them and the respondent's evidence. If fewer than 5 members of the board are available for deliberation the alternate shall be seated as a voting member until conclusion of the matter, including any appeals; otherwise, the alternate is excused at the conclusion of the hearing.

The complainant, the respondent, and their counsel shall be excluded from all deliberations of the board.

Findings of Fact and Conclusions of Law

The board shall enter its findings of fact and conclusions of law no later than 30 days after the conclusion of the hearing. The board shall notify the parties and their attorneys if an extension is required to permit the board to prepare its findings of fact and conclusion of law.

If the board finds that no violation has occurred, the board shall dismiss the complaint. The Clerk shall serve the notice of dismissal on the complainant, the respondent and attorneys. The notice of dismissal remains confidential.

If the board finds that a violation of Section 6.12.010 has been committed, it shall prepare and submit its findings of fact and conclusions of law to the assembly.

The findings of fact and conclusions of law are final and conclusive.

The Assembly may not change, modify or otherwise alter the findings of fact and conclusions of law as submitted.

The Assembly shall impose a penalty on the public official in accordance with Section 6.24.010.

If the board determines that no violation has occurred, or otherwise dismisses the complaint for substantive reasons, the board may, in its discretion award full or partial attorney fees to a public official who reasonably incurred those costs defending the complaint. This award may be made only to the extent that the Assembly has appropriated funds for that purpose.

APPEAL OF FINDINGS OF FACT AND CONCLUSIONS OF LAW AND PENALTY

After the Assembly has determined and imposed a penalty, appeal of the findings of fact and conclusions of law and the penalty may be taken to the superior court in accordance with the Alaska Rules of Appellate Procedure.

Notice of an appeal must be filed with the superior court within 30 days of the imposition of the penalty.



FNSB ASSEMBLY CODE OF ETHICS -- COMPLAINT FORM

**ALL DOCUMENTS AND RECORDS, INCLUDING
THE COMPLAINT, ARE CONFIDENTIAL**

Complainant's Name: _____

Mailing Address: _____

Contact Number(s): _____

Respondent's Name: _____

Date(s) of the alleged violation: _____

The complaint must be a written statement of the charge setting out in ordinary and precise language the acts or omissions with which the respondent is charged, so that the respondent is able to prepare a defense.

Specify the subsection(s) of Section 6.12.010 that the respondent is alleged to have violated.

No action may be taken on any complaint which is filed later than 2 years after a violation of this ordinance is alleged to have occurred, and a complaint alleging a violation must be filed within 2 years from the date the complainant(s) knew or should have known of the action alleged to be a violation, provided that in no event shall a hearing be initiated more than 5 years after the alleged violation occurred.

Submit the complaint on 8 1/2 x 11 paper and attach to this form. The text shall be double-spaced with form verification.

The verification shall be substantially in the following form:

I _____ (Complainant), have read the foregoing complaint know the contents thereof, and the same are true to the best of my knowledge and belief.

Signature

Subscribed to and affirmed before me this ____ day of _____, 20____.

Notary of Public in and for the State of Alaska
My Commission Expires: _____

Division 1. Assembly Code of Ethics

Chapter 6.04 DEFINITIONS

Sections:

6.04.010 Definitions.

6.04.010 Definitions.

"Anything of value" means:

1. Anything having a monetary value in excess of \$100.00; or
2. Anything, regardless of its monetary value, perceived or intended by either the one who offers it or the one to whom it is offered to be sufficient in value to influence a *public official* in the performance or nonperformance of an official action; or
3. Anything, regardless of its monetary value, which, under the circumstances, a reasonably prudent *person* in the position of the *public official* to whom the thing is or may be offered, would recognize as being likely to be intended to influence the *public official* in the performance or nonperformance of an official action; and
4. The term *"anything of value"* includes, but is not limited to, a valuable act, advance, award, benefit, contract, compensation, contribution, deposit, emolument, employment, favor, fee, forbearance, *gift*, gratuity, honorarium, loan, offer, payment, perquisite, privilege, promise, reward, remuneration, service, subscription, or the promise that any of these things will be conferred in the future.

"Board" means the *Assembly board* of ethics.

"Clerk" means the *Borough Clerk*, the *Deputy Borough Clerks*, and any designee of the *Borough Clerk* or *Deputy Borough Clerks*. In the event a complaint is filed against the *Borough Clerk* or a *Deputy Borough Clerk* then *"Clerk,"* as used in Chapter [6.20](#) FNSBC, Procedures, shall mean the *Borough Attorney's office*.

"Complainant" means a *person* filing a complaint with the *board* of ethics.

"Confidential information" means information gained by the *Borough* in the course and scope of its business, including but not limited to personnel, financial and litigation information which is not generally made available to the public, or information concerning the acts of the *Assembly*, including but not limited to executive sessions and ethics hearings not generally made available to the public.

"Conflict of interest" means a *financial interest* or an interest in *anything of value*, as defined in this chapter, or a professional interest in a relevant matter. It may also *include* the filing of a complaint by a *public official* or a member of the *board*.

"Entity" means a group of *persons* organized for any purpose *including* but not limited to a corporation, company, partnership, firm, association, organization, joint venture, joint stock company, foundation, institution, government, union, trust, society, church or club.

"Financial interest" means:

1. An interest held by a *person* or *entity* subject to this division 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 *anything of value*; or
2. The *public official* holds a position in an *entity*, as an officer, director, trustee, partner, or holds a position of management.

This definition, however, shall be interpreted and applied in a manner that distinguishes between minor and insubstantial conflicts that are unavoidable in a free society and those conflicts of interest that are substantial and material. Specifically, a *public official* shall not be disqualified from participation in matters in which the *public official*:

1. Has a *financial interest* which is insubstantial;
2. Has a *financial interest* that is possessed generally by the public or a large class of *persons* to which the *public official* belongs;
3. Merely performs some duty or has some influence which would have insubstantial or conjectural effect on the matter; or
4. Has an interest because it involves compensation and benefits for the performance of *public official* duties.

"Gift" means any benefit or thing or act of value which is conveyed to or performed for the benefit of a *public official* *including* any advance, award, contract contribution, deposit, employment, favor, forbearance gratuity, honorarium, loan, payment, service, subscription, or the promise that any of these things or acts of value will be conferred in the future, if such thing or act of value is conferred or performed without the lawful exchange of consideration which is at least equal in value to the thing or act conferred or performed.

"Human resources" means *persons* employed by the Fairbanks North Star *Borough*.

"Immediate family member" means spouse, child (step, biological or adoptive), parent (step, biological or adoptive), sibling, grandparent, father-in-law, mother-in-law, or a regular member of the *public official's* household.

"Investments" means the acquisition of *property* or other assets with the expectation of gain.

“*Person*” means and *includes* a corporation, company, firm, partnership, association, society, organization or business trust, joint venture, as well as a *natural person*.

“*Public censure*” means an official rebuke, which shall be part of the public records.

“*Public official*” means any *person* serving on the *Assembly*, the *Borough Clerk*, or the *Deputy Borough Clerks* and any individual serving in an acting capacity in either position.

“*Respondent*” means the *person* against whom a complaint is filed with the *board* of ethics.

“*Subpoena*” means a command to appear at a certain time and place to give testimony upon a certain matter. A *subpoena duces tecum* requires production of books, papers and other things. (Ord. 2022-09 § 5, 2022; Ord. 2016-40 § 37, 2016; Ord. 2013-01 § 2, 2013; Ord. 2006-69 § 2, 2006. 2004 Code § 2.10.330.)

Chapter 6.08

PURPOSE AND APPLICABILITY

Sections:

- 6.08.010** **Title.**
- 6.08.020** **Scope of division.**
- 6.08.030** **Purpose.**

6.08.010 **Title.**

This division shall be known as and may be cited as the Fairbanks North Star *Borough Assembly* code of ethics. (Ord. 2016-40 § 38, 2016; Ord. 2006-69 § 2, 2006. 2004 Code § 2.10.010.)

6.08.020 **Scope of division.**

This division shall apply to the members of the *Borough Assembly*, the *Borough Clerk*, and the *Deputy Borough Clerks*. The individuals covered by this division shall not also be subject to the separate code of ethics for *Mayor* and *Borough* employees. (Ord. 2022-09 § 6, 2022; Ord. 2016-40 § 38, 2016; Ord. 2006-69 § 2, 2006. 2004 Code § 2.10.020.)

6.08.030 **Purpose.**

The purpose of this division is to assist members of the *Assembly*, the *Borough Clerk* and the *Deputy Borough Clerks* in carrying out their responsibilities under their oaths of office to support and defend the Constitution of the United States, the Constitution of the *State* of Alaska, and the laws of the Fairbanks North Star *Borough*, to specify

conduct that violates public expectations that they will honestly, faithfully, and impartially perform their duties as members of the Fairbanks North Star *Borough Assembly*, as *Borough Clerk*, and as Deputy *Borough Clerks*, to the best of their ability. (Ord. 2022-09 § 7, 2022; Ord. 2016-40 § 38, 2016; Ord. 2006-69 § 2, 2006. 2004 Code § 2.10.030.)

Chapter 6.12

VIOLATIONS

Sections:

6.12.010 **Violations.**

6.12.010 **Violations.**

Specific ethical *violations* are enumerated below for the guidance of *public officials*, but these do not necessarily encompass all the possible ethical considerations that might arise.

- A. *Special Consideration.* A *public official* shall not grant any special consideration, treatment, or advantage to any citizen beyond that which is available to every other citizen.
- B. *Authority.* A *public official* shall not exceed their authority, or breach the law, or ask or coerce others to do so in the course of their official public duties.
- C. *Other Offices or Employment.* A *public official* shall not hold or seek other office or employment which compromises the performance of their *elected* or appointed duties without disclosure of such office or employment. A *public official* shall disqualify themselves from any particular action which might be compromised by such office or employment.
- D. *Use of Confidential Information.*
1. A *public official* shall not use or disclose *confidential information* without appropriate authorization.
 2. A *public official* shall not use or disclose information gained as a *public official* that is not yet *published* in any form by the *Borough* or is not generally made available to the public to gain, directly or indirectly, *anything of value*.
 3. This provision shall not prevent any *public official* from reporting *violations* of this division or other illegal acts to the proper authorities.
- E. *Solicitation of or Receipt of Anything of Value.* A *public official* shall not solicit or accept *anything of value* from any *person* or *entity* other than the *Borough*, directly or indirectly, in consideration of some action to be taken or not to be taken in the performance of the *public official's* duties. *Gifts* may be accepted as provided in Chapter [6.16](#) FNSBC.

- F. *Disclosure of Gift.* A public official shall not fail to disclose a *gift* as set forth in Chapter [6.16](#) FNSBC.
- G. *Holding Investments or Property.* A public official shall not hold any *investment* that might compromise the performance of the *public official's* duties without disclosure of the *investment* and self-disqualification from any particular action that might be compromised by the *investment*.
- H. *Representation of Others.*
1. A public official shall not represent any *person* in dealings with the *Borough* in consideration of *anything of value* except:
 - a. In a contested case which involves a party other than the *Borough*, and the interests represented by the *public official* are the *Borough's* interests, are essentially the same as the *Borough's* interests, or are not adverse to the *Borough's* interests;
 - b. In a matter that involves only a ministerial action by a *Borough* department, i.e., the performance of a duty that is normally done in the course of business in which the officer is left with no choice of their own;
 - c. When the representation is by a *public official* acting within the scope of their official public duties;
 - d. When the representation is merely for the purpose of obtaining information on behalf of a *person* or business and the *public official* receives no compensation for the representation beyond the salary and other compensation or reimbursement to which the *public official* is entitled for the performance of their official public duties;
 2. A public official shall be disqualified from acting on any matter or proceeding coming before the *Assembly* when the matter involves any *person* who is, or has been, a client, patient or other business associate of the *public official* within one year immediately preceding the date of the matter or proceeding and the matter or proceeding is directly related to the *public official's* representation of that client, patient or other business associate of the *public official*; or
 3. A public official shall not, within one year immediately following conclusion of service on the *Assembly*, represent, advise or assist a *person* for compensation regarding a matter that was under consideration by the *Assembly* and in which the *public official* participated personally and substantially through the exercise of official action. For the purposes of this subsection, "matter" means a case, proceeding, application, contract or determination, but does not *include* the proposal, consideration or enactment of legislation.
- I. *Financial Interest.* A public official or a member of the *public official's* immediate family shall not have a *financial interest* in any matter being considered by the *public official*. A public official shall disclose a *financial interest*, if known. The *public official* shall be disqualified from further participation in any matter in which the *public official* has a *financial interest*.
- J. *Borough Property.* A public official shall not use *Borough-owned property*, fiscal, or *human resources* for personal convenience, political purposes, or profit, except when such *property* is available to the public generally, or where such *property* is provided by specific *Borough* policy in the conduct of official *Borough* business.

- K. *Giving Anything of Value.* A public official shall not give *anything of value* in return for votes, promises, or other consideration that is prohibited by *state law*.
- L. *Expenses.* A public official shall provide required documentation to support requests for expense reimbursement or advancement. Expense reimbursement and advancements shall be made in accordance with *Borough policy*.
- M. *Donations.* Except as specifically authorized by law, a public official shall not take any official action which will benefit any *person or entity* because of a donation of *anything of value* to the *Borough* by the *person or entity*.
- N. *Official Action.* A public official shall not take any official public action that will benefit any *person or entity* when the public official would not have taken the action but for the public official's family relationship, friendship, or business relationship with the *person or entity*.
- O. *Representation of Assembly Position.*
1. A public official shall not represent themselves as being the official authorized spokesperson for the *Assembly* on a given issue unless specially authorized by the *Assembly*.
 2. A public official when making a public statement or otherwise taking a public position shall state that they are expressing a personal opinion unless authorized to speak in behalf of the *Assembly*.
- P. *Aiding a Violation.* A public official shall not knowingly aid another public official in the *violation* of this division.
- Q. *Employment of Elected Public Official.* An elected public official shall not accept employment with the Fairbanks North Star *Borough* while serving in office or within one year after conclusion of service for regular or term positions and within six months after conclusion of service for casual, temporary positions (*including election workers*).
- R. *Disclosure of Conflict of Interest.* A public official shall not fail to disclose a *conflict of interest*.
- S. *Misrepresentation of a Material Fact.* No person shall misrepresent a material fact in a response to a complaint filed under this division.
- T. *Disclosure of Confidential Information.* No person shall disclose *confidential information* relating to a proceeding under this division. (Ord. 2021-42 § 2, 2022; Ord. 2019-09 § 2, 2019; Ord. 2006-69 § 2, 2006. 2004 Code § 2.10.120.)

Chapter 6.16

GIFTS AND REQUIRED DISCLOSURE

Sections:

- 6.16.010** **Improper gifts and required disclosures.**

6.16.010 Improper gifts and required disclosures.

- A. A *public official* 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 set forth in subsection (C) of this section, "*gift*" includes a series of *gifts* from the same donor within a 12-month period.
- C. Notice of the receipt by *public official* 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 *public official* may take or withhold official action that affects the giver;
 2. If the *gift* is connected to the *public official'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. 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.
- E. A *public official* who knows or reasonably ought to know that a family member has received a *gift* because of the family member's connection with the *public official* shall report the receipt of the *gift* by the family member to the *Clerk's* office if the *gift* would have to be reported under this section had it been received by the *public official* or if receipt of the *gift* by the *public official* would be prohibited under this section. (Ord. 2019-09 § 2, 2019; Ord. 2009-21 § 2, 2009. 2004 Code § 2.10.130.)

Chapter 6.20 PROCEDURES

Sections:

- 6.20.010 Filing of a verified complaint.**
- 6.20.020 Form of verification.**
- 6.20.030 Confidentiality.**
- 6.20.040 Service of complaint.**
- 6.20.050 Response.**

- 6.20.060 Transmittal.**
- 6.20.070 Board of Ethics review and determination.**
- 6.20.080 Pre-hearing conference.**
- 6.20.090 Hearing notice.**
- 6.20.100 Subpoenas.**
- 6.20.110 Motions – Depositions.**
- 6.20.120 Service by mail and filing.**
- 6.20.130 Hearing.**
- 6.20.140 Findings of fact and conclusions of law.**
- 6.20.150 Appeal of findings of fact and conclusions of law and penalty.**
- 6.20.160 Records retention.**

6.20.010 Filing of a verified complaint.

Any *person* may file a verified complaint with the *Clerk* alleging that a *public official* has violated one or more provisions of FNSBC [6.12.010](#). The complaint must:

- A. Be a written statement of the charge setting out in ordinary and precise language the acts or omissions with which the *respondent* is charged, so that the *respondent* is able to prepare a defense;
- B. Specify the subsection(s) of FNSBC [6.12.010](#) that the *respondent* is alleged to have violated;
- C. No action may be taken on any complaint which is filed later than two years after a *violation* of this division is alleged to have occurred, and a complaint alleging a *violation* must be filed within two years from the date the *complainant(s)* knew or should have known of the action alleged to be a *violation*; provided, that in no event shall a hearing be initiated more than five years after the alleged *violation* occurred. (Ord. 2006-69 § 2, 2006. 2004 Code § 2.10.150.)

6.20.020 Form of verification.

- A. The verification shall be substantially in the following form:

I, (complainant/respondent), have read the foregoing complaint/response, know the contents thereof, and the same are true to the best of my knowledge and belief.

- B. The complaint/response and the verification must be signed by the *complainant/respondent* before a notary public. (Ord. 2006-69 § 2, 2006. 2004 Code § 2.10.160.)

6.20.030 Confidentiality.

- A. All proceedings in respect of a complaint filed under FNSBC [6.20.010](#) are confidential and may not be disclosed to any *person* except as required for the proper processing and handling of the complaint.
- B. It is not a *violation* of this section for a *person* to contact or retain an attorney or to participate in a criminal investigation.
- C. All proceedings and records shall remain confidential unless the *respondent* requests a public hearing or until the *board* of ethics files with the *Assembly* its findings of fact and conclusions of law concerning the complaint. (Ord. 2006-69 § 2, 2006. 2004 Code § 2.10.170.)

6.20.040 Service of complaint.

- A. Upon receipt of a verified complaint, the *Clerk* shall:
1. Stamp the complaint with the date and time received, number the complaint, establish a docket for further proceedings, and enter the complaint, *including* date and time received, on the docket.
 2. Review the complaint to determine that it complies with FNSBC [6.20.010](#), that it alleges facts sufficient to constitute a *violation*, and that the *board* has jurisdiction over the matter.
- B. If the *Clerk* determines that the complaint complies with FNSBC [6.20.010](#) and that the *board* has jurisdiction, the *Clerk* shall serve the complaint and notice on the *respondent*, personally, or by U.S. mail, certified return receipt requested.
- C. The *Clerk* shall notify both the *respondent* and the *complainant* that the complaint has been accepted.
- D. The notice shall specify the following:
1. The *respondent* must file a response to the complaint within 30 days from the date of the *Clerk's* written notice;
 2. The *respondent* may file a challenge to sufficiency of the complaint, if any, within 15 days;
 3. The *respondent* has the right to submit affidavits or other written evidence in support of their response;
 4. Failure to submit a timely response shall be deemed an admission of the allegations in the complaint;
 5. The existence of the complaint shall be confidential until the *board* of ethics files its findings of fact and conclusions of law to the *Assembly* concerning the complaint;
 6. The *complainant* and the *respondent* have the right to be represented at any hearing throughout these proceedings.

E. If the *Clerk* determines that the complaint fails to comply with FNSBC [6.20.010](#) or that the *board* does not have jurisdiction, the *Clerk* shall dismiss the complaint, setting forth the grounds in a written decision. The *Clerk* shall serve a copy of the decision on the *complainant*.

F. A *complainant* may appeal a dismissal of a complaint to the *board* by filing an appeal with the *Clerk* within 15 days after the date of the notice of dismissal. The appeal must *state* all facts and legal grounds for the appeal. (Ord. 2019-09 § 2, 2019; Ord. 2006-69 § 2, 2006. 2004 Code § 2.10.180.)

6.20.050 Response.

A. The *respondent* shall file a verified response within 30 days from the date of service of the complaint.

B. If the *respondent* fails to *respond* timely, the allegations of the complaint shall be deemed admitted. The *Clerk* shall notify the *complainant* and *respondent* the allegations of the complaint are deemed admitted.

C. The *respondent* may appeal to the *board* any deemed admission of the allegations of the complaint, for good cause, by filing an appeal with the *Clerk* within 15 days after the date on which the response was due. The appeal must *state* all facts and legal grounds for failure to *respond* timely. (Ord. 2006-69 § 2, 2006. 2004 Code § 2.10.190.)

6.20.060 Transmittal.

The *Clerk* will forthwith furnish to the *board* the complaint and response, if any, or any appeal and schedule a meeting of the *board*. (Ord. 2006-69 § 2, 2006. 2004 Code § 2.10.200.)

6.20.070 Board of Ethics review and determination.

A. The *board* shall review and consider all complaints accepted by the *Clerk*, and timely responses, or any appeal of the dismissal of the complaint.

B. The *board* shall take any action or combination of actions which it deems appropriate and which it is lawfully empowered to take, *including* but not limited to the following:

1. Consider any timely appeals filed pursuant to FNSBC [6.20.040\(F\)](#). Upon granting of the appeal, it shall notify the parties.

2. If the *respondent* has admitted the allegation or failed to *respond*, the *board* may issue findings of fact and conclusions of law based on the written record.

C. The *board* may, in its sole discretion, dismiss the complaint, or decide to proceed to resolution of the complaint if:

1. The *complainant* seeks to withdraw the complaint at any time before the *board* takes final action; or

2. The *complainant*, after notice, materially fails to cooperate in the *board's* review and consideration of the complaint. (Ord. 2006-69 § 2, 2006. 2004 Code § 2.10.210.)

6.20.080 Pre-hearing conference.

- A. Upon receipt of the response, or the time has passed and the *respondent* has failed to answer the allegations of the complaint, the *Clerk* shall furnish copies of the complaint and response, if any, to the *complainant*, the *respondent* and the members of the *board* of ethics, *including* the notice convening the *board* and setting the time and place for a pre-hearing conference.
- B. The pre-hearing conference shall be held no later than 30 days after receipt of the response or the time for filing a response has run.
- C. Both the *complainant* and the *respondent* may be represented by counsel at all proceedings after the filing of the complaint. An attorney representing a party shall file with the *Clerk* an entry of appearance, furnishing the *Clerk* with their name, mailing address, telephone and facsimile numbers and email addresses, if any.
- D. At the pre-hearing conference, the following matters shall be considered:
 1. Time and place for hearing on the complaint and response;
 2. Any stipulations of fact;
 3. Any motions to be filed;
 4. Any simplifications of the issues;
 5. Scheduling motions, discovery and any other relevant matters;
 6. Exchange of evidence which shall not be later than 10 days before the hearing; and
 7. Any other matters that the *board* determines will provide a fair and orderly hearing. (Ord. 2019-09 § 2, 2019; Ord. 2006-69 § 2, 2006. 2004 Code § 2.10.220.)

6.20.090 Hearing notice.

- A. If the *board* determines that a hearing on the complaint must be held, the *Clerk* shall serve on the *complainant* and the *respondent* a notice of hearing setting out the time and place of hearing and the schedule for any preliminary matters. This notice shall *include* a statement of the right to provide written evidence and oral testimony. The *complainant* and the *respondent* shall also be informed of the right to be represented at the hearing.
- B. If the *respondent* has failed to answer the allegations of the complaint or has admitted the allegations, the *board* shall prepare findings of fact and conclusions of law based on the written record. (Ord. 2006-69 § 2, 2006. 2004 Code § 2.10.230.)

6.20.100 Subpoenas.

- A. The *board* shall issue *subpoenas* and *subpoenas duces tecum* at the request of either the *complainant* or the *respondent*, and may issue *subpoenas* and *subpoenas duces tecum* to witnesses not called or named by either party but who are deemed by the *board* to have relevant information.
- B. A *subpoena* issued under this section may be enforced in the superior court in the manner provided under the Alaska Rules of Civil Procedure. (Ord. 2006-69 § 2, 2006. 2004 Code § 2.10.240.)

6.20.110 Motions – Depositions.

- A. All motions shall be served in the manner set forth in the Alaska Rules of Civil Procedure and the answering party shall have 10 days from date of service to *respond* and moving party shall have five days to reply, unless another time has been agreed upon in the pre-hearing conference.
- B. Either party or the *board's* attorney may depose witnesses. Notices of deposition shall be served on the parties no less than three business days before the date scheduled for the deposition.
- C. Motions and depositions may not be used to extend the time for hearing. For good cause shown, either party may apply to the *board* for an extension of the time for hearing. (Ord. 2006-69 § 2, 2006. 2004 Code § 2.10.250.)

6.20.120 Service by mail and filing.

- A. If service by mail is used, three days will be added for response time from the date of mailing. The party must certify the date mailed on the document.
- B. All documents shall be filed with the *Clerk*. (Ord. 2006-69 § 2, 2006. 2004 Code § 2.10.260.)

6.20.130 Hearing.

- A. All hearings shall be before the *board* of ethics. The chair of the *board* shall preside, unless another member of the *board* has been so designated by the *board*. The chair shall rule on admission and exclusion of evidence.
- B. The *board* may administer oaths, hold hearings, and take testimony. Upon motion by the *board* or application by a party to the hearing, the *board* may issue *subpoenas* to require the presence of witnesses and the production of records, books and papers at the hearing.
- C. The *Borough Attorney*, or designee, shall act as the attorney for the *board* and shall advise the *board* on matters of law.

- D. The *complainant* and the *respondent* may each present opening statements setting out the matters they intend to prove. The *complainant* shall proceed first with their evidence and the *respondent* shall follow, setting forth their evidence. The *complainant* and the *respondent* may make closing arguments.
- E. The *board* may obtain additional information by a request to the *Borough* Attorney or designee, to investigate the complaint and report all information to the *board*.
- F. The Alaska Rules of Evidence do not apply to the admission of evidence in a hearing, but the *board's* findings of fact must be based on reliable and relevant evidence.
- G. At the conclusion of the presentation of evidence and closing arguments, the *board* shall consider the allegations, the evidence supporting them and the *respondent's* evidence. If fewer than five members of the *board* are available for deliberation the alternate shall be seated as a voting member until conclusion of the matter, *including* any appeals; otherwise, the alternate is excused at the conclusion of the hearing.
- H. The *complainant*, the *respondent*, and their counsel shall be excluded from all deliberations of the *board*. (Ord. 2019-09 § 2, 2019; Ord. 2006-69 § 2, 2006. 2004 Code § 2.10.270.)

6.20.140 Findings of fact and conclusions of law.

- A. The *board* shall enter its findings of fact and conclusions of law no later than 30 days after the conclusion of the hearing. The *board* shall notify the parties and their attorneys if an extension is required to permit the *board* to prepare its findings of fact and conclusion of law.
- B. If the *board* finds that no *violation* has occurred, the *board* shall dismiss the complaint. The *Clerk* shall serve the notice of dismissal on the *complainant*, the *respondent* and attorneys. The notice of dismissal remains confidential.
- C. If the *board* finds that a *violation* of FNSBC [6.12.010](#) has been committed, it shall prepare and submit its findings of fact and conclusions of law to the *Assembly*.
- D. The findings of fact and conclusions of law are final and conclusive.
- E. The *Assembly* may not change, modify or otherwise alter the findings of fact and conclusions of law as submitted.
- F. The *Assembly* shall impose a penalty on the *public official* in accordance with FNSBC [6.24.010](#).
- G. If the *board* determines that no *violation* has occurred, or otherwise dismisses the complaint for substantive reasons, the *board* may, in its discretion, award full or partial attorney fees to a *public official* who reasonably incurred those costs defending the complaint. This award may be made only to the extent that the *Assembly* has appropriated funds for that purpose. (Ord. 2006-69 § 2, 2006. 2004 Code § 2.10.280.)

6.20.150 Appeal of findings of fact and conclusions of law and penalty.

- A. After the *Assembly* has determined and imposed a penalty, appeal of the findings of fact and conclusions of law and the penalty may be taken to the superior court in accordance with the Alaska Rules of Appellate Procedure.
- B. Notice of an appeal must be filed with the superior court within 30 days of the imposition of the penalty. (Ord. 2006-69 § 2, 2006. 2004 Code § 2.10.290.)

6.20.160 Records retention.

The *Clerk* shall provide for the storage or destruction of all records of the proceedings of the *board* in accordance with the approved *Borough* retention schedule. (Ord. 2006-69 § 2, 2006. 2004 Code § 2.10.300.)

Chapter 6.24 PENALTIES AND REMEDIES

Sections:

- 6.24.010 Penalties.**
- 6.24.020 Remedies.**

6.24.010 Penalties.

- A. The *Borough Clerk* or a *Deputy Borough Clerk* who violates this division shall be disciplined by a majority vote of the *Assembly*. In determining an appropriate penalty, the *Assembly* may be guided by the provisions of the *Borough* personnel code. Depending on the *violation*, disciplinary action may *include* termination.
- B. A member of the *Assembly* who violates this division shall be subject to one or more of the following:
1. *Public censure*.
 2. A civil fine of not more than \$1,000 for each *violation* of any of the subsections of FNSBC [6.12.010](#). If a *public official* has violated more than one subsection of FNSBC [6.12.010](#), the civil penalty may not exceed \$10,000 in the aggregate.
 3. Removal from office.
- C. Removal from office may only be imposed if the *violation* occurred in the *Assembly* member's present term and by a vote of three-fourths of the *Assembly* qualified to vote thereon.

D. An *Assembly* member who voted after the *Presiding Officer* or *Assembly* determined, after full and complete disclosure, that the *Assembly* member did not have a *financial interest* in accordance with FNSBC [6.12.010\(l\)](#) shall not be subject to such penalties.

E. A penalty imposed under this section is in addition to and not in lieu of any other penalty that may be imposed according to law. To the extent that *violations* under this code are punishable in a criminal action, that sanction is in addition to the civil remedies set out in this division. (Ord. 2022-09 § 8, 2022; Ord. 2006-69 § 2, 2006. 2004 Code § 2.10.310.)

6.24.020 Remedies.

A. The *Assembly* may, upon notice of a *violation* by a *public official*, take any of the following actions:

1. Void any action of the *Assembly* materially and substantially connected to a *violation* of this division unless the required majority would exist without the vote of the disqualified member.
2. In determining whether to void a grant, contract, or lease, the interest of third parties who may be damaged and the nature of the *violation* may be taken into account. The *Assembly* shall give notice of intent to void a *Borough* grant, contract, or lease under this section no later than 30 days after the *board* files its findings of facts and conclusions of law.

B. Require that any loan received from the *Borough* in *violation* of this division shall be immediately due and payable.

C. Direct the *Borough* Attorney to pursue any other remedies available at law or in equity. (Ord. 2006-69 § 2, 2006. 2004 Code § 2.10.320.)

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)
[Code Publishing Company](#)