

# Town of Berthoud Code of Conduct for Elected Officials, Boards and Commissions

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# Town of Berthoud Code of Conduct for Elected Officials, Boards and Commissions

## OVERVIEW AND PURPOSE

The Town of Berthoud, a Colorado Town, (hereafter the “**Town**” or “**Town of Berthoud**”) is committed to transparent, collegial, ethical local government, and to that end endorses the following “Town of Berthoud Code of Conduct for Elected Officials, Boards and Commissions” (hereafter “**Code of Conduct**”) to provide guidance assisting Public Servants in the performance of their duties in a manner which serves the public interest and honors public trust. This document is intended to embody core values of the government of the Town of Berthoud, including:

Fiscal Responsibility	Professionalism	Accountability	Integrity
Transparency	Respect	Service	

## DEFINITIONS

“**Appearance of Impropriety**” means actions or decisions which do not fall under conflict of interest statutes, but reasonably give rise to an implication that an action is self-serving rather than considered solely with respect to its impact on the Town and its citizens.

“**Censure**” means an official written statement approved by the Board of Trustees as an official Sanction which identifies the Code of Conduct violation and expresses disapproval of those violations.

“**Gifts of Substantial Value**” are as defined in Section 18 of Title 24 of the Colorado Revised Statutes and include, but are not limited to, gifts which could be perceived as a reward for an official action taken.

“**Public Servant**” means any elected or appointed official of the Town of Berthoud as well as employees and volunteers, including, but not limited to: Board of Trustee members; Planning & Zoning Commissioners; Parks, Open Space, Recreation and Trails (PORT) Committee Members; Youth Advisory Committee Members; Historical Preservation Committee Members; Tree Board Members; any other Town boards or commissions that may arise from time to time; part time employees; recreation instructors and volunteers; and temporary employees.

“**Sanction**” means an action taken by the Board of Trustees if an individual member of the Board of Trustees or an advisory board member is in violation of this Code of Conduct. Sanctions can include Reprimand, formal Censure, and removal from boards and commissions (in compliance with state law).

“**Reprimand**” means a verbal statement in a meeting that addresses a violation of this Town of Berthoud Code of Conduct, and specifically references the provision that has been violated.

## ROLES & RESPONSIBILITIES

The Town of Berthoud operates under the statutory town form of government and recognizes the importance of maintaining a transparent and well-defined structure. The Board of Trustees is composed

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of six Trustees and one Mayor. The Town Administrator is responsible for staff management and day-to-day operations; the Board of Trustees is responsible for legislative functions such as setting policy, establishing goals, and interacting with the public.

## **STATEMENT OF AGREED PRINCIPLES**

The Town of Berthoud is committed to adhering to these principles in order to best serve its constituents. The Following are adopted as joint goals and commitments of all Public Servants:

- Be accountable to the community and public.
- Enhance and promote good will and public discourse among citizens and fellow Public Servants.
- Give consideration to potential consequences of conduct – both short and long term.
- Strive to maintain and improve public trust in their Public Servants.
- Behave and conduct all public business in a professional manner.
- 
- Listen and consider all perspectives before reaching a conclusion.
- Approach discussion and decisions with an open mind.
- Engage in respectful and constructive discourse with an eye towards a mutually beneficial outcome.

## **CONFLICTS OF INTEREST**

All Public Servants of the Town of Berthoud are expected to be familiar with and at all times comply with Colorado statutes addressing ethics and conflicts of interest as a baseline level of conduct. A summary of all applicable statutory provisions compiled by the Colorado Municipal League legal staff is attached hereto and incorporated herein as “Appendix A”. The following provisions are intended only as practical direction for implementing such standards or for issues which do not rise to levels prohibited by statute but nonetheless raise the appearance of impropriety.

If a Board Member has questions or concerns about a potential conflict of interest or any other ethical issue, he or she should consult the Town Administrator (outside of a Board of Trustees meeting) requesting that the Town Administrator consult with the Town Attorney, or consult the Town Attorney during a meeting.

When participation in action or decision-making as a Public Servant does not implicate the specific statutory criteria for conflicts of interest, but does raise an Appearance of Impropriety, then that Public Servant is encouraged to recuse him/herself in order to avoid any Appearance of Impropriety.

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No board member may vote on any matter before the board if the board member's participation is prohibited by statute. If a conflict isn't clear, the member may choose to disclose the nature of the potential conflict to the board prior to a vote taking place, and request a determination be made by the non-conflicted board members as to whether the potentially conflicted board member may cast his/her vote. If the potentially-conflicted-member makes a request for the remaining members to determine whether the potentially-conflicted-member has a conflict of interest, then the remaining members may determine, by motion adopted by the affirmative vote of a majority of the remaining members, whether a conflict of interest exists. On all matters not rising to the level of a statutory prohibition, such vote shall be advisory only.

When a board member is precluded from voting on a matter because of a conflict of interest, then the board member shall physically remove himself/herself from the council dais, from the board room in which it is meeting, and shall refrain from attempting to influence the decisions of the other members of the board who will cast a vote on that matter. After the board has completed consideration of the matter, the board member may return and resume his or her duties as a member of the board.

As soon as a board member determines that he or she has a conflict of interest on any matter before the board, then he or she shall immediately refrain from attempting to influence the decision of the other members of the board on that matter.

No board member shall vote on any question concerning the member's own conduct.

## **CONFIDENTIALITY**

Public Servants will often be privy to sensitive, private, or confidential matters, in formal and informal settings. All Public Servants shall respect the letter and intent of the open meetings laws, and keep secret all private and confidential matters. No Public Servant may disclose to third parties any confidential information, unless authorized to do so by a 2/3 vote of the applicable board. Public Servants shall comply with applicable state law – including without limitation C.R.S. 24-18-104 – concerning the prohibition of the use of confidential information for personal benefit.

## **GIFTS**

Public Servants shall not accept Gifts of Substantial Value or of substantial economic benefit tantamount to a Gift of Substantial Value which would tend to improperly influence a reasonable person in a public position to depart from the faithful and impartial discharge of the Public Servant's public duties, of which the Public Servant knows, or which a reasonable person should know, is being gifted primarily for the purpose of rewarding an Official Action the Public Servant has taken or could take.

Public Servants shall comply with applicable state law – including without limitation C.R.S. 24-18-104 – concerning the prohibition of the receipt of Gifts of Substantial Value.

## **GENERAL ETHICS GUIDELINES**

NEPOTISM - Except as otherwise required by law, no Public Servant should participate in any decision specifically to appoint, hire, promote, discipline or discharge a relative for any appointed or elected

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position at the Town of Berthoud. Public Servants are expected to disclose the relationship, and recuse or remove him/herself appropriately.

PERSONAL USE OF TOWN PROPERTY - No Elected Official or Public Servant shall utilize Town Property for personal purposes. This prohibition shall not apply to occasional use of telephones, copiers, or technological equipment to the same extent that such use would be allowed to any citizen of the Town.

## CODE OF CONDUCT

### WITH ONE ANOTHER

Governing bodies are composed of individuals with a wide variety of backgrounds, personalities, values, opinions, and goals. Despite this diversity, all have chosen to serve in public office in order to preserve and protect the community and its future. In all cases, this common goal should be acknowledged even as Board members may "agree to disagree" on contentious issues.

### IN PUBLIC MEETINGS

Making the public feel welcome is an important part of the democratic process. No signs of partiality, prejudice or disrespect should be evident on the part of any individual Board member toward an individual participating in a public forum. Every effort should be made to be fair and impartial in listening to public testimony. In addition, Board members should strive to:

- Be welcoming to speakers
- Speaking in public can be uncomfortable. Some issues and decisions can be personal or emotional. Be courteous, kind, supportive, attentive, and do not interrupt. Be fair and equitable in allocating public hearing time to individual speakers.
- Ask for clarification, but avoid debate and argument(s) with the public.
- Honor the role of the Mayor in maintaining order. It is the responsibility of the Mayor to calm and focus the speaker and to maintain the order and decorum of the meeting. Questions by Board members to members of the public testifying should seek to clarify or expand information. It is never appropriate to belligerently challenge or belittle the speaker. Board members' personal opinions or inclinations about upcoming votes should not be revealed until after the public hearing is closed. All Board Members shall refrain stating their final decision until all information has been presented in the public meeting where the agenda item is to be voted upon.
- Practice civility, professionalism and decorum in discussions and debate
- Conflict, difficulty reaching consensus, and disagreement is a matter of course for a

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governmental organization; however, belligerent, personal, impertinent, slanderous, threatening, abusive, or disparaging comments will not be tolerated.

- Public Servants should honor efforts by the Mayor to focus discussion on current agenda items. If there is disagreement about the agenda or the Mayor's actions, those objections should be voiced politely and with reason, following procedures outlined in parliamentary procedure.
- Demonstrate effective problem-solving approaches
- Look for opportunities to utilize public discourse as an opportunity to display how individuals with disparate points of view can find common ground and seek a compromise that benefits the community as a whole.
- Be respectful of others' time. Everyone in attendance at a public meeting has made a commitment to attend meetings and partake in discussions. Their time is valuable. Therefore, it is important that Public Servants are punctual and that meetings start on time. It is also important that comments are productive and relevant so that adequate time may be spent on scheduled issues.
- Abstain responsibly. Abstain (and furthermore, recuse) when you have any financial interest or other conflict of interest according to state law. Abstain from matters for which you do not have necessary information, such as the approval of minutes. While you cannot be compelled to vote on any given matter, keep in mind that it's your duty to vote on critical public matters even if the decision is difficult or uncomfortable.

## **IN PRIVATE ENCOUNTERS**

- Continue respectful behavior in private
- The same level of respect and consideration of differing points of view that is deemed appropriate for public discussions should be maintained in private conversations.
- Be aware of the insecurity of written notes, voicemail messages, and e-mail.
- Technology presents the risk of quick public dissemination of communications far beyond the intended recipient. Written notes, voicemail messages and e-mail should be treated as potentially "public" communication.
- Even private conversations can have a public presence.
- Public Servants are always on display – their actions, mannerisms, language, and interactions in

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non-official settings are under scrutiny. Public Servants should endeavor to conduct themselves in a way which would not reflect poorly on the Town of Berthoud's values.

## **BETWEEN STAFF & ELECTED OFFICIALS**

Exemplary governance in Berthoud depends on the cooperative and symbiotic efforts of elected officials, who set policy, and Town staff, who implement and administer policy. Every effort should be made to be cooperative and show mutual respect for the contributions made by each Public Servant for the good of the community.

- Treat all Public Servants as professionals - Clear, honest communication that respects the abilities, experience, and dignity of each individual is expected. Poor behavior towards staff is not acceptable.
- Job Disruption - Elected Officials should not disrupt Town staff while they are in meetings, on the phone, or engrossed in performing their job functions in order to have their individual needs met. Questions of Town staff and/or requests for additional background information should be directed to the Town Administrator.
- Never publicly criticize an individual employee – Board Members should never express concerns about the performance of a Town employee in public, to the employee directly, or to the employee's supervisor. Comments about staff performance should only be made to the Town Administrator through private correspondence or conversation.
- Do not act outside the scope of your authority – Board members should not attempt to influence Town staff on the making of appointments, awarding of contracts, selecting of consultants, processing of development applications, or granting of Town licenses and permits. Unsolicited attendance to staff meetings is discouraged. .
- Honor the established structure. Elected officials should not be involved with administrative matters. Staff members should not circumvent their supervisor or the established structure by appealing to an elected official for a raise or other consideration that should be between the staff member and their supervisor.
- Limit requests for staff support - Requests for additional staff support – even in high priority or emergency situations -- should be made to the Town Administrator who is responsible for allocating Town resources in order to maintain a professional, well-run Town government.
- Do not solicit political support from staff - Council members should not solicit any type of political support (financial contributions, display of posters or lawn signs, name on support list, etc.) from Town staff. Town staff may, as private citizens with constitutional rights, support political candidates but all such activities must be done away from the workplace.

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## BETWEEN BOARDS & COMMISSIONS

- Familiarize yourself with the bylaws, policies, and structure of the Town and its governing entities and advisory entities. Act in a manner which honors those structures.
- Make an effort to communicate as one voice between boards & commissions. Take the time and make an effort to reach consensus and avoid confusing official recommendations with personal opinion or ex-parte information once a compromise has been reached.
- Do not direct staff individually or as an entity in a way that is inconsistent with established structures.

## WITH THE MEDIA

- Make no promises on behalf of the Town of Berthoud
- Board members will frequently be asked to explain a Board action or to give their opinion about an issue as they meet and talk with constituents in the community. It is appropriate to give a brief overview of Town policy and to refer to Town staff for further information. It is inappropriate to overtly or implicitly promise Board action, or to promise Town staff will do something specific (fix a pothole, remove a library book, plant new flowers in the median, etc.).
- Staff should inform the media of official public actions, refer media to the public record, and refrain from providing personal opinions. If appropriate, always refer the media to the “point person” on any particular topic, such as a project lead or a department head rather than providing second-hand knowledge.
- Do not speak, write, or otherwise communicate for the Town of Berthoud without proper authorization.
- Unless you are expressly permitted to do so by Board of Trustee action prior to your communication, do not speak for the Town of Berthoud in an explicit or even implied manner. Always disclose your communications as an individual and not as a representative of the Town of Berthoud as a whole.
- It is acceptable to publicly disagree about an issue, but it is unacceptable to make derogatory or personal comments about other Public Servants, or their opinions, actions or perceived motivations.
- After a Board has voted on an any policy issue it is considered closed and the Board moves on to other matters Board Members shall refrain from acting in any manner that would impede the carrying out of a decision which has been made by the Board. Continued actions to impair implementation of a decision undermines Board governance and the Board’s credibility and



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trust with constituents and potential investors.

## **ENFORCEMENT/SANCTIONS**

This Code of Conduct is meant to be self-enforcing. Public Servants should be familiar with its contents and support any training necessary to further its implementation.

If a member of the staff or a volunteer for the Town of Berthoud is in violation of this Code of Conduct, then their actions should be referred to the Town Administrator, and the employee/volunteer will be subject to Town disciplinary procedures at the Town Administrator's discretion.

If a member of the Board of Trustees or an advisory board for the Town is in violation of this Code of Conduct, then they may be Reprimanded or formally Censured by the Board of Trustees. Serious infractions could lead to Sanctions as determined by a majority vote of the Board of Trustees. Those Sanctions may include but are not limited to: Reprimand, formal Censure, and removal from boards and commissions (in compliance with state law). In the event that a violation escalates into a situation in which the board wishes to pursue a Sanction, an independent attorney may be consulted to avoid a conflict of interest with the Town Attorney.

# **COLORADO STATUTORY PROVISIONS CONCERNING ETHICS AND CONFLICTS OF INTEREST FOR MUNICIPAL OFFICIALS AND EMPLOYEES**

by

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## **Applicable Statutes**

Ethics and conflicts of interest for local government officers and employees are addressed in three areas of the Colorado Revised Statutes:

- I. Article 18 of Title 24. Part 1 is Colorado's "Code of Ethics" for public officers and employees. Part 2 addresses proscribed interests in contracts;
- II. Sections 31-4-404(2) and (3), concerning restrictions on members of municipal governing bodies voting on matters in which they have a personal or private interest; and
- III. Section 18-8-308 of the Colorado Criminal Code, imposing certain disclosure requirements on public officials.

*Caveat: Be sure to check for local charter or ordinance provisions that may also bear on these issues.*

## **Colorado "Code of Ethics" for Public Officials and Employees-**

**[C.R.S. 24-18-101, et seq.; C.R.S. 24-18-201, et seq.]**

### **Violation of Public Trust and Fiduciary Duty- Standard of Proof**

The Code of Ethics identifies several rules of conduct for local government officials and employees. Violation of these rules is declared to be a breach of fiduciary duty and the public trust. [C.R.S. 24-18-103(2)] A local government official or employee whose conduct departs from his fiduciary duty is "liable to the people of the state as a trustee of property and shall suffer such other liabilities as a private fiduciary would suffer for abuse of his trust." The district attorney in the district where the trust is violated is authorized to bring "appropriate judicial proceedings" on behalf of the people, and money collected in such proceedings is paid to the general fund of the local government. Successful prosecution under the Code of Ethics for breach of fiduciary duty requires proof beyond a reasonable doubt of the commission of any act proscribed in the Code.

## Code of Ethics: Rules of Conduct

### **[C.R.S. 24-18-101, et seq]**

The Code of Ethics specifies “Rules of Conduct”, violation of which constitutes breach of fiduciary duty and the public trust. (The Code also specifies non-binding “Ethical Principles”, which are intended as guides to conduct.)

1. Use of Confidential Information for Personal Benefit. [C.R.S. 24-18-104-(1)(a)]

A local government official or employee shall not:

*“Disclose or use confidential information acquired in the course of his official duties in order to further substantially his personal financial interest.”*

- Note that this section restricts only use of “confidential” information.
- “Financial interest” is defined as a substantial interest held by an individual which is:
  - (a) An ownership interest in a business
  - (b) A creditor interest in an insolvent business
  - (c) An employment or prospective employment for which negotiations have begun
  - (d) An ownership interest in real or personal property
  - (e) A loan or any other debtor interest
  - (f) A directorship or officership in a business.(24-18-102-(4), C.R.S)

2. Accepting Gifts or Economic Benefits as Rewards or Inducements. [C.R.S. 24-18-104-(1)(b)]

A local government official or employee shall not:

*“Accept a gift of substantial value or a substantial economic benefit tantamount to a gift of substantial value:*

- 1) *Which would tend to improperly influence a reasonable person in his position to depart from the faithful discharge of his public duties; or*
  - 2) *Which he knows or which a reasonable person in his position should know under the circumstances is primarily for the purpose of rewarding him for official action he has taken.”*
- This prohibition utilizes an objective “reasonable person” standard. Thus it is no defense to argue that the gift or benefit did not actually induce improper conduct or was not actually understood to be a reward for official action.
  - *Inclusions:* “Economic benefit tantamount to a gift if substantial value”
    - I. A loan at a rate of interest substantially lower than the commercial rate then currently prevalent for similar loans, and
    - II. Compensation received for private services rendered at a rate substantially exceeding the fair market value of such services. [C.R.S. 24-18-104(2)]

- *Exclusions: Economic benefits*". The Code does not define "gift of substantial value"; however, it does identify several items that are not considered "gifts of substantial value" or "economic benefits tantamount to gifts of substantial value." [See C.R.S. 24-18-104(3)] Among these exclusions are:
  - Campaign contributions reported under the Fair Campaign Act,
  - Honoraria
  - "Items of perishable or nonpermanent value, including, but not limited to, meals, lodging, travel expenses or tickets to sporting, recreational, educational, or cultural events."

3. Transactions With Those One Supervises or Inspects. [C.R.S. 24-18-109(2)(b)]

A local government official or employee shall not:

*"Engage in a substantial financial transaction for his private business purposes with a person whom he inspects or supervises in the course of his official duties."*

4. Acts Benefitting Ones Business or Client. [C.R.S. 24-18-109-(2)(b)]

A local government official or employee shall not:

*"Perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative or agent."*

- "Official act" is defined as including any "vote, decision, recommendation, approval, disapproval, or other action, including in action, which involves the use of discretionary authority." [C.R.S. 24-18-102(7)]

**Exclusions:** Section 24-18-109(4) provides that it is not a breach of fiduciary duty or the public trust for a local government official or employee to:

- (i) Use local government facilities or equipment to communicate with constituents, family members or business associates, or
- (ii) Accept or receive benefits as an indirect consequence of transaction local government business

**Defense:** Disclosure

- A. Section 24-18-110 provides for voluntary disclosure by a local government official or employee of the "nature of his private interest" prior to acting in a manner that may impinge upon fiduciary duty and the public trust. Proper disclosure is an affirmative defense to "any civil or criminal action or any other sanction." (Emphasis added)
- B. Proper disclosure:
  - 1. For local government officials and employees, disclosure must be in writing to the Secretary of State. Disclosure may be accomplished online: go to the Secretary of State website, [www.sos.state.co.us](http://www.sos.state.co.us); click on "Elections" and then "Conflict of Interest".

2. Elements of the disclosure
  - (i) Amount of financial interest if any,
  - (ii) Purpose and duration of services rendered, if any,
  - (iii) Compensation received for services, or
  - (iv) "Such other information as necessary to describe" the interest.
3. If the act is then performed, the official or employee shall state for the record the fact and nature of the interest involved.

### **Code of Ethics: Prohibited Interests in Contracts**

#### **[C.R.S. 24-18-201, et seq.]**

**Rule:** Local government officials and employees "*shall not be interested in any contract made by them in their official capacity or by any body, agency or board of which they are members or employees.*"

- **Note:** See particularly part (e) below, concerning compliance with the "Disclosure and Abstention" statutes.
- **"Safe Harbors":** The statute states that certain types of transactions are not "contracts" for purposes of these restrictions. [C.R.S. 24-18-201(1)(b)] Excluded transactions include:
  - a. Contracts awarded to the lowest responsible bidder based on competitive bidding procedures;
  - b. Merchandise sold to the highest bidder at public auction;
  - c. Investments or deposits in financial institutions which are in the business of loaning or receiving monies;
  - d. A Contract with an interested party if, because of geographical restrictions, a local government could not otherwise reasonably afford itself of the subject of the contract. It shall be presumed that a local government could not otherwise reasonably afford itself of the subject of a contract if the additional cost to the local government is greater than 10% of a contract with an interested party 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.
  - e. A contract with respect to which any... local government official or employee has disclosed a personal interest and has not voted thereon or with any respect to which any member of the governing body of a local government has voted thereon in accordance with Section 24-18-109(3)(b) or 31-4-404(3), C.R.S. Any such disclosure shall be made: To the governing body, for local government officials and employees.
- **Noncompliance- contract voidable:** Violation of the prohibitions described above shall render the contract voidable at the instance of any party to the contract except the officer interested therein. [C.R.S. 24-18-203]

**Rule: “Revolving Door” Provision:** Former employees may not within six months of the end of their employment contract or be employed by any employer that contracts with a local government during his employment.

### **Title 31-Municipal Governing Body Members –Disclosure/Abstention**

#### **[C.R.S. 31-4-404(2) and (3)]**

**Rule:** “Disclosure and Abstention”, a member of the governing body of a city or town who has a personal or private interest in any matter proposed or pending before the governing body shall:

- A. Disclose such interest to governing body,
- B. Not vote and
- C. Not attempt to influence the votes of other members of the governing body. [C.R.S. 31-4-404-(2)]

#### **Exception**

A member of the governing body may vote notwithstanding his or her personal or private interest if:

- A. Such member’s participation is necessary to achieve a quorum or otherwise enable the body to act, and
- B. Disclosure is made pursuant to Section 24-18-110 C.R.S. of the Colorado Code of Ethics for Public Officials and Employees (which, as noted above, requires disclosure in writing to the Secretary of State prior to official action). [31-4-404-(3)] C.R.S.

### **Criminal Code Disclosure Requirements**

#### **[C.R.S. 18-8-308]**

Section 18-8-308 of the Colorado Criminal Code contains additional disclosure requirements affecting local government officials and employees.

**Rule:** When the disclosure requirement of section 18-8-308 C.R.S. is triggered, “actual advance written notice” to the Secretary of State and to the governing body is required 72 hours before any action is taken.

**What triggers the Law** (When you pay attention to this rule): An impending exercise of “substantially discretionary function with respect to a government contract purchase, payment or other pecuniary transaction” where a “potential conflicting interest” is known by the official or employee to exist.

- A “potential conflicting interest” exists when the public servant is a director, president, general manager or similar executive officer or owns or controls directly or indirectly a substantial interest in any non-governmental entity participating in the transaction in question.