

Memorandum

REPORT TO: Board of Ethics

FROM: Jennifer A. Giuttari, Assistant City Attorney
Greg Sullivan, City Attorney

SUBJECT: Review of and Recommendation to the City Commission Regarding Proposed Ordinance Amending Ethics Opinions and Complaint Procedures, and Adoption of Board of Ethics Resolution 2024-01 Establishing Hearing Rules of Procedures

MEETING DATE: December 9, 2024

AGENDA ITEM TYPE: Ordinance

RECOMMENDATION:

1. Having reviewed and considered the draft ordinance amending ethics opinions and complaint procedures, I hereby move to recommend the City Commission approve said draft ordinance.
2. Having reviewed and considered Resolution 2024-01 which establishes Board of Ethics Hearing Rules of Procedure, I move to approve Board Resolution 2024-01.

STRATEGIC PLAN: 7.1 Values-Driven Culture: Promote a values-driven organizational culture that reinforces ethical behavior, exercises transparency and maintains the community’s trust.

BACKGROUND: In [September 2024](#), the Board of Ethics held a work session to examine the Code of Ethics and provide staff with direction about substantive changes to the Code. The September 2024 work session was held in accordance with the board’s work plan established in June 2024. During the work session, the Board considered recommendations from the City Attorney’s Office on three sections in the Code. We drafted amendments to these three sections, as requested during the work session, and have attached a draft ordinance for the board’s consideration. *See Exhibit A.*

The following key changes were made in response to the board’s work sessions:

- **2.03.610 – Who can request board action:** This section is repealed and reserved because the portion that applies to ethics complaints is now incorporated in revised 2.03.640. As discussed during the September

work session, we removed the requirement that the board issue ethics opinions because with these revisions, the board's duties are now more focused on overseeing the hearing procedures. Additionally, in practice, under 2.03.610 as written, if the board receives a request of an ethics opinion, they would request a written analysis from their legal advisor, which, unless there is a conflict, would be the city attorney.

- **2.03.630 – City attorney ethics opinions:** This section now includes the ability of the public to request an ethics opinion from the city attorney on a potential conflict of interest. We clarified how requests for opinions from public officials and employees are made as well as the ability for a person to use an ethics opinion as a defense to an ethics complaint. We also included a requirement that the city attorney provide the board a summary of significant ethics opinions issued.
- **2.03.640 – Procedures for complaints (revised to include Sec. 2.03.610):** This section was redrafted to provide clarity about who can file a complaint, how a complaint is filed, what needs to be contained in the complaint, and the timeline for a respondent to answer and the city attorney to provide a preliminary written analysis to the board. We've also clarified the actions the board can take after an ethics complaint is filed. The flowchart, attached as *Exhibit B*, provides a more detailed explanation of this process.

In addition, we drafted Resolution 2024-01, attached as *Exhibit C*, which, as indicated by the second suggested action, we are recommending that the board adopt today. Resolution 2024-01 is a board resolution that adopts *Hearing Rules of Procedure ("Rules")*, attached as Appendix A *Exhibit C*. The *Rules* establish structure for the conduct of ethics hearings to ensure that a hearing is fair and objective, simple in process, and eliminates unnecessary delay. Contained in the *Rules* are principles of evidence that apply to an ethics hearing. This includes establishing a standard of proof by which a complainant must prove the allegations in the ethics complaint. This "clear and convincing" standard is used in certain types of civil cases and is currently used for municipal infractions. Montana case law defines "clear and convincing evidence" as evidence that is definite, clear, and convincing. Finally, the proposed evidentiary principles applicable to ethics hearings do not permit the hearing panel or officer to consider public comment when deciding if an ethics violation has occurred. This is to ensure that the hearing is fair and impartial, and, because the hearing is akin to a judicial proceeding, protects the integrity of the hearing record.

Additionally, upon further examination, we determined that there are four additional Code sections that need to be revised. Therefore, the draft ordinance also includes recommended changes, not previously considered by the board, to the following sections:

- **2.03.580 – Board of ethics:** We made amendments to this section for clarity. Specifically, we clarified how interim appointments occur, and who the city attorney represents when there is a conflict acting as a legal advisor for the board.
- **2.03.600 – Duties and powers of the board:** We made organizational changes to this section and made amendments for clarity. We clarified the commission’s oversight of the board’s power to adopt procedural rules. We also re-organized this section and included the board’s ability to investigate ethics complaints and to appoint a hearing officer. Both duties were previously included in 2.03.640.
- **2.03.620 – Limitations on board’s power:** We clarified the board’s limitations by including a non-exhaustive list of areas that the board does not have authority over such as budgetary, personnel, and legislative matters.
- **2.03.670 – Confidentiality of board information:** We removed the requirement pertaining to confidential advisory ethics opinions since with these revisions the board will no longer be issuing ethics opinions.

Should the Board vote in favor of these changes, we intend to present the ordinance to the City Commission for approval in the early part of 2025.

UNRESOLVED ISSUES: Possible unresolved issue: 2.03.580, BMC establishes 2 year terms for board members. Changing the term limit is outside of the scope of this review, but should the board want to establish longer term limits nothing in state law appears to prevent it from doing so.

ALTERNATIVES: Make no amendments to the Code of Ethics.

FISCAL EFFECTS: None.

Attachments:

[Ex. A. Ethics Code Revisions Ord.pdf](#)

[Ex. B. BOE Complaint Process flowchart.pdf](#)

[Ex. C. BOE Resolution 2024-01-Appx A final.pdf](#)

Report compiled on: December 4, 2024