

## RESOLUTION NO. 25-09

### **A Resolution of the City Council of the City of Whitefish, Montana, adopting the City of Whitefish Ethics Policy.**

WHEREAS, it is the policy of the City that the Mayor, City Council members, City Board members, City Commission members, City Committee members, and all City employees comply strictly with all State laws regarding ethical behavior and avoidance of both conflicts of interest and the appearance of conflicts of interest; and

WHEREAS, on December 15, 1997, the City Council, through Resolution No. 97-38, adopted an ethics and conflict of interest policy; and

WHEREAS, on May 18, 1998, through Resolution No. 98-22, the City Council adopted revisions to the ethics and conflict of interest policy; and

WHEREAS, there have been significant changes in Montana law since the last revision to the ethics and conflict of interest of policy; and

WHEREAS, the City Council adopted a goal to update the ethics and conflict of interest policy; and

WHEREAS, at a lawfully noticed work session on February 3, 2025, the City Council received a report from staff, reviewed the proposed City of Whitefish Ethics Policy, solicited public comment, and thereafter directed staff to make certain revisions to the Policy; and

WHEREAS, at a lawfully noticed work session on February 18, 2025, the City Council received a report from staff, reviewed the proposed City of Whitefish Ethics Policy and the revisions thereto, solicited public comment, and thereafter directed staff to make further revisions to the Policy; and

WHEREAS, at a lawfully noticed public hearing on May 5, 2025, the City Council received a report from staff, solicited public comment, and determined it was in the best interest of the City and its inhabitants to adopt the City of Whitefish Ethics Policy.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Whitefish, Montana, as follows:

Section 1: The City of Whitefish Ethics Policy, attached hereto as Exhibit A, is hereby adopted.

Section 2: This Resolution shall take effect immediately upon its adoption by the City Council and signing by the Mayor thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF  
WHITEFISH, MONTANA, ON THIS 5TH DAY OF MAY 2025.

*/s/John Muhlfeld*

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John M. Muhlfeld, Mayor

*/s/Michelle Howke*

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Michelle Howke, City Clerk

## CITY OF WHITEFISH ETHICS POLICY

It is the policy of the City of Whitefish that the Mayor, City Council members, City Board members, City Commission members, City Committee members, and all City employees comply strictly with all State laws regarding ethical behavior and avoidance of both conflicts of interest and the appearance of conflicts of interest. The purpose of this ethics policy is to set forth standards of ethical conduct, to assist public officials and employees in establishing guidelines for their conduct, to foster the development and maintenance of a tradition of responsible, accountable and effective public service, and to prohibit conflict between public duty and private interest.

On December 15, 1997, the City Council, through Resolution No. 97-38, adopted an ethics and conflict of interest policy. Subsequently, on May 18, 1998, through Resolution No. 98-22, the City Council adopted revisions to the ethics and conflict of interest policy. There have been significant changes in Montana law since the last revision, and the City Council accordingly adopted a goal to update the ethics policy. It is the City's intention to create transparency, good governance, and ethical guardrails for all elected officials, public employees, City committee members, City commission members, and City board members as set forth below.

### **Section 1: Definitions**

The following definitions apply to this Policy:

"Board, Commission or Committee Member" means any individual appointed or elected to a City board, commission, or committee regardless of whether such board, commission or committee is merely advisory or is responsible for making quasi-judicial decisions.

"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.

"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.

"Gift of substantial value" means a gift with a value of \$100 or more for an individual. The term does not include:

1. A gift that is not used and that, within 30 days after receipt, is returned to the donor or delivered to a charitable organization and that is not claimed as a charitable contribution for federal income tax purposes;
2. Food and beverages consumed when participating in a charitable, civic, or community event bearing a relationship to the public officer's, public employee's or board, commission or committee member's office or employment or when the officer, employee or member is in attendance in an official capacity;
3. Educational material directly related to official governmental duties;
4. An award publicly presented in recognition of public service; or
5. Educational activity that does not place or appear to place the recipient under obligation, clearly serves the public good, and is not lavish or extravagant.
6. An economic benefit tantamount to a gift includes, but is not limited to, 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.

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

"Private interest" means an interest held by an individual that is:

1. An ownership interest in a business;
2. A creditor interest in an insolvent business;
3. An employment or prospective employment for which negotiations have started;
4. An ownership interest in real property;
5. A loan or other debtor interest; or
6. A directorship or officer ship in a business.

"Public employee" means any temporary, seasonal, short-term, permanent or contract employee of the City.

"Public officer" means any elected officer of the City, including the municipal judge.

**Section 2: Rules of conduct and ethics for public officers, public employees, and board, commission or committee members.**

A public officer, public employee, or a board, commission or committee member may not:

1. Disclose or use confidential information acquired in the course of official duties. "Confidential information" includes, but is not limited to, information shared in closed executive sessions, personnel information, or any other information a member of the general public would not be privy to.
2. Accept a gift of substantial value or a substantial economic benefit tantamount to a gift:
  - (a) That would tend improperly to influence a reasonable person to depart from the impartial discharge of the person's public duties or that could be perceived by a reasonable person as improperly influencing the person to depart from their public duties; or
  - (b) 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 or actions taken.
  - (c) Campaign contributions reported as required by statute are not gifts or economic benefits tantamount to gifts.
3. A public officer or public employee may not receive salaries from two separate public employment positions that overlap for the hours being compensated, unless:
  - (a) The individual reimburses the City for the salary paid for performing the function from which they are absent; or

(b) The individual's salary from the City is reduced by the amount of salary received from the other public employer to avoid duplicate compensation for the overlapping hours.

(c) This section does not prohibit a public officer, public employee, or municipal judge from receiving income from the use of accrued leave or compensatory time during the period of overlapping employment

4. Use public time, facilities, equipment, City letterhead, supplies, personnel, or funds for the public officer's, public employee's or board, commission or committee member's private or personal business purposes.

5. Engage in a substantial financial transaction for the public officer's, public employee's, or board, commission or committee member's private business purposes with a person whom the officer, employee, or board, commission or committee member inspects or supervises in the course of official duties.

6. Use the public official's, public employee's, or board, commission or committee member's position to assist an individual in obtaining a City contract, claim, license, or other economic benefit.

7. Perform an official act that directly economically benefits a business or other undertaking in which the public officer, public employee, or board, commission or committee member either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent.

8. A public officer, public employee, or board, commission or committee member may not participate in a proceeding when an organization, other than an organization or association of local government officials, of which the officer, employee or member is an officer or director is involved in a proceeding before the City that is within the scope of the officer's, employee's or member's job duties.

9. A public officer, public employee, or board, commission or committee member may not acquire an interest in any business or undertaking that the officer, employee or member has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken.

10. A public officer, public employee, or board, commission or committee member may not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when the officer, employee or member has a substantial personal interest in a competing firm or undertaking.

**Section 3: Use of Resources for Political Purposes.**

1. Except as provided in this section, a public officer, public employee, or board, commission or committee member may not use or permit the use of public time, facilities, equipment, City letterhead, 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:

- (a) Authorized by law;
- (b) Properly incidental to another activity required or authorized by law, such as the function of a public officer, public employee or board, commission or committee member in the normal course of duties; or
- (c) Reasonably considered to be also available to the public.

2. As used in subsection (1), "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 the activities of a public officer, public employee, or board, commission or committee member related to determining the impact of passage or failure of a ballot issue on City operations.

#### **Section 4: Quasi-Judicial Matters.**

1. A quasi-judicial matter is one in which the City Council, a City board, or a City commission is acting as a judge rather than legislator. The Council, board or commission is not making new laws, but rather applying existing laws to specific facts concerning one person or a small number of people rather than the entire City, at a public hearing. Examples of quasi-judicial decisions include, but are not limited to, decisions on conditional use permits, planned unit developments, variances, zone changes, subdivision plats, and zoning code interpretation.

2. The following guidelines exist to ensure that all quasi-judicial hearings are conducted fairly and openly.

(a) Once a public officer, board member, or commission member knows that an application or request has been submitted to the City, or will be submitted, they should refrain from meeting with or otherwise discussing the merits of the application with the applicant or requestor or their representatives and with individuals who support or oppose the application or request. If the public officer, board member or commission member does inadvertently have discussions with the applicant or requestor or their representatives or with individuals who support or oppose the application or request, they must fully disclose the circumstances and substance of the discussions at the public hearing.

(b) To the best of the public officer's, board member's, or commission member's ability, they should consider only the information and public opinion that is openly expressed, or provided in writing, at the public hearing on the application or request. If a public officer, board member, or commission member receives unsolicited written information prior to the public hearing, they should use their best efforts to provide staff and all other decision makers a copy prior to the hearing.

(c) A public officer, board member, or commission member should review all written material that is part of an application or request or staff report, or that is received from the applicant or requestor or members of the public prior to the public hearing. It is appropriate for a public officer, board member, or commission member to ask questions of staff prior to the hearing to clarify issues of fact or law.

(d) If a public officer, board member, or commission member deems it advisable to visit or inspect a site, such visit or inspection may not occur in the presence of the applicant or requestor or their representative, or an opponent or their representative. If the public officer, board member, or commission member wishes to access private property during such visit or inspection, they must receive prior express authorization through the City from the property owner.

(e) If the public officer, board member, or commission member has a preconceived and unalterable view of what the desired outcome of the hearing should be without regard to the information or public opinion offered at the hearing, they should recuse themselves from the hearing, abstain from voting, and from attempting to influence another public official's, board member's or commission member's vote or action with respect to the application or request. Public officers, board members, and commission members have a legal duty to listen to and consider public comment before making a decision on a quasi-judicial matter.

**Section 5: Conflict of Interest Disclosure.**

1. Within thirty (30) days of the election at which the Mayor or a City Council member is elected, or when a City Manager or City Attorney is hired, such individuals must file with the City Clerk a written disclosure on a form provided by the City containing:

(a) Their name and address and describing any current employment;

(b) Each present or past employing entity from which benefits, including retirement benefits, are currently received;

(c) Each business, firm, corporation, partnership or other business or professional entity or trust in which they hold an equity interest of ten percent or more of the entity;

(d) Each entity not listed under subsection (c) in which they are an officer, director or registered agent, regardless of whether the entity is engaged for profit;

(e) All real property, other than a personal residence, in which they hold an equity interest of the real property. Real property may be described by general description such as street address or highway location; and

(f) Any existing or proposed contract between them and the City or between the City and any business of which they are an owner, member or hold a position of officer, director, or hold a position of authority.

(g) Any non-profit organization or board membership and office held that are not held in the course of their City duties.

2. The written disclosure required in the above subsections (b) through (e) and (g) is limited to businesses or entities that could have applications pending before the City and to real property located within Flathead County.

3. The disclosure form is not required to identify the value of any interest held in any business, firm, corporation, partnership, other entity trust, the value any benefits received, the value of any real estate, or the value of any income or compensation.

4. The disclosure form must be filed annually by January 31 of each year, and provided to the public upon request

**Section 6: Enforcement.**

Any complaint about a violation of this policy by a public officer must be filed in writing with the City Clerk. The City Clerk will forward the complaint to the City Council. The City Council will schedule a hearing to determine if a violation has occurred. If the violation is found valid, one or more of the following sanctions will be imposed:

1. Written reprimand by the City Council via Resolution.
2. Written request by the Council that the individual resign.
3. Referral to the Flathead County Attorney's Office.
4. Removal of the public officer by supermajority of Council, with the Mayor voting.

Public employees are subject to the provisions set forth in the City of Whitefish Personnel Policy as well as any applicable collective bargaining agreement.

**Section 7:** Nothing in this Policy is intended to restrict the right of a public officer, public employee, or a board, commission or committee member to express personal political views or to preclude a public official, public employee, or a board, commission or committee member from participating in any public meeting or hearing as a member of the public.