

## **Attachment B**

Comparison of City Ethics Ordinances to Corresponding State of  
Montana Ethics Statutes

Sec. 2-701. - Policy.

The public judges its government by the way public officials conduct themselves in the offices to which they are elected or appointed. The people have a right to expect that every public official will conduct himself or herself in a manner that will tend to preserve public confidence in and respect for the government he or she represents. Such confidence and respect can best be promoted if every public official, whether paid or unpaid, and whether elected or appointed, will uniformly:

- (1) Treat all citizens with courtesy, impartiality, fairness and equality under the law; and,
- (2) Avoid both actual and potential conflicts between his or her private self-interest and the public interest.

(Code 1967, § 2.08.010)

**(This introductory City Code section remains unchanged)**

~~Sec. 2-702. - Definitions.~~

~~The terms used in this article are defined as follows:~~

~~*Financial interest* means any interest which shall yield, directly or indirectly, a monetary or other material benefit (other than the duly authorized salary or compensation for his or her services to the city) to the official or to any person employing or retaining the services of the official.~~

~~*Official* means any person elected to a city office, employed by the city, or appointed to any public office or public body of the city whether paid or unpaid and whether part-time or full-time.~~

~~*Personal interest* means any interest arising from blood or marriage relationships or from close business or political association whether or not any financial interest is involved.~~

~~*Public body* means any agency, board, body, commission, committee, department or office of the city.~~

**This section has been transferred to Section 2-221(2)(o) in the City Code which now states:**

- o. Every member of the council present shall vote upon every question submitted to the council, unless excused or unless the member has a financial or personal interest as defined in section 2-702. If a member has a financial, private or personal interest, the member shall, immediately after the motion has been made and seconded, or as soon thereafter as the member may be recognized by the presiding officer, publicly disclose the nature and extent of such interest and disqualify himself or herself from participation in the deliberation and voting on the question.

For purposes of evaluating whether or not a conflict of interest requires the Mayor or a Council Member to disqualify themselves from the vote on any question, the following definitions shall apply:

*Financial or personal interest.* No official, either on his or her own behalf or on behalf of

any other person, shall have any financial or personal interest in any business or transaction with any public body unless the official shall first make full public disclosure of the nature and extent of such interest.

Official means any person elected to a city office, employed by the city, or appointed to any public office or public body of the city whether paid or unpaid and whether part-time or full-time.

Personal interest means any interest arising from blood or marriage relationships or from close business or political association whether or not any financial interest is involved.

Private interest. Private interest is a direct or indirect interest of a natural person, partnership, corporation or any other entity including a political entity other than the city or an organization in which the city is affiliated.

Public body means any agency, board, body, commission, committee, department or office of the city.

~~(Code 1967, § 2.08.020)~~

~~**Cross reference**— Definitions and rules of construction generally, § 1-102.~~

~~Sec. 2-703.— Fair and equal treatment.~~

- ~~(a) No official shall grant or make available to any member of the public any consideration, treatment, advantage or favor beyond that which is the general practice to grant or make available to the public at large.~~
- ~~(b) No official shall use public time, facilities, equipment, supplies, personnel or funds for the official's private business purposes.~~

~~Code 1967, § 2.08.030; Ord. No. 97-5018, § 1, 4-14-97)~~

**(Covered by MCA sections 2-2-101 Statement of Purpose and 2-2-103 Public Trust-  
Public Duty-which state:**

## **MCA 2-2-101**

### **2-2-101. Statement of purpose**

The purpose of this part is to set forth a code of ethics prohibiting conflict between public

duty and private interest as required by the constitution of Montana. This code recognizes distinctions between legislators, other officers and employees of state government, and officers and employees of local government and prescribes some standards of conduct common to all categories and some standards of conduct adapted to each category. The provisions of this part recognize that some actions are conflicts per se between public duty and private interest while other actions may or may not pose such conflicts depending upon the surrounding circumstances.

### **2-2-103. Public trust--public duty**

(1) The holding of public office or employment is a public trust, created by the confidence that the electorate reposes in the integrity of public officers, legislators, and public employees. A public officer, legislator, or public employee shall carry out the individual's duties for the benefit of the people of the state.

(2) A public officer, legislator, or public employee whose conduct departs from the person's public duty is liable to the people of the state and is subject to the penalties provided in this part for abuse of the public's trust.

(3) This part sets forth various rules of conduct, the transgression of any of which is a violation of public duty, and various ethical principles, the transgression of any of which must be avoided.

(4)(a) The enforcement of this part for:

(i) state officers, legislators, and state employees is provided for in 2-2-136;

(ii) legislators, involving legislative acts, is provided for in 2-2-135 and for all other acts is provided for in 2-2-136;

(iii) local government officers and employees is provided for in 2-2-144.

(b) Any money collected in the civil actions that is not reimbursement for the cost of the action must be deposited in the general fund of the unit of government.

**Sec. 2-7024. - Conflict of interest.**

The Mayor and City Council, all other elected City officials, appointed boards and commission Members and all City employees shall be subject to the applicable Code of Ethics provisions in State law including but not limited to laws governing conflict between public duty and private interest.

**( New language referencing State ethics statutes and expected compliance with them)**

- ~~(a) *Financial or personal interest.* No official, either on his or her own behalf or on behalf of any other person, shall have any financial or personal interest in any business or transaction with any public body unless the official shall first make full public disclosure of the nature and extent of such interest.~~
- ~~(b) *Disclosure and disqualification.* Whenever the performance of his or her official duties shall require any official to deliberate and vote on any matter involving the official's financial or personal interest, the official shall publicly disclose the nature and extent of such interest and disqualify himself or herself from participating in the deliberation as well as in the voting.~~
- ~~(c) *Incompatible employment.* No official shall engage in private employment with, or render services for, any private person who has business transactions with any public body unless the official shall first make full public disclosure of the nature and extent of such employment or services.~~
- ~~(d) *Private interest.* Private interest is a direct or indirect interest of a natural person, partnership, corporation or any other entity including a political entity other than the city or an organization in which the city is affiliated.~~

~~(Code 1967, § 2.08.040)~~

**Subsections (a), (b) and (d) have been moved to BMCC section 2-221(2)(o) provided above on page 2.**

**Subsection (c) is covered by State law at MCA sections 2-2-105(2) and (5) and 2-2-121(2)(b) through (f) which state:**

**MCA 2-2-105**

**2-2-105. Ethical requirements for public officers and public employees**

(1) The requirements in this section are intended as rules of conduct, and violations constitute a breach of the public trust and public duty of office or employment in state or local government.

(2) Except as provided in subsection (4), a public officer or public employee may not acquire an interest in any business or undertaking that the officer or employee has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by the officer's or employee's agency.

(3) A public officer or public employee may not, within 12 months following the voluntary termination of office or employment, obtain employment in which the officer or employee will take direct advantage, unavailable to others, of matters with which the officer or employee was directly involved during a term of office or during employment. These matters are rules, other than rules of general application, that the officer or employee actively helped to formulate and applications, claims, or contested cases in the consideration of which the officer or employee was an active participant.

(4) When a public employee who is a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority is required to take official action on a matter as to which the public employee has a conflict created by a personal or private interest that would directly give rise to an appearance of impropriety as to the public employee's influence, benefit, or detriment in regard to the matter, the public employee shall disclose the interest creating the conflict prior to participating in the official action.

(5) A public officer or public employee may not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when the officer or employee has a substantial personal interest in a competing firm or undertaking.

#### **MCA 2-2-121**

#### **2-2-121. Rules of conduct for public officers and public employees**

...

(2) A public officer or a public employee may not:

(a) subject to subsection (7), use public time, facilities, equipment, supplies, personnel, or funds for the officer's or employee's private business purposes;

(b) engage in a substantial financial transaction for the officer's or employee's private business purposes with a person whom the officer or employee inspects or supervises in the course of official duties;

(c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from the officer's or employee's agency;

(d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any agency;

(e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which the officer or employee either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or

(f) solicit or accept employment, or engage in negotiations or meetings to consider employment, with a person whom the officer or employee regulates in the course of official duties without first giving written notification to the officer's or employee's supervisor and department director.

**Sec. 2-705. — Representing private interests.**

~~(a) No official, whether paid or unpaid, shall appear on behalf of private interests before any public body of the city. An official shall not represent private interests in any action or proceeding against the interests of the city or in any proceeding to which the city is a party.~~

~~(b) These prohibitions shall not be construed to prevent an official from making inquiries and investigations as provided for in the Charter, nor shall it prevent an official from appearing before any public body of the city to express the official's personal views as a private citizen.~~

~~(Code 1967, § 2.08.050)~~

~~(Covered by MCA section 2-2-121(2)—provided above.~~

~~Sec. 2-706. — Gifts and favors.~~

- ~~(a) No official or employee shall accept any gift, whether in the form of money, thing, favor, loan or promise, that is offered to influence an official decision or to produce an official opinion or action.~~
- ~~(b) No city official or employee shall accept a cash gift for any reason.~~
- ~~(c) Except as provided under previous subsections (a) and (b), a city official or employee may accept a gift or favor of food, merchandise or services whose cash value is less than fifty (\$50.00) dollars.~~

~~(Code 1967, § 2.08.060; Ord. No. 02-5217, § 1, 7-22-02)~~

**(Covered by MCA sections 2-2-102(3) which defines “gift of substantial value” and 2-2-104(1)(b) and (2) which specifies when a gift may be accepted provided below:**

**MCA 2-2-102**

**2-2-102. Definitions**

...

**(3)(a) “Gift of substantial value” means a gift with a value of \$50 or more for an individual.**

**(b) The term does not include:**

- (i) a gift that is not used and that, within 30 days after receipt, is returned to the donor or delivered to a charitable organization or the state and that is not claimed as a charitable contribution for federal income tax purposes;**
- (ii) food and beverages consumed on the occasion when participation in a charitable, civic, or community event bears a relationship to the public officer’s or public employee’s office or employment or when the officer or employee is in attendance in an official capacity;**

- (iii) educational material directly related to official governmental duties;
- (iv) an award publicly presented in recognition of public service; or
- (v) educational activity that:
  - (A) does not place or appear to place the recipient under obligation;
  - (B) clearly serves the public good; and
  - (C) is not lavish or extravagant.

**MCA 2-2-104**

**2-2-104. Rules of conduct for public officers, legislators, and public employees**

(1) Proof of commission of any act enumerated in this section is proof that the actor has breached the actor's public duty. A public officer, legislator, or public employee may not:

...

b) accept a gift of substantial value or a substantial economic benefit tantamount to a gift:

(i) that would tend improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties; or

(ii) that the person knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the person for official action taken.

(2) An economic benefit tantamount to a gift includes without limitation a loan at a rate of interest substantially lower than the commercial rate then currently prevalent for similar loans and compensation received for private services rendered at a rate substantially exceeding the fair market value of the services. Campaign contributions

reported as required by statute are not gifts or economic benefits tantamount to gifts.

**~~Sec. 2-707. — Nepotism.~~**

~~No elected official shall appoint or vote for appointment of any person related to the elected official by blood or marriage to any clerkship, office, position, employment or duty, when the salary, wages, pay or compensation is to be paid out of public funds.~~

~~(Code 1967, § 2.08.070)~~

**(Covered by current State law at MCA sections 2-2-301 through 304)**

**~~Sec. 2-708. — Sanctions.~~**

- ~~(a) *Resignation.* Violation of any provision of this article should raise conscientious questions for the official concerned as to whether voluntary resignation or other action is indicated to promote the best interests of the city.~~
- ~~(b) *Civil penalty.* Violation of any of the provisions of this article, including but not limited to any failure to file disclosures, in addition to any criminal penalty, shall subject the violator to a civil penalty equal to any pecuniary benefits received because of the violation committed. The civil penalty in this subsection shall be recoverable by, and accrue to, the city in a civil action brought by the city.~~
- ~~(c) *Criminal penalty.* Any official who shall violate any provision of this article shall be subject, upon conviction in a court of competent jurisdiction, to the penalty prescribed in section 1-110.~~

~~(Code 1967, § 2.08.090)~~

**~~Sec. 2-709. — Forfeiture of office.~~**

~~Recovery of pecuniary benefits under section 2-708(b) or criminal conviction under section 2-708(c) shall conclusively determine that the city official lacks qualifications for office and is subject to forfeiture of office as prescribed in section 3.09(b) of the Charter.~~

~~(Code 1967, § 2.08.100)~~

**(Both of these ordinance sections 2-708 and 2-709 are Covered by current State law. If State ethics statutes are relied upon, MCA section 2-2-144 (provided below) indicate the enforcement and sanctions/penalties for violation of state ethics statutes).**

~~Secs. 2-710—2-720. — Reserved.~~

**MCA 2-2-144**

## **2-2-144. Enforcement for local government**

(1) Except as provided in subsections (5) and (6), a person alleging a violation of this part by a local government officer or local government employee shall notify the county attorney of the county where the local government is located. The county attorney shall request from the complainant or the person who is the subject of the complaint any information necessary to make a determination concerning the validity of the complaint.

(2) If the county attorney determines that the complaint is justified, the county attorney may bring an action in district court seeking a civil fine of not less than \$50 or more than \$1,000. If the county attorney determines that the complaint alleges a criminal violation, the county attorney shall bring criminal charges against the officer or employee.

(3) If the county attorney declines to bring an action under this section, the person alleging a violation of this part may file a civil action in district court seeking a civil fine of not less than \$50 or more than \$1,000. In an action filed under this subsection, the court may assess the costs and attorney fees against the person bringing the charges if the court determines that a violation did not occur or against the officer or employee if the court determines that a violation did occur. The court may impose sanctions if the court determines that the action was frivolous or intended for harassment.

(4) The employing entity of a local government employee may take disciplinary action against an employee for a violation of this part.

(5)(a) A local government may establish a three-member panel to review complaints alleging violations of this part by officers or employees of the local government. The local government shall establish procedures and rules for the panel. The members of the panel may not be officers or employees of the local government. The panel shall review complaints and may refer to the county attorney complaints that appear to be substantiated. If the complaint is against the county attorney, the panel shall refer the matter to the commissioner of political practices and the complaint must then be processed by the commissioner pursuant to 2-2-136.

(b) In a local government that establishes a panel under this subsection (5), a complaint must be referred to the panel prior to making a complaint to the county attorney.

(6) If a local government review panel has not been established pursuant to subsection (5), a person alleging a violation of this part by a county attorney shall file the complaint with the commissioner of political practices pursuant to 2-2-136.

DRAFT of 12/22/16