

To: pluwe@bozeman.net
From: Ken Weaver <upokw@montana.edu>
Subject: Self-Gov Ordinance
Cc: upojm
Bcc:
X-Attachments: C:\TEMPFILE\bzn.plan.doc;

September 1, 2000

Paul Luwe, Esq.
Bozeman City Attorney

Paul,

You know how much I like to play attorney but..... I really Do NOT like second guessing a real attorney. So, I am caught in a bit of a dilemma and I simply have to rely on your trust to understand that I have no ulterior purpose in bringing the following matter to your attention. It is simply that we have done this process so many times for so many communities and we cannot ignore our own community. Here goes.

I believe that the City Ordinance No. 1524, Section 2, placing on the November ballot the question of adopting the alternative form of commission-manager government for the City of Bozeman, should be amended to include the entire plan of government set forth at 7-3-114, MCA and 7-3-301 through 317, MCA My reasoning follows.

As presently worded, relatively few attorneys in this state, let alone future city commissioners or citizens, will be able readily to figure out exactly what the plan of government is for the City of Bozeman. For example, I know of only a few city or county attorneys and even fewer local elected officials who know of the existence or significance of 7-3-111 through 114, MCA. Yet, as you know, absent a charter, 7-3-114, MCA is crucial to understanding the basic form, structures, powers and roles and responsibilities of the proposed form and plan of government.

Additionally, if approved at the ballot in November, which I trust it will be, I believe it would be most helpful if there were a single document (i.e. Commission Ordinance 1524) that could be read and readily referenced as the voter approved "plan of government" for the city of Bozeman. (See, for example, the definition of a "plan of government" at 7-1-4121(2)(14),MCA). Otherwise, citizens and future commissioners are going to have to first read the ordinance, then go to the "recipe" at 7-3-114, MCA while flipping the pages back and

forth to cross reference that to Part 3....if they have ready access to Title 7 at all.

Moreover, to cast an informed vote a citizen would literally have to refer to all three documents (two fairly complicated statutes plus the ordinance); arguably a rather severe test of even the most dedicated citizen and, I hunch, a potential flaw in achieving the desired outcome. Our experience is that when voters do not clearly understand a ballot issue, they tend to vote against it. Would it not therefore be helpful for voter education purposes alone (as well as for future clarity of the role and functions of the manager and commission) to be able to refer to a single document entitled "Plan of Government for the City of Bozeman" which, among other things, would clearly demonstrate the limited nature of the changes being proposed?

For your convenience and consideration for incorporation by amendment into Section 2, of the ordinance, I have attached a WORD file containing a complete "plan of government", drawn from the two relevant statutes, which I believe reflects the apparent intent of the present language.

I will be out of the country for awhile but Judy Mathre (994-6680 and E-mail upojm@montana.edu) is available and extremely well informed on this subject, having written a very large number of plans of government and charters for other communities.

Holler if we can be of any assistance.

Judy and I send our best regards,

Ken Weaver

p.s. I was really pleased to learn from Miral that the eye surgery went well for you

CERTIFICATE
ESTABLISHING THE EXISTING PLAN OF GOVERNMENT
FOR
BOZEMAN, MONTANA

If retained by the voters, the government of Bozeman, Montana shall be organized under the following provisions of Section 7-3-114 MCA.

7-3-114. Statutory basis for municipal commission-manager government. (1) For the purpose of determining the statutory basis of existing units of local government after May 2, 1977, each unit of local government organized under the general statutes authorizing the municipal commission-manager form of government shall be governed by the following sections:

- (a) 7-3-301;
- (b) 7-3-302(2);
- (c) 7-3-303;
- (d) 7-3-304;
- (e) 7-3-305;
- (f) 7-3-312(3);
- (g) 7-3-313(1)
- (h) 7-3-314(2);
- (i) 7-3-315(3);
- (j) 7-3-316(2);
- (k) 7-3-317(2);
- (l) 7-3-318.

(2) This form has terms of 4 years for all elected officials. The size of the commission shall be established by ordinance, but it may not exceed five members.

These sections establish the following form of government which shall be called a MUNICIPAL COMMISSION-MANAGER FORM.

7-3-301. Commission-manager form. The commission-manager form (which may be called the council-manager form) consists of an elected commission (which may be called the council) and a manager appointed by the commission, who shall be the chief administrative officer of the local government. The manager shall be responsible to the commission for the administration of all local government affairs placed in his charge by law, ordinance, or resolution.

7-3-302 (1). Nature of government. The plan of government submitted to the qualified electors shall determine the powers of the local government unit by authorizing self-government powers.

7-3-303. Appointment of manager. The manager shall be appointed by the commission for an indefinite term on the basis of merit only and removed only by a majority vote of the whole number of

the commission.

7-3-304. Duties of manager. The manager shall:

- (1) enforce laws, ordinances, and resolutions;
- (2) perform the duties required of him by law, ordinance, or resolution;
- (3) administer the affairs of the local government;
- (4) direct, supervise, and administer all departments, agencies, and offices of the local government unit except as otherwise provided by law or ordinance;
- (5) carry out policies established by the commission;
- (6) prepare the commission agenda;
- (7) recommend measures to the commission;
- (8) report to the commission on the affairs and financial condition of the local government;
- (9) execute bonds, notes, contracts, and written obligations of the commission, subject to the approval of the commission;
- (10) report to the commission as the commission may require;
- (11) attend commission meetings and may take part in the discussion, but he may not vote;
- (12) prepare and present the budget, to the commission for its approval and execute the budget adopted by the commission;
- (13) appoint, suspend, and remove all employees of the local government except as otherwise provided by law or ordinance;
- (14) appoint members of temporary advisory committees established by the manager.

7-3-305. Employees of commission-manager government.

- (1) Employees appointed by the manager and his subordinates shall be administratively responsible to the manager.
- (2) Neither the commission nor any of its members may dictate the appointment or removal of any employee whom the manager or any of his subordinates are empowered to appoint.
- (3) Except for the purpose of inquiry or investigation under this title, the commission or its members shall deal with the local government employees who are subject to the direction and supervision of the manager solely through the manager, and neither the commission nor its members may give orders to any such employee, either publicly or privately.

7-3-312 (3). Appointment to boards. All members of boards, other than temporary advisory committees established by the manager, shall be appointed by the commission.

7-3-313 (1). Selection of commission members. The commission shall be elected at large.

7-3-314 (2). Type of election. Local government elections shall be conducted on a nonpartisan basis.

7-3-315 (3). Chairman of commission. The chairman of the commission shall be selected as provided by ordinance.

7-3-316 (2). Terms of commission members. Commission members shall be elected for

overlapping terms of office.

7-3-317 (2). Size of commission and community councils. The size of the commission shall be five (5), and community councils to advise commissioners may be authorized by ordinance.

7-3-318. Terms of elected officials. The term of office of elected officials shall be four (4) years.

ORDINANCE NO. 1524

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF BOZEMAN, MONTANA, STATING THE COMMISSION'S INTENT TO PLACE THE QUESTION OF AMENDING THE FORM OF GOVERNMENT UNDER WHICH THE CITY OF BOZEMAN OPERATES FROM THE "MUNICIPAL COMMISSION - MANAGER" FORM OF GOVERNMENT, WITH GENERAL GOVERNMENT POWERS, TO THE "COMMISSION - MANAGER" FORM OF GOVERNMENT, WITH SELF-GOVERNMENT POWERS AND DEFINING THE APPLICABLE STRUCTURAL SUBOPTIONS.

*Judy M.
994-1905*

WHEREAS, the City of Bozeman implemented the Municipal Commission - Manager form of government on the 10th day of October 1921, as approved by the electors on the 4th day of October 1921, under Title 11, Chapters 32 and 33, Revised Codes of Montana, which have subsequently been incorporated under Title 7, Chapter 3, Parts 43 and 44, Montana Code Annotated; and

WHEREAS, Article XI of the Constitution of the State of Montana provides for self-government powers for local governments; and

WHEREAS, Title 7, Chapter 1, Part 1, Montana Code Annotated, provides the basis for self-government powers for local governments; and

WHEREAS, Title 7, Chapter 3, Part 3, Montana Code Annotated, provides for the adoption of the Commission - Manager form of government with either general government powers or self-government powers; and

WHEREAS, the existing Municipal Commission - Manager form of government established under Title 7, Chapter 3, Parts 43 and 44, Montana Code Annotated, does not provide for the adoption of self-government powers; and

WHEREAS, the City Commission has determined it is in the community's best interests to place on the ballot the adoption of an alternative form of government, under which the City of Bozeman would operate under the Commission - Manager form of government, as set forth in Title 7, Chapter 3, Part 3, Montana Code Annotated.

NOW, THEREFORE, BE IT ORDAINED by the City Commission of the City of Bozeman, Montana, that

Section 1

The following issue be placed on the November 7, 2000, general election ballot:

- FOR** adoption of commission-manager form of government with self-government powers and proposed structural suboptions as set forth in Bozeman Ordinance No. 1524.
- FOR** the existing form of government.

Section 2

The following structural suboptions be established to further define the structural characteristics of the proposed form of government:

1. All members of boards, other than temporary advisory committees established by the manager, shall be appointed by the commission.
2. The commission shall be elected at large.
3. Local government elections shall be conducted on a nonpartisan basis.
4. The chairman of the commission shall be selected as provided by ordinance.
5. Commission members shall be elected for overlapping terms of office.
6. The Commission shall consist of five (5) members.
7. Community councils to advise commissioners may be authorized by ordinance.
8. The term of office of elected officials shall be four (4) years.

Section 3

Repealer.

All resolutions, ordinances and sections of the Bozeman Municipal Code and parts thereof in conflict herewith are hereby repealed.

Section 4

Severability.

If any provisions of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provision or application and, to this end, the provisions of this ordinance are declared to be severable.

Section 5

Savings Provision.

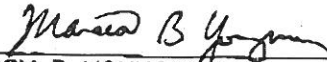
This ordinance does not affect the rights or duties that matured, penalties and assessments that were incurred or proceedings that were begun before the effective date of this ordinance.

Section 6

Effective Date.

This ordinance shall be in full force and effect thirty (30) days after adoption.

PASSED by the City Commission of the City of Bozeman, Montana, on first reading at a regular session thereof held on the 7th day of August 2000.



MARCIA B. YOUNGMAN, Mayor

ATTEST:



ROBIN L. SULLIVAN
Clerk of the Commission

PASSED, ADOPTED AND APPROVED by the City Commission of the City of Bozeman, Montana, on second reading at a regular session thereof held on the 21st day of August 2000.

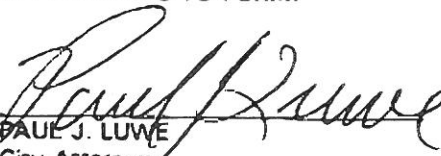
MARCIA B. YOUNGMAN, Mayor

ATTEST:



ROBIN L. SULLIVAN
Clerk of the Commission

APPROVED AS TO FORM:



PAUL J. LUWE
City Attorney