

CODE OF CONDUCT AND ETHICS¹

1. Intent.

This Code of Conduct and Ethics (“Ethics Code”) is adopted in accordance with Section 3.06 of the Home Rule Charter for the Town of Severance (the “Charter”) and is intended to govern the conduct of elected and appointed officials of the Town with respect to conflicts of interest and the performance of their official duties on behalf of the Town and its residents.

2. Purpose.

- A. The Town Council recognizes that the holding of public office is a public trust and that public officials have a fiduciary duty to carry out the responsibilities of their office for the benefit of the Town. The Town Council finds that ethical standards among its members and the members of the Town’s boards and commissions are essential to the public affairs of the Town. In pursuit of such goals, the Town Council adopts the following rules, regulations, standards, and procedures as set forth in this Ethics Code.
- B. The purposes of this Ethics Code are to foster public trust and promote public confidence in the integrity of the Town government, and to provide guidance in the event of conflicts of interest to members of the Town Council and to the boards and commissions operating on behalf of the Town. This Ethics Code is further intended to foster public trust by ensuring that government decisions and policy be made in proper channels of the government structure; and by prohibiting the use of public office for private gain.
- C. This Ethics Code establishes guidelines for standards of conduct by setting forth those acts or actions that are incompatible with the best interests of the Town; by directing disclosure of private, financial, or other substantial interests in matters affecting the Town; and by imposing appropriate sanctions upon elected or appointed officials who violate the provisions of this Ethics Code.
- D. While it is critical that elected and appointed officials of the Town follow both the letter and spirit of this Ethics Code, it is equally important that they strive to avoid situations that may create public perceptions of violations of this Ethics Code. Perceptions of such violations can have the same negative impact on public trust as actual violations.

3. Scope of coverage.

The provisions of this Ethics Code shall be applicable to all members of the Town Council and all appointed members of the Town's boards.

4. Definitions.

As used in this Ethics Code, the following terms shall have the following meanings, except where the context clearly requires a different meaning:

"Appear on behalf of" means to act as a witness, advocate, or expert, or otherwise to support the position of another person.

¹ Adopted Feb. 22, 2022, Res. 2022-08R; amended _____, 2022, Res. 2022-15R (adding § 12).

"Board" means the Town planning commission, the Town tree board, and any other appointed board or commission, including advisory and appeal boards, created by ordinance of the Town Council or as set forth in the Town Charter or Town Code.

"Board member" means an appointed regular or alternate member of a Town board.

"Business" means any corporation, limited liability company, trust, partnership, association, sole proprietorship, firm, venture, or other legal entity carrying on a business, whether or not operated for profit.

"Confidential information" means any information that is not available to the general public or is deemed confidential in accordance with local, state or federal law, and which is obtained by reason of a Council member's or board member's official position or under circumstances by which a reasonable person could anticipate that such information not be disclosed. Confidential information shall also include matters discussed in executive sessions; however, information otherwise available to the general public does not become "confidential" merely because it was discussed in executive session.

"Conflict of interest" means a financial interest or personal interest of the Council or board member or of any relative of such member that interferes with or influences or may interfere with or influence the conduct of the duties or the exercise of the powers of the Council or board member on behalf of the Town. The term "conflict of interest" includes the restrictions set forth in Section 6 of this Ethics Code.

"Contract" means an arrangement or agreement, including the bidding or negotiation process therefor, pursuant to which any land, goods, materials, services, or other thing of value is to be furnished to the Town for a valuable consideration to be paid by the Town or is to be sold or transferred by the Town, provided the amount involved is more than one hundred dollars. The term "contract" shall include any subcontract thereof.

"Council" means the Town Council of the Town of Severance.

"Council member" means a member of the Town Council of the Town of Severance, including the Mayor.

"Day" means working days.

"Financial interest" means a pecuniary, property, or commercial interest or any other interest, the primary significance of which is economic gain or the avoidance of economic loss, held by a Council or board member or his or her relative. A "financial interest" includes, without limitation:

1. An ownership interest in a business, including ownership of securities of a corporation, or of any beneficial interest in a business, the aggregate amount of which interest or securities owned by the Council or board member and the Council or board member's relative is five (5) percent or more of any class of securities of such business or five (5) percent or greater ownership in such business;
2. A creditor interest in an insolvent business;
3. Employment or a prospective employment for which negotiations have begun, or a contractual relationship that directly relates to a matter under consideration;
4. An ownership interest in real or personal property;
5. A loan or any other debtor interest; or
6. A position as a director, manager, or officer in a business.

However, the term "financial interest" shall not include any matter involving the common public good or necessity or any matter in which a similar benefit is conferred to all persons or property similarly situated.

"Matter" or "matters" includes, without limitation, any contract, any sale, lease, or purchase of an interest in land, goods, materials, supplies, or services, and any processing or granting of a development right, license, permit, application, inspection, or administrative approval.

"Official act" or "official action" means any vote, decision, discussion, determination, recommendation, approval, disapproval, or other action, including inaction, of any Council or board member or of the Town Council or of any board of the Town.

"Pending" means those matters before the Town for an official act or action. Such matters shall not be considered "pending" if no application or request for such official act or action has been filed with or received by the Town.

"Person" means any individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, limited liability company, partnership, association, or other legal entity.

"Personal interest" shall mean a direct or indirect interest, not shared by the general public, having value peculiar to a particular Council or board member, whether or not the value is related to monetary, financial, commercial, or property matters, which value may accrue to such Council or board member or result in such Council or board member deriving or potentially deriving a personal benefit as a result of the approval or denial of any ordinance, resolution, order, or other official action, or the performance or nonperformance thereof, by the Town. Personal interest does not include any matter in which a similar benefit is conferred to all persons or property similarly situated to that of the Council or board member.

"Relative" means a Council or board member's spouse, domestic partner, child, parent, brother, sister, any dependent, or any person assuming a relationship being the substantial equivalent of those listed herein. "Domestic partner" shall mean an unmarried adult, unrelated by blood, with whom an unmarried Council or board member has an exclusive, committed relationship, maintains a mutual residence, and shares basic living expenses.

"Town" means the Town of Severance, Colorado, a Colorado home rule municipal corporation.

5. General duties.

All Council and board members have a duty to use their public positions to contribute to the public good. This Ethics Code shall not preclude such persons from acting in any manner consistent with their official duties or from providing assistance or public services to anyone who is entitled to them. All Council and board members, however, also have a fiduciary duty to refrain from using their positions in any manner for personal or private gain or which is detrimental to the public good. Council and board members must be mindful that the appearance of impropriety can be as corrosive of public confidence as an actual impropriety and must strive to avoid situations that may create an appearance of impropriety.

6. Rules of conduct for Council members and board members.

A. Confidential information.

1. No Council or board member may disclose to third parties any confidential information unless authorized to do so by a two-thirds vote of the applicable Council members and board members in office, except as required by law.

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2. No Council or board member may waive any confidence or privilege of the Council or the board unless authorized to do so by a two-thirds vote of the applicable Council or board members in office, except as required by law.
 3. The obligations and requirements of this subsection A. continue to apply to Council members and board members after leaving office.
 3. Whether or not it shall involve disclosure, no Council or board member shall use or permit the use of any confidential information to advance his or her personal or financial interest or those of any other person, unless such information is available to the public at large.
- B. *Gifts.* No Council or board member may solicit or accept from any one person or entity a present or future gift, favor, loan, service, honorarium, or thing of value, whose cumulative value is more than sixty-five dollars (\$65) per annum, or of any value whatsoever under circumstances that would lead a reasonable person to believe that such gift, favor, loan, service, honorarium, or thing of value was made or given primarily for the purpose of influencing or attempting to influence such Council or board member in connection with an official act, or as a reward for official action he or she has previously taken. This prohibition shall not apply to:
1. Campaign contributions and contributions in kind reported in full compliance with the Colorado Fair Campaign Practices Act.
 2. Admission and reasonable expenses for attendance at conferences, meetings, seminars, training sessions, cultural events, award ceremonies, or conventions related to or in connection with Town business.
 3. Acceptance of food and refreshment at conferences, meetings, seminars, training sessions, luncheon and dinner meetings, special occasions and other instances in conjunction with Town business.
 4. An unsolicited item of trivial value less than fifty dollars (\$50), such as a pen, calendar, plant, book, note pad, or other similar item, or an unsolicited token or award of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item.
 5. A gift given by an individual who is a relative or personal friend of the recipient on a special occasion.
 6. Payment of salary from employment, including other government employment, in addition to any that may be earned from being a Council or board member, and reimbursement of necessary and reasonable expenses directly related to such employment.
- C. *Conflict of interest.* No Council or board member may participate in any discussion of, or take any official action on, any matter in relation to which the Council or board member has a conflict of interest, as provided in Section 7 of this Ethics Code. In addition, a Council or board member must not perform an official act that directly and substantially affects to its economic benefit a business or other undertaking in which such Council or board member has a substantial personal or financial interest, or that directly and substantially affects to its economic detriment any business or other undertaking when such Council or board member has a substantial personal or financial interest in a competing business or undertaking.
- D. *Appearances before Council and boards.* No Council or board member may appear on behalf of a private party before the Council or board, unless otherwise permitted by the Town Code, except that any Council or board member may appear before the Council or any board to address that Council or
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board member's own personal interest. Nothing in this subsection shall preclude a Council or board member in the same manner and under the same circumstances as any other person from appearing before the Council or any board on an application of the Council or board member for a permit, license, or other approval of the Council or board required by law.

- E. *Civil litigation.* No Council or board member may appear on behalf of or represent any private interests, other than the Council member's or board member's own interest, against the interests of the Town in any civil litigation to which the Town is or may become a party, unless the consent of the Council or applicable board is first obtained, except that any Council or board member may testify under oath if subpoenaed.
- F. *Service on other governmental entities or associations.* A Council or board member may serve on a board of another governmental entity or association as long as the Council or board member (1) first requests the consent of the Council to apply for, run for, or seek appointment to the board of the other governmental entity or association and a majority of the Council members in office approve the request, (2) does not receive any personal pecuniary benefit from such service, other than reimbursement for expenses directly related to such service, (3) explicitly discloses such service through a conflict-of-interest disclosure as to type of position, compensation, and role, to be kept on file with the Town and with the other governmental entity, (4) discloses a conflict and recuses themselves from an official act of the Council or board that may directly or substantially affect the other governmental entity or association, and (5) discloses a conflict and recuses themselves from an official act of the other governmental entity or association that may directly or substantially affect the Town.
- G. *Personal benefit.* No Council or board member may use any Town property, equipment, or employee services for personal or private purposes, gain, or advantage except in the same manner and under the same circumstances as any other person who is not a Council or board member of the Town.
- H. *Special consideration.* No Council or board member may request or grant to any person any special consideration, treatment, or advantage beyond that which is available to every other person in similar circumstances or need.
- I. *Voting on matters involving own conduct.* No Council or board member may take any official action on or vote on any question concerning the member's own conduct.
- J. *Other conduct.* It shall be a violation of this Code of Conduct for any Council or board member to engage in other conduct which threatens the public confidence in the integrity of the Town government, including but not limited to illegal conduct, conduct which puts self-interest before public interest, willful or persistent failure to perform his or her duties, engaging in any form of harassment or unlawful discrimination, or any other conduct involving dereliction of duties.

7. Conflict of interest—Disclosure; Recusal.

- A. No Council or board member may vote on any matter if the member has a conflict of interest as defined above. In the event that a Council or board member has a conflict of interest in any matter proposed or pending before the Council or board of which he or she is a member, the member shall disclose the conflict of interest in a public meeting and shall not vote, participate in, or take any official action on the matter.
- B. In the event that any Council or board member is aware that he or she could reasonably be perceived as having such a conflict of interest or is unsure of the existence of such a conflict, the member shall

nevertheless disclose the possibility of such conflict of interest to the Council or board. The member may request an advisory opinion pursuant to Section 9 of this Ethics Code and if it is determined that such member has a conflict of interest, the member shall disclose such conflict of interest to the Council or board and shall not vote, participate in, or take any official action on the matter.

- C. A Council or board member with a conflict of interest shall physically remove himself or herself from the room in which the Council or board is meeting and shall refrain from attempting to influence the decisions of the other members of the Council or board of which the person is a member. No vote shall be recorded for a Council or board member who refrains from voting due to a conflict of interest. After the Council or board has completed consideration of the matter, the member may return and resume his or her duties as a member of the Council or board.
- D. A Council or board member who has a conflict of interest may vote notwithstanding the requirements and restrictions of this section if his or her participation is necessary to obtain a quorum or otherwise enable the Council or board to act and if he or she complies with the disclosure procedures under subsection A or B of this section.

8. Quasi-judicial decisions.

- A. *Duty to remain impartial.* Each Council and board member shall be and remain impartial when making any quasi-judicial decision. Any Council or board member who cannot be impartial in making a quasi-judicial decision shall follow the disclosure and recusal procedures in Section 7 of this Ethics Code.
- B. *No investigation or ex parte communications.* No Council or board member shall receive nor shall any Town employee or member of the public provide to any Council or board member any substantive oral or written information, except for legal advice, regarding a matter which is pending before the Council or board on which the member sits, and which is the subject of a quasi-judicial hearing before the Council or board, outside of the quasi-judicial hearing process. The term "quasi-judicial hearing process" includes, but is not limited to, preparations necessary for such hearing such as written staff reports, scheduling, agendas, proposed resolutions and ordinances, posting or publishing notice, and legal advice. The Town Attorney shall provide affected Council or board members advice on what constitutes a quasi-judicial decision.
- C. *Disclosure.* In the event a Council or board member shall inadvertently or unintentionally receive any substantive oral or written information outside of the quasi-judicial hearing process, as prohibited in this section, the Council or board member shall fully and completely disclose such substantive oral or written information received at the start of the quasi-judicial public hearing process. By making such full and complete disclosure, the Council or board member shall be deemed to be in compliance with the requirements of this section. Failure to make such full and complete disclosure shall be a violation of this section.

9. Advisory opinions.

- A. Any Council or board member may request from the Town Attorney an advisory opinion whenever a question arises as to the applicability of this Ethics Code to a particular situation. In determining whether or not a Council or board member has a conflict of interest, consideration may be given to the following:
 - 1. The purposes and provisions of this Ethics Code;
 - 2. Whether the potential conflict of interest would impede independence of judgment;

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3. The effect of the member's participation on public confidence in the integrity of the Council or board and of the Town government;
 4. Whether the member's participation is likely to have any significant effect on the ultimate disposition of the matter; and
 5. The member's fiduciary obligations to the Town.
- B. Should the Town Attorney at any time determine that he or she has a conflict of interest in carrying out the duties of this section, the Town attorney shall request that the Town Council appoint special counsel to undertake such duties. Special counsel must be engaged by a majority vote of the Council and his or her reasonable fees and expenses shall be paid by the Town.

10. Enforcement.

- A. *Council to enforce.* The Town Council shall have the responsibility for the enforcement of this Ethics Code and the Town's Charter as to Council and board members. The Council shall have the power to investigate any complaint and to initiate any civil action on behalf of the Town where it believes such action is appropriate. If the accused is a Council member, the procedures in Subsection 7.C. shall apply, except that the accused Council member may participate as a party in a hearing on a complaint under this section. Further, the Council shall have the power to appoint a hearing officer to carry out all duties assigned to the Council in this section, except that only the Council may impose sanctions under subsection I. of this section and determine whether to reimburse attorney fees under subsection K. of this section.
- B. *Verified complaint.* Any person who believes that a Council or board member has violated any of the provisions of this Ethics Code or the Charter and wishes to initiate proceedings on such alleged violation shall file a written complaint with the Town Clerk, who shall forthwith forward the complaint to the Council. The Town Clerk shall within ten days of a receipt of a complaint cause to be personally served a copy of the complaint to the Council or board member who is the subject of the complaint. The complaint must state in detail the facts of the alleged violation, must specify the provisions of this Ethics Code or the Charter alleged to have been violated, and must contain a sworn or verified statement signed by the complainant and stating under penalty of perjury that the information in the complaint is true and accurate, and that the complaint is filed in good faith and not out of malice or any other improper motive or purpose. Any complaint that does not contain such a signed statement shall be returned forthwith to the complainant without action.
- C. *Dismissal.* If the Council determines that the verified complaint does not allege facts sufficient to constitute a violation of this Ethics Code or the Charter, it shall dismiss the complaint and notify the complainant and the accused.
- D. *Investigation.* Following the receipt of a complaint or upon the receipt of other information, whether or not under oath, that provides a reasonable basis to believe that a violation of this Ethics Code or the Charter has been committed or that an investigation of a possible violation is warranted, the Council may cause an investigation to be made of the circumstances concerning the possible violation. An investigation shall be conducted by a special investigator, who shall be a qualified disinterested party recommended by the Town Attorney, and who shall be engaged by a majority vote of the Council. The reasonable fees and expenses of the special investigator shall be paid by the Town. Before invoking its investigatory powers, the Council shall approve a motion which shall state the nature and purpose of the investigation, the actions or activities to be investigated and the persons who are the subject of
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the investigation. The Council shall, within five days, serve a copy of the motion on the accused together with a notice informing the person that he or she is the subject of the investigation and a general statement of the applicable provisions for which violations are being investigated.

- E. *Special investigator.* The special investigator may interview witnesses and request documents that may be relevant to the investigation. Before completing the investigation, the special investigator shall provide the Council or board member against whom the complaint is made an opportunity to provide information concerning the complaint. Such information must be provided in writing. Upon completion of the investigation, the special investigator shall provide a written investigation report to the Council stating whether there is probable cause to believe the violation(s) alleged in the complaint occurred, whether the investigation revealed that there is probable cause to believe that different or additional violations of this Ethics Code or the Charter occurred, or recommending dismissal of the complaint, and the basis for the special investigator's conclusions. A copy of the investigation report shall be provided to the Council and served on the accused.
- F. *Dismissal or hearing.* Upon completion of the investigation, the Council shall review the investigation report and dismiss the complaint if it determines there was no violation of this Ethics Code or of the Charter. If the Council determines, based on the investigation report, that there is probable cause that a violation occurred, it shall by motion set a hearing date, time and place. The investigative report and notice of the hearing shall be served on the accused not less than thirty days prior to the hearing.
- G. *Hearing.* The mayor or mayor pro tem shall preside over the hearing on the complaint and shall determine all procedural issues with the assistance of the Town Attorney. The special investigator shall present the case against the accused. The accused may be represented pro se or by any person of the accused's choice. The hearing shall be conducted so as to provide fundamental fairness, although strict rules of procedure and evidence need not be followed. All witnesses shall be subject to cross-examination. Documentary evidence that can be reasonably authenticated shall be admitted for consideration. A violation of this Ethics Code or the Charter shall be proven by a preponderance of the evidence as determined by two-thirds of all the voting members of the Council. Upon finding that the accused violated this Ethics Code or the Charter, the Council may continue the hearing to discuss and, in its discretion, to receive additional evidence regarding the appropriate penalty.
- H. *Findings.* At the conclusion of the hearing regarding the alleged violation, the Council shall dismiss the charges or find that the accused violated this Ethics Code or the Charter. The Council shall serve on the accused a written findings and order within thirty days after conclusion of the hearing.
- I. *Sanctions.* Upon finding that a Council or board member has violated this Ethics Code or the Charter, the Council may impose an oral or written reprimand, a public censure, non-financial restorative justice measures, or other sanctions as the Council deems just and appropriate depending on the seriousness of the violation and any mitigating circumstances. The Council may also remove any board member from such person's appointed position. The Council may also remove a Council or board member from any committees, boards, or other special or ex officio appointments. If a hearing officer appointed by the Council issued the findings and order, the hearing officer may provide a recommendation regarding sanctions for the Council's consideration.
- J. *Service.* Service of any notice or other document pursuant to this section or this Ethics Code is complete upon mailing certified mail to the person's last known address, or upon personal service.

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- K. *Reimbursement of attorney fees.* If the final outcome of any complaint filed pursuant to this section is dismissal or in the event the Council or board member against whom a complaint is filed is found by the Council not to be in violation of the provisions of this Ethics Code or the Charter, then, in that event, the Council or board member may request and the Town may reimburse the Council or board member for any attorney fees actually expended by the Council or board member in his or her defense of the complaint, in an amount determined by the Council in its sole discretion, subject to appropriation. The Council or board member seeking such reimbursement of attorney fees as provided for herein shall file a complete and detailed request for reimbursement with the Council showing amounts expended and specific legal services received. The Council shall then review the request and determine its appropriateness hereunder. In the event the Council has determined by resolution to reimburse such fees, the Town shall reimburse such fees within 60 days of receipt of the request for reimbursement, subject to appropriation therefor.
- L. *Other actions not precluded.* Nothing in this section or this Ethics Code shall be construed to preclude other actions that may be available at law against a Council or board member for violations of this Ethics Code or the Charter.

11. Compliance with other laws.

The requirements of this Ethics Code shall be in addition to the applicable requirements of the Town Charter, the Town Code, the Colorado Constitution, and the laws of the state. To the extent any conflict exists between the requirements of this Ethics Code and the requirements of the Town Code, the Colorado Constitution, or the laws of the state, the more restrictive provision shall apply.

12. Conduct with Town Staff.

- A. For purposes of this section, "staff" shall mean employees of the Town, the Town Manager, and contract consultants performing services for the Town. "Staff" does not include the Town Attorney or the Town's Municipal Judge.
- B. In interacting with Town staff, Council members and board members shall:
1. Treat all staff members as professionals;
 2. Not disrupt staff in the performance of their duties;
 3. Not publicly criticize individual staff members;
 4. Direct all questions of staff through the Town Manager; and
 5. Not attend staff meetings unless invited by the Town Manager.
- C. Individual Council members and board member are prohibited from giving a direct order to any staff member, and from soliciting political support from any staff member for any Council member's or board member's campaign for any elected or appointed office.
- D. If a Council member wishes to discuss matters relating to Town operations and administrative services with Town staff, the Council member must first advise the Town Manager. The Town Manager

may either arrange a time and place for the Council member to discuss the matter with the appropriate staff, or arrange for the appropriate staff to attend a Town Council meeting to discuss the matter with the entire Council, as appropriate.

E. Council members and board members may only request information from staff through the Town Manager. If, in the Town Manager's determination, more than 60 minutes of staff time per calendar week will be required to obtain or compile the requested information, the request will not be processed unless the matter is placed on the Town Council's agenda for consideration at an upcoming regular or special meeting. The Town Manager will proceed to direct staff to fulfill the request only if so directed by a vote of the majority of the Council present.