

Montana Board of Housing (the Board or MBOH)

Ex Parte Communication Policy

December 9, 2024

Purpose

The purposes of this *ex parte* communication policy are to:

- (1) promote transparency and openness concerning the Board's interactions with public stakeholders;
- (2) assure that, where required, Board decisions are based upon information presented to the Board in a duly noticed public meeting;
- (3) prevent individuals and entities from gaining an unfair advantage, or the perception of an unfair advantage, over others by communicating with one or more Board members on an *ex parte* basis;
- (4) assure that all Board members and public stakeholders have access to information presented to the Board and its members and opportunity to comment and respond; and
- (5) reduce the risk that Board decisions will be subject to challenge due to reliance on information obtained through inappropriate *ex parte* communication.

This policy, by design, accounts for the varying nature of matters that come before the Board.

Applicability

This policy applies to Board members and the Board's public stakeholders with respect to the matters specified below. For purposes of this policy, the following terms (whether or not capitalized herein) have the following meanings:

- (1) "Board" means the Montana Board of Housing established by Mont. Code Ann. § 2-15-1814, acting through a duly constituted quorum of its members.

- (2) “Board meeting” or “meeting” means a duly noticed meeting of the Board at which a quorum is present.
- (3) “*Ex parte*” or “*ex parte* communication” means communication in any form (including but not limited to oral, written or electronic) between one or more Board members and one or more public stakeholders other than in the course and on the record of a Board meeting (e.g., emails, telephone calls or conversations between an applicant and Board member outside a meeting urging favorable action on an application, award or other benefit).
- (4) “Matter” means and includes any one of the following matters:
- a. Loan applications, exceptions and related matters requiring Board approval;
 - b. Participating lender applications;
 - c. Requests for fund set-asides, purchase of lien, loan or servicing portfolios, and similar requests;
 - d. Bond resolutions or similar resolutions;
 - e. Housing Credit letter of intent project selections and credit awards, and other requests and approvals under the Board’s Qualified Allocation Plan requiring Board action (e.g., waiver requests and credit refresh requests);
 - f. Competitive procurement contract awards;
 - g. Award of any benefit to any one or more particular applicants;
 - h. Contested cases;
 - i. Any other matters in which the Board is required to adjudicate or adjudicates the matter by applying a law or policy to particular facts or situations based upon evidence in the record.

The term does not include any of the following matters, decisions, participation and communications, or Board consideration and action thereon, unless specifically included within the foregoing list of covered matters:

- a. Board policies or standards of general applicability;
- b. Board program reports, minutes, audits and similar items;
- c. Board rulemaking, including QAP development and approval;
- d. Board training, planning and policy discussions;
- e. Board program development and adoption and related matters;
- f. Conferences, forums and related discussions relating to affordable housing or other matters generally within the Board's purview;
- g. Scheduling, status, administrative and ministerial matters;
- h. Any decision or matter performed by or delegated to Board staff;
- i. Documents or information submitted to Board staff and included in the materials provided generally to Board members in connection with any meeting agenda item;
- j. Any matter constituting an exercise of the Board's legislative or operational functions;
- k. Communication and interaction in the course and on the record of a Board meeting;
- l. Communication unrelated to Board business.

(5) "Member" means a member of the Board appointed by the Governor as provided by law and does not include the Board's Executive Director or other staff.

(6) "Public stakeholder" means an individual, association, organization or other entity (and any owner of an interest in any such entity) with any interest, direct or indirect, in a matter, whether such interest is financial, contractual, legal,

policy, advocacy or otherwise, and includes but is not limited to applicants, borrowers, lenders, investors, sponsors, local governmental entities and officials, and advocacy organizations. The term does not include the Board's Executive Director or other staff.

(7) "Quorum" means a majority of the membership of the Board.

This policy applies to Board members and all Board members must abide by this policy in all communication with a public stakeholder regarding any matter that is before the Board for consideration or action (as indicated by inclusion of the matter on a Board meeting agenda) or that will require Board action to proceed (*e.g.*, a potential/proposed project that will apply for Housing Credits or a Board loan). This policy also applies to all public stakeholders with respect to communication with Board members regarding any such matter. This policy applies to all communication and interactions, including oral, written and electronic, between one or more Board members and any one or more public stakeholders.

Policy

In acting on any matter, the Board and any member may consider only information and documents:

- (i) presented by Board staff generally to Board members for purposes of the meeting;
- (ii) communicated or submitted in the course and on the record of a Board meeting; or
- (iii) unless otherwise restricted by Board action, included in an *ex parte* communication to the extent such information is disclosed on the record of a Board meeting.

Board members should not receive or consider any other communication, information, material or documents for purposes of acting on any matter.

Board members should refrain from and take all reasonable measures to avoid engaging in *ex parte* communication with any public stakeholder regarding any matter that is before the Board for consideration or action (as indicated by inclusion of the matter on a Board meeting agenda) or that will require Board action to proceed (e.g., a potential/proposed project that will apply for Housing Credits or a Board loan).

Members should not initiate contact with any public stakeholder regarding any such matter. If contacted or approached by a public stakeholder on an *ex parte* basis regarding any such matter, a Board member should attempt to prevent or stop the communication and inform the public stakeholder that such communication is prohibited except in a Board meeting. This may include the member providing information to the public stakeholder on how to appropriately submit material to MBOH.

Public stakeholders should not make or cause to be made any *ex parte* communication to any Board member who is or may reasonably be expected to be involved in Board consideration or action on any matter that is before the Board for consideration or action (as indicated by inclusion of the matter on a Board meeting agenda) or that will require Board action to proceed (e.g., a potential/proposed project that will apply for Housing Credits or a Board loan). Further, if a Board member initiates an *ex parte* communication with a public stakeholder, the public stakeholder should attempt to prevent or stop the communication and avoid discussing the matter with the member.

Process

A Board member who has had any *ex parte* communication (including without limitation any communication or receipt of information, material or documents) to, from or with any public stakeholder regarding any matter that is before the Board for consideration or action (as indicated by inclusion of the matter on a Board meeting agenda) or that will require Board action to proceed (e.g., a potential/proposed project that will apply for

Housing Credits or a Board loan) must disclose all such communication on the record at any Board meeting at which the matter is considered.

The disclosure must include:

- (i) the identity of the public stakeholder making the communication(s);
- (ii) the date(s) of the communication;
- (iii) the substance of all oral communication, including the member's response; and
- (iv) copies of all written and electronic communication included in the *ex parte* communication.

Absent Board action to the contrary, the disclosing member may participate in consideration, discussion and action on the matter. The Board may, however, impose additional measures or remedies deemed necessary or appropriate to avoid any unfair advantage or perception of unfair advantage or to cure any prejudice to other interested parties, including but not limited to any one or more of the following:

- (i) mandatory recusal of the disclosing member from participation in consideration, discussion and action on the matter;
- (ii) adverse action on the matter, including denial or rejection of an application or request, if the applicant or requestor committed, caused or failed to take reasonable action to avoid the *ex parte* communication;
- (iii) no consideration of or reliance upon content of the *ex parte* communication;
- (iv) where the opportunity does not already exist, providing all interested persons an opportunity to respond to the disclosed material; or
- (v) other reasonable measures or remedies.

If a member has any doubt or question regarding whether any communication constitutes an *ex parte* communication subject to this policy, the member will contact the Board's Executive Director or legal counsel to discuss and obtain further guidance.

Board Member Responsibility

In addition to the foregoing, all Board members will acknowledge and accept the responsibility to follow all applicable state laws and policies regarding *ex parte* communication, including but not limited to:

- (i) initial and annual completion, execution and submission of an acknowledgement and affirmation of this policy in the form required by the Board;
- (ii) attendance and participation in at least annual training regarding *ex parte* communication; and
- (iii) compliance with the terms of this policy, including full disclosure and any other measures or remedies determined by Board action as provided in this policy.

The Board will provide a copy of this policy to each Board member and each member must sign and return the policy, acknowledging receipt of the policy and that the member has read, understands, and will comply with the policy.

Acknowledgement

The undersigned Board member hereby acknowledges receipt of a copy of this policy and that the member has read, understands, and will comply with the policy.

DATED: _____, 20____

Print Board Member Name: _____