



Ethics Committee Agenda
Civic Center, 2 Park Drive South, Great Falls, MT
Rainbow Room
February 6, 2019
1:00 PM

- 1. Call to Order**
- 2. Roll Call**
 - Carmen Roberts
 - Carl Rostad
 - Katrina Stark
- 3. Recognition of Staff**
- 4. Approval of Meeting Minutes – November 7, 2018**
- 5. Jeni Dodd Complaint received 1/15/19.**
 - Complaint alleging Commissioner Houck Violation of Mont. Code Ann. Title 2, Chapter 2 or a violation of OCCGF Title 2, Chapter 21.*
- 6. Miscellaneous Reports and Announcements from Committee**
- 7. Public Comment**
- 8. Adjournment**



Agenda #: 5
Ethics Committee Meeting Date: 2/6/2019
CITY OF GREAT FALLS
ETHICS COMMITTEE AGENDA REPORT

Item: Jeni Dodd Complaint received 1/15/19
From: Legal Department
Initiated By: City Manager
Presented By: Sara R. Saxe, City Attorney
Action Requested: Consideration and Decision regarding Complaint

Suggested Motion after Hearing:

1. Committee Member moves:

“I move that the Ethics Committee (finds/does not find) that there is an appearance of a violation of any provision of Mont. Code Ann. Title 2, Chapter 2, or a violation of OCCGF Title 2, Chapter 21, and makes a written finding of such.”

2. Presiding officer requests a second to the motion, public comment, Committee discussion, and calls for the vote.

If there is a finding of an appearance of a violation, then:

3. Committee Member moves:

“I move that the Ethics Committee (finds/does not find) that the appearance of a violation of any provision of Mont. Code Ann. Title 2, Chapter 2, or a violation of OCCGF Title 2, Chapter 21, rises to a level of an actual violation, and makes a written finding of such.”

4. Presiding officer requests a second to the motion, public comment, Committee discussion, and calls for the vote.

If there is a finding of an actual violation, then:

5. Committee Member moves:

“I move that the Ethics Committee, in conjunction with counsel, recommend the following course of action to eliminate the violation and/or reduce the appearance of any violation:

- a. _____;
- b. _____; and
- c. _____.

6. Presiding officer requests a second to the motion, public comment, Committee discussion, and calls for the vote.

Recommendation: Staff recommends that the Ethics Committee conduct a hearing under its procedural rule Section 5.01 summarized and adapted for this purpose as follows:

1. The presiding officer or staff member presents the item to the Committee along with a brief summary of the matter for discussion.
2. Comments from the Complainant or Complainant's representative will then be heard by the Committee.
3. For the purpose of clarification and after recognition by the presiding officer, Committee Members may direct questions about the item to the presiding officer or staff member.
4. After recognition from the presiding officer, the Committee may direct questions to the Complainant.
5. The presiding officer will then invite members of the audience to present or submit testimony beginning with those in favor of the proposal, followed by those who oppose the proposal and concluding with those who neither favor nor oppose the proposal.
6. All testimony shall be directed to the presiding officer.
7. The Committee may, upon a proper motion and second, vote on the matter (suggested motions are provided above) or postpone action on the matter until a date certain.

Background: On January 15, 2019, the City Attorney received a hand-delivered Complaint which was dated January 16, 2018, by Jeni Dodd. The Complaint related to City Commissioner Tracy Houck's use of a Facebook page. As the Complaint was lodged against one of City Manager Doyon's immediate supervisors, Mr. Doyon referred the Complaint to the Ethics Committee for evaluation and determination. The City has retained outside legal counsel Jordan Crosby, of Ugrin Alexander Zadick, P.C., to represent and advise the Ethics Committee during the hearing.

Ms. Dodd's Complaint is summarized as such: Great Falls City Commissioner Tracy Houck's use of her "official city commissioner Facebook page to support the Women's March is a violation of the MCA. Her actions also violate the Official Code of the City of Great Falls, 2.21.050.L." The full Complaint is attached as an Exhibit to this Agenda Report.

After receipt of the Complaint, the City Attorney requested that the City Clerk provide the process by which City Commission Facebook pages are recorded. A copy of the City Clerk's memorandum is attached.

Attachments/Exhibits:

Jeni Dodd Complaint received January 15, 2019
January 23, 2019 Memo from City Clerk Lisa Kunz
Mont. Code Ann. §2-2-121
OCCGF Title 2, Chapter 21

RECEIVED

January 16, 2018

ETHICS COMPLAINT

JAN 15 2019

Page 1 of 2

City of Great Falls Ethic Committee:

CITY CLERK

I wish to file an ethics complaint against a member of the Great Falls City Commission.

Commissioner Tracy Houck currently has posted, on her official Great Falls City Commission Facebook page, solicitation for and support of the Great Falls Women's March occurring January 19, 2019.

This violates the Montana Code Annotated Rules of Conduct for Public Officers and Public Employees.

MCA 2-2-121 (3) (a) states:

Except as provided in subsection (3)(b), a public officer or public employee may not use 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.

In addition, MCA 2-2-121(6) states:

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.

The Women's March is a political action committee/political organization. It also is actively engaged in opposing candidates that doesn't support its platform.

Therefore, Houck's use of her official city commissioner Facebook page to support the Women's March is a violation of the MCA. Her actions also violate the Official Code of the City of Great Falls, 2.52.050 L:

No officer or employee shall request, use or permit the use of any public property, vehicle, equipment, labor or service for personal convenience or

advantage for himself or any other person. The only exception shall be where it is the general practice to make the same available to the public at large or where the same is provided pursuant to stated public policy for the use of officials and employees in the conduct of official business.

I ask that you look into this matter as soon as possible.

Jeni Dodd
Great Falls, MT
jeni@jenidodd.com



Tracy Houck Great Falls City Commission shared The Electric's post.
January 6 at 7:25 AM · 🌐



The Electric
January 4 at 9:14 PM · 🌐

The city is currently working to update Title 17, the land development code, which includes parking, landscaping, zoning and other rules that are often criticized as barriers for development. Multiple public meetings will be part of the process and now is the time to share ideas.



THEELECTRICGF.COM

Process underway to update city land development code

The city's development processes and requirements are often blasted



Like



Comment



Share

Salome Gaiachild Range likes this.



Tracy Houck Great Falls City Commission shared Great Falls Community Action Team, Montana's event.
January 4 at 4:50 PM · 🌐



SAT, JAN 19 AT 12:00 PM MST

3rd Annual Women's March - Great Falls

Gibson Park · Great Falls

👤 Causes · 266 people



Like



Comment

Patrick VanWorth, Stacy Tempel-St John and 2 others like this.

Memorandum

To: Ethics Committee
From: Lisa Kunz, City Clerk
Date: 1/29/2019
Re: Jeni Dodd Complaint

I was present during the January 15, 2019, Commission meeting wherein Jeni Dodd expressed concerns regarding Commissioner Tracy Houck posting the Women's March on her Commission Facebook page in violation of Mont. Code Ann. Rules of Conduct, and the City of Great Falls Code of Ethics. Ms. Dodd commented that it is wrong to support a political organization on an official Commission Facebook page, and further that the founder of the Women's March is an Anti-Semite. After Ms. Dodd concluded her remarks, Mayor Kelly suggested that Ms. Dodd submit her concerns in writing to the City Attorney.

During the City Commission miscellaneous reports and announcements portion of the meeting, Commissioner Houck responded to Ms. Dodd's comments. She noted that she does often post many things that are happening within the City and the community on her Facebook page. There is a women's march that is being organized in Great Falls by an independent group. It is not listed as an affiliate march. She is not aware that this group is acting under any political or action group whatsoever. She concluded that she was asked to emcee this year's event as she did last year.

After the meeting adjourned, I was made aware that Ms. Dodd had submitted her concerns in writing to the City Attorney. Attorney Sexe requested that I provide the process by which Commission Facebook pages are recorded.

Social media is an opportunity for the City to informally communicate with the public. Because comments/posts to social media constitute correspondence, state and local records retention and schedules apply to social media content. Since May, 2016, City elected officials who were utilizing social media technologies for government purposes, operated by non-city hosted services, were requested to notify the Deputy City Manager to activate the account with Archive Social. The City of Great Falls utilizes Archive Social to capture and archive social media content posted in an official capacity.

Commissioner Tracy Houck maintains an active Facebook account in her official capacity.

Sara Sexe

From: Sara Sexe
Sent: Friday, January 18, 2019 4:39 PM
To: gdoyon@greatfallsmt.net
Subject: FW: ETHIC COMMITTEE COMPLAINT FROM JENI DODD
Attachments: SKM_C65919011612190.pdf; 2-2-144_ MCA.pdf

Greg:

Please see the attached complaint. Related to the issue are the attached MCA 2-2-144 and following OCCGF provisions:

- [2.21.060 - Great Falls Ethics Committee established.](#)
- [2.21.070 - Committee purpose.](#)
- [2.21.080 - Committee membership.](#)
- [2.21.090 - Committee meeting schedule.](#)
- [2.21.100 - Committee duties.](#)

Under the OCCGF, please let me know how you want to proceed.

Thank you,
Sara

From: Darcy Dea <ddea@greatfallsmt.net>
Sent: Wednesday, January 16, 2019 12:24 PM
To: Sara Sexe <saras@greatfallsmt.net>
Subject: ETHIC COMMITTEE COMPLAINT FROM JENI DODD

Sara – attached is the Ethic Committee Complaint from Jeni Dodd.
Thank you,

Darcy Dea
Deputy City Clerk
P. O. Box 5021
Great Falls, MT 59403
406-455-8479

From: greatfallsadmin_scanner@greatfallsmt.net <greatfallsadmin_scanner@greatfallsmt.net>
Sent: Tuesday, January 15, 2019 10:20 PM
To: Darcy Dea <ddea@greatfallsmt.net>
Subject: Message from KM_C659

2-2-144, MCA

Currency Statement Missing

LexisNexis® Montana Code Annotated > *Title 2 Government Structure and Administration (Chs. 1 — 89)* > *Chapter 2 Standards of Conduct (Pts. 1 — 3)* > *Part 1 Code of Ethics (§§ 2-2-101 — 2-2-145)*

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](#).

Annotations

LexisNexis® Notes

Sara Sexe

Chapter 21 - CODE OF ETHICS**Sections:****2.21.010 - Title.**

This chapter shall be known and may be cited as the "City of Great Falls Code of Ethics."

(Ord. 3169, 2017).

2.21.020 - Findings.

The City Commission of the City of Great Falls finds and declares that:

- A. Public office and employment are a public trust;
- B. The vitality and stability of representative democracy depends upon the public's confidence in the integrity of its elected and appointed representatives; and
- C. Governments have the duty both to provide their citizens with standards by which they may determine whether public duties are being faithfully performed, and to apprise their officers and employees of the behavior which is expected of them while conducting such duties.

(Ord. 3169, 2017).

2.21.030 - Purpose and authority.

It is the purpose of this chapter to provide a method of assuring that standards of ethical conduct for officers and employees of the City of Great Falls shall be clear, consistent, uniform in their application, enforceable, and to provide those officers or employees with advice and information concerning possible conflicts of interest which might arise in the conduct of their public duties. Such ethical standards shall inspire and stimulate each officer and employee to:

- A. Be dedicated to the concepts of effective and democratic local government by responsible elected officials and believe that professional general management is essential to the achievement of this objective;
- B. Affirm the dignity and worth of the services rendered by government and maintain a constructive, creative and practical attitude toward urban affairs and a deep sense of social responsibility as a trusted public servant;
- C. Be dedicated to the highest ideals of honor and integrity in all public and personal relationships so that each public servant may merit the respect and confidence of elected officials, of other officials and employees, and of the public; and
- D. Recognize that the chief function of local government at all times is to serve the best interests of all of the people.

(Ord. 3169, 2017).

2.21.040 - Definitions.

As used in this section:

- A. "Agency" means any agency, board, governing body, including the chief executive officer, office, commissioner, or instrumentality within the City of Great Falls, and any independent local authority created by or appointed by the authority of the City of Great Falls.
- B. "Business organization" means any corporation, partnership, firm, enterprise, franchise, association, trust, sole proprietorship, union, or other legal entity.
- C. "Employee" means any person, whether compensated or not, whether part-time or full-time, employed by or serving on an agency, who is not a local government officer.
- D. "Interest" means the ownership or control of more than ten (10) percent of the profits, assets or stock of a business organization, but shall not include the control of assets in a non-profit entity or labor union.
- E. "Member of immediate family" means the spouse or dependent child of an officer or employee residing in the same household.
- F. "Officer" means any person whether compensated or not, whether part-time or full-time, who is one (1) of the following:
 - 1. Member of the City Commission;
 - 2. City Manager;
 - 3. Deputy City Manager;
 - 4. Director, Department of Finance;
 - 5. Director, Department of Planning and Community Development;
 - 6. Director, Department of Public Works;
 - 7. Director, Department of Parks and Recreation;
 - 8. Chief of Police;
 - 9. City Clerk;
 - 10. City Attorney;
 - 11. Municipal Judge;
 - 12. Fire Chief;
 - 13. Library Director;
 - 14. Human Resources Director;
 - 15. Housing Authority Director; or
 - 16. A member of any City board, council, committee, or commission.
- G. "Officer or employee" means an officer or employee of the City of Great Falls or of an agency under the authority of or appointed by the City Commission.

(Ord. 3183, 2017; Ord. 3169, 2017).

2.21.050 - Ethical standards.

In addition to complying with the provisions of Mont. Code Ann. Title 2, Chapter 2, officers and employees of the City of Great Falls shall comply with the following provisions:

- A. No officer or employee of the City of Great Falls shall have an interest in a business organization or engage in any business, transaction, or professional activity which is in substantial conflict with the proper discharge of his or her governmental duties;

- B. No officer or employee shall use, or attempt to use, his or her official position to secure unwarranted privilege advantages for himself, herself or others;
- C. No officer or employee shall act in his or her official capacity in any matter where he or she, a member of his or her immediate family, or any business organization in which he or she has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to:
 - 1. impair his or her objectivity or independence or judgment, or
 - 2. substantially conflict with the proper discharge of officer or employee's governmental duties;
- D. No officer or employee shall undertake any private employment or service which might prejudice his or her independent judgment in the exercise of his or her official duties;
- E. No officer or employee, any member of his or her immediate family, or any business organization in which he or she has an interest shall solicit or accept any gift, favor, political contribution, service, promise of future employment, or other thing of value for the purpose of influencing him or her, directly or indirectly, in the discharge of his or her official duties, the appearance of impropriety must be avoided by the acceptance of such a gift;
- F. No officer or employee shall use, or allow to be used, his or her public office or employment or any information, not generally available to the members of the public, which he or she receives or acquires in the course of employment, for the purpose of securing financial gain for himself or herself, any member of his or her immediate family, or any business organization with which he or she is associated;
- G. No officer or employee, or any business organization in which he or she has an interest, shall represent any other person or party except the City in connection with any cause, proceeding, application, or other matter pending before any agency of the City of Great Falls; except in the process of collective bargaining for public employees or where any officer or employee or members of his or her immediate family shall represent himself, herself or themselves, in negotiations or proceedings concerning his, her, or their own interests;
- H. No officer shall be in conflict with these provisions if, by reason of his or her participation in the enactment of any ordinance, resolution or other matter required to be voted upon, no particular material or monetary gain accrues to him or her, or his or her immediate family;
- I. No elected officer shall be prohibited from making an inquiry for information on behalf of a constituent if in return, no fee, reward, or other thing of value is directly or indirectly promised to or accepted by the officer or a member of his or her immediate family;
- J. No officer or employee, elected or appointed in the City, shall without receiving formal written authorization from the appropriate person or body, disclose any confidential information concerning any other officer or employee or any other person or any property or governmental affairs of the City;
- K. No officer or employee shall approve, disapprove, or in any way recommend the payment of any bill, voucher, or indebtedness in which he or she has direct or indirect interests except reimbursement for proper expenses otherwise approved by the City Manager;
- L. No officer or employee shall request, use, or permit the use of any public property, vehicle, equipment, labor, or service for personal convenience or advantage for himself or any other person; except where it is the general practice to make the same available to the public at large, or where the same is provided pursuant to stated public policy for the use of officials and employees in the conduct of official business;
- M. All officers or employees shall exercise prudence and integrity in management of public funds in their custody and in all financial transactions;

- N. All officers or employees shall uphold the letter and spirit of the constitution, statutes, and regulations governing their duties and report violations of the law to appropriate authorities;
- O. All officers or employees shall be sensitive and responsive to the concerns and questions of the public; and
- P. All officers, whether elected or appointed, shall file a signed written disclosure with the City Clerk, and City Attorney, disclosing any appearance of a violation of this chapter, and said disclosure may, within the City Manager's discretion, be forwarded to the Great Falls Ethics Committee for determination if a violation of this chapter exists and appropriate course of action.

(Ord. 3169, 2017).

2.21.060 - Great Falls Ethics Committee established.

The City Commission hereby establishes The Great Falls Ethics Committee hereinafter referred to in this chapter as the "Committee."

(Ord. 3169, 2017).

2.21.070 - Committee purpose.

The purpose of the Committee is to ensure that all City officers and employees are performing their duties in compliance with the provisions of Mont. Code Ann. Title 2, Chapter 2, and the provisions of this chapter.

(Ord. 3169, 2017).

2.21.080 - Committee membership.

- A. Subject to the provisions provided in Subsection (B.) of this part, the Committee shall consist of three (3) members appointed by the City Commission for not more than three (3) consecutive, three-year terms. Members shall be qualified electors and residents of the City. Members shall not be City employees. As is reasonably possible, the members shall have experience and or training in the following:
 - 1. Public administration;
 - 2. Governmental operation;
 - 3. Political practices; or
 - 4. Legal practice.
- B. The first appointee to the Great Falls Ethics Committee shall serve an initial term of three (3) years, the second appointee shall serve an initial term of two (2) years, and the third appointee shall serve an initial term of one (1) year. Following the expiration of these initial terms, the provisions of Subsection (A.) of this part shall apply.

(Ord. 3169, 2017).

2.21.090 - Committee meeting schedule.

The Committee shall meet on an as needed basis, in the City Commission Chambers, on the first Wednesday of the month after a matter has been referred to the Committee pursuant to this Chapter, or by direction of the City Manager. Committee meetings shall be open to the public, pursuant to Mont. Code Ann. Titles 2, and 7, and Committee meeting minutes shall be maintained by the City Clerk.

(Ord. 3169, 2017).

2.21.100 - Committee duties.

The Committee shall meet and be presented testimony regarding matters referred to it. Based on the information and testimony presented, the Committee shall:

- A. Make a written finding, filed with the City Clerk, as to whether there is an appearance of a violation of any provision on Mont. Code Ann. Title 2, Chapter 2, or a violation of this chapter;
- B. Make a written finding, filed with the City Clerk, as to whether the appearance of a violation rises to a level of an actual violation; and
- C. Make a written recommendation, filed with the City Clerk, in consultation with the City Attorney's Office, as to the correct course of action to eliminate any violation and/or reduce the appearance of any violation.

(Ord. 3169, 2017).

2.21.110 - Nepotism.

All personnel matters shall be administered on the basis of merit and through regular management procedure.

- A. No one participating actively in the appointment of a position, i.e., City Commissioners, City Manager, representatives of the Human Resources Department, the appointing department head, or division head, shall appoint any person related or connected by consanguinity within the fourth degree or by affinity within the second degree;
 1. "Consanguinity" means blood relation and degrees are determined as follows:
 - i. Parent and child are of the first degree;
 - ii. Grandparents, grandchildren, brothers and sisters are of the second degree;
 - iii. Uncles, aunts, nephews, nieces and great grandparents are of the third degree; and
 - iv. First cousins, great uncles and great aunts and great-great grandparents are of the fourth degree.
 2. "Affinity" means a relationship by marriage and the degrees are determined as follows:
 - i. Husband and wife are of the first degree; and
 - ii. Brothers-in-law, sisters-in-law, fathers-in-law and mothers-in-law are of the second degree.
- B. No one may be appointed to a position, within a City department, if related or connected by consanguinity within the fourth degree or by affinity within the second degree to any person sitting on a board or commission representing or advising that department.
- C. The above shall include but not be limited to the following:
 1. City Commission;
 2. Board of Adjustment;
 3. Board of Health;
 4. Housing Authority;
 5. Library Board;
 6. Park and Recreation Board;

7. Parking Commission;
8. Planning Board and Zoning Commission;
9. Police Commission;
10. Business Improvement District;
11. Tourism Business Improvement District; and
12. Great Falls Ethics Committee.

(Ord. 3169, 2017).

2.21.120 - Distribution.

The City Clerk shall cause a copy of this Code of Ethics to be distributed to every public officer and employee of the City within thirty (30) days after enactment. Each public officer and employee elected, appointed, or engaged thereafter shall be furnished a copy before entering upon the duties of his or her office or employment.

(Ord. 3169, 2017).