



Datsopoulos, MacDonald & Lind, P.C.

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**Missoula Offices**

Central Square Building  
201 W. Main Street, Suite 201  
Missoula, MT 59802

Phone: 406.728.0810  
Fax: 406.543.0134

www.DMLlaw.com

**Hamilton Offices**

Hamilton Center  
1920 N. First Street, Suite C  
Hamilton, MT 59840

Phone: 406.363.0073  
Fax: 406.961.9004

www.DMLlaw.com

**Dennis E. Lind**  
**William K. VanCanagan**  
▲ **Terance P. Perry**  
◦► **Molly K. Howard**  
**Trent N. Baker**  
**Peter F. Lacny**  
**Joseph R. Casillas**  
**George H. Corn**  
• **Jason A. Williams**  
**Matthew A. McKeon**  
**\*\*Adrienne Tranel**  
**William J. Lower**  
**Quenton Hegel**  
**Zane K. Sullivan [Of Counsel]**

May 3, 2023

Milton Datsopoulos [1940-2022]  
Ronald B. MacDonald [1946-2002]

▲ Also admitted in Massachusetts  
► Also admitted in North Dakota  
◦ Also admitted in Washington  
• Also admitted in Idaho  
\*\*Also admitted in Colorado

**VIA EMAIL: NugentJ@ci.missoula.mt.us**

**AND U.S. MAIL**

Mr. Jim Nugent, City Attorney  
City of Missoula  
435 Ryman  
Missoula, Montana 59802

Re: Our Client: MC Real Estate Development  
Concerns Regarding City Council Member Carlino

Dear Mr. Nugent:

I am writing to inform you of serious concerns one of our clients has raised regarding what they see as clearly libelous, unethical, and defamatory statements and related conduct by a current City Council member, Mr. Daniel Carlino.

As you may already know, our client, MC Real Estate Development, a husband-and-wife small family business, is developing a blighted property at 333 and 401 Front Street. These two blighted houses next to Kiwanis park currently provide for 5 dilapidated apartment units. My client regularly deals with drug users and transients on and around this property. They are now hopefully on course to build 26 safe apartments, which constitute an approximately 400% increase in rental unit availability in the downtown area – a significant benefit to the City to be sure.

As you can appreciate, developing this responsible project is incredibly expensive, somewhere in neighborhood of \$5 to \$6 million. Today the property taxes are around \$9,000/year. After development, the property taxes will skyrocket to an estimated \$70,000/year. This is an

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Mr. Jim Nugent

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almost 700% increase in tax revenue. My client requested approximately \$250,000 in TIF funding to do things that benefit the public like remove asbestos and provide new sidewalks. My client is trying to operate a small family business and create additional housing options in Missoula.

Since this project became known to the public, Mr. Carlino opposed it at every turn. Attached hereto as **Exhibit A** is a timeline summarizing some of Mr. Carlino's conduct that our client is concerned about. This timeline is quite telling and truly speaks for itself.<sup>1</sup> Our client understands and appreciates that Mr. Carlino has every right to oppose their project both as a private citizen of Missoula and as a City Council member. It is no secret that TIF requests are almost always rife with a high level of controversy. Our client's issue is that Mr. Carlino has appeared to single out their project.

First, Mr. Carlino attempted to interfere with our client's ability to obtain a small easement to the project site for fire access. But his efforts did not cease there. Mr. Carlino continued to aggressively attack not only the project, but the Sullivans personally. Just last month the MRA board approved funding over Mr. Carlino's lamentations. Mr. Carlino urged the board to violate the law in administering the funding program. The comments from board member Mr. Karl Englund discussed in the April 20, 2023 *Missoula Current* article are particularly notable. Mr. Englund is a long-time and highly respected Montana attorney, who was appointed and reappointed to the board by the late Mayor Engen. Fortunately, the funding request was approved, but said approval does not lessen the gravity of the conduct at issue.

Our client's overall observation is that Mr. Carlino's dogged opposition is almost always paired with public statements that are demonstrably false, factual inaccuracies, and substantial misinformation, all of which seriously threaten the viability of our client's project and their valuable reputation, which they have worked very hard to establish and maintain in the community.

Mr. Carlino has in the media, in City Council meetings, and now at the Montana state legislature, publicly misstated facts about our client's project. Worse yet as they see it, Mr. Carlino has tried to use his authority as a Council member to stymie their project while supporting other similar projects. For example, and without limitation:

1. **Exhibit B:** Mr. Carlino's social media posts attempting to single out my client's project, and block their TIF request. His statements are factually inaccurate in saying the "City's MRA is going to grant the owner \$258K of taxpayer funds to redevelop it." My clients had an application hearing on 4/20/23 with no guarantee of funding.
2. **Exhibit C:** Mr. Carlino claiming in July of 2022 on his social media posts that 12 tenants on Front St. would be displaced by this development when in fact only 6 tenants reside in these units. Such false statements appear to be made to garner more public opposition to my client's project by overstating possible downsides of TIF.

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<sup>1</sup> Please note that certain portions of **Exhibit A** may be duplicative of other exhibits, but are included in timeline format for reference.

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May 3, 2023

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3. **Exhibit D and E:** Mr. Carlino attempted to stymie an emergency only access easement which would have prevented development of our client's housing units.

4. **Exhibit F:** Mr. Carlino posing for the press in front of a new multifamily project similar to our client's project.

Is this political or some other form of unlawful discrimination? Our client is understandably very frustrated, but not exactly sure why Mr. Carlino appears to be singling out their project and continues to disseminate inaccurate information about it.

As you are aware, the City of Missoula has a Code of Ethics Policy for Missoula Elected Officials and Members of City Boards and Commissions. We write to you about this concern since enforcement of these standards of conduct is the responsibility of the Missoula City Council on which Mr. Carlino sits. My client is worried Council cannot be neutral in a matter involving allegations against one of their own members.

The Code of Ethics encourages and protects impartial and independent judgment and ensures that the private conduct and financial interests of council members do not result in a conflict of interests in their responsibilities to serve the public and uphold the public trust as defined in § 2-2-103, M.C.A. Upon information and belief, Mr. Carlino is personal friends with former disgruntled tenants of my client, which could be driving his opposition. Some actions taken by public officers or public employees are conflicts of interest per se, while other actions may or may not pose such conflicts depending upon the relevant facts and circumstances. This conflict raised by my client likely falls into the latter category (e.g., a conflict or perceived conflicts based on the unique facts and circumstances of this case), but it is highly concerning nonetheless.

This Code comes down from the top at the state level. Attached hereto as **Exhibit G** is the State of Montana's Code of Ethics and Administrative Rules. Notably, § 2-2-101, M.C.A., indicates the state Code prohibits "conflict between public duty and private interest as required by the constitution of Montana." The historical record demonstrates Mr. Carlino is unable, unwilling, or both, to distinguish between his public duty and private interests when it comes to our client's project. His personal interests drove him so far as to urge the MRA to ignore applicable law and precedent with respect to TIF requests.

Needless to say, our client asserts a litany of ethical violations by Mr. Carlino. The manner in which he has conducted himself relative to our client's project violates public trust. It appears Mr. Carlino is more interested in carrying out his own biased personal agenda rather than carrying out his duties for the benefit of the people of the state. Such violations are enforceable and punishable under § 2-2-144, M.C.A., and as the City may otherwise see fit within lawful parameters. Our client asks that all available forms of action be considered.

Mr. Carlino recently posed for pictures with the Governor for a similar project and has stated several times that Missoula needs more housing options. That is all my client is trying to provide. On April 18, 2023, Mr. Carlino also identified himself as speaking on behalf of City

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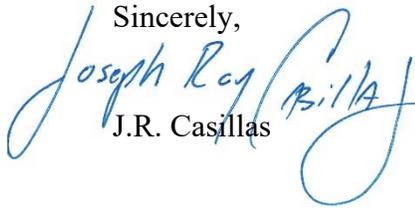
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Council. He testified to the Montana state legislature, “This week TIF is being used to tear down affordable rentals to turn them into luxury rentals, TIF is used for gentrification as well, by giving over \$268,000 for this gentrification project on Front Street...you can see that TIF is used to hurt our affordable housing supply.” While Mr. Carlino is certainly entitled to his own opinions and to exercise his right to speak out in opposition, he created the appearance he was speaking for the entire City Council. If that is the case, how can our client ever get a fair shake? This and similar comments undermine the public trust in a serious way. Our client worries that Mr. Carlino is willing to go to any lengths to run interference, even if doing so involves making libelous and defamatory statements that may be civilly actionable.

My client would like those in charge at the City to address this concern with Mr. Carlino, and review this matter for all appropriate and lawful action. Mr. Carlino should refrain from voting or in any way further influencing a decision of the City Council regarding my client’s project going forward. Any and all existing conflicts of interest, whether real or perceived, should be made known in the official records of the City. In the meantime, my client is considering other legal options as well.

Thank you for your time and consideration of this matter that is so very important to my client.

Sincerely,



J.R. Casillas

C: Client (via email only)

Mayor Jordan Hess (via mail only)

Senior Deputy City Attorney Patrick Lowney (via email: [adepartment@ci.missoula.mt.us](mailto:adepartment@ci.missoula.mt.us))

Ms. Gwen Jones (via email: [gjones@ci.missoula.mt.us](mailto:gjones@ci.missoula.mt.us))

Ms. Heidi West (via email: [hwest@ci.missoula.mt.us](mailto:hwest@ci.missoula.mt.us))

Ms. Jennifer Savage (via email: [SavageJ@ci.missoula.mt.us](mailto:SavageJ@ci.missoula.mt.us))

Ms. Mirtha Becerra (via email: [mbecerra@ci.missoula.mt.us](mailto:mbecerra@ci.missoula.mt.us))

Ms. Sierra Farmer (via email: [farmers@ci.missoula.mt.us](mailto:farmers@ci.missoula.mt.us))

Mr. Daniel Carlino (via email: [CarlinoD@ci.missoula.mt.us](mailto:CarlinoD@ci.missoula.mt.us))

Ms. Amber Sherrill (via email: [sherrilla@ci.missoula.mt.us](mailto:sherrilla@ci.missoula.mt.us))

Mr. Mike Nugent (via email: [NugentM@ci.missoula.mt.us](mailto:NugentM@ci.missoula.mt.us))

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Mr. Jim Nugent

May 3, 2023

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Ms. Stacie Anderson (via email: sanderson@ci.missoula.mt.us)

Mr. John Contos (via email: contosj@ci.missoula.mt.us)

Ms. Sandra Vasecka (via email: vaseckas@ci.missoula.mt.us)

Ms. Kristen Jordan (via email: JordanK@ci.missoula.mt.us)

**Exhibit A:**

Timeline

# TIMELINE OF DANIEL CARLINO BLOCKING 333/401 FRONT ST DEVELOPMENT

4/19/23: Carlino suggesting blocking our MRA TIF request because of my political views and other issues (recording forward to 1:07:00)

<https://pub-missoula.escribemeetings.com/Players/ISISStandAlonePlayer.aspx?id=37f55d96-7b70-48c9-bd94-b8a61e1eec01>

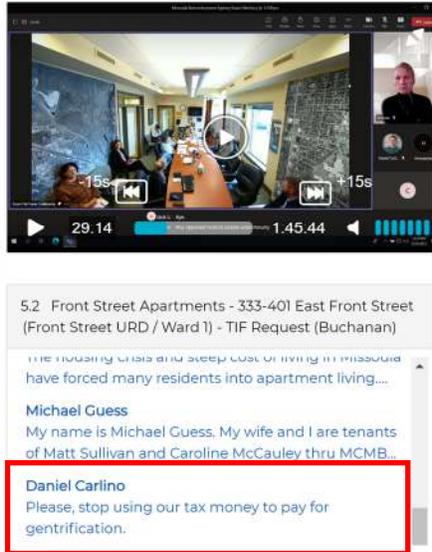
MS Morgan Stanley Sto... +



**Missoula Redevelopment Agency Board Agenda**

**Date:** April 20, 2023 at 12:00 PM  
**Location:** Hal Fraser Conference Room (in person) or TEAMS (virtually)  
**Attend in person:** Hal Fraser Conference Room, 140 W Pine, Missoula, MT

**Microsoft Teams meeting**  
Join on your computer or mobile app\*:  
[Click here to join the meeting](#)  
\* You may be prompted to download the Teams app  
**Or call in (audio only)**  
406-384-6960  
Phone Conference ID: 247 195 671#  
Press \*5 to raise your hand to be recognized for public comment, \*6 to mute and unmute  
**Watch the meeting:**  
[Web stream \(live or on demand\)](#) Open this meeting on the calendar and select "View Live Stream" or "Video."



5.2 Front Street Apartments - 333-401 East Front Street (Front Street URD / Ward 1) - TIF Request (Buchanan)

The housing crisis and steep cost of living in Missoula have forced many residents into apartment living...

**Michael Guess**  
My name is Michael Guess. My wife and I are tenants of Matt Sullivan and Caroline McCauley thru MCMB...

**Daniel Carlino**  
Please, stop using our tax money to pay for gentrification.

4/17/23: Facebook post

facebook

Email or phone Password

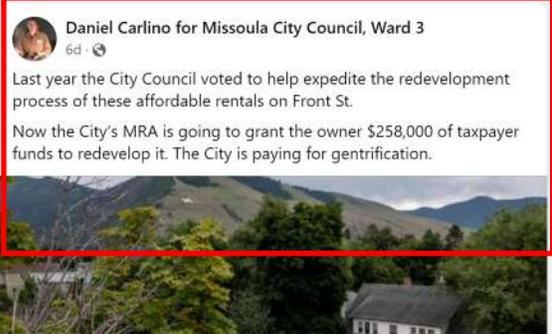
Posts About Photos Videos

**Intro**  
Daniel Carlino represents Ward 3 on the Missoula City Council. Riverfront, Slant Streets & U-District

**Page** · Politician  
(406) 239-2240  
Carlinoformissoula@gmail.com  
Carlinoformissoula

**Daniel Carlino for Missoula City Council, Ward 3**  
6d · 🌐

Last year the City Council voted to help expedite the redevelopment process of these affordable rentals on Front St. Now the City's MRA is going to grant the owner \$258,000 of taxpayer funds to redevelop it. The City is paying for gentrification.



4/17/23: Daniel Carlino Twitter Posts attempting to block Front St Project

← **Daniel Carlino** Follow  
918 Tweets

 **Daniel Carlino** @CarlinoforMT · 21h ...

Last year the City Council voted to help expedite the redevelopment process of these affordable rentals on Front St.

Now the City's MRA is going to grant the owner \$258,000 of taxpayer funds to redevelop it. The City is paying for gentrification.



[missoulian.com](https://missoulian.com)

City approves Front Street easement, development plans still unclear  
Missoula City Council voted 8-1 for an easement through Kiwanis Park.

3 3 10 691

[Show this thread](#)

 **Daniel Carlino** @CarlinoforMT · Apr 17 ...

I've also had the most proposals shot down in the last year as well, but sometimes they pass.

Holding a council seat for years without introducing any budget amendments or any policy changes is harmful. City Council has the power to introduce policies that we are all counting on

## MISSOULA CURRENT COVERAGE: 2022-2023

### DOWNTOWN APARTMENT PROJECT MOVES CLOSER TO SECURING EASEMENT FOR REDEVELOPMENT

<https://missoulacurrent.com/downtown-apartment-project-2/>

Missoula Current Published: July 14, 2022

MC Real Estate Development LLC plans a 21-unit apartment project on Front Street in downtown Missoula.

The redevelopment of private property in downtown Missoula moved closer to reality on Wednesday when the majority of a City Council committee approved a small easement to the property along Kiwanis Park.

The developers, MC Real Estate Development LLC, need the easement to adhere to city building and fire codes, according to city staff. It will also allow more density on the downtown lot.

While the easement will have no material impact on Kiwanis Park, and while the project will provide more housing than what's currently on the site, the simple request turned controversial with two council members in opposition.

Daniel Carlino and Kristen Jordan said granting the easement would displace the property's current tenants when redevelopment begins. But those in favor of the easement said redevelopment of private property would displace the tenants regardless of whether the easement was granted.

According to the developer, five tenants currently live on the property in question.

"It was always our intention to develop this," said Carol McCauley. "We've been clear of that with the tenants there. We've always done month-to-month leases for these and tend to attract people that are coming and going a little more."

Caroline McCauley and husband Matt Sullivan, who make up MC Real Estate, purchased the property in 2018 with plans to redevelop the site. City staff said the recommended easement measures 855 square feet along one corner of Kiwanis Park and would have no impacts on the park itself.

The project will result in around 21 apartment units, representing an increase in available housing in the downtown district. But two council members opposed the project and attempted to delay granting the easement, but without success.

"While we can't control private property rights, we can control density, easements and things like that," said Carlino. "The financial incentive wouldn't be there to gentrify these currently affordable homes if there was no easement granted that would allow for the density. To say we have to allow all development is not correct."

Carlino cited a portion of the city's housing policy that recommends retaining existing affordable housing. The developer suggested the existing units aren't considered affordable and the condition of the current building is poor.

Council member Heidi West said the housing policy also makes note of housing quality and doesn't just focus on retaining dilapidated properties.

"There's also language in our policy around what the quality of housing should be," West said. "I don't believe these homes are providing affordable housing for people in our community, and the owners of property when they acquired it in 2018 were completely transparent on what their plans for the property would be."

Council member Mike Nugent said the city has no say in regulating private property rights. Even if the City Council withheld the easement, the property owners would be free to redevelop anyway.

"Anyone who is applying that council by voting yes or no on this easement will prevent the tenants from being displaced is being misleading. We have no ability to regulate what a landlord does with their private contracts," Nugent said. "We need to be sure we're dealing with the facts of what we can actually control. The private owner of this private land can still tomorrow displace the tenants even without the easement."

### **MISLEADING STATEMENTS DRAW FIRE FROM MISSOULA COUNCIL; SMALL EASEMENT APPROVED FOR HOUSING**

Missoula Current Published: July 18, 2022

**By Martin Kidston/Missoula Current**

<https://missoulacurrent.com/easement-approved-housing/>

One member of the Missoula City Council was called out for offering "disingenuous" statements on Monday night in both comments entered into the official record and for posts made to social media, and not for the first time.

An 850 square-foot easement for fire access in Kiwanis Park requested by a Missoula developer who plans to increase the amount of housing in the downtown district led Ward 3 council member Daniel Carlino last week to inflate the number of tenants who would be impacted by the project.

Carlino, who opposes the easement and attempted to delay a vote, repeated his figures on social media and again on Monday night despite data provided by the developer, who said four to five tenants – not 12 to 15 as stated by Carlino – would eventually be impacted when construction begins in the coming months.

"We told all these folks the truth about this property when we bought it back in 2018," said Matt Sullivan, who is developing the property with his wife. "I heard this disinformation the last time

from Carlino that we're killing all the housing that people live in. That's just not true, Daniel (Carlino). We rent to the mid-market of Missoula.”

The developers, MC Real Estate Development, need the small easement to adhere to city building and fire codes. It's seeking 850 square feet of space to provide it.

While the vote was non-political initially, Carlino attempted to delay it by pitting the developer – and the rest of City Council – against the tenants who remain on the property. Carlino also has insisted that he was “the only renter” on City Council, which isn't true.

Council member Sandra Vasecka also rents her residence, as do 52% of Missoulians, according to housing statistics.

“If we grant the easement, they could keep collecting rent, or they have a bigger financial incentive to create 18 units and have much more money coming in every month,” Carlino said. “We have power over their financial incentive.”

The vacancy rate in Missoula has increased in recent months, rising above 2% for the first time in years, according to housing experts. Carlino said he was “surprised” at the figure and suggested the City Council was playing favorites with developers.

A rezone request for lower Grant Creek was approved by the City Council last month and was supported by Carlino. On Monday, however, he suggested the Grant Creek developers had received favorable treatment in receiving what he described as “a delay.”

That drew the ire of nearly all other council members, who labeled his statement as another outright lie.

“Grant Creek folks got a delay imposed upon them,” said council member Jordan Hess. “They didn't want a delay. They said as much at the meeting. I just wanted to correct the record on that.”

“I'm not sure what delay my colleague is talking about,” added council member Mirtha Becerra. “That first rezone was denied in Grant Creek. Two years later they came back with a different proposal. Trying to equate two different scenarios isn't helping the conversation we're having now.”

Carlino then suggested that “perhaps the developers in Grant Creek didn't want the delay.” Carlino was alone in his argument given that council member Kristen Jorden, who backs Carlino most of the time, didn't attend Monday's meeting.

The project proposed by MC Real Estate will result in roughly 21 working class apartments, according to the developer. That represents an increase in housing in the downtown district and replaces what most agree is a dilapidated property, which the couple purchased with the intent of redeveloping.

On all accounts, the property owners have been transparent about their plans since purchasing the property four years ago. They're seeking emergency egress to the site, which several council members said represented a minor request that shouldn't warrant such extensive debate.

The tenants remaining on the property could be displaced regardless of whether the easement was granted, said council member Stacie Anderson. It's a parameter granted within state - not city- law.

"This decision doesn't have the ability to change any of that. To imply otherwise is incredibly disingenuous, because you're implying that we're in it for the landlords or the developers," said Anderson. "That's hogwash and that's not what this is. It's incredibly frustrating to imply otherwise to create this sense that it's us versus them when that's not the case. We do better when we work together on these things."

Members of the council suggested Carlino had set up a scenario of "us versus them" while ignoring state law, offering false promises and neglecting the actual vote on the table and its legal bookends.

They also pushed back on Carlino's claim that he alone was concerned with housing opportunities, costs and affordability. He doesn't have a corner on such claims, they said.

"Members of this body think about gentrification every day, housing prices every day, houselessness and the impact our housing crisis has every day," said Hess. "Everyone in our community deserves a safe, affordable and reasonable place to live, but that's not the decision before us. It's inappropriate for members of this body to imply that it's the decision before us. We don't have power over that. To say otherwise is disingenuous and it's false. It gives people false hope, and that's really inappropriate to me."

While the council called Carlino out for his divisive and misleading statements, members did listen to the concerns of renters and took their statements to heart.

Both elected officials and Missoula's renters understand the challenges of the city's housing issues, and the city is working to resolve it – spending millions of dollars of taxpayer money in many projects to subsidize housing opportunities.

"I think we need to think more deeply about the value of replacing housing that people are using and displacing them into a market where it's going to be extremely difficult to find equivalent housing or even housing at all," said renter Gwen Nicholson. "There should be more of a voice from tenants."

## **Exhibit C:**

Downtown developer, tenants push back against 'lies' around housing project



### **DOWNTOWN DEVELOPER, TENANTS PUSH BACK AGAINST 'LIES' AROUND HOUSING PROJECT**

[Missoula Current](#)

Published: September 13, 2022

**Martin Kidston/Missoula Current**

The owner of a downtown apartment building who plans to redevelop the property by adding more units defended his reputation against claims made by one member of City Council in July and at least one public comment since.

Matt Sullivan, owner of MCMB Property Management, was also joined by several of his tenants who backed his reputation as a solid and responsive landlord who has been honest about his family's plans to redevelop the property.

"We did not lie to you," Sullivan said, adding that he wanted the truth on the record. "The tenants on the Front Street location have been abreast of this development. We feel like our reputation is being damaged and what's being communicated to you is very one sided."

The project will result in roughly 21 working class apartments, according to Sullivan. That represents an increase in housing in the downtown district and replaces what most agree is a dilapidated property, which the couple purchased with the intent of redeveloping in 2018.

The project **became an issue in July** when the City Council approved an 850-square-foot easement for fire access in Kiwanis Park. But council member Daniel Carlino attempted to block the easement, saying that doing so would give the city “power over their financial incentive” by preventing the Sullivans from redeveloping their lot.

Carlino was accused by his council peers as being “disingenuous” and creating an “us versus them” scenario while ignoring state law and offering false promises. Nearly two months have since passed and on Monday, several tenants defended Sullivan.

Carlino smirked throughout the testimony.



Ward 3 City Council member Daneil Carlino. (Screenshot taken during Monday night's public comment period)

“I've been renting from them for a year-and-a-half,” said Tara Harrington. “They are communicative and responsive to everything. They've been great landlords.”

Alicia Goff offered a similar sentiment.

“I've rented from (Sullivan) for four years. They have been nothing but prompt and down to earth. I feel really grateful to rent from them. They've been really great to rent from.”

The tenants who remain in the Front Street property said Sullivan has been transparent about his plans for the property. They've been given added time to find a new residence, Sullivan added.

Christopher Fuchs, a tenant of the Front Street property, said that while he'd rather not move, he understands the need to redevelop the site.

“It's a bummer that it's going to get redeveloped but at the same time, it's an older building and I do think that a newer property there would add value to downtown Missoula,” Fuchs told the council. “The whole time I've lived there I've had an affordable place to live, really well below the market value. It's something I'm appreciative to have had. The fact that it's on a month-to-month lease is something of my own doing.”

## **AMID INSULTS, MRA APPROVES FUNDING FOR DOWNTOWN APARTMENT**

Missoula Current Published: April 20, 2023

## **Martin Kidston**

(Missoula Current) Over the lamentations of a city council member, the Missoula Redevelopment Agency's board of directors on Thursday approved a funding request to remove two blighted houses in the downtown district and replace them with a 26-unit apartment building.

The board, which includes several lawyers, said Montana law is clear in the use of tax increment financing and what projects MRA can invest. They also said City Council sets policy, and it's up to the agency's board to follow it when approving or denying a funding request.

Matt Sullivan and his wife, Caroline, owners of MC Real Estate Development, purchased their Front Street property in 2018 with plans to remove two dilapidated structures and replace them with 26 apartments – a project valued at \$6.5 million. They said the tenants are short-term renters and were told last year that the property was poised for redevelopment.

As of Thursday, Sullivan said five tenants remain on site and will be aided in their relocation efforts. That includes two months of free rent, 100% return of their security deposit and first dibs on any apartment owned by MC Real Estate.

“The plans to redevelop this property were in place or being developed as these spaces were being rented on a short-term basis,” said MRA Director Ellen Buchanan. “There's never been any misunderstanding as to what was planned for that property, as far as I've been told.”

## Insults and Controversy

Plans for the project began turning last year when the Sullivans sought a small easement to the site for fire access. At the time, council member Daniel Carlino attempted to block the easement, saying that doing so would give the city “power over (the Sullivans') financial incentive” by preventing them from redeveloping their property.

Carlino on Thursday continued to attack both the project and the Sullivans and urged the board to deny the funding request. He insisted that MRA demand affordability in exchange for tax increment, even though MRA said it's not the city's current policy.

“We already have five affordable rental units here. We don't need to give \$250,000 in taxpayer money to capitalists to cause this gentrification,” Carlino said. “We don't need to give millions of dollars to capitalists who are going to do market rate, unaffordable housing.”

Sullivan was prompted to address the City Council last year regarding Carlino's misleading and disparaging remarks. Members of City Council also suggested that Carlino, in opposing the project, was being “disingenuous” and creating an “us versus them” scenario while ignoring state law and offering false promises.

Members of MRA's board also questioned Carlino's remarks on Thursday.

"I think we're being asked to say no to this request based on policies that don't exist, or create policies on the fly, or in the case of councilman Carlino's request, that we deny this project because of Mr. Sullivan's political beliefs – all policies that are blatantly illegal in Montana," said board chair Karl Englund.

Englund said the City Council sets the policies for the board to follow, and the city doesn't currently mandate that affordability be attached to a project in order for it to receive tax increment. He called it a significant policy decision that's not up for one council member to decide unilaterally but rather, one the entire City Council must make.

"We have to administer this program in accordance to the law," said Englund. "It's entirely within the council's authority to change the plans. But to have a council person come to us and tell us to operate differently than what the plans say is, to me, inconceivable and is something I'd never do as someone sworn to administer this program."



Two dilapidated buildings currently occupy the site.

Front Street Apartments

In its review of the project, MRA said the 26 units will offer far more housing than what's currently on the site, and also in a safer building. The two dilapidated homes were erected in the early 1900s and have fallen into disrepair given plans to deconstruct them.

Roughly 60% of the old homes will be salvaged for other uses. The property currently generates around \$9,440 a year, though it's expected the new apartment building will generate around \$45,000 a year.

The increase in tax increment enables MRA to invest in other public projects like affordable housing, sidewalks and trail lighting. Without the increase in tax increment, the agency has said it would be unable to invest in housing or other public projects.

State law dictates how the program operates.

“When folks want to add requirements, that's the regulation of private property rights,” said board member Tasha Jones. “My fear is that a husband-and-wife team like the Sullivans that have established a commitment to this community will be priced out of these programs due to demands for more regulation over these types of projects.”

Sullivan said he and his wife have worked hard to create their business and don't have the backing of “institutional investors, a hedge fund or a private equity shop.” Amid insults, MRA approves funding for downtown apartment

## **Missoula City Council approves real estate easement next to Kiwanis Park**

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by NBC Montana Staff

Tue, July 19th 2022, 6:35 AM MDT



*The Missoula City Council has approved a real estate easement next to Kiwanis Park.  
(Photo: NBC Montana)*

MISSOULA, Mont. — The Missoula City Council approved a real estate easement next to Kiwanis Park.

Council Member Daniel Carlino wrote on social media that the voted against the measure.

According to the post, the easement will pave the way for redevelopment of two homes next to the park.

Carlino says some neighbors are concerned about displacing about 12 tenants in two houses on East Front Street.

The proposed easement would make it possible to turn the homes into an apartment building by providing an emergency dispersal route for the apartments into Kiwanis Park.

Even without approving the easement, however, the current owners would be able to build the apartment complex at a lower density.

### **City approves Front Street easement, development plans still unclear**

[Bret Anne Serbin](#)

July 19, 2022

[https://missoulian.com/news/local/city-approves-front-street-easement-development-plans-still-unclear/article\\_091fc041-486c-53a9-a16f-465bef38aefa.html](https://missoulian.com/news/local/city-approves-front-street-easement-development-plans-still-unclear/article_091fc041-486c-53a9-a16f-465bef38aefa.html)

Two historic Front Street homes are set for redevelopment, despite a small but vocal contingent of opponents to the project by Kiwanis Park.

The Missoula City Council voted 8-1, with three members absent Monday, in favor of an easement through Kiwanis Park. The easement allows Caroline McCauley and Matt Sullivan, owners of 401 and 333 Front Street, to develop 18 new apartments on the property. Without the easement, the developers could still redevelop the existing Front Street houses at a lower density.

Community members and one current Front Street tenant, **backed by Ward 3 Council Member Daniel Carlino**, urged the city council to postpone voting on the easement to give the tenants more time to find alternative housing.

**“From hearing all the tenants today, it’s become pretty apparent that more time to talk about this, more time to have public comment would be really appropriate,” Carlino said. “If there’s anything that we can do to help slow down this process, I think it would be the most helpful thing to do as a council.”**

Five public commenters, including a current tenant of one of the subject properties, raised concerns about the redevelopment plans. They highlighted the housing instability redevelopment would create for the current residents, along with the historic value of the homes and their significance to the LGBTQIA+ community.

“A landmark of both Missoula and queer history could suddenly be erased,” said Chloe Runs Behind. “Please, please think about what gentrification is doing to this city.”

But since the city council can't regulate what an owner does with their property, the rest of council felt it made more sense to approve the easement and give the developer the option of adding density to the proposed new subdivision that would take the place on the Front Street homes.

"I think that there's a difference between preserve and delay," said Ward 5 Council Member Stacie Anderson. "And this is a delay. And I don't think that this genuinely preserves this affordable housing in any long term."

According to Sullivan, seven renters on month-to-month leases currently live in the two residences.

Council members repeatedly expressed sympathy for the renters who could be displaced from the Front Street homes, but they didn't believe delaying the easement approval would do much to preserve the housing currently available there.

"I don't want to displace people," said Ward 1 Council Member Jennifer Savage. "That's never something that I want to do. But I don't think we would accomplish much by sending it back."

Sullivan, who owns five properties throughout the city with an average rent in the range of \$1,100 per month, said delays on the part of the city council could jeopardize the project altogether.

"It may not be viable financially," he told the Missoulian, citing rising interest rates.

Sullivan said the future of the project is unclear.

While the developers haven't applied for Tax Increment Financing for this or any of their other projects, Sullivan said they are open to partnering with the city on the potential new subdivision.

If McCauley and Sullivan do go forward with redeveloping the Front Street houses, Sullivan said they will have to determine how much time to give the tenants to vacate the residences.

“What we do and what we will always do is continue to communicate that we’re going to develop the property,” said Sullivan. “And we will always follow Montana state law.”

It’s unclear, too, how the city will preserve currently affordable housing options after the Front Street decision.

“I’d love to hear an answer to how we’re going to preserve naturally affordable housing in Missoula without putting in some sort of regulations or without being creative and sometimes delaying things,” Carlino said.

**Carlino cast the lone dissenting vote against the easement.**

### **EXAMPLE OF CARLINO SUPPORTING HOUSING FROM OTHER DEVELOPERS:**

Governor Gianforte Calls for Pro-Housing Reform

Governor's Office

- March 29 2023

MISSOULA, Mont. – Joining a bipartisan group of community leaders and pro-housing advocates, Governor Greg Gianforte today urged legislative action on commonsense, pro-housing reform at a high-density housing project in Missoula County.

“We need bold, transformational pro-housing reform so more Montanans can achieve the American dream of homeownership. Let’s get it done,” Gov. Gianforte said, highlighting elements of his agenda to increase Montanans’ access to affordable, attainable housing.



*Gov. Gianforte calls for pro-housing reform at a high-density housing project in Missoula, joined by (from left to right) Daniel Carlino, Danny Tenenbaum, Kendall Cotton, Sandra Vasecka, and Adam Hertz*

Gov. Gianforte is spearheading state efforts to resolve the housing supply shortage, standing up a diverse, bipartisan Housing Task Force last summer to make recommendations to increase the supply of affordable, attainable housing.

Three members of his task force – Adam Hertz, a developer with ERA Lambros Real Estate and secretary of the Board of Housing, Danny Tenenbaum, a former Democratic state representative from Missoula, and Kendall Cotton, president and CEO of the Frontier Institute – and two pro-housing members of the Missoula City Council, Sandra Vasecka and Daniel Carlino, joined the governor today.

Exhibit F:

Example of Daniel Carlino support other housing projects easements:

<https://missoulacurrent.com/missoula-riverfront-triangle-2/>

**Martin Kidston**

(Missoula Current) The Missoula City Council on Monday agreed to close and vacate a sliver of ground near the intersection of Front Street and West Broadway, making the parcel easier to develop.

The request to vacate unused public right-of-way the corner of 601 West Broadway was submitted by WGM Group on behalf of Riverfront LLC and was approved by all but two members of council.

"I do see the public benefit," said council member Daniel Carlino. "It'll be a great use of public space."

**Exhibit B:**



**Daniel Carlino**

918 Tweets

**Follow**



**Daniel Carlino** @CarlinoforMT · 21h



Last year the City Council voted to help expedite the redevelopment process of these affordable rentals on Front St.

Now the City's MRA is going to grant the owner \$258,000 of taxpayer funds to redevelop it. The City is paying for gentrification.



[missoulain.com](https://missoulain.com)

City approves Front Street easement, development plans still unclear  
Missoula City Council voted 8-1 for an easement through Kiwanis Park.

3

3

10

691



[Show this thread](#)



**Daniel Carlino** @CarlinoforMT · Apr 17



I've also had the most proposals shot down in the last year as well, but sometimes they pass.

Holding a council seat for years without introducing any budget amendments or any policy changes is harmful. City Council has the power to introduce policies that we are all counting on

Exhibit C:

## Missoula City Council approves real estate easement next to Kiwanis Park

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Even without approving the easement, however, the current owners would be able to build the apartment complex at a lower density.

## Exhibits D & E:

Downtown developer, tenants push back against 'lies' around housing project



### Missoula Current

#### **Martin Kidston/Missoula Current**

The owner of a downtown apartment building who plans to redevelop the property by adding more units defended his reputation against claims made by one member of City Council in July and at least one public comment since.

Matt Sullivan, owner of MCMB Property Management, was also joined by several of his tenants who backed his reputation as a solid and responsive landlord who has been honest about his family's plans to redevelop the property.

"We did not lie to you," Sullivan said, adding that he wanted the truth on the record. "The tenants on the Front Street location have been abreast of this development. We feel like our reputation is being damaged and what's being communicated to you is very one sided."

## **Datsopoulos, MacDonald & Lind, P.C.**

Mr. Jim Nugent

May 3, 2023

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The project will result in roughly 21 working class apartments, according to Sullivan. That represents an increase in housing in the downtown district and replaces what most agree is a dilapidated property, which the couple purchased with the intent of redeveloping in 2018.

The project **became an issue in July** when the City Council approved an 850-square-foot easement for fire access in Kiwanis Park. But council member Daniel Carlino attempted to block the easement, saying that doing so would give the city “power over their financial incentive” by preventing the Sullivans from redeveloping their lot.

Carlino was accused by his council peers as being “disingenuous” and creating an “us versus them” scenario while ignoring state law and offering false promises. Nearly two months have since passed and on Monday, several tenants defended Sullivan.

Carlino smirked throughout the testimony.

Ward 3 City Council member Daneil Carlino. (Screenshot taken during Monday night's public comment period)

“I've been renting from them for a year-and-a-half,” said Tara Harrington. “They are communicative and responsive to everything. They've been great landlords.”

Alicia Goff offered a similar sentiment.

“I've rented from (Sullivan) for four years. They have been nothing but prompt and down to earth. I feel really grateful to rent from them. They've been really great to rent from.”

The tenants who remain in the Front Street property said Sullivan has been transparent about his plans for the property. They've been given added time to find a new residence, Sullivan added.

Christopher Fuchs, a tenant of the Front Street property, said that while he'd rather not move, he understands the need to redevelop the site.

“It's a bummer that it's going to get redeveloped but at the same time, it's an older building and I do think that a newer property there would add value to downtown Missoula,” Fuchs told the council. “The whole time I've lived there I've had an affordable place to live, really well below the market value. It's something I'm appreciative to have had. The fact that it's on a month-to-month lease is something of my own doing.”

## Exhibit F:

# Governor Gianforte Calls for Pro-Housing Reform

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**Datsopoulos, MacDonald & Lind, P.C.**

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May 3, 2023

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**Exhibit G:**

State of Montana's Code of Ethics and Administrative Rules

**The State of MONTANA's**  
**CODE OF ETHICS**  
**and ADMINISTRATIVE RULES**

**Montana Code Annotated, Title 2, Chapter 2, Part 1**  
**Montana Administrative Rules, Title 44, Chapter 10, Subchapter 6**

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# Montana Code Annotated

## Title 2, Chapter 2, Part 1

### CODE OF ETHICS

- 2-2-101 Statement of purpose
- 2-2-102 Definitions
- 2-2-103 Public trust -- public duty
- 2-2-104 Rules of conduct for public officers, legislators, and public employees
- 2-2-105 Ethical requirements for public officers and public employees
- 2-2-106 Disclosure
- 2-2-107 through 2-2-110 reserved
- 2-2-111 Rules of conduct for legislators
- 2-2-112 Ethical requirements for legislators
- 2-2-113 through 2-2-120 reserved
- 2-2-121 Rules of conduct for public officers and public employees
- 2-2-122 through 2-2-124 reserved
- 2-2-125 Repealed
- 2-2-126 through 2-2-130 reserved
- 2-2-131 Disclosure
- 2-2-132 Repealed
- 2-2-133 and 2-2-134 reserved
- 2-2-135 Ethics committees
- 2-2-136 Enforcement for state officers, legislators, and state employees -- referral of complaint involving county attorney
- 2-2-137 Repealed
- 2-2-138 Repealed
- 2-2-139 Repealed
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- 2-2-143 Repealed
- 2-2-144 Enforcement for local government
- 2-2-145 Retaliation unlawful -- civil liability -- remedies -- statute of limitations -- definitions

# Montana Code Annotated

## Title 2, Chapter 2, Part 1

**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.

History: En. 59-1701 by Sec. 1, Ch. 569, L. 1977; R.C.M. 1947, 59-1701.

**2-2-102. Definitions.** As used in this part, the following definitions apply:

(1) "Business" includes a corporation, partnership, sole proprietorship, trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.

(2) "Compensation" means any money or economic benefit conferred on or received by any person in return for services rendered or to be rendered by the person or another.

(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.

(4) "Local government" means a county, a consolidated government, an incorporated city or town, a school district, or a special district.

(5) "Official act" or "official action" means a vote, decision, recommendation, approval, disapproval, or other action, including inaction, that involves the use of discretionary authority.

(6) "Private interest" means an interest held by an individual that is:

(a) an ownership interest in a business;

(b) a creditor interest in an insolvent business;

(c) an employment or prospective employment for which negotiations have begun;

(d) an ownership interest in real property;

(e) a loan or other debtor interest; or

(f) a directorship or officership in a business.

(7) "Public employee" means:

# Montana Code Annotated

## Title 2, Chapter 2, Part 1

- (a) any temporary or permanent employee of the state;
  - (b) any temporary or permanent employee of a local government;
  - (c) a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority; and
  - (d) a person under contract to the state.
- (8) "Public information" has the meaning provided in 2-6-1002.
- (9) (a) "Public officer" includes any state officer and any elected officer of a local government.

(b) For the purposes of 67-11-104, the term also includes a commissioner of an airport authority.

(10) "Special district" means a unit of local government, authorized by law to perform a single function or a limited number of functions. The term includes but is not limited to conservation districts, water districts, weed management districts, irrigation districts, fire districts, community college districts, hospital districts, sewer districts, and transportation districts. The term also includes any district or other entity formed by interlocal agreement.

- (11) (a) "State agency" includes:
- (i) the state;
  - (ii) the legislature and its committees;
  - (iii) all executive departments, boards, commissions, committees, bureaus, and offices;
  - (iv) the university system; and
  - (v) all independent commissions and other establishments of the state government.

(b) The term does not include the judicial branch.

(12) "State officer" includes all elected officers and directors of the executive branch of state government as defined in 2-15-102.

**History:** En. 59-1702 by Sec. 2, Ch. 569, L. 1977; R.C.M. 1947, 59-1702; amd. Sec. 3, Ch. 18, L. 1995; amd. Sec. 1, Ch. 562, L. 1995; amd. Sec. 1, Ch. 122, L. 2001; amd. Sec. 1, Ch. 77, L. 2009; amd. Sec. 2, Ch. 156, L. 2019.

**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.

# Montana Code Annotated

## Title 2, Chapter 2, Part 1

**History:** En. 59-1703 by Sec. 3, Ch. 569, L. 1977; R.C.M. 1947, 59-1703; amd. Sec. 216, Ch. 685, L. 1989; amd. Sec. 2, Ch. 562, L. 1995; amd. Sec. 2, Ch. 122, L. 2001.

**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:

(a) disclose or use confidential information acquired in the course of official duties in order to further substantially the individual's personal economic interests; or

(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.

(3) (a) Except as provided in subsection (3)(b), a public officer, legislator, or public employee may not receive salaries from two separate public employment positions that overlap for the hours being compensated, unless:

(i) the public officer, legislator, or public employee reimburses the public entity from which the employee is absent for the salary paid for performing the function from which the officer, legislator, or employee is absent; or

(ii) the public officer's, legislator's, or public employee's salary from one employer is reduced by the amount of salary received from the other public employer in order to avoid duplicate compensation for the overlapping hours.

(b) Subsection (3)(a) does not prohibit:

(i) a public officer, legislator, or public employee from receiving income from the use of accrued leave or compensatory time during the period of overlapping employment; or

(ii) a public school teacher from receiving payment from a college or university for the supervision of student teachers who are enrolled in a teacher education program at the college or university if the supervision is performed concurrently with the school teacher's duties for a public school district.

(c) In order to determine compliance with this subsection (3), a public officer, legislator, or public employee subject to this subsection (3) shall disclose the amounts received from the two separate public employment positions to the commissioner of political practices.

**History:** En. 59-1704 by Sec. 4, Ch. 569, L. 1977; R.C.M. 1947, 59-1704; amd. Sec. 3, Ch. 562, L. 1995; amd. Sec. 1, Ch. 243, L. 1997.

## Montana Code Annotated

### Title 2, Chapter 2, Part 1

**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.

History: En. 59-1709 by Sec. 9, Ch. 569, L. 1977; R.C.M. 1947, 59-1709; amd. Sec. 4, Ch. 562, L. 1995.

**2-2-106. Disclosure.** (1)(a) Prior to December 15 of each even-numbered year, each state officer, holdover senator, supreme court justice, and district court judge shall file with the commissioner of political practices a business disclosure statement on a form provided by the commissioner. An individual filing pursuant to subsection (1)(b) or (1)(c) is not required to file under this subsection (1)(a) during the same period.

(b) Each candidate for a statewide or a state office elected from a district shall, within 5 days of the time that the candidate files for office, file a business disclosure statement with the commissioner of political practices on a form provided by the commissioner.

(c) An individual appointed to office who would be required to file under subsection (1)(a) or (1)(b) is required to file the business disclosure statement at the earlier of the time of submission of the person's name for confirmation or the assumption of the office.

(2) Except as provided in subsection (4), the statement must provide the following information:

- (a) the name, address, and type of business of the individual;
- (b) each present or past employing entity from which benefits, including retirement benefits, are currently received by the individual;

# Montana Code Annotated

## Title 2, Chapter 2, Part 1

(c) each business, firm, corporation, partnership, and other business or professional entity or trust in which the individual holds an interest;

(d) each entity not listed under subsections (2)(a) through (2)(c) in which the individual is an officer or director, regardless of whether or not the entity is organized for profit; and

(e) all real property, other than a personal residence, in which the individual holds an interest. Real property may be described by general description.

(3) An individual may not assume or continue to exercise the powers and duties of the office to which that individual has been elected or appointed until the statement has been filed as provided in subsection (1).

(4) An individual required to file a business disclosure statement may certify that the information required by subsection (2) has not changed from the most recent statement filed by the individual. The commissioner shall provide a certification form.

(5) The commissioner of political practices shall make the business disclosure statements and certification forms available to any individual upon request.

History: En. Sec. 16, I.M. No. 85, approved Nov. 4, 1980; amd. Sec. 12, Ch. 562, L. 1995; Sec. 5-7-213, MCA 1993; redes. 2-2-106 by Code Commissioner, 1995; amd. Sec. 2, Ch. 114, L. 2003; amd. Sec. 2, Ch. 130, L. 2005; amd. Sec. 1, Ch. 156, L. 2015; amd. Sec. 1, Ch. 166, L. 2017.

### **2-2-107 through 2-2-110 reserved.**

**2-2-111. Rules of conduct for legislators.** Proof of commission of any act enumerated in this section is proof that the legislator committing the act has breached the legislator's public duty. A legislator may not:

(1) accept a fee, contingent fee, or any other compensation, except the official compensation provided by statute, for promoting or opposing the passage of legislation;

(2) seek other employment for the legislator or solicit a contract for the legislator's services by the use of the office; or

(3) accept a fee or other compensation, except as provided for in 5-2-302, from a Montana state agency or a political subdivision of the state of Montana for speaking to the agency or political subdivision.

History: En. 59-1705 by Sec. 5, Ch. 569, L. 1977; R.C.M. 1947, 59-1705; amd. Sec. 5, Ch. 562, L. 1995; amd. Sec. 1, Ch. 327, L. 2003.

**2-2-112. Ethical requirements for legislators.** (1) The requirements in this section are intended as rules for legislator conduct, and violations constitute a breach of the public trust of legislative office.

(2) A legislator has a responsibility to the legislator's constituents to participate in all matters as required in the rules of the legislature. A legislator concerned with the possibility of a conflict may briefly present the facts to the committee of that house that is assigned the determination of ethical issues. The committee shall advise the legislator as to whether the legislator should disclose the interest prior to voting on the issue pursuant to the provisions of subsection (5). The legislator may, subject to legislative rule, vote on an issue on which the legislator has a conflict, after disclosing the interest.

# Montana Code Annotated

## Title 2, Chapter 2, Part 1

(3) When a legislator is required to take official action on a legislative matter as to which the legislator has a conflict created by a personal or private interest that would directly give rise to an appearance of impropriety as to the legislator's influence, benefit, or detriment in regard to the legislative matter, the legislator shall disclose the interest creating the conflict prior to participating in the official action, as provided in subsections (2) and (5) and the rules of the legislature. In making a decision, the legislator shall consider:

- (a) whether the conflict impedes the legislator's independence of judgment;
- (b) the effect of the legislator's participation on public confidence in the integrity of the legislature;
- (c) whether the legislator's participation is likely to have any significant effect on the disposition of the matter; and
- (d) whether a pecuniary interest is involved or whether a potential occupational, personal, or family benefit could arise from the legislator's participation.

(4) A conflict situation does not arise from legislation or legislative duties affecting the membership of a profession, occupation, or class.

(5) A legislator shall disclose an interest creating a conflict, as provided in the rules of the legislature. A legislator who is a member of a profession, occupation, or class affected by legislation is not required to disclose an interest unless the class contained in the legislation is so narrow that the vote will have a direct and distinctive personal impact on the legislator. A legislator may seek a determination from the appropriate committee provided for in 2-2-135.

History: En. 59-1708 by Sec. 8, Ch. 569, L. 1977; R.C.M. 1947, 59-1708; amd. Sec. 6, Ch. 562, L. 1995.

### **2-2-113 through 2-2-120 reserved.**

**2-2-121. Rules of conduct for public officers and public employees.** (1) Proof of commission of any act enumerated in subsection (2) is proof that the actor has breached a public duty.

- (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

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duties without first giving written notification to the officer's or employee's supervisor and department director.

(3) (a) Except as provided in subsection (3)(b), a public officer or public employee may not use or permit the use of public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the use is:

(i) authorized by law; or

(ii) properly incidental to another activity required or authorized by law, such as the function of an elected public officer, the officer's staff, or the legislative staff in the normal course of duties.

(b) As used in this subsection (3), "properly incidental to another activity required or authorized by law" does not include any activities related to solicitation of support for or opposition to the nomination or election of a person to public office or political committees organized to support or oppose a candidate or candidates for public office. With respect to ballot issues, properly incidental activities are restricted to:

(i) the activities of a public officer, the public officer's staff, or legislative staff related to determining the impact of passage or failure of a ballot issue on state or local government operations;

(ii) in the case of a school district, as defined in Title 20, chapter 6, compliance with the requirements of law governing public meetings of the local board of trustees, including the resulting dissemination of information by a board of trustees or a school superintendent or a designated employee in a district with no superintendent in support of or opposition to a bond issue or levy submitted to the electors. Public funds may not be expended for any form of commercial advertising in support of or opposition to a bond issue or levy submitted to the electors.

(c) This subsection (3) is not intended to restrict the right of a public officer or public employee to express personal political views.

(d) (i) If the public officer or public employee is a Montana highway patrol chief or highway patrol officer appointed under Title 44, chapter 1, the term "equipment" as used in this subsection (3) includes the chief's or officer's official highway patrol uniform.

(ii) A Montana highway patrol chief's or highway patrol officer's title may not be referred to in the solicitation of support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue.

(4) (a) A candidate, as defined in **13-1-101(8)(a)**, may not use or permit the use of state funds for any advertisement or public service announcement in a newspaper, on radio, or on television that contains the candidate's name, picture, or voice except in the case of a state or national emergency and then only if the announcement is reasonably necessary to the candidate's official functions.

(b) A state officer may not use or permit the use of public time, facilities, equipment, supplies, personnel, or funds to produce, print, or broadcast any advertisement or public service announcement in a newspaper, on radio, or on television that contains the state officer's name, picture, or voice except in the case of a state or national emergency if the announcement is reasonably necessary to the state officer's official functions or in the case of an announcement directly related to a program or activity under the jurisdiction of the office or position to which the state officer was elected or appointed.

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(5) A public officer or public employee may not participate in a proceeding when an organization, other than an organization or association of local government officials, of which the public officer or public employee is an officer or director is:

(a) involved in a proceeding before the employing agency that is within the scope of the public officer's or public employee's job duties; or

(b) attempting to influence a local, state, or federal proceeding in which the public officer or public employee represents the state or local government.

(6) A public officer or public employee may not engage in any activity, including lobbying, as defined in **5-7-102**, on behalf of an organization, other than an organization or association of local government officials, of which the public officer or public employee is a member while performing the public officer's or public employee's job duties. The provisions of this subsection do not prohibit a public officer or public employee from performing charitable fundraising activities if approved by the public officer's or public employee's supervisor or authorized by law.

(7) A listing by a public officer or a public employee in the electronic directory provided for in **30-17-101** of any product created outside of work in a public agency is not in violation of subsection (2)(a) of this section. The public officer or public employee may not make arrangements for the listing in the electronic directory during work hours.

(8) A department head or a member of a quasi-judicial or rulemaking board may perform an official act notwithstanding the provisions of subsection (2)(e) if participation is necessary to the administration of a statute and if the person complies with the disclosure procedures under **2-2-131**.

(9) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee unless the member is also a full-time public employee.

(10) Subsections (2)(b) and (2)(e) do not prevent a member of the governing body of a local government from performing an official act when the member's participation is necessary to obtain a quorum or to otherwise enable the body to act. The member shall disclose the interest creating the appearance of impropriety prior to performing the official act.

**History:** En. 59-1706 by Sec. 6, Ch. 569, L. 1977; R.C.M. 1947, 59-1706; amd. Sec. 1, Ch. 59, L. 1991; amd. Sec. 7, Ch. 562, L. 1995; amd. Sec. 3, Ch. 42, L. 1997; amd. Sec. 3, Ch. 122, L. 2001; amd. Sec. 1, Ch. 58, L. 2003; amd. Sec. 1, Ch. 145, L. 2005; amd. Sec. 3, Ch. 173, L. 2005; amd. Sec. 1, Ch. 437, L. 2005; amd. Sec. 1, Ch. 386, L. 2011; amd. Sec. 1, Ch. 14, L. 2013; amd. Sec. 1, Ch. 259, L. 2015; amd. Sec. 3, Ch. 156, L. 2019.

**2-2-122 through 2-2-124 reserved.**

**2-2-125. Repealed.** Sec. 6, Ch. 122, L. 2001.

**History:** En. 59-1707 by Sec. 7, Ch. 569, L. 1977; R.C.M. 1947, 59-1707; amd. Sec. 8, Ch. 562, L. 1995.

**2-2-126 through 2-2-130 reserved.**

**2-2-131. Disclosure.** A public officer or public employee shall, prior to acting in a manner that may impinge on public duty, including the award of a permit, contract, or

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license, disclose the nature of the private interest that creates the conflict. The public officer or public employee shall make the disclosure in writing to the commissioner of political practices, listing the amount of private interest, if any, the purpose and duration of the person's services rendered, if any, and the compensation received for the services or other information that is necessary to describe the interest. If the public officer or public employee then performs the official act involved, the officer or employee shall state for the record the fact and summary nature of the interest disclosed at the time of performing the act.

History: En. 59-1710 by Sec. 10, Ch. 569, L. 1977; R.C.M. 1947, 59-1710; amd. Sec. 9, Ch. 562, L. 1995; amd. Sec. 1, Ch. 65, L. 2005.

**2-2-132. Repealed.** Sec. 22, Ch. 562, L. 1995.

History: En. 59-1711 by Sec. 11, Ch. 569, L. 1977; R.C.M. 1947, 59-1711.

**2-2-133 and 2-2-134 reserved.**

**2-2-135. Ethics committees.** (1) Each house of the legislature shall establish an ethics committee. Subject to 5-5-234, the committee must consist of two members of the majority party and two members of the minority party. The committees may meet jointly. Each committee shall educate members concerning the provisions of this part concerning legislators and may consider conflicts between public duty and private interest as provided in 2-2-112. The joint committee may consider matters affecting the entire legislature.

(2) Pursuant to Article V, section 10, of the Montana constitution, the legislature is responsible for enforcement of the provisions of this part concerning legislators.

History: En. Sec. 14, Ch. 562, L. 1995; amd. Sec. 3, Ch. 4, Sp. L. May 2007.

**2-2-136. Enforcement for state officers, legislators, and state employees -- referral of complaint involving county attorney.** (1) (a) A person alleging a violation of this part by a state officer, legislator, or state employee may file a complaint with the commissioner of political practices. The commissioner does not have jurisdiction for a complaint concerning a legislator if a legislative act is involved in the complaint. The commissioner also has jurisdiction over complaints against a county attorney that are referred by a local government review panel pursuant to **2-2-144** or filed by a person directly with the commissioner pursuant to **2-2-144(6)**. If a complaint is filed against the commissioner or another individual employed in the office of the commissioner, the complaint must be resolved in the manner provided for in **13-37-111(5)**.

(b) The commissioner may request additional information from the complainant or the person who is the subject of the complaint to make an initial determination of whether the complaint states a potential violation of this part.

(c) The commissioner may dismiss a complaint that is frivolous, does not state a potential violation of this part, or does not contain sufficient allegations to enable the commissioner to determine whether the complaint states a potential violation of this part.

(d) When a complaint is filed, the commissioner may issue statements or respond to inquiries to confirm that a complaint has been filed, to identify against whom it has been filed, and to describe the procedural aspects and status of the case.

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(2) (a) If the commissioner determines that the complaint states a potential violation of this part, the commissioner shall hold an informal contested case hearing on the complaint as provided in Title 2, chapter 4, part 6. However, if the issues presented in a complaint have been addressed and decided in a prior decision and the commissioner determines that no additional factual development is necessary, the commissioner may issue a summary decision without holding an informal contested case hearing on the complaint.

(b) Except as provided in **2-3-203**, an informal contested case proceeding must be open to the public. Except as provided in Title 2, chapter 6, part 10, documents submitted to the commissioner for the informal contested case proceeding are presumed to be public information.

(c) The commissioner shall issue a decision based on the record established before the commissioner. The decision issued after a hearing is public information open to inspection.

(3) (a) Except as provided in subsection (3)(b), if the commissioner determines that a violation of this part has occurred, the commissioner may impose an administrative penalty of not less than \$50 or more than \$1,000.

(b) If the commissioner determines that a violation of **2-2-121(4)(b)** has occurred, the commissioner may impose an administrative penalty of not less than \$500 or more than \$10,000.

(c) If the violation was committed by a state employee, the commissioner may also recommend that the employing state agency discipline the employee. The employing entity of a state employee may take disciplinary action against an employee for a violation of this part, regardless of whether the commissioner makes a recommendation for discipline.

(d) The commissioner may assess the costs of the proceeding against the person bringing the charges if the commissioner determines that a violation did not occur or against the officer or employee if the commissioner determines that a violation did occur.

(4) A party may seek judicial review of the commissioner's decision, as provided in Title 2, chapter 4, part 7, after a hearing, a dismissal, or a summary decision issued pursuant to this section.

(5) The commissioner may adopt rules to carry out the responsibilities and duties assigned by this part.

**History:** En. Sec. 15, Ch. 562, L. 1995; amd. Sec. 4, Ch. 42, L. 1997; amd. Sec. 4, Ch. 122, L. 2001; amd. Sec. 2, Ch. 386, L. 2011; amd. Sec. 1, Ch. 234, L. 2013; amd. Sec. 4, Ch. 156, L. 2019.

**2-2-137. Repealed.** Sec. 6, Ch. 122, L. 2001.

History: En. Sec. 16, Ch. 562, L. 1995.

**2-2-138. Repealed.** Sec. 6, Ch. 122, L. 2001.

History: En. Sec. 17, Ch. 562, L. 1995.

**2-2-139. Repealed.** Sec. 6, Ch. 122, L. 2001.

History: En. Sec. 18, Ch. 562, L. 1995.

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**2-2-140. Repealed.** Sec. 1, Ch. 159, L. 2021  
History: En. Sec. 1, Ch. 156, L. 2019.

**2-2-141 reserved.**

**2-2-142. Repealed.** Sec. 6, Ch. 122, L. 2001.  
History: En. Sec. 19, Ch. 562, L. 1995.

**2-2-143. Repealed.** Sec. 6, Ch. 122, L. 2001.  
History: En. Sec. 20, Ch. 562, L. 1995.

**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.

History: En. Sec. 21, Ch. 562, L. 1995; amd. Sec. 5, Ch. 122, L. 2001.

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**2-2-145. Retaliation unlawful -- civil liability -- remedies -- statute of limitations -- definitions.** (1) It is unlawful for a state agency, state officer, public officer, or public employee to retaliate against, or to condone or threaten retaliation against, an individual who, in good faith, alleges waste, fraud, or abuse.

(2) A person who violates a provision of this section is liable in a civil action in a court of competent jurisdiction. The provisions of 2-9-305 apply if the person is being sued in a civil action for actions taken within the course and scope of the person's employment and the person is a state officer, public officer, or public employee.

(3) For purposes of this section:

(a) "person" has the meaning provided in 2-5-103;

(b) "retaliate" means to take any of the following actions against an individual because the individual, in good faith, alleged waste, fraud, or abuse:

(i) terminate employment;

(ii) demote;

(iii) deny overtime, benefits, or promotion;

(iv) discipline;

(v) decline to hire or rehire;

(vi) threaten or intimidate;

(vii) reassign to a position that hurts future career prospects;

(viii) reduce pay, work hours, or benefits; or

(ix) take another adverse personnel action; and

(c) "state agency" has the meaning provided in **1-2-116**.

(4) Remedies available to an aggrieved individual for a violation may include:

(a) reinstatement to a lost position;

(b) compensation for lost benefits, including service credit;

(c) compensation for lost wages;

(d) payment of reasonable attorney fees;

(e) payment of court costs;

(f) injunctive relief; and

(g) compensatory damages.

(5) A lawsuit alleging a violation of this section must be brought within 2 years of the alleged violation.

(6) If a state agency maintains written internal procedures under which an individual may appeal an action described in subsection (3)(b) within the agency's organizational structure, the individual shall first exhaust those procedures before filing an action under this section. The individual's failure to initiate or exhaust available internal procedures is a defense to an action brought under this section.

(7) For purposes of this subsection, if the state agency's internal procedures are not completed within 90 days from the date the individual may file an action under this section, the agency's internal procedures are considered exhausted. The limitation period in subsection (5) is tolled until the procedures are exhausted. The provisions of the agency's internal procedures may not in any case extend the limitation period in subsection (5) more than 240 days.

(8) If the state agency maintains written internal procedures described in subsection (6), the agency shall, within 7 days of receiving written notice from the complaining

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individual of the action described in subsection (3)(b), notify the individual of the existence of the written procedures and supply the individual with a copy. If the agency fails to comply with this subsection, the individual is relieved from compliance with subsection (6).

(9) The commissioner of political practices is not required or authorized to enforce this section.

History: En. Sec. 1, Ch. 215, L. 2017.

# **Administrative Rules of Montana**

## **Title 44, Chapter 2, Subchapter 6**

### **Code of Ethics and Guidelines**

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## Title 44, Chapter 2, Subchapter 6

### **44.10.601 OVERLAPPING SALARIES FROM MULTIPLE PUBLIC EMPLOYERS**

(1) "Public employee" and "public officer" are defined in 2-2-102, MCA. For purposes of this rule, "public employee" does not include an employee in the federal system.

(2) All state public employees, state public officers, and legislators who receive multiple salaries from multiple public employers for overlapping work hours must file a completed multiple public employment disclosure form with the commissioner within 15 business days of the occurrence, contract agreement, or receipt of payment. The multiple public employer disclosure form is available upon request from the commissioner's office.

(3) The multiple public employment disclosure form will contain the following information:

(a) name, address, and telephone number of the state public employee, state public officer, or legislator;

(b) name, address, and telephone number of each public employer;

(c) date(s) of multiple employment;

(d) title(s) or description(s) of each overlapping position;

(e) amount(s) paid by each public employer and method(s) of payment.

(4) If multiple employment is ongoing, a multiple public employment disclosure form must be filed with the commissioner annually, prior to December 15 of the current year. If multiple employment is occasional, a multiple public employment disclosure form must be filed on each occasion.

(5) The commissioner will monitor statutory disclosure requirements and notify any state public employee, state public officer, or legislator who is not in compliance with 2-2-104, MCA, within a reasonable period of time. Noncompliant individuals must correct the infraction and submit supporting documentation to the commissioner within 15 days after their receipt of notification. Saturdays, Sundays, and holidays shall be excluded in the calculation of the 15-day period.

History: Sec. 13-37-114, MCA; IMP, Sec. 2-2-104, MCA; NEW, 1996 MAR p. 789, Eff. 3/22/96; AMD, 2001 MAR p. 2049, Eff. 10/12/01.

### **44.10.603 DEFINITIONS**

The following definitions shall apply throughout this chapter:

(1) "Commissioner" means the commissioner of political practices created under 2-15-411 and 13-37-102, MCA.

(2) "Complainant" means any person who files a complaint with the commissioner under Title 2, chapter 2, MCA.

(3) "Ethics code" means the code of ethics, Title 2, chapter 2, part 1, MCA.

(4) "Hearing examiner" means a hearing examiner appointed by the commissioner.

(5) "Respondent" means any person against whom a complaint is filed with the commissioner.

History: Sec. 2-2-136, MCA; IMP, Sec. 2-2-136, MCA; NEW, 1996 MAR p. 922, Eff. 4/5/96; AMD, 2001 MAR p. 2049, Eff. 10/12/01.

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### **44.10.604 COMPLAINT, WHO MAY FILE**

(1) A complaint may be filed with the commissioner by any person alleging a violation of the ethics code by a state officer, state employee, or a legislator, so long as the alleged violation against a legislator does not pertain to a legislative act. The complaint must:

(a) be filed with the commissioner either by certified mail or delivered in person;

(b) be filed within two years of the date of the alleged violation of the code. A complaint is considered filed on the date it is received by the commissioner.

History: Sec. 2-2-136, MCA; IMP, Sec. 2-2-136, MCA; NEW, 1996 MAR p. 922, Eff. 4/5/96.

### **44.10.605 FILING, AMENDING COMPLAINTS**

(1) Complaints shall be in writing and shall be sworn to before a notary public or other person authorized by law to administer oaths.

(2) A complaint may be amended to cure defects or omissions, verify the original claim, swear or affirm that the charge is true, clarify allegations, or allege new, but related matters.

(3) The commissioner shall promptly notify all parties in writing of any amendments.

History: Sec. 2-2-136, MCA; IMP, Sec. 2-2-136, MCA; NEW, 1996 MAR p. 922, Eff. 4/5/96; AMD, 2001 MAR p. 2049, Eff. 10/12/01.

### **44.10.607 COMPLAINT CONTENTS**

(1) A complaint shall contain the following:

(a) the full name, address, and telephone number, if any, of the person making the complaint (complainant) ;

(b) the full name, address, and telephone number, if any, of the person against whom the complaint is made (respondent) ;

(c) a clear and concise statement of the facts(s) , including pertinent dates(s) constituting the alleged violation(s) of the ethics code;

(d) the specific provision of the ethics code which is alleged to have been violated;

(e) the verified signature of the complainant swearing or affirming that the charge is true.

(2) A complaint may be filed on a form available on request from the commissioner's office.

History: Sec. 2-2-136, MCA; IMP, Sec. 2-2-136, MCA; NEW, 1996 MAR p. 922, Eff. 4/5/96; AMD, 2001 MAR p. 2049, Eff. 10/12/01.

### **44.10.608 WITHDRAWAL OF A COMPLAINT**

(1) Any person who has filed a complaint with the commissioner may request in writing that the complaint be withdrawn. Upon receipt of a written request for withdrawal of the complaint, the commissioner shall dismiss the complaint.

History: Sec. 2-2-136, MCA; IMP, Sec. 2-2-136, MCA; NEW, 1996 MAR p. 922, Eff. 4/5/96; AMD, 2001 MAR p. 2049, Eff. 10/12/01.

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### **44.10.610 NOTICE OF FILING A COMPLAINT**

(1) After a complaint is filed, the commissioner shall promptly furnish the respondent with written notice of the complaint. The notice shall include identification of the person filing the complaint and a copy of the complaint.

History: Sec. 2-2-136, MCA; IMP, Sec. 2-2-136, MCA; NEW, 1996 MAR p. 922, Eff. 4/5/96.

### **44.10.612 CONFIDENTIALITY**

(1) The commissioner shall maintain the confidentiality of privacy interests entitled to protection by law.

History: Sec. 2-2-136, MCA; IMP, Sec. 2-2-136, MCA; NEW, 1996 MAR p. 922, Eff. 4/5/96; AMD, 2001 MAR p. 2049, Eff. 10/12/01.

### **44.10.613 INFORMAL CONTESTED CASE HEARING**

(1) After the commissioner has asserted jurisdiction over a complaint, a hearing date will be set by the hearing examiner.

(2) The matter shall proceed in accordance with the Administrative Procedure Act, Title 2, chapter 4, part 6, MCA.

(3) For purposes of these ethics complaint procedures, the commissioner incorporates by reference the attorney general's model rules for contested case hearings, ARM 1.3.212, 1.3.214 (effective 6/12/92) , and 1.3.217 (effective 10/12/79)

. Copies of these model rules are available from the Commissioner of Political Practices, 1205 Eighth Avenue, PO Box 202401, Helena, Montana 59620-2401.

History: Sec. 2-2-136, MCA; IMP, Sec. 2-2-136, MCA; NEW, 1996 MAR p. 922, Eff. 4/5/96; AMD, 2001 MAR p. 2049, Eff. 10/12/01.

### **44.10.621 BUSINESS DISCLOSURE**

(1) For purposes of this rule, "individual" means elected officials, candidates for statewide or state district offices (excluding judiciary) ; department directors, or anyone appointed to fill any of these offices.

(2) For purposes of 2-2-106, MCA, the term "business interest" means any interest in any business, firm, corporation, partnership, or other business or professional entity or trust owned by an individual, the current fair market value of which is \$1000 or more. Ownership of any security, equity, or evidence of indebtedness in any business corporation or other entity is a "business interest."

(3) Not included within the meaning of "business interest" and therefore not reportable under 2-2-106, MCA, are interests of the following nature:

(a) ownership of any personal property held in an individual's name and not held for use or sale in a trade or business or for investment purposes, such as personal vehicles or household furnishings;

(b) cash surrender value of any insurance policy or annuity;

(c) bank deposits, including checking or savings accounts or certificates of deposit, if they are not held for use in a trade or business;

(d) securities issued by any government or political subdivision.

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(4) An ownership interest in real property includes a fee, life estate, joint or common tenancy, leasehold, beneficial interest (through a trust), option to purchase, or mineral or royalty interest, if the current fair market value of the interest is \$1000 or more.

(a) It is not necessary to disclose ownership of a personal residence, but each individual is entitled to exclude only one residence.

(b) While valuation of property is not required (it need only be disclosed if its current fair market value exceeds \$1000), a description of both the property and the nature of the interest must be included. This may be a general description sufficient to identify the property without recourse to oral testimony. A street address is sufficient unless it is a rural route. The nature of the property must be described; for example, farm, ranch, vacation home, commercial or residential property, raw land held for investment, etc.

(5) Any individual described in (1) of this rule, is required to file a business disclosure form according to the filing schedules prescribed in 2-2-106, MCA. Business disclosure forms are provided by the Commissioner of Political Practices, PO Box 202401, Helena, MT 59620-2401.

History: Sec. 5-7-111, MCA; IMP, Sec. 5-7-102(12), MCA; NEW, 1982 MAR p. 1208, Eff. 6/18/82; AMD, 1986 MAR p. 128, Eff. 1/31/86; TRANS & AMD, 1996 MAR p. 2195, Eff. 8/9/96.