

Attachment D

Presentation to Mayor and City Council

Comparing City and State Ethics Rules

January 4, 2016

City of Billings Ethics Ordinances: Research, Analysis and Recommendations

Presented to City of Billings Mayor and City Council
January 4, 2016

Brent Brooks
City Attorney

Ethics Ordinances

Approved **Council Initiative** By Council Member Brent Cromley:

“Request the City Attorney to provide a written opinion or seek an opinion from the State Attorney General regarding the constitutionality or legality of the City’s Code of Ethics contained in Section 2-700 of the Billings, Montana City Code (hereafter referred to as BMCC) and the City’s advisory Board of Ethics.”

Ethics Ordinances

Scope of Research

1. Legislative History of City's Ethics Ordinances
2. Procedures of City's Ethics Ordinances
3. State Ethics Statutes Summary
4. Survey of Larger MT Cities Ethics Laws/Procedures
5. Summary of Self-Governing Laws
6. Weaknesses/Deficiencies of City's Ordinances

Ethics Ordinances

1. Legislative History

- Enacted in 1981-now in BMCC 2-701-709 and 2-540-544
- Minor amendments in 1982,1997, 2002, 2009
- Ethics Board in Sec. 2-540 Not Activated until 2001 along with Human Relations Bd.

Ethics Ordinances

2. Procedures of Ethics Board

- Complaint submitted to any Bd member
- Open Bd Meeting held/complaint reviewed
- Two Options At First Meeting:
 - Determine No Further Action Needed
 - Determine “reasonable grounds”/2nd hrg
- “Reasonable grounds” not defined

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2. Board Procedures (cont.)

- Evidence received at 2nd open meeting
- Bd may request witnesses/information
- Bd issues its written “decision” to City Attorney and Bd may:
 - Determine no violation, or
 - Recommend prosecution, or
 - Set forth voluntary compliance steps
- City Attorney then decides further action, if any
- Outside Counsel used if City Atty has conflict

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3. MT Ethics Statutes-MCA 2-2-101 thru 144

- Includes local gov't officials/employees
- Defines/describes prohibited conduct
- Enforcement-complaint to County Attorney or previously created three member ethics panel
- Panel initially reviews/ makes recommendations to County Attorney
- County Attorney-investigates after referral by panel

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3. MT Ethics Statutes (cont.)

- **County Attorney** may:
 - Take no action/decide no violation
 - Pursue civil fine in District Court-\$50-\$1000
 - Pursue criminal charges
- **Complaining Person** may:
 - Pursue private action/seek civil fine in District Court
 - Costs/Attorneys fees to prevailing party

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4. Ethics Procedures - Other Larger MT Cities

Bozeman

Butte/Silver Bow

Great Falls

Kalispell

Missoula

Whitefish

- **Bozeman:** Comprehensive/complex
- **Missoula:** four member advisory Bd that provides guidance.
- **Whitefish:** Resolution - can censure/reprimand/request resignation
- **Others:** varying reliance on State Ethics statutes

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4. Ethics – Other MT Cities (cont.)

- Recent Complaints-Missoula and Great Falls
- Both complaints used State Ethics statutes/procedures
- Cascade Co. Attorney - letter included in Appendices to Memo
- Jim Nugent, Missoula City Attorney:

“It should not be a forum or venue for airing philosophical and/or political differences...”

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5. Self-Governing Laws v. Ethics Ordinances

- S/G authority arguable-undecided/open issue
- Bozeman - defaults to whichever is stricter - its ordinances or state ethics law
- No MT city has dealt with this issue

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6. Weaknesses/Deficiencies of City's Ord.s

- Inconsistent with portions of City Charter - (Advisory Bd investigating)
- Procedures are ambiguous/confusing
- No appeal process
- Confusing as to whether City or State ethics laws prevail
- No provision for conflict of interest of City Atty

Ethics Ordinances

6. Weaknesses/Deficiencies (cont.)

- Co. Atty better able to investigate – unfair to require members of advisory Bd to do so
- Potential conflicting results-City vs. State Procedures
- Potential for Simultaneous/Successive Complaints using City and State laws/procedures
- Potential civil liability to City - right of privacy

Ethics Ordinances

Options

- Repeal Existing Ord.s/Apply MT ethics laws
- Repeal/Apply MT laws/Appoint ethics panel
- Amend Ord.s using best practices of other cities
- Refer Issue to Ethics Bd
- Seek AG Opinion on legal issues
- Take no action/retain existing Ord.s-need training of Board if this option is chosen.

Ethics Ordinances

Recommendations

- Repeal existing ordinances
- Rely on MT ethics statutes/procedures(e.g. Kalispell's simple ordinance)
- State process eliminates conflict for City Atty and provides impartial third party investigation by County Attorney

Ethics Ordinances

Questions?

CI 116 (Marsy's Law)

Implementation /Impacts

Presented to City of Billings
Mayor and City Council
January 3, 2017

Brent Brooks
City Attorney

National History/Background of Marsy's Law

- Originated from domestic violence homicide of Marsy Nicholas in 1983 in California.
- Mother/brother of victim saw offender in retail store after he was charged with the crime-they were not advised/aware of his release after bond posted.
- Brother-Nicholas committed himself to change treatment of victims in similar situations.