

ORDINANCE NO. 2022-28

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO
REPEALING AND REPLACING CHAPTER 2.70 OF THE FRUITA MUNICIPAL CODE
CONCERNING A CODE OF ETHICS FOR CITY OFFICIALS**

WHEREAS, the City of Fruita (the “City”) is a home rule municipality duly organized and existing under Article XX of the Colorado Constitution and the Fruita City Charter (“Charter”); and

WHEREAS, Chapter 2.70 of the Fruita Municipal Code (“Code”) outlines the City’s Code of Ethics for City Officials; 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 City’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 City Council desires to repeal and replace the City’s Code of Ethics to conform to state-wide standards as set forth below.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO, as follows:

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

Section 2. Repeal and Replace. The City Council hereby repeals Chapter 2.70 of the Fruita 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 City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City, 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 City 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 thirty (30) days after final adoption in accordance with Section 2.13(G) of the Charter.

Section 6. Publication. The City Clerk shall publish notice of this Ordinance in accordance with Chapter 2.13(F) of the Fruita City Charter.

PASSED and **ADOPTED** by the Fruita City Council on this 6th day of December, 2022.

CITY OF FRUITA

Joel Kincaid, Mayor

ATTEST:

Margaret Sell, City Clerk

Exhibit A

Chapter 2.70

A CODE OF ETHICS FOR CITY OFFICIALS

Sections:

2.70.010	Purpose
2.70.020	Definitions
2.70.030	Public Trust – Breach of Fiduciary Duty
2.70.040	Ethical Principles for City Officials and Employees
2.70.050	Rules of Conduct for City Officials and Employees
2.70.060	Interests in Contracts, Sales, or Purchases
2.70.070	Voluntary Disclosure
2.70.080	Enforcement and Penalties

2.70.010 PURPOSE. The City Council recognizes the importance of promoting public confidence in the City government and that those citizens who hold public office or are employed by the City 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 City Council desires to conform to state-wide ethics standards as set forth in C.R.S. § 24-18-101, *et seq.*

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

- A. “Board” means the boards, commissions, committees, or other authorities operating on behalf of the City as the City Council may, from time to time, create.
- B. “Board member” means a member of any Board, including regular and alternate members, but does not include any Employee of the City.
- C. “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.
- D. “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.
- E. “Council Member” means a duly elected member of the Fruita City Council.
- F. “Employee” means any temporary or permanent employee of the City, except an employee under contract to the City.
- G. “Financial interest” means a substantial interest held by an individual which is:
 - 1. An ownership interest in a business;
 - 2. A creditor interest in an insolvent business; an employment or a prospective employment for which negotiations have begun;

- 3. An ownership interest in real or personal property;
- 4. A loan or any other debtor interest; or
- 5. A directorship or officership in a business.
- H. “Immediate family” means spouse and any dependents living in the City official or employee’s household.
- I. “Official act” or “official action” means any vote, decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.
- J. “City” means the City of Fruita, Colorado.
- K. “City Council” means the duly elected Fruita City Council.
- L. “City official” means an elected or appointed official of the City and includes any Board member, but does not include any Employee of the City.

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

2.70.040 ETHICAL PRINCIPLES FOR CITY 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 City 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 or its immediate family’s economic benefit by official action to be taken by an agency over which they have substantive authority.
- C. A City 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 City 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. City 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.

2.70.050 RULES OF CONDUCT FOR CITY 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 City 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 City 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 City under a contract or other means by which the person receives payment or other compensation from the City, 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 City 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 City 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 City official or employee on a special occasion.
 - (g) Payment for speeches, appearances, or publications that may be accepted or received by City 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 City official or employee in the normal course of employment; and

- (j) Any other gift or thing of value a City 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.

2.70.060 INTERESTS IN CONTRACTS, SALES, OR PURCHASES.

- A. City 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 City 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 City could not otherwise reasonably afford itself of the subject of the contract. It shall be presumed that the City could not otherwise reasonably afford itself of the subject of a contract if the additional cost to the City 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 City 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 City Council, for City officials and employees.

- B. City 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 City official or employee interested therein.

2.70.070 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 City 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 City Manager and City 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, City 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.

2.70.080 ENFORCEMENT AND PENALTIES.

- A. The City Council and Boards have the duty to bring a matter concerning an alleged violation to the City Council.
- 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 City Council and may be subject to a censure if deemed appropriate by the City Council.
- 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 City Council and may be subject to a censure if deemed appropriate by the City Council. Furthermore, upon such a finding, the City 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 City 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 City shall be entitled to its costs and expenses in pursuing such action, including reasonable attorneys' fees.