

**DENALI BOROUGH, ALASKA**  
**ORDINANCE NO.: 03-14**

Introduced By Assembly Member: Teresa Hall

**AN ORDINANCE AMENDING THE DENALI BOROUGH CODE OF ORDINANCES BY  
THE ADDITION OF TITLE 5 CHAPTER 38 CREATING  
THE DENALI BOROUGH ETHICS COMMISSION POLICIES AND PROCEDURES**

BE IT ENACTED by the Assembly of the Denali borough, Alaska that:

**Section 1. Classification.** This ordinance is of a general and permanent nature.

**Section 2. Purpose.** The purpose of this ordinance is to amend the Denali Borough Code of Ordinances, by the addition of Title 5, Chapter 37, creating an Ethics Commission as follows:

**Chapter 38**  
**Ethics Commission Policies and Procedures**

**Sections:**

1. Order of Business
2. Hearing Procedures
3. Hearing Rules
4. Disposition of Complaint
5. Referral of Matter for Appropriate Action and Sanctions
6. Legal Council
7. Penalties and Enforcement, General
8. Prosecution for perjury

Section 1. Order of Business.

**A. Filing.**

Any person or the commission on its own initiative believing there has been a violation of this chapter may file a sworn complaint on a Denali Borough Citizen Complaint Form (See Appendix of Forms P), under the penalty of perjury, with the Borough Clerk. The complaint must:

1. be written, signed, and filed within 90 days,
2. identify the person or persons who allegedly committed the violation and/or the subject matter;
3. provide a statement of the facts on which the complaint is based;

4. identify the ethics provision or provisions allegedly violated; and
5. identify sources of evidence, if any, that the complainant recommends should be considered by the ethics commission.

B. Confidentiality. No borough official or employee shall reveal information relating to the filing or processing of a complaint, except as required for the performance of official duties. Ex parte communications by or to members of the commission are prohibited by this chapter. All attorney work product and attorney-client papers and related communication of a complaint are confidential to the extent allowed by law.

C. Notification. The Borough Clerk shall promptly forward a copy of the complaint to the chair of the commission and to the person charged in the complaint. The person charged shall have the opportunity to submit a sworn statement, together with such other information he or she feels is relevant.

D. False accusations and responses. The Borough Clerk shall, in writing, advise the person filing the complaint that falsely accusing someone of a violation of this chapter may result in criminal prosecution of anyone who knowingly makes a false accusation. The Borough Clerk shall, in writing, advise the person charged in the complaint that falsely responding to a complaint may result in criminal prosecution of anyone who knowingly makes a false response.

## Section 2. Hearing procedures.

### A. Preliminary Hearing.

1. Within thirty (30) days after receipt of the complaint the commission members will make a preliminary finding (See Appendix of Forms Q) in an open hearing about whether or not the complaint states a claim under Chapter 36 and is supported by just cause. "Just cause" means such cause found to exist upon a reasonable inquiry that would induce a reasonably intelligent and prudent person to believe that a person has committed an act or acts constituting an ethical violation under this chapter.
2. If the preliminary finding is that the complaint does not state a claim covered under Chapter 36 or does not have just cause, based upon the statements and evidence submitted, the complaint must be dismissed. A determination that a complaint be dismissed can only be made upon the affirmative vote of the commission. Written notice of the dismissal must be sent to both the person who made the complaint and the person about whom the complaint was made. The reason or reasons for dismissal will be identified.
3. The chairperson may participate in discussions and voting on a complaint when it is being considered by the commission as a whole. The commission must always have a minimum of three members, only one of which may be an Assembly member.

A. Evidentiary Hearing.

1. If a complaint is not summarily dismissed, it will be pursued further at a hearing before the ethics commission. Not less than ten days before the hearing, the commission shall, by certified mail or personal service, give written notice of the hearing to both the person who made the complaint and the person about whom the complaint was made. They each shall have 10 days to respond.

The notice must state the specific provision or provisions of this chapter alleged in the complaint to have been violated, as determined by the preliminary hearing.

Section 3. Hearing Rules.

- A. Hearing on complaints. The rules contained in this section apply to hearings of the ethics commission on complaints not summarily dismissed.
- B. General rules. A determination that a violation of Chapter 36 has occurred can be made only upon an affirmative of of the commission members present and voting, otherwise the complaint must be dismissed. A finding that a violation occurred must be supported by a preponderance of the evidence. "Preponderance of the evidence " means that measure or degree of proof that produces in a person's mind a firm belief or conviction as to the truth of the allegations sought to be established.
- C. Procedural rules. A quorum of three commission members must be present for a hearing. Any member of the commission who is not present at a hearing on a complaint may not participate in any discussion, voting, or disposition regarding the complaint. All witnesses must be sworn, and the members of the ethics commission or its legal counsel shall conduct questioning of witnesses.
- D. Rights of the person charged. The person charged in the complaint has the right to attend the hearing, the right to make a statement, the right to present and cross-examine witnesses, and the right to be represented by legal counsel or another advisor.
- E. Ex Parte communications. It is a violation of this chapter for:
  1. the complainant, the person charged in the complaint, or any person acting on their behalf to engage or attempt to engage, directly or indirectly, in any ex parte communication about the subject matter of a complaint with a member of the ethics commission; or
  2. a member of the ethics commission to:
    - a. Knowingly entertain an ex parte communication prohibited by Sub-section C. (1); or

- b. Knowingly communicate, directly or indirectly, with any person, other than a member of the commission, its staff, or its legal counsel, about any issue of fact or law relating to the complaint.

F. Duty to cooperate. All borough officials and employees shall cooperate with the ethics commission and shall supply requested testimony or evidence to assist the commission in carrying out its charge. Failure to abide by the obligations imposed by the subsection is a violation of this chapter.

#### Section 4. Disposition of Complaint.

- A. Written decision. The ethics advisory commission shall make all reasonable efforts to issue a written decision within 90 days after preliminary hearing has established there has been a violation of Chapter 36. The commission shall state its findings in the written decision. The written decision must either:
  - 1. dismiss the complaint, with the grounds for dismissal set forth in the decision; or
  - 2. find that there has been a violation of this chapter and identify in the decision the particular provision or provisions violated.
- B. Notification. Copies of the findings and decision shall be forwarded to the complainant, the person charged in the complaint, the borough attorney, and any member of the ethics advisory commission who did not participate in the disposition of the complaint. A copy of the findings and decision shall also be forwarded to the borough clerk, who shall make it available to the public as authorized by law.
- C. Similar charges barred. If the complaint is dismissed because the evidence failed to establish a violation of this chapter, the ethics advisory commission shall not entertain any other similar complaint based on substantially the same evidence.

#### **Section 5. Referral of Matter for Appropriate Action and Sanctions.**

- A. Referral. If the Ethics Commission determines that a violation of the Borough Code of Ethics has occurred, it shall deliver copies of the findings to the complainant, the person named in the complaint, and the Borough attorney. Along with the findings, the commission shall set forth recommendations for prosecution, or other requirements that, when in voluntary compliance, would lead to a final determination of the complaint.
- B. Sanctions.
  - 1. If the commission determines that a violation has occurred, it may impose or recommend the following sanctions.
    - a. A letter of notification (See Appendix of Forms R) shall be the appropriate sanction when:
      - 1. the violation is clearly unintentional, or

2. when the official or employee's conduct named in the complaint was made in reliance on public written opinion of the Borough attorney.

A letter of notification shall advise the official or employee to whom it is directed of any steps to be taken to avoid future violations. The commission may direct a letter of notification to any official or employee covered by this chapter.

- b. A letter of admonition (See Appendix of Forms S) shall be the appropriate sanction in those cases which the commission finds that the violation is minor and/or may have been unintentional, but calls for a more substantial response than a letter of notification, The commission may admonish any official or employee covered by this chapter.
- c. A reprimand (See Appendix of Forms T) shall be the appropriate sanction when the commission finds that a violation has been committed intentionally or through disregard of this chapter. The commission may reprimand any official or employee covered by this chapter. A reprimand directed to a borough official shall also be sent to the borough assembly. A reprimand directed to an employee shall be sent to the borough Executive Officer and included in said employee's personnel file.
- d. A recommendation (See Appendix of Forms U) of removal from office or a recommendation of suspension from office, as well as a recommendation for length of suspension, shall be the appropriate sanction when the Commission finds that serious or repeated violation of this chapter has been committed intentionally or through culpable disregard of this chapter by an unsalaried Borough Official.

A recommendation of suspension from office for an unsalaried official or for a salaried official appointed by the Mayor and Borough Assembly shall be transmitted to the Borough Assembly. The final authority to carry out such recommendations to remove from office or suspend from office and the length of suspension shall be with the Borough Assembly.

A recommendation of suspension of borough employees shall be directed from the Commission to the Borough Executive Officer. In such cases the final authority to carry out such recommendations to suspend from employment and the length of suspension shall be with the Executive Officer.

- e. A letter of recommendation of recall (See Appendix of Forms V) shall be the appropriate sanction when the Commission finds that serious or repeated violation of this chapter has been committed intentionally or through culpable disregard of this chapter by an elected Borough official. A letter of recommendation of recall directed to an elected official shall be transmitted to the Borough Clerk, published in a local newspaper of the largest general circulation and shall be sent to the Borough Attorney.

Section 6.           Legal Counsel.

If the ethics commission determines that a person has violated Chapter 36, it shall direct the Borough Attorney or independent counsel to initiate whatever legal action is necessary including but not limited to injunctive relief.

Section 7. Penalties and Enforcement, General.

The remedies contained in this article are available whenever the ethics commission finds a violation or violations of Chapter 36.

Section 8. Prosecution for Perjury.

Any person who knowingly files a false sworn statement under Chapter 36 is subject to criminal prosecution for perjury under the laws of the State of Alaska.

**Section 3. Effective Date.** This ordinance becomes effective upon adoption of the Denali Borough Assembly and signature of the Mayor.

DATE INTRODUCED: June 11, 2003  
FIRST READING: June 11, 2003  
PUBLIC HEARING: May 12, 2004

PASSED and APPROVED by the DENALI BOROUGH ASSEMBLY this 12th TH DAY OF May, 2004.



Borough Mayor



Borough Clerk

ATTEST:

