

# ANNUAL REPORT 2021

## BOISE CITY ETHICS COMMISSION

### **Introduction**

The City of Boise Ethics Commission (“Ethics Commission”) was established in 2004 to provide the City of Boise (“City”), its employees and the public with a forum to discuss issues of workplace and governmental ethics.

The Ethics Commission applies the City Ethics Code to factual issues and provides specific advice to City employees. Members of the public, City employees or City officials may present issues to the Ethics Commission, and the Commission’s past opinions are available on the City’s website <https://www.cityofboise.org/departments/mayor/ethics-commission/advisory-opinions/>. The Ethics Commission strives to bring ethics and ethical conduct into the everyday consciousness of Boise citizens and City employees. With assistance from the offices of the City Attorney, Human Resources, and the City Clerk, we on the Commission believe this goal has been substantially achieved.

### **The Importance of Ethics in Government**

The City of Boise continues to be the only city in Idaho with an Ethics Commission. In other states, however, many municipalities have established their own boards or commissions tasked with enforcing codes of ethics.

Though Idaho is one of only eight states without a statewide ethics commission, the Legislature does have a resource in the *Ethics Handbook of the Idaho Legislature*, which lists “Ethics Guidelines ~ Procedures ~ Rules and Statutes.” The Attorney General has also drafted a manual titled “Idaho Ethics in Government Manual,” which includes the Ethics in Government Act.

Boise’s Ethics Commission continues to engage members of the public as well as City employees and officials in a dialogue about ethics and ethical conduct in the workplace.

## **Ethics Commission Members**

The Ethics Commission (“Commission”) consists of five volunteer members. The Commissioners and their respective terms of service are as follows:

### **Appointed by the Mayor:**

Tony Roark: Four-year term expires February 2025 (Chair)

Monica Church: Four-year term expires February 2023

### **Appointed by the City Council:**

Luke Howarth: Four-year term expires February 2025

Vacant: Katelynn Penney, whose four-year term was set to expire in February 2023, resigned from the Commission.

### **Appointed by the Ethics Commission (on the recommendation of the Boise City Wages and Benefits Team):**

Addison King: Two-year term expires February 2023 (Vice Chair)

## **Support Staff**

The Ethics Commission works closely with City staff members who assist the Commission by preparing agendas, minutes, and draft opinions. Staff members also attend meetings and provide advice and information during deliberations. The Ethics Commission relies on and appreciates this assistance. Advisors to the Commission include:

- Sarah Martin, Human Resources Department
- Nacho Larracochea, Human Resources Department
- Doug Tyler, Legal Department
- Jamie Heinzerling, City Clerk's Office
- Char Tim, City Clerk's Office

## **Getting the Word Out**

During new-employee orientation, City employees are informed about the City's commitment to ethical conduct and the various methods employees can use to report ethical concerns or ask for advice.

The Ethics Commission's webpage can be found on the City of Boise's website at <https://www.cityofboise.org/departments/mayor/ethics-commission/>. Both employees and the public can access the Commission's webpage which includes information about the Commission, how to contact the Commission, meeting dates and times as well as:

- Revised Code of Ethics, attached as *Exhibit A*.
- Ethics Commission Rules of Procedure, attached as *Exhibit C*.
- Meeting agendas and minutes.
- City's Ethics Handbook.
- Ethics Commission annual reports.
- Request for Advisory Opinion and Inquiry forms.
- Advisory Opinions issued by the Ethics Commission (either by reference to a particular Boise City Code section or by date issued).
- Inquiry decisions; and
- Brief biographical information about each Commissioner

The Ethics Commission also has a dedicated email address ([ethicscommission@cityofboise.org](mailto:ethicscommission@cityofboise.org)) for questions or inquiries and a toll-free telephone hotline to report concerns. A summary of email messages received in 2021 is attached as *Exhibit F*.

Commission meetings are open to the public and are held on the second Thursday of each odd numbered month at 3:30 p.m. as business needs require, or more frequently if necessary. Meetings are typically held at City Hall; however, in 2020 and 2021, virtual meetings were held as needed due to the COVID-19 pandemic. When no pending Request for Advisory Opinion or other new business is before the Commission for decision, the regular meetings are cancelled.

The Commission continues to recommend outreach and education regarding workplace ethics to enable the Commission to better support the City's work.

### **Ethics Questions**

Ethics-related questions can be presented to the Ethics Commission in the following forms:

- Request for Advisory Opinion (copy attached as *Exhibit D*)
- Request for Inquiry Form (copy attached as *Exhibit E*)
- Email message
- Toll-free telephone hotline that allows employees to remain anonymous

The City contracts with NAVEX Global (NVX) to provide a confidential telephone hotline (the “Alert line”) and an online platform known as EthicsPoint to report potential ethical violations at a cost of \$4,984 per year. The NVX agreement is for one year and automatically renews each year unless either party decides otherwise. The Ethics Commission and the Mayor’s Office support this expenditure as necessary to provide employees and community members a convenient, confidential, and independent avenue to voice concerns about perceived unethical behavior.

The Boise City Human Resource and Legal Departments screen the Alert line and EthicsPoint reports. At each regular Commission meeting, the Ethics Commission is provided an update of activity and a summary of the nature and disposition of each report received. Calls deemed to be unrelated to Ethics Commission responsibility are delegated to the appropriate City department for follow-up.

Employees, elected and appointed officials, and members of the public may communicate ethical concerns through any of these methods.

A summary of the email messages and telephone Alertline contacts received by the Ethics Commission are attached as *Exhibit F* and *Exhibit G*, respectively.

### **Requests Received by the Ethics Commission in 2021**

The Ethics Commission received three (3) requests for advisory opinions in 2021 and issued three (3) written opinions in answer to those questions. A copy of Advisory Opinions 21-01, 21-02, and 21-03 are attached as *Exhibit H*. The Ethics Commission did not receive a Request for Inquiry in 2021.

## **Recommendation for Code of Ethics Modification**

Section 2-12-6 of the code of the City of Boise provides that the Ethics Commission’s annual report “shall include any recommendations for modifying the Code of Ethics.”

The Commission recommends that the first sentence of section 2-12-1(E)(2), which currently reads: “The Mayor may remove a member appointed by him for inappropriate conduct . . .” be modified to remove the gender-specific pronoun “him” in reference to the mayor (E.g., “The Mayor may remove a member appointed by the Mayor. . .”).

The Commission is aware of the Code’s general rule of construction in section 1-3-1(C)(3) (“Gender: A word importing the masculine gender only shall extend and be applied to females and to firms, partnerships and corporations as well as to males.”), but also believes language used in the Code should be specifically changed whenever possible.

## **Conclusion**

The Ethics Commission is committed to fostering integrity in public service for the benefit of the City of Boise and its citizens. The Commissioners look forward to another year of service and the opportunity to resolve challenging issues as Boise continues to set the standard as the most ethically conscious municipality in Idaho.

## **LIST OF EXHIBITS:**

- A. Boise City Code, Title 1, Chapter 8 (Code of Ethics)
- B. Boise City Code, Title 2, Chapter 12 (Ethics Commission)
- C. Boise City Ethics Commission Rules of Procedure
- D. Request for Advisory Opinion form
- E. Request for Inquiry form
- F. Summary of 2021 email messages to the Commission
- G. Summary of 2021 Alertline calls
- H. Advisory Opinion numbers 21-01, 21-02, and 21-03.

# **EXHIBIT A**

**Boise City Code, Title 1, Chapter 8 (Code of Ethics)**

## CHAPTER 8

### CODE OF ETHICS

#### SECTION:

#### 1-8-1: Policy

#### 1-8-2: Definitions

#### 1-8-3: Standard Of Conduct

#### 1-8-4: Disclosure Of Conflicts Of Interest

#### 1-8-5: Prohibited Influence And Conduct

#### 1-8-6: Prohibition Of Financial Interest

#### 1-8-7: Exception

#### 1-8-8: Appointments To Boards And Commissions; Terms

#### 1-8-9: Penalty

#### 1-8-1: POLICY:

It is hereby declared to be the policy of the City, and the Council hereby finds and declares such policy to be necessary in order to promote and provide efficient and good government, where government is based on the consent of the governed, that the proper operation of democratic government requires the public officials and employees be independent, impartial and responsible to the people, that government decision and policy be made in the best interest of the people, the community and the government, that public office not be used for personal gain, and that the public have confidence in the integrity of its government. (1952 Code § 1-21-01)

#### 1-8-2: DEFINITIONS:

As used in this chapter, each of the terms herein defined shall have the meanings given in this section, unless a different meaning is clearly required by the context. All words used in the present tense shall include the future; words used in the singular number shall include the plural number, and the plural number the singular, unless the natural construction of the sentence indicates otherwise, and the word "shall" is mandatory, not directory:

**BUSINESS:** Any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any legal entity.

**BUSINESS WITH WHICH HE OR SHE IS ASSOCIATED:** Any business of which the person or a member of his or her household is a director, officer, owner, employer or holder of more than one percent (1%) of the outstanding stock, and any business which is a client of the person.

**CITY OFFICIAL:** Any elected official, employee, any member of a board or commission appointed by the Mayor or City Council, or any agent of the City.

**EMPLOYEE:** An individual drawing a salary from the City, whether elected or not, and any noncompensated individual who performs personal services for the City.

**VALUABLE GIFT:** Any gift with a value in excess of fifty dollars (\$50.00), and any gift with a value of less than fifty dollars (\$50.00) where the item is durable and/or transferable and is offered within six (6) months of similar gifts. The purpose of this definition is to ensure that employees do not seek nor receive multiple gifts that total more than fifty dollars (\$50.00) over a relatively short period of time. Gifts that are durable and/or transferable do not include food items, meals and the like. (1952 Code § 1-21-02)

#### 1-8-3: STANDARD OF CONDUCT:

No City official shall knowingly:

A. Use his or her official position or office to obtain financial gain for him or herself, any member of his or her household, or any business with which he or she or a member of his or her household is associated.

B. Use or disclose confidential information gained in the course of or by reason of his or her official position or activities in any way that could result in financial gain for him or herself or for any other person. (Ord. 53-15, 12-8-2015)

C. Accept any valuable gift, whether in the form of service, loan, thing or promise from any person or business that is interested directly or indirectly in any manner in a business dealing with the City if that City official has any discretionary function related to the business dealing; provided, however, any City official who is a candidate for public office may accept campaign contributions and services in connection with such campaign. Gifts of any kind shall not be accepted where there exists a substantial risk that the gift would undermine official impartiality. (Ord. 53-15, 12-8-2015; amd. 2019 Code)

D. Violate the fiduciary duty owed to the City under this standard of conduct. The fiduciary duty is defined as a duty to act for the benefit of the citizens of the City of Boise, while subordinating one's personal interest to those of the City as a whole. When an employee expends any resources of the City, this duty requires that the expenditure be reasonable, prudent and for the benefit of the City and not for personal gain. (Ord. 53-15, 12-8-2015)

#### 1-8-4: DISCLOSURE OF CONFLICTS OF INTEREST:

A. **Conflict Of Interest Defined:** For purposes of this section, an actual "conflict of interest" is defined as a set of circumstances

wherein a City official would be required to take an action or make a decision that would affect his or her personal financial or pecuniary interests, or those of a member of his or her household, or a business with which he or she is associated. An apparent conflict of interest is one that does not affect a City official's personal financial or pecuniary interests, but nevertheless calls into question his or her objectivity and independence. Any City official who has either an actual conflict of interest or an apparent conflict of interest, shall:

1. If a City official, other than an appointed or elected member of a commission, board or council, verbally discloses such interest to the Mayor (or if such City official is the Mayor, then to the City Council), who may require the assignment of the matter creating the conflict to another City official of the same department of the City who does not have a conflict of interest, or determine such conflict de minimus, as defined in subsection B of this section. (1952 Code § 1-21-04)

2. If an appointed or elected member of a commission, board or council, discloses such interest on the records of said commission, board or council and shall disqualify him or herself from participating in any decision or vote relating thereto, unless following such disclosure a majority of the remaining members of such commission, board or council determined by official action at a public meeting of such commission, board or council that such conflict of interest is de minimus, as defined in subsection B of this section.

B. De Minimis Conflict Defined: A pecuniary benefit is de minimis if it does not exceed the value of fifty dollars (\$50.00) incidental to personal, professional or business contacts and involving no substantial risk of undermining official impartiality, as defined in Idaho Code section 18-1359. An officer's interest in a contract is deemed de minimis if it is a remote interest. "Remote interest" means that of a nonsalaried officer of a nonprofit organization; that of an employee of a contracting party where the compensation consists entirely of fixed wages; that of a landlord or tenant of a contracting party; or that of a holder of less than one percent (1%) of the shares of a corporation or cooperative which is a contracting party, all as defined in Idaho Code section 74-502. There is no conflict of interest if the City official's personal interest is so remote that it would be unreasonable to question his or her ability to impartially serve the City's best interests. (Ord. 31-15, 7-28-2015)

#### **1-8-5: PROHIBITED INFLUENCE AND CONDUCT:**

A. Valuable Gift: No City official shall solicit or receive any valuable gift, or anything of value, including favors, services or promises of future employment, based on any understanding that such City official's vote, official action or judgment would be influenced thereby, or where it could reasonably be inferred that the thing of value would influence the City official in the discharge of his or her duties, or as a reward for the discharge of his or her duties.

B. Money: No person shall offer or pay to a City official, and no such City official shall solicit or receive, any money in any amount in addition to that received as wages or salary by the City official in his or her official capacity, for advice or assistance given in the course of the City official's employment or relating to the employment. (1952 Code § 1-21-05)

#### **1-8-6: PROHIBITION OF FINANCIAL INTEREST:**

A. Requirement: No public official having any discretionary function to perform in connection with an expenditure, purchase, sale, or contract shall have any personal beneficial interest, either directly or indirectly in such expenditure, purchase, sale, or contract made by the City or in any firm, corporation or association that furnishes or bids on such purchase, sale or contract.

B. Standard Of Conduct: Every officer, employee or agent of the City is expressly prohibited from knowingly:

1. Underestimating or exaggerating requirements to certain prospective bidders in order to influence bids.
2. Misrepresenting a competitor's prices, quality or service to obtain concessions.

3. Splitting invoices or orders, etc., in an effort to avoid the competitive bid requirements of Idaho Code and City of Boise ordinances. (Ord. 53-15, 12-8-2015)

#### **1-8-7: EXCEPTION:**

A City official shall not be deemed to have a financial interest in a matter if his or her interest is solely that of a general taxpayer or solely that of a recipient of public services generally provided by the City on the same terms and conditions as if he or she were not an official. (1952 Code § 1-21-07)

#### **1-8-8: APPOINTMENTS TO BOARDS AND COMMISSIONS; TERMS:**

A. Appointments: Appointments to boards and commissions of the City shall be made with a view to minimizing potential conflicts of interest described in this chapter, and no person shall be appointed to any such board or commission if his or her potential conflicts of interest are of such a degree that they are likely to substantially interfere with the performance of his or her duties as an official. Appointments to such boards and commissions have memberships which approximate the diverse interests of the residents of the City. (1952 Code § 1-21-08)

B. Terms Of Office: The terms of office for each board and/or commission shall be provided by ordinance. Reappointment for a successive term or terms shall be subject to the approval of the Mayor and Council. Prior to the expiration of a term of office, the board or commission upon which a member serves may submit a majority recommendation to the Mayor and Council for the reappointment of such member or the appointment of a new member for Council consideration. (1952 Code § 1-21-09)

#### **1-8-9: PENALTY:**

Any person or business violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be subject to penalty as provided in section 1-4-1 of this title. (Ord. 31-13, 8-27-2013; amd. 2019 Code)



# **EXHIBIT B**

**Boise City Code, Title 2, Chapter 12 (Ethics Commission)**

## CHAPTER 12

### ETHICS COMMISSION

#### SECTION:

#### 2-12-1: Ethics Commission

#### 2-12-2: Advisory Opinions

#### 2-12-3: Inquiries

#### 2-12-4: Procedure For Inquiries

#### 2-12-5: Subpoenas

#### 2-12-6: Annual Report

#### 2-12-1: ETHICS COMMISSION:

A. Purpose: The purpose of the commission shall be to issue advisory opinions related to title 1, chapter 8, "Code Of Ethics", of this Code; and to hear inquiries and issue findings regarding alleged violations of the previously cited provisions.

B. Creation And Appointment: There is hereby created an Ethics Commission to consist of five (5) members. One member of the Ethics Commission shall be an employee of the City. This member shall not be an elected or appointed official, a member of the Mayor's Office, the City Attorney or his/her staff, the internal auditor or his/her staff, a department head or any employee of Human Resources. Three (3) members of the commission shall constitute a quorum. (1952 Code § 2-24-01)

#### C. Method Of Appointment:

1. The Mayor shall appoint two (2) members. The City Council shall appoint two (2) members.
2. The employee member of the commission shall be appointed by a majority of the four (4) members appointed by the Mayor and City Council. The commission shall receive input from the Department of Human Resources prior to selection. (Ord. 6-18, 2-6-2018)

#### D. Terms Of Appointment:

1. Nonemployee members shall be appointed to terms of four (4) years; however, the first member appointed by the Mayor and the first member appointed by the City Council shall initially serve two (2) year terms to achieve staggered ending dates. The City employee member shall serve a term of two (2) years, which may be renewed by reselection by the commission.
2. If a member is appointed to fill an unexpired term, that member's term shall end at the same time as the term of the person being replaced.

#### E. Termination Or Removal:

1. The unexcused absence of any member of the commission from three (3) consecutive meetings, unless the commission has excused the absence for good and sufficient reasons as determined by the commission, shall constitute termination from the commission.
2. The Mayor may remove a member appointed by him for inappropriate conduct before the expiration of the member's term. The City Council may remove a member appointed by the City Council for inappropriate conduct before the expiration of the member's term. The commission may remove the member appointed by the commission for inappropriate conduct before the expiration of the member's term. Before removing a member, the Mayor or City Council, or commission, shall specify the cause for removal and shall give the member the opportunity to make a personal explanation.

F. Compensation: Members of the Ethics Commission shall serve without compensation in a volunteer capacity. The member who is an officer or employee of the City shall not receive any additional compensation for serving on the Ethics Commission.

#### G. Consultation With City Attorney:

1. The Ethics Commission shall be provided with the services of the City Attorney or designee to assist it with legal questions, questions of procedure and to act as parliamentarian at their meetings. The Ethics Commission may consult with the City Attorney or designee regarding legal issues and may request advisory assistance in conducting hearings on inquiries during any stage of the process.

2. In the event that the City Attorney or a member of the City Attorney's Office is the subject of an inquiry, the Ethics Commission is hereby authorized to retain conflict counsel. The Mayor and City Council shall assist the commission in retaining conflict counsel.

3. The commission shall have the ability to request assistance from Human Resources. When an inquiry involves a member of the Human Resources staff, the commission shall not request or receive their assistance. (1952 Code § 2-24-01)

#### 2-12-2: ADVISORY OPINIONS:

A. Current Employees: Any current officer, official, appointee or employee may submit a written request to the Ethics Commission for advisory opinions on whether any conduct by that person would constitute a violation of the City Code of Ethics.

B. Persons Intending To Become Employees: The Ethics Commission may render advisory opinions to individuals who intend to

become employees, officers, or officials upon written request of the person. The commission may make further inquiry of the potential future relationship the requester may have with the City to determine the appropriateness of proceeding on the request.

C. **Publication Of Opinions:** The Ethics Commission may publish its advisory opinions. It shall do so in compliance with the provisions of the Idaho Public Records Act. The commission may publish guidelines based on advisory opinions.

D. **Conduct In Accordance With Advisory Opinion:** A person whose conduct is in accordance with an advisory opinion or a published advisory opinion of the commission that has not been superseded by a subsequent advisory opinion shall not be found in violation of any of the provisions of the City Code of Ethics.

E. **Noncompliance With Advisory Opinions:** When the Ethics Commission has reason to believe that an advisory opinion has not been complied with, it shall inform the person, the person's Supervisor, the department head, the City Attorney, Human Resources and the Mayor. The Supervisor, department head, the City Attorney, Human Resources and the Mayor shall take all steps necessary to ensure compliance or address the matter as a performance issue through the progressive discipline process. This provision does not provide authority for the commission to independently investigate matters of compliance with advisory opinions.

F. **De Minimis Opinion:** The commission may issue advisory opinions declaring the intended conduct de minimis. The requesting party is entitled to rely on the advisory opinion of the commission. Notwithstanding that determination, the Supervisor or department head of the affected employee can supersede that determination as department policy. De minimis is defined as a trivial benefit not to exceed the value of fifty dollars (\$50.00) incidental to personal, professional or business contacts and involving no substantial risk of undermining official impartiality.

G. **Authority Of Commission To Decide:** The Ethics Commission shall have the sole authority to decide whether to consider, investigate or issue an advisory opinion to any party seeking such opinion. The Ethics Commission shall render an advisory opinion pursuant to written rules adopted by the commission. (1952 Code § 2-24-02)

### **2-12-3: INQUIRIES:**

Any person may file an inquiry with the Ethics Commission asking whether a current officer, official or employee has failed to comply with the City Code of Ethics. The City Clerk or designee shall accept inquiries on behalf of the Ethics Commission and shall immediately transmit such inquiry to the commission or its designee. The City Clerk is responsible to schedule meetings and post notice of said meeting pursuant to Idaho open meeting requirements. Subject to section 2-12-4 of this chapter, the Idaho Public Records Act, and the rules adopted by the commission pursuant to section 2-12-4 of this chapter, the Ethics Commission shall follow all the appropriate law and procedures, to include the following:

A. **Hearing:** May conduct a hearing pursuant to the Idaho open meetings requirements on all inquiries which have not been dismissed pursuant to subsection 2-12-4F of this chapter or resolved in accordance with subsection 2-12-4G of this chapter. The affected officer, official or employee shall have the right to a closed hearing if allowed by law.

B. **Written Findings:** Except as otherwise provided by law, written findings and recommendations, if any, on inquiries will become public record. The commission findings should characterize the seriousness of the violation, if any.

C. **Notice Of Findings And Recommendations:** Except as otherwise provided by law, the commission shall inform the person who is the subject of the inquiry and the person who submitted the inquiry of its findings and recommendations.

D. **Supervisor, Department Head Notified:** If the person who is the subject of the inquiry is an employee, nonelected officer or appointed official, notify the person's Supervisor and department head of its findings and recommendations. (1952 Code § 2-24-03)

### **2-12-4: PROCEDURE FOR INQUIRIES:**

The Ethics Commission shall adopt written rules for inquiries that create a process that is fair to both the person who submits the inquiry and the person who is the subject of the inquiry. In addition to rules which the commission may, in its discretion adopt, the rules shall:

A. **Time Line:** Establish time lines for all aspects of its handling of inquiries. The time lines shall be sufficiently long to enable a person who is the subject of an inquiry to have adequate time to understand the inquiry and prepare a response. The rules shall allow the commission to alter the time lines upon a request of the subject of the inquiry for more time to prepare.

B. **Filing:** Require the inquiry to be filed with either the City Clerk or the 1-800 telephone reporting line with sufficient identifying information to enable the Ethics Commission and staff to identify and contact the complaining party. The Ethics Commission will provide for a form which shall contain a statement that states, to the best of the person's knowledge, information and belief formed after reasonable reflection, the information in the inquiry is true. The rules shall require the inquiry to describe the facts that constitute the alleged violation of the Code of Ethics in sufficient detail so that the commission and the person who is the subject of the inquiry can reasonably be expected to understand the nature of any offense that is being alleged.

C. **Actions More Than One Year:** Prohibit the commission from accepting inquiries about actions that took place more than one year prior to the date of filing.

D. **Notification:** Require the commission to notify the person who is the subject of the inquiry that an inquiry has been filed. The rules shall require the commission to provide notification in a timely manner. The rules shall require the notification to include a copy of the full inquiry; a copy of any portion of the Code of Ethics that is alleged to have been violated; and the commission rules for dealing with inquiries.

E. **Public Release Of Inquiry:** Require the commission to provide the subject of the inquiry with a copy of the inquiry before it provides copies to any other parties. The rules shall recognize that distribution to the public of an inquiry prior to screening by the commission or its designee could harm the reputation of an innocent person and is contrary to the public interest; therefore, the rules shall prohibit the public release of the inquiry until the screening process has been completed.

F. **Review Time Period; Dismissal:** Require the commission, a committee of the commission or a designee of the commission to review the inquiries within the time period as adopted by the commission. The rules shall require the dismissal and the reason for

dismissal to be in writing and available to the public. The rules shall allow the inquiry to be dismissed if:

1. The commission has no jurisdiction over the subject matter or the alleged violator;
2. The alleged violation, if true, would not constitute a violation of the Code of Ethics;
3. The alleged violation is a minor or de minimis violation;
4. The inquiry is, on its face, frivolous, groundless or brought for purposes of harassment;
5. The matter has become moot because the person who is the subject of the inquiry is no longer an officer, official or employee, unless the commission determines that the public interest would be served by publishing an advisory opinion;
6. The person who is the subject of the inquiry had obtained a determination that the issue was de minimis or an advisory opinion under section 2-12-2 of this chapter permitting the conduct; or
7. The Supervisor or department head has already taken action as a result of finding a violation.

G. **Finding Without Public Hearing:** Allow the commission, at its discretion, to make a finding solely on the basis of written arguments without holding a public hearing, if it determines that there is no significant discrepancy in the facts as presented by the person filing the inquiry and the person who is the subject of the inquiry; and the commission determines that it does not need any additional information. However, the person alleged to have violated the Code of Ethics retains the right to demand a hearing, which may be open to the public.

H. **Open Meetings:** Require the commission to have hearings on inquiries at meetings which may open to the public, when said inquiries have not been dismissed or resolved pursuant to this section.

I. **Representation:** Allow any person who is the subject of an inquiry to designate a representative if he or she wishes to be represented by another, to present evidence, and to cross examine witnesses. The rules shall allow the person who submitted the inquiry and the subject of the inquiry sufficient time to examine and respond to any evidence not presented to them in advance of the hearing. While the intent of the process is to provide all parties sufficient time to prepare for a hearing, in no circumstance shall the inquiry hearing be held more than sixty (60) days from receipt of the inquiry.

J. **Open Deliberations:** Require deliberations on inquiries to be conducted in an open public session unless the hearing is closed pursuant to law.

K. **Dismissal Without Finding:** Allow the commission to dismiss an inquiry without a finding for or against the subject of the inquiry if the person committed the violation due to oversight and comes into voluntary compliance.

L. **Failure To Appear:** Allow the commission to dismiss an inquiry if the person who submitted it does not appear at the hearing and if, in the opinion of the commission, it would be unfair to the subject of the inquiry not to have the opportunity to cross examine the person. The rules shall, however, require the City Clerk to schedule the hearing at a time reasonably convenient to both the person who submitted the inquiry and the subject of the inquiry.

M. **Compelling Attendance:** Allow the commission to compel the attendance of any City officer, official or employee to testify at a hearing before the commission.

N. **Subpoenas:** Allow the commission to request that City Council, with the assistance of the Mayor, issue subpoenas to individuals the commission reasonably believes are necessary to fully appreciate the facts and circumstances related to an inquiry. The issuance and service of said subpoena shall be in accordance with the process set forth in Idaho Code section 50-216.

O. **Evidence:** Require the commission to base its finding of a violation upon clear and convincing evidence.

P. **Referral When Evidence Of Crime:** Require the commission to stay the inquiry and refer the entire matter to the appropriate prosecuting attorney and/or law enforcement agency when credible evidence of a crime under State law is discovered.

Q. **Frivolous Inquiries:** Require the commission to inform the person who submitted the inquiry and the subject of the inquiry in writing if it believes an inquiry is frivolous, groundless or brought for purposes of harassment.

R. **Prohibited Participation:** Prohibit members who have not been present for the hearing from participating in the findings or recommendations.

S. **Majority Required:** Require that findings and recommendations be made only by a majority of the commission.

T. **Considerations By Commission:** Allow the commission to consider, when it makes findings and recommendations, the severity of the offense; the presence or absence of any intention to conceal, deceive or mislead; whether the violation was deliberate, negligent or part of a pattern.

U. **Advisory Opinion:** Allow the commission to issue an advisory opinion in response to any inquiry, in lieu of making findings and recommendations, where deemed appropriate by the commission. (1952 Code § 2-24-04)

#### **2-12-5: SUBPOENAS:**

The Ethics Commission shall have the authority to request that City Council, with the assistance of the Mayor, subpoena witnesses to come before them to testify at a hearing or produce documentation. Any hearing conducted where one or more witnesses are compelled to attend pursuant to this provision shall be presided over by the Mayor or President of the City Council. Neither the Mayor nor the President of the City Council shall participate in the deliberations, findings or recommendation of the commission at such a meeting. The subpoena procedure shall be in accordance with Idaho Code section 50-216. Prior to requesting that a subpoena be issued by the City Council and the Mayor, every reasonable attempt should be made to secure the person or documents voluntarily. (1952 Code § 2-24-05)

**2-12-6: ANNUAL REPORT:**

By February 15 of each year, the Ethics Commission shall submit an annual report to the Mayor and City Council summarizing its activities during the previous calendar year. The report shall include any recommendations for modifying the Code of Ethics. (1952 Code § 2-24-06)

# **EXHIBIT C**

## **Boise City Ethics Commission Rules of Procedure**

## **Boise City Ethics Commission Rules of Procedure**

### **I. Intent**

It is the intention of the Boise City Ethics Commission in these Rules of Procedure (Rules) to establish procedures that are fair to officers, officials, and employees of the City of Boise in the reporting, investigation and resolution of ethics-related questions or concerns. The Ethics Commission extends these procedures and the same sense of fairness to citizens who wish to report possible violations of the Code of Ethics. The Ethics Commission is committed to a procedure that is responsive, open, and consistent so that all who use the process will have confidence in it. These Rules are intended to set forth the procedures to implement the requirements of Title 2, Chapter 12, of the Boise City Code.

### **II. Definitions**

- A. **Advisory Opinion** – An opinion issued by the Ethics Commission regarding whether past, present or proposed conduct by an official, officer, or employee of the City violates or would violate the provisions of Title 1, Chapter 8, of the Boise City Code or any related provision.
- B. **Boise City Ethics Commission (Ethics Commission)** – The members of the Ethics Commission appointed pursuant to Title 2, Chapter 12, of the Boise City Code.
- C. **Complainant** – The individual who files an Inquiry.
- D. **Ethics Commission’s purview** – Those provisions of the Boise City Code contained in Title 1, Chapter 8.
- E. **Employee** – An individual drawing a salary from the City, whether elected or not, and any non-compensated individual who performs personal services for the City.
- F. **Inquiry** – Any communication seeking an investigation by the Ethics Commission into the past or present conduct of a named person or persons on either a signed, approved form submitted to the City Clerk or by any other manner which contains the same degree of reliability and detail. At a minimum, such communications shall contain the name(s) and home address(es) of the person(s) seeking such an investigation; the name(s) of the person(s) who is(are) the subject of the investigation; a detailed statement of the facts and reasons why the subject(s) should be investigated; a description of the City code(s) which may have been violated; and a statement that the person(s) requesting such an investigation knows and/or believes such information is true.
- G. **Inquiry Subject** – The individual who is the subject of the Inquiry.
- H. **Officer** – The Mayor, members of the City Council, any and all department heads, City Clerk, City Attorney, Community Ombudsman, Director of Internal Audit, City Treasurer, City Budget Manager, and City Purchasing Manager.

- I. Official – any elected official, employee, member of a board or commission appointed by the Mayor or City Council, or any agent of the City.
- J. Referral or Referred Matter - Any communication in any form and from any source intended for the Ethics Commission to review for any reason.

### III. The Ethics Commission

- A. There shall be a Chair and a Vice Chair elected by the Ethics Commission each year at the first meeting after February 15 or at a meeting as close to that date as practicable.
- B. The Chair, and in the absence of the Chair, the Vice Chair, shall:
  - i. Preside at all meetings;
  - ii. Administer oaths to or accept affirmations from all persons who wish to testify at hearings;
  - iii. Decide all points of order, procedure, and evidence;
  - iv. Request that the Mayor and City Council issue a subpoena and thereafter relinquish the Chair position to the Mayor or President of the City Council for all hearings where an individual is present pursuant to a subpoena issued in accordance with Boise City Code § 2-12-05 and Idaho Code § 50-216.
- C. In absence of both the Chair and the Vice Chair, a Chair Pro Tem shall be elected by a majority of the members present.

### IV. Meetings

- A. Meetings shall be scheduled by the City Clerk. Regular meetings of the Ethics Commission shall be held bi-monthly on the second Thursday of every other month at 3:30 P.M. at Boise City Hall. Nothing shall prevent the Ethics Commission from amending this schedule to provide for more than bi-monthly meetings if warranted by the caseload.
- B. Written minutes of all Ethics Commission meetings shall be taken by the City Clerk or designee in accordance with the requirements of Idaho Code § 67-2344.
- C. A quorum shall consist of three (3) members.
- D. All meetings shall be open to the public pursuant to Idaho Code § 67-2342, except for matters properly identified for discussion in Executive Session pursuant to Idaho Code § 67-2345.
- E. If any member of the Ethics Commission desires to abstain from participating in a particular case, the member shall disclose such on the record as well as the reason for the abstention.
- F. Special meetings may be called and scheduled with proper notice given under Idaho Code § 67-2343(2).



## V. Intake and Screening

- A. Referrals to the Ethics Commission must be submitted to the City Clerk, the City Attorney's Office, the City's Human Resources Department, the Mayor's Office or the Ethics Commission directly.
- B. All referrals to the Ethics Commission shall initially be reviewed by one or more designees from the City Human Resources Department and one or more designees from the City Attorney's Office.
- C. A record shall be made and kept of all such referrals.
- D. Referrals that fall within the Ethics Commission's purview to any degree shall be forwarded to the Ethics Commission and placed upon the agenda for consideration at the next regularly scheduled meeting.
- E. Referrals deemed not to fall within the Ethics Commission's purview shall be forwarded to such other departments within the City or other authorities as is appropriate. Summaries outlining the substance of these referrals shall be prepared by designees from either the City Human Resources Department or the City Attorney's Office. These summaries shall be presented to the Ethics Commission and placed upon the agenda for review at the next regularly scheduled meeting. The Ethics Commission may, however, review any referral in its entirety. At the Ethics Commission's request, any matter presented in summary fashion shall be presented in entirety and placed upon the agenda for the next regularly scheduled meeting.
- F. The Ethics Commission may call special meetings to consider referrals deemed by the Chair or Vice-Chair to demand attention more quickly than the regular hearing schedule.

## VI. Advisory Opinions

- A. Any current or prospective officer, official, or employee or the supervisor or Department Head of a non-elected officer, official, or employee, may submit a request that the Ethics Commission issue an Advisory Opinion.
- B. The request for an Advisory Opinion may be submitted on the approved form to the City Clerk's Office, or in any other manner that contains the same information. A request for an Advisory Opinion will be deemed "received" by the Ethics Commission when it is first reviewed by the Ethics Commission pursuant to Section V(D), *above*.
- C. The Ethics Commission or its designee may request any additional information deemed necessary to render an Advisory Opinion.

- D. The Ethics Commission shall render an Advisory Opinion in writing at the next regularly scheduled meeting, unless the person who requests the opinion has withdrawn the request in writing, or unless the requested additional information has not been received by the Ethics Commission, or unless the Ethics Commission has given written notice to the requestor explaining the reason for the delay and stating an expected issuance date. The Advisory Opinion will be issued to the person who requests the Opinion.
- E. The Ethics Commission may publish Advisory Opinions with such deletions as may be lawful and necessary to prevent disclosure of records exempt pursuant to the Idaho Public Records Act. The Ethics Commission may also publish guidelines based on an Advisory Opinion if the subject of the opinion may be of general interest and guidance.
- F. If the Ethics Commission has a belief, based in fact, that an Advisory Opinion has not been followed, it shall inform the person, the person's supervisor or Department Head, and the City Attorney in writing and request that the supervisor or Department Head take appropriate disciplinary action after consulting with the City Attorney's designee.

## VII. Inquiries

- A. Any person may file an Inquiry with the Ethics Commission.
- B. Inquiries will be deemed "filed" when they are received by the City Clerk in writing or when received by Human Resources or City Attorney's Office from the 1-800 telephone reporting line. Inquiries will be deemed "received" by the Ethics Commission when they are first reviewed by the Ethics Commission.
- C. The Ethics Commission or its designee may request any additional information deemed necessary to screen the Inquiry or to render a decision.
- D. No inquiries shall be accepted or considered which relate to actions that took place more than one (1) year prior to the date of filing unless recurring benefits or consequences attributable to such actions are apparent.
- E. The City Attorney's designee must notify the person who is the subject of the Inquiry no more than three (3) business days from the day the Inquiry was filed. The notification shall include a copy of the full Inquiry; a copy of any portion of the Code of Ethics that is alleged to have been or that may be violated; and the Ethics Commission's Rules of Procedure.
- F. The Ethics Commission shall provide the subject of the Inquiry with a copy of the Inquiry before it provides copies to any other parties. The Ethics Commission may recognize that distribution to the public of an Inquiry prior to screening by the Ethics Commission as required below could harm the reputation of an innocent person and is contrary to the public interest; therefore, the public release of the Inquiry is prohibited until the screening process has been completed by the City Attorney's designee.

- G. Screening pursuant to Section V(B), *above*, shall occur no more than three (3) business days from the date an Inquiry is filed. If the Inquiry is deemed to fall within the purview of the Ethics Commission pursuant to Section V(D), *above*, the Ethics Commission shall review the Inquiry at its next regularly scheduled meeting or sooner if the Chair deems it necessary.
- H. The Ethics Commission may immediately dismiss an Inquiry at any time if:
- i. The Ethics Commission has no jurisdiction over the subject matter or the alleged violator;
  - ii. The alleged violation, if true, would not constitute a violation of the Code of Ethics;
  - iii. The alleged violation is *de minimis*;
  - iv. The Inquiry is, on its face, frivolous, groundless, or brought for purposes of harassment;
  - v. The matter has become moot because the person who is the subject of the Inquiry is no longer an officer, official, or employee. If the Ethics Commission determines that the public interest would be served by publishing an Advisory Opinion, it shall subsequently issue an opinion;
  - vi. The person who is the subject of the Inquiry had obtained a determination that the issue was *de minimis* or an Advisory Opinion under Boise City Code § 2-24-02 permitting the conduct; or
  - vii. The supervisor or Department Head has already taken action as a result of finding a violation;

All dismissals shall be in writing, contain the reason for the dismissal and be made available to the public.

- I. If, after initial review by the Ethics Commission, the Inquiry has not been dismissed pursuant to Boise City Code §§ 2-12-04(A)(6) or (7), the City Attorney's designee shall prepare and issue a Notice of Hearing, which shall set forth in reasonable detail the alleged violations of the Code of Ethics and the facts supporting the allegations. The Notice of Hearing shall be mailed to the person filing the Inquiry (Complainant) and to the subject of the Inquiry (Inquiry Subject) within five (5) days of its approval by the Chair of the Ethics Commission. The Notice shall provide the Inquiry Subject an opportunity to prepare and file an Answer to the Notice of Hearing within ten (10) days, unless an extension is granted for good cause. When received by the Ethics Commission, the Answer shall be promptly mailed to the Complainant.
- J. Within ten (10) days of the receipt of the Answer, the City Attorney's designee shall issue a notice setting forth a date and place for the hearing, which may be open to the public. The Ethics Commission will attempt to accommodate the parties in selecting a date that is mutually agreeable.
- K. The Ethics Commission shall stay the Inquiry and refer the entire matter to the appropriate prosecuting attorney and/or law enforcement agency when credible evidence of a crime under Idaho State law is discovered.

- L. At least ten (10) days before the hearing, the parties or their representatives shall submit to the Ethics Commission a proposed list of witnesses and a list of possible documentary evidence to be introduced at the hearing, as well as an estimate of the length of time needed to present the testimony and evidence. The Ethics Commission may schedule a pre-hearing conference, at which time a schedule and hearing order may be adopted. Such order shall include the exchange of proposed exhibits and witness lists. The Ethics Commission shall attempt to resolve any outstanding procedural or evidentiary issues at this time.
- M. The Ethics Commission may request that the City Council and Mayor subpoena witnesses and documents after having made a written request to appear or provide the records.
- i. Subpoenas shall be issued pursuant to Idaho Code § 50-216. Persons who are subpoenaed or whose records are subpoenaed may object to testimony or the production of documents on the grounds that such information is privileged under Idaho law.
  - ii. In hearings where witnesses or documents have been subpoenaed pursuant to Idaho Code § 50-216, the Mayor or President of the City Council shall preside over the meeting in an ex-officio capacity. Neither the Mayor nor President of the City Council shall participate in the deliberations or decision.
- N. Any officer, official, or employee of the City of Boise who is called before the Ethics Commission for a hearing shall be required to participate in providing information unless such information is protected by a privilege under Idaho law.
- O. After the Notice of Hearing has been issued, none of the parties or their representatives may communicate on an *ex-parte* basis with the Ethics Commission or any Ethics Commission member on any manner pertaining to the Inquiry. All communications pertaining to the Inquiry shall be sent to the City Attorney's designee.
- P. At any time after the issuance of the Notice of Hearing, the Ethics Commission, at its discretion, may make a finding solely on the basis of written arguments without holding a public hearing if it determines that there is no significant discrepancy in the facts. However, the Inquiry Subject shall have the right to demand a hearing which may be open to the public.
- Q. At any time after the issuance of the Notice of Hearing, the Ethics Commission may dismiss an Inquiry without a finding for or against the Inquiry Subject if it finds that the person committed the violation due to oversight and comes into voluntary compliance.
- R. The Ethics Commission may dismiss an Inquiry if the complainant does not appear at the hearing and if, in the opinion of the Ethics Commission, it would be unfair to the Inquiry Subject not to have the opportunity to examine the Complainant. Nothing herein shall prevent the Ethics Commission from conducting the hearing where there is reason to believe that the Code of Ethics has been violated.
- S. At the hearing, the Complainant or the Complainant's representative will be provided the opportunity to make an opening statement and presentation of the evidence in support of the allegations set forth in the Notice of Hearing. In the alternative, at the request of the Ethics

Commission, the City Attorney's designee shall make the opening statement and present the evidence supporting the allegations. In the event the City Attorney or designee has a conflict of interest, outside counsel shall present the case. The Inquiry Subject or their representative shall be entitled to cross-examine witnesses called by the Complainant, the City Attorney's designee, or conflict counsel.

- T. At the conclusion of the evidence offered by the Complainant or the Complainant's representative, the City Attorney's designee, or conflict counsel, the Inquiry Subject or their representative shall have the opportunity to make an opening statement and present evidence. The Complainant or their representative, the City Attorney's designee, or conflict counsel shall have the opportunity to cross-examine witnesses called by the Inquiry Subject. Either party shall be allowed sufficient time to examine and respond to any evidence not presented to them in advance of the hearing. At the conclusion of the evidence, the parties may make closing statements or, with the consent of the Ethics Commission, submit briefs or written summaries of their respective positions.
- U. The Chair of the Ethics Commission and, in the absence of the Chair, the Vice-Chair shall preside at the hearing, administer oaths or accept affirmations from witnesses, and decide all points of order, procedure, and evidence. The hearing need not be conducted according to technical rules of evidence, and any relevant evidence, including hearsay, of probative value shall be admitted at the discretion of the Chair. Incompetent, immaterial, or unduly repetitious evidence may be excluded.
- V. An electronic or stenographic record of the hearing shall be made and kept by the City Clerk.
- W. At the conclusion of the hearing, the Ethics Commission shall deliberate towards a decision. Upon a majority vote of the members present for the hearing, the matter shall be decided. The Ethics Commission shall then direct the City Attorney's designee to draft findings, conclusions, and recommendations for approval at the following regularly scheduled meeting.
- X. The Ethics Commission shall conduct a hearing of all inquiries within sixty (60) days of receipt of the Inquiry by the Commission. Procedural delays caused by the Inquiry Subject shall toll the sixty (60) day time limit.
- Y. At the next regularly scheduled meeting, the Ethics Commission shall issue and publish its decision which shall include findings, conclusions and recommendations. In the alternative, the Ethics Commission where it deems appropriate, may issue an Advisory Opinion in lieu of making findings and recommendations.
- Z. If the Inquiry Subject is an elected officer, the Ethics Commission may propose actions appropriate to the finding, including but not limited to a recommendation that the person abstain from further action in the matter, or adoption of a resolution reprimanding the officer.
- AA. The City Attorney's designee shall send a written copy of the Ethics Commission's findings and recommendations to the Inquiry Subject and the Complainant and, unless

provided otherwise in these Rules, in the Code of Ethics, or in State law, shall make the findings and recommendations public.

#### VIII. Parliamentary Authority

The latest version of Robert's Rules of Order shall be followed to the extent practicable and applicable, except as modified by provisions of these Rules of Procedure and of the Boise City Code.

#### IX. Posting of Agenda

A copy of the Ethics Commission's meeting agenda shall be posted at the location of the meeting, at any other appropriate locations, and at the first-floor bulletin board of the Boise City Hall building.

#### X. Case Numbers

Case numbers shall be assigned chronologically for each written request for Advisory Opinion, Request for Waiver, and Inquiry, with a new sequence to commence on the first day of each calendar year. The calendar year shall be the first two digits of the case number followed by a hyphen (for example 04-01 for the first case filed in 2004).

# **EXHIBIT D**

**Request for Advisory Opinion Form**



**Boise City Ethics Commission  
REQUEST FOR ADVISORY OPINION**

The purpose of the Ethics Commission is to issue advisory opinions related to the Boise City Code of Ethics, Title 1, Chapter 8 and to hear inquiries and issue findings regarding alleged violations of the Code of Ethics. Please mark an "X" beside the section(s) of the Code of Ethics you believe are relevant to the matter you are bringing before the Commission. A description of each of the below code sections is on the adjoining pages.

Section 1-8-3(A)\_\_\_\_ Section 1-8-3(B)\_\_\_\_ Section 1-8-3(C)\_\_\_\_ Section 1-8-3(D)\_\_\_\_  
Section 1-8-4(A)\_\_\_\_ Section 1-8-4(B)\_\_\_\_ Section 1-8-5(A)\_\_\_\_ Section 1-8-5(B)\_\_\_\_  
Section 1-8-6(A)\_\_\_\_ Section 1-8-6(B)\_\_\_\_ Section 1-8-7\_\_\_\_

Describe all relevant facts and circumstances in enough detail that the Boise City Ethics Commission can understand the question or concern and issue an accurate opinion. Include all names, relationships, approximate dates, etc. and attach additional sheets as necessary. If you need an advisory opinion on more than one issue, a separate request form must be completed per issue. *Please note, all requests and advisory opinions may be available to the public.*

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Requester's name [please print]: \_\_\_\_\_ Telephone number: \_\_\_\_\_

***The Boise City Ethics Commission meets at 3:30pm on the second Thursday of odd numbered months in the Warm Springs conference room in Human Resources. Please plan to attend the meeting in order to respond to any clarifying questions the commission may have regarding your request for advisory opinion.***



## **Sections of the Code of Ethics**

No city official shall knowingly:

**1-8-3(A)** – Use his or her official position or office to obtain financial gain for him or herself, any member of his or her household, or any business with which he or she or a member of his or her household is associated.

**1-8-3(B)** – Use or disclose confidential information gained in the course of or by reason of his or her official position or activities in any way that could result in financial gain for him or herself or for any other person. (Ord. 53-15, 12-8-2015)

**1-8-3(C)** – Accept any valuable gift, whether in the form of service, loan, thing or promise from any person or business that is interested directly or indirectly in any manner in a business dealing with the city if that city official has any discretionary function related to the business dealing; provided, however, any city official who is a candidate for public office may accept campaign contributions and services in connection with such campaign. Gifts of any kind shall not be accepted where there exists a substantial risk that the gift would undermine official impartiality. (Ord. 53-15, 12-8-2015; amd. 2019 Code)

**1-8-3(D)** – Violate the fiduciary duty owed to the city under this standard of conduct. The fiduciary duty is defined as a duty to act for the benefit of the citizens of the City of Boise, while subordinating one's personal interest to those of the city as a whole. When an employee expends any resources of the city, this duty requires that the expenditure be reasonable, prudent and for the benefit of the city and not for personal gain. (Ord. 53-15, 12-8-2015)

**1-8-4(A)** – Conflict Of Interest Defined: For purposes of this section, an actual "conflict of interest" is defined as a set of circumstances wherein a city official would be required to take an action or make a decision that would affect his or her personal financial or pecuniary interests, or those of a member of his or her household, or a business with which he or she is associated. An apparent conflict of interest is one that does not affect a city official's personal financial or pecuniary interests, but nevertheless calls into question his or her objectivity and independence. Any city official who has either an actual conflict of interest or an apparent conflict of interest, shall:

1. If a city official, other than an appointed or elected member of a commission, board or council, verbally discloses such interest to the Mayor (or if such city official is the Mayor, then to the City Council), who may require the assignment of the matter creating the conflict to another city official of the same department of the city who does not have a conflict of interest, or determine such conflict de minimus, as defined in subsection B of this section.
2. If an appointed or elected member of a commission, board or council, discloses such interest on the records of said commission, board or council and shall

disqualify him or herself from participating in any decision or vote relating thereto, unless following such disclosure a majority of the remaining members of such commission, board or council determined by official action at a public meeting of such commission, board or council that such conflict of interest is de minimus, as defined in subsection B of this section.

**1-8-4(B)** – De Minimis Conflict Defined: A pecuniary benefit is de minimis if it does not exceed the value of fifty dollars (\$50.00) incidental to personal, professional or business contacts and involving no substantial risk of undermining official impartiality, as defined in Idaho Code section 18-1359. An officer's interest in a contract is deemed de minimis if it is a remote interest. "Remote interest" means that of a non-salaried officer of a nonprofit organization; that of an employee of a contracting party where the compensation consists entirely of fixed wages; that of a landlord or tenant of a contracting party; or that of a holder of less than one percent (1%) of the shares of a corporation or cooperative which is a contracting party, all as defined in Idaho Code section 74-502. There is no conflict of interest if the city official's personal interest is so remote that it would be unreasonable to question his or her ability to impartially serve the city's best interests. (Ord. 31-15, 7-28-2015)

**1-8-5(A)** – Valuable Gift: No city official shall solicit or receive any valuable gift, or anything of value, including favors, services or promises of future employment, based on any understanding that such city official's vote, official action or judgment would be influenced thereby, or where it could reasonably be inferred that the thing of value would influence the city official in the discharge of his or her duties, or as a reward for the discharge of his or her duties.

**1-8-5(B)** – Money: No person shall offer or pay to a city official, and no such city official shall solicit or receive, any money in any amount in addition to that received as wages or salary by the city official in his or her official capacity, for advice or assistance given in the course of the city official's employment or relating to the employment. (1952 Code § 1-21-05)

**1-8-6(A)** – Requirement: No public official having any discretionary function to perform in connection with an expenditure, purchase, sale, or contract shall have any personal beneficial interest, either directly or indirectly in such expenditure, purchase, sale, or contract made by the city or in any firm, corporation or association that furnishes or bids on such purchase, sale or contract.

**1-8-6(B)** – Standard of Conduct: Every officer, employee or agent of the city is expressly prohibited from knowingly:

1. Underestimating or exaggerating requirements to certain prospective bidders in order to influence bids.
2. Misrepresenting a competitor's prices, quality or service to obtain concessions.
3. Splitting invoices or orders, etc., to avoid the competitive bid requirements of Idaho Code and City of Boise ordinances. (Ord. 53-15, 12-8-2015)

**1-8-7** – A city official shall not be deemed to have a financial interest in a matter if his or her interest is solely that of a general taxpayer or solely that of a recipient of public services generally provided by the city on the same terms and conditions as if he or she were not an official.

# **EXHIBIT E**

## **Request for Inquiry Form**



**Boise City Ethics Commission  
INQUIRY FORM**

Please provide the following information regarding the City of Boise officer, official, employee, or volunteer you are making this inquiry about:

\_\_\_\_\_

Name

\_\_\_\_\_

Position or job title [if known]

\_\_\_\_\_

City department or work location [if known]

\_\_\_\_\_

Daytime phone [if known]

Please describe the facts that you believe constitute a violation of the Boise City Code of Ethics in enough detail that the Ethics Commission and the person who is subject of the inquiry can understand the nature of the alleged violation. Provide as much information as possible including names, dates, city department, relationships, witnesses, etc. Attach additional pages as necessary.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Note, a copy of this inquiry will be sent to the person named above and may be made available to the public.

**Your contact information [required]**

\_\_\_\_\_

Your name [please print]

\_\_\_\_\_

Your address [print]

(\_\_\_\_) \_\_\_\_\_

Your daytime phone number

\_\_\_\_\_

City, State, Zip Code

# **EXHIBIT F**

## **Summary of 2021 Email Messages**

## **2021 Ethics Commission Email Activity**

Below is a summary of electronic mail (email) messages sent to the Boise City Ethics Commission between January 1 and December 31, 2021. Please note this does not include various phishing or spam email; it only contains City of Boise related e-mail messages sent to the Boise City Ethics Commission:

### **September 2021**

On September 17, 2021, the City Attorney's Office received an email from a city employee asking about the propriety of accepting an honorarium for a speaking engagement. The City Attorney's Office responded that the request was a matter that should go before the Ethics Commission as a request for an advisory opinion. The City Attorney's Office also indicated that more facts would be required for the Commission to decide and those could be supplied by filling out the Request for Advisory Opinion Form (link to form provided) or in an additional email. The City Attorney's Office also provided a copy of a prior advisory opinion addressing the issue. The employee did not follow up with more information, but later informed the City Attorney's Office that he did not accept the honorarium. The employee also suggested that the City should enact a regulation governing such matters.

# **EXHIBIT G**

## **Summary of 2021 Alertline**



**ALERT LINE**

No Data for 2021

# **EXHIBIT H**

**Advisory Opinion Numbers 21-01, 21-02, and 21-03**

## BOISE CITY ETHICS COMMISSION

### Advisory Opinion

21-01

**FACTS:** The Boise City Planning and Zoning Commission ("P&Z Commission") serves in an advisory role to the Boise City Council on matters relating to zoning, annexations, and Boise City's Comprehensive Plan. Other issues that come before the P&Z Commission include administrative appeals and making final decisions on conditional use permits, planned unit developments, and variances. The P&Z Commission is comprised of appointed commissioners.

A candidate for appointment to the P&Z Commission currently contracts with Boise City to provide consulting services concerning Housing and Urban Development requirements and crafting a five-year development plan. Completion of the contracted work is anticipated within the next six months. The candidate previously served as a member of the P&Z Commission and is familiar with the types of matters brought before the P&Z Commission. The candidate, and Boise City staff, believe the frequency of issues that may arise before the P&Z Commission relating to the candidate's business dealings or contractual relationship will be rare.

**QUESTION:** Will the candidate's contractual relationship with Boise City preclude the candidate from accepting an appointment to serve on the P&Z Commission?

**OPINION:** No, the candidate's disclosure of any conflict of interest and recusal from participation in related discussions or decisions will allow him to accept an appointment to serve on the P&Z Commission.

**ANALYSIS:** The Commission considered the following City Code of Ethics provisions in reaching its decision:

**1. Boise City Code § 1-8-8(A)**

Boise City Code § 1-8-8A discusses appointments to Boise City boards and commissions. It provides that appointments shall be made with a view to minimizing potential conflicts of interest. No person shall be appointed to a board or commission if their potential conflicts of interest are of such a degree that they are likely to substantially interfere with the performance of their duties as an official.

City staff and the candidate provided information that the candidate's type of work and business dealings do not typically come before the P&Z Commission for any vote or action. Any conflicts of interest that do arise due to the candidate's relationship with a City partner or City

backed initiative will be infrequent and should be handled on a case-by-case basis as provided in Boise City Code § 1-8-4(A)(2).

**2. Boise City Code § 1-8-4(A)(2)**

The primary consideration for the Commission is Boise City Code § 1-8-4(A)2. This section provides that an appointed member of a commission shall disclose any actual or apparent conflict of interest on the commission's record and disqualify him or herself from participating in a discussion or vote on the matter. Per Boise City Code § 1-8-4(A), an actual conflict of interest occurs when an official is required to take action or make a decision affecting his or her personal financial or pecuniary interests, those of a member of his or her household, or a business with which he or she is associated. Boise City Code § 1-8-4(A) defines an apparent conflict as one that calls into question an official's objectivity and independence but does not affect a personal financial or pecuniary interest.

While it appears that any conflicts of interest caused by the candidate's business dealings or contract with the City will be infrequent, there the potential exists that a rare conflict of interest may arise. Any conflict of interest, either actual or apparent, will require the candidate to firmly adhere to the requirements of Boise City Code § 1-8-4(A)2. Provided that the candidate discloses any conflict of interest on the record and recuses himself from any related discussion or vote, the legal requirements associated with a conflict of interest will be satisfied. The candidate may accept the appointment and serve as a member of the P&Z Commission so long as he strictly complies with the provisions outlined in Boise City Code § 1-8-4(A)2.

## BOISE CITY ETHICS COMMISSION

### Advisory Opinion

21-02

**FACTS:** Property developers in wildland-urban interface areas must have a special expert write a Wildfire Safety Plan for any new developments and submit the plan with any preliminary plats. Very few local individuals possess the expertise needed to draft Wildfire Safety Plans.

A Boise Fire Department (“Department”) employee (“Employee”) serves as a Wildfire Mitigation Specialist for the Department. In this role, Employee frequently reviews Wildfire Safety Plans submitted by property developers for developments within Boise City limits. Employee provides personal comments to the Fire Marshal whether the plan is complete and acceptable. Employee may also make suggestions to the property developers as to how plans may be modified. The Fire Marshal has ultimate authority for the review and approval of any submitted plans.

Employee maintains a side business conducting instruction, training and education in wildfire preparedness and mitigation, writing code amendments for jurisdictions, and writing Wildfire Safety Plans for property developers. Employee possesses the qualifications and specialized expertise to draft Wildfire Safety Plans. Employee does not solicit work for the side business; all referrals come by word of mouth. All work occurs during off-duty hours. Employee only prepares Wildfire Safety Plans for developments outside of Boise City limits. Employee’s services are all short-term consulting contracts that end at the culmination of the development process.

A local firm recently retained Employee to draft a Wildfire Safety Plan for development outside of Boise City. This firm does not have any business dealings with Boise City. Another firm recently asked Employee to write a Wildfire Safety Plan for development outside of Boise City. This second firm does business with Boise City, but none of the business dealings involve Employee in a professional capacity with the Department or Boise City.

Wildfire Safety Plans are becoming more common. A company for whom Employee provides services outside of Boise City limits may submit a plan, drafted by a separate specialist, for development inside Boise City limits. In this situation, Employee will review the plan and provide comments to the Fire Marshal prior to the ultimate approval decision.

**QUESTION:** May Employee provide consulting or drafting services to companies that submit Wildfire Safety Plans to Boise Fire Department for review and approval, knowing that Employee may be asked for comment on the Wildfire Safety Plans?

**OPINION:** Yes, Employee, under the specific factual background provided, may consult and perform services for companies submitting Wildfire Safety Plans to Boise Fire Department under the following conditions:

1. Employee may not draft or contract to prepare a Wildfire Safety Plan for any development within Boise City limits.
2. Employee may not perform any consulting or drafting services during the hours of his employment with the Boise Fire Department. All consulting or drafting work will be performed during Employee's personal time.
3. This approval is limited to Employee remaining in his current position and responsibilities with the Fire Department. Employee is required to readdress and seek further approval from the Ethics Commission upon any change in employment status or responsibilities with the Fire Department.

**ANALYSIS:** The Commission considered the following City Code of Ethics provisions in reaching its decision:

**1. Boise City Code § 1-8-4(A)**

The primary consideration identified by the Employee for the Commission is the conflict-of-interest prohibition outlined in Boise City Code. Per Boise City Code § 1-8-4(A), an actual conflict of interest occurs when an official is required to take action or make a decision affecting his or her personal financial or pecuniary interests, those of a member of his or her household, or a business with which he or she is associated. Boise City Code § 1-8-4(A) defines an apparent conflict as one that calls into question an official's objectivity and independence but does not affect a personal financial or pecuniary interest.

The facts as stated do not present an actual or apparent conflict of interest. Employee already restricts himself from providing services to any development within the City of Boise. Any services performed by Employee relate solely to areas outside of Boise City limits and will not come before the Boise Fire Department for review. In relation to developments within Boise City limits, Employee's responsibilities include making comments to the final-decision maker. Employee is not the final approval authority for any submitted plans within Boise City limits.

**Boise City Code § 1-8-3(A)**

Boise City Code § 1-8-3(A) prohibits a city employee from using his official position to obtain financial gain for himself, any member of his family, or any business with which he or a member of his household is associated. Here, Employee is not using his current position to obtain gain for himself. Employee does not market his business to others or discuss his business during the course of his employment with Boise City. Any referrals are by word of mouth only, and the risk of someone utilizing Employee's services because of his work with the Boise Fire Department is minimal.

Any services performed by Employee will be outside of his regular work hours. Employee will not consult with outside entities during work hours or use any City equipment or supplies in his consulting work.

## BOISE CITY ETHICS COMMISSION

### Advisory Opinion

21-03

**FACTS:** A Boise Fire Department employee (“Employee”) is currently employed as a Senior Captain Fire Inspector and Wildfire Mitigation Specialist. In this position, Employee writes and implements Fire Code amendments for Boise City. The Fire Marshal retains ultimate authority for reviewing and approving any Fire Code amendments in Boise City.

Employee maintains a side business which, among other things, assists different jurisdictions to write and make policy or code amendments. All work for outside entities and jurisdictions is performed outside of regular work hours. Employee does not solicit business; all referrals come by word of mouth. Employee possesses the specific qualifications and expertise needed to assist municipalities and governmental entities in writing code amendments for wildland-urban interface areas. Employee wishes to ensure that work on code amendments for outside governmental entities does not create a conflict of interest or apparent conflict of interest.

**QUESTION:** May Employee perform contract code amendment and policy drafting for governmental entities outside of Boise City?

**OPINION:** Yes, Employee may contract to perform code amendment and policy drafting for governmental agencies outside of Boise City so long as the work is performed in a personal capacity and not as a representative of, or on behalf of, Boise City.

**ANALYSIS:** The Commission considered the following City Code of Ethics provisions in reaching its decision:

**1. Boise City Code § 1-8-3(A)**

Boise City Code § 1-8-3(A) prohibits a city employee from using his official position to obtain financial gain for himself, any member of his family, or any business with which he or a member of his household is associated.

At this point, Employee is not using his official position to obtain financial gain for himself. Employee does not advertise his current position in order to gain benefit. All referrals are by word of mouth only. This code section seeks to prevent employees from engaging in an abuse of power associated with their positions. However, employees are permitted to use the knowledge or experience that they have gained from their employment for personal use. In this instance, Employee has certain qualifications and specialized knowledge that may benefit other



governmental entities in drafting wildland code amendments. So long as Employee ensures that the municipalities with whom he contracts know that he is operating on a personal basis, and not as a representative of Boise City, Employee may perform the services for outside governmental entities.

**2. Boise City Code § 1-8-4(A)(2)**

This provision discusses conflicts of interest. Because Employee's contract work will be performed outside the scope of his normal work for Boise City and for unrelated entities, there is not a conflict of interest. Any code amendments that Employee helps draft will relate only to jurisdictions outside of Boise City and will not implicate Employee's duties and obligations to Boise City.