

City Council Work Session

5:30 PM
Council Chambers
January 4, 2016

ATTENDANCE:

Mayor/Council (please check) Hanel, Cromley, Yakawich, Cimmino, Brewster, McFadden, Friedel, Swanson, Sullivan, Clark, Brown.

ADJOURN TIME: 8:45 pm

Agenda

TOPIC #1	Ethics Code Report and Ethics Training
PRESENTER	Brent Brooks
NOTES/OUTCOME	Bring back ordinance changes to adopt State Ethics Policy

- Friday packet memo summarized in Power Point presentation.
- Result 2/15 initiative by CM Cromley on aged City ordinance
- Enacted in 1981 with amendments in 1982, 1997, 2002, 2009
- Code had existed long time before City Ethics Board initiated in 1981.
- 2-step process for ethics complaint: complaint to member and open meeting to review; does the complaint need further action or are there reasonable grounds for a second hearing? Reasonable grounds not well defined. Both meetings advertised and noticed, with public comment
- Board procedures: Can request additional witnesses or information. At second step, Board issues a decision to City Attorney. Attorney may determine: not a violation, recommend prosecution, or voluntary compliance steps. Letter to City Attorney with decision; if conflict, sent to outside attorney.
- State ethics statutes are better drafted, more comprehensive, used in other cities. Includes local government officials and employees. Complaints sent to County Attorney or a 3-member ethics panel in cities that have created them. Panel submits findings to the attorney.
- County attorney may: take no action, pursue \$500-\$1,000 fine in District Court, or pursue criminal charges.
- Complainants may seek civil action if County Attorney seeks no criminal action. Prevailing party is awarded attorney's fees.
- Surveyed other larger MT cities: Bozeman, Missoula and Whitefish have ordinances. Bozeman, self-governing, has adopted comprehensive ordinances. Stricter of two codes (City or state) applies; Whitefish resolution allows for censure/reprimand.
- Comparison showed weakness of City ordinance: Inconsistent with advisory board form when doing investigation; procedures ambiguous/confusing, although likely made sense when adopted; inconsistencies in language; no appeal process, a procedural flaw; confusing whether City or State ethics laws prevail; no provision for City Attorney

conflict of interest; County Attorney better trained to investigate than citizen board; potential for conflicting results and there could be parallel investigations with City Board and County Attorney; potential civil liability to City and violation of right of privacy.

- Brown: Potential for successive investigations. When occurred previously, County said send back to City? Brooks: County said it would allow City to work, but does own the investigation.
- Sullivan: Hypothetically speaking, if conflict arises between City and County, how is it handled? Brooks: would not happen often, but County Attorney could recuse self and call in County Attorney from another County to assist.
- Brooks: Options: Repeal existing ordinance: apply MT ethics laws, which are similar, more complete, with safe-guards City ordinance do not have, i.e., attorney's fees; Amend City ordinances by creating 3-member panel to submit suggestions to County Attorney—other cities not using, but more thorough than City ordinance; Refer issue to ethics board; seek AG opinion; leave ordinance as is, but train board on meeting and procedural issues. Attorney retained in early '15 helped, ethics board members agree.
- Brooks: Recommend repealing existing City ordinance, rely on MT ethics statutes/procedures as outlined in Appendix 4; State process eliminates City Attorney.
- Cromley: agree with recommendation. Not required to create 3-member commission. Brooks: Agree. Cromley: Could decide not to appoint. Brooks agree; could adopt state standard.
- Clark: How often was committee used: once in 2015 and how many before? Brooks: First in 2008, at least two in 2015 and some in 08-09. Clark: If repeal ordinance and rely on State ordinance, do citizens go directly to County Attorney? Brooks: Yes. Sample letter from County Attorney showing analysis in 2015.
- Yakawich: Weaknesses in investigatory process – hard for citizens? Brooks: After 2015 case, board thought it needed information on what questions to ask. County Attorney is already set up to handle, easier, with knowledge of questions and documents to request.
- Cimmino: Six year gap is a good sign. Received calls from two members -- Binon and Schiffelbein—were they provided with adequate training? Bozeman very detailed. 2 Councilmembers and Administrator involved in last cases. Obvious after 35 years need to review. Brooks: Other boards not required to provide investigation. Could look at Bozeman model, very thorough, but recommend relying on state statutes, revisit later. Cimmino: 3 meetings, no minutes, get from Singer. Brooks: Will convene meeting to approved 2/12/15 minutes and get other ones.
- Hanel: Concerned about liability to City and Board members; right to privacy; and lack of training. Favor Kalispell one line model. Ethics procedure in past ineffective and abused. Encourage Council to consider serious changes. Brooks: At time ordinances enacted 35 years ago, probably made sense but often confusing now.
- Clark: Any past complaints still waiting action? Brooks: Final results of 1/15 and 2/15 sent to Singer. Disqualified from process, not aware of anything outstanding.
- Brown: Ordinance adjustments follow activities by Board? Brooks: One suggested by former Mayor Tooley, covering luncheon speak being given meal, up to \$50 value (no cash), now allowed in City Code and State law. Minor amendments – in 2009-10, did comprehensive change to boards and commissions, some renumbered, nothing substantive. Brown: Adjustments made following complaints? Brooks: No, not to his knowledge. Brown: What does assigning 3-member board do other than drag out time, as

City Attorney still needs to investigate? Brooks: Nothing. Justifies recommending no panel.

- McFadden: Agree adopt Kalispell model. The more complicated it is, more likely City will have problem with slander, libel, defamation of character. City does not need to take on liability, someone could come back on City.
- Cromley: Creating another bureaucracy adds expense for training. Investigation means expense. Important to act ASAP; County Attorney will not accept claims until City ordinance resolved. Hindering citizen effort to file claims.
- Sullivan: Concerned with punitive accusations going before County Attorney. How long to dispose with nonsense ethics complaints? In instances when Councilmember involved, support City board checking it. How many get tried by County Attorney or do 3-person panels do good job getting rid of complaints? Brooks: No City created 3-member panel, County Attorneys in Billings, Cascade, etc., found ethics violation. Typically, County Attorney here has been thorough in what was requested and careful not to contact City Attorney. Could try 3-member panel, but not used, most complaints dwindled in informal discussions with complainant or person accused. If potential conflict, suggest recuse selves.
- Brown: if 3-member board couldn't make a decision, could make a recommendation to County Attorney? Brooks: Correct, no final adjudicatory authority.
- Cimmino: Can't take action, would like to support 5-member board currently because eager to serve, taking active role in community. Need them to review. Brooks: If City keeps 5-member board, different than 3-member State board, potential conflict. May wish to reduce to 3-members to be consistent with State statute.
- **Public comment:**
- Sandra McKee, 2901 Monad Road, Billings, MT, Chair of Ethics Board: Thanked Brooks for clarifying issues. Would recommend revoking existing statute, go with State statute until decided what want to do. Present ordinance ambiguous, allows any charge to come forward, questions remaining in professional situations, big risk. Ordinance should say grievous offenses against morals of community. Clear on what constitutes ethical behavior. Who makes decisions on forfeiture of office, sanctions – now appears Board can do that. Seemed to go beyond advisory board. Puts elected officials and City at risk. Glad to help rewrite. New members must have orientation before they hear first complaint. Went through with hearing to allow more time, only way to be fair to complainant and to complainer. Need time to review – rushed, gave more weight to complaint. Cost taxpayers several thousand dollars and could been handled without such expense. Hanel: Thanks for serving, especially as chair, apologize for putting in bad position.
- McFadden: Appreciate people who served on boards, do not want anyone to feel obsolete.
- Pastor Herb Schiefelbein, 915 Nutter Blvd, Billings, MT: As a pastor, dealt with religious ethics for over 63 years, had 4 years preparation before becoming a pastor. As an insider, wanted to help volunteer for City, concerned about business and City betterment. As a Board member (1 of 4 new), no preparation, and faced suddenly with 3 complaints after long period with none. This is where Council needs to bring information to people volunteering. Feel that if we can use citizen volunteers, please do, same with Board of Ethics. Need a lot of changes, training necessary.

- Connie Wardell, PO Box 21432, Billings, MT: Former Local Government Review Committee, concerned about actions of Ethics Commission. Supposed to eliminate decisions by all but Council. Boards supposed to be advisory only. Ethics Board is in conflict with the Charter. Support repeal. Served on state board, and different thought of what should be done, i.e., can't vote because conflict of interest unless money in pocket. To not vote, shirking duty. Should come to County Attorney for better result, counseling.
- Kevin Nelson, 4235 Bruce Avenue, Billings, MT: Ethics board worked well. Hearing in past found guilty by Judge Fagg, who understood process. Another case, Councilmember resigned, knew what was coming. County Attorney is no avenue, FBI initiated task force going after local officials. Cleaned up state in Indiana. Council put politics into ethics. Brown: With City-appointed board, same charges – City taking care of City—keep coming up. County Attorney more fair.
- Dennis Ulvestad, 3040 Central Avenue, Billings, MT: Attended Ethics Board, Chair did outstanding job with what given; follow her suggestion to repeal Ethics Board ordinances, instead of three should be 5-member board. Should be oriented on duties to avoid lawsuits. More forward from here.
- Tom Zurbuchen, 1747 Wickes Lane, Billings, MT requests repeal City Ethics Code and adopt state code. For months no board, needs to be resolved immediately. Seldom-used, state code handles professional investigations and decisions, Charter violation to make decisions.
- Mayor: No vote but direction?
- Brooks: Previous employees mentioned were handled through collective bargaining discipline.
- Cromley: Recommend repealing City ordinance, adopt ordinance similar to Kalispell, turn over to County Attorney.
- Mayor: Support of Council?
- Yakawich: Like elected County Attorney involved, take extensive training, thanks to those who volunteer, support Cromley's direction .
- Brewster: More appropriate to ask if okay to come forward to bringing recommendation forward.
- Mayor: Strong opposition?
- Cimmino: Recommendation to mirror Kalispell, which says all subject to State law. Favor Bozeman comprehensive plan. Didn't get Kalispell Code. Brooks: Could get a copy of bill; provided all language in Kalispell City Code. Council could embellish, could provide alternative language, if choose.
- McFadden: If citizen committee, might be manipulated by someone bringing false accusation, would stop at County Attorney.
- Mayor: Any strong opposition?
- Sullivan: Ethics complaints waiting? Need to put time on it. Brooks: None pending that he knows of, ask Chair. Zurbuchen says County Attorney not taking complaints until issue resolved. McKee: None pending.

TOPIC #2	Annexation Policy, Map Discussion and Process
PRESENTER	Candi Millar, Wyeth Friday
NOTES/OUTCOME	

- Millar: From 1990 to 2000, City annexed 1 square mile, but from 2000-2010, annexed 10 square miles. Annexation process controlled by state law, with six methods annexing property dating back to 1880s. City relies primarily on property owners voluntarily annexing. While water and sewer can charge fees, other departments can't. That was recognized in early 2000s, when Briarwood, Rehberg Ranch and Yellowstone Club Estates were annexed. The City fell behind in covering the cost of services, when it couldn't keep up with the demand. 2004, City adopted an annexation policy to help maintain orderly growth.
- Friday: On the annexation map, blue line shows current City limits; red area is ready for annexation in five years because can provide services; orange would require additional analysis. White is not within current policy purview. Process conducted annually; in a few months, staff committee will come back with recommendations to Council for decision on changes to map and/or policy. Review with Capital Improvement Program (CIP). As updates made to CIP, could affect ability to provide services. Annexation Committee reviews map starting in November with notice to applicants to submit requests. Set up monthly schedule to review. Reviewed policy in 2011, map last amended in 2014. In 2011, made changes in information requested. Some years, activity varies. Annexation Committee staff comes from many departments, SD#2 and County Water District of Billings Heights. Provide recommendations on map and policy.
- Brewster: Where in process do we determine where people want to live, and where there are willing developers? Involve realtors? Friday: Map is based on where City is able to provide services, look at Water/Sewer Master Plan, Growth and Transportation policies. Seem to have had properties in red areas want to develop, and some property owners outside of the red areas want to develop. Brewster: Nervous about number of developments in the County areas surrounding the City? Wyeth: Only became prevalent in last 2 years because prior to that time, economy prevented. Could be a challenge later, but many want to develop only in County. Volek: Had some could not bring in because not sufficient water pressure, when new reservoir built, were allowed in (Friday: Lenhart Square).
- Cimmino: Do realtors participate? Friday: Yes.
- Brown: When does desire of developers ready to build come into play ie Inner Belt Loop? Changed yearly? Friday: This process time to do that.
- Friday: In past few years SD#2 participated, helped knowing where coming from, very helpful, not part of process when first started.
- Friday: Procedure looks at distance, capacity, cost of services, effect on existing residents, conformances with adopted plan. Cost of City services important – need cost of services sturdy, will discuss later. Try to get feedback from departments that we are continuing to provide same services to existing residents.
- Friday: Requests can be made by residents, departments with request of City Administrator. Two types of changes—brought into orange, ie Trailhead Park, which was not included last year. Amendments to red more common, conduct urban planning study to bring into area, what kind of development, impact on public safety.
- Yakawich: What are property owners in orange required to provide? Friday: In both red and orange, more information provided helps determine what kind of services need be provided.

- Friday: Next committee meeting Jan. 20 will include specific requests. Have 3 – one previous and one new orange to red and one from white to orange. Friday communicates with property owners, not public hearings, but property owners involved in discussion. One meeting per month until committee has information, brings to Council.
- Friday: Possible changes this year. How managing land in red long-term? How depicted on map. Recommendations on cost of services, and growth policy.
- Friday: Will bring an annexation request later this year, can be submitted any time. Have to be in red, must be adequately able to provide services, meet City standards on public improvements, condition with subdivision improvements, require waiver of protest to future SIDs, will it comply with zoning? If not, otherwise go through zoning process, automatically become R-9600 when come in from County,
- Cimmino: Word cloud showed Inner Belt Loop important. Friday: Land recommendation brought to Council several years ago, when moved forward services, brought into orange. Cimmino: When will staff provide follow-up memo to bring orange into red. Friday: no discussion on moving entire orange area into red. Volek: referring to Inner Belt Loop phase two? Friday: may look at this in the future and will determine how to provide services
- Yakawich: City County Committee consider this? Saw house being built in creek bed. Millar: Envision to use City/County Planning Board members to ask Commissioners to have different standards for subdivisions in immediate area next to City to avoid lack of storm facilities, urban streets, sidewalks. Ask Commissioners to consider suburban standards to avoid future issues. Cloverleaf Subdivision an example on Grand: no sidewalks, drainage may be problems, would have to spend money to increase capital improvements, cost existing property owners lots of money. In '06 approached by Molt Road subdivision. Couldn't improve without large costs. Lockwood subdivision cost benefit analysis showed would cost \$80 million. Yakawich: Win-win, knowing standards, when someone building, helping future property owners to move into City. Millar: City and property owners.
- Clark: served on Planning Board, whenever bring new subdivision in, developers aren't interested because of additional costs.
- Millar: Growth Policy may affect how provide services, doesn't describe where grow, shows what density would do to costs, and will see how affect annexation map and change colors in another year or so.
- Friday: Mumford clarified on Inner Belt Loop, looking at City right of way only, private owners have make own request.
- **Public Comment:**
- Kevin Nelson, 4235 Bruce Avenue, Billings, MT: Ask if property owner request being put into red, would it be possible to asses charge to property if want to come in over time? Get property generating revenue when starting?
- Sullivan: How do we charge Planning Department's time to look at non-City owners to judge costs? Millar: Charge fee for annexation, but not to change map, except for urban planning study to go from orange to red. Cost about \$900 for residential and \$1,100 commercial. Sullivan: Flat fee? Millar: Yes.

- Clark: City/County Planning, get some funds from County? Millar: About $\frac{1}{4}$ of budget comes from \$3.80 annual expense throughout the County to help offset costs.
- Brown: Issue providing services, discussed before? Mumford: Done on rare occasions, such as sewer and water in Lockwood, Phillips 66, Exxon, try not to. Needs to be circumstance such as retaining business, services. Cloverleaf example of significant water and sewer issues, not cost-effective to bring in. Large-lot subdivisions issue. Recouping costs for water and sewer difficult when extended line to distant subdivisions may not recover if don't continue to annex. Brown: If we do property by property, get leap frog effect. Mumford: Yeagans and Zimmers have large area not likely to annex soon, promised services to those areas.
- Friedel: Impact fee? Mumford: Water and wastewater, pay for infrastructure already in place, but not for police, fire, etc. Volek: significant issue in other cities, suggested impediment to growth. Friedel: Incentive for future development possible? Millar: Commissioners would likely ask to look at incentives. Impact fees pay for system right now, with water and sewer fees, can't afford to upgrade system without fees, State law says only can be used for facilities, not operations, so install fire station, still have to pay for operations and staffing.
- Clark: Only providing wastewater to Lockwood? Mumford: Yes.
- Cimmino: Annexation for middle schools tax exempt, citizens pay for them (Elysian, Ben Steele, Medicine Crow). Mumford: Does not apply to system development, storm maintenance fees. Cimmino: Property taxes on Cloverleaf high – any incentives to offer? Mumford: comes down service provision/extension costs. Streets need be wide enough. Came twice with SID discussions, large lot frontage, decided was cost to high.
- Clark: Where is Cloverleaf located? Mumford: Cloverleaf on Grand near Zimmerman.
- Tom Zurbuchen, 1747 Wicks Lane, Billings, MT: Part of annexation request previously required four lots per acre, red hasn't changed, in Heights straight line area with deed covenants saying only one home on lot, why in red? No owners asked for it, and no owners want it. West end of Wicks lane, sewer and water right to end, why yellow not red. Some things are red and some yellow that make no sense. Friday: Will have to look more into areas mentioned, not aware of covenants in which the City is not involved. Areas included many years ago, looking at areas to be served. Volek asked Friday to explain areas in red that are industrial. Friday: Some areas industrial and state law prohibits forcing annexation, may come forward themselves to petition like refinery.
- McFadden: Possible to get rid of covenants? Friday: Ways to change, depending on how they were originally created, number of properties involved.
- Connie Wardell PO Box 21432, Billings, MT: Urban/Rural issue common in other states. Disclosure element may be helpful. People buy in areas like Cloverleaf for nicer houses at lower costs. No disclosure requirements to notify buyers of issues of annexing into City. In California, developer outside City does not build to urban standards, developer had to disclose so property owner sees title report in current dollars. Might be disincentive to develop outside City. Brown: Full disclosure have to be state requirement? Wardell: Don't know, would need to be explored.

TOPIC #3	Council Discussion
----------	--------------------

PRESENTER	
NOTES/OUTCOME	

- Yakawich: Friday packet question on code enforcement well done, educational, colors to delineate between items. Millar: Thanked Yakawich. Stated item was annual report.
- Yakawich: Why so many RVs and trailers? Millar: Code does not allow trailers on street except in certain condition, irritating, get lots of complaints during hunting and RV/camping season. Do not ticket on Friday afternoons or Monday mornings. Other situations include improper parking (not being allowed to park in yard, too close to house, has to be on concrete). Yakawich: Three code enforcement officers, complaint driven, need more? Millar: Yes, cities of same size have six, need supervisor and secretary. Volek: Code Enforcements positions are paid through the General Fund, 88 employees outside public safety in General Fund, public safety number one priority, choice on what to fund from recommendations of Council.
- Clark: Six initiatives coming forward in future meetings, including public safety funding.
- Cimmino: Ethics training signup sheet? Volek: Not aware, if Council wants to sign up, let Volek know. Cimmino: required for Council? Volek: required for staff, not Council
- Cimmino: Cromley asked for 24-hour notice on initiatives, put in part of procedures? Brooks: could add this to rules of procedure.
- Brewster: has several initiatives as well.
- Cromley: appreciate advance notice for initiatives. Understand there may be emergency initiatives that could come about during a meeting.

TOPIC #4	Public Comment on Items not on the Agenda
PRESENTER	
NOTES/OUTCOME	

- Tom Zurbuchen, 1747 Wicks Lane, Billings, MT: Reminded Council that two incumbents in essence fired by voters. Initiatives needed and welcomed.