

ORDINANCE NO. 2022-06

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE,
COLORADO REPEALING AND REPLACING APPENDIX A CODE OF ETHICS OF THE
MOUNTAIN VILLAGE MUNICIPAL CODE**

WHEREAS, the Town of Mountain Village (“Town”) is a home rule municipality duly organized and existing under Article XX of the Colorado Constitution and the Town of Mountain Village Home Rule Charter of 1995, as amended (“Charter”); and

WHEREAS, Appendix A of the Mountain Village Municipal Code outlines the Town’s Code of Ethics for Town Council Members, Town Board Members and other Town employees; and

WHEREAS, C.R.S. § 24-18-101, *et seq.*, provides state-wide ethics standards that have been subject to uniform interpretation, and Article XXIX § 3 of the Colorado Constitution contains certain gift bans; and

WHEREAS, there are conflicts between the Town’s Code of Ethics and C.R.S. § 24-18-102 and the Colorado Constitution; and

WHEREAS, to promote consistency in ethics rules across the State of Colorado, the Town Council desires to repeal and replace the Town’s Code of Ethics to conform to state-wide standards as set forth below.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE, COLORADO, as follows:

Section 1. Recitals. The above recitals are hereby incorporated as findings of the Town Council in support of the enactment of this Ordinance.

Section 2. Repeal and Replace. The Town Council hereby repeals Appendix A Code of Ethics of the Mountain Village Municipal Code in its entirety and replaces it as set forth in Exhibit A, attached hereto.

Section 3. Severability. If any portion of this Ordinance is found to be void or ineffective, it shall be deemed severed from this Ordinance and the remaining provisions shall remain valid and in full force and effect.

Section 4. Safety Clause. The Town Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the Town, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 5. Effective Date. This Ordinance shall become effective on July 16, 2022 and shall be recorded in the official records of the Town kept for that purpose and shall be authenticated by the signatures of the Mayor and the Town Clerk.

Section 6. Public Hearing. A public hearing on this Ordinance was held on the 16th day of June 2022 in the Town Council Chambers, Town Hall, 455 Mountain Village Blvd., Mountain Village, Colorado 81435.

Section 6. Publication. The Town Clerk or Deputy Town Clerk shall post and publish notice of this Ordinance as required by Article V, Section 5.8 of the Charter.

INTRODUCED, READ, AND REFERRED to public hearing before the Town Council of the Town of Mountain Village, Colorado on the 19th day of May 2022

TOWN OF MOUNTAIN VILLAGE:

**TOWN OF MOUNTAIN VILLAGE, COLORADO,
A HOME-RULE MUNICIPALITY**

By: 
Laila Benitez, Mayor

ATTEST:


Susan Johnston, Town Clerk

HEARD AND FINALLY ADOPTED by the Town Council of the Town of Mountain Village, Colorado this 16th day of June 2022

TOWN OF MOUNTAIN VILLAGE:

**TOWN OF MOUNTAIN VILLAGE, COLORADO,
A HOME-RULE MUNICIPALITY**

By: 
Laila Benitez, Mayor

ATTEST:


Susan Johnston, Town Clerk

Approved as to Form:


David McConaughy, Town Attorney

I, Susan Johnston, the duly qualified and acting Town Clerk of the Town of Mountain Village, Colorado ("Town") do hereby certify that:

1. The attached copy of Ordinance No. 2022-06 ("Ordinance") is a true, correct, and complete copy thereof.
2. The Ordinance was introduced, read by title, approved on first reading and referred to public hearing by the Town Council the Town ("Council") at a regular meeting held at Town Hall, 455 Mountain Village Blvd., Mountain Village, Colorado, on May 19, 2022, by the affirmative vote of a quorum of the Town Council as follows:

Council Member Name	"Yes"	"No"	Absent	Abstain
Laila Benitez, Mayor	X			
Dan Caton, Mayor Pro-Tem	X			
Marti Prohaska	X			
Harvey Mogenson	X			
Patrick Berry	X			
Peter Duprey	X			
Jack Gilbride	X			

3. After the Council's approval of the first reading of the Ordinance, notice of the public hearing, containing the date, time and location of the public hearing and a description of the subject matter of the proposed Ordinance was posted and published in the Telluride Daily Planet, a newspaper of general circulation in the Town, on May 25, 2022 in accordance with Section 5.2(d) of the Town of Mountain Village Home Rule Charter.
4. A public hearing on the Ordinance was held by the Town Council at a regular meeting of the Town Council held at Town Hall, 455 Mountain Village Blvd., Mountain Village, Colorado, on June 16, 2022. At the public hearing, the Ordinance was considered, read by title, and approved without amendment by the Town Council, by the affirmative vote of a quorum of the Town Council as follows:

Council Member Name	"Yes"	"No"	Absent	Abstain
Laila Benitez, Mayor	X			
Dan Caton, Mayor Pro-Tem	X			
Marti Prohaska	X			
Harvey Mogenson	X			
Patrick Berry	X			
Peter Duprey	X			
Jack Gilbride	X			

5. The Ordinance has been signed by the Mayor, sealed with the Town seal, attested by me as Town Clerk, and duly numbered and recorded in the official records of the Town.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town this 16th day of June 2022.


Susan Johnston, Town Clerk
(SEAL)



Exhibit A

Appendix A CODE OF ETHICS

§ 1-1 PURPOSE

The Town Council recognizes the importance of promoting public confidence in the Town government and that those citizens who hold public office or are employed by the Town may have conflicts arise between their public duty and their personal and or financial interests. Therefore, to promote consistency in ethics rules across the State of Colorado, the Town Council desires to conform to state-wide ethics standards as set forth in C.R.S. § 24-18-101, *et seq.*

§ 1-2 DEFINITIONS

As used in this Code of Ethics, unless the context otherwise requires:

(1) "Board" means the boards, commissions, committees, or other authorities operating on behalf of the Town as the Town Council may, from time to time, create.

(2) "Board member" means a member of any Board, including regular and alternate members, but does not include any Employee of the Town.

(3) "Business" means any corporation, limited liability company, partnership, sole proprietorship, trust or foundation, or other individual or organization carrying on a business, whether or not operated for profit.

(4) "Compensation" means any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another.

(5) "Council Member" means a duly elected member of the Town of Mountain Village Council.

(6) "Employee" means any temporary or permanent employee of the Town, except an employee under contract to the Town.

(7) "Financial interest" means 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 a prospective employment for which negotiations have begun;

(d) An ownership interest in real or personal property;

(e) A loan or any other debtor interest; or

(f) A directorship or officership in a business.

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

(9) "Town" means the Town of Mountain Village, Colorado.

(10) "Town Council" means the duly elected Town of Mountain Village Council.

(11) "Town official" means an elected or appointed official of the Town and includes any Board member, but does not include any Employee of the Town.

§ 1-3 PUBLIC TRUST – BREACH OF FIDUCIARY DUTY

A. The holding of public office or employment is a public trust, created by the confidence which the electorate reposes in the integrity of local government officials and employees. A Town official or employee shall carry out their duties for the benefit of the people of the Town.

B. A Town official or employee whose conduct departs from their fiduciary duty is liable to the people of the Town as a trustee of property and shall suffer such other liabilities as a private fiduciary would suffer for abuse of their trust. The Town Attorney 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 Town. Judicial proceedings pursuant to this section shall be in addition to any criminal action which may be brought against such Town official or employee.

§ 1-4 ETHICAL PRINCIPLES FOR TOWN OFFICIALS AND EMPLOYEES

A. The principles in this section are intended as guides to conduct and do not constitute violations as such of the public trust of office or employment in local government.

B. A Town official or employee should not acquire or hold an interest in any business or undertaking which they have reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by an agency over which they have substantive authority.

C. A Town official or employee should not, within six months following the termination of their office or employment, obtain employment in which they will take direct advantage, unavailable to others, of matters with which they were directly involved during their term of employment. These matters include rules, other than rules of general application, which they actively helped to formulate and applications, claims, or contested cases in the consideration of which they were an active participant.

D. A Town official or employee should not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when they have a substantial financial interest in a competing firm or undertaking.

E. Town officials and employees are discouraged from assisting or enabling members of their immediate family in obtaining employment, a gift of substantial value, or an economic benefit tantamount to a gift of substantial value from a person whom the officer, official, or employee is in a position to reward with official action or has rewarded with official action in the past.

§ 1-5 RULES OF CONDUCT FOR TOWN OFFICIALS AND EMPLOYEES

A. Proof beyond a reasonable doubt of commission of any act enumerated in this Section is proof that the actor has breached their fiduciary duty and the public trust. A Town official or employee shall not:

1. Disclose or use confidential information acquired in the course of their official duties in order to further substantially their personal financial interests; or
2. Accept a gift of substantial value or a substantial economic benefit tantamount to a gift of substantial value:

(a) Which would tend improperly to influence a reasonable person in their position to depart from the faithful and impartial discharge of their public duties; or

(b) Which they know or which a reasonable person in their position should know under the circumstances is primarily for the purpose of rewarding them for official action they have taken.

B. An economic benefit tantamount to a gift of substantial value includes without limitation:

1. A loan at a rate of interest substantially lower than the commercial rate then currently prevalent for similar loans and compensation received for private services rendered at a rate substantially exceeding the fair market value of such services; or

2. The acceptance by a Town official or employee of goods or services for their own personal benefit offered by a person who is at the same time providing goods or services to the Town under a contract or other means by which the person receives payment or other compensation from the Town, as applicable, for which the official or employee serves, unless the totality of the circumstances attendant to the acceptance of the goods or services indicates that the transaction is legitimate, the terms are fair to both parties, the transaction is supported by full and adequate consideration, and the official or employee does not receive any substantial benefit resulting from their official or governmental status that is unavailable to members of the public generally.

3. The following are not gifts of substantial value or gifts of substantial economic benefit tantamount to gifts of substantial value for purposes of this Section:

(a) Campaign contributions and contributions in kind reported as required by C.R.S. § 1-45-108;

(b) An unsolicited item of trivial value;

(b.5) A gift with a fair market value of sixty-five dollars (\$65.00) or less that is given to the Town official or employee by a person other than a professional lobbyist.

(c) An unsolicited token or award of appreciation as described in Section 3 (3)(c) of Article XXIX of the Colorado Constitution;

(c.5) Unsolicited informational material, publications, or subscriptions related to the performance of official duties on the part of the Town official or employee;

(d) Payment of or reimbursement for reasonable expenses paid by a nonprofit organization or state and local government in connection with attendance at a convention, fact-finding mission or trip, or other meeting as permitted in accordance with the provisions of Section 3 (3)(f) of Article XXIX of the Colorado Constitution;

(e) Payment of or reimbursement for admission to, and the cost of food or beverages consumed at, a reception, meal, or meeting that may be accepted or received in accordance with the provisions of Section 3 (3)(e) of Article XXIX of the Colorado Constitution;

(f) A gift given by an individual who is a relative or personal friend of the Town official or employee on a special occasion.

(g) Payment for speeches, appearances, or publications that may be accepted or received by Town official or employee in accordance with the provisions of Section 3 of Article XXIX of the Colorado Constitution that are reported pursuant to C.R.S. § 24-6-203 (3)(d);

(h) Payment of salary from employment, including other government employment;

(i) A component of the compensation paid or other incentive given to the Town official or employee in the normal course of employment; and

(j) Any other gift or thing of value a Town official or employee is permitted to solicit, accept, or receive in accordance with the provisions of Section 3 of Article XXIX of the Colorado Constitution, the acceptance of which is not otherwise prohibited by law.

C. The provisions of this Section are distinct from and in addition to the reporting requirements of C.R.S. §§ 1-45-108 and 24-6-203, and do not relieve an incumbent in or elected candidate to public office from reporting an item described in subsection (3) of this Section, if such reporting provisions apply.

D. The amount of the gift limit specified in paragraph (b.5) of subsection (3) of this Section shall be identical to the amount of the gift limit under Section 3 of Article XXIX of the Colorado Constitution, which is adjusted for inflation from time to time by the Colorado Independent Ethics Commission.

§ 1-6 INTERESTS IN CONTRACTS, SALES, OR PURCHASES.

A. Town officials or 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. A former employee may not, within six (6) months following the termination of their employment, contract or be employed by an employer who contracts with the Town involving matters with which they were directly involved during their employment. For purposes of this Section, the term:

(1) "Be interested in" does not include holding a minority interest in a corporation.

(2) "Contract" does not include:

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

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

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

(d) A contract with an interested party if, because of geographic restrictions, the Town could not otherwise reasonably afford itself of the subject of the 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 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 Town official or employee has disclosed a personal interest and has not voted thereon or with respect to which any member of the governing body of a local government has voted thereon in accordance with C.R.S. §§ 24-18-109 (3)(b) or 31-4-404 (3). Any such disclosure shall be made to the Town Council, for Town officials and employees.

B. Town officials shall not be purchasers at any sale or vendors at any purchase made by them in their official capacity.

C. Any contract made in violation of this Section shall be voidable at the instance of any party to the contract except the Town official or employee interested therein.

§ 1-7 EVENT TICKETS

A. In the event the Town receives event or festival tickets for an event within the Town or the Town of Telluride, the Town Manager shall have the discretion to distribute such tickets to Employees if attendance at the event will be beneficial to the Town.

B. Each Employee receiving tickets shall submit a report on the event to the Town Manager within two (2) weeks after the event.

C. In no event shall event or festival tickets received by the Town be distributed to Council or Board members.

D. Notwithstanding the foregoing, for events held within the Town, if the Town deems it desirable for Council members to attend such events, the Town may purchase tickets to such events for Council members.

§ 1-8 VOLUNTARY DISCLOSURE

A member of a board, commission, council, or committee who receives no compensation other than a per diem allowance or necessary and reasonable expenses, a Town official, or an employee may, prior to acting in a manner which may impinge on their fiduciary duty and the public trust, disclose the nature of their private interest. Such disclosure shall be made in writing to the Town Manager and Town Attorney, listing the amount of their financial interest, if any, the purpose and duration of their services rendered, if any, and the compensation received for the services or such other information as is necessary to describe their interest. If the Board member, Town official, or employee then performs the official act involved, they 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.

§ 1-9 ETHICS COMMISSION

A. The Town Council hereby establishes the Ethics Commission for the purpose of reviewing alleged violations of this Code of Ethics and determining the validity of the alleged violations.

B. The Ethics Commission shall be comprised of three (3) members and two (2) alternates. The first member shall be a Council Member appointed by the Town Council, the second shall be a qualified elector appointed by the Town Council third member shall be a qualified elector, appointed by the Town

Council. The first alternate shall be a Council Member appointed by the Town Council and the second alternate shall be a qualified elector appointed by the Town Council.

C. Each member of the Ethics Commission shall serve for two (2) year terms.

D. Two (2) members of the Ethics Commission shall constitute a quorum at meetings of the Ethics Commission. If a member of the Ethics Commission is not available to attend a meeting, then an alternate may serve in his or her place. The Ethics Commission shall meet on an as needed basis, with the exception that the Ethics Commission shall meet on an as needed basis, when formal complaints of a violation of the Code of Ethics have been presented. All Ethics Commission meetings shall be public meetings, noticed by posting at Town Hall at least twenty four (24) hours prior to such meeting.

E. Each member of the Ethics commission or alternate serving in a members place shall be entitled to one (1) vote. A vote of the majority of the members (or alternate serving in the member's place) of the Ethics Commission shall constitute an affirmative vote of the Ethics Commission for all matters including the enforcement of this Ethics Code and administering penalties.

F. Upon the Town receiving a complaint alleging a violation of this Code of Ethics, the Ethics Commission to convene within thirty (30) days and hold a public hearing on the alleged violation, taking evidence from the person or group making the allegation and from the person against whom the allegation is made. Upon conclusion of the hearing, in the event the Ethics Commission determines by clear and convincing evidence that a violation of this Code of Ethics has occurred, the Ethics Commission shall make a report to Town Council with its findings and recommended penalty to the Town Council. The Town Council shall then consider the findings of the Ethics Commission before imposing penalties in accordance with this Code of Ethics.

§ 1-10 ENFORCEMENT AND PENALTIES

A. The Town Council and Boards have the duty to bring a matter concerning an alleged violation to the Ethics Commission for investigation and appropriate action including levying penalties under this Code of Ethics.

B. Any Council members found to have violated any provision of this Code of Ethics, by clear and convincing evidence, shall be subject to a public reprimand by the Town Council and may be subject to a censure if deemed appropriate by the Ethics Commission.

C. Any Board members found to have violated any provision of this Code of Ethics, by clear and convincing evidence, shall be subject to a public reprimand by the Town Council and may be subject to a censure if deemed appropriate by the Ethics Commission. Furthermore, upon such a finding by the Ethics Commission, the Town Council shall have good cause to remove such Board member from the Board upon which they sit.

D. The penalties contained herein shall not limit the Town from bringing any action at law or equity, including civil or criminal action under federal, state, or local law for violation of this Code of Ethics, a breach of public trust, a breach of fiduciary duty, or any other related violation. The Town shall be entitled to its costs and expenses in pursuing such action, including reasonable attorneys' fees.