NORTHWEST ARCTIC BOROUGH ASSEMBLY
ORDINANCE 21-09

AN ORDINANCE OF THE
NORTHWEST ARCTIC BOROUGH
ASSEMBLY AMENDING CHAPTER 2.36
OF THE BOROUGH CODE TO ADDRESS
CONFLICT OF INTEREST STANDARDS
FOR VOTING.

WHEREAS: Chapter 2.36 of the Borough Code establishes
standards for addressing conflicts of interest for the Borough’s public
officials; and

WHEREAS: the Borough Assembly wishes to amend Chapter 2.36
in order to address a broader range of potential conflicts and to promote
public trust and confidence in the Borough’s public officials; and

WHEREAS: the Assembly has determined that it is in the
Borough’s best interest to amend Chapter 2.36 of the Borough Code as
outlined in this Ordinance.

NOW THEREFORE BE IT ENACTED BY THE
NORTHWEST ARCTIC BOROUGH ASSEMBLY:

Section 1: Chapter 2.36 of the Borough Code is amended as follows, with
additions indicated by underline in blue and deletions by strikethrough in
red:

2.36.030 Definitions.
For the purpose of this chapter, the following definitions shall apply unless
the context clearly indicates or requires a different meaning:

“Alcohol test” means any scientifically accepted and valid analytical
method or test procedure performed under reasonable and sanitary
conditions to determine the percent of alcohol in the blood.

“Borough” means the Northwest Arctic Borough and, where the context
requires, the Northwest Arctic Borough school district.

“Breach of public trust” means, for the purpose of this chapter, a knowing
violation of the ethical standards and policies as defined in this chapter.
which injures the reputation of the borough, interferes or hampers the work of the borough government or tends to erode public confidence in the integrity and trust of public officials or the government.

“Campaign activity” means any act for the purpose of influencing the nomination or election of a person to public office, or for the purpose of influencing a ballot proposition or question.

“Confidential information” means information that has been obtained in the course of holding public office or otherwise acting as a public servant, which, by law or regulation, is not available to the public, and which the public official is not authorized to disclose.

“Contribution” has the same definition as in 2 AAC 50.313 or any successor regulation to 2 AAC 50.313, and except as limited in this chapter, includes any payment, gift, subscription, loan, advance, transfer, deposit of money, services or anything of value made or given by a person or group for the purpose of influencing an election.

“Controlled substance” means any drug, substance, or immediate precursor as defined and regulated by state or federal laws, except that within the meaning of this chapter, the term does not include any drug or substance which has been lawfully prescribed by an authorized person for the use of a public official, and which is used in accordance with the prescription.

“Convicted” means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of criminal statutes, including all drug, alcohol, and controlled substance laws, as defined herein and under federal, state or local laws.

“Criminal drug or alcohol statute” means a federal, state, municipal or tribal criminal statute or ordinance involving the illegal manufacture, distribution, importation, dispensing, possession, influence, or use of alcohol, any illegal drug or controlled substance, as defined in this chapter or under state or federal laws.

“Criminal statute” means any federal, state, municipal or tribal criminal statute or ordinance involving illegal activity, conduct or behavior, including all classes of felonies, involving theft, child abuse or other dishonest or immoral acts prohibited by law, and misdemeanors involving violations of alcohol, drugs, controlled substances or moral turpitude.
“Drug test” means testing for evidence of the use of a drug or controlled substances, such as a multiple-step urine test which involves an immunoassay screening method approved by the Food and Drug Administration, and confirmation by use of Gas Chromatography and Mass Spectroscopy (GC/MS) or other scientifically accepted and valid analytical method or test procedures.

“Drunken state” means the condition of a drunken person, as defined in AS 4.21.080(b)(8), or any successor statute, whose physical or mental conduct is substantially impaired as a result of the introduction of an alcoholic beverage into the person’s body and who either exhibits those plain and easily observed or discovered outward manifestations of behavior commonly known to be produced by the overconsumption of alcoholic beverages, or has a positive alcohol test.

“Engaging in business” means submitting a written or oral proposal to supply goods, services or other things of value or furnishing goods, services or other things of value, for consideration.

“Gratuity” means a thing having value given voluntarily or beyond lawful obligation, in return for, or in anticipation of, any service or consideration in connection with the recipient’s performance of duties.

“Illegal drugs” means “controlled substances,” as defined in 21 USC Section 802 and listed in 21 USC Section 812, or any subsequent amendments to these federal statutes and as defined in AS 11.71.900(4), or any successor statute under state law.

“Immediate family” means anyone who, by blood or adoption, is a child, spouse, sibling or parent of a public official.

“Knowingly” means acting with awareness or substantial certainty with respect to conduct or to circumstances surrounding such conduct.

“Moral turpitude” means conduct or behavior that gravely violates moral sentiments or accepted moral standards of the community.

“Nonprofit, service organization” means a corporation, committee, commission or similar organization formed to provide health, housing, resource management primarily as a not-for-profit public service.
“Notice” means written notice given through personal delivery, certified mail or other means reasonably calculated to notify a person of an action or event.

“Organization” means any entity, corporation, partnership, firm or association, whether organized for profit or nonprofit other than an individual or governmental agency.

“Personal interest” means the interest of a person or his or her immediate family from which a person receives a benefit, and which interest is not shared by the general public.

“Positive drug or alcohol test” means the presence of alcohol, an illegal drug or an illegal controlled substance in an individual’s system, as determined by appropriate testing of a bodily specimen, that indicates a violation of legal levels as prescribed by law. This is referred to as a positive test, positive level, prohibitive level, or positive screen.

“Public official” means a person occupying a borough public office as the mayor, an assembly member, a commission member, or a board member, including any member of the Northwest Arctic Borough school board, the school district superintendent, school district attorney or any office required by law to be appointed by the mayor and confirmed by the assembly.

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

“Substantial financial interest” means a direct or indirect monetary or material benefit, privilege, interest, or contractual relationship accruing as a result of the Borough’s consideration of a matter.

1. A financial interest includes:

a. Any monetary interest of a public official’s immediate family or employer.

b. Any monetary interest in an entity in which a public official or member of the public official’s immediate family has an ownership interest, or is a director, officer, or employee.
2. A determination that a public official has a substantial financial interest in a matter must be considered on a case-by-case basis evaluating these factors:

a. The scope and nature of the conflict or potential conflict;

b. The potential for the appearance of impropriety;

c. The scope of the discretion vested in the public official;

d. Whether the financial interest which is obtained through an open competitive process;

e. Whether the financial interest is limited in nature and magnitude such that it would not tend to influence an average, reasonable person; and

f. The harm caused to the public interest by removal of the public official from participation in the action or matter.

2.36.090 Conflict of interest – Voting.

A. A potential conflict of interest exists where a public official has a financial interest in an official action or matter. Any such potential conflict must be addressed under the provisions of this chapter. If the financial interest is determined to be substantial, it constitutes a conflict of interest prohibiting a public official from participating in any action relating to the official action or matter pursuant to the procedures in Subsection F.

A.B. The mayor shall declare to the assembly any substantial financial interest the mayor he has in an official action. The superintendent shall declare such interest to the school board.

B.C. A member of the assembly, school or other borough board or commission public official shall declare any substantial financial interest the member or a member of their immediate family has in an official action and ask for a determination on whether the public official is required to be excused from a vote on consideration of the matter.
C.D. The presiding officer shall determine whether a request by a member of a public official has a substantial financial interest in an official action or matter that requires the official’s excusal to be excused from consideration and voting on that matter is a vote.

D.E. The decision of the presiding officer’s determination on whether a public official has a substantial financial interest that requires their excusal from voting on an official action or matter is a request by a member of a borough body to be excused from a vote may be overridden by the a majority vote of the body’s membership.

F. A public official who has been excused from consideration of a matter under this section shall also abstain from deliberation and discussion of the matter, except that the public official may speak on the matter as a member of the public if public comments are being heard on the action or matter. The excused public official shall not sit with the borough body during its consideration of the matter in which the public official has a conflict after a conflict of interest has been determined to exist.

Section 2: This Code Ordinance shall be effective immediately.


Nathan Hadley, Jr., Assembly President

PASSED AND APPROVED THIS 24th DAY OF August, 2021.

Lucy S. Nelson, Mayor

SIGNED AND ATTESTED TO THIS 25th DAY OF August, 2021.

Helena Hildreth, Borough Clerk

ATTEST:

First Reading: July 27, 2021
Second Reading: August 25, 2021