

TOWN OF TIMNATH
ORDINANCE NO. 91-2010

**AN ORDINANCE ADOPTING A CODE OF CONDUCT
FOR THE TOWN OF TIMNATH**

WHEREAS, the Town of Timnath, Colorado (the "Town"), is a political subdivision of the State of Colorado organized and existing as a home rule municipality pursuant to Section 6 of Article XX of the Colorado Constitution and the home rule charter for the Town ("Charter"); and

WHEREAS, pursuant to its home rule authority, the Town possesses the authority to adopt code provisions governing the conduct of Town officials and prescribing penalties for deviations from that conduct; and

WHEREAS, the Town Council recognizes that the Charter and the Timnath Municipal Code (the "Code") contain general provisions regarding expected conduct and Council authority to enforce remedies for violations; and

WHEREAS, the Town Council finds that the citizens of the Town will be best served by a complete chapter in the Code describing the conduct expected of the Town's elected officials, the process for addressing complaints and the potential remedies for violations of the Code and the Charter;

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Timnath, Colorado, that:

Section 1. There shall be adopted as part of the Code, a new Chapter 12 titled Code of Conduct.

Section 2. The new Chapter 12 shall read as follows:

CHAPTER 12 CODE OF CONDUCT

12.1 Purpose and declaration of policy

The holding of public office is a public trust created by the confidence which the electorate reposes in the integrity of public officers. Officers have sworn an oath to uphold the Constitution of the United States, state and the ordinances of the Town. It is the intent of the Town that its officers and employees adhere to high levels of ethical and behavioral conduct so that the public will have confidence that persons in positions of public responsibility are acting for the benefit of the public.

The purpose of this Chapter is to provide clear conduct guidelines and necessary enforcement procedures, and to fully implement the provisions of the Charter.

12.2 Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

12.2.1 *Council member* means a member of the Town Council of the Town of Timnath, Colorado.

12.2.2 *Employee* means any person performing labor or services for the benefit of the Town in which the Town may command when, where, and how much labor or services shall be performed. For the purpose of this Chapter, an individual primarily free from control and direction in the performance of the service, both under his or her contract for the performance of service and in fact, and who is customarily engaged in an independent trade, occupation, profession, or business related to the service performed is not an “employee”. In addition and for or the purpose of this Chapter, “employee” does not include any member of Town Council or any person appointed by the Town Council to serve on any Town board, commission, committee, agency, or authority.

12.2.3 *Malfeasance* shall mean an act or failure to act committed by an officer in the course of his or her official duties which the officer had no legal right to do (or not do); it includes when an officer acts without any authority whatsoever, or exceeds, ignores, or abuses his or her powers.

12.2.4 *Misconduct* shall mean any willful and unlawful behavior by an officer in relation to the duties of his or her office.

12.2.5 *Officer* means any person or officer holding a position by election or appointment to fill a vacancy in an elected position in the service of the Town, i.e., members of the Town Council, including the Mayor.

12.2.6 *Town* means the incorporated home rule Town of Timnath, Colorado.

12.2.7 *Town Council* means the town council of the Town of Timnath, Colorado, comprising of the Council members and Mayor.

12.3 Compliance with other laws

The requirements of this Chapter shall be in addition to the applicable requirements of the laws of the Town and of the state. This Chapter shall not create any private rights of action.

12.4 Restrictions on Conduct

An officer shall not commit malfeasance or misconduct in office. Upon a finding that an officer has committed malfeasance or misconduct in office, he or she shall be subject to appropriate discipline in accordance with the provisions provided in this Chapter.

12.5 Requests for Opinion

An officer, upon full disclosure of facts to the town manager, may directly request an advisory opinion from the town attorney regarding the application of this chapter to the officer.

12.6 Procedures concerning violations of this Code.

12.6.1 If an alleged violation of this Code of Conduct is referred to the Town Council, the Town Council shall have the responsibility and authority for the enforcement of this chapter.

12.6.2 The Town Council shall promptly review and consider the recommendations made by the Mayor, Mayor Pro Tem or a majority of the Council, regarding the alleged violation.

12.6.3 In exercising its authority hereunder, the Town Council shall have the power to:

- A. make a determination that any complaint is founded or unfounded;
- B. dismiss frivolous complaints without conducting a public hearing (Complaints dismissed as frivolous shall be maintained confidential);
- C. hold a public hearing to make a determination whether any complaint is founded or unfounded; or
- D. initiate any suit and to prosecute any criminal or civil action on behalf of the Town wherein it believes, in its sole and exclusive discretion, such action is appropriate.

12.6.4 The following procedures shall apply if the Town Council determines that a hearing on the allegations should be held:

- A. The hearing shall be conducted in a judicial or quasi-judicial forum. The allegations shall be presented on behalf of the Town, by a designated agent, such as the town attorney, selected by the Town Council.
- B. The officer against whom the allegations are raised shall receive a notice at least ten (10) days before the hearing stating the substance of the allegation and notice of all hearings pertaining thereto.
- C. The Town shall have the burden of proof which shall be a preponderance of the evidence.

D. In addition to any rules of procedure adopted by the Town Council, the parties shall have the following rights:

- (a) Present testimony.
- (b) Produce evidence.
- (c) Cross examine witnesses.
- (d) Be represented by legal counsel.
- (e) Raise any statutory privilege.

E. The Town Council shall announce its decision and any penalty within fifteen (15) days of the completion of the hearing. Any penalty shall be stayed until expiration of the reconsideration period, if applicable.

12.6.5 The action taken by the Town Council on any complaint shall be the final action of the Town on the matter.


12.6.6 The various provisions of this Section are cumulative, and not exclusive, and shall not be construed to limit any administrative, civil, or criminal action or proceeding which may be instituted by the Town pursuant to Colorado statutes.

12.7 Violations; Penalties

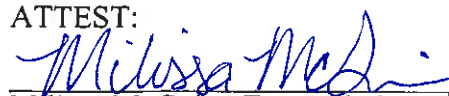
12.7.1 After a hearing held pursuant to Section 12.6.4, if the Town Council by a majority vote of the members of Town Council entitled to vote thereon determines that a violation or violations of the Code of Conduct has occurred, the Council by majority vote of the members entitled to vote may impose the following penalties:

- A. If the violation was unintentional or an oversight, the Town Council may issue a verbal admonition, which shall be part of the record of proceedings.
- B. If the conduct was negligent, the Town Council may issue a verbal admonition or an official written reprimand, which shall be part of the record of proceedings.
- C. If the conduct was intentional, the Town Council may, in its sole discretion:
 - (1) issue a verbal admonition, which shall be part of the record of proceedings;
 - (2) issue an official written reprimand, which shall be part of the record of proceedings; and/or
 - (3) publically censure the officer.
- D. The penalties provided for in this section shall not foreclose the application of any other cause of action, or right of action arising under the Municipal Code, Charter or other applicable law.

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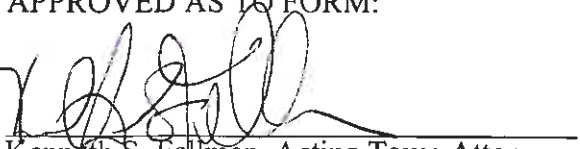


Donna Benson, Mayor
Mayor Pro Tem

ATTEST:


Milissa McGuire, Town Clerk



APPROVED AS TO FORM:


Kenneth S. Fellman, Acting Town Attorney

INTRODUCED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF
TIMNATH, COLORADO, ON THIS 24th DAY OF MARCH, 2010, AND ORDERED TO
BECOME EFFECTIVE THIRTY DAYS FROM PUBLICATION BY TITLE.