

**CITY OF CORDOVA, ALASKA
ORDINANCE 1195**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF CORDOVA, ALASKA, AMENDING CORDOVA MUNICIPAL CODE CHAPTER 3.10 “CONFLICTS OF INTEREST” TO UPDATE CONFLICT OF INTEREST DECLARATION PROCESSES, INCORPORATE THE COMMON LAW “RULE OF NECESSITY” THAT PERMITS CONFLICTED OFFICIALS TO VOTE WHEN NECESSARY, AND DEFINING SUBSTANTIAL FINANCIAL INTERESTS AND OFFICIAL ACTIONS AND AMENDING CMC CHAPTER 18.90 “HISTORIC PRESERVATION COMMISSION” AND CMC CHAPTER 3.52 “ADVISORY PARKS AND RECREATION COMMISSION” TO STREAMLINE CONFLICT OF INTEREST COMMISSION REQUIREMENTS AND UPDATE FORMATTING AND LANGUAGE

WHEREAS, at the 2021 general election, Cordova voters amended City of Cordova (“City”) Charter Section 5-19 to, in part, clarify that contracts between elected City officials and the City, or the City Manager and the City, constituting a “substantial financial interest” must be awarded via competitive procurement; and

WHEREAS, Cordova Municipal Code Chapter 3.10 entitled “Conflicts of Interest” prohibited City officials and employees from participating in official actions where they had a “substantial financial interest”; and

WHEREAS, it is in the City’s best interest to define what constitutes a “substantial financial interest” and to revise and update language governing the process for declaring and ruling upon conflicts of interest throughout City Code; and

WHEREAS, it is also in the City’s best interest to codify the common law “rule of necessity” to permit City officials to participate in official actions in which they have substantial financial interests when and only when certain strict criteria are met,

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Cordova, Alaska that:

Section 1. Cordova Municipal Code Chapter 3.10 – Conflicts of interest is amended to read as follows:

Chapter 3.10-Conflict of Interest

3.10.010-Conflicts of interest-Council members.

3.10.020 Conflicts of interest-Board and commission members.

3.10.030-Conflict of interest-Other city officers and employees.

3.10.040-Exemption from state financial disclosure laws.

3.10.050-Definitions.

3.10.010 - Conflicts of interest—Council members.

A. Except as otherwise provided in this section, no Council member or the Mayor shall participate in an official action in which he or she has a substantial financial interest. Participation in an official action includes voting, debating or discussing a matter with Council members or any person authorized to act on the matter.

~~BA. Immediately after the Council approves the agenda at a regular or special meeting, the Mayor and each Council member shall declare any financial interest in an official action matter appearing on the agenda and ask to be excused from participating in the matter if the disclosed financial interest is substantial. Any member, and may question whether another Council member or the Mayor such officer has a substantial financial interest in an official action a matter appearing on the agenda, and should be excused from participating in the matter.~~

~~CB. Once a financial interest has been disclosed by a Council member, the Mayor shall determine whether or not the interest exists and, if so, if it is substantial. If the Mayor or a Council member discloses a financial interest held by the Mayor, the City Council shall determine if the Mayor has a substantial financial interest. The mayor shall rule on whether a council member should be excused due to a substantial financial interest.~~

~~DC. A determination of the Mayor under this section may be overridden by a majority vote of Council. The decision of the mayor on whether a council member should be excused due to a substantial financial interest may be overridden by a majority vote of the council, and a majority vote of the council shall determine whether the mayor has a conflict of interest.~~

~~D. A council member who has been ruled to have a substantial financial interest in a matter before the council shall not participate in the discussion of the matter or vote on the matter.~~

~~E. If the Mayor is ruled to have a substantial financial interest in a matter before the council, the Mayor shall yield the chair to the Vice Mayor vice mayor during the Council discussion and its vote on the matter, and shall not participate in the discussion of or vote on the matter.~~

F. Rule of Necessity. Exceptions to a ruling excusing a Council member from participation shall be made in cases where:

1. By reason of being excused for conflicts of interest the number of Council members is reduced to less than the minimum number required to approve the official action;

2. No other body of the City has jurisdiction and authority to take the official action on the matter; and

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

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

3.10.020 - Conflicts of interest—Board and commission members.

A. Except as otherwise provided in this section, a City board or commission member may not participate in an official action in which the member has a substantial financial interest. Participation in an official action includes voting, debating or discussing a matter with members of the body or any person authorized to take official action on the matter.

~~BA. Immediately after a city City board or commission approves the agenda at a regular or special meeting, each member having a financial interest in an official action matter appearing on the agenda shall declare the financial interest and ask to be excused from discussing and voting on the matter if the disclosed financial interest is substantial. Any, and any member may question whether another member has a substantial financial interest in an official action matter appearing on the agenda, and should be excused from discussing and voting on the matter.~~

CB. Once a financial interest has been disclosed by a commission or board member, the presiding officer shall determine if the financial interest exists and, if so, whether or not it is substantial. ~~The presiding officer shall rule on whether a board or commission member should be excused due to a substantial financial interest.~~

~~DC. The determination decision of the presiding officer under this section on whether a board or commission member should be excused due to a substantial financial interest may be overridden by a majority vote of the board or commission.~~

~~ED. A board or commission member who has been ruled to have a substantial financial interest in a matter before the board or commission shall not participate in the discussion of the matter or vote on the matter.~~

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 commission or board eligible to vote is reduced to less than the minimum number required to approve the official action;

2. No other body of the City has jurisdiction and authority to take the official action on the matter; and

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

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

3.10.030 - Conflicts of interest—Other City officers and employees.

A City officer or employee **may not**, ~~other than a council member or a member of a city board or commission, may not~~ participate in an official action in which the officer or employee has a substantial financial interest.

3.10.040 - Exemption from state financial disclosure laws.

At a special election held on September 2, 1975, the voters of the City approved propositions that exempted the City from the requirements of AS 39.50 Conflict of Interest and AS 15.13 State Election Campaigns.

3.10.050-Definitions

As used in this chapter and throughout the City Charter and Code, unless the context otherwise requires, the following terms shall have the meanings set forth in this section:

A. “Financial interest” means an interest in or control of an asset or debt or a position in an organization or business held by a person or a member of that person’s household which may produce or has produced monetary gain or loss. A “financial interest” does not include any interest or control that is the equivalent of or arises from an interest held by all members of the public or a substantial class of persons to which that person belongs as a member of a profession, occupation, industry, or region. An interest in a membership, appointment or unpaid volunteer position with a nonprofit or public entity is not a “financial interest” unless the position is compensated. A mere stipend for meeting attendance or expenses associated with a volunteer position does not constitute compensation.

B. “Official action” means a recommendation, decision, approval, disapproval, vote, or other similar action made while serving as a City Council member, a City commission or board member or as a City employee or officer, including City Manager.

C. “Substantial financial interest” means a financial interest that the presiding officer or governing body determines is substantial after weighing the following factors:

1. Whether the financial interest is a substantial part of the consideration;
2. Whether the financial interest will be significantly impacted or changed by the outcome of the official action;
3. Whether the financial interest is immediate and known or attenuated and dependent on factors beyond the official action; and
4. Whether a reasonable person would consider the financial interest significant and would expect a person to take actions and make decisions to protect that financial interest.

Notwithstanding these factors, a financial interest that would result in a pecuniary gain or loss exceeding \$5,000 in a single transaction or more than \$10,000 in the aggregate in 12 consecutive months is presumed to be “substantial” unless City Council or the board or commission taking the official action determines that the financial interest under the specific circumstances is not substantial.

Section 2. Cordova Municipal Code 18.90 – Cordova ~~h~~**H**istoric ~~p~~**P**reservation ~~e~~**C**ommission established, is amended to read as follows:

18.90.010 - Cordova ~~h~~**H**istoric ~~p~~**P**reservation ~~e~~**C**ommission established.

A. There is created a historic preservation commission. **In this chapter, “the Commission” refers to the Cordova Historic Preservation Commission.** The **C**ommission shall have seven members which shall consist of ~~one currently sitting a~~ **a** member of the Cordova **P**lanning **C**ommission, ~~one current a~~ **a** member of the Cordova **H**istorical **S**ociety, ~~one a~~ **a** member selected by the **N**ative **V**illage of Eyak and four ~~public~~ **additional** members appointed by the **M**ayor and confirmed by **C**the city **C**ouncil. **At least**

~~One of the **four additional** public members shall be a Cordova resident with a demonstrated interest or knowledge of historic preservation **and three of the additional members**. The final three members shall be professionals, as defined by the National Park Service Regulations, from the disciplines of history, architecture or architectural history, and archaeology.~~

B. Ex Officio Members. The ~~M~~Mayor and the ~~C~~City ~~M~~Manager shall be ex officio members of the ~~C~~Commission and shall **be permitted to participate in discussions as members of the Commission** have the privilege of the floor, but **shall not** ~~no right to vote~~ **on matters before the Commission**.

C. Terms of Office. Members of the ~~C~~Commission shall be appointed for three-year terms, provided however, that in the first instance two members shall be appointed for one year, two members appointed for two years and three members appointed for three years.

D. Filling of Vacancies. Appointments to fill vacancies shall be for the unexpired term of the vacated position.

Section 3. Cordova Municipal Code 18.90.020 – Cordova historic preservation commission-Officers, is amended to read as follows:

18.90.020 - Cordova ~~h~~**H**Historic ~~p~~**P**reservation ~~e~~**C**Commission—Officers.

A. The ~~C~~Commission shall annually organize and elect a chair, vice-chair, and secretary at the first meeting of a new fiscal year.

B. The chair~~person~~ shall preside over the meetings of the ~~C~~Commission and shall exercise all powers usually incident to the office and shall **have the power to participate in discussions and vote on all matters before the Commission**.~~be a voting member with full right to have his vote recorded in all deliberations of the commission.~~

C. The ~~V~~vice-~~C~~chair~~person~~ shall assume the duties of the ~~C~~Chair in **the Chairperson's** absence. In case of the absence of both the ~~C~~Chair and the ~~V~~vice-~~C~~Chair, the members present may elect a temporary chair for the meeting who shall, during such meeting, have full powers of the ~~C~~Chair.

D. The ~~S~~ecretary shall be responsible for taking and typing minutes of all meetings of the ~~C~~Commission, and for providing the minutes to the ~~C~~City ~~C~~lerk for distribution and recordkeeping.

Section 4. Cordova Municipal Code 18.90.030 – Cordova ~~h~~**H**Historic ~~p~~**P**reservation ~~e~~**C**Commission-Meetings, is amended to read as follows:

18.90.030 - Cordova Historic Preservation Commission—Meetings.

A. The ~~C~~Commission shall meet regularly at a time and place set by the ~~C~~Commission. The ~~C~~Commission will meet twice a year at a minimum. The commission shall conduct business in accordance with the Open Meeting Laws of Alaska. ~~This includes adequate public notice of all meetings including the meeting time, place and agenda items.~~ **The Commission shall publish notice of the time, place, and agenda items for all meetings.** Notice of postponement of any regular meeting must be given to each member and to the public at least ~~24~~**twenty-four** hours in advance.

B. Special meetings may be called by the Chairperson and at such times as the Commission may determine necessary provided that at least ~~24~~^{twenty-four} hours' notice of a special meeting is given to the public and to each Commission members at their established residences or businesses, and to the public.

C. The Commission shall keep minutes of its proceedings showing the vote on each issue and the number absent or failing to vote. The Commission shall keep records of its official actions, all of which shall be filed in the office of the City Clerk and shall be kept as a public record.

D. A majority of the membership of the Commission shall constitute a quorum for the transaction of business. A public hearing may be opened and comments received without a quorum of the Commission present, and action taken at the next meeting at which a quorum is present. Commission members may participate in and vote on a matter even if they were not present at the public hearing so long as they have been provided the minutes from the public hearing before voting on the matter. ~~provided that no action may be taken on any issue until minutes have been received by absent commission members. Action can then be taken at the next meeting. Action can be taken after the public hearing if a quorum is assembled and all members present are informed of the substance of public testimony.~~

E. The Commission shall conduct business using the latest edition of Robert's Rules of Order. All main motions shall be made in the affirmative.

~~F. Any member who has a substantial personal interest or financial interest of any kind in any questions being voted upon shall identify his interest and declare a possible conflict of interest. He shall not be excused from voting thereon except with the concurrence of the majority of the members present.~~

FG. Any member of the Commission anticipating an absence from Commission meetings shall so advise the Commission. A member who misses three consecutive regular meetings without prior excuse shall automatically be recommended for replacement to the Mayor.

GH. All recommendations by the Commission to the Planning Commission or to the City Council shall be made by resolution. Resolutions shall be numbered consecutively within each year according to the sequence of approval and shall be signed by the chair and secretary.

HI. Rules and procedures of the Commission may be amended at any regular or special meeting by a majority vote of the membership of the Commission.

Section 5. Cordova Municipal Code 3.52.010 - Advisory ~~p~~^Parks and ~~r~~^Recreation ~~e~~^Commission created, is amended to read as follows:

3.52.010 - Advisory ~~p~~^Parks and ~~r~~^Recreation ~~e~~^Commission created.

TheA Cordova Advisory Parks and Recreation Commission is established. In this chapter, "the Commission" refers to the Cordova Advisory Parks and Recreation Commission. The Commission shall conduct business and have the powers and duties set forth in this chapter. The Commission shall have the authority to draft its own by-laws to supplement and carry out the provisions of this chapter. The Parks and Recreation Director shall serve as staff to the Commission and in the absence of a Director, the Planning Director shall serve as staff.

Section 6. Cordova Municipal Code 3.52.040 - Advisory parks and recreation commission-Meetings, is amended to read as follows:

3.52.040 - Advisory ~~p~~Parks and ~~r~~Recreation ~~e~~Commission—Meetings.

A. The Commission shall meet regularly at a time and place set by the Commission. The public shall be notified of the Commission meeting schedule ~~through the media~~ as required by the Cordova Municipal Code. Notice of postponement of any regular meeting must be given to each Commission member in advance.

B. Special meetings may be called by the Chair or at such times as the Commission may determine necessary provided that at least ~~twenty-four~~24-hour notice of a special meeting is given to the public and each Commission member at the member's ~~his/her~~ established residence or business, ~~and to the public.~~

C. All meetings of the Commission shall be open to the public with the exception of executive sessions. Executive sessions are closed to the public; however, no final action may be taken on any question during an executive session. Executive sessions shall be conducted in strict compliance with state and municipal law.

D. The Commission shall keep minutes of its proceedings showing the vote upon each question. The Commission shall keep records of its official actions, all of which shall be filed with the City Clerk ~~in the office of the city clerk~~ and shall be kept as a public record.

E. A majority of the membership of the Commission shall constitute a quorum for the transaction of business. A public hearing may be opened and comments received without a quorum of the Commission present, provided that no action be taken on the issue until records of public testimony and any relevant reports have been received by absent Commissioners. Four affirmative votes are needed to pass any motion.

F. The Commission shall conduct business using the parliamentary procedures adopted by the Commission in its by-laws.

~~G. Any member who has a substantial personal or financial interest of any kind in any question being voted upon shall identify his/her interest and declare a possible conflict of interest. He/she shall not be excused from voting thereon except with concurrence of the majority of other members present.~~

GH. All recommendations by the Commission to ~~C~~Cthe city Council shall be made by resolution. Resolutions shall be numbered consecutively ~~consequently~~ within each year according to the sequence of approval, shall be signed by the chair and secretary, and the motion adopting the resolution shall show the vote of the Commission members present.

HH. The agenda and memorandum for each meeting shall be set by staff at the direction of the Chair and shall be available to each member at least ~~twenty-four~~24 hours prior to the meeting.

IJ. Rules and procedures of the Commission may be amended at any regular or special meeting by a majority vote of the membership of the Commission.


Section 7. This ordinance shall be effective thirty (30) days after its passage and publication. This ordinance shall be enacted in accordance with Section 2.13 of the Charter of the City of Cordova, Alaska, within ten (10) days after its passage.

1st reading: April 7, 2021

2nd reading and public hearing: April 21, 2021


PASSED AND APPROVED THIS 21st DAY OF APRIL 2021.





Clay R. Koplín, Mayor

ATTEST:



Susan Bourgeois, CMC, City Clerk