UM DRAFT FREE SPEECH POLICY

OUTLINE: Freedom of Speech/Expression/Association – NEW
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I. Purpose statement
   a. The right to free speech is a fundamental personal right and essential to the common quest for truth and the vitality of society as a whole. University of Montana (UM), as the flagship liberal arts and research university for the State of Montana, takes upon itself a special responsibility to foster dialogue, demonstration, and freedom of expression. UM recognizes the pressing need to preserve First Amendment rights to freedom of speech and expression as a fundamental aspects of higher education and American democracy. The University of Montana encourages the pursuit of knowledge and the free exchange of ideas and, as such, the strives to protect diversity of viewpoints and drafts its policies and procedures to discourage speech suppression.

II. Mission Statement
   a. University students are dynamic, critical-thinking problem-solvers who grow stronger as they confront and interact with diverse viewpoints and perspectives. As part of its mission to pursue academic excellence, UM supports academic freedom and believes educational institutions have a responsibility to foster dialogue to help students gain experience in processing and responding to messages they find objectionable, intolerant, or deeply offensive.

III. Limitations:
   b. Burden. The level of scrutiny applied under the First Amendment to speech restrictions on government property depends on the nature of the forum in which it occurs. Cyr v. Addison Rutland Supervisory Union, 955 F. Supp. 2d 290 (D. Vt. 2013). The University of
Montana is a limited public forum, requiring any restrictions placed on speech to be viewpoint neutral and reasonable in light of the objective purposes served by the forum.

c. **Time, Place, Manner.** The University implements valid time, place, or manner regulations that are justified without reference to the content of the regulated speech, narrowly tailored to serve a significant governmental interest, and leave open ample alternative channels for communication of that information.

d. **Substantial Disruption.** Activity that disrupts the academic or administrative functions or the primary mission of the University is prohibited.

e. **Unlawful Activity.** The right of free speech does not include unlawful activity or activity that endangers or imminently threatens the safety of any member of the community, or of the University’s physical facilities. Furthermore, in accordance with Montana law, the University does not permit speech or conduct that is discriminatory, harassing, intimidating, obscene or defamatory as defined by the Montana Code Annotated.

i. **Discrimination.** Under the Montana Code Annotated 49-1-102, Montana recognizes the right to freedom from discrimination because of race, creed, religion, color, sex, physical disability, age, or national origin and declares such to be a civil right.

ii. **Harassment.** Under the Montana Code Annotated 45-5-221, Montana criminalizes malicious intimidation or harassment relating to civil or human rights. A person commits the offense of malicious intimidation or harassment when, because of another person’s race, creed, religion, color, national origin, or involvement in civil rights or human rights activities, the person purposely or knowingly, with the intent to terrify, intimidate, threaten, harass, annoy, or offend: (a) causes bodily injury to another; (b) causes reasonable apprehension of bodily injury in another; or (c) damages, destroys, or defaces any property of another or any public property. To “deface” includes but is not limited to cross burning or the placing of any word or symbol commonly associated with racial, religious, or ethnic identity or activities on the property of another person without the other person’s permission.

iii. **Intimidation.** In accordance with Montana Code Annotated 45-5-203, a person commits the offense of intimidation when, with the purpose to cause another to perform or to omit the performance of any act, the person communicates to another, under circumstances that reasonably tend to produce fear that it will be carried out, a threat to perform without lawful authority of any of the following acts: (a) inflict physical harm on the person threatened or any other person; (b) subject any person to physical confinement or restraint; or (c) commit any felony. Furthermore, a person commits the offense of intimidation if the person knowingly communicates a threat or false report of a pending fire, explosion, or disaster that would endanger life or property.

iv. **Obscenity.** Under the Montana Code Annotated 45-8-201, a person commits the offense of obscenity when, with knowledge of the obscene nature of the material, the person purposely or knowingly: (a) sells, delivers, or provides or offers or agrees to sell, deliver, or provide any obscene writing, picture, record, or other representation or embodiment of the obscene to anyone under 18.
years of age; (b) presents or directs an obscene play, dance, or other performance, or participates in that portion of the performance that makes it obscene, to anyone under 18 years of age; (c) publishes, exhibits, or otherwise makes available anything obscene to anyone under 18 years of age; (d) performs an obscene act or otherwise presents an obscene exhibition of the person's body to anyone under 18 years of age; (e) creates, buys, procures, or possesses obscene matter or material with the purpose to disseminate it to anyone under 18 years of age; or (f) advertises or otherwise promotes the sale of obscene material or materials represented or held out by the person to be obscene. In accordance with the statute, a thing is obscene if: (i) it is a representation or description of perverted ultimate sexual acts, actual or simulated; (ii) it is a patently offensive representation or description of normal ultimate sexual acts, actual or simulated; or (iii) it is a patently offensive representation or description of masturbation, excretory functions, or lewd exhibition of the genitals. A thing is obscene if, taken as a hole, the material (i) applying contemporary community standards, appeals to the prurient interest in sex; (ii) portrays conduct described in subsection (2)(a)(i), (2)(a)(ii), or (2)(a)(iii) in a patently offensive way; and (iii) lacks serious literary, artistic, political, or scientific value.

ev. **Defamation.** Defamation includes Slander and Libel.

1. Under Montana Code Annotated 27-1-803, Slander is a false and unprivileged publication other than libel that: (1) charges any person with crime or with having been indicted, convicted, or punished for crime; (2) imputes in a person the present existence of an infectious, contagious, or loathsome disease; (3) tends directly to injure a person in respect to the person's office, profession, trade, or business, either by imputing to the person general disqualification in those respects that the office or other occupation peculiarly requires or by imputing something with reference to the person's office, profession, trade, or business that has a natural tendency to lessen its profit; (4) imputes to a person impotence or want of chastity; or (5) by natural consequence causes actual damage.

2. Under Montana Code Annotated 27-1-802, Libel is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation that exposes any person to hatred, contempt, ridicule, or obloquy or causes a person to be shunned or avoided or that has a tendency to injure a person in the person's occupation.

IV. **Right to Due Process**

a. In accordance with the United States Constitution and the Constitution of the State of Montana, no person shall be deprived of life, liberty, or property without due process of law. The First Amendment to the United States Constitution protects the right to free speech. A Fourteenth Amendment procedural due process claim requires proof of two elements: (1) the existence of a property or liberty interest that was deprived; and (2) deprivation of that interest without due process. As such, requirements of procedural
due process apply only to deprivation of interests encompassed by Fourteenth Amendment’s protection of liberty and property, and when protected interests such as the right to freedom of speech are implicated the right to some kind of prior hearing is paramount. U.S.C.A.Const. Amend. 14.; Bd. of Regents of State Colleges v. Roth, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972). Please refer to the Facilities Use Policies and Procedures for the procedure on hearing and appeal.