

ETHICS COMPLAINT
CITY OF BAINBRIDGE ISLAND

RECEIVED
SEP 09 2011
EXECUTIVE DIR

Received 9/9/11
To: Lassoff

TO: City Clerk

SUBMITTED BY: Name:

Kim Hennricksen

Address:

[REDACTED]
[REDACTED]
[REDACTED]

Telephone No.:

Ethics Complaints concern the actions of individuals in relation to the City of Bainbridge Island Ethics Code.

1. Does the situation for which you are making a complaint involve: (please circle one)

a. An Elected Official

b. ^{the} A Member of a City Committee or Commission

c. A Major Contractor with the City

d. A City Employee

2. Please describe the facts that constitute the violation(s) of the Code of Ethics. (If necessary, please attach additional pages for description)

SEE Attachment A

3. Section(s) and subsection(s) of the Code of Ethics that are alleged to have been or would be violated [optional]: Article II, 1: "conduct of public meetings"

4. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct:

Date: Sept 9, 2011 Place: City Hall

Signature

[Handwritten Signature]

Ethics Complaint

Submitted by Kim Hendrickson, Secretary/Chief Examiner, Civil Service Commission
September 9, 2011

Attachment A

Question #2: Please describe the facts that constitute the violation of the Code of Ethics.

According to the Code of Ethics Article II, meetings involving city commissions should be “conducted in a manner that maximizes transparency of relationships among individuals or groups that could affect decision making.”

Civil Service Commissioners David Hand, George McKinney, and Robert Fernandez met with City Attorney Jack Johnson on May 26, 2011 and with City Manager Brenda Bauer on May 31, 2011. There was no public notice of either meeting, nor notice of executive session. Both meetings were held privately (the first in the City Attorney’s office, the second in the City Manager’s office). Both meetings included a discussion of the Civil Service Secretary’s job reorganization, which is business of concern to the City. Both meetings included all three Commissioners, and thus a quorum (RCW 42.30, Bainbridge Island Governance Manual 3.7.1).

The Commissioners’ May meetings are violations of the state Open Public Meetings Act.¹ Meetings in violation of the OPMA violate our Ethics Code, since they do not maximize the transparency of relationships between individuals that affect decision-making.

Commissioner Fernandez, when learning that these May meetings were in violation of the OPMA, self-reported the violation to the City Manger and City Council (attachment B).

This is not the first time that Commissioners Hand and McKinney have acted in violation of OPMA provisions. At the February 2011 Civil Service Commission meeting, the commissioners acknowledged that they had a “private” meeting with City Manger Brenda Bauer that was not noticed (attachment C), and apologized to Police Guild President Scott Weiss about the violation of the OPMA (Officer Weiss’ recollection, September 9, 2011 phone conversation). According to the June 2004 and July 2004 Civil Service Commission minutes (attachment D and E), the commissioners participated in a May 2004 meeting that violated the Act’s executive session provisions and recognized the illegality of their action. Nor have they lacked information about OPMA standards. In June of 2004, then-secretary Paula Fernandez distributed copies of the *Open Records and Open Meetings Deskbook* to the commissioners (published by the state Attorney General). In June of 2008, Secretary Shannon Cohen distributed copies of the OPMA to both commissioners along with the Ethics Board “best practices” brochure (attachment F).

¹ Municipal Research and Services Center Report Number 60 (“The Open Public Meetings Act: How it Applies to Washington Cities and Counties,” June 2004): city and county Civil Service Commissions are subject to the OPMA (p 3).

B

Date: August 15, 2011

To: Members of City Council
Brenda Bauer, City Manager, City of Bainbridge Island
Jack Johnson, City Attorney, City of Bainbridge Island

From: Robert A. Fernandez, Commissioner, Civil Service Commission
Kim Hendrickson, Secretary/Chief Examiner, Civil Service Commission

Subject: Civil Service Commission's August 12, 2011 meeting
Vote to reorganize Secretary/Chief examiner position

At its August 12, 2011 meeting, the Bainbridge Island Civil Service Commission (Commission) voted to transfer the position of Civil Service Secretary and Chief Examiner (S/CE) from an independent position overseen by the Commission to a City of Bainbridge Island employee.

We strongly object to this vote because of procedural irregularities, along with possible violations of Civil Service Rules and state law:

- Notice that the Commission would be voting on reorganization was not included on our agenda.
- The motion to make this change was made by a Commissioner who had introduced the same action, at our prior meeting, and was on the losing side of the vote. This is a violation of *Robert's Rules of Order*, which guide the Commission's procedures. These rules were not waived or modified at the August meeting (CSC rules, 2.3).
- The S/CE was asked prior to the motion to expunge a section of the public record that related to this decision (i.e., the recording of a previous vote against reorganization).
- This action was discussed, prior to the August 12 vote, at two meetings: one with City Attorney Jack Johnson, on May 26, and one with City Manager Brenda Bauer, on May 31. There was no public notice of either meeting, nor notice of executive session. Both meetings were held privately (the first in the City Attorney's office, the second in the City Manger's office). Both meetings included a discussion of S/CE job reorganization, which is business of concern to the City. Both meetings included all three Commissioners, and thus a quorum (RCW 42.30, Bainbridge Island Governance Manual 3.7.1).

A motion will be made to rescind this action at our next meeting on September 9. We respectfully ask the Council and City Manger not to take action related to this change unless a new vote is taken.

The reorganization of the S/CE is a major policy change for the City of Bainbridge Island. It has the potential to significantly affect the operations of the entity within city government that is charged with police department oversight in hiring decisions. A 1997 memo by the then-City Attorney, Rod Kaseguma, expressed legal concerns about a Commission S/CE who is directed by both a city manager and an independent commission. The president of the Bainbridge Island Police Guild, Officer Scott Weiss, objects to this action. We strongly feel that a decision of this importance should be sound in execution, widely publicized, and discussed with City Council. We encourage members of Council, and interested members of the public, to attend the September 9, 2011 meeting of the Commission.

Robert A. Fernandez, Commissioner
City of Bainbridge Island, Civil Service Commission

Kim Hendrickson, Secretary/Chief Examiner
City of Bainbridge Island, Civil Service Commission

C

City of Bainbridge Island
CIVIL SERVICE COMMISSION

625 Winslow Way E, Bainbridge Island, Washington 98110-1812
Telephone: 206 679 0680

**MEETING MINUTES, FEBRUARY 11, 2011
BAINBRIDGE ISLAND CIVIL SERVICE COMMISSION**

The February meeting of the Bainbridge Island Civil Service Commission was held in the Council Conference Room, City Hall, on February 11, 2011. Chair David Hand called the meeting to order at 3:05 p.m. Also present were Commissioner George McKinney, commission volunteer Rob Killian, Police Guild President Scott Weiss, Executive Secretary Kate Brown, and Commission Secretary/Chief Examiner (S/CE) Kimberly Hendrickson. Lieutenant Chris Jensen attended part of the meeting.

Preliminary comments: Commissioner McKinney noted that the commission received a job description for a sergeant position. Both commissioners agreed that there is no need to review the description, at present, since there is no request to hire a sergeant pending.

The S/CE presented the commissioners with a task list describing her current duties. She is managing three searches: lateral officer, harbormaster, and parking enforcement officer.

1. Approval of January 14 and January 21 meeting minutes

The meeting minutes of January 14 and January 21 (special meeting) were reviewed. Minor changes were made to the January 14 minutes; both were approved by the commission. City Manager Brenda Bauer's letter to the commission and Guild President Scott Weiss' letter to the commission were added to the record (attachment a and b).

2. Update from S/CE on two current searches: lateral officer and harbormaster; request to extend closing date for harbormaster

The S/CE reported to the commissioners that the lateral search is proceeding on schedule. The closing date is February 18, and the oral board is scheduled for March 4. She informed the panel that a lieutenant from the Bainbridge police department, a sergeant from a police department in Kitsap County, and a citizen representative had agreed to serve (names were provided, but are not included here). Barring complications, a certified list of candidates will be presented at the March meeting.

The S/CE informed the commission that, after consultation with Commissioner Hand, she has decided to extend the closing date for the harbormaster search to allow adequate advertising through the Pacific Coast Congress of Harbormasters and Port Managers (PCC). PCC agreed to inform its members about the job opening through its email distribution list. In the opinion of the S/CE, this is the most effective way to advertise the opening with marine professionals in the area. A draft of oral interview questions was distributed for review. The S/CE is working with a member of the harbor commission and the harbormaster in a neighboring city to improve them.

The S/CE informed the commission that a marine facilities manager from a neighboring city, a member of the harbor commission, and a lieutenant from the Bainbridge Police Department (recommended by Commander Shultz) would serve on the oral board. The S/CE asked the commission if oral board members may serve who have a professional relationship with applicant/s for the position. The commissioners and the S/CE agreed that this situation is acceptable, since, in the small and close-knit world of marine management, alternatives are not easily available. The S/CE informed the commissioners that panelists are asked, before being invited to serve, if they can be impartial.

3. Parking enforcement officer testing procedure, new timeline for PEO search

In January, the commission approved the use of Public Safety Testing to administer a written test to screen PEO candidates. The S/CE asked the commissioners to advise her if a local testing option should be offered and, if so, if applicants or the commission should pay for the \$15 testing charge (per applicant). Commissioner Hand recommended that a local test be given, and that the fee be paid by the commission. There were no objections.

Commissioner McKinney suggested, to the S/CE, that she screen applicants on the basis of their city applications and invite a subset to take the exam. The S/CE agreed. Commissioner Hand informed the commission that the S/CE has the legal authority to distinguish between candidates who are most qualified and least qualified for the job despite the fact that minimum qualifications are required for the position.

Executive Secretary Brown will submit a print ad for the PEO position, and work with S/CE Hendrickson on a closing date.

4. Discussion of commission policies: minutes distribution prior to formal adoption, privacy and retention of correspondence, posting scores, passing scores, method of response to job applicants.

Upon request of Commissioner McKinney, minutes will not be distributed prior to their formal adoption. The S/CE may send excerpts from unapproved minutes to participants for their approval. Commissioner McKinney further instructed the S/CE not to share approved minutes unless it is by request. Executive Secretary recommended posting all minutes online so they are easily available to the public; she will work with the S/CE to ensure that this addition, and other web changes, are made. (Note: the commission's interest in posting minutes and other public documents is noted in the January 2010 minutes.)

The S/CE shared a conversation she had with city attorney Jack Johnson about retention of correspondence. Mr. Johnson advised the S/CE to save, but not print, commission-related emails.

The S/CE confirmed, with the commissioners, that applicant testing scores can be shared/posted but only if applicant names are coded. She also confirmed, with the commission, that email is the preferred form of communication with job applicants.

The topic of minimum passing scores was not discussed.

5. Civil Service Rule changes/modifications

Chair Hand notified the commission that city attorney Jack Johnson had volunteered to revise the civil service commission rules, and asked commissioner McKinney, volunteer Rob Killian, and S/CE Hendrickson to submit suggested changes. Commissioner Hand noted that the city civil service rules were written, in 1996, to comport with state model rules—and that model rules were intended for cities with larger police departments. Guild president Weiss and Lieutenant Jensen encouraged the commission to compare Bainbridge rules with rules of other jurisdictions. S/CE Hendrickson informed commissioners that a previous city attorney reviewed the 1996 rules shortly after their adoption, and volunteered to give his comments to the city attorney. She confirmed, with the commission, that rule changes adopted by the commission but not entered in the rules would be guiding policy while Mr. Johnson suggests revisions. Chair Hand asked the S/CE to arrange a meeting with Mr. Johnson to initiate the revision process.


6. S/CE proposals for commission web page (testing schedule, disqualifiers)

The S/CE distributed a draft list of proposed additions to the commission/city webpage. The main purpose of these additions is to give police officer candidates information about our testing policies and testing schedule; this seems particularly important now that the commission maintains continuous entry level and lateral officer eligibility lists. The commissioners had no objections. She will submit the proposal to the city attorney to ensure that it raises no legal issues, and present a revised list to the commission for its review.

7. Request from S/CE to prepare a report to the commission about commission operations

The S/CE offered to prepare a report for the commission about its operations in accordance with city civil service rule 3.3.3. The commissioners had no objections, but requested an oral, as opposed to a written presentation because of the potentially sensitive nature of the information. The S/CE will deliver this report at the next commission meeting.

8. Other business

 Guild President Scott Weiss expressed his concern about a private meeting being held between the interim city manager and the two commissioners following the special January commission meeting. Commissioner McKinney assured Mr. Weiss that no business relating to the police department or its employees was discussed.

Mr. Weiss offered to post meeting notices, agendas, and other public commission documents on the guild bulletin board at the police station. The S/CE thanked him for his help in ensuring open communication between the commission and employees at the BIPD.

As there was no further business to discuss, the Commission meeting was adjourned at 4:19pm.

Kim Hendrickson, Secretary/Chief Examiner

David Hand, Chair

The next meeting of the Civil Service Commission will be held at 3:00 p.m. on Friday, March 11, 2011, in the City Council conference room.

Attachment A

Letter to commission from Interim City Manger Brenda Bauer, January 22, 2011

Attachment B

Letter to commission from Police Guild president Scott Weiss, January 26, 2011



CIVIL SERVICE COMMISSION

City of Bainbridge Island
625 Winslow Way East, Bainbridge Island, Washington 98110
Telephone: 206/842-5211

Glen Tyrrell, Chairman

George McKinney, Vice Chairman
Paula Fernandez, Secretary/Chief Examiner

David Hand, Member

Minutes of the 4:30 p.m., Friday, June 11, 2004 Meeting

The meeting was called to order by Vice Chair McKinney at 4:30 p.m., in the Bainbridge Island Police Department conference room.

Present were Vice Chair George McKinney, Member David Hand, S/CE Paula Fernandez, Councilman Bill Knobloch, Steven Gardner of *The Sun*, and Robert Fernandez.

UNFINISHED BUSINESS

- The minutes of the May 8, 2004, meeting were presented for review and approved.

NEW BUSINESS

1. The revised Rules page covering the new meeting time of the second Friday of the month at 4:30 p.m. as the regular meeting time for the Civil Service Commission was distributed.
2. The Commission was unable to review and discuss Parking Enforcement Officer candidate Brian Foley disqualification from the PEO eligible roster without the legal opinion that was requested 6-1-04 of City Attorney Rod Kaseguma.
 - This matter will be re-addressed at the July 9th meeting.
 - The commissioners were advised that Mr. Foley requested only the issue of his right to appeal his disqualification from the PEO register be mentioned in open meeting, not the reason for his disqualification.
3. Glen Tyrrell was absent and unable to report on his investigation into Civil Service Commission's removal from the e-mail distribution lists "Everyone" and "Police Group" and access to the H-drive.
 - Paula related that K. Grauman, HR, had sent PEO Nina Jackson an old job description for her to edit in preparation for a salary increase. Citywide access to the Civil Service job descriptions is on the H-drive where Paula was asked to build the file by Ms. Grauman, but no longer has access.
 - Commissioners McKinney and Hand expressed interest in restoring previously held communications capabilities.
4. Paula presented her research on the feasibility of adding a "financial responsibility" clause to Civil Service Rules 7.5, *Rejection of Applicant or Eligible*. The suggested text provided by the City Attorney was distributed.
 - This matter was taken under advisement and will be re-addressed at the July 9th meeting in order for Chair Tyrrell to review and offer his opinion.

5. Paula presented her invoice for April 2004 for review and it was approved.
6. Paula distributed the Office of the Attorney General's *Open Records and Open Meetings Deskbook* to the commissioners with comment. She announced that there has been no training available for civil service staff and that she has been working with the Washington Department of Personnel to develop a course specific to that need. She did recently learn that the Commission is subject to the Open Public Meetings of 1971 and announced recommended broader meeting notifications. She also noted:
 - The executive session called for at the May 8th meeting was illegal as setting business policy is not a valid reason for an executive session.
 - The meeting that was called for by Chair Tyrrell that took place between the Civil Service Commission (Tyrrell, McKinney, and Hand) and Mayor Kordonowy was a secret meeting in violation of RCW 42.30.010.
 - Commission Chair Tyrrell misrepresented the reason for the meeting to her when responding to her question about the nature of the executive session, stating, "This isn't about you. It's about how things are going to be done here."
 - Councilman Bill Knobloch confronted Chair Tyrrell via landline about the Open Public Meetings Act and his lack of cause for an executive session.
 - Paula stated that she believes she is being subjected to a hostile work environment and retaliatory measures and said she will seek legal remedy if this continues.
 - The Commission expressed interest in discussing the above with Chair Tyrrell and will address these issues in the July 9th meeting.

ANNOUNCEMENTS

Councilman Knobloch invited the Commission to hold their monthly meetings at City Hall for better public access and offered his assistance in coordinating that effort.

- The Commission thanked Councilman Knobloch for his invitation and will make their determination at the July 9th meeting.

George McKinney adjourned the meeting at 5:16 p.m.

Respectfully submitted,

Paula P. Fernandez, Secretary/Chief Examiner

Date

*The next meeting of the Civil Service Commission is at 4:30 p.m. on
Friday, July 9, 2004, in the BIPD conference room.*

E



CIVIL SERVICE COMMISSION

City of Bainbridge Island
625 Winslow Way East
Bainbridge Island, Washington 98110
Telephone: 206/842-5211

Glen Tyrrell, Chairman

George McKinney, Vice Chairman
Paula Fernandez, Secretary/Chief Examiner

David Hand, Member

Minutes of the 4:30 p.m., Friday, July 9, 2004 Meeting

The meeting was called to order at 4:33 p.m., in the Bainbridge Island Police Department conference room. Present were Vice Chair George McKinney, Member David Hand, S/CE Paula Fernandez, Councilman Bill Knobloch, Bob Fernandez, and HR Director Kathleen Grauman.

UNFINISHED BUSINESS

The minutes of the June 11, 2004, meeting were presented for review and approved.

NEW BUSINESS

1. The Commission reviewed the City Attorney's legal opinion concerning Parking Enforcement Officer candidate Brian Foley's appeal of his disqualification from the PEO register and decided to reinstate Mr. Foley to the PEO register.
 - Paula will type a letter to Mr. Foley following the City Attorney's suggested text and mail it next week.
2. Chair Glen Tyrrell was not in attendance to report on his efforts to restore the Commission to e-mail distribution lists "Everyone" and "Police Group", and access to the H-drive.
 - This will be re-addressed in the August meeting when Chair Tyrrell is expected to return.
3. The Commission will discuss the feasibility of adding a "fiscal responsibility" clause to the *Rejection of Applicant or Eligible*, Section 7.5 of the Civil Service Rules.
 - The City Attorney-approved text was provided at the June 11th meeting and allows for a case-by-case determination.
 - The commissioners will re-address this in the August meeting when Chair Tyrrell is expected to return for the benefit of his opinion.
4. Paula reported that her proposed training for civil service staff has stirred some interest with Ms. Patti Crane of the Washington Cities Insurance Authority (WCIA). Paula will be meeting with Ms. Crane this month to discuss a possible curriculum for 2005.
5. The commissioners expressed their thanks to Councilman Knobloch for his invitation to the Civil Service Commission to hold their meetings at City Hall. The Commission recognizes that City Hall has better public access and a more civic atmosphere, etc.
 - The commissioners deferred voting on the decision to move Civil Service Commission meetings to City Hall until the August meeting when Chair Tyrrell is expected to return.

- Councilman Knobloch graciously offered his assistance in coordinating a meeting relocation effort.
6. Paula presented her invoice for June 2004 for review and it was approved.
 7. The Commission discussed the information related by Paula in regards to the executive session called for at the May 8th meeting.
 - After reviewing the *Open Records and Open Meetings Deskbook* published by the Attorney General's Office, it was concluded that the executive session of May 8, 2004, was called for without proper cause.
 - The commissioners asserted that they would be mindful of the Open Public Meetings Act regulations and that such a breach will not recur.

The meeting was adjourned at 4:45 p.m.

Respectfully submitted,

Paula P. Fernandez

Date

The next regularly scheduled Civil Service Commission meeting is
Friday, August 13, 2004 at 4:30 p.m., in the BIPD conference room.

F

**FINAL MEETING MINUTES JUNE 2008
BAINBRIDGE ISLAND CIVIL SERVICE COMMISSION**

The regular meeting of the Bainbridge Island Civil Service Commission was held at the Council Chambers anteroom at City Hall on Friday, June 13, 2008. Commission Chair George McKinney called the meeting to order at 4:35 p.m. Also present were Commissioner David Hand, Commissioner Charles Wiggins, Deputy Police Chief Mark Duncan, and Secretary/Chief Examiner Shannon Cohen. Deputy Chief Duncan departed the meeting at 4:58 p.m. Carol Badzik, with the City of Bainbridge Island's Finance Department, stopped by to introduce herself to the Commission.

1. May 2008 Minutes

The Commission reviewed the May 2008 minutes. Commissioner Wiggins moved to approve the minutes, the motion was seconded, and approved.

2. April 2008 Minutes

The Commission reviewed the revised April 2008 minutes. Commissioner Hand moved to approve the minutes, the motion was seconded, and approved.

3. Police Officer Vacancies

Secretary/Chief Examiner Cohen stated there was still 1 police officer vacancy. Deputy Chief Duncan indicated the Police Department had scheduled interviews with the candidates on the certified list.

4. Police Officer Candidates

The Commission went into Executive Session to discuss the status of the Police Department's update on the background investigation of one of the candidates. Upon completion of the Executive Session, Commissioner Hand moved that the candidate be disqualified and removed from the eligible register as a result of the information obtained during the background investigation. The motion was seconded and approved. In addition, the Commission directed Ms. Cohen to redact the names of the disqualified candidates from the July 2007 minutes.

5. Updated Civil Service Commission Rules

The Commission reviewed the Rules that had been changed during the course of the past year. Ms. Cohen indicated the Commission had previously reviewed the language of all of the Rules, except Rule 9.1.6. The Commission reviewed and approved the language of Rule 9.1.6.

6. Open Public Meetings Act (OPMA)

Chair McKinney discussed the OPMA with the Commission. Ms. Cohen distributed copies of the OPMA to the Commission members. In addition, Ms. Cohen distributed copies of the City's Ethics Board "Best Practices" brochure for the Commission to discuss at the next meeting.

7. Budget

Chair McKinney indicated he had received a copy of the City of Bainbridge Island's budget and that the budget included the \$10,000 amount requested by the Commission.

As there was no further business, the Commission adjourned the meeting at 5:03 p.m.