

AN ORDINANCE OF THE HAINES BOROUGH REPEALING HAINES BOROUGH CODE CHAPTER 2.06 CODE OF ETHICS; REPEALING CHAPTER 2.62 RESPONSIBILITIES OF OFFICERS AND EMPLOYEES; REPEALING CHAPTER 2.96 PROHIBITED ACTIVITY AND CONDUCT; REENACTING A NEW CHAPTER 2.06 CALLED CONFLICTS OF INTEREST, PARTIALITY AND CODE OF ETHICS; ENACTING CHAPTER 2.73 EMPLOYEE RESPONSIBILITIES; AND MOVING PORTIONS OF CHAPTERS 2.62 AND 2.96 TO OTHER SECTIONS OF CODE.

WHEREAS, the borough assembly holds the trust and respect of its citizens in the highest regard, recognizing that the citizens' determination of public officials' ethical behavior relies heavily upon members while they are acting within the scope of authority and responsibility bestowed upon them; and

WHEREAS, HBC 2.06, HBC 2.62 and HBC 2.96 all address ethical issues, conflicts of interest and conduct of borough officials and employees; and combining and/or reorganizing the sections will streamline the code, allow greater lucidity and clarify definitions of several terms; and

WHEREAS, elected and appointed officials may be called upon to make decisions that are intertwined with their private business dealings and need further guidance to know when they must refrain from participating in decision-making in such matters,

NOW, THEREFORE, BE IT ENACTED BY THE HAINES BOROUGH ASSEMBLY:

Section 1. Classification. This ordinance is of a general and permanent nature and the adopted amendment shall become a part of the Haines Borough Code.

Section 2. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held to be invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 3. Effective Date. This ordinance is effective upon adoption.

Section 4. Repeal and Reenactment of HBC Chapter 2.06. Chapter 2.06 of the Haines Borough Code is hereby repealed and reenacted to read, as follows:

Chapter 2.06

CONFLICTS OF INTEREST, PARTIALITY AND CODE OF ETHICS

Sections:

- 2.06.010 Purpose.
- 2.06.020 Scope and duration of code of ethics.
- 2.06.025 Definitions.
- 2.06.030 Standards and prohibited acts.
- 2.06.035 Public financial disclosure.
- 2.06.040 Business dealings with borough.
- 2.06.045 Procedure for declaring potential conflict of interest - borough officials.
- 2.06.046 Procedure for declaring potential conflicts of interest – borough manager
- 2.06.047 Procedure for declaring and ruling on partiality in quasi-judicial matters.
- 2.06.050 Procedures for violation reporting and advisory opinions.
- 2.06.055 Actions voidable.
- 2.06.060 Suspension and forfeiture of office.
- 2.06.065 Violation and penalty

- 2.06.070 Criminal sanctions additional.
- 2.06.075 Distribution of code.

2.06.010 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 borough officials and the borough manager so that the public may be assured that its trust in such persons is well placed and that the borough officials and the borough manager themselves are aware of the standards of conduct demanded.

B. In recognizing that Haines is a small community, with a limited number to serve 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 borough officials and the borough manager are resolved in the shortest practicable time in order to protect the rights of the public at large and the rights of the borough and the borough manager.

E. The borough assembly intends this code to be interpreted to promote fair, honest, and impartial dealings with members of the public, to ensure proper use of borough resources, and to avoid conflicts of interest.

2.06.020 Scope and duration.

A. Except as otherwise provided in this chapter, this chapter applies to the conduct of elected and appointed borough officials and the borough manager.

B. Enforcement proceedings may be commenced and continue to completion after a person is no longer a borough official or borough manager for conduct that occurred during the time the person was serving or engaged in such a capacity for the borough.

2.06.025 Definitions.

The following words, terms and phrases, when used in this chapter, shall have the following meanings ascribed to them, except where the context clearly indicates a different meaning:

“Agency” means the assembly, a department, the borough manager’s office, or other entity in or of the government of the borough, including the school district, harbors, and all boards and commissions.

“Applicant” means any person that is applying for an official action by any official, employee, or body of the borough 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.

“Benefit” means anything that is to a person’s financial or personal interest.

“Board or commission” means a board, commission, committee, council, task force, or other body or sub-committee thereof, created by charter or the Haines Borough Code, or by the assembly, the mayor or the borough manager. The school board, elected by the public, is not a “board” of the borough assembly for purposes of this title.

Haines Borough
Ordinance No. 17-10-481
Page 3 of 25

"Body of the borough" means the borough assembly and the boards, commissions, committees and task forces appointed by the borough assembly or the Mayor.

"Borough" means the Haines Borough.

"Borough manager" means the person who is hired by the borough assembly to manage the Haines Borough.

"Borough official" or "official" means a person who holds or has been elected to elective office under the ordinances of the Borough, is a member or member-designate of a board or commission whose appointment is subject to confirmation by the borough assembly, or an appointed borough officer, as defined in HBC 2.04.020(B).

"Business" means 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 not for profit.

"Child" means a biological child, an adopted child, a stepchild, or a dependent child.

"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 regular, probationary, seasonal or temporary employee of the borough, other than a borough officer.

"Fiduciary Duty" is the duty imposed upon an individual in whom another has placed the utmost trust and confidence to manage and protect property or money. One who owes a fiduciary duty to another has an obligation to act for the other party's benefit.

"Financial interest" means:

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

- a. Involvement or ownership in a business, or
- b. Property ownership that is a source of income or financial benefit;
- c. Professional or private relationship, or contract, that is a source of income or financial benefit; or
- d. An affiliation with an organization in which the person holds a position of management, or is an officer, director, trustee, employee, or the like.

2. Financial interest does not include:

- a. Affiliation as unpaid volunteer with a legally recognized non-profit organization, or
- b. Financial interests of a type which are generally possessed in common with all other citizens or a large class of citizens.

"Gain" means actual or anticipated gain, benefit, profit, or compensation.

"Gratuity" means a thing having value given voluntarily or beyond lawful obligation.

"Hired consultants and contractors" means a person or organization hired by the borough as an independent contractor and not as an employee.

"Immediate family member" means a person's spouse, life partner or person cohabiting with the person, child or dependents, a regular member of the person's household, the person's parent or parent of the person's spouse or life partner.

"Large class of citizens" means a substantially large group of citizen as recognized by the borough assembly. "Large class of citizens" does not include:

- a. A single profession, regardless of the number of persons, or
- b. An individual business or organization regardless of the number of citizens it contains.

"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 borough official or borough manager, whether such action or inaction is administrative, legislative, quasi-judicial, advisory, or otherwise.

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

"Parent" means a biological parent, an adoptive parent, or a stepparent.

"Partiality" applies only in quasi-judicial proceedings and means the inability to make an impartial decision because of actual or perceived bias.

"Person" means a natural person, a business, or an organization.

"Personal interest" means an interest other than a financial interest, and includes any material advantage in the form of a promise, service, privilege, exemption, patronage, or advancement. A borough official shall be deemed to have a personal interest in the affairs of any person, other than any not-for-profit organization, if the official owes a fiduciary duty to that person.

"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.

"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, or
6. Appeals and quasi-judicial proceedings.

"Substantial financial interest" means a financial interest that would result in a gain or loss exceeding \$1000 in a single transaction or more than \$5000 in the aggregate in 12 consecutive months.

2.06.030 Standards and prohibited acts.

A. Borough officials, the borough manager, and borough-hired consultants and contractors, while acting in such capacity, shall not knowingly make false statements to influence official action.

B. Official Action. No borough official or the borough manager shall participate in any official action 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:

a. 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.

b. 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.

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

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

E. Participation in Appointments. No borough official shall participate in, vote on, or attempt to influence the selection of an appointee to any board, commission or committee (1) having authority to take official action on any pending matter or application in which that official has a substantial financial interest or (2) 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 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 applies to an official who had such a matter pending before the planning commission within one year before the date of the reappointment. The borough attorney may, upon written request, recommend 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 borough official shall seek office or position or use their office or position for the purpose of obtaining anything of value for the official, an immediate family member or a business owned by the official or in which the official holds an interest, or for the purpose of influencing any matter in which the official has a financial interest. This subsection does not prohibit the receipt of authorized remuneration for the office or position.

H. Inappropriate Use of Office Title or Authority. No borough official or the borough 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. Borough officials and the borough manager will refrain from using their title except when duly representing the borough in an authorized capacity. Unless duly appointed by the mayor or assembly to represent the interests of the full assembly, assembly members shall refrain from implying their representation of the whole by the use of their title.

I. Representing Private Interests. No borough official shall, for compensation, represent or assist those representing private business or personal interests before the borough assembly, administration, or any borough 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 borough 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 borough official or the borough manager may disclose information he or she knows to be confidential concerning employees of the borough, borough property, borough government, or other borough 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 borough official or the borough manager may not engage in business or accept employment with, or render services for person other than the borough or hold any office or position where that activity, office, or position is incompatible with the proper discharge of the official's or borough manager's borough duties or would tend to impair the official's or the borough manager's independence of judgment in performing borough duties. For one year after leaving office, an assembly member shall not hold any compensated borough office or employment that was created, or the salary or benefits of which were specially increased, in a vote by the assembly during the last year the member was in office. The same rule shall apply to school board members. This section does not apply to employment by or election to a charter commission.

L. Gratuities. No borough official or the borough manager shall accept a gratuity from any person engaging in business with the borough or having a financial interest in a decision pending with the borough. No borough official or the borough manager shall give a gratuity to another borough official for the purpose of influencing that person's opinion, judgment, action, decision or exercise of discretion as a borough 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 employer 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 gift of insignificant value;

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

M. Use of Borough Property. No borough official, the borough manager, or borough-hired consultant or contractor may use, request or permit the use of borough vehicles, equipment, materials or property for any non-borough 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 borough assembly. This subsection does not prohibit de minimis personal use.

N. Political Activities, Limitations of Individuals. A borough 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 borough.

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

P. Testimony. Borough officials or the borough manager shall not participate in public testimony before any borough body in any matter in which they have a substantial financial interest unless

1. They or the borough are the applicant, or

2. They fully and publicly disclose the nature of their interest in the subject of the action.

Q. Voting on certain questions prohibited.

1. No assembly member or the member of any committee, board or commission may vote, debate, testify, or otherwise take part in the official action on any question on which the member has substantial financial or personal interest, except an official who is an applicant may testify on his or her own behalf from the public testimony area.

2. Exceptions:

a. A vote to adopt or approve a variance request, a conditional use request or an amendment to a zoning text or map unless the assembly member or committee, board or commission member is directly or indirectly the applicant initiating the request;

b. A vote on the question of recommending, approving or directing a condemnation proceeding;

c. A vote on a question of granting or modifying a franchise or a vote on a question of setting the rates charged by a business whether under franchise or not and whether authorized by law, ordinance or contract to set or alter such rates, provided the borough official has an interest in such franchise or rate setting solely by reason of employment as an officer or employee of such business and the remuneration of such employment will not be affected as a

result of such franchise grant or modification or such rate setting, and the duties of such employment do not directly or indirectly involve the negotiation or setting of the terms of the franchise or rates; or provided the member has an interest solely by reason of the ownership of stock in the corporation if it is listed on a major stock exchange, or ownership, direct or indirect, of less than five percent of the outstanding stock or shares in the subject corporation.

R. Prohibited Employment-Related Activities. The following employment-related activities are prohibited:

1. Continuing as an employee of the borough after being elected to the borough assembly (this does not include school district employees);
2. Taking any action which affects the employment status of any other person when the reason for such action is predicated on race, color, religion, sex, or national origin;
3. Making any false statement on any application, report or other document relating to employment status or to commit any other fraud which would prevent the fair and impartial execution of this code;
4. Demanding or requesting an applicant for employment provide information relating to the applicant's religion, ancestry, race, or political convictions;
5. Seeking or attempting to use any political party endorsement to secure any borough appointment or promotion;
6. Requiring personnel to subscribe, contribute, or provide a service to any political party; or
7. Giving, rendering, paying, offering, soliciting, or accepting any money, service, or other valuable thing in attempting to secure any appointment, promotion, or advantage in a borough position.

2.06.035 Public financial disclosure.

A. The borough assembly members, mayor, school board members, planning commissioners, and borough manager must annually file a financial disclosure statement listing each source of income over \$5,000, including business interests, real property interests, and interests in trusts exceeding \$5,000, natural resources leases, government contracts and leases, and loans, loan guarantees, and debts over \$5,000. The borough clerk shall provide the forms.

B. When to File. By March 15 of each year, the annual financial disclosure statements must be filed. A **newly appointed official** must file a financial disclosure statement within 30 days of taking office. Each **candidate for elected borough office**, except an incumbent seeking reelection with a current disclosure statement on file, must file a financial disclosure statement at the time the candidate files for office. Refusal or failure of a candidate to file the required financial disclosure statement before the end of the time period for filing a declaration of candidacy shall cause the candidate's declaration of candidacy to be rejected and the candidate disqualified. A person who fails to file a properly completed and certified financial disclosure statement within the time required by this section is subject to a civil penalty of \$10.00 a day for each day the delinquency continues.

C. Penalties. Disclosure must be true, correct and complete and shall be signed under oath or affirmation, or certified to be true under penalty of perjury. A person required to file a financial disclosure statement under this section who refuses or knowingly fails to disclose required information within the time required in this chapter, or who provides false or misleading information, knowing it to be false or misleading, commits a minor offense punishable by a fine of not less than \$100.00 nor more than \$500.00. A municipal official or

candidate for an office who refuses or fails to file a financial disclosure statement required under this section when due shall not hold office, and the person's name shall not be submitted to the assembly for appointment or reappointment, until the person complies. The person may not be confirmed, hired, or appointed, and the person forfeits and may not be paid any salary, per diem, or travel expenses, until the person complies. If, after installation in office or beginning employment in the position, the person refuses or fails to file the required financial disclosure statement when due, the person commits a minor offense punishable by a fine of not less than \$100.00 nor more than \$500.00. Any citizen eligible to vote in Alaska may bring a civil action to enforce any of the provisions of this section.

D. The disclosures shall be filed with the borough clerk and shall be open to public inspection and copying at the office of the borough clerk. The disclosures will not be sent to the Alaska Public Offices Commission and shall not be posted on the Haines Borough's website.

E. Each statement must be an accurate representation of the financial affairs of the filer and must contain the information specified in subsections (E)(1) through (7) of this section for the filer, the filer's spouse or domestic partner, and the filer's dependent children.

1. The source of income over \$5,000 during the preceding calendar year, including taxable and nontaxable capital gains, received by the filer, the filer's spouse or domestic partner, or the filer's dependent child, except that gifts received from sources other than immediate family members must be included if the value of the gift, or series of gifts from the same donor, exceeds \$250.00 during the preceding calendar year.

a. A borough official or candidate required to file a disclosure statement may, for any reason set out in AS [39.50.035](#), request an exemption from the requirement to report the name of an individual who was a source of income on a form provided by the borough clerk. The person requesting any exemption has the burden of proving each fact necessary to show that an exemption available under this section is applicable. A written request for exemption must be submitted before the due date of any report or filing to which it relates. No later than 30 days after the clerk receives a written exemption request, the clerk shall send to the person requesting the exemption, at the address listed in the request, a decision granting or denying the request. If the clerk issues a decision denying the request, the decision must state the reasons and notify the person requesting the exemption of the right to appeal the staff decision to the assembly. If the person that requested the exemption does not file an appeal to the assembly within 30 days after the date the clerk's decision is mailed or delivered to the person, the decision is final, and may not be appealed to the assembly at a later date.

2. The identity, by name and address, of each business in which the filer, the filer's spouse or domestic partner, or the filer's dependent child had an interest or was a stockholder, owner, officer, director, partner, proprietor, or employee during the preceding calendar year.

a. Reporting Stock Investments.

(1) Filers who exercise full control of their investments shall list each company in which they invest and the company address.

(2) Filers who do not manage their own investments, who do not decide where to invest, shall report the name of the investment company that holds and manages their assets.

(3) Interest of less than \$5,000 in the stock of a publicly traded corporation need not be included.

3. The identity and nature of each interest in real property in the Haines Borough, including an option to buy, owned at any time during the preceding calendar year by the filer, the filer's spouse or domestic partner, or the filer's dependent child.

4. The identity of each trust or other fiduciary relation in which the filer, the filer's spouse or domestic partner, or the filer's dependent child held a beneficial interest exceeding \$5,000 during the preceding calendar year, a description and identification of the property contained in each trust or relation, and the nature and extent (percentage) of the beneficial interest in it.

5. A list of all mineral, timber, oil, or other natural resource leases held, bid, or offered in the Haines Borough during the preceding calendar year by the filer, the filer's spouse or domestic partner, or the filer's dependent child, a partnership or professional corporation of which the filer is a member, or a corporation in which the filer, the filer's spouse or domestic partner, or the filer's dependent child, or a combination of them, holds a controlling interest. Controlling interest means the filer and/or family members hold more than 50 percent.

6. A list of all contracts and offers to contract with the state of Alaska or with the Haines Borough (including the school district or other Haines Borough entity) during the preceding calendar year held, bid, or offered by the filer, the filer's spouse or domestic partner, or the filer's dependent child, a partnership or professional corporation of which the filer is a member, or a corporation in which the filer, the filer's spouse or domestic partner, or the filer's dependent child, or a combination of them, hold a controlling interest.

7. Any loan or loan guarantee of more than \$5,000 made to the filer, the filer's spouse or domestic partner, or the filer's dependent child, and the identity of the maker of the loan or loan guarantor and the identity of each creditor to whom the filer, the filer's spouse or domestic partner, or the filer's dependent child owed more than \$5,000. This subsection requires disclosure of a loan, loan guarantee, or indebtedness only if the loan or guarantee of more than \$5,000 was made during the preceding calendar year, or if the amount still owing on the loan, loan guarantee, or indebtedness was more than \$5,000 at any time during the preceding calendar year. Credit cards and revolving charge accounts are exempt from disclosure.

2.06.040 Business dealings with borough.

A. Prior to official action, a borough official shall file a statement regarding business dealings or proposed business dealings between the official and the borough. The statement shall set forth the nature of such business dealings and the borough official's interest therein. This statement is only required when the person receives a 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, the official shall be precluded from engaging in business with the borough on that particular matter for one year.

B. Officials with business dealings or proposed business dealings with the borough shall file the statement described above within 30 days of taking office or upon subsequently acquiring such interest.

C. The borough manager shall not engage in business with the borough outside the duties of borough manager.

2.06.045 Procedure for declaring potential conflict of interest - borough officials.

A. A borough official who has or may have a substantial financial interest or personal interest in an official action shall disclose the facts concerning that interest to the body of the borough 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 or personal interests, in which case the member in question shall disclose relevant facts concerning the official's interests in the subject of the action.

B. If the official is a borough assembly member, the mayor or the deputy mayor in the absence of the mayor, shall rule on whether the assembly member must be excused from participation or must participate. The ruling may be immediately overridden by a majority vote of the borough assembly. There is no appeal from the action or inaction of the borough assembly to override or not override the ruling of the mayor.

C. If the official is not a borough assembly 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. The body must excuse the official if they find that the official has partiality concerning the matter. There is no appeal from the ruling of the body.

D. The official shall abide by the ruling. If the official is not a borough assembly 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.

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 assembly 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 borough 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.

2.06.046 Procedure for declaring potential conflicts of interest – borough manager.

A borough manager who has or may have a substantial personal or financial interest in an official action shall disclose the facts concerning those interests to the borough assembly prior to taking the official action. If the borough assembly determines the manager has a substantial personal or financial interest in the action, the borough assembly shall excuse the manager and assign another borough employee to the matter. The borough administration may adopt written policies setting forth additional standards and requirements for excusing the manager and assigning another borough employee to the matter. Such written policies will be approved by the borough assembly.

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

A. A borough official or the borough 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 borough 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 to 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 borough official may excuse themselves for partiality without a vote of the body, otherwise the body (including a body comprised of borough assembly members when serving in a quasi-judicial capacity) shall by majority vote, rule on whether the member must be excused from participation. The body must excuse the official if they find that the official has partiality concerning the matter. There is no appeal from the ruling of the body.

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 assembly 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 borough 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 borough manager who has or may have partiality concerning a quasi-judicial matter over which the manager has decision-making authority shall either (1) appoint another borough employee to make the decision or (2) disclose the facts concerning the possible partiality to the borough assembly and to the parties to the matter prior to taking any official action. If referred to the borough assembly and the borough assembly determines the manager has partiality concerning the matter, the borough assembly shall excuse the manager and cause another borough employee to be assigned to decide the matter.

2.06.050 Procedures for violation reporting.

A. Any resident of the borough who believes that a violation of any portion of this chapter has occurred may file a written complaint of potential violation with the borough clerk's office. However, where the complaint is against the clerk, the complaint may be filed with either the manager or the attorney. When the complaint is against the attorney, it will be referred by the clerk to the manager who will retain private counsel to investigate and, if so ordered by the manager or the assembly, prosecute the charge.

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 borough clerk's office may be forwarded to the borough attorney, and the borough attorney shall issue an opinion.

D. The borough attorney may reconsider, revoke, or modify an opinion at any time.

E. A request for advice made under this section is confidential to the extent permitted by law unless the subject of the opinion waives confidentiality and authorizes in writing the release of the request or the full text of the advisory opinion.

F. The borough attorney shall make the opinion issued under this section available for public inspection with sufficient deletions to prevent disclosure of the persons whose identities are confidential under subsection (G) of this section.

G. When the attorney's opinion involves an assembly member, a hearing on the matters concerning the assembly member involved is initiated by the introduction of a resolution of forfeiture by another assembly member, a group of assembly members or a committee of the assembly. When the attorney's opinion involves a borough official who is not an assembly member, or involves a consultant, advisor, contractor or other person covered by this chapter, the manager, an assembly member or the attorney may, if the respective person believes that reasonable persons would differ as to whether a violation of this chapter has occurred, proceed to bring the matter before the assembly for hearing by filing charges with the clerk.

H. If the attorney cannot, in good conscience or without conflict, prosecute the charge, the manager or the assembly shall retain counsel for the purpose of prosecution.

2.06.055 Actions voidable.

A. In addition to any other penalty provided by law, a borough grant, contract, or lease entered into in violation of this chapter is voidable by the borough. In a determination under this section of whether to void a grant, contract, or lease, the interests of third parties who could be damaged may be taken into account. The borough attorney shall give notice of intent to void a borough grant, contract, or lease under this section no later than 30 days after a determination of a violation under this chapter.

B. In addition to any other penalty provided for by law, the borough may require a borough loan received in violation of this chapter to become immediately payable.

C. Any borough action taken in violation of this chapter is voidable, except that the interests of third parties and the nature of the violation may be taken into account. The borough attorney may pursue any other available legal and equitable remedies.

D. The borough attorney, via the borough manager, may recover any fee, compensation, gift, or benefit received by a person as a result of a violation of this chapter by a current or former borough official. An action to recover under this subsection must be brought within two years after discovery of the violation, or five years after the violation occurred, whichever is sooner.

2.06.060 Procedures for Investigation of Violations.

A. In addition to the penalty provided in HBC [1.24](#), any borough official who knowingly conceals a financial interest in violation of this chapter, or who willfully violates the requirements of this chapter is guilty of malfeasance and shall be subject to forfeiture or suspension from office or employment.

B. The assembly shall be the body to hear and decide all matters concerning suspension or removal of any borough official on the grounds of a violation of this chapter.

C. The procedures used to file and investigate a complaint pursuant to this section shall be the same as those contained in Section 2.06.050 above.

2.06.065 Violation and penalty.

Unless another penalty is expressly provided in this chapter for a particular act or offense, any official who violates any of the provisions of this chapter shall be subject to penalties pursuant to HBC 1.24.

2.06.070 Criminal sanctions additional.

A. To the extent that violations under this chapter are punishable in a criminal action, the criminal penalty is in addition to the civil remedies set out in this chapter.

B. 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.

2.06.075 Distribution of Code.

The borough clerk shall cause a copy of this chapter to be distributed to each borough official elected or appointed before entering upon the duties of his office and to the borough manager upon employment.

Section 5. Repeal of HBC Chapter 2.62. Chapter 2.62 of the Haines Borough Code is hereby repealed to be incorporated into or addressed by other areas of code [see sections 7-10 of this ordinance].

NOTE: STRIKETHROUGH ITEMS ARE DELETED

Chapter 2.62 ~~<RESERVED>~~

~~RESPONSIBILITIES OF OFFICERS AND EMPLOYEES~~

~~Sections:~~

~~2.62.010 Conduct in office — Investigations — Oath — Records — Reports.~~

~~2.62.020 Failure to perform duties of office — Removal.~~

~~2.62.030 Participation in contracting prohibited.~~

~~2.62.040 Voting on certain questions prohibited.~~

~~2.62.050 Suspension and forfeiture of office or employment.~~

~~2.62.060 Transactions between borough and officials or employees.~~

~~2.62.070 Borough employees — Indemnification against claims.~~

~~2.62.080 Penalty for violations.~~

~~**2.62.010 Conduct in office — Investigations — Oath — Records — Reports.**~~

~~——— A. The assembly, the mayor, manager or any person or committee authorized by any of them shall have power to inquire into the conduct of any office, department, agency or officer of the borough and to make investigations as to borough affairs and for that purpose may order the appearance of witnesses, administer oaths, and compel the production of books, papers and other evidence. Failure to obey such orders or to produce books, papers or other evidence as ordered under the provisions of this section shall constitute grounds for the immediate dismissal of any officer, agent or employee of the borough.~~

~~——— B. Each officer of the borough, including the mayor and assembly members, shall, before entering upon the duties of the office, severally take an oath in writing to honestly, faithfully and impartially perform and discharge the duties of that office and trust, which oath shall be filed with the clerk. *[Clerk's note: now in 2.04]*~~

~~——— C. All records and accounts of every office, department and agency of the borough shall be open to inspection by any person at all reasonable times and under reasonable regulations established by the manager except records and documents the disclosure of which would tend to defeat the lawful purpose which they are intended to accomplish and except such records as are required by state law or borough ordinance or code to be kept confidential. Each department head shall be held responsible for the preservation of all public records under that~~

head's jurisdiction and shall provide a system of filing and indexing the same. No public records, reports, correspondence or other data relative to the business of any department shall be destroyed or removed permanently from the files without the knowledge and approval of the manager. *[Clerk's note: now in 2.64]*

~~2.62.020 Failure to perform duties of office — Removal.~~ *[Clerk's note: now in 2.04]*

~~Every elective office shall be declared vacant by resolution of the assembly if the incumbent fails to perform the duties of the position. Every position appointed by the mayor to a committee board or commission shall be declared vacant by the mayor if the incumbent fails to perform the duties of the position. The following constitutes failure to perform the duties of the position:~~

~~——— A. Absence from more than one-half of the regularly scheduled meetings in the period of one year;~~

~~——— B. Absence from more than three consecutive meetings without being excused, which excuse shall not be unreasonably withheld;~~

~~——— C. Election or appointment to state or federal office; provided, however, that appointment to or service in military units of the state or federal government or appointment or election to committees, boards, or commissions for which no payment is received, other than reimbursement for expenses, shall not constitute election or appointment within the meaning of this subsection; and provided further, that the mayor and members of the assembly may serve in state elective or appointive offices during the same time they hold borough elective offices, but shall receive no pay or expenses from the borough whatsoever during sessions of the state body to which elected or appointed.~~

~~2.62.030 Participation in contracting prohibited.~~ *[Clerk's note: employee portions now in 2.73 and officials portions addressed 2.06]*

~~——— A. No borough officer or employee who has a substantial interest, direct or indirect, in any contract with, or to be made with, the borough or the sale of any land, material, supplies or services to the borough or to a contractor supplying the borough may participate in that person's capacity as a borough officer or employee in the making or performance of such contract or the making of such sale.~~

~~——— B. The following shall not constitute a substantial interest prohibited by this section:~~

~~——— 1. A contract with a person, firm, corporation or association in which a borough officer or employee has an interest solely by reason of employment as an officer or employee thereof, if the remuneration of such employment will not be directly affected as a result of such contract and the duties of such employment do not directly involve the procurement, preparation or performance of any part thereof;~~

~~——— 2. A contract in which a borough officer or employee has an interest if such contract was entered into prior to the time the person was elected or appointed as such officer or employee, but this exception shall in no event authorize a renewal of any such contract;~~

~~——— 3. A contract with or sale by a corporation in which a borough officer or employee has an interest by reason of stockholdings when:~~

~~——— a. The stock of the corporation is listed on a major stock exchange, or~~

~~——— b. Less than 10 percent of the outstanding stock of the corporation is owned or controlled directly or indirectly by such officer or employee;~~

~~——— 4. A contract or sale in which a borough officer or employee has an interest if the total consideration payable thereunder, when added to the aggregate amount of all consideration payable under contracts in which such person had an interest during the fiscal year, does not exceed the sum of \$500.00. If the borough manager determines a higher sum would be in the best interest of the borough, the assembly may approve the exception by motion.~~

~~**2.62.040 Voting on certain questions prohibited.**~~ *[Clerk's note: now in 2.06]*

~~A. No assembly member or the member of any committee, board or commission may vote on any question on which the member has substantial financial interest.~~

~~_____ B. The following do not constitute a vote on a question on which the assembly member or committee, board or commission member has a substantial financial interest:~~

~~_____ 1. A vote to adopt or approve a variance request, a conditional use request or an amendment to a zoning text or map unless the assembly member or committee, board or commission member is directly or indirectly the applicant initiating the request;~~

~~_____ 2. A vote on the question of recommending, approving or directing a condemnation proceeding;~~

~~_____ 3. A vote on a question of granting or modifying a franchise or, a vote on a question of setting the rates charged by a corporation, firm or partnership whether under franchise or not and whether authorized by law, ordinance or contract to set or alter such rates, provided the assembly member or committee, board or commission member has an interest in such franchise or rate setting solely by reason of employment as an officer or employee of such corporation, firm, or partnership and the remuneration of such employment will not be affected as a result of such franchise grant or modification or such rate setting, and the duties of such employment do not directly or indirectly involve the negotiation or setting of the terms of the franchise or rates; or provided the member has an interest solely by reason of the ownership of stock in the corporation if it is listed on a major stock exchange, or ownership, direct or indirect, of less than five percent of the outstanding stock or shares in the subject corporation.~~

~~**2.62.050 Suspension and forfeiture of office or employment.**~~ *[Clerk's note: employee portions now in 2.73 and officials portions now in 2.06]*

~~_____ A. In addition to the penalty provided in HBC [2.62.080](#), any borough officer or employee who knowingly conceals a financial interest in violation of this chapter, or who willfully violates the requirements of this chapter is guilty of malfeasance and shall be subject to forfeiture or suspension from office or employment.~~

~~_____ B. The assembly shall be the body to hear and decide all matters concerning suspension or removal of any borough officer or employee on the grounds of a violation of this chapter.~~

~~_____ 1. Upon a complaint in writing and signed by any resident of the borough being filed with the clerk, which complaint can be interpreted as a charge that a named borough officer or employee has violated a provision of this chapter, the borough attorney shall immediately investigate the complaint for any violation. However, where the complaint is against the clerk, the complaint may be filed with either the manager or the attorney. When the complaint is against the attorney, it will be referred by the clerk to the manager who will retain private counsel to investigate and, if so ordered by the manager or the assembly, prosecute the charge.~~

~~_____ 2. The attorney or retained counsel shall render an opinion and findings of fact to the manager and the assembly. The opinion and findings of fact shall also include a statement of the facts provided by the person whose actions are being questioned. Such party shall be notified of the person's right to prepare and have included the person's own statement of the facts, however failure to notify or include shall not constitute a fatal procedural flaw.~~

~~_____ 3. When the attorney's opinion involves an assembly member, a hearing on the matters concerning the assembly member involved is initiated by the introduction of a resolution of forfeiture by another assembly member, a group of assembly members or a committee of the assembly.~~

~~_____ 4. After the attorney's opinion and findings of fact, or those of retained counsel, have been delivered to the manager and assembly, and the opinion involves a borough officer or employee who is not an assembly member, or involves a consultant, advisor, contractor or other person covered by this chapter, the manager, an assembly member or the attorney may, if the respective person believes that reasonable persons would differ as to whether a violation~~

of this chapter has occurred, proceed to bring the matter before the assembly for hearing by filing charges with the clerk.

5. If the attorney cannot, in good conscience or without conflict, prosecute the charge, the manager or the assembly shall retain counsel for the purpose of prosecution. This provision shall apply to both subsection (B)(3) and (4) of this section.

~~2.62.060 Transactions between borough and officials or employees.~~ [Clerk's note: employee portions now in 2.73 and officials portions addressed by 2.06]

~~A. Affidavit as to Transaction — Filing with Clerk. Should any officer or employee of the borough desire or intend to have business dealings with the borough whereby that person may derive income and benefits other than those provided as remuneration for the performance of official duties, or duties of employment, the person shall file with the clerk, and in such form as the clerk may prescribe, a statement under oath which shall include the nature of the proposed transaction and the extent of the interest, direct or indirect, which the officer or employee has in the transaction.~~

~~B. Publication of Affidavit — Costs Borne — Exceptions. The clerk shall publish a copy of the statement of the intent to do business with the borough in a newspaper of general circulation within the borough at least once within seven days after the statement has been sworn and subscribed to. In addition, the clerk shall post a copy of the statement in at least one public place. The cost of the newspaper publications shall be borne by the officer or employee who intends to enter into business transactions with the borough; provided, that any member of a borough board, commission or committee who serves in that capacity without compensation will have the cost of the publication paid for by the borough. The clerk may require of any officer or employee who is obligated to pay the cost of publication to pay a deposit to cover such costs.~~

~~C. Action by Assembly Only After Specified Lapse of Time. The assembly, or other agency or official with authority to act for the borough in the transaction, shall take no action with regard thereto until at least 10 days have elapsed since the filing of the statement by the interested official or employee and until at least seven days have elapsed since the publishing and posting of the statement as required herein.~~

~~D. Tort or Workers' Compensation Claims Construed. Claims arising in tort or under applicable workers' compensation statutes shall not, for the purpose of this section, be construed as business dealings with the borough.~~

~~E. The provisions of subsections (A) through (D) of this section shall not apply to any assembly member in regard to participation in any form of open competitive bidding process excepting that said member shall abstain from voting upon any and all matters and questions regarding the preparation or acceptance of such bids.~~

~~2.62.070 Borough employees — Indemnification against claims.~~ [Clerk's note: now in 2.72]

~~A. An employee of the borough against whom a claim is made, or a proceeding is threatened or brought, by reason of the employee being or having been an employee of the borough, may be indemnified by the borough against:~~

- ~~1. Reasonable expenses incurred by the employee, including legal fees; and~~
- ~~2. Liabilities imposed upon the employee, including any amount paid in settlement in order to satisfy a judgment or order.~~

~~B. No employee may be indemnified unless an independent determination shows the employee:~~

- ~~1. Acted in a matter which is related to the employee's employment and in which the borough had an interest;~~
- ~~2. Acted in discharge of a duty imposed or authorized by law;~~
- ~~3. Acted in good faith and in addition, in the case of a criminal action, that the employee had no reasonable cause to believe that the employee's conduct was unlawful.~~

~~_____ C. The independent determination shall be made by independent legal counsel selected by the borough assembly, except any court finding concerning any of the above three required determinations shall be conclusive when the employee shall be a party to the court proceeding.~~

~~_____ D. Indemnification for reasonable expenses incurred in a successful defense is a matter of right.~~

~~_____ E. No indemnification shall be permitted:~~

~~_____ 1. For reasonable legal expenses of defense where the borough attorney or any borough insurance policy provides a defense without a conflict of interest; or~~

~~_____ 2. For liability imposed where any borough insurance policy provides for payment or indemnification of any liability imposed against the employee without subrogation against the employee; or~~

~~_____ 3. Where the borough makes the claim or brings the proceeding against the employee and the employee has acted in bad faith in connection with the claim.~~

~~_____ F. Where a claim is brought against an employee and the employee requests the borough to provide the employee with independent legal counsel pending the prosecution of the claim or proceeding, the borough shall provide independent legal counsel if in the judgment of the borough assembly there may be a possible conflict of interest between the borough's position and that of the employee, or the liability of the employee concerns claims or defenses not reasonably related to the defense or position of the borough.~~

~~2.62.080 Penalty for violations:~~

~~Any violation of any of the provisions of this chapter shall be punished according to HBC [1.24.010](#).~~

Section 6. Repeal of HBC Chapter 2.96. Chapter 2.96 of the Haines Borough Code is hereby repealed to be incorporated into or addressed by other areas of code [see sections 4 and 10 of this ordinance].

NOTE: STRIKETHROUGH ITEMS ARE DELETED

Chapter 2.96 **<RESERVED>** *[Note: employee portions now in 2.76 and officials' portions addressed by 2.06]*
~~PROHIBITED ACTIVITY AND CONDUCT~~

~~Sections:~~

~~2.96.010 Unlawful activity and conduct.~~

~~2.96.020 Prohibited conduct.~~

~~2.96.010 Unlawful activity and conduct.~~

~~_____ A. It shall be unlawful for:~~

~~_____ 1. Any person to give, render, pay, offer, solicit, or accept any money, service, or other valuable thing in attempting to secure any appointment, promotion, or advantage in a position in the borough service.~~

~~_____ 2. Any person to require personnel to subscribe, contribute, or provide a service to any political party.~~

~~_____ 3. Any person to seek or attempt to use any political party endorsement to secure any appointment or promotion in the borough service.~~

~~_____ 4. Any elected official or employee to solicit, negotiate for, or promise to accept anything of substantial value from any person, firm or company which is engaged in the transaction of business with the borough.~~

~~_____ 5. Any elected official or employee to use information which is obtained in the person's official capacity as an employee of the borough and which concerns the property, government or affairs of the borough to advance the financial or other private interests of the person or others.~~

~~6. Any elected official or employee to accept any loan, gift, gratuity, remuneration or compensation from any person, business or organization other than the borough when the same is offered in exchange for performing or discharging any official duty or responsibility.~~

~~B. A violation of this section is a minor offense and subject to a maximum fine of up to \$500.00 for each offense.~~

~~2.96.020 Prohibited conduct:~~

~~A. It shall be prohibited for:~~

~~1. Any person, except a school district employee, to continue as an employee of the borough after being elected to the borough assembly.~~

~~2. Any person to take any action which affects the employment status of any other person when the reason for such action is predicated on race, color, religion, sex, or national origin.~~

~~3. Any person to make any false statement on any application, report or other document relating to employment status or to commit any other fraud which would prevent the fair and impartial execution of this code.~~

~~4. Any person to be employed in any position in any department whose immediate family member is the elected official, borough officer or department head under whom such person is employed.~~

~~5. Any elected official or employee to demand or request an applicant for employment to provide information relating to the applicant's religion, ancestry, race, or political convictions.~~

~~6. Any elected official or employee to invest, either directly or indirectly, in any business or participate in any private business transaction which conflicts with his official duties.~~

~~7. Any elected official or employee to be a party to the purchase of or influence the purchase of goods or services for the use of the borough from any business in which the person has a substantial financial interest unless the purchase is approved in advance by the assembly.~~

~~B. Any employee or official who violates this section shall be subject to discipline or those penalties provided in Chapter 2.06 HBC.~~

Section 7. Amending HBC Chapter 2.04. Chapter 2.04 of the Haines Borough Code is hereby amended to incorporate repealed sections 2.62.010(B) and 2.62.020 [see section 5 of this ordinance].

NOTE: **Bolded/UNDERLINED** ITEMS ARE TO BE ADDED
STRIKETHROUGH ITEMS ARE DELETED

Chapter 2.04

BOROUGH OFFICERS AND EMPLOYEES

Sections:

2.04.010 Applicability.

2.04.020 Officers.

2.04.030 Employees.

2.04.040 Oaths of office.

2.04.050 Bonds of officials.

2.04.060 Failure to perform duties of office – Removal. [Clerk's note: formerly 2.62.020]

...

2.04.040 Oaths of office. *[Clerk's note: incorporating 2.62.010(B)]*

Elected officials, borough officers and other employees as required for the performance of their duties, before taking office, shall affirm in writing that they will honestly, faithfully and impartially perform **and discharge** their duties **of the office**. The oaths shall be administered by and filed with the clerk or the clerk's designee and shall be ~~substantially~~ in the following form:

I solemnly affirm that I will support the Constitution of the United States, the Constitution of the State of Alaska, and the Charter of the Haines Borough, and that I will faithfully perform **and discharge** the duties of _____ to the best of my ability.

2.04.050 Bonds of officials.

The assembly shall, from time to time by resolution, determine which officers of the borough, in addition to the chief fiscal officer and borough clerk, shall be bonded for the faithful accounting of all funds and property under their control. Such bonds shall be purchased from surety companies licensed to do business in the state in such amounts as the assembly shall determine and shall be in such form as is acceptable to the assembly. Premiums on bonds are paid by the borough. The provisions of Chapter [2.66](#) HBC shall also apply.

2.04.060 Failure to perform duties of office – Removal. *[Clerk's note: formerly 2.62.020]*

Every elective office shall be declared vacant by resolution of the assembly if the incumbent fails to perform the duties of the position. Every position appointed by the mayor to a committee board or commission shall be declared vacant by the mayor if the incumbent fails to perform the duties of the position. The following constitutes failure to perform the duties of the position:

_____ A. Absence from more than one-half of the regularly scheduled meetings in the period of one year;

_____ B. Absence from more than three consecutive meetings without being excused, which excuse shall not be unreasonably withheld;

_____ C. Election or appointment to state or federal office; provided, however, that appointment to or service in military units of the state or federal government or appointment or election to committees, boards, or commissions for which no payment is received, other than reimbursement for expenses, shall not constitute election or appointment within the meaning of this subsection; and provided further, that the mayor and members of the assembly may serve in state elective or appointive offices during the same time they hold borough elective offices, but shall receive no pay or expenses from the borough whatsoever during sessions of the state body to which elected or appointed.

Section 8. Amending HBC Chapter 2.64. Chapter 2.64 of the Haines Borough Code is hereby amended to add repealed subsection 2.62.010(C) [see section 5 of this ordinance].

NOTE: **Bolded/UNDERLINED** ITEMS ARE TO BE ADDED
~~STRIKETHROUGH~~ ITEMS ARE DELETED

Chapter 2.64

DOCUMENTS, REPORTS AND RECORDS

Sections:

2.64.010 Documents – Assent – Approval – Attestation.

- 2.64.020 Documents to file with the state.
2.64.030 Retention, disposal and electronic media storage of public records.
2.64.040 Disclosure of records. *[Clerk's note: formerly 2.62.010(C)]*

...

2.64.040 Disclosure of records. *[Clerk's note: formerly 2.62.010(C)]*
All records and accounts of every office, department and agency of the borough shall be open to inspection by any person at all reasonable times and under reasonable regulations established by the manager except records and documents the disclosure of which would tend to defeat the lawful purpose which they are intended to accomplish and except such records as are required by state law or borough ordinance or code to be kept confidential. Each department head shall be held responsible for the preservation of all public records under that head's jurisdiction and shall provide a system of filing and indexing the same. See also HBC 2.24.030.

Section 9. Amending HBC Chapter 2.72. Chapter 2.72 of the Haines Borough Code is hereby amended to add repealed subsection 2.62.070 [see section 5 of this ordinance].

NOTE: **Bolded/UNDERLINED** ITEMS ARE TO BE ADDED
~~STRIKETHROUGH~~ ITEMS ARE DELETED

Chapter 2.72

PERSONNEL SYSTEM

Sections:

- 2.72.010 Personnel system.
2.72.015 Collective bargaining agreement.
2.72.020 Applicability.
2.72.030 Review and amendment.
2.72.040 Personnel committee.
2.72.050 Personnel officer.
2.72.060 Duties of personnel officer.
2.72.070 Personnel records.
2.72.080 Security of records.
2.72.090 Indemnification against claims. *[Clerk's note: formerly 2.62.070]*

...

2.72.090 Indemnification against claims. *[Clerk's note: formerly 2.62.070]*

A. An employee of the borough against whom a claim is made, or a proceeding is threatened or brought, by reason of the employee being or having been an employee of the borough, may be indemnified by the borough against:

1. Reasonable expenses incurred by the employee, including legal fees;
and

2. Liabilities imposed upon the employee, including any amount paid in settlement in order to satisfy a judgment or order.

B. No employee may be indemnified unless an independent determination shows the employee:

1. Acted in a matter which is related to the employee's employment and in which the borough had an interest;

2. Acted in discharge of a duty imposed or authorized by law;

3. Acted in good faith and in addition, in the case of a criminal action, that the employee had no reasonable cause to believe that the employee's conduct was unlawful.

C. The independent determination shall be made by independent legal counsel selected by the borough assembly, except any court finding concerning any of the above three required determinations shall be conclusive when the employee shall be a party to the court proceeding.

D. Indemnification for reasonable expenses incurred in a successful defense is a matter of right.

E. No indemnification shall be permitted:

1. For reasonable legal expenses of defense where the borough attorney or any borough insurance policy provides a defense without a conflict of interest; or

2. For liability imposed where any borough insurance policy provides for payment or indemnification of any liability imposed against the employee without subrogation against the employee; or

3. Where the borough makes the claim or brings the proceeding against the employee and the employee has acted in bad faith in connection with the claim.

F. Where a claim is brought against an employee and the employee requests the borough to provide the employee with independent legal counsel pending the prosecution of the claim or proceeding, the borough shall provide independent legal counsel if in the judgment of the borough assembly there may be a possible conflict of interest between the borough's position and that of the employee, or the liability of the employee concerns claims or defenses not reasonably related to the defense or position of the borough.

Section 10. Enactment of HBC Chapter 2.73. Chapter 2.73 of the Haines Borough Code is hereby enacted, as follows, to address repealed Chapter 2.96 for employees and Subsections 2.62.030, 050, 060, and 080 [see sections 5-6 of this ordinance].

Chapter 2.73

EMPLOYEE RESPONSIBILITIES AND CONDUCT

Sections:

- 2.73.010 Participation in contracting prohibited. *[Clerk's note: formerly 2.62.030]*
2.73.020 Suspension and forfeiture of employment. *[Clerk's note: formerly 2.62.050]*
2.73.030 Transactions between borough and employees. *[Clerk's note: formerly 2.62.060]*
2.73.040 Prohibited activity and conduct. *[Clerk's note: formerly 2.96]*
2.73.050 Penalty for violations. *[Clerk's note: formerly 2.62.080]*

2.73.010 Participation in contracting prohibited.

A. No employee who has a substantial financial and/or personal interest, direct or indirect, in any contract with, or to be made with, the borough or the sale of any land, material, supplies or services to the borough or to a contractor supplying the borough may participate in that person's capacity as an employee in the making or performance of such contract or the making of such sale.

B. The following shall not constitute a substantial interest prohibited by this section:

1. A contract with a person, firm, corporation or association in which an employee has an interest solely by reason of employment as an employee thereof, if the remuneration of such employment will not be directly affected as a result of such contract and the duties of such employment do not directly involve the procurement, preparation or performance of any part thereof;

2. A contract in which an employee has an interest if such contract was entered into prior to the time the person was hired as an employee, but this exception shall in no event authorize a renewal of any such contract;

3. A contract with or sale by a corporation in which an employee has an interest by reason of stockholdings when:

- a. The stock of the corporation is listed on a major stock exchange, or
- b. Less than 10 percent of the outstanding stock of the corporation is owned or controlled directly or indirectly by such employee;

4. A contract or sale in which an employee has an interest if the total consideration payable thereunder, when added to the aggregate amount of all consideration payable under borough contracts in which such person had an interest during the fiscal year, does not exceed the sum of \$2,000. If the borough manager determines a higher sum would be in the best interest of the borough, the assembly may approve the exception by motion.

2.73.020 Suspension and forfeiture of employment.

~~A. In addition to the provision of **HBC 2.82 for Suspension, Demotion and Dismissal**, for penalty provided in HBC 2.73.040, any employee who knowingly conceals a financial interest in violation of this chapter, or who willfully violates the requirements of this chapter is guilty of malfeasance and shall be subject to forfeiture or suspension from employment.~~

~~B. The assembly shall be the body to hear and decide all matters concerning suspension or removal of any employee on the grounds of a violation of this chapter.~~

~~1. Upon a complaint in writing and signed by any resident of the borough being filed with the clerk, which complaint can be interpreted as a charge that a named employee has violated a provision of this chapter, the borough attorney shall immediately investigate the complaint for any violation. However, where the complaint is against the clerk, the complaint may be filed with either the manager or the attorney.~~

~~When the complaint is against the attorney, it will be referred by the clerk to the manager who will retain private counsel to investigate and, if so ordered by the manager or the assembly, prosecute the charge.~~

~~2. The attorney or retained counsel shall render an opinion and findings of fact to the manager and the assembly. The opinion and findings of fact shall also include a statement of the facts provided by the person whose actions are being questioned. Such party shall be notified of the person's right to prepare and have included the person's own statement of the facts, however failure to notify or include shall not constitute a fatal procedural flaw.~~

~~3. When the attorney's opinion involves an assembly member, a hearing on the matters concerning the assembly member involved is initiated by the introduction of a resolution of forfeiture by another assembly member, a group of assembly members or a committee of the assembly.~~

~~4. After the attorney's opinion and findings of fact, or those of retained counsel, have been delivered to the manager and assembly, and the opinion involves an employee or involves a consultant, advisor, contractor or other person covered by this chapter, the manager, an assembly member or the attorney may, if the respective person believes that reasonable persons would differ as to whether a violation of this chapter has occurred, proceed to bring the matter before the assembly for hearing by filing charges with the clerk.~~

~~5. If the attorney cannot, in good conscience or without conflict, prosecute the charge, the manager or the assembly shall retain counsel for the purpose of prosecution. This provision shall apply to both subsection (B)(3) and (4) of this section.~~

2.73.030 Transactions between borough and employees.

A. Affidavit as to Transaction – Filing with Clerk. Should any employee of the borough desire or intend to have business dealings with the borough whereby that person may derive

income and benefits other than those provided as remuneration for the performance of duties of employment, the person shall file with the clerk, and in such form as the clerk may prescribe, a statement under oath which shall include the nature of the proposed transaction and the extent of the interest, direct or indirect, which the employee has in the transaction.

B. Publication of Affidavit – Costs Borne –Exceptions. The clerk shall publish a copy of the statement of the intent to do business with the borough in a newspaper of general circulation within the borough at least once within seven days after the statement has been sworn and subscribed to. In addition, the clerk shall post a copy of the statement in at least one public place. The cost of the newspaper publications shall be borne by the employee who intends to enter into business transactions with the borough. The clerk may require of any employee who is obligated to pay the cost of publication to pay a deposit to cover such costs.

C. Action by Assembly Only After Specified Lapse of Time. The assembly, or other agency or official with authority to act for the borough in the transaction, shall take no action with regard thereto until at least 10 days have elapsed since the filing of the statement by the interested employee and until at least seven days have elapsed since the publishing and posting of the statement as required herein.

D. Tort or Workers' Compensation Claims Construed. Claims arising in tort or under applicable workers' compensation statutes shall not, for the purpose of this section, be construed as business dealings with the borough.

~~——— E. The provisions of subsections (A) through (D) of this section shall not apply to any assembly member in regard to participation in any form of open competitive bidding process excepting that said member shall abstain from voting upon any and all matters and questions regarding the preparation or acceptance of such bids.~~

2.73.040 Employee Prohibited activity and conduct.

A. It shall be unlawful **and therefore prohibited** for:

1. Any person to give, render, pay, offer, solicit, or accept any money, service, or other valuable thing in attempting to secure any appointment, promotion, or advantage in a position in the borough service.
2. Any person to require personnel to subscribe, contribute, or provide a service to any political party.
3. Any person to seek or attempt to use any political party endorsement to secure any appointment or promotion in the borough service.
4. Any employee to solicit, negotiate for, or promise to accept anything of substantial value from any person, firm or company which is engaged in the transaction of business with the borough.
5. Any employee to use information which is obtained in the person's official capacity as an employee of the borough and which concerns the property, government or affairs of the borough to advance the financial or other private interests of the person or others.
6. Any employee to accept any loan, gift, gratuity, remuneration or compensation from any person, business or organization other than the borough when the same is offered in exchange for performing or discharging any official duty or responsibility.

~~B. It shall be prohibited for:-~~

1. ~~7.~~ Any person, except a school district employee, to continue as an employee of the borough after being elected to the borough assembly.
2. ~~8.~~ Any person to take any action which affects the employment status of any other person when the reason for such action is predicated on race, color, religion, sex, or national origin.
3. ~~9.~~ Any person to make any false statement on any application, report or other document relating to employment status or to commit any other fraud which would prevent the fair and impartial execution of this code.

4. ~~10.~~ Any person to be employed in any regular full-time or part-time position where they would be supervised by their immediate family member. This shall not apply to temporary positions or special hires.

5. ~~11.~~ Any employee to demand or request an applicant for employment to provide information relating to the applicant's religion, ancestry, race, or political convictions.

6. ~~12.~~ Any employee to invest, either directly or indirectly, in any business or participate in any private business transaction which conflicts with the employee's official duties.

7. ~~13.~~ Any employee to be a party to the purchase of or influence the purchase of goods or services for the use of the borough from any business in which the person has a substantial financial interest unless the purchase is approved in advance by the assembly.

~~2.73.050 Penalty for violations:~~

~~Any violation of any of the provisions of this chapter shall be punished according to HBC 1.24.010.~~

Section 11. Amending HBC Chapter 2.990. Chapter 2.990 of the Haines Borough Code is hereby amended as follows:

2.990.010 Definitions.

For the purposes of this title:

...

"Immediate family member" ~~means spouse and any person related by blood or marriage within and including the second degree of kindred.~~ **shall have the same definition as that contained in HBC 2.06.025.**

...

~~"Second degree of kindred" means father, mother, son, daughter, brother, sister, husband, wife, grandfather, grandmother, grandson, granddaughter, uncle and aunt and includes those relationships involving half or step relationships.~~

ADOPTED BY A DULY CONSTITUTED QUORUM OF THE HAINES BOROUGH ASSEMBLY THIS ____ DAY OF _____, 2017.

ATTEST:

Janice Hill, Mayor

Julie Cozzi, MMC, Borough Clerk

Date Introduced: 10/10/17 – Referred to Government Affairs & Services Committees
Date of First Public Hearing: ___/___/17
Date of Second Public Hearing: ___/___/17