

ORDINANCE NO.

AN ORDINANCE ADOPTING THE APPEARANCE OF FAIRNESS DOCTRINE FOR QUASI-JUDICIAL PROCEEDINGS BY ADDING SECTION 2.04.130 TO THE RAPID CITY MUNICIPAL CODE.

WHEREAS, applicants in quasi-judicial matters decided by the City of Rapid City have a right to Due Process under the federal and state constitutions; and

WHEREAS, due process affords applicants the right to a fair hearing with notice and an opportunity to be heard; and

WHEREAS, the Common Council of the City of Rapid City has determined that it is in the best interests of the City to adopt a formal policy related to due process in quasi-judicial proceedings conducted by City entities by adding Section 2.04.130 to the Rapid City Municipal Code.

NOW THEREFORE, BE IT ORDAINED, by the City of Rapid City that Section 2.04.130 be added to the Rapid City Municipal Code to read as follows:

2.04.130 Appearance of Fairness Doctrine for Quasi-Judicial Proceedings.

A. *Purpose:* The purpose of this Ordinance is to protect the public's right to due process in all quasi-judicial proceedings conducted pursuant to the ordinances, rules, and policies of the City of Rapid City by prohibiting improper ex-parte communications with the decision makers in such hearings. This ordinance is not intended to prohibit or restrict citizens' ability to communicate with elected or appointed officials on legislative issues, matters of general public concern, or matters of public policy.

B. *Definitions:* The following definitions apply to terms used in this ordinance:

1. *Decision Maker:* An elected official, member of a City board or committee, or any other appointed officer of the City who as part of their official duties is required to render a decision in a quasi-judicial proceeding.

2. *Ex-parte Communication:* An oral or written communication between a decision maker and an interested party regarding the subject matter of a quasi-judicial proceeding that is made outside the official record of the proceeding or a properly noticed public hearing on the matter.

3. *Legislative Decision:* A legislative decision is one by which the City enacts a permanent law or lays down a rule of conduct or course of policy for the guidance of citizens or the City's officers and staff.

4. *Quasi-Judicial Proceeding/Decision:* A proceeding, or decision, by which administrative bodies or appointed officers of the City are required to investigate or ascertain the existence of facts, hold hearings, weigh evidence and ultimately draw conclusions from such facts, hearings and evidence as a basis for an official action or decision. Proceedings where an administrative body or appointive officer is required to exercise discretion of a judicial nature.

C. Rules Applicable to Quasi-Judicial Proceedings: It is the policy of the City that all quasi-judicial hearings must be fair. Decision makers in quasi-judicial proceedings should be disinterested and free from bias, or predisposed to the final outcome. While decision makers are presumed to be objective and capable of judging controversies fairly on the basis of their own circumstances, where actual bias or an unacceptable risk of actual bias exists, the decision maker must be disqualified from participating in the proceeding. In order to ensure fairness and the risk of bias or prejudgment the following rules for quasi-judicial proceedings are adopted:

1. These rules apply at the time an application, or appeal, which will initiate a quasi-judicial proceeding is filed with the City.

2. There should be no ex-parte communications between a decision maker and City staff, an applicant, members of the public, other elected or appointed officials and any other interested party pertaining to the substance of such application or appeal.

3. All exhibits, pictures, reports, memos, or comments received by the City shall be made part of the official record of the proceeding. All effort shall be made by City staff and the applicant to provide all information to be considered by the decision makers in a quasi-judicial proceeding at least five (5) days prior to the hearing. If any comments or information are received or made part of the record with less than five (5) days' notice, any interested party should be given a reasonable opportunity to respond to, or rebut, such new information.

4. If any ex-parte communication with a decision maker does occur, the decision maker must disclose the substance of such communication to the parties and is **disqualified from participating in the hearing**. If a decision maker fails to disclose the substance of any ex-parte communication prior to the hearing, or on the record at the next public hearing after the communication has occurred, the decision maker shall be disqualified from participating in the proceeding.

5. A decision maker whose communications, statements, or actions regarding an issue or party involved in a quasi-judicial proceeding demonstrates prejudice or an unacceptable risk of bias shall be disqualified from participating in the proceeding. If it appears that a decision maker should be disqualified from participating in a proceeding, but refuses to do so voluntarily, the other members of the board or committee conducting such hearing can by majority vote prohibit such decision maker's further participation in the hearing.

6. If it is later determined that a decision maker should have been disqualified from participating in, or voting on, a matter decided in a quasi-judicial proceeding the remedy will be to invalidate that decision maker's vote.

D. Exceptions: The provisions of this section do not apply to legislative decisions and/or proceedings.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(SEAL)

First Reading:
Second Reading:
Published:
Effective: