

ORDINANCE NO. 10

SERIES 2009

AN ORDINANCE AMENDING THE
TOWN'S CODE OF CONDUCT
CONTAINED IN CHAPTER 2, ARTICLE 4
OF THE CRESTED BUTTE MUNICIPAL
CODE

WHEREAS, the Town of Crested Butte, Colorado (the "Town") is a home rule municipality duly and regularly organized and validly existing as a body corporate and politic under and by virtue of the Constitution and laws of the State of Colorado;

WHEREAS, Chapter 2, Article 4 of the Crested Butte Municipal Code contains a Code of Conduct (the "Code of Conduct") that establishes guidelines for ethical standards of conduct for all public officials and employees;

WHEREAS, the Code of Conduct is intended to prohibit the appearance and perception of impropriety as well as actual conflicts of interest; protect the integrity of Town government by providing standards of conduct and guidelines for public officials and public employees to follow when such officials' or employees' private interests as citizens conflict with their public duties; foster public trust by defining standards of honest government and prohibiting the use of public office for private gain; and specify rules to avoid any appearance of impropriety that may result from the dealings of a public official or public employee with the Town;

WHEREAS, the Town Council has determined that to better serve these intended goals, certain revisions to the Code of Conduct are necessary and desirable; and

WHEREAS, the Town Council has determined that the below amendments to the Code of Conduct promote the afore-stated goals and such amendments are in the best interest of the health, safety and general welfare of the residents and visitors of Crested Butte.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO, THAT,

Section 1. Amending Chapter 2, Article 4, Sections 2-4-10 through 2-4-60 and 2-4-120 of the Crested Butte Municipal Code. Sections 2-4-10 through 2-4-60 and 2-4-120 are hereby deleted in their entirety and replaced with the following new sections which shall read as follows:

"Sec. 2-4-10. Purpose.

The purpose of this Article is to protect the public health, safety and welfare and the integrity of Town government by defining and prescribing certain conflicts of interest that may arise between the Town and Town Councilmembers, employees or appointees to a Town board, commission, task force or similar body. The Town Council intends to prohibit the appearance and perception of impropriety as well as actual conflicts of interest. This Article also intends to protect the integrity of Town government by providing standards of conduct and guidelines for public officials and public employees to follow when such officials' or employees' private interests as citizens conflict with their public duties; to foster public trust by defining standards of honest government and prohibiting the use of public office for private gain; to specify rules to avoid any appearance of impropriety that may result from the dealings of a public official or public employee with the Town; and to provide a mechanism to enforce the Town's code of conduct.

Sec. 2-4-20. Definitions.

As used in this Article, the following words shall have the definitions ascribed to them, unless otherwise provided:

Affiliate or affiliated with means an employee, partner, agent, stockholder, joint venturer, corporate member, director, manager or officer of any business organization, or counsel, consultant, representative or a person who shares office space with such organization.

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

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

Contract means any arrangement or agreement pursuant to which any real or personal property, service or other thing of value is to be furnished, transferred, leased or bailed for a valuable consideration.

Employment means providing personal services as an employee or an independent contractor, with or without consideration.

Gift means any payment, entertainment, subscription, forbearance, service or any other thing of value, rendering or deposit of money, which is transferred to a donor directly or in trust for his or her benefit.

Official action means any legislative, administrative or quasi-judicial act of any public official or employee and any vote, decision, recommendation, approval, disapproval, or other action, including inaction (as applicable under the circumstances) which involves the use of discretionary authority.

Public employee or employee means any person holding any paid position of employment with the Town and whose primary income is derived from Town employment.

Public official or official means any person holding a position with the Town by election, and any person holding a position as an appointee of the Town Council or the Town Manager, serving on any Town board, commission, task force or similar body.

Relative means any person related to a public official or an employee by blood, marriage or adoption, through the second degree of consanguinity, including without limitation the following: spouse, parents, parents-in-law, children, children-in-law, brothers, sisters, brothers-in-law, sisters-in-law, grandparents, grandchildren, aunts, uncles, cousins, nephews and nieces. A separation between spouses shall not be deemed to terminate relationships described above which exist only because of marriage.

Substantial interest means a situation where there exists the reasonable possibility of (i) a pecuniary gain by the Town Councilmember, appointee to a Town board, commission, task force or similar body, or a relative thereof, or a Town employee from the outcome of any official action, or (ii) the business or undertaking for which the Town Councilmember, appointee to a Town board, commission, task force or similar body or a Town employee is an affiliate, or his or her relative is an affiliate, standing to economically benefit from the outcome of any official action, where, considering all of the surrounding circumstances, a reasonably prudent person observing the situation would expect a marked tendency to make or influence a decision other than an objective decision.

Transaction means any contract; any sale or lease of any interest in land, material, supplies or services; or any granting of a development right, license, permit or application. A *transaction* does not include any official action which is legislative in nature and which is of general applicability in which the subject Town official or employee shares the same personal or financial interests as the entire membership of a common class of citizens or residents of the Town, or owners of property in the Town.

Sec. 2-4-30. Conflicts of interest prohibited.

(a) Town Councilmember and board, commission or task force member conflicts of interest. No Town Councilmember or board, commission or task force member shall appear before the Town Council or any Town board, commission, task force or similar body where such individual has a conflict of interest as identified in Section 2-4-40.

(b) Town employee conflicts of interest. No Town employee shall appear on behalf of or be employed by a business or undertaking or other person concerning any

transaction with the Town, or before the Town Council or any Town board, commission, task force or similar body where such individual has a conflict of interest as identified in Section 2-4-40. An employee may appear before such a body on his or her own behalf or on behalf of such employee's relative. Nothing in this Article shall be deemed to prohibit the Town Manager from establishing additional policies and regulations to prevent conflicts of interest between Town employees and the Town, provided that such policies are no less stringent than the requirements contained in this Article.

(c) Town Council members and Municipal Court. No Town Councilmember shall appear on behalf of or be employed by another person, or be affiliated with a business or undertaking appearing on behalf of or employed by another person, concerning any matter before the Municipal Court; however, a Councilmember or a member of such a business or undertaking may appear on his or her own behalf or on behalf of such person's relative in Municipal Court.

(d) Town employees and Municipal Court. No Town employee shall appear on behalf of or be employed by another person, or be affiliated with a business or undertaking that appears on behalf of or is employed by another person, concerning any matter before the Municipal Court; however, an employee may appear before the Municipal Court on his or her behalf, and an employee other than a Municipal Judge may appear on behalf of such employee's relative. This authority is intended to allow employees to assist relatives in matters before the Municipal Court to the extent permitted by law.

(e) Board, commission or task force member and Municipal Court. An appointee to a Town board, commission, task force or similar body may appear before the Municipal Court and may be affiliated with a business or undertaking appearing before the Municipal Court.

Sec. 2-4-40. Identifying conflicts of interest.

A Town Councilmember, an appointee to a Town board, commission, task force or similar body or a Town employee shall have a conflict of interest and shall follow the procedure prescribed by Subsection 2-4-60(a) below if such member, appointee or employee:

- (1) Has a substantial interest in any transaction with the Town;
- (2) Has a substantial interest as an affiliate of a business or undertaking with a substantial interest in any transaction with the Town;
- (3) Has a substantial interest as an affiliate of a business or undertaking appearing on behalf of or employed by a person with a substantial interest in any transaction with the Town;

(4) Is an affiliate of a business or undertaking that has taken an official position on any transaction with the Town (unless the individual or such individual's relative has no substantial interest in the outcome of the official action, in which case such individual shall simply identify on the record his or her position);

(5) Is an affiliate of a business or undertaking that is or could be substantially affected by a transaction with the Town (unless the individual or such individual's relative has no substantial interest in the outcome of the official action, in which case such individual shall simply identify on the record his or her position); or

(6) Is required to receive official notice of a quasi-judicial action from the Town.

Sec. 2-4-50. Consent to sue.

No Town Councilmember or appointee to any Town board, commission, task force or similar body shall be a party to or, by himself or herself or as an affiliate of a business or undertaking, appear on behalf of a party in any civil suit in which the Town is an adverse party, unless the member or appointee first obtains the consent of the Town Council.

Sec. 2-4-60. Disclosure and recusal.

(a) Disclosure required. No person described in Section 2-4-30(a), 2-4-30(b) or 2-4-40 above shall fail to give written notice of the interest described in such Section to the Town Council or the Town board, commission, task force or similar body of which the person is a member and the Town Manager, as soon as reasonably possible after the interest has arisen. Notwithstanding the foregoing, no written notice is required if such person discloses the interest described in Section 2-4-30(a), 2-4-30(b) or 2-4-40 above on the record of a public meeting of the Town Council or the Town board, commission, task force or similar body of which the person is a member. The interested Councilmember, employee or appointee shall thereafter refrain from attempting to influence the decisions of the other members of the governing body and:

(1) Refrain from voting upon or otherwise taking official action in such transaction;

(2) Physically absent himself or herself from the room in which a matter related to such transaction is being considered; and

(3) Not discuss any matter related to such transaction with any other member of the Town Council, board, commission, task force or similar body of which the person is a member.

(b) Recusal by Town Council, board, commission, task force or similar body. The Town Council and any Town board, commission, task force or similar body may order recusal of one (1) of its members if that member has an obligation to do so under Section 2-4-30(a), 2-4-30(b) or 2-4-40 above and has failed to do so. Such an order is valid if reached after majority vote of the members of the body, not including the member whose recusal is sought, based on competent evidence.

Sec. 2-4-120. Voting on annual budget resolution.

Nothing in this Article shall prohibit a Town Councilmember from voting on the resolution adopting the annual fiscal year budget, regardless of whether or not such Town Councilmember may otherwise have a conflict of interest with respect to a line item contained in that budget, such Town Councilmember's right to vote on the resolution adopting the annual fiscal year budget being expressly permitted hereunder."

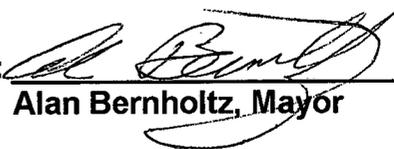
Section 2. Severability. If any section, sentence, clause, phrase, word or other provision of this ordinance is for any reason held to be unconstitutional or otherwise invalid, such holding shall not affect the validity of the remaining sections, sentences, clauses, phrases, words or other provisions of this ordinance, or the validity of this ordinance as an entirety, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

Section 3. Savings Clause. Except as amended hereby, the Crested Butte Municipal Code, as previously amended, shall remain valid and in full force and effect. Any provision of any ordinance previously adopted by the Town which is in conflict with this ordinance is hereby repealed as of the enforcement date hereof.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS 8th DAY OF SEPTEMBER, 2009.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS 21st DAY OF SEPTEMBER, 2009.

TOWN OF CRESTED BUTTE, COLORADO

By: 

Alan Bernholtz, Mayor

ATTEST:


Eileen Hughes, Town Clerk

(SEAL)