

ORDINANCE NO. 1759

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF BOZEMAN, MONTANA AMENDING ORDINANCE NO. 1726 BY PROVIDING THAT THE BOZEMAN MUNICIPAL CODE BE AMENDED BY REVISING CHAPTER 2.01 OF SAID CODE; PROVIDING FOR THE AMENDMENT OF CHAPTER 2.01 BY AMENDING THE TO CONFORM TO THE ADOPTED BOZEMAN CHARTER BY ADDING NEW SECTIONS ON FINANCIAL DISCLOSURE, POST EMPLOYMENT PROHIBITIONS AND CREATION OF ETHICS BOARD AND AMENDING SECTIONS 2.01.020, DEFINITIONS. AND 2.01.040, STANDARDS OF CONDUCT.

BE IT ORDAINED by the City Commission of the City of Bozeman, Montana:

Section 1

That Chapter 2.01 of the Bozeman Municipal Code be amended so that Bozeman Municipal Code Chapter 2.01 shall read:

2.01.010 Declaration of Policy

The proper operation of the city government requires that public officials and employees be independent, impartial, and responsible; that governmental policies and decisions be made in the proper channels of the governmental structure; that public office and employment not be used for personal gain; and that the public have confidence in the integrity of its government. The purpose of this code of ethics is to set forth standards of ethical conduct, to assist public officials and employees in establishing guidelines for their conduct, to foster the development and maintenance of a tradition of responsible and effective public service, and to prohibit conflict between public duty and private interest. Nothing herein shall be construed to relieve any employee or official of the responsibilities set forth in Sections 2-2-104, 2-2-105, , 2-2-121, 2-2-131, and 7-5-4109 of the Montana Code Annotated. Where a provision or interpretation of this Chapter conflicts with a provision of the Montana Code Annotated the more stringent provision or interpretation requiring a greater level of public disclosure shall apply.

2.01.020 Definitions

As used in this chapter, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:

- A. "Agency" means the City Commission and all other agencies, board, committees, departments, and offices of the city, without exception.

- B. "Board" means Board of Ethics.
- C. ~~B~~ "City" means the "City of Bozeman", Montana.
- D. ~~C~~ "Confidential information" means any information which is not available to the general public and which is obtained only by reason of an official's or employee's position.
- E. "Direct Advantage" means a gain or benefit to the former public servant; his/her present principal or employer.
- F. ~~D~~ "Employee" means all individuals employed by the City and its agencies, but does not include independent contractors hired by the City, City Commissioners, or any Municipal Judge.
- G. ~~E~~ "Financial interest" means any ownership interest, contractual relationship, business relationship, or other interest which will result in a monetary or other material benefit to an official or employee, either tangibly or intangibly, which has a value of more than fifteen dollars, other than his or her duly authorized salary or compensation for his services to the city, and which interest is not common to the interest of all other citizens of the city. The following financial interest shall be imputed to be those of an official or an employee of the city:
that of a spouse or child of an official or employee; that of any prime contractor or subcontractor of the city, in which the official or employee or any member of his or her immediate family has any direct or indirect interest as the proprietor, by ownership of stock or partnership interest.
- H. ~~F~~ "Immediate family" means spouse and children.
- I. ~~G~~ "Officials" means all officers and members of the city's agencies, whether elected or appointed, whether paid or unpaid, whether permanent, temporary, or alternate, and that are not employees.
- J. ~~H~~ "Personal interest" means any interest in the matter which would affect the action of the official or employee other than a financial interest, and other than an interest because of membership in, or affiliation with, but not employment by a social, fraternal, charitable, service, educational, religious, governmental, health service, philanthropic, cultural, or similar nonprofit institution or organization.
- K. ~~I~~ "Public servant" means officials, members of the Parking Commission and Library Board and employee as defined in this section.
- L. ~~J~~ "Transaction" means the offer of, or the sale, purchase, or furnishing of, any real or personal property or services, by or to any person or entity directly or indirectly, as vendor or vendee, prime contractor, subcontractor, or otherwise, for

the use and benefit of the city or of such other person or entity for a valuable consideration.

2.01.030 Persons Covered

All city officials, members of the Parking Commission and Library Board and employees shall be bound by this chapter.

2.01.040 Standards of Conduct

- A. Officials and employees have an obligation to act morally and honestly in discharging their responsibilities.
- B. Officials and employees shall conduct themselves with propriety, discharge their duties impartially and fairly, and make continuing efforts toward attaining and maintaining high standards of conduct.
- C. Each official or employee serving on a multimember agency is expected to devote the time and effort necessary to the successful functioning of such agency.
- D. No official or employee shall improperly use, directly or indirectly, his city position to secure any financial interest or personal interest for himself or others.
- E. No official or employee shall, for any reason, use or attempt to use his position to improperly influence any other official or employee in the performance of his official duties.
- F. No employee shall act in a private capacity on matters that they are directly responsible for as an employee.
- G. No official shall act in a private capacity on matters acted upon as an official.

2.01.050 Use of City Resources

No official or employee shall use, or permit the use of, city-owned vehicles, equipment, material, or city personnel for personal use of the employee or official or anyone else or to be used in any manner prohibited by state statutes or city ordinance. No city automobile shall be used by a city employee or official going to or from home, except when such use is for the benefit of the city, as in the case of an employee on call outside of the employee's working hours.

2.01.060 Treatment of the Public

City officials and employees represent the city government to the public. In their contact with the public, officials and employees must bear in mind their role as public servants. Each member of the public should be treated courteously, impartially, and fairly.

2.01.070 Conflict of Interest

A. No official or employee shall engage in any employment or business which conflicts with the proper discharge of his official duties.

B. No official or employee shall have a financial or personal interest, tangibly or intangibly, in any transaction with the City as to which he has the power to take or influence official action unless full public disclosure is made. If an official or employee has any tangible or intangible financial or personal interest in the outcome of any matter coming before the agency of which he is a member or by which he is employed, such official or employee shall publicly disclose on the record of the agency, or to his superior or other appropriate authority, the existence of such financial or personal interest. An official or employee having such a financial or personal interest shall not engage in deliberations concerning the matter, shall disqualify himself from acting on the matter, except in the event of a tie vote, and shall not communicate about such matter with any person who will participate in the action to be taken on such matter.

C. No employee, whether paid or unpaid, shall represent or appear on behalf of any individual or entity before any agency of the city, or take any appellate proceedings from any action of such agency, either personally or through an associate or partner.

D. No official, whether paid or unpaid, shall represent or appear on behalf of any individual or entity in any action or proceeding of concern to the agency on which that official serves, either before that agency or any other agency of the city, or before the City Commission, or take any appellate proceedings from any action of such agency or the Commission. Such representation may be made by an official's associate or partner, provided no reference to the participation of the involved official is made except for certification or other required identification on prepared documents. The involved official shall not engage in deliberations concerning a matter represented by an associate or partner, shall disqualify himself from acting on the matter, except in the event of a tie vote, and shall not communicate about such matter with any person who will participate in the action to be taken on such matter.

E. Nothing in this section shall be interpreted or construed to prohibit any official or employee from exercising his legal rights as to his own personal interests in a matter pending before the City or any of its agencies, or to prohibit an official or employee from testifying as a witness in any administrative or judicial proceeding. However, no official or employee who represents his own personal interest before an agency of which he is a member, or a member of an agency to which the matter may

be appealed, shall participate in the decision of that agency or the appellate agency.

2.01.080 Confidential Information

- A. No official or employee shall, without legal authority, disclose confidential Information concerning the personnel, property, government, or affairs of the city.
- B. No official or employee shall use confidential information to advance his own financial or personal interest or the financial or personal interests of any other person.
- C. Nothing in this section shall be interpreted as prohibiting the disclosure of information required by law to be disclosed.

2.01.090 Gifts, Gratuities, and Favors

No official or employee shall accept a gift, gratuity, or favor from any person or entity, except as authorized by law.

2.01.100 Financial Disclosure Statement

The Ethics Board shall prepare for approval by the City Commission a financial disclosure statement form, and recommendations for filing deadlines, procedures, and who must file consistent with the following:

- A. The Finance Director and the Personnel Director shall certify to the City Clerk a list, current as of the previous January 1, of the names and mailing addresses of persons who are required to file a financial statement in the current year.
- B. The financial statement must include the following information: (1) the name and address of the public servant and describe any current employment in addition to employment with the City of Bozeman; (2) each present or past employing entity from which benefits, including retirement benefits, are currently received by the individual; (3) each business, firm, corporation, partnership or other business or professional entity or trust in which the individual holds an equity interest of 10% or more of the entity; (4) each entity not listed under subsection (B)(1) through (B)(3) in which the individual is an officer, director or registered agent, regardless of whether or not the entity is engaged for profit; and (5) all real property, other than a personal residence, in which the individual holds an equity interest of 10% or more of the real property. Real property may be described by general description such as street address or highway location.
- C. Who must file financial statements. Financial statements must be filed by the members of the City Commission, the City Manager, department heads and other major financial decision makers which may include members of the Library Board and Parking Commission.

- D. Each department annually shall develop and then review a list of vendors and service providers of that department who provide through contract, purchase order or otherwise, services or materials greater than \$2,500 each month or more than \$10,000 per year. Each member of that department receives these services or materials must disclose if he or she has an economic relationship with that vendor. If the decision maker has a substantial economic relationship with that vendor, that decision maker may not make decisions regarding that vendor. For the purposes of this ordinance, substantial economic relationship is that amount of interest in the organization, compensation including all benefits or other valuable consideration exceeding \$10,000.

2.01.110. Post Employment Activities

No former public servant:

1. during the 12 months following the date on which the ~~he or she ceases to be a~~ former public servant ceases service to the City of Bozeman, may, without complying with the provisions of 2.01.111, make any formal or informal appearance before, or negotiate with any decision maker on any matter ~~which might give rise to a judicial or quasijudicial proceeding and~~ which was under the public servant's direct responsibility as a public servant;
2. may, for compensation, without complying with the provisions of 2.01.111 within 12 months after termination of public service act on behalf of any party other than the City in connection with any matter in which the former public servant participated personally and substantially as a public servant;
3. shall use or continue to use any former official City title, including use on business cards or stationery, following termination of employment with the City, except that such use is not prohibited if the public servant indicates that the employment with the City was former to current employment.

- B. Upon initial employment and annually thereafter each employee, public official and member of any board or committee shall verify he/she has not and will not knowingly violate any provision of this ordinance or the rules, standards of conduct or rules of ethics established by state law.

2.01.111 (Public Notice Required)

During the first 12 months following the date on which the former public servant ceases service to the City of Bozeman, any former public servant intending to make any formal or informal appearance before, or negotiate with any decision maker, shall file with the Clerk of the City Commission and with the office of the City Attorney a public notice of

the former public servant's desire to negotiate, or appear informally or formally before a decision maker. Such written disclosure shall state in substance the purpose for which the former public servant wishes to appear or negotiate with the decision maker, the reason for such appearance or negotiation and a disclosure of all offices or employment held by the former public servant during the last 12 months of service to the City of Bozeman. Upon filing such written disclosure, the former public servant is not prohibited from the post employment activities proscribed in 2.01.110 A. 1 & 2.

2.01.120. Board of Ethics

- A. There is created a Board of Ethics consisting of three (3) members who are residents of the City who shall serve without compensation unless the governing body provides otherwise. Members of the Board of Ethics shall not be elected officials of the City, persons appointed to elective office, full-time appointed City officials whether exempt or nonexempt, or City employees, nor shall they be currently serving on any other City board or commission.
- B. Members of the Board shall be residents of the City and shall hold no elected public office nor any other City office or employment.
- C. Board members shall be appointed by the governing body. An appointment to fill a vacancy shall be made by the appointing authority who appointed the member who formerly held the position which is vacant.
- D. The Board shall select its own presiding officer from among its members.
- E. Board members shall serve staggered terms of two (2) years. A member shall hold office until a member's successor is appointed. At initial appointment of the members of the board, one of the initial members shall be appointed for a term of three (3) years and thereafter for a term of one (1) year.
- F. The governing body shall provide such staff support for the Board as the governing body determines to be necessary for the Board to fulfill its duties. The City Attorney is designated to be the legal advisor for the Board, except that the City Attorney is not authorized to represent the Board in any legal action if doing so would create a conflict which would prevent the City Attorney from also representing the Mayor, the City Manager, or the governing body. The City Clerk shall serve as Recording Secretary to the Board and shall provide such administrative services to the Board as may be necessary. Neither the City Attorney nor the City Clerk shall be eligible for appointment as board members.

2.01.130. Duties and Powers of the Board

- A. The Board shall, in addition to its other duties:
- (1) adopt written rules governing its procedures and providing for the holding

of regular and special meetings, which rules shall be subject to the approval of the governing body; a copy of the rules shall be filed with the City Clerk; and

- (2) administer oaths;
- (3) conduct hearings as needed to hear and decide specific cases in which a violation of this Chapter or a violation of Title 2, Chapter 2, Part 100 of Montana Code Annotated is alleged, whether such cases arise from a complaint or are brought on the Board's own motion; and
- (4) no later than December of each year, submit an annual report to the governing body concerning its action in the preceding year; the report shall contain
 - (i) a summary of its decisions and opinions, both open and confidential; the Board shall make any alterations in the summaries necessary to prevent disclosure of any confidential information pertaining to any individual or to any organization if the disclosure could lead to the disclosure of the identity of a person who is entitled to confidentiality; and
 - (ii) recommend any legislative or administrative actions regarding the City's policies and practices which the Board believes would or could enhance the ethical environment in which public servants work; and
- (5) establish a process for systematically and regularly evaluating all significant aspects of the administration and implementation of this Chapter, which shall include an annual review of the full scope of operations of the Board and its procedures, and which shall insure that the both the public and all public servants are provided a reasonable opportunity, and are encouraged, to participate in the process; and
- (6) prescribe and make available forms for use under this Chapter; and
- (7) when it deems it appropriate, request the City Attorney for assistance in compelling the production of documents and witnesses to assist the Board in the conduct of any investigation.
- (8) when circumstances make it necessary to do so, retain outside legal counsel and other experts as needed after solicitation of recommendations from the City Attorney (unless the need to retain outside counsel is caused by a conflict involving the City Attorney's Office), and upon approval by the governing body of a contract for services approved as to form by the City Attorney; and
- (9) serve as legal custodian of the Board's records, and accept, file, maintain and administer, in accordance with all applicable laws, any information related to the purposes of this Chapter; and
- (10) make financial disclosure statements filed with the Board available for public inspection and copying facilities available at a charge which is the minimum

amount permitted under applicable law. All open opinions of the Board shall be filed with the City Clerk and are open to public inspection. To the extent permitted by law, confidential opinions and any records obtained or filed in connection with requests for confidential opinions, whether the records are written, tape recorded, videotaped, or otherwise recorded shall be kept confidential; and confidential advisory opinions rendered shall be closed in whole to public inspection. Confidential opinions and summaries of them or open references to them shall be drafted in such a way as not to reveal confidential information.

(11) compile and maintain an index to all financial disclosure statements currently on file with the Board to facilitate public access to such statements; and

(12) develop a plan for implementation of a program to educate public servants who are subject to this Ordinance and the public about their rights, duties and responsibilities hereunder; and

(13) within one year from the effective date of this Ordinance—date of the first meeting of the Board, submit to the governing body for its approval and promulgation, an ethics handbook for the use of all public servants and the public; the personnel department shall document that each City officer and employee receives a copy of the handbook and acknowledges receipt of the handbook in writing; and

(14) in coordination with the City Attorney, City Manager, and other appropriate City personnel, arrange for the conduct of an annual workshop, which shall serve as an orientation for new Board members and an opportunity for experienced members to explore specific issues in depth; attendance at this workshop shall be made a condition of service as a member of the Board, and, before taking office, Board members shall commit themselves to attend it.

B. The Board may:

(1) conduct hearings as it determines necessary or appropriate
(i) to ascertain public opinions and to gather information from the general public, employees, or others regarding any aspect of the City's ethics policies or practices; and

(ii) for any other purpose for which the Board is authorized to conduct hearings; and

(2) respond, as it deems appropriate, to requests for confidential advisory opinions; the Board may decline to render an opinion in response to any request for an advisory opinion;

(3) render and publish formal opinions on any matter within the scope of the Board's authority which it may deem appropriate; the Board may initiate opinions on its own motion or upon request; any formal opinion shall be in writing; and

- (4) prepare and publish special reports, technical studies, and recommendations to further the purposes of this Ordinance.

2.01.140. Who May Request Board Action

- A. Any person may file a complaint with the Board, and any public servant, prospective public servant or former public servant, either personally or on behalf of an organization or governmental body, may request of the Board an ethics opinion, whether a formal opinion or a confidential advisory opinion, regarding the propriety of any matter or matters to which the person is or may become a party; and any decision maker, with the consent of a prospective appointee, may request of the Board an ethics opinion regarding the propriety of any matter to which the public servant, prospective public servant or former public servant is or may become a party.
- B. Any request for Board action shall be in writing, and shall be signed by the person making the request.

2.01.150. Limitations on Board's Power

The Board does not have the authority to reverse or otherwise modify a prior action of the Mayor, governing body, or an officer or employee of the City. If the Board finds a prior action of the Mayor, the governing body, officer or employee to have been ethically improper, the Board may advise the appropriate party or parties that the action should be reconsidered. Upon such advice by the Board, the action shall be reconsidered by the appropriate person or public body. If the Board determines an existing City contract to be ethically improper, after such determination and advice from the Board, the City may void or seek termination of the contract if legally permissible. The Board may refer a matter to the City Attorney for review and consideration for appropriate action. Upon completion of review and consideration, the City Attorney's Office shall report its findings to the Board.

2.01.160. City Attorney Opinions

A. at the request of a person, the City Attorney may render an informal or formal advisory opinion with respect to the prospective conduct of such person. An informal advisory opinion need not be written, and may be provided directly to the requestor of such opinion. A request for a formal advisory opinion must be in writing and include all the information and documents related to the request. The request for either an informal or formal advisory opinion must state all the material facts so the City Attorney may render a complete and correct opinion. The City Attorney's formal advisory opinion must be in writing. Nothing in this Chapter shall be construed to prohibit a request for an opinion by any public servant from the City Attorney regarding a potential conflict of interest. Neither a request for an informal or formal advisory opinion, nor the making of a statement concerning a potential conflict of interest made by a member of the City Commission in the course of abstaining from voting or making a motion of self-recusal, shall create a presumption or inference that a public servant actually has a personal

interest in the matter about which the opinion was requested; if the City Attorney elects to render an opinion, the City Attorney shall, within a reasonable time, submit a written summary of the opinion to the Ethics Board for the Board's information; if the City Attorney declines to render an opinion, nothing shall preclude the person requesting the opinion from requesting the Ethics Board for an opinion.

B. Any formal advisory opinion issued pursuant to Section 2.01.160 may be relied upon by the person directly involved in the specific transaction or activity to which such advisory opinion has been issued; and any person directly involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which such advisory opinion was rendered.

C. Any person who relies upon a formal advisory opinion pursuant to this section, and who acts in good faith in accordance with the provisions and findings of such opinion, shall not, as a result to such act, be subject to prosecution under this Chapter or, in the case where the opinion is exculpatory, be subject to any administrative adverse action or civil action based upon legal authority cited in that opinion.

D. The City Attorney's client is the City of Bozeman and not the individual requesting the opinion. No request for an opinion from the City Attorney shall constitute the establishment of an attorney-client relationship with the individual requesting the opinion.

2.01.170. Procedures for Hearing Complaints

- A. Any person may file a written complaint, signed and sworn, with the City Clerk alleging a violation of this Chapter or a violation of Title 2, Chapter 2, Part 100 of Montana Code Annotated.
- B. A complaint shall specify the provisions of this Chapter or provisions of Title 2, Chapter 2, Part 100 of Montana Code Annotated alleged to have been violated and facts alleged to constitute the violation.
- C. Upon receipt of such a complaint, but in any event not later than three (3) working days after receipt, the City Clerk shall acknowledge receipt to the complainant(s), and forward the complaint simultaneously to the Board, the person who is complained against and the City Attorney.
- D. The City Attorney shall provide the Board with a preliminary written analysis of the complaint no later than thirty (30) days from the date the complaint is filed with the City Clerk.
- E. During any investigation and during any hearing which is conducted to determine whether a violation of this Chapter or a violation of Title 2, Chapter 2, Part 100 of Montana Code Annotated has occurred
 - (1) the person under investigation or the accused may be represented by

counsel of his or her own choosing; and

- (2) the accused or his or her representative, if any, shall have an opportunity to
 - (i) challenge the sufficiency of any complaint which has been filed against him or her; and
 - (ii) examine all documents and records obtained or prepared by the Board in connection with the matter heard; and
 - (iii) bring witnesses; and
 - (iv) establish all pertinent facts and circumstances; and
 - (v) question or refute testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses; and
 - (vi) exercise, to the extent the Board, in its discretion, determines to be just and reasonable, any pretrial discovery procedure usually available in civil actions.

F. The following principles shall apply to evidence in connection with hearings conducted by the Board:

- (1) The Board shall not be bound to adhere to statutory Rules of Evidence, but shall be fundamentally fair in its administration of evidence; and
- (2) During any hearing conducted by the Board to determine whether a violation of this Ordinance has occurred, all evidence including certified copies of records which the Board considers shall be fully offered and made a part of the record in the proceedings; and
- (3) The accused or any other person under investigation shall be afforded adequate opportunity to rebut or offer countervailing evidence; and
- (4) The Board shall inform the accused or his or her counsel of exculpatory evidence in its possession; and
- (5) The standard of evidence in hearings conducted under this Chapter shall be clear and convincing evidence admitted at the hearing.

G. The Board, in addition to its other duties and powers, may:

- (1) appoint a hearing officer to conduct hearings under this Chapter; and
- (2) with the approval of the governing body, retain outside legal counsel and other experts as needed with respect to hearings in accordance with its policies. The selection of a hearing officer and outside counsel and other experts and any contract for such persons shall be made after solicitation of recommendations from the City Attorney and upon approval by the governing body of a contract for services approved as to form by the City Attorney; and
- (3) order testimony to be taken by deposition before any individual who is designated by the Board and, in such instances, to compel testimony and the production of evidence to the extent it is otherwise lawfully authorized to do so; and
- (4) require any person to submit in writing such reports and answers to questions relevant to the proceedings conducted under this Chapter as the Board may prescribe, such submission to be made within such period and under oath or otherwise as the Board may determine; and
- (5) request and obtain from the Department of Revenue copies of state income

tax returns and access to other appropriate information as permitted under state law regarding all persons who are the subject of such investigation.

- H. The person complained against shall have twenty (20) days from the day after the City Clerk serves the complaint on the person to submit a written response to the complaint prior to the Board deciding whether to hold a hearing. Service may be by certified mail, return receipt at the last know address in City Records or personal service.
- I. If the complaint is dismissed, the complainant(s) shall have one opportunity within fifteen (15) days of the dismissal to amend the complaint and to refile it with the Board.
- J. Any person whose name is mentioned or who is otherwise identified during a hearing being conducted by the Board and who, in the opinion of the Board, may be adversely affected thereby, may, upon request of the person or a representative of the person, or upon the request of any member of the Board, appear at the hearing to testify on his or her own behalf or have a representative appear to so testify, and the Board may permit any other person to appear and to testify at a hearing.
- K. Upon request of the accused, on its own motion, or upon request of the City Attorney, the Board shall issue subpoenas to compel the attendance of necessary witnesses.
- L. At the next regular meeting, or within thirty (30) days, whichever is sooner, following receipt of the City Attorney's analysis, the Board shall review and consider the complaint and the City Attorney's analysis, and, if a hearing is to be held, shall set a date certain for the hearing to take place within thirty (30) days, unless the accused petitions for and the Board consents to a later date.
- M. As soon as practicable after giving due consideration to a complaint, or, if a hearing was held, after the hearing, the Board shall take any action or combination of actions which it deems appropriate and which it is lawfully empowered to take, including, but not limited to the following:
 - (1) dismiss the complaint based on any of the following grounds:
 - (i) the complaint does not allege facts sufficient to constitute a violation of this Chapter or a violation of Title 2, Chapter 2, Part 100 of Montana Code Annotated; or
 - (ii) the Board has no jurisdiction over the matter; or
 - (iii) failure of the complainant to cooperate in the Board's review and consideration of the complaint; or
 - (iv) the complaint is defective in a manner which results in the Board being unable to make any sound determination; and
 - (2) determine that no violation of this Chapter or a violation of Title 2, Chapter 2, Part 100 of Montana Code Annotated has occurred; or

(3) determine that the complaint alleges facts sufficient to constitute a violation of this Chapter or a violation of Title 2, Chapter 2, Part 100 of Montana Code Annotated, and that the Board will conduct a hearing, in which case the Board shall promptly send written notice of such determination to the accused and to the party who made the complaint; or

(4) determine that further information must be obtained in order for the Board to determine whether the complaint alleges facts sufficient to constitute a violation of the Chapter or a violation of Title 2, Chapter 2, Part 100 of Montana Code Annotated; and

(i) conduct its own investigation with respect to any alleged violation; or

(ii) schedule the complaint for further review and consideration at a future time certain, in which case the Board shall promptly send written notice of such determination to the accused and to the party who made the complaint; or

(iii) refer the complaint to any appropriate authorities for criminal investigation; or

(iv) refer the complaint, if it appears to be substantiated, to the county attorney or city attorney for prosecution; or

(v) refer the complaint, along with the Board's findings and conclusions, to any appropriate administrative authority for disciplinary action or other suitable remedial action; the Board, although it has no independent administrative authority, may make any recommendation to any City administrator at any level of supervision, if the Board finds that the recommendation will advance the objectives of this Chapter; whether to implement the recommendation may be decided by whatever decision maker is authorized under the circumstances; if it is determined that misconduct or malfeasance has occurred, the Board shall refer the matter to the City Manager, City Attorney or to the governing body, as circumstances warrant.

(5) After it has made its final determination, the Board shall issue its written findings of fact and conclusions, and may issue any additional reports, opinions and recommendations as it deems advisable under the circumstances. All such reports shall be in compliance with all state and city laws governing confidentiality, open government, and torts. All such reports shall be reviewed by the City Attorney prior to their issuance.

2.01.180. Those Subject to Removal Only by the Governing Body

If findings relative to an elected or appointed official are filed by the Board with the governing body, the governing body may take action to remove the official in accordance with state law.

2.01.190. Ex Parte Communications

A. After a complaint has been filed and during the pendency of a complaint before the Board, no member of the Board may communicate directly or indirectly with any party or other person about any issue of fact or law regarding the complaint, except that

- (1) the members of the Board may obtain legal advice from the City Attorney (or retained counsel) and may discuss the complaint with their staff; and
 - (2) the members of the Board may discuss the complaint at a lawfully conducted meeting.
- B. If any person attempts to communicate with a Board member regarding the pending complaint, the Board member shall report the substance of the communication to the Board on the public record at the next regular meeting of the Board.

2.01.200. Confidentiality of Board Information

No member of the Board nor any public servant who has access to any confidential information related to the functions or activities of the Board shall divulge that information to any person who is not authorized to have it. The identity of a person who requests a confidential advisory ethics opinion is confidential, as is information describing or pertaining to any organization mentioned in the request for an opinion if the disclosure of the information could lead to the disclosure of the identity of the person requesting the confidential advisory opinion.

2.01.210. Waiver of Confidentiality

A person who makes or purports to make public the substance of or any portion of an advisory opinion requested by or on behalf of that person is deemed to have waived the confidentiality of the request for an advisory opinion and of any records obtained or prepared by the Board in connection with the request for an advisory opinion.

2.01.220. Statute of Limitations

No action may be taken on any complaint which is filed later than one year after a violation of this Chapter is alleged to have occurred, and a complaint alleging a violation must be filed within one year from the date the complainant(s) knew or should have known of the action alleged to be a violation.”

Section 2

Repealer

All resolutions, ordinances and sections of the Bozeman Municipal Code and parts thereof in conflict herewith are hereby repealed.

Section 3

Savings Provision

This ordinance does not affect the rights and duties that matured, penalties that were incurred or proceedings that were begun before the effective date of this ordinance.

Section 4

Severability


If any portion of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions of this ordinance which may be given effect without the invalid provisions or application and, to this end, the provisions of this ordinance are declared to be severable.

Section 5

Effective Date

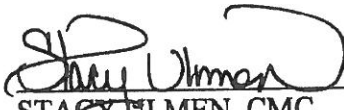
This ordinance shall be in full force and effect thirty (30) days after final adoption.

PASSED by the City Commission of the City of Bozeman, Montana, on first reading, at a regular session thereof held on the 20th day of April 2009.



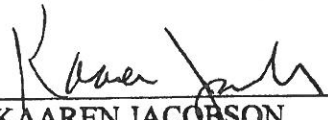
KAAREN JACOBSON
Mayor

ATTEST:



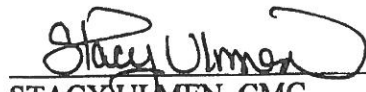
STACY ULMEN, CMC
City Clerk

PASSED, ADOPTED, AND APPROVED by the City Commission of the City of Bozeman, Montana, on second reading, at a regular session thereof held on the 11th day of May 2009.




KAAREN JACOBSON
Mayor

ATTEST:



STACY ULMEN, CMC
City Clerk

APPROVED AS TO FORM:



GREG SULLIVAN
City Attorney