

Chapter 2-24

ETHICS COMMISSION

Sections:

| | |
|----------------|---------------------------------|
| 2-24-01 | ETHICS COMMISSION |
| 2-24-02 | ADVISORY OPINIONS |
| 2-24-03 | INQUIRIES |
| 2-24-04 | PROCEDURES FOR INQUIRIES |
| 2-24-05 | SUBPOENAS |
| 2-24-06 | ANNUAL REPORT |
| 2-24-07 | SEVERABILITY |

Section 2-24-01 ETHICS COMMISSION

- A. Purpose: The purpose of the Commission shall be to issue advisory opinions related to the Boise City Code of Ethics, Title 1, Chapter 21; 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 of Boise. Three members of the Commission shall constitute a quorum. 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.
- C. Method of Appointment
1. The Mayor shall appoint two members. The City Council shall appoint two members.
 2. The employee member of the Commission shall be appointed by a majority of the four members appointed by the Mayor and City Council. The Commission shall receive input from the Department of Human Resources prior to selection.
- D. Terms of Appointment
1. Non-employee 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 re-selection 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 the 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.

(6858, Amended, 08/28/2012; 6796, Amended, 12/14/2010; 6351, Added, 10/05/2004)

Section 2-24-02 ADVISORY OPINIONS

- A. 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 Boise City Code of Ethics.
- B. 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. 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. 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 Boise 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. 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. 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.

(6351, Added, 10/05/2004)

Section 2-24-03 INQUIRIES

- A. Any person may file an inquiry with the Ethics Commission asking whether a current officer, official, or employee has failed to comply with the Boise 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 2-24-04, the Idaho Public Records Act, and the rules adopted by the Commission pursuant to Section 2-24-04, the Ethics Commission shall follow all the appropriate law and procedures to include the following:
1. May conduct a hearing pursuant to the Idaho Open Meetings requirements on all inquiries which have not been dismissed pursuant to Section 2-24-04(A)(6) or resolved in accordance with Section 2-24-04(A)(7). The affected officer, official, or employee shall have the right to a closed hearing if allowed by law.
 2. 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.
 3. 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.
 4. If the person who is the subject of the inquiry is an employee, non-elected officer, or appointed official, notify the person's supervisor and department head of its findings and recommendations.

(6351, Added, 10/05/2004)

Section 2-24-04 PROCEDURES FOR INQUIRIES

- A. 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:
1. 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.
 2. 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.

3. Prohibit the Commission from accepting inquiries about actions that took place more than one (1) year prior to the date of filing.
4. 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's rules for dealing with inquiries.
5. 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.
6. 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:
 - a. The Commission has no jurisdiction over the subject matter or the alleged violator;
 - b. The alleged violation, if true, would not constitute a violation of the Code of Ethics;
 - c. The alleged violation is a minor or de minimis violation;
 - d. The inquiry is, on its face, frivolous, groundless, or brought for purposes of harassment;
 - e. The matter has become moot because the person who is the subject of the inquiry is no longer an officer, official, or employee unless Commission determines that the public interest would be served by publishing an advisory opinion.
 - f. 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 2-24-02 permitting the conduct; or
 - g. The supervisor or department head has already taken action as a result of finding a violation.
7. 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 doesn't 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.
8. 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.
9. 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 60 days from receipt of the inquiry.

10. Require deliberations on inquiries to be conducted in an open public session unless the hearing is closed pursuant to law.
11. 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.
12. 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.
13. Allow the Commission to compel the attendance of any City officer, official or employee to testify at a hearing before the commission.
14. 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 §50-216.
15. Require the Commission to base its finding of a violation upon clear and convincing evidence.
16. 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 Idaho State law is discovered.
17. 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.
18. Prohibit members who have not been present for the hearing from participating in the findings or recommendations.
19. Require that findings and recommendations be made only by a majority of the Commission.
20. 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.
21. 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.

(6401, Amended, 06/28/2005; 6351, Added, 10/05/2004)

Section 2-24-05 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 § 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.

(6351, Added, 10/05/2004)

Section 2-24-06 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.
(6351, Added, 10/05/2004)

Section 2-24-07 SEVERABILITY

If any provision or section of this Ordinance shall be held to be invalid by a court of competent jurisdiction, then such provision or section shall be considered separately and apart from the remaining provisions or sections of this Ordinance, which shall remain in full force and effect.
(6351, Added, 10/05/2004)