

City of Bozeman Ethics Handbook

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Board of Ethics
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City Commission
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in collaboration with



LOCAL GOVERNMENT CENTER

City of Bozeman Ethics Handbook

by

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Local Government Center

In collaboration with:

Bozeman City Commission

Bozeman Board of Ethics

Bozeman City Attorney's Office

Bozeman City Clerk's Office

Montana State University Extension

Preface

This ethics handbook is produced by the city of Bozeman Board of Ethics to educate citizens and train employees and public officials in best practices and legal requirements. In addition, this handbook details specific ethical requirements and provides guidance on obtaining information and filing complaints. The City Code of Ethics provides legal requirements outlining conduct and best practices as detailed in **Chapter 2.01** of the Bozeman Municipal Code.

City of Bozeman's Core Values

Integrity:

Be honest, hardworking, reliable, and accountable to the public.

Leadership:

Take initiative, lead by example, and be open to innovative ideas.

Service:

Work unselfishly for our community and its citizens.

Teamwork:

Respect others, welcome citizen involvement, and work together to achieve the best result.

Disclaimer: This handbook is not meant to serve as an authoritative legal guide for municipal and state ethics laws. For specific legal direction regarding the city of Bozeman Code of Ethics and the Montana Code of Ethics, see the full state statutes, the complete city municipal code provisions, and consult with proper legal counsel.

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1. What Are Ethics and Why Are They Important for Local Governments?

Ethics are commonly defined as the rules of conduct that govern how a society differentiates between good and bad, right and wrong. In practice, ethics guide individuals in identifying the correct course of action in how decisions are made.

In local government, the role of ethics is significant in maintaining public trust, fairness, and the appearance of fairness in all government action. Many local governments, including Bozeman, have created laws that outline a Code of Ethics that specify the conduct of all government actions, be it employees, elected officials, or appointed officials, to ensure that all dealings are conducted fairly and in an unbiased manner in both appearance and fact. In general, a Code of Ethics, as is the case for Bozeman, is designed to guarantee that procedural requirements are followed so that all government actions are not only fair, but also appear to be fair. The goal of any ethics-related statute and program is to preserve the public's confidence and trust in government.

2. Why Have an Ethics Handbook?

In addition to the City Code of Ethics all city employees and officials are subject to the state of Montana Code of Ethics (2-2-101, Montana Code Annotated, MCA). Among the provisions outlined in the State Code of Ethics, a local government may “establish a three-member panel to review complaints alleging violations” (2-2-144(5)(a), MCA). More specific information about the State Code of Ethics is detailed in Section 14 of this handbook.

This handbook was created as a result of the Bozeman City Charter (effective Jan. 1, 2008), and through codification of the City Code of Ethics in Chapter 2.01 of the Bozeman Municipal Code.

The Charter states that the City shall implement an ordinance addressing matters such as conflict of interest, accepting gifts, use of confidential information, and public disclosure. The Charter also requires the City to establish a Board of Ethics. Among the many responsibilities of the board are to create an “ethics handbook for the use of all public servants and the public” (2.01.140.A.13).

The City Code of Ethics also affirms the statement of core values of the city of Bozeman. This statement declares:

“Integrity, leadership, service, and teamwork are the core values of our organization and provide a framework for our employees, community volunteers, and citizens,” (Resolution No. 3832).

3. Who Is This Handbook Written For?

This handbook is written for all persons interested in the operation of Bozeman city government including citizens, city employees and elected and appointed officials. This handbook addresses legal requirements and best practices for the ethical behavior of city employees and officials as they undertake their public duties. Employees are defined as all individuals employed by the City and its agencies, but do not include independent contractors hired by the City, City Commissioners, or any municipal judge (2.01.020.F). Officials are all officers and members of the city’s agencies, whether elected or appointed, whether paid or unpaid, whether permanent, temporary, or alternate, and that are not employees (2.01.020.J). Agencies are defined as boards, committees, departments, and offices of the city, without exception (2.01.020.A). Officials and employees are considered to be public servants under the City Code of Ethics (2.01.020.L).

The City Code of Ethics also specifically states that this handbook is for use by the public (2.01.140.A.13) and that “every member of the public has the right to report improper government action” (2.01.120.B), and “any person” may file a complaint with the Board of Ethics or may request an ethics opinion (2.01.150.A).

4. What Is the Board of Ethics and What Are Its Responsibilities?

The City Code of Ethics details the responsibilities of a three-member Board of Ethics (hereafter called “The Board”). The Board is made up of individuals who are residents of the city but not “elected officials of the city, full-time appointed city officials whether exempt or nonexempt, or city employees” (2.01.130). Board members are appointed by the City Commission to staggered terms and do not receive compensation. The responsibilities of the Board are to:

- Evaluate all aspects of the City Code of Ethics to ensure the public and all public servants have a reasonable opportunity and are encouraged to participate;
- Develop a plan to educate public servants about their rights, duties and responsibilities;
- Submit an annual report of summary decisions, opinions and recommended actions regarding ethical practices or policies;
- Arrange for an annual workshop or training program for all board members; and
- Conduct hearings as needed (2.01.140.A.1-14).

The Board does not have authority to reverse or modify a prior action of the Mayor, governing body or an officer or employee of the City but may refer a matter to the City Attorney for review and consideration for appropriate action (2.01.150). The Board was created to ensure the public and all public servants have a reasonable opportunity and are encouraged to participate in any process for regularly evaluating the City Code of Ethics.

5. What Are Standards of Conduct?

Standards of conduct refer to the basic legal rules that apply to all employees and officials. These rules are designed to provide practical day-to-day guidance for employees and officials as they fulfill their public duties. This section of the City Code of Ethics states that officials or employees must:

- Act morally and honestly in discharging their responsibilities;
- Discharge their duties impartially and fairly;
- Devote necessary time and effort; and
- Not use their position to secure any financial interest or personal interest, improperly influence any other official or employee in the performance of official duties, or act in a private capacity on matters they are directly responsible for (2.01.140.A-G).

Standards of conduct are necessarily broad as they are general principles for behavior. Application of these principles to every day circumstances is the duty of each employee or official.

6. Can Employees or Officials Use City Resources for Personal Gain?

City officials and employees are entrusted with public resources including equipment and access to information. The temptation to use resources and knowledge for personal gain can be significant, especially when equipment, such as a vehicle, is entrusted to an employee. The City Code of Ethics clearly states employees and officials are not permitted the use of city-owned vehicles, equipment, material, or the use of other city resources for personal use. In addition, no city automobile shall be used by a city employee or official going to or from home, except when such use is for the benefit of the city, as in the case of an employee on call outside of the employee's working hours (2.01.050). The City also has a specific vehicle use policy (See [Administrative Order 2007-03](#)).

7. What If an Employee or Official Has a Conflict of Interest?

Many of the rules established in the City Code of Ethics provide general principles required of an employee or official while others provide specific direction. The conflict of interest section in the City Code of Ethics provides both. Specific rules required of an employee or official when confronted with a potential conflict, and general principles, which can provide guidance if a situation is not covered by a specific rule. A conflict of interest can be either financial or personal. In general, no city official or employee shall have any financial or personal interest in any transaction with the City without full public disclosure (further detailed in Section 11 of this handbook) (2.01.070).

A financial interest is defined as any interest (such as ownership, a contractual relationship, or a business relationship), which will result in a monetary or other material benefit that has a value of more than fifteen dollars, other than salary or compensation, for services to the city (2.01.020.G). A personal interest is any interest that would affect the action of the individual other than a financial interest (2.01.020.K).

It is better to avoid conflicts of interest than determine how to manage one if it arises (2.01.070). If a city official or employee has a conflict of interest, the individual should first review the specific language in the Code. If the Code does not provide specific direction, the employee or official is encouraged to contact the City Attorney (see Section 17 of this handbook).

8. Can Employees or Officials Disclose Confidential Information?

Article II, Section 9 of the Montana Constitution provides an express statement regarding privacy: “The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.” In some circumstances, despite strong open government laws in Montana, the protection of private or confidential information is a public duty. To achieve this, city officials or employees are not, without legal authority, permitted to disclose confidential information concerning personnel, property, government, or affairs of the City (2.01.080.A). Confidential information is defined as any information which is not available to the general public and which is obtained only by reason of an individual’s position with the City (2.01.020.D).

City officials or employees are not permitted to use confidential information to advance their own financial or personal interest or the financial or personal interests of any other person (2.01.080).

City employees and officials should use their best judgment to first determine if information is confidential in nature. If so, employees and officials are under obligation to protect those confidences. If an employee or official is in doubt as to whether information is confidential and must be protected, the employee or official must contact the City Attorney.

9. Can Employees or Officials Accept Gifts?

Gifts are undeniably a major topic of discussion for employees and officials. Questions invariably arise as to whether it is a violation of the City Code of Ethics to accept a tin of holiday cookies or even a free cup of coffee. City officials or employees are not permitted to accept a gift, gratuity, or favor from any person or entity, except as authorized by state law (2.01.090). According to Montana state law, it is unlawful for an official or employee to accept a gift of substantial value (defined as \$50 or more), or of a substantial economic benefit that would improperly influence a reasonable person to depart from their duties, or is primarily viewed as a reward (2-2-104(1)(b), MCA).

The question is not whether a gift offered by a citizen is done with the intent to unduly influence an official or employee. The question an employee or official

must focus on is whether a reasonable member of the public would view the gift as improperly influencing a reasonable person to depart from their duties or is designed to reward that employee or official for official action. Gifts that are exempt from state law include any gift that is returned or given to charity and any of the following:

- 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;
- Educational materials directly related to official governmental duties;
- Public award recognizing public service; and

Educational activity that does not appear to place the recipient under obligation, clearly serves the public good, and is not lavish or extravagant (2-3-102(3)(b), MCA).

City officials or employees are not permitted to accept loans at a substantially lower rate or compensation at a substantially higher rate (2-2-104(2), MCA).

The City Attorney routinely advises employees and officials on a case-by-case basis regarding whether acceptance of a gift is lawful (For more information, see Section 17 of this handbook).

10. Do Employees or Officials Have to File Financial Disclosure Statements?

Section 7.01(a) of the City Charter requires the "reasonable public disclosure of finances by officials with major decision-making authority over monetary expenditures and contractual and regulatory matters..." This mandate is fulfilled by 2.01.100 of the Code of Ethics. The purpose behind these disclosure requirements is to ensure a greater level of accountability and transparency in the management of public resources. The annual filing of a Financial Disclosure Statement is required for officials and employees who are determined by the City Manager and City Commission to be "major financial decision makers." A list is created annually by the City Finance Director and the Human Resource Director and individuals subject to the disclosure requirements are notified annually (2.01.100.A-C). The City Clerk stores all submitted disclosures.

In addition, the Finance Department creates a list of vendors and service providers for each department who contract for services or materials greater than \$2,500 each month or more than \$10,000 per year. Each member of a department must disclose if they have an economic relationship with that vendor (2.01.100.D). The list of vendors is maintained by the Finance Department.

11. What Are the Post-Employment Policies for Employees or Officials?

Generally, the public views with distrust actions taken by individuals who once worked for or represented the City when knowledge gained in service to the city directly benefits the former employee or official. However, it is also understandable that some transactions, when disclosure is properly made, should not be prohibited because they are necessary to an individual's economic efforts. To balance these considerations, city employees and officials are subject to specific rules that apply to post-employment activities.

As a rule, city employees and officials may not, for 12 months following the date on which they cease to be a public servant, make any formal or informal appearance before or negotiate with any decision maker, or for compensation act on behalf of any party on any matter that was under the public servant's direct responsibility, *without filing a public notice of their desire to negotiate with or appear informally or formally before the decision maker* (2.01.110.A.1).

In addition, during the first 12 months after separation from the City, no former official or employee may, without filing a proper disclosure, act on behalf of any party other than the City in connection with any matter in which that official or employee participated personally and substantially in their capacity as an official or employee (2.01.110.A.2).

The disclosure shall be made with the City Clerk and with the City Attorney (2.01.110-111). In some instances, the public may not understand or be privy to these disclosures prior to a lawful action taking place. As a result, employees and officials who leave the City should be mindful of the long-term implications for the public trust when considering engaging in an activity subject to the City Code of Ethics.

In addition, city employees and officials may not use their former official city title following termination of employment with the City unless the former public servant indicates the employment with the City was former to the current employment (2.01.110.A.3).

12. Are There Restrictions on *Ex Parte* Communications?

Perhaps no other activity has the potential to negatively impact the public's trust in city government than favoritism and bias in decision-making. When an official engages in discussions with individuals outside of the official public process, the public can view decisions involving those individuals with distrust. *Ex parte* communications is defined as a private, one-sided communication between a decision-maker and a party or person with an issue before that decision-maker. While the City Code of Ethics does not specifically address *ex parte* communications for employees and officials, these individuals should be prudent regarding potential communications, particularly for those individuals acting in a quasi-judicial capacity.

The first principle regarding *ex parte* communication is to avoid it. If, however, an individual feels that he/she is involved in an *ex parte* communication that may negatively impact his/her ability to perform official duties, the individual should disclose the communication on the record, recuse him/herself from participating in the discussion and action on the subject, and step away from his/her official seat on the board or committee. If the communication does not affect an official's ability to impartially perform his/her duties, the official should still disclose the existence of the *ex parte* communication and state on the record that his/her decision will be based solely on the public record and not on the substance of the *ex parte* communication.

The City Attorney views *ex parte* communication as a critical issue demanding prompt response. As such, employees and officials are encouraged to contact and seek the advice of the City Attorney when such communications occur.

13. What Is the City Whistle Blower Policy?

Transparent and fair practices are at the heart of the public's trust in city government. When officials and employees violate this trust, the public should

have the opportunity to actively report violations. Without such opportunity, the very premise upon which the City Code of Ethics is built will not be fulfilled.

The City refers to “whistle blowing” as the “reporting of improper governmental conduct or action.” Every official or employee must refrain from improper governmental action. An improper governmental action includes any action taken by an official or employee during the performance of their duties that violates the standards of conduct in the City Code of Ethics or Montana state law, or is intended to harass, intimidate, or retaliate against any other employee, official, or any member of the public. This principle is critical: No official or employee shall retaliate against any employee, official or member of the public regarding an allegation of improper governmental action (2.01.040.I).

An improper governmental action also includes any action that violates a fiduciary duty to the City or its citizens or creates a danger to the public health or safety (2.01.020.I). To ensure the public is afforded the ability to “whistle blow,” the Code of Ethics specifically states that every city employee, official or member of the public has the right to report in good faith, information concerning improper governmental action (2.01.120.B).

The City Code of Ethics further states that “each member of the public shall be treated courteously impartially and fairly. All employees and officials shall in the exercise of their official duties refrain from taking any action, making of any statement, or authoring any document that is intended to harass, intimidate, or retaliate against any member of the public” (2.01.060).

It is important to note that “improper governmental action” excludes personnel actions, including but not limited to: employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions in pay, dismissals, suspensions, demotions, reprimands, violations of collective bargaining or civil service laws, or alleged violations of agreements with labor organizations under collective bargaining (2.01.020.I).

Finally, a properly authorized city program or budgetary expenditure does not become an improper governmental action because a person disagrees with the city policy or decision. Members of the public who may want to discuss a potential whistle blowing action are encouraged to communicate with the City Attorney.

14. What State Laws Apply to Ethics in Local Government?

Montana state law on ethics applies to local government officials and employees. As such, employees and officials must understand there are provisions of state law in addition to the City Code of Ethics that apply to employees and officials. State law and the City Code of Ethics prohibit conflict between public duty and private interest as required by the Constitution of Montana (2-2-101, MCA).

Another important provision of state law applicable to employees and officials is the requirement that they may not receive a salary from two separate public employment positions that overlap for the hours being compensated. Employees and officials should familiarize themselves with other specific provisions and exceptions of state law that are detailed in the Montana Code Annotated (2-2-104 (3)(a), MCA). Employees and officials must also disclose in writing the nature of any private interest that creates a conflict to the Commissioner of Political Practices at the address below (2-2-131, MCA):

Montana Commissioner of Political Practices

1205 8th Ave
P.O. Box 202401
Helena, MT 59620-2401

According to state law, a former public employee (as defined by 2-2-102(7), MCA) may not within six months following the termination of employment, contract with or be employed by an employer who contracts with the state or any of its subdivisions involving matters with which the former employee was directly involved during employment. This provision does not absolve an employee from complying with the post-employment activities of the City Code of Ethics (see Section 11 of this handbook). The prohibition on post-employment activity in the City Code of Ethics lasts for twelve months unless disclosed. Employees and officials are encouraged to familiarize themselves with 2-2-201, MCA.

City employees and officials are also subject to state law regarding nepotism. Nepotism is defined as the “bestowal of political patronage by reason of relationship rather than of merit” (2-2-301, MCA). It is unlawful to appoint a person who is related by blood (consanguinity) or marriage (affinity) to any position of “trust or emolument” (meaning any office or employment that

results in compensation or privilege) within certain degrees of relationship. While state law related to nepotism applies only to these relationships, the appearance of favoritism with regards to friends or acquaintances of employees or officials can also be a hindrance to the public's trust in city government.

Employees and officials are encouraged to consult with the City Attorney for additional information on potential conflicts or exceptions to Montana state law requirements.

15. What Are the Penalties for Violating the Code of Ethics?

The rules of the State and City Codes of Ethics are meaningless unless they can be enforced in a way that ensures the public trusts city officials and employees to serve city government. All employees and officials must understand that a violation of the City or State Code of Ethics could lead to disciplinary action including termination, removal from office, or even criminal sanctions. While there are provisions in state code for violations of state law (2-2-144, MCA), a violation of the City Code of Ethics, in addition to termination or removal from office, could be prosecuted as a misdemeanor under the Bozeman Municipal Code's general penalty provision (Chapter 1.16).

16. Are There Additional Resources on Ethics in Local Government?

The following is a partial list of additional resources for information on ethics in local government:

City of Bozeman Board of Ethics

c/o Office of the City Clerk

121 North Rouse

P.O. Box 1230

Bozeman, MT 59771-1230

Tel: (406) 582-2320

agenda@bozeman.net

www.bozeman.net/bozeman/Residents/Ethics

Local Government Center

Montana State University
P.O. Box 172240
Bozeman, MT 59717
Tel: (406) 994-6694
msulocalgov@montana.edu
www.msulocalgov.org

Ethics Resource Center

2345 Crystal Drive, Suite 201
Arlington, VA 22202
Tel: (703) 647-2185
ethics@ethics.org
www.ethics.org

City Ethics, Inc.

4417 Beach Blvd Suite 300
Jacksonville, FL 32207
info@cityethics.org
www.cityethics.org

Council on Governmental Ethics Laws

P.O. Box 81237
Athens, GA 30608
Tel: (706) 548-7758
director@cogel.org
www.cogel.org

17. What Is the Process to Seek Advice About the City Code of Ethics?

If a city employee or official has a question about a potential ethics issue, impropriety, or violation, depending on the employee's or official's position and the nature of the issue, he/she should consult with his/her supervisor, Human Resources Department, or seek the advice of the City Attorney. Any member of the public may also request a formal or informal City Attorney opinion with respect to the ethical conduct of an employee or official (2.01.170). In some circumstances, the City Attorney may exercise discretion regarding whether to issue such an opinion. Contact information is available below.

Bozeman City Attorney's Office

Bozeman City Hall
121 North Rouse Ave.
P.O. Box 1230
Bozeman, MT 59771-1230
Tel: (406) 582-2309

City of Bozeman Human Resource Department

Bozeman City Hall
121 North Rouse Ave.
P.O. Box 1230
Bozeman, MT 59771-1230
Tel: (406) 582-2300

18. How Can an Ethics Complaint Be Filed?

Any member of the public may file a complaint with the Board of Ethics or may request an ethics opinion from the Board (2.01.150.A). Written complaints shall be filed with the City Clerk at the address below.

City of Bozeman Board of Ethics

c/o Office of the City Clerk
121 North Rouse
P.O. Box 1230
Bozeman, MT 59771-1230
Tel: (406) 582-2320
agenda@bozeman.net
www.bozeman.net/bozeman/Residents/Ethics



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