Chapter 1.18 Conflicts of Interest, Partiality and Code of Ethics

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1.18.010 Purpose. a. The proper functioning of democratic government requires ethical behavior by public officials. Ethics involves the commitment to take individual responsibility in creating a government that has the trust and respect of its citizens. The purpose of this chapter is to set reasonable standards of conduct for city officials and the city manager so that the public may be assured that its trust in such persons is well placed and that the city officials and the city manager themselves are aware of the standards of conduct demanded.

b. However, recognizing that Homer is a small community, with a limited number of people interested in serving as community leaders, it is not the intent of this chapter to set unreasonable barriers that will serve only to deter aspirants from public service.

c. This chapter also defines conflict of interest and partiality, the standards stating when and to whom it applies, and the procedures for declaration and the proper action of the body when possible conflicts and partiality arise.

d. This chapter is also intended to establish a process which will ensure that complaints or inquiries regarding the conduct of city officials and the city manager are resolved in the shortest practicable time in order to protect the rights of the public at large and the rights of the city and the city manager.

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(Homer 03/10)

1.18.010(e)—1.18.020(f)

e. The City Council intends this code to be interpreted to promote fair, honest, and impartial dealings with members of the public, to ensure proper use of city resources, and to avoid conflicts of interest.

f. This chapter does not create or prevent a private cause of action against any person, city official, or the city manager. (Ord. 08-24(S-2)(A), 2008).

1.18.020 Definitions. As used in this chapter and unless otherwise provided or the context otherwise requires, the following terms shall have the meanings set forth in this section:

a. “Applicant” means any person that is applying for an official action by any official, employee, or body of the city including but not limited to:

1.) Any person authorized to act for the applicant,

2.) If the applicant is an organization, any person who has an ownership interest in the organization or serves as an officer, director or manager of the organization.

b. “Body of the city” means the City Council and the boards, commissions, committees and task forces appointed by the City Council or the Mayor.

c. “City manager” means the person who is hired by the City Council to manage the City of Homer.

d. "City official" means a person who holds elective office under the ordinances of the City, or who is a member of a board or commission whose appointment is subject to confirmation by the City Council.

e. ”Financial interest" means:

1. an interest currently held by that person or an immediate family member including:

i.)involvement or ownership in a business or,

ii.)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 receives a financial benefit; or

iii.) an affiliation with an organization in which the person holds a position of management, or is an officer, director, trustee, employee, or the like; or

2. financial interest does not include:

i.) affiliation as unpaid volunteer with a legally recognized non-profit organization or,

ii.) financial interests of a type which are generally possessed in common with all other citizens or a large class of citizens.

f. “Gratuity” means a thing having value given voluntarily or beyond lawful obligation.

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(Homer 09/08)

1.18.020(g)—1.18.020(f)

g. “Hired consultants and contractors” means a person or organization hired by the city as an independent contractor and not as an employee.

h. "Immediate family member" means:

1. the spouse of the person;

2. a life partner or person cohabiting with the person;

3. a child, including a stepchild and an adoptive child, of the person;

4. a parent, sibling, or grandparent of the person; and

5. a parent or sibling of the person's spouse.

i. “Large class of citizens” means a substantially large groups of citizens as decided by official decision of the City Council made prior to the official action in question.

"Large class of citizens" does not include:

a. A single profession, regardless of the number of persons.

b. An individual business or organization regardless of the number of citizens it contains.

j. "Official action" means a recommendation, decision, approval, disapproval, vote, or other similar action, including inaction, (when it is the equivalent of decision to take negative action), made while serving in the capacity of city official or city manager, whether such action or inaction is administrative, legislative, quasi-judicial, advisory, or otherwise.

k. "Organization" means any business, corporation, partnership, firm, company, trust, association, or other entity, whether organized for profit or non-profit.

l. "Partiality" applies only in quasi-judicial proceedings and means:

1. The ability of a member of the quasi-judicial body to make an impartial decision is actually impaired; or

2. The circumstances are such that reasonable persons would conclude the ability of the member to make an impartial decision is impaired and includes, but is not limited to instances in which:

(i) the member has a personal bias or prejudice for or against a party to the proceeding including a party's lawyer;

(ii) the member or an immediate family member is a party, material witness to the proceeding or represents a party in the proceeding.

m. “Person” means a natural person or an organization.

n. “Political activity” means any act for the purpose of influencing the nomination or election of any person to public office, or for the purpose of influencing the outcome of any ballot proposition or question. Informing the public about a ballot proposition or question without attempting to influence the outcome of the ballot proposition or question is not political activity.

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(Homer 09/08)

1.18.020(o)—1.18.030(b)(5)(ii)

o. “Subject of the action” means anything under consideration for official action including but not limited to:

1. Appointments to any office or position of employment,

2. Any contract, project, property, or transaction subject to the action,

3. A platting, vacation or subdivision action,

4. An application for or other consideration of a license, permit, appeal, approval, exception, variance, or other entitlement,

5. a rezoning, and

6. appeals and quasi-judicial proceedings.

p. "Substantial financial interest” means a financial interest that would result in a pecuniary gain or loss exceeding $1000 in a single transaction or more than $5000 in the aggregate in 12 consecutive months. (Ord. 08-24(S-2)(A), 2008).

1.18.025 Scope and Duration.

a. Except as otherwise provided in this chapter, this chapter applies to the conduct of city officials and the City Manager.

b. Enforcement proceedings may be commenced and continue to completion after a person is no longer a city official or City Manager for conduct that occurred during the time the person was serving or engaged in such a capacity for the city. (Ord. 08-24(S-2)(A), 2008).

1.18.030 Standards and Prohibited Acts.

a. City officials, the City Manager, and City hired consultants and contractors, while acting in such capacity, shall not knowingly make false statements to influence official action.

b. Official Action. No City official or the City Manager shall participate in any official actions in which

1. the person is the applicant, a party or has a substantial financial interest in the subject of the official action.

2. within a period of one year after the action the person will have a substantial financial interest in the subject of the official action.

3. the person resides or owns land within a three-hundred foot periphery of any property that is the subject of any action.

4. the person does or will recognize a substantial financial interest as a result of the action.

5. Exceptions:

i.) This subsection does not prohibit a person from acquiring a substantial financial interest in the subject of the action after the longer of twelve months after the official action is approved, or twelve months after the person's term or employment ends.

ii.) This section does not prohibit any gain or loss that would generally be in common with all other citizens or a large class of citizens.

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(Homer 09/08)

1.18.030(b)(5)(iii)—1.18.030(g)

iii.) This section does not prohibit any gain or loss that would generally be in common with other property owners on property that is further than three hundred feet from the periphery of any property that is the subject of an action.

c. City officials and the City Manager acting in the course of their official duties are allowed to participate in official actions on behalf of the city or when the city itself is the applicant or subject of the action.

d. Undue Influence. No city official or the City Manager shall attempt to influence the city’s selection of any bid or proposal, or the city’s conduct of business, in which the city official or the City Manager has a substantial financial interest. This subsection does not prohibit a city official or the City Manager from being an applicant while holding city office or city position, if the person takes no official action concerning his or her own application. A city official or city manager may give testimony and make appearances before city bodies on his or her own behalf.

e. Participation in Appointments. No city official shall participate in, vote on, or attempt to influence the selection of an appointee to any board, commission or committee (i) having authority to take official action on any pending matter or application in which that official has a substantial financial interest or (ii) if that official has a substantial financial interest with a nominee for the appointment.

f. No official shall participate in, vote on, or attempt to influence the selection of an appointee to the Homer Advisory Planning Commission if that official has, or could reasonably be expected to have within one year after the date of the appointment:

1. a rezoning, quasi-judicial or platting action pending before the commission, or

2. an application that would require approval by a quasi-judicial or platting action of the commission.

In the case of the reappointment of an incumbent to another term, the prohibition above also applied to an official who had such a matter pending before the Homer Advisory Planning Commission within one year before the date of the reappointment. The Board of Ethics may, upon written request, grant an exception to this one year period when it determines the public interest does not require continuing enforcement of the prohibition.

g. Use of Office for Personal Gain. No city official or the City Manager shall seek office or position or use their office or position for the purpose of obtaining anything of value for himself, an immediate family member or a business that he owns or in which he holds an interest, or for the purpose of influencing any matter in which he has a financial interest. This subsection does not prohibit the receipt of authorized remuneration for the office or position.

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(Homer 09/08)

1.18.030(h)—1.18.030(k)(2)

h. Inappropriate Use of Office Title or Authority. No city official or the City Manager, shall use the implied authority of office or position for the purposes of unduly influencing the decisions of others, or promoting a personal interest within the community. City Officials and the City Manager will refrain from using their title except when duly representing the city in an authorized capacity. Unless duly appointed by the Mayor or Council to represent the interests of the full council, councilmembers shall refrain from implying their representation of the whole by the use of their title.

i. Representing Private Interests. No city official shall, for compensation, represent or assist those representing private business or personal interests before the city council, administration, or any city board, commission or agency. Nothing herein shall prevent an official from making verbal or written inquiries on behalf of constituents or the general public to elements of city government or from requesting explanations or additional information on behalf of such constituents. No official may solicit or accept a benefit or anything of value from any person for having performed this service.

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

k. Outside Activities. A city official or the City Manager may not engage in business or accept employment with, or render services for, a person other than the city or hold any office or position where that activity, office, or position is incompatible with the proper discharge of the official's or City Manager’s city duties or would tend to impair the official's or the City Manager’s independence of judgment in performing city duties. This prohibition shall include but not be limited to the following activities:

1. A person who holds an appointed city office on a board or commission shall not be eligible for employment with the city in the department related to the board or commission during the official's term of office and until one year has elapsed following the period of service. An exception may be made on a case-by-case basis with the express authorization of the city council.

2. A person who holds or has held an elective city office shall not be eligible for appointment to an office or for employment with the city during the official’s period of service and until one year has elapsed following the period of service. An exception may be made on a case-by-case basis with the express authorization of the city council.

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(Homer 09/08)

1.18.030(l)—1.18.030(p)

l. Gratuities. No city official or the City Manager shall accept a gratuity from any person engaging in business with the city or having a financial interest in a decision pending with the city. No city official or the City Manager shall give a gratuity to another city official for the purpose of influencing that person's opinion, judgment, action, decision or exercise of discretion as a city official. This subsection does not prohibit accepting:

1. A meal of reasonable value;

2. Discounts or prizes that are generally available to the public or large sections thereof;

3. Gifts presented by an employers to its employees in recognition of meritorious service, or civic or public awards;

4. A lawful campaign contribution made to a candidate for public office;

5. An occasional non-pecuniary gift insignificant in value;

6. Any gift which would have been offered or given to him if he were not a city official or the City Manager.

m. Use of City Property. No city official, the City Manager, or City hired consultant or contractor may use, request or permit the use of city vehicles, equipment, materials or property for any non-city purpose, including but not limited to private financial gain, unless that use is available to the general public on the same terms or unless specifically authorized by the city council. This subsection does not prohibit de minimis personal use.

n. Political Activities, Limitations of Individuals. A city official may not take an active part in a political campaign or other political activity when on duty. Nothing herein shall be construed as preventing such officials from exercising their voting franchise, contributing to a campaign or candidate of their choice, or expressing their political views when not on duty or otherwise conspicuously representing the city.

o. Influencing another city official's vote. A city official may not attempt to influence another city official's vote or position on a particular item through contact with the city official's employer or by threatening financial harm to another city official.

p. City officials or the City Manager shall not participate in public testimony before any city body in any matter in which they have a substantial financial interest unless

1.) they or the city are the applicant, or

2.) they fully and publicly disclose the nature of their interest in the subject of the action. (Ord. 08-24(S-2)(A), 2008)

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(Homer 09/08)

1.18.040(a)—1.18.043(b)

1.18.040 Business dealings with city.

a. Not less than ten days before the date when official action may be taken by the council or by any officer, the City Manager, commission or other agency of the city upon business dealings between the city and a city official or an organization in which the city official has a substantial financial interest, the city official shall file a statement with the city clerk. The statement shall set forth the nature of such business dealings and the city official's interest therein. This statement is only required when the person receives a beneficial substantial financial interest. If all other provisions of this chapter are complied with, the statement shall be sufficient for continuing transactions of a similar or like nature for one year from the date of its filing. However, if an official has violated any of the provisions of this chapter, he shall be precluded from engaging in business with the city on that particular matter for one year.

b. Upon taking office or upon subsequently acquiring the interest, an official shall, within ten days, file with the city clerk a statement disclosing any substantial financial interests of the official or the City Manager in any existing business with the city, including those of any organization in which the official or the City Manager has a substantial financial interest.

c. The City Manager shall not engage in business with the city outside the duties of City Manager. (Ord. 08-24(S-2)(A), 2008).

1.18.043 Public Disclosure.

a. Each city official and City Manager must annually file a Financial Interest Disclosure Statement using forms substantially the same as the following selected schedules from the Alaska Public Offices Commission Public Official Financial Disclosure Statement: Schedules B (business interests), C (real property interests / rent to own), E (the portion relating to natural resource leases only), F (government contracts and leases) and G (close economic associations). The City Clerk shall provide the forms to each city official. The City Clerk may make such alterations to the forms as may be necessary.

b. The Financial Interest Disclosure Statement must be filed by November 1 each year. A newly appointed official must file a statement within 30 days after taking office. Each candidate for elected city office must file a disclosure statement at the time he or she files a declaration of candidacy, except an incumbent seeking reelection with a current disclosure statement on file. Refusal or failure of a candidate to file the required disclosure statement before the end of the time period for filing declarations of candidacy shall require that the candidate's declaration of candidacy be rejected and the candidate disqualified.

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(Homer 09/08)

1.18.043(c)—1.18.045(e)

c. The disclosure statement must be true, correct and complete and shall be signed under oath or affirmation, or certified to be true under penalty of perjury. Not filing a statement within the stipulated period is a violation of this chapter.

d. The disclosure statement shall be filed with the city clerk and shall be open to public inspection and copying at the office of the city clerk. The disclosure statement will not be sent to the Alaska Public Offices Commission. (Ord. 08-24(S-2)(A), 2008).

1.18.045 Procedure for declaring potential conflict of interest-city officials.

a. A city official who has or may have a substantial financial interest in an official action shall disclose the facts concerning that interest to the body of the city of which the official is a member prior to the body taking any official action. Any member of the body may raise a question concerning another member's financial interests, in which case the member in question shall disclose relevant facts concerning the official's financial interests in the subject of the action.

b. If the official is a city council member, the mayor, or the mayor pro tem in the absence of the mayor, shall rule on whether the council member must be excused from participation or must vote. The ruling may be immediately overridden by a majority vote of the city council. There is no appeal from the action or inaction of the city council to override or not override the ruling of the mayor.

c. If the official is not a city council member, the official may excuse themselves without a vote for conflict of interest, otherwise the board, commission, or other body of which the official is a member shall by majority vote rule on whether the member must be excused from participation, which must be the ruling when the body determines the official has a substantial financial interest in the official action. There is no appeal from the ruling of the body.

d. The official shall abide by the ruling. If the official is not a city council member, the ruling applies (without the need for further disclosures and rulings) to all subsequent occasions on which the same official action comes before the same body, unless there has been a material change of circumstances. On each such subsequent

occasion, the presiding officer shall note for the minutes that the ruling previously made continues in effect.

e. An official who is ruled to be excused from participation shall leave the official table and not vote, debate, testify, or otherwise take part in the official action, except an official who is an applicant may testify on his or her own behalf from the public testimony area.

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(Homer 09/08)

1.18.045(f)—1.18.048(c)

f. Rule of necessity; Exceptions to a ruling excusing a member from participation shall be made in cases where

(1) by reason of being excused for conflicts of interest the number of members of the council or other body eligible to vote is reduced to less than the minimum number required to approve the official action,

(2) no other body of the city has jurisdiction and authority to take the official action on the matter, and

(3) the official action cannot be set aside to a later date, within a reasonable time, when the body could obtain the minimum number of members to take action who are not excused for conflicts of interest.

When the body determines this exception applies, then all members, except the applicant when the applicant is a member of the body, shall participate in the official action. (Ord. 08-24(S-2)(A), 2008).

1.18.047 Procedure for declaring potential conflicts of interest – City Manager.

The City Manager who has or may have a substantial financial interest in an official action shall disclose the facts concerning the manager's financial interests to the City Council prior to taking any official action. If the City Council determines the manager has a substantial financial interest in the action, the City Council shall excuse the manager and assign another city employee to the matter. (Ord. 08-24(S-2)(A), 2008).

1.18.048 Procedure for declaring and ruling on partiality in quasi-judicial matters.

a. A city official or the City Manager who has partiality concerning a quasi-judicial matter shall not advise on matter, adjudicate the matter or serve as a member of a body adjudicating the matter.

b. A city official who is a member of a quasi-judicial body and who has or may have partiality concerning a matter to be adjudicated shall disclose the facts concerning the official's possible partiality to the body to the parties of the matter prior to the commencement of proceedings by the body. Any member of the body, and any party to a matter before the body, may raise a question concerning a member's partiality, in which case the member in question shall disclose facts concerning the official's possible partiality in the matter.

c. After such disclosure, the city official may excuse themselves for partiality without a vote of the body, otherwise the body (including a body comprised of city council members when serving in a quasi-judicial capacity) shall by majority vote, rule on whether the member must be excused from participation, which must be the ruling when the body determines the official has partiality concerning the matter.

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(Homer 09/08)

1.18.048(d)—1.18.050(c)

d. Rule of necessity; Exceptions to a ruling excusing a member from participation shall be made in cases where

(1) by reason of being excused for partiality the number of members of the council or other body eligible to vote is reduced to less than the minimum number required to approve the official action,

(2) no other body of the city has jurisdiction and authority to take the official action on the matter, and

(3) the official action cannot be set aside to a later date, within a reasonable time, when the body could obtain the minimum number of members to take action who are not excused for partiality.

When the body determines this exception applies, then all members, except the applicant when the applicant is a member of the body, shall participate in the official action.

e. The City Manager who has or may have partiality concerning a quasi-judicial matter over which the manager has decision-making authority shall either (i) appoint another city employee to make the decision or (ii) disclose the facts concerning the possible partiality to the City Council and to the parties to the matter prior to taking any official action . If referred to the City Council and the City Council determines the manager has partiality concerning the matter, the City Council shall excuse the Manager and cause another city employee to be assigned to decide the matter. (Ord. 08-24(S-2)(A), 2008).

1.18.050 Procedures for violation reporting.

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

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

c. Written complaints of potential violations filed with the City Clerk’s office shall be forwarded to the Board of Ethics under Chapter 1.79. The Board of Ethics has sole jurisdiction to decide the merits of the complaint filed under this chapter. (Ord. 08-24(S-2)(A), 2008).

7-15

(Homer 09/08)

1.18.060—1.18.100(b)

1.18.060 Advisory opinions.

a. Where any city official or the City Manager has a doubt as to the applicability of any provision of this chapter to a particular situation, or as to the definition of terms used herein, he may apply in writing to the city attorney for an advisory opinion. The city official or City Manager shall have the opportunity to present his interpretation of the facts at issue and of the applicability of provisions of the chapter before such advisory opinion is made. The request must clearly state it is a request for an advisory opinion under this section of the ethics code.

b. Such opinion, until amended or revoked, shall be binding on the city in any subsequent actions concerning the public official who sought the opinion and acted on it in good faith, unless material facts were omitted or misstated in the request for the advisory opinion. An advisory opinion shall be applicable and binding only to the particular set of facts and instances of conduct for which it was requested and shall have no force or effect for purposes of general application. Such opinion shall not be binding or admissible in evidence in any action initiated by any private citizen. (Ord. 08-24(S-2)(A), 2008).

1.18.070 Violation and penalty. Any official who violates any of the provisions of this chapter shall be guilty of a violation subject to punishment pursuant to HCC 1.16. (Ord. 08-24(S-2)(A), 2008).

1.18.090 Distribution of Code. The city clerk shall cause a copy of this chapter to be distributed to each city official elected or appointed before entering upon the duties of his office and to the City Manager upon employment. (Ord.

08-24(S-2)(A), 2008).

1.18.100 Application of state statutes.

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

b. All municipal officers as defined by Alaska Statutes Chapter 39.50 are exempt from the provisions of AS 39.50 relating to conflicts of interest or financial disclosures. (Ord. 08-24(S-2)(A), 2008).

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(Homer 09/08)

[1] Ordinance 08-24(S-2)(A) repealed and reenacted 1.18. Prior code history: Ord. 06-68(S)(A).

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