

**SUMMARY MINUTES**  
**Council Committee**  
**COUNCIL OPERATIONS**

**DATE:** Thursday, November 3, 2022  
**TIME:** 4:00 PM – Started at 4:07 PM  
**PLACE:** City Hall Conference Room  
 210 N. 27<sup>th</sup> Street  
 Billings, MT

**ATTENDANCE:**

**Mayor/Council:** Mayor Cole, Mike Boyett, Roy Neese

**Staff:** Chris Kukulski, City Administrator

**ADJOURN TIME:** 6:17 PM

**Agenda**

<b>TOPIC #1</b>	<b>Discussion and Possible Adoption of Committee Rules of Procedure</b>
<b>PRESENTER</b>	Mayor Cole
<b>NOTES/OUTCOME</b>	Unanimously agreed that Mayor Cole would serve as Chair of the Operations Committee. Mike Boyett acted as secretary.
<b>4:08 PM</b>	
<b>Audio Start: 00:48</b>	
<b>Audio Stop: 31:13</b>	The committee unanimously agreed to recommend review by the City Council of proposed draft rules attached as Exhibit 1. Motion made by Boyett, seconded by Neese.

- **Public Comment:** None

<b>TOPIC #2</b>	<b>Discussion of Possible Changes to City Administrator, Chris Kukulski's, Employment Agreement and Recommendation to City Council</b>
<b>PRESENTER</b>	Mayor Cole

<b>NOTES/OUTCOME</b>	Unanimously agreed to recommend to Council adoption of changes per Chris. Motion made by Mayor Cole, seconded by Mike Boyett.
<b>4:40 PM</b> <b>Audio Start: 31:14</b> <b>Audio Stop: 1:19:55</b>	See Exhibits 2A and 2B

- **Public Comment:** None

<b>TOPIC #3</b>	<b>Discussion of Rules Allowing Remote Participation at Meetings of Billings City Council and Boards and Commissions and Recommendations to City Council</b>
<b>PRESENTER</b>	Mayor Cole
<b>NOTES/OUTCOME</b>	Unanimously agreed to support Exhibit #3, electronic version.
<b>5:27 PM</b> <b>Audio Start: 1:19:56</b> <b>Audio Stop: 1:55:12</b>	

- **Public Comment:** None

<b>TOPIC #4</b>	<b>Future Meetings Schedule and Agenda Items, Including Review of Draft Rules of Procedure for City Council Meetings</b>
<b>PRESENTER</b>	Mayor Cole
<b>NOTES/OUTCOME</b>	Future Meetings Schedule: <ul style="list-style-type: none"> <li>• First Thursday of the month, at 4:00 PM, City Hall Conference Room, 210 N. 27<sup>th</sup> Street</li> </ul> Future Agenda Items: <ol style="list-style-type: none"> <li>1. Revisions to Sections 2-211 through 2-241, BMCC, Rules of Procedure for City Council Meetings.</li> <li>2. Review the City Administrator Annual review process.</li> <li>3. City Charter review recommendations.</li> </ol>
<b>6:02 PM</b> <b>Audio Start: 1:55:13</b> <b>Audio Stop: 2:09:45</b>	

- **Public Comment:** None

**PUBLIC COMMENT ON ANY ITEM NOT ON THE AGENDA BUT WITHIN THE SCOPE OF THE COMMITTEE: (3 Min.)**

- None

**Council Operations Committee**~~[COMMITTEE NAME]~~ Rules

Adopted November 3, 2022 ~~[DATE]~~

- 1. PURPOSE AND JURISDICTION.** This Committee is formed for the purpose of advising City Council on matters within this Committee’s jurisdiction and to explore policy issues in depth. The jurisdiction of this Committee includes general Council operations and logistics, including agenda development, meeting rules, strategic planning processes, new member orientation, and city administrator review processes. ~~[INSERT LANGUAGE FROM RESOLUTION]~~. In addition, this Committee may work on matters referred to it by the full Council. The work of the Committee is limited to making reports and recommendations to the full Council. Absent extenuating circumstances as determined by the Council, n~~No~~ matter within this Committee’s jurisdiction shall generally be placed on the agenda for a Council b~~B~~usiness m~~M~~eeeting without having first been considered by this Committee.
- 2. ORGANIZATIONAL MEETING.** The f~~F~~irst meeting of the Committee during the biennium shall be an organizational meeting. The meeting agenda shall focus on electing a Chair, setting meeting dates and times, and debating, amending, and adopting rules. Once adopted by a majority vote of the Committee, rules shall be reported to the full Council for review. Such report may also include a request for staff support, which must be approved by the full Council.
- 3. MEETINGS.**

  - a. Date and time.** Meetings shall be held on the first Thursday of each month at 4 p.m. ~~[first/second/third/fourth] [day of week] at [time]~~. Public notice shall be given at least two weeks in advance, indicating the date and time, location, and agenda of the meeting. A sample legal ad is attached as Exhibit A. The legal ad and agenda shall be emailed to the City Clerk using the same format and font in the template no later than noon on the Tuesday of the week it is to be published.
  - b. Location.** Regular Committee meetings shall generally be held at the city hall conference room. ~~[Location]~~. Committee members may choose to hold a meeting in a different location, so long as the public will have access and notice is provided in advance of the meeting.
  - c. Open Meetings.** All meetings of the Committee shall be open to the public in accordance with Sec. 2-3-203, MCA, and public comment shall be received during the time designated on the agenda. Any materials made available to Committee members shall also be available to the public. The Chair of the Committee may reasonably limit the time available for public comment and set the length of time in advance that an individual may speak.
  - d. Special Meetings.** The Committee may, by a majority vote, schedule special meetings in addition to the standing monthly meeting.

**e. Procedure.** All meetings of this Committee shall be conducted in accordance with these rules and Robert's Rules of Order.

**f. Presiding Officer.** The Chair of the Committee, as selected by a majority vote of the Committee, shall preside over all Committee meetings. In the event the Chair is unavailable, the Chair may designate a Presiding Officer.

**g. Quorum.** A majority of the members of the Committee shall constitute a quorum. A quorum is necessary for the conduct of Committee business.

**h. Remote Attendance.** The committee will comply with the City Council's Resolution No. 22 XXXX governing remote participation at committee meetings that is attached as Exhibit B.

**4. AGENDAS.** Agendas shall be provided to the Clerk for publication as set forth in section 3 above and shall contain, at a minimum, the following information:

- Date, Place and Time of the meeting
- Call to Order by Chair
- Roll Call of Committee members and staff present
- Topics of Discussion
- Public Comment Periods
- Adjournment

**a. New business.** Items shall be placed on this Committee's agenda by Council referral or at the discretion of the Chair. Committee members may, by a majority vote, place an item on a future Committee meeting agenda.

**b. Referrals from Council.** Council may, by a majority vote, refer an item to this Committee for consideration and recommendations. When an item is referred to Committee by Council, the item shall be placed on the next reasonably available Committee agenda.

**c. Public Comment.** All Committee agendas shall include a designated time for public comment. Copies of the agenda shall be made available to members of the public at the meeting.

**5. MINUTES.** Minutes shall be kept of all Committee meetings. Minutes are not required to be a verbatim transcript. Video or audio recordings of meetings may be kept in lieu of written minutes. All minutes and recordings of Committee meetings shall be made available to the public on the official website of the City of Billings. In addition to any official recording made, a written record of the meeting must also be made and must include the following:

- a. Date, time, and place of meeting;
- b. A list of members in attendance;
- c. Substance of all matters proposed, discussed, or decided; and
- d. A record of the votes by individual members.

If the minutes are recorded and designated as the official record, a log or time stamp for each main agenda item for the purpose of providing assistance to the public in accessing that portion of the meeting.

**6. CONDUCTING BUSINESS.**

**a. Voting.** A majority vote of all Committee ~~m~~Members present shall be required for a report or recommendation to Council.

**b. Hearings.** This Committee is authorized to conduct hearings, hear presentations, receive reports, and otherwise explore issues within the Committee's jurisdiction.

**c. Reports.** This Committee shall present reports and recommendations to the Council for consideration. Such reports may be written or oral. Members voting in the minority on any issue may provide a written or oral ~~m~~Minority ~~R~~report to Council.

**7. AMENDING THE RULES.** These Rules shall only be amended by a majority vote of the Committee and shall take effect upon report to the full Council.

Exhibit A

**NOTICE OF PUBLIC MEETING**

The **(Name of Committee)** will hold a public meeting on \_\_\_\_\_, \_\_\_\_\_, 2022, at \_\_\_\_\_ AM/PM, in the \_\_\_\_\_ Room, at \_\_\_\_\_ Street, Billings, Montana.

The meeting is open to any interested members of the public. Meeting agendas are prepared and available online at <https://www.billingsmt.gov/1592/Council-Ad-Hoc>

For additional information, contact **(List the chairperson for the committee here with email and phone number)**.

Published on \_\_\_\_\_, 2022.

Denise R. Bohlman  
Billings City Clerk  
P.O. Box 1178  
Billings, MT 59103

Dept: Admin. - Council  
Publish: \_\_\_\_\_

Possible contract changes (\*= substantive)

- 1 ■ \*Sec. 1 -- 4 (vs. 2) years until contract expires – need Tom Singer’s input (but how address charter “indefinite term”)
- 2 ■ \*12 month notice of non-renewal instead of 6 month (if provide less, contract renews automatically; could still terminate contract, but would owe severance)
- 3 ■ \*Salary – Chris not looking for anything in excess of 3% for other employees
- 4 ■ \*Sec. 7B – give him the option of converting deferred comp. benefit to base salary
- 5 ■ Delete Sec. 3B that required 2019 evaluation after 6 mos. for possible merit increase up to 5% (done and now unneeded)
- 6 ■ Sec. 10.A. – update that minimum severance is now 10 months, maximum 12, to reflect 4 years seniority (no substantive change)
- 7 ■ Sec. 12 – delete confusing, complicated evaluation procedure
- 8 ■ Sec. 16 – delete paragraph on moving
- 9 ■ Sec. 20 – change address

*other than current salary plus 3%*

*Non-Substantive*

*3*  
*3 YR term of employment*

*2 1 YR NOTICE*  
*1 Expires NOV 30*

5. Council discussion (not decision) on compensation (to resolve 11-14 or 11-28) and contract changes (to extent desired)

*4*  
*Defers com to contract*

6. Conversation with Chris (4:45-4:50 ish)

Cole review of strengths

Cole review opportunities for improvement

Further input from CMs

Dialogue with Chris and description of proposed contract changes

DRAFT-EMPLOYMENT  
AGREEMENT 11/3/22

Between

City of Billings & Chris A. Kukulski

Effective November 30, 2022 ~~October 22,~~  
~~2018~~



## Introduction

This Agreement made and entered into effective ~~November 30, 2022~~ ~~October 22, 2018~~, by and between the City of Billings, Montana, a municipal corporation, (hereinafter called "Employer") and Chris A. Kukulski, (hereinafter called "Employee") an individual who has the education, training and experience in local government management and who, as a member of the International City/County Management Association (ICMA), is subject to the ICMA Code of Ethics, both of whom agree as follows:

## Section 1 - Term

The term of this agreement shall be ~~from November 30, 2022 through November 30, 2025, for an initial period from Employee's first date of employment, which will be no later than December 31, 2018, until December 31, 2020.~~ This Agreement shall be renewed for a ~~three~~ two-year term automatically ~~on January 1, 2021, December 1, 2024~~ and every ~~three~~ ~~the~~ two years thereafter unless notice of termination is given by the Employer at least ~~twelve (12)~~ ~~six (6)~~ months before the next renewal date.

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## Section 2 - Duties and Authority

Employer agrees to employ employee as City Administrator to perform the functions and duties specified in Section 4.03 of the City of Billings, Montana Charter and to perform other legally permissible and proper duties and functions without unreasonable interference. Section 4.03 provides:

The Administrator shall:

- A. Carry out policies established by the City Council;
- B. Perform the duties required by law, ordinance, resolution, or this Charter;
- C. Enforce laws, ordinances, and resolutions;
- D. Administer the affairs of the City;
- E. Direct, organize, establish, supervise, and administer all departments, agencies, and offices of the City;
- F. Appoint, suspend, and remove all employees of the local government;
- G. Prepare and present the City budget to the Council for its approval and administer the budget adopted by the Council;
- H. Report publicly to the Council at least quarterly on the financial conditions of the City;
- I. Recommend measures to the Council;
- J. Report to the Council as the Council may require;
- K. Attend Council meetings and take part in the discussion, but shall have no vote;
- L. Appoint with the approval of the City Council a qualified acting administrator to exercise

the powers and perform the duties of the Administrator during temporary absences.

### Section 3 - Compensation

A. Base Salary: Employer agrees to pay Employee an annual base salary of ~~one hundred-seventy nine thousand dollars (\$179,000)~~ (current salary +3%) payable in installments at the same time that the other management employees of the Employer are paid.

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B. ~~Not later than May 16, 2019, the Employer will evaluate the Employee's performance against the Employer's identified six month goals. The Employer agrees to consider increasing the compensation of the Employee dependent upon the results of the performance evaluation not to exceed five percent (5%) of annual base salary.~~

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C. Consideration shall be given on an annual basis to an increase in compensation. The Employer agrees to consider increasing the compensation of the Employee dependent upon the results of the performance evaluation conducted under the provisions of Section 12 of this Agreement. Increased compensation can be in the form of a base salary increase and/or performance incentive and/or an increase in benefits.

D. This agreement shall be automatically amended to reflect any salary adjustments that are provided.

### Section 4 - Health, Disability and Life Insurance Benefits

A. The Employer agrees to provide and to pay the premiums for health, dental and vision insurance equal to that which is provided to all other employees of the City. The Employee will be responsible for the City employee contribution for the health, dental and vision coverage for himself, his spouse and his children at the same rate as all other employees of the City.

B. Employer shall pay the premium due for \$300,000 term life insurance and long term disability insurance. The Employee shall name the beneficiary of the life insurance policy.

### Section 5 - Leave

A. Upon commencing employment, the Employee shall be credited with 192 hours of vacation leave. Employee shall then accrue sick and vacation leave on an annual basis at the highest rate provided to any other employees. Upon termination of employment for any reason, Employee shall be compensated for accrued vacation and sick leave according to

Employer's policy and Montana law.

- B. All other leave accruals and usages will be administered and used in a manner consistent with the City's Employee Handbook with the exception that there will be no waiting period for use of any leave.

### **Section 6 - Vehicle Allowance**

- A. The Employer agrees to pay to the Employee, during the term of this Agreement and in addition to other salary and benefits herein provided the sum of six thousand dollars (\$6,000) per year, payable monthly, as a vehicle allowance to be used to purchase, lease, or own, operate and maintain a vehicle. The Employee shall be responsible for paying for liability, property damage, and comprehensive insurance coverage upon such vehicle and shall further be responsible for all expenses attendant to the purchase, operation, maintenance, repair, and regular replacement of said vehicle.
- B. The Employer shall reimburse the Employee for documented fuel costs for any business use of the vehicle where the destination is greater than 50 miles from Billings or follow the current City travel policy.

### **Section 7 - Retirement and Health Savings Account**

- A. Employer agrees to contribute the statutorily required percentage of Employee's salary into the Montana Public Employees' Retirement System (MPERS). Employee will contribute the statutorily required percentage of Employee's annual salary to MPERS.
- B. Additionally, Employer agrees to contribute on behalf of Employee, a total of twelve percent (12%) of the annual base salary as defined in Section 3 to a City approved IRS Code Section 457 deferred compensation plan and/or 401(a) and/or Health Savings Account. The Employee may elect to distribute the 12% in any combination to any available plan(s)- At the employee's discretion, all or part of this benefit may be added to the employee's base pay as defined in Section 3. Annually, employer's contribution to each plan shall not be more than the maximum contributions permitted under IRS rules as they exist or may change during the term of the agreement.

### **Section 8 - General Business Expenses**

Subject to annual budgetary approval by the Council:

- A. Employer agrees to budget and pay for professional dues, including but not limited to the International City/ County Management Association, and subscriptions of the

Employee necessary for continuation and full participation in national, regional, state, and local associations, and organizations necessary and desirable for the Employee's continued professional participation, growth, and advancement, and for the good of the Employer.

- B. Employer agrees to budget and pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions to adequately continue the professional development of Employee and to pursue necessary official functions for Employer, including but not limited to the ICMA Annual Conference, the state league of municipalities, and such other national, regional, state, and local governmental groups and committees in which Employee serves as a member.
- C. Employer also agrees to budget and pay for travel and subsistence expenses of Employee for short courses, institutes, and seminars that are necessary for the Employee's professional development and for the good of the Employer.
- D. Employer recognizes that certain expenses of a non-personal but job-related nature are incurred by Employee, and agrees to reimburse or to pay said general expenses. Such expenses may include meals where Employer business is being discussed or conducted and participation in social events of various organizations when representing the Employer. Such expenditures are subject to annual budget constraints as well as state and Employer ethics and purchasing policies. The finance director is authorized to disburse such moneys upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits.
- E. The Employer acknowledges the value of having Employee participate and be directly involved in local civic clubs or organizations. Accordingly, Employer shall pay for the reasonable membership fees and/ or dues to enable the Employee to become an active member in local civic clubs or organizations.
- F. While the Employee is free to pursue reasonable off duty, non-job related activities, Council approval is necessary prior to the Employee's agreeing to hold office in any of the above referenced professional, business or civic organizations.
- G. Recognizing the importance of constant communication and maximum productivity, Employer shall provide Employee, for business and personal use, a laptop computer,

software, mobile phone/personal digital assistant and/or tablet computer for business and personal use, required for the Employee to perform their duties and to maintain communication with Employer's staff and officials as well as other individuals who are doing business with Employer. Upon termination of Employee's employment, the equipment described herein shall become the property of the Employee after any city documents and business related items have been removed and at the discretion of the Employee any mobile phone number shall be transferred to the Employee.

### **Section 9 - Termination**

- A. This Agreement will terminate if Employee becomes incapable of performing the duties defined in Section 2.
- B. This Agreement will be terminated involuntarily and without cause if:
  - a. A majority of the governing body votes to terminate Employee, without cause, in accordance with the City of Billings, Montana Charter, Section 4.02, at a properly posted and duly authorized public meeting.
  - b. Employer, citizens or legislature amends any provisions of the Charter pertaining to the role, powers, duties, authority, responsibilities of the Employee's position that substantially changes the form of government, and the Employee declares that such amendments constitute termination.
  - c. Employer reduces the base salary, compensation or any other financial benefit of Employee, unless it is applied in no greater percentage than the average reduction of all department heads.
  - d. A representative of the majority of the governing body offers to accept Employee's resignation and Employee declares a termination as of the date of the suggestion.
  - e. Employee notifies Employer, in writing, of a material breach of this Agreement, and Employer fails to cure the breach within 30 days.
- C. The City may terminate this Agreement for cause for Employee's failure to satisfactorily perform job duties, disruption of City operations, conduct which is prejudicial to the City or City Council, or other legitimate business reasons including:
  - a. Violation of any then existing residency requirement if applicable;
  - b. Conviction of or plea of guilty or no contest to a felony;

- c. Conviction of or plea or guilty or no contest to a misdemeanor which-:
  - i. involves an act or failure to act that occurs in the course and scope of Employee's duties;
  - ii. negatively affects the credibility of Employee to sufficiently discharge his duties.
- d. Adjudication by a forum of competent jurisdiction that Employee violated the City or State codes of ethics;
- e. Repeated and protracted unexcused absences from Employee's office or duties;
- f. Knowingly falsifying records or documents or knowingly making false statements related to the City's activities or businesses;
- g. Violation of any City policy regarding drugs or alcohol; or
- h. Any willful, grossly negligent, or negligent misapplication or misuse, direct or indirect, by Employee of public or other funds or other property, real, personal, or mixed owned by or entrusted to the City, any agency or corporation thereof, or the Employee in Employee's official capacity.

### Section 10 - Severance

Employee will be paid severance in the amounts provided by this Section only when Employee is terminated involuntarily and without cause as defined in Section 9 (B).

- A. If the Employee is terminated as defined in Section 9 (B), the Employer shall provide a minimum severance payment equal to ~~ten (10) six (6) months salary at the then current base rate of pay~~. An additional month of severance payment will be paid for each 12 month period of continued employment with the City of Billings, but the severance payment will not exceed twelve (12) months salary. This severance shall be paid in a lump sum or in a continuation of salary on the existing biweekly basis, at the Employee's option. Vacation and sick leave accruals will cease upon termination.
- B. Employee shall also be compensated for accrued vacation and sick leave according to Employer's policy and Montana law.

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C. Employer will contribute to the Employee's Section 457 deferred compensation account using Employee's annual salary at the date of termination divided by two thousand and eighty (2080) hours. If the amount of the contribution under this Section exceeds the limit under the Code for a contribution to the Deferred Compensation plan, the remainder shall be paid to the Employee in a lump sum as taxable compensation.

D. For a period consistent with earned severance months, following termination, the Employer shall pay the cost to continue the following benefits:

1. Health insurance for the Employee and all dependents as provided in Section 4A, after which time, Employee will be provided access to health insurance pursuant to the Consolidated Omnibus Budget Reconciliation Act ("COBRA").
2. Life insurance and long-term disability as provided in Section 4B.

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### Section 11 – Resignation

In the event that the Employee voluntarily resigns his position with the Employer, the Employee shall provide a minimum of 60 days notice unless Employer and Employee agree otherwise.:

### Section 12 – Performance Evaluation

A. Employer shall annually review the performance of the Employee ~~no later than~~ in November subject to a process, form, criteria, and format for the evaluation which shall be mutually agreed upon by the Employer and Employee.

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~~The annual evaluation process, at a minimum, shall include the opportunity for both parties to: (1) Conduct a formulary session where the governing body and the Employee meet first to discuss goals and objectives of both the past twelve (12) month performance period as well as the upcoming twelve (12) month performance period; (2) following that formulary discussion, prepare a written evaluation of goals and objectives for the past and upcoming year; (3) next meet and discuss the written evaluation of these goals and objectives; and (4) present a written summary of the evaluation results to the Employee. The final written evaluation should be completed and delivered to the Employee within 30 days of the initial formulary evaluation meeting.~~

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B. In the event the Employee is an ICMA Credentialed Manager, the multi-rater evaluation tool will be utilized at a minimum of every five years.

### Section 13 - Hours of Work

It is recognized that the Employee must devote a great deal of time outside the normal office hours on business for the Employer, and to that end Employee shall be allowed to establish an appropriate work schedule. The schedule shall be appropriate to the needs of the Employer and shall allow Employee to faithfully perform his or her assigned duties and responsibilities.

### Section 14 - Ethical Commitments

Employee will at all times uphold the tenets of the ICMA Code of Ethics, a copy of which is attached hereto and incorporated herein. Specifically, Employee shall not endorse candidates, make financial contributions, sign or circulate petitions, or participate in fund-raising activities for individuals seeking or holding elected office, nor seek or accept any personal enrichment or profit derived from confidential information or misuse of public time.

Employer shall support Employee in keeping these commitments by refraining from any order, direction or request that would require Employee to violate the ICMA Code of Ethics. Specifically, neither the governing body nor any individual member thereof shall request Employee to endorse any candidate, make any financial contribution, sign or circulate any petition, or participate in any fund-raising activity for individuals seeking or holding elected office, nor to handle any matter of personnel on a basis other than fairness, impartiality and merit.

### Section 15 - Outside Activities

The employment provided for by this Agreement shall be the Employee's sole employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to the City and the community, the Employee may elect to accept limited teaching, consulting or other business opportunities with the understanding that such arrangements shall not constitute interference with nor a conflict of interest with his or her responsibilities under this Agreement.

### ~~Section 16: Moving and Relocation Expenses~~

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~~Employee agrees to establish residence within the corporate boundaries of the local government within eight (8) months of employment, and thereafter to maintain residence within the corporate boundaries of the local government.~~

~~A. Employer shall pay directly for the expenses of moving Employee and his family and personal property from their current residence in Bozeman, MT to Employee's permanent~~



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~~residence in Billings, MT. Said moving expenses include packing, moving, storage costs, unpacking, and insurance charges. The Employee shall provide evidence of actual moving expenses by securing quotations from three (3) companies. The Employee shall submit these quotes to the Employer who, in consultation with the Employee, shall select the moving company.~~

- B. ~~Employer shall pay Employee an interim housing supplement of \$750 per month and shall continue for a maximum of eight (8) months, or until a home is purchased and closed on, within the corporate limits of the City of Billings, whichever event occurs first.~~

### **Section 17 - Residency**

Employee agrees to maintain residence within the corporate boundaries of the City of Billings.

### **Section 18 - Indemnification**

- A. Pursuant to Section 2-9-305, M.C.A., the City will indemnify, immunize and provide a defense to Employee if he is civilly sued for action taken within the scope of his employment.
- B. Beyond that required under Federal, State or Local Law, Employer shall defend, save harmless and indemnify Employee against any obligation to pay money or perform or not perform action, including without limitation, any and all losses, damages, judgments, interests, settlements, penalties, fines, court costs and other reasonable costs and expenses of legal proceedings including attorney's fees, and any other liabilities arising from, related to, or connected with any tort, professional liability claim or demand or any other threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrate or investigative, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as City Administrator or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, unless the act or omission involved willful or wanton conduct.

The Employee may request and the Employer shall not unreasonably refuse to provide independent legal representation at Employer's expense and Employer may not unreasonably withhold approval. Legal representation, provided by Employer for Employee, shall extend until a final determination of the legal action including any appeals brought by either party. The Employer shall indemnify Employee against any and all losses, damages, judgments, interest, settlements, penalties, fines, court costs and other reasonable costs

and expenses of legal proceedings including attorney's fees, and any other liabilities incurred by, imposed upon, or suffered by such Employee in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of his duties. Any settlement of any claim must be made with prior approval of the Employer in order for indemnification, as provided in this Section, to be available.

Employee recognizes that Employer shall have the right to compromise and settle any claim or suit, unless said compromise or settlement is of a claim brought against Employee in his individual capacity in which case Employee may elect to continue to defend and settle said personal claim at Employee's own expense. Except as provided in the previous sentence, Employer agrees to pay all reasonable litigation expenses of Employee throughout the pendency of any litigation to which the Employee is a party, witness or advisor to the Employer. Such expense payments shall continue beyond Employee's service to the Employer as long as litigation is pending. Further, Employer agrees to pay Employee reasonable consulting fees and travel expenses when Employee serves as a witness, advisor or consultant to Employer regarding pending litigation, beyond Employee's term of service to Employer.

#### Section 19 - Bonding

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

#### Section 20 - Other Terms and Conditions of Employment

- A. The Employer, only upon agreement with Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Billings Charter, local ordinances or any other law.
- B. Except as otherwise provided in this Agreement, the Employee shall be entitled, at a minimum, to the highest level of benefits that are enjoyed by or offered to other appointed officials, appointed employees, department heads or general employees of the Employer as provided in the Charter, Code, Personnel Rules and Regulations or by practice.

#### Section 21 - Notices

Notice pursuant to this Agreement shall be given by depositing in the custody of the United States Postal Service, postage prepaid, addressed as follows:

- A. EMPLOYER: Office of the Mayor, Billings City Council, 210 N. 27<sup>th</sup> Street, Billings, Montana 59101
- B. EMPLOYEE: Chris A. Kukulski, ~~3918 Summerwood Drive, Billings, MT 59106, 445-Cherry Drive, Bozeman, MT 59715~~, or at the residence of Employee in Billings, MT once established.

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Alternatively, notice required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as the date of deposit of such written notice in the course of transmission in the United States Postal Service .

## Section 22 - General Provisions

- A. Integration. This Agreement sets forth and establishes the entire understanding between the Employer and the Employee relating to the employment of the Employee by the Employer. Any prior discussions or representations by or between the Employer and Employee are merged into and rendered null and void by this Agreement. The Employer and Employee by mutual written agreement may amend any provision of this agreement during the life of the agreement. Such amendments shall be incorporated and made a part of this agreement.
- B. Binding Effect. This Agreement shall be binding on the Employer and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.
- C. Effective Date. This Agreement shall become effective on October 22, 2018.
- D. Severability. The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both Employer and Employee subsequent to the expungement or judicial modification of the invalid provision.
- E. Precedence. In the event of any conflict between the terms, conditions and provisions of this Agreement and the provisions of Council's policies, or Employer's ordinance or Employer's rules and regulations, or any permissive state or federal law, then, unless

otherwise prohibited by law, the terms of this Agreement shall take precedence over contrary provisions of Council's policies, or Employer's ordinances, or Employer's rules and regulations or any such permissive law during the term of this Agreement.

F. Public Document. This Agreement is a public document and shall be available for inspection by the public.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, in duplicate, the day of ~~November, 2022~~ October, 2018.

THE CITY OF BILLINGS

By t0:RP :4 ae Date: 10-2-18  
Mayor William Cole

ATTEST:

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Clerk of the Court mi

EMPLOYEE

Chris A. Kukulski Date: 10-22-18  
Chris A. Kukulski

# ICMA Code of Ethics

The mission of ICMA is to create excellence in local governance by developing and fostering professional local government management worldwide. To further this mission, certain principles, as enforced by the Rules of Procedure, shall govern the conduct of every member of ICMA, who shall:

1. Be dedicated to the concepts of effective and democratic local government by responsible elected officials and believe that professional general management is essential to the achievement of this objective.
2. Affirm the dignity and worth of the services rendered by government and maintain a constructive, creative, and practical attitude toward local government affairs and a deep sense of social responsibility as a trusted public servant.
3. Be dedicated to the highest ideals of honor and integrity in all public and personal relationships in order that the member may merit the respect and confidence of the elected officials, of other officials and employees, and of the public.
4. Serve the best interests of the people.
5. Submit policy proposals to elected officials; provide them with facts and advice on matters of policy as a basis for making decisions and setting community goals; and uphold and implement local government policies adopted by elected officials.
6. Recognize that elected representatives of the people are entitled to the credit for the establishment of local government policies; responsibility for policy execution rests with the members.
7. Refrain from all political activities which undermine public confidence in professional administrators. Refrain from participation in the election of the members of the employing legislative body.
8. Make it a duty continually to improve the member's professional ability and to develop the competence of associates in the use of management techniques.
9. Keep the community informed on local government affairs; encourage communication between the citizens and all local government officers; emphasize friendly and courteous service to the public; and seek to improve the quality and image of public service.
10. Resist any encroachment on professional responsibilities, believing the member should be free to carry out official policies without interference, and handle each problem without discrimination on the basis of principle and justice.
11. Handle all matters of personnel on the basis of merit so that fairness and impartiality govern a member's decisions pertaining to appointments, pay adjustments, promotions, and discipline.
12. Public office is a public trust. A member shall not leverage his or her position for personal gain or benefit.

Adopted by the ICMA Executive Board in 1924, and most recently revised by the membership in June 2018

RESOLUTION 22-\_\_\_\_\_

**A RESOLUTION ESTABLISHING RULES, PROCEDURES, AND CRITERIA FOR A CITY COUNCIL MEMBER OR A MEMBER OF A CITY BOARD, COMMISSION, OR COMMITTEE TO PARTICIPATE REMOTELY IN PUBLIC MEETINGS**

**WHEREAS**, pursuant to 2-3-103, MCA, and the Montana Constitution, the City of Billings must establish procedures for permitting and encouraging the public to participate in decisions of the City Council and of the City's boards, committees, or agencies that are of significant interest to the public; and

**WHEREAS**, the City has adopted such procedures through Chapter 2, Article 2, Billings, Montana City Code, among others; and

**WHEREAS**, the City Council desires to adopt procedures and establish rules to authorize members of Council and the City's boards, commissions, and committees to participate remotely under specific circumstances and conditions while ensuring such remote participation fulfills the City's obligation to permit and encourage public participation.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:**

Pursuant to BMCC 2-212, the City Council hereby establishes the following criteria that must be met and procedures that must be followed to authorize a council member or a member of a City board, agency, or committee to ~~attend-participate in their official capacity~~ at a public meeting through remote participation. Whenever this policy refers to a City Council member the same criteria and procedures apply to members of City boards, commissions, and committees unless a specific standard applies.

1. Remote participation means ~~attendance-participation~~ by a Council member at any meeting of the City Council through the use of technology such as a video meeting software application.
2. Remote participation by a council member may be available only upon a determination by the City Administrator that the City has the technological and administrative capacity to support remote participation and-remote participation is beneficial and convenient for the administration of city business in the discretion of the city administrator.
3. Council members are expected to attend meetings in person absent authorization by the presiding officer as described in the following paragraph.
4. Remote participation may be authorized by the presiding officer only under the following circumstances:
  - a. Council member illness or health condition;

- b. Council member personal emergency, travel, or other circumstances reasonably limiting the Council member's ability to participate in person; or
- c. Fire, flood, earthquake, or other community emergency that makes it impracticable for the Council member to attend the meeting.

5. A Council member may shall submit a request to the presiding officer, City Administrator, and City Clerk in advance of the meeting to determine if an arrangement for remote participation is possible. The Council member seeking such accommodation shall endeavor to advise the City of their intent to participate remotely at the earliest possible time and not less than twenty-four (24) hours prior to the meeting unless notice within that time frame is not reasonable under the circumstances. The pPresiding officer shall seek to advise the Council member within 12 hours of the meeting if the request is approved or denied. Any approved request does not guranteeguarantee that a remote connection can be established or maintained during the meeting.

6. A Council member may be authorized to participate remotely pursuant to any single request for no more than two consecutive Business meetings. A Council member must submit a subsequent request to participate remotely for any additional meetings, Other than illness or injury, but in no case may a Council member be authorized to participate remotely for more than four five ??? meetings in any calendar year without approval by a majority of the Council, board, commission or committee. Remote participation is generally intended to be a temporary accommodation, and repeated absence from in-person attendance for the same or different reasons may result in refusal to grant additional requests.

7. The Council member participating remotely must ensure the equipment, ~~and~~ technology and venue the Council member uses meets the following to ensure that the Council member's remote participation is materially comparable to in-person participation and is not a distraction for the public or other Council members:

- a. Each member of Council and the public must be able to adequately see and hear the Council member participating remotely;
- b. The Council member participating remotely must be able to adequately see and hear the other Council members and City staff;
- c. The Council member participating remotely must be able to reasonably observe all materials reviewed and discussed by the Council during the meeting; and
- d. The Council member participating remotely must ensure they have a suitable location from which to participate and must ensure they do not communicate with others not in the meeting regarding matters on the agenda.

8. A Council member participating remotely meeting the above requirements will be counted in determining a quorum and are-is eligible to vote on all business presented during the meeting. If at any time the member does not have an audio/video connection meeting the requirements above or the connection fails during a presentation, of material public hearing or any other time in which the item is discussed, then the member attending remotely will be

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considered absent for that portion of the meeting and is not eligible to vote. ~~However, the member may appeal to the presiding officer if their absence might not have had a material adverse impact on their ability to make a fair judgment or the public's ability to observe the Council member. The presiding officer has the sole and final discretion to approve or deny the appeal. determination to the appeal, as determined in the discretion of the presiding officer.~~

9. If the Mayor is remotely participating in a meeting and the Deputy Mayor or the Deputy Mayor Pro Tempore is participating in person, the Deputy Mayor or Deputy Mayor Pro Tempore shall preside over the meeting. If the Mayor, Deputy Mayor, and Deputy Mayor Pro Tempore, or other presiding officer in the case of a City board, commission, or committee, are absent or participating remotely, the Council shall select a temporary presiding officer to preside over the meeting.

10. No member shall be allowed to participate ~~remotely in a meeting closed to the public pursuant to BMCC 2-600 and state law an executive session remotely~~ by electronic means.

11. This policy does not ~~grant any member of the public a right to remotely attend or offer public comment at a public meeting by electronic means or~~ authorize the City to conduct public meetings of the City Council or of a city board, commission, or committee wherein the public's only means of participation in the meeting is through remote methods. If a meeting is to occur limiting the public to only remote participation, such a decision may be made only upon a determination that public health or safety ~~or other exigent circumstances~~ necessitates a fully remote meeting. For the City Council such a decision may be made by the presiding officer or City Administrator. For boards, commissions, and committees, such a decision may be made by the City Administrator.

This resolution shall be effective upon adoption.

ADOPTED AND APPROVED by the City Council of the City of Billings, Montana, on the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

CITY OF BILLINGS

By:

William A. Cole, Mayor

ATTEST:

By: \_\_\_\_\_

Denise R. Bohlman, City Clerk