

Memorandum

REPORT TO: City Commission

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

SUBJECT: Ordinance 2025- ##### Amending Ethics Opinions and Complaint Procedures

MEETING DATE: February 4, 2025

AGENDA ITEM TYPE: Ordinance

RECOMMENDATION: **Consider the Motion:** *Having reviewed and considered the Ordinance Amending Ethics Opinions and Complaint Procedures, I hereby move to to adopt the ordinance.*

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 June 2024, the Board of Ethics established a work plan. One of the board's work plan items includes recommending to the City Commission an ordinance on procedural changes for ethics complaints and opinions. Upon the board establishing its work plan, the City Attorney's Office began reviewing the Code of Ethics to determine what procedural changes related to the filing and processing of a complaint, if any, it would recommend to the Board at its September 2024 work session.

In September 2024, the Board of Ethics held a work session to examine the Bozeman Code of Ethics and provide the City Attorney's Office with direction about substantive changes to the Code. During the work session, the board considered recommendations from the City Attorney's Office on three sections in the Code. In response to the board's September 2024 work session, the City Attorney's Office drafted amendments to these three sections, as requested during the work session.

At the December 9, 2024 meeting, the City Attorney's Office presented a draft ordinance detailing the amendments to the three code sections discussed during the September 2024 work session. In addition, the City Attorney's Office presented amendments to four other code sections not previously considered by the board. At the end of the December 2024 meeting, the Board of Ethics unanimously voted to recommend the City Commission to approve the proposed ordinance, which is attached as *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- **2.03.610 – Who can request board action:** This section is repealed and reserved because the portion that applies to ethics complaints is now incorporated in revised 2.03.640.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, the requirement that the board issue ethics opinions is removed 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, it 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. Additionally, 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, has been clarified. There is also a new 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. The actions the board can take after an ethics complaint is filed has also been clarified. The flowchart, attached as *Exhibit B*, provides a more detailed explanation of this process.

Additionally, the City Attorney's Office proposed four additional Code sections that it recommended to be revised. These four sections are:

- **2.03.580 – Board of ethics:** Amendments are recommended for clarity. Specifically, how interim appointments occur and who the city attorney represents when there is a conflict acting as a legal advisor for the board has been clarified.
- **2.03.600 – Duties and powers of the board:** Organizational changes and amendments for clarity are recommended. The City Commission's

oversight of the board's power to adopt procedural rules has been clarified. This section was also reorganized and now includes 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:** The board's limitations has been clarified 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:** The requirement pertaining to confidential advisory ethics opinions has been removed since with these revisions the board will no longer be issuing ethics opinions.

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 Commission want to establish longer term limits for Board of Ethics members, nothing in state law appears to prevent it from doing so.

ALTERNATIVES: As directed by the City Commission.

FISCAL EFFECTS: None.

Attachments:

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

[Ex. B Board of Ethics Complaint Process flowchart.pdf](#)

Report compiled on: January 24, 2025