

## EXHIBIT A: AMENDMENTS TO AVON TOWN CODE OF ETHICS

### Town Code of Ethics

#### 2.30.010 Citation.

This Chapter shall be known and may be cited as the "Avon Town Code of Ethics."

#### 2.30.020 Declaration of policy.

The proper operation of democratic government requires that public officers be independent, impartial and responsible to the people; that government decisions and policy be made within the proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals, a code of ethics for all Town eOfficers is adopted. The purpose of this code is to establish guidelines for ethical standards of conduct for all such eOfficers by setting forth those acts or actions that are incompatible with the best interest of the Town, and by directing disclosure by such eOfficers of private financial or other interests in matters affecting the Town.

#### 2.30.030 Finding of local concern.

The Town Council finds and determines that the matter of ethical municipal government is a matter of local concern upon which home rule municipalities in Colorado are fully empowered to legislate and to supersede conflicting state statutes.

#### 2.30.040 Effect of common law.

This Chapter shall supersede and override the common law as to the subject matter of this Chapter.

#### 2.30.050 Definitions.

As used in this Chapter, unless the context requires otherwise:

*Business* means any corporation, limited liability corporation, partnership, sole

proprietorship, trust or foundation, or other individual or organization carrying on a business operated for private profit.

*Confidential information* means all information, whether transmitted orally, electronically or in writing, which is intended to be confidential and which does not constitute a public record under the Colorado Open Records Act set forth in C.R.S. §24-72-200.1 *et. seq.* including but not limited to attorney-client confidential and privileged communications and information received in an executive session.

*Council or Town Council* means the Town Council of the Town of Avon.

*Council Member* means any member of the Town Council.

*Officer* means any person holding a position by election or appointment in the service of the municipality, whether paid or unpaid, including the members of the Town Council, any other Town board, committee or commission, any employee and any independent contractor.

*Official act or official action* means any vote, decision, recommendation, approval, disapproval or other action, including inaction, which involves the use of discretionary authority.

*Substantial financial interest* means an interest owned or held by an eOfficer which is:

- a. An ownership interest in a business;
- b. A creditor interest in a business;
- c. An ownership interest in real or personal property;
- d. A loan or any other debtor interest;
- e. A directorship or officership in a business.

An officer shall be presumed to have a *substantial financial interest* in any of the

## EXHIBIT A: AMENDMENTS TO AVON TOWN CODE OF ETHICS

abovementioned interests owned, held or controlled by such eOfficer's spouse or dependent children.

### 2.30.060 Conflict of interest.

A Town Officer shall not:

(1) Disclose or use confidential information acquired in the course of such Officer's duties (a) in order to further a business or other undertaking in which such Officer has a substantial financial interest or (b) for any use which would be detrimental to the Town;

(2) Engage in a substantial financial transaction for his or her private business purposes with a person whom such eOfficer inspects or supervises in the course of his or her official duties;

(3) Perform an official act which directly and substantially affects to its economic benefit a business or other undertaking in which such Officer has a substantial financial interest;

(4) Perform an official act which directly and substantially affects a business or other undertaking by whom the eOfficer is employed, or by whom such Officer is engaged as counsel, consultant, representative or agent;

(5) Acquire or hold an interest in any business or undertaking which such Officer has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by the agency over which he or she has substantive authority;

(6) Perform an official act directly and substantially affecting to its economic detriment any business or other undertaking when such Officer has a substantial financial interest in a competing business or undertaking;

(7) Solicit or accept a present or future gift, favor, loan, service or thing of value from a

person under circumstances which would lead a reasonably prudent person to believe that such gift, favor, service or thing of value was made or given primarily for the purpose of influencing or attempting to influence such eOfficer in connection with an official act, or as a reward for official action he or she has previously taken. The provisions of this Subsection shall not apply to those circumstances described in Subsection 2.30.070(3);

(8) Perform any official act under circumstances which give rise to appearance of impropriety on the part of the Officer;

(9) Make or accept any ex parte communication or contact concerning a matter which is to be determined after a public hearing without making the contents of such communication or contact a part of the record of such public hearing;

(10) Appear on behalf of any private person, business or entity, other than himself or herself, his or her spouse, or minor children, before the Town Council, any Town Commission or the Municipal Court; ~~or,~~

(11) For members of Town Council, seek or obtain employment or compensation concerning matters upon which he or she took an Official Act during his or her term of office for six (6) months following expiration or termination of office, if such Official Act occurred less than four years prior to such employment or compensation, provided that this provision may be waived by a majority of the disinterested Town Council members.

### 2.30.070 Exemptions.

The provisions of Section 2.30.060 shall not prohibit an Officer from:

(1) Accepting or receiving a benefit as an indirect consequence of the performance of an official act;

## EXHIBIT A: AMENDMENTS TO AVON TOWN CODE OF ETHICS

(2) Taking official action when such Officer is similarly situated to other Town residents, such as adopting general land use regulations, owning property within a special or local improvement district, voting for taxes or bonds, adopting ordinances of general applicability or otherwise acting upon matters involving the common public interest, except that this exemption shall not apply to interests of Officers of the Avon Urban Renewal Authority in any project or in any property included or planned to be included in any project and the provisions of C.R.S. §31-25-104(3) shall control;

(3) Soliciting or accepting gifts or loans which are:

a. Campaign contributions reported as required by law;

b. An occasional nonpecuniary gift, insignificant in value;

c. A nonpecuniary award publicly presented by a nonprofit organization in recognition of public service;

d. Payment of or reimbursement for actual and necessary expenditures for travel and subsistence or attendance at a convention or other meeting at which such Officer is scheduled to participate;

e. Reimbursement for or acceptance of an opportunity to participate in a social function or meeting which is not extraordinary when viewed in light of the position held by such Officer;

f. Items of perishable or nonpermanent value, including, but not limited to, meals, lodging, travel expenses or tickets to sporting, recreational, educational, or cultural events;

g. Payment for speeches, debates, or other public events, reported as honorariums to the Town Manager;

h. A loan at a rate of interest which is not substantially lower than the commercial rate then currently prevalent for similar loans within the Town.

(4) Receiving such compensation for his or her services to the Town as may be fixed by ordinance, pay plan, budget or other similar official action.

### **2.30.080 Disclosure of conflict of interest in Town Council action.**

Any member of the Town Council who believes he or she has a conflict of interest as defined in Section 2.30.060 on any matter proposed or pending before the Town Council shall disclose such potential interest to the Town Council. Any member of the Council who believes that another member of the Council has a conflict of interest shall bring the matter to the attention of the Council prior to Council consideration of the issue involving the alleged conflict. The Council shall determine whether a conflict of interest exists. The Council member who has an alleged conflict of interest shall not vote on the determination of whether a conflict of interest exists; ~~however, such Council member may participate in the discussion and may remain in the room with the consent of the majority of the remaining Council members.~~ If the Council determines that an actual conflict of interest exists, the Council Member shall not attempt to influence other members of the Town Council in connection with such matter, and, except as provided in Section 2.30.100, the Council Member shall not vote upon such matter. The Council Member shall leave the room during Council's discussion and action on the subject, and shall return only when the council has taken up the next agenda item.

## EXHIBIT A: AMENDMENTS TO AVON TOWN CODE OF ETHICS

### **2.30.090 Disclosure of conflict of interest in Planning Commission action.**

Any member of the Planning Commission who believes he or she has a conflict of interest as defined in Section 2.30.060 on any matter proposed or pending before the Planning Commission shall disclose such potential interest to the Planning Commission. Any member of the Planning Commission who believes that another member of the Planning Commission has a conflict of interest shall bring the matter to the attention of the Planning Commission prior to Planning Commission consideration of the issue involving the alleged conflict. The Planning Commission shall determine whether a conflict of interest exists. The Planning Commission member who has an alleged conflict of interest shall not vote on the determination of whether a conflict of interest exists; ~~however, such Planning Commission member may participate in the discussion and may remain in the room with the consent of the majority of the remaining Planning Commission members.~~ If the Planning Commission determines that an actual conflict of interest exists, the member of the Planning Commission shall not attempt to influence other members of the Planning Commission in connection with such matter, and, except as provided in Section 2.30.100, the member of the Planning Commission shall not vote upon such matter. The member of the Planning Commission shall leave the room during the Planning Commission's discussion and action on the subject, and shall return only when the Planning Commission has taken up the next agenda item.

### **2.30.100 When Council Member or member of the Planning Commission with conflict of interest may vote.**

Notwithstanding the provisions of Sections 2.30.080 and 2.30.090, a Council member or member of the Planning Commission may vote upon a matter as to which he or she has a conflict of interest if:

- (1) His or her participation is necessary to obtain a quorum or to otherwise enable the Council or Planning Commission to act, and
- (2) he or she complies with the disclosure provisions of Section 2.30.110, and
- (3) a majority of the Council members or Planning Commission members present at a meeting who do not have a conflict of interest find that the participation of such Council member or Planning Commission member will not be contrary to the public interest and vote to permit such Council member or Planning Commission member to vote despite the conflict of interest.

### **2.30.110 Voluntary Disclosure to Secretary of State.**

A Town eOfficer may, prior to acting in a manner which may impinge on his or her fiduciary duty and the public trust, disclose the nature of his or her private interest to the Colorado Secretary of State. Such Town eOfficer shall make the disclosure in writing to the Colorado Secretary of State, listing the amount of his or her financial interest, if any, the purpose and duration of his or her services rendered, if any, and the compensation received for the services or such other information as is necessary to describe his or her interest. If he or she then performs the official act involved, he or she shall state for the record the fact and summary nature of the interest disclosed at the time of performing the act. Such disclosure shall constitute an affirmative defense to any civil or criminal action or any other sanction under this Town

## EXHIBIT A: AMENDMENTS TO AVON TOWN CODE OF ETHICS

Code of Ethics or any other local, state or other code of ethics or standards of conduct.

### 2.30.120 Public contracts.

(a) The Town shall not enter into any contract with a Town Officer (including spouse or minor children of the Town Officer) to provide any compensation from the Town for the provision of goods or services and shall not approve any vendor permit or privilege to conduct commercial business on Town property during such Officer's term, appointment or employment with the Town; provided that this restriction shall not apply to compensation provided to any Town Officer for performance of official duties for the Town. This section shall not operate to restrict the Town from entering into contracts or approving vendor permits and privileges to an organization which employs a Town Officer if such Town Officer is not an owner or controlling officer of such organization that receives such compensation, permits or privileges and such Town Officer declares a conflict of interest in accordance with Section 2.30.060(3) and does not participate in any Town decision related to such public contract. For the purposes of this section, ownership in an organization shall include any ownership interest that is greater than 1%.

(b) The provisions of Subsection (a) of this Section shall not apply to:

(1) Investments or deposits in financial institutions which are in the business of loaning or receiving money; or,

(2) with respect to which the Town Officer has voted therein in accordance with Section 2.30.100.

(c) It shall be a violation of this Code of Ethics for any Town Officer to enter into a contract with the Town or receive compensation or

receive vendor permits or privileges from the Town in violation of this section.

(d) Any contract approved by the Town or vendor permit or privilege granted by the Town in violation of this section shall be unenforceable against the Town.

~~(a) Except as provided in Subsection (b) of this Section, no Officer shall have an interest in any contract made by the Town.~~

~~(b) The provisions of Subsection (a) of this Section shall not apply to:~~

~~(1) Contracts awarded to the lowest responsible bidder based on competitive bidding procedures;~~

~~(2) Merchandise sold to the highest bidder at public auctions;~~

~~(3) Investments or deposits in financial institutions which are in the business of loaning or receiving moneys;~~

~~(4) A contract between the Town and an officer if, because of geographic restrictions, the Town could not otherwise reasonably afford itself of the subject of contract. It shall be presumed that the Town could not otherwise reasonably afford itself of the subject of a contract if the additional cost to the Town is greater than ten percent (10%) of a contract with an officer or if the contract is for services that must be performed within a limited time period and no other contractor can provide those services within that time period;~~

~~(5) A contract with respect to which the officer has disclosed his or her personal or financial interest to the Town Council and has not voted thereon, or with respect to which the officer has voted therein in accordance with Section 2.30.100.~~

## EXHIBIT A: AMENDMENTS TO AVON TOWN CODE OF ETHICS

~~(e) No Town officer shall be a purchaser or vendor in connection with any sale or purchase made by him or her in his or her official capacity. The provisions of this Subsection shall not apply to those contracts described in Subsection (b) of this Section.~~

### **2.30.130 Limitation on subsequent employment.**

A former Town eOfficer may not, within six (6) months following the termination of his or her office with the Town, contract with or become employed by an employer who contracts with the Town involving matters with which such eOfficer was directly involved during such Officer's ~~the~~ term of office ~~or~~ with the Town.

### **2.30.140 Enforcement.**

(a) The Town Council shall have the primary responsibility for the enforcement of this Chapter. It shall have the power to investigate any complaint, to initiate any suit and to prosecute any criminal or civil action on behalf of the Town wherein it believes such action is appropriate.

(b) The Town Council may direct the Town Attorney to investigate or prosecute any apparent violation of this Chapter or the Council may employ or appoint any qualified attorney to investigate or prosecute any violation or series of violations by one (1) or more persons of this Chapter. In the event the alleged conflict of interest involves a Council member (or multiple Council members), the Council member(s) who has an alleged conflict of interest shall not vote upon whether to investigate or prosecute the alleged conflict of interest.

(c) Any person who believes that a violation of any portion of this Chapter has occurred may file a complaint with the Town Council, which shall promptly investigate such complaint and

take such action thereon as the Council shall deem to be appropriate.

(d) The district attorney of the district where the trust is violated may bring appropriate judicial proceedings on behalf of the people. Any moneys collected in such actions shall be paid to the general fund of the Avon Town government. Judicial proceedings pursuant to this section shall be in addition to any criminal action which may be brought against such Town eOfficer.

### **2.30.150 Penalties and remedies.**

(a) It is unlawful for any person to violate any provision of, or to fail to comply with any of the requirements of this Chapter. Any person who violates any provisions of this Chapter shall be punished in accordance with the provisions of Section 1.08.010 of this Code. Additionally, upon conviction such person shall be liable to the Town for such damages as may have been suffered or incurred as a result of such violation.

(b) Upon conviction for any violation of this Chapter such eOfficer shall immediately forfeit his or her office or position. Nothing in this Chapter shall be construed to prohibit such public eOfficer from being reelected, reappointed or otherwise rehired to any position forfeited under the provisions of this Chapter.

(c) Any court of competent jurisdiction called upon to enforce the provisions of this Chapter may, with the consent of the Town Council, exempt from the provisions of this Chapter any conduct of a Town Officer upon the finding that the enforcement of this Chapter with respect to such Officer's conduct would not be in the public interest.

### **2.30.160 Distribution of code of ethics.**

The Town Clerk shall cause a copy of ~~this code of ethics~~ the Avon Town Code of Ethics

## EXHIBIT A: AMENDMENTS TO AVON TOWN CODE OF ETHICS

to be distributed to every Officer of the Town within thirty (30) days after enactment of the ordinance adopting this Chapter. Each Town Officer elected, appointed, or engaged thereafter shall be furnished a copy before entering upon the duties of his or her office.

### **2.30.170 Gift Reporting.**

(a) In accordance with §7, Article XXIX of the Colorado Constitution, the requirements of Article XXIX of the Colorado Constitution shall not apply to the Town of Avon. It is the intention and purpose that this section 2.30.170, Chapter 2.30 Avon Town Code of Ethics of the Avon Municipal Code, and any other applicable Avon Home Rule Charter provision, ordinance or resolution adopted by the Town of Avon shall completely address all matters set forth in Article XXIX of the Colorado Constitution.

(b) Any Town Officer who receives any present, or offer of future, individual gift, favor, loan, service or thing of value in excess of \$50.00 and such gift is offered due to such person's status as a Town Officer then such Officer shall report such gift and the estimated value to the Town Clerk. The Town Clerk shall promptly disclose gifts received, or offer of future gifts, to the Town Council. The failure of a Town Officer to report a gift to the Town Clerk shall constitute a violation of the Avon Town Code of Ethics.

(c) Council shall determine if gifts received or offered in the future constitute a conflict of interest in accordance with the Avon Town Code of Ethics. Council members who are the recipient or intended recipient of a gift shall not vote on whether such gift constitutes a conflict of interest unless such gift is offered to Council as a whole or offered to Town generally.

(d) Gifts which are given by an individual who is a relative or personal friend of the recipient

on special occasions shall not be deemed a conflict of interest. Gifts which are given without the purpose or intent to influence a Town Officer in connection with an official act or as a reward for an official act performed and gifts which do not create the appearance of impropriety shall not be a conflict of interest.

(e) Gifts which are received which are determined by Council to be a conflict of interest shall be returned. The receipt of a gift or the failure to return a gift or reimburse the equivalent value when Council determines such gift is a conflict of interest shall constitute a violation of the Avon Town Code of Ethics.