

ORDINANCE NO. 24

Series 2014

AN ORDINANCE REPEALING AND READOPTING WITH CHANGES CHAPTER 16 OF TITLE 1 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE "BRECKENRIDGE TOWN CODE OF ETHICS"

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO:

Section 1. Chapter 16 of Title 1 of the Breckenridge Town Code is repealed and readopted with changes so as to read in its entirety as follows:

CHAPTER 16

TOWN CODE OF ETHICS

- 1-16-1: Citation
- 1-16-2: Declaration of Policy
- 1-16-3: Finding of Local Concern
- 1-16-4: Finding Concerning Article XXIX of the Colorado Constitution; Statutory Gift-Reporting Form
- 1-16-5: Authority
- 1-16-6: Effect of Common Law
- 1-16-7: Definitions
- 1-16-8: Conflict of Interest - Town Officer
- 1-16-9: Prohibited Conduct - Town Officers and Employees
- 1-16-10: Exemptions - Town Officers and Employees
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- 1-16-12: Restrictions After Leaving Town Employment or Office
- 1-16-13: Prohibited Conduct - Temporary Boards
- 1-16-14: Prohibited Conduct - Town Contractors
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- 1-16-17: Penalties and Remedies
- 1-16-18: Authority of Town Attorney to Issue Opinions
- 1-16-19: Distribution Of Code Of Ethics

1-16-1: CITATION: This Chapter is to be known and may be cited as the "2014 TOWN OF BRECKENRIDGE CODE OF ETHICS."

1-16-2: DECLARATION OF POLICY:

A. The proper operation of democratic government requires that public officers and employees 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.

B. The purpose of this Chapter is to establish minimum ethical standards of conduct for the members of the Town Council, the members of all Town boards and commissions, the members of all temporary boards, all Town employees, and all Town contractors.

1-16-3: FINDING OF LOCAL CONCERN: The Town Council finds and determines that the subject 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. Accordingly, this Chapter supersedes all conflicting state statutes, including, but not limited to: (i) Article 18 of Title 24, C.R.S.; (ii) Section 24-6-203, C.R.S.; and (iii) Section 31-4-404, C.R.S.

1-16-4: FINDING CONCERNING ARTICLE XXIX OF THE COLORADO CONSTITUTION; STATUTORY GIFT-REPORTING FORM:

A. The Town Council finds, determines, and declares that this Chapter addresses the matters covered by Article XXIX of the Colorado Constitution. Therefore, the provisions of

Article XXIX are inapplicable to the Town, the Town Council, all Town boards and commissions, all temporary boards, all Town employees, and all Town contractors. As such, the Independent Ethics Commission created by Section 5 of Article XXIX has no jurisdiction over any member of the Town Council, any member of a Town board or commission, any member of a temporary board, any Town employee, or any Town contractor.

B. Notwithstanding the inapplicability of Article XXIX of the Colorado Constitution and Section 24-6-203, C.R.S., members of the Town Council shall file the periodic reports required by Section 24-6-203(2), C.R.S.

1-16-5: AUTHORITY: The Town Council finds, determines, and declares that it has the power to adopt this Chapter pursuant to the authority granted to home rule municipalities by Article XX of the Colorado Constitution, and the powers contained in the Breckenridge Town Charter.

1-16-6: EFFECT OF COMMON LAW: This Chapter supersedes and overrides the common law as to the subject matter of this Chapter.

1-16-7: DEFINITIONS:

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

BUSINESS:	Any corporation, limited liability company or entity, limited or general partnership, sole proprietorship, trust or foundation, or other organization operated for the purpose of attempting to make a profit. The term "business" includes any activity conducted primarily for the purpose of making a profit, including, but not limited to, any activity that substantially advances a person's private monetary interest or position.
CONFIDENTIAL INFORMATION:	All information, whether transmitted orally or in writing, that is of such a nature that it is not, at that time, a matter of public record or public knowledge.
EMPLOYEE (OR TOWN EMPLOYEE):	Any person in an employer-employee relationship with the Town. The term "Town Employee" includes, but is not limited to, the Town Manager, Town Attorney, Municipal Judge, and Associate Municipal Judge(s), but does not include a Town officer, a member of a temporary board, or a Town contractor.
IMMEDIATE FAMILY:	A Town officer's or a Town employee's spouse, domestic partner, or dependent child under the age of eighteen years.
OFFICIAL ACT (OR OFFICIAL ACTION):	Any vote, decision, recommendation, approval, disapproval, or other action, including inaction, that involves the use of discretionary authority.
TEMPORARY BOARD:	Any temporary (non-permanent) board, commission, or advisory board created by the Town Council.
TOWN BOARD OR COMMISSION:	The Town's Planning Commission, Open Space Advisory Commission, and the Liquor Licensing Authority.
TOWN CONTRACTOR:	An independent contractor as defined by state law who is under contract to perform work for the Town, or a person or business that has submitted a bid to do work for the Town as an independent contractor, which bid is still pending.
TOWN OFFICER:	A member of the Town Council or the member of any Town board or commission.

B. Terms not defined in this Chapter or this Code are to be given their common meaning.

1-16-8: CONFLICT OF INTEREST – TOWN OFFICER:

A. A Town officer shall not vote on any question or participate in the discussion by the body of which the Town officer is a member with respect to any question as to which the member has a substantial personal or financial interest as determined by majority of the body.

B. For the purpose of this Section, and Section 5.7 of the Breckenridge Town Charter, a Town officer has a "substantial personal or financial interest" with respect to a particular question if a majority of the body determines that the body's final decision on the question would have a:

- (a) reasonably foreseeable;
- (b) material; and
- (c) beneficial financial effect,

distinguishable from its effect on the public generally, on:

1. The Town officer, or his or her immediate family;
2. Any business in which the Town officer, or a member of his or her immediate family, has an investment or owns a 10% or greater interest;
3. Any real property in which the Town officer, or a member of his or her immediate family, has an interest;
4. Any source of income of the Town officer, or a member of his or her immediate family; or
5. Any business of which the Town officer, or a member of his or her immediate family, is a director, officer, partner, trustee, employee, independent contractor, or holds any position of management.

C. A Town officer does not have a conflict of interest with respect to any matter determined by the body to involve the common public interest. For members of the Town Council, examples include the adoption of the Town's budget, adoption of general land use regulations, the formation of a special or local improvement district within which the Town officer owns real property, the imposition of taxes, the authorization of bonds, and similar actions.

D. A Town officer who may have a conflict of interest on a particular matter shall disclose the potential conflict of interest to the body before it begins its consideration of the matter. Any other member of the body who believes a Town officer may have a conflict of interest may bring the issue to the attention of the body before it begins its consideration of the matter.

E. A Town officer who may have a conflict of interest on a particular matter is entitled to be heard by the body on the issue before the body determines whether a conflict of interest exists; however, the Town officer may not vote with respect to the question of whether he or she has a conflict of interest.

F. The body's determination of whether a conflict of interest exists is final and conclusive for all purposes, but the affected Town officer may request the body to reconsider its determination for the purpose of presenting additional relevant facts. Whether to reconsider its determination lies in the sound discretion of the body.

G. If a Town officer is determined to have a conflict of interest on a particular matter:

1. The Town officer may not attempt to influence other members of the body in connection with the matter;
2. Except as provided in Section 1-16-8(H), the Town officer may not vote upon the matter; and
3. The Town officer shall leave the Council Chambers during the body's discussion and action on the matter, and may return only when the body has taken up the next agenda item.

H. Notwithstanding Section 1-16-8(G)(2), a Town officer 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 body to act; and
2. Not later than seventy two hours before voting the Town officer gives written notice to both the Colorado Secretary of State and the body. The notice shall clearly state the nature of his or her conflict of interest.

Exception: This subsection (H) shall not be applied to permit a Town Council member to vote to approve a contract in which he or she has a personal interest.

1-16-9: PROHIBITED CONDUCT – TOWN OFFICERS AND EMPLOYEES.

A. A Town officer or Town employee shall not:

1. Disclose or use confidential information acquired in the course of the officer's or employee's duties in order to further substantially his or her personal monetary interests.
2. Disclose any confidential information acquired in the course of the officer's or employee's duties to any person under circumstances where the officer or employee knows, or reasonably should know, that the person to whom the confidential information is disclosed will use the confidential information for a private business purpose.
3. Solicit or accept a present or future gift, favor, loan, service, or thing of value from a person under circumstances that would lead a reasonably prudent person to believe that the gift, favor, loan, service, or thing of value was made or given primarily for the purpose of influencing or attempting to influence the officer or employee in connection with an official act, or as a reward for official action he or she has previously taken.
4. Perform an official act directly and substantially affecting to its economic benefit any business when the officer or employee, or a member of the officer's or employee's immediate family: (i) is an employee of the business; (ii) owns a 10% or greater interest in the business; or (iii) is a director, officer, partner, trustee, or holds any management position in the business.
5. Affirmatively act to obtain employment for a member of his or her immediate family, a gift of substantial value, or an economic benefit tantamount to a gift of substantial value, from a person whom the officer or employee is in a position to reward with official action, or has rewarded with official action in the past.

B. A Town officer shall not make or accept an ex parte communication or contact concerning a quasi-judicial matter pending before the Town body of which he or she is a member without making the contents of the communication or contact a part of the record of the public hearing. This Section does not apply to a legislative or administrative matter.

C. A Town employee shall not:

1. Engage in a substantial financial transaction for the employee's private business purposes with a person whom the employee inspects or supervises in the course of his or her employment with the Town.
2. Perform an official act that directly and substantially affects to its economic detriment a business in which the employee, or a member of the officer's or employee's immediate family: (i) is an employee of a competing business, (ii) owns a 10% or greater ownership interest in a competing business; or (iii) is a director, officer, partner, trustee, or holds any management position in a competing business.
3. Acquire or hold an interest in any business that the employee has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by the Town department over which he or she has substantive authority.

1-16-10: EXEMPTIONS – TOWN OFFICERS AND EMPLOYEES:

A. Section 1-16-9 does not prohibit a Town officer or Town employee from:

1. Accepting or receiving a benefit as an indirect consequence of the performance of an official act.
2. Taking official action when the Town officer or employee is similarly situated with other Town residents, or generally acting when the matter involves the common public interest.
3. Accepting gifts or loans that are:
 - (a) an occasional non-pecuniary gift, insignificant in value;
 - (b) a gift publicly presented to all members of the body of which a Town officer is a member;
 - (c) a non-pecuniary 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 for attendance at a convention or other meeting at which the officer or employee is scheduled to participate as a speaker or other contributor in his or her official capacity if the paying or reimbursing party has no current or anticipated business with the Town. Any honorarium or other monetary compensation received by the officer or employee in connection with the convention or meeting shall be turned over to the Town;
 - (e) reimbursement for or acceptance of an opportunity to participate in a social function or meeting that is not extraordinary when viewed in light of the position held by the officer or employee;
 - (f) items of perishable or nonpermanent value, including, but not limited to, meals and tickets to sporting, recreational, educational, or cultural events, unless prohibited by the body of which the Town official is a member, or by an employee's departmental rules;
 - (g) payment for speeches, debates, or other public events, reported as honorariums to the Town Manager; or
 - (h) a loan at a rate of interest that is not substantially lower than the commercial rate then currently prevalent for similar loans within the Town.
4. Receiving compensation for his or her services to the Town as may be fixed by ordinance, pay plan, budget, or other similar official Town action.
5. Personally contracting with a Town contractor for the performance of work so long as the contract will not interfere with or delay the contractor's performance of any contract with the Town, and the contractor is paid by the officer or employee at substantially the generally prevailing market rate for the services within the Town. Before entering into the contract the officer or employee shall notify the Town Manager in writing.

B. Section 1-16-9 does not prohibit a Town Council member from accepting a campaign contribution reported as required by law, or any gift reported as required by Section 1-16-4(B).

1-16-11: RESTRICTIONS ON APPEARANCE BEFORE TOWN BODIES; EXCEPTIONS:

A. Except as authorized by Section B of this Section, a Town officer shall not appear as an applicant, witness, or party in interest with respect to any matter that comes before the Town body of which he or she is a member, nor shall a Town officer appear before or address the body of which he or she is a member in his or her capacity as a citizen.

B. Nothing in Section A of this Section prohibits a Town officer from appearing before the Town Council or the Planning Commission in connection with a planning or development matter pertaining to the Town officer's primary residence; provided that a Town Council member appearing before the Town Council pursuant to this Section, or a Planning Commission member appearing before Planning Commission, pursuant to this Section, shall be deemed to have a conflict of interest with respect to such matter.

C. If a Town employee has a financial interest in an application that comes before the Town Council or any Town board or commission, he or she shall not be involved in the Town staff processing, analyzing, reporting, or presenting the application.

D. Except as provided in Section C of this Section, nothing in this Chapter prohibits a Town employee from:

1. Appearing before the Town Council, any Town board or commission, any temporary board, or the municipal court in the course of the performance of the employee's duties for the Town; or
2. Appearing with respect to any matter of public concern before the Town Council, Planning Commission, a Town board or commission, or any temporary board in his or her capacity as a citizen.

E. A Town officer or Town employee shall not appear before the Town Council, Planning Commission, a Town board or commission, or a temporary board, as counsel, consultant, representative, or agent for any person or business.

1-16-12: RESTRICTIONS AFTER LEAVING TOWN EMPLOYMENT OR OFFICE:

A. For a period of one (1) year after leaving Town employment no former Town employee may personally represent a person before the Town Council, any Town board or commission, any temporary board, or any Town department, with respect to any matter that the former employee worked on while employed by the Town.

B. No former member of the Town Council may be appointed to serve on any Town board or commission for a period of one (1) year after leaving office.

1-16-13: PROHIBITED CONDUCT - TEMPORARY BOARDS: A member of a temporary board shall not perform an official act that would have a direct economic benefit on a business in which he or she has a financial interest. Except as provided in this Section, the provisions of this Chapter do not apply to the members of any temporary board.

1-16-14: PROHIBITED CONDUCT - TOWN CONTRACTORS:

A. A Town contractor may not offer or give to a Town officer or a Town employee a present or future gift, favor, loan, service, or thing of value under circumstances that would lead a reasonably prudent person to believe that the gift, favor, loan, service, or thing of value was offered or given primarily for the purpose of influencing or attempting to influence the member or employee in connection with an official act, or as a reward for official action the member or employee has previously taken.

B. Nothing in this Chapter prevents a Town contractor who provides instructional services to customers at a Town recreational facility from accepting tips or gratuities for services provided by the contractor if the acceptance of tips or gratuities is authorized by the Town contractor's contract, or by the Town Manager.

1-16-15: TOWN CONTRACTS:

A. Except as provided in subsection C of this Section, no Town officer or employee may have an interest in any contract made by the Town.

B. Every contract made in violation of this Section is voidable at the request of any party to the contract, except the Town officer or employee interested in such contract.

C. Section A of this Section does 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 auction;
3. Investments or deposits in financial institutions that are in the business of loaning or receiving monies;
4. A contract between the Town and a Town officer or employee if, because of

geographic restrictions, the Town could not otherwise reasonably afford itself of the subject of contract. It is 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 a Town officer or Town employee, or if the contract is for services that will be performed within a limited time period and no other contractor can provide those services within that time period. If the contract involves a Town Council member, the member shall disclose his or her interest to the Town Council before the contract is signed; or

D. In addition to the restrictions set forth in subsections (C)(1) through (C)(4) of this section, before the Town enters into a contract with a member of the Town Council the Town Council member must disclose a personal interest in the proposed contract, and either:

1. The Town Council itself (and not the Town Manager or other Town employee) approves the contract at a public meeting; or
2. The Town Manager approves the contract; provided that prior to approving the contract the Town Manager must notify the Town Council of the proposed contract and explain how the proposed contract satisfies the requirements of subsections (C)(1) through (C)(4) of this section.

E. Notwithstanding Section 1-16-8(H), a Town Council member shall not vote to approve a contract in which he or she has a personal interest.

1-16-16: ENFORCEMENT:

A. The Town Manager has the responsibility for the enforcement of this Chapter as to all Town employees, other than those Town employees appointed or hired by the Town Council. The Town Manager may investigate any complaint, and direct the filing of appropriate legal action against any person as to whom he or she has enforcement authority if the Town Manager believes such action is appropriate. The Town Manager may exempt from the provisions of this Chapter the conduct of any person as to whom he or she has enforcement authority upon the finding that the enforcement of this Chapter with respect to the employee's conduct would not be in the public interest.

B. The Town Council has the responsibility for the enforcement of this Chapter as to all other persons who are subject to the provisions of this Chapter. The Town Council may investigate any complaint, and direct the filing of appropriate legal action against any person as to whom it has enforcement authority if the Town Council believes such action is appropriate. The Town Council may exempt from the provisions of this Chapter the conduct of any person as to whom it has enforcement authority upon the finding that the enforcement of this Chapter with respect to such person's conduct would not be in the public interest.

C. The Town Manager or Town Council, as the case may be, may direct the Town Attorney to investigate or prosecute any apparent violation of this Chapter, or the Town Manager or Town Council may employ or appoint any qualified attorney to investigate or prosecute any violation of this Chapter.

D. Any person who believes that a violation of this Chapter has occurred may file a complaint with the Town Manager or Town Council, as the case may be, which complaint shall be promptly investigated and such action taken thereon as the Town Manager or Town Council determines to be appropriate.

1-16-17: PENALTIES AND REMEDIES:

A. It is unlawful and a misdemeanor offense for any person to knowingly violate any provision of this Chapter. "Knowingly" has the meaning provided in Section 6-3-5 of this Code.

B. Any person convicted of violating any provision of this Chapter shall be punished as provided in Chapter 4 of this Title. Additionally, upon conviction such person is liable to the Town for such damages as may have been suffered or incurred as a result of the violation, together with any costs (including, but not limited to, attorneys' fees and expert witness fees) incurred by the Town in the investigation and prosecution of the violation.

1-16-18: AUTHORITY OF TOWN ATTORNEY TO ISSUE OPINIONS:

A. Notwithstanding anything contained in this Chapter to the contrary, no person who is subject to the provisions of this Chapter may be convicted of violating this Chapter if, prior to engaging in the conduct that would otherwise have resulted in a violation of this Chapter, such person obtains a written opinion from the Town Attorney that the particular conduct in question would not violate this Chapter, and such person acts in accordance with the opinion of the Town Attorney.

B. The Town Attorney shall promptly render an opinion as to legality of proposed conduct or action under this Chapter upon request.

C. The Town Attorney has no authority to finally determine whether a conflict of interest exists with respect to any Town officer. Such determination may only be made by the Town body of which the officer is a member.

1-16-19: DISTRIBUTION OF CODE OF ETHICS:

A. Within thirty days after the effective date of the ordinance adopting this Chapter, the Town Clerk shall notify the following persons of the adoption of the ordinance and provide such persons with a link to this Chapter on the Town's web site:

1. each current member of the Town Council;
2. each current member of all Town boards and commissions;
3. each current member of any temporary board; and
4. all current Town employees.

B. Within thirty days after they assume office the Town Clerk shall provide the following persons with a link to this Chapter on the Town's web site:

1. each new member of the Town Council;
2. each new member of all Town boards and commissions; and
3. each new member of any temporary board.

C. Within thirty days after their appointment or hiring the Town Clerk shall provide each newly hired Town employee with a link to this Chapter on the Town's web site.

D. Not later than the date a contractor's commences work for the Town, the Town Clerk shall provide the Town contractor with a link to this Chapter on the Town's web site.

Section 2. Except as specifically amended by this ordinance, the Breckenridge Town Code, and the various secondary codes adopted by reference therein, shall continue in full force and effect.

Section 3. The Town Council finds, determines, and declares that this ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants thereof.

Section 4. This ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
PUBLISHED IN FULL this 8th day of July, 2014.


This ordinance was published in full on the Town of Breckenridge website on July 9, July 10, July 11, July 12 and July 13, 2014.

A public hearing on this ordinance was held on July 22, 2014.

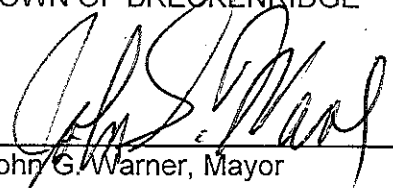
READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED IN FULL ON THE
TOWN'S WEBSITE this 22nd day of July, 2014. A copy of this Ordinance is available for
inspection in the office of the Town Clerk.

ATTEST:

TOWN OF BRECKENRIDGE

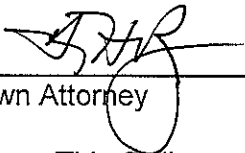


Helen Cospolich, Town Clerk



John G. Warner, Mayor

APPROVED IN FORM



Town Attorney

7/22/14

Date

This Ordinance was published on the Town of Breckenridge website on July 25, July 26, July 27, July 28 and July 29, 2014. This ordinance shall become effective on August 28, 2014.