

City Council Policy Manual

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**CITY OF ALAMOSA, COLORADO
CITY COUNCIL POLICY MANUAL**

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I. GENERAL INFORMATION

The City Alamosa literally grew up overnight. In June 1878, the City of Alamosa went from a tent city to a rail center for the Denver and Rio Grande Railroad. According to local legend, the rail crews were fed in Garland City in the morning then the building was placed on a flat car and the crews were fed dinner from the same building in Alamosa that night. Many of the City's first buildings were brought in whole on railroad flat cars. Alamosa was incorporated on August 30, 1878. Alamosa which means "cottonwood grove" in Spanish is the hub of the San Luis Valley for retail and services.

The City of Alamosa is a home rule city organized under the State of Colorado Constitution and Statutes. The Charter may be viewed as the basic legal document of city government in Alamosa. The form of municipal government provided for in this Charter is the Council-Manager form of government.

The Council-Manager form of government provides a clear line of authority and responsibility between the policy making and administrative functions of municipal government. Council Members should make every effort to learn about the Council-Manager form of government in order to most effectively and appropriately carry out their responsibilities.

This manual is based on the concepts set out in the City Charter and Ordinances. The use of "Council" in this handbook will refer to both Council Members and Mayor unless otherwise noted.

II. CITY COUNCIL

A. ELECTION

The City Council consists of seven members including a Mayor and six Councilors. Four Council Members reside in and are elected by the voters residing in their respective wards and two are elected at-large. The Mayor is elected at large by the voters of the city. Council Members are elected for four year terms.

B. QUALIFICATIONS

The Mayor and Council Members shall be citizens of the United States, at least twenty-one years of age, and shall have been a qualified elector of the City for at least one year immediately preceding his/her election. Councilors elected by ward shall be residents and qualified electors of the respective wards in which they are elected.

C. PROHIBITIONS

No elective officer of the City shall hold any other public elective office. No Council Member shall be appointed City Manager during the term for which he/she shall have been elected nor within one year after the expiration of his/her term.

Except for the purpose of inquiry, the Council and the Mayor shall deal with the administrative services solely and directly through the City Manager, and neither the Council, its members, nor the Mayor shall either dictate the appointment or removal of or direct or interfere with the work of any employee under the City Manager.

D. VACANCIES

Vacancies in the Council, and in the office of Mayor, shall be filled by the Council for a period extending to the next regular election, at which time a successor shall be elected for the unexpired term.

E. GENERAL POWERS

The Council shall have and exercise all the legislative powers of the City of Alamosa and shall be the body of final responsibility in all matters affecting the City. By way of example but not of limitation the Council shall have power to enact ordinances as follows:

- a) To protect life, health and property.
- b) To declare, prevent, and summarily remove nuisances.
- c) To promote the general welfare, order and security of the city.
- d) To exercise the exclusive power to appropriate and raise municipal revenue.
- e) To preserve and enforce good government.
- f) To pass all ordinances and resolutions necessary to carry out the powers conferred by the Charter or granted by general law.

The duty of the City Council is to enact local legislation, determine policies, and appoint the City Manager, City Clerk, City Attorney, Municipal Judge, and City Prosecutor. These positions are responsible to the City Council and serve at the pleasure of the Council. The City Manager is the chief executive and administrative officer of the City.

F. MAYOR

The Mayor shall preside over the meetings of the Council. He/she shall be recognized as the head of the City government for ceremonial purposes, and by the Governor of the State of Colorado for purposes of military law, and for services of civil processes. He/she shall execute and authenticate legal instruments requiring his/her signature as such official. The Council shall choose one of its members as Mayor Pro Tem who shall preside over the Council in the absence or disability of the Mayor and serve as acting Mayor with the same duties as the Mayor.

G. MAYOR PRO TEM

One of the Council Members will be chosen as Mayor Pro Tem at the first meeting in January of even-numbered years. The selection will be made by ballot in the same manner as other ballots are conducted. The Mayor Pro Tem term will be for two years. If the Mayor Pro Tem resigns this title or leaves the position of Councilor prior to the end of the term, another Council Member will be selected in the same manner to complete the term.

H. TIMING OF COMPENSATION

A Council Member serving the full duration of one regular meeting in the month shall be paid a pro-rated salary of 50% of the month's compensation. A Council Member serving the full duration of two regular meetings during the month shall be paid 100% of the month's compensation. This shall apply whether the transition is the result of an election or appointment. The trigger is the date the oath is given, rather than the date of election or appointment action. Under no circumstances will a Councilor be paid for a month in which he/she did not hold office.

Paychecks for Councilors will be included with the first pay cycle of the month following the time period for which he/she is compensated. The exact dates will vary, but will be in conjunction with regular pay cycles for general employees. For example, if a Council Member takes office during the month of November, the first paycheck will be received on the first pay date in December.

III. CITY MANAGER

The Council shall appoint a City Manager for an indefinite term and shall fix his/her compensation and conditions of employment. The City Manager shall hold office at the pleasure of the Council. The City Manager shall be appointed solely on the basis of his/her executive and administrative qualifications with special reference to knowledge of, and experience in, municipal administration. The City Manager need not be a resident of the City or State at the time of his/her appointment, but shall reside within the City during his/her tenure of office. The City Manager shall devote full-time to the duties of his/her office.

The City Manager shall be responsible to the Council for the proper administration of all the affairs of the City and to that end he/she shall have power and be required to:

- a) Except as such power may be specifically otherwise designated herein, appoint and remove all heads of departments and employees of the City.
- b) See that the laws and ordinances of the City are enforced.
- c) Prepare the annual budget proposal and submit it to the Council and be responsible for the administration of the budget after adoption by the Council.
- d) Participate in discussions of the Council in an advisory capacity.
- e) Prepare and submit to the Council at the end of the fiscal year a complete report on the finances and the administrative activities of the City for the preceding year, and shall make written or oral reports to the Council, when required by it, as to any particular matters relative to the affairs of the City under his/her supervision.
- f) Keep the Council advised of the financial condition of the City, and make such recommendations to the Council for adoption as he/she may deem necessary or expedient.
- g) Except as herein otherwise provided, exercise supervision and control over all executive and administrative departments created herein or that may be created hereafter by the Council.

- h) Prepare for the Council and make available for public inspection a monthly report of activities in each department under his/her jurisdiction.

The Council may appoint or designate an acting City Manager to serve during the period of a vacancy in the office or during the absence of the City Manager from the City.

The City Manager shall be appointed for an indefinite term but shall be removable at the pleasure of the Council for cause. Before the Manager may be removed he/she shall, if he/she so demands, be given a written statement of the reasons alleged for his/her removal and the right to be heard in executive session, or, if the Manager so chooses, publicly thereon at a meeting of the Council prior to the final vote on the question of his/her removal, but pending and during such hearing the Council may suspend him/her from office. The action of the Council in suspending or removing the Manager shall be final, it being the intention of this section to vest all authority and fix all responsibility for such suspension or removal in the Council. Upon removal of the City Manager, the Council shall cause to be paid him/her any unpaid balance of his/her salary for the current month and his/her salary for the succeeding calendar month or any conditions contained in an employment contract.

By letter filed with the City Clerk, the City Manager shall designate a qualified Assistant City Manager to exercise the powers and perform the duties of the City Manager during the temporary absence or disability of the City Manager. The Council may revoke such designation at any time and appoint another person to serve until the City Manager shall return or his/her disability shall cease.

IV. REPRESENTATION OF THE CITY

Mayor - The Mayor shall be recognized as head of the City for all legal and ceremonial purposes and by the Governor for purposes of military law.

Negotiations - No member of the City Council (Mayor and Council) shall represent or negotiate for the City to any other individual, body, group or governmental department or official without prior approval from the Council in a regular meeting or executive session (depending on the subject). All negotiations are handled by the City Manager or designee unless otherwise authorized by the City Council.

External Contacts to Council - Any Council Member (Mayor and Council) contacted by any governmental body, group or official concerning policy decisions or official administrative matters shall inform the Council at the next regular meeting of such fact or notify the City Manager for proper communication.

Council to City Manager - The City Manager shall notify the Council of any question or action of any Council Member that requests or directs the City Manager to make an administrative or policy decision. If there is any question as to a request of action by the City Manager from a Council Member, the City Manager shall ask the Council for a decision. At that time, any Council Member shall have an opportunity to request support of the Council for action on that request.

V. CORRESPONDENCE AND RECOGNITION POLICY

The purpose of this policy is to establish guidelines for the issuance of official City Council correspondence and the awarding of recognition. In that the public may perceive that any correspondence or forms of recognition from the Mayor or City Council have the support of a majority of City Council, it is necessary to establish guidelines for the issuance of correspondence and forms of recognition.

A. Policy Statement:

1. The City Council intends to recognize all elected and appointed officials for their service to the City at the time the elected or appointed official leaves office.
2. Individual members of the City Council may request, through the City Clerk's Office, an appropriate ceremonial recognition for individuals, groups, organizations, or other entities that are believed to be deserving of such recognition.
3. The Mayor and the City Manager are the official spokespersons for the City of Alamosa.

B. Implementation:

1. The recognition of outgoing elected and appointed officials is to be carried out through the City Clerk's office and scheduled for City Council consideration on a regular agenda of the City Council.
2. City Council Member requests for ceremonial recognition of individuals groups, organizations, or other entities, shall be directed to the City Clerk's office. The City Clerk will determine pursuant to this policy the appropriate type of recognition to be considered by the City Council and will confirm this with the sponsoring Council Member(s).
3. Prior to the Clerk's preparing any ceremonial recognition for presentation, the recognition must receive the consent of either the Mayor or the majority of City Council Members.
4. Ceremonial recognitions presented at City Council meetings shall be presented by the Mayor or his/her designee. Ceremonial recognitions presented at a function or event separate from a City Council meeting shall be made by the sponsoring City Council Members or his/her agreed upon designee.
5. Each request shall be made with sufficient background information to allow staff to prepare an appropriate form of recognition. Requests for presentations shall be made through the City Clerk's office at least two weeks prior to the function or celebration. Once the City Clerk has determined that the presentation request is consistent with

the policy, the City Clerk shall prepare the materials and notify the recipient of the date, time and place of the intended presentation. The City Clerk will also notify City Council of any recognitions not occurring at a Council Meeting.

6. Proclamation: This recognition may be presented to representatives of government or non-government organizations where the City has determined that a certain day, week, or month be observed for a particular public awareness/education purpose.
7. Certificate of Commendation/Appreciation: Each year, individuals and organizations perform good work for the benefit of the community. The certificate of commendation/appreciation may be used to recognize significant individual or group accomplishments, anniversaries and retirements, the achievements of local sports teams or individual milestones achieved on the playing field, in the classroom, in the work place or through volunteer efforts.
8. Resolutions: A resolution of congratulations/commendation may be used to recognize outgoing elected and appointed City officials and outstanding contributions to the City of Alamosa or the Alamosa community that may warrant an action that becomes a part of the historical record of the City of Alamosa. Such recognitions by Resolution are approved by City Council during a City Council meeting.
9. City Council Correspondence: Members of the City Council will occasionally be asked to write letters to businesses, citizens or other public agencies. Typically, the Mayor will be charged with communicating the City's position on policy matters on behalf of City Council. If individual members wish to prepare letters for constituents in response to inquiries or to provide requested information, they should receive Council's approval. City letterhead is available for this purpose, and staff can assist in the preparation of such correspondence.

After the City Council has taken a position on an issue, official correspondence should reflect this position. While members who may disagree with a position are free to prepare correspondence on such issues as private citizens, and in their role as Council Members, the official City position must be acknowledged in such communication. City letterhead and staff support may not be utilized. City letterhead and staff support cannot be utilized for personal or political purposes.

Council Members are often asked to prepare letters of recommendation for students and others seeking employment or appointment (outside city government). It is appropriate for individual Council Members to use City letterhead and their Council titles for such letters. Such letters do not require review/consideration of the City Council, but should be reviewed by the City Clerk.

Copies of all correspondence should be forwarded to the City Clerk for filing.

10. Speaking for the City: The Mayor and the City Manager are the official spokespersons for the City. Occasionally a Council Member will be contacted by a media organization for opinion or information on issues on which the City may or may not have an official position. If responding to a question on an issue on which the City has an official position, the Council Member must state the City's position on an issue; if a Councilor goes on to express his or her own opinion, it must be made clear that what is being said is not the position of the City. If responding to a question on an issue on which the City does not have an official position, a Council Member may state his or her own opinion, but it must be made clear that what is being said is not the position of the City.

When representing the City at meetings or other venues, it is important that those in attendance gain an understanding of the City Council's position rather than that of an individual member.

VI. COUNCIL PROCEDURES

A. COUNCIL REQUESTS FOR INFORMATION

The City Manager will make every effort to respond in a timely and professional manner to all requests for information or assistance made by individual Council Members.

Any request which would require more than two hours of staff time to research a problem or prepare a response, will need the support of at least two other Council Members to ensure that staff resources are allocated in accordance with overall Council priorities. Once notified that a request for information or staff support would require more than two hours, the Council Member can request that the City Manager place the request on an upcoming Council agenda. There may be times in which the inquiry prompts the use of City resources to correct or address a situation either in workload or policy creation. In these situations, the City Manager will determine if the dedication of resources falls within normal, routine operations and thus will be completed or if it extends beyond normal, routine operations and should be placed on an upcoming Council agenda.

B. CITY COUNCIL MEETINGS

The City Council meets on Wednesdays at 7:00 P.M. The meetings are regularly scheduled to be held on the first and third Wednesdays of each month. A work session may be held preceding the regular Council meetings or on off Wednesdays to discuss items on the agenda and other City business. The work session is intended to introduce all new ideas and concepts for discussion that may warrant staff research or public input before drafting an ordinance or placement on an agenda. Special meetings of Council may be set by Council in advance or called by the Mayor or by any three Council Members, with written notice to all other member at least 24 hours before the meeting (see Code of Ordinances section 2-17). Meetings may be cancelled by resolution of Council when it is known in advance that a quorum will not be present (see *Id.*) or there is no business.

Throughout the year Council may have retreats or other public meetings with school board, county, or other entities. Appropriate agendas will be posted as required.

All meetings of the Council shall be open to the public in accordance with the State "Sunshine Law" except that a closed or executive session may be held to discuss legal actions, causes of legal action or litigation, leasing, purchasing or sale of real estate, confidential communications with the City Attorney, hiring, firing, disciplining, promotion of personnel or employee labor relations. Closed sessions are normally held after the last agenda item on a regular meeting.

C. CITY COUNCIL AGENDA

If an item is to be considered on the City Council Agenda, it must be submitted to the City Clerk's Office no later than the Monday of the week prior to the next Council meeting. On the Friday preceding a regular City Council meeting, an agenda packet is prepared with an agenda of items to be considered at the Council meeting. Attached to the agenda are supporting informational Council Reports for each agenda item (i.e. staff recommendation, proposed ordinances and resolutions) along with pertinent drawings, maps, photographs, applications, reports, petitions, etc.

See Exhibit A -- Sample Agenda, City of Alamosa Council Meeting.

The items listed on the sample agenda are for illustrative purposes only. Not all items will appear on every agenda. Any agenda may be modified by a majority vote of Council during Agenda Approval. A Consent Calendar item may be removed by any Councilor for separate consideration either during Agenda Approval, or immediately prior to action on the Consent Calendar.

Agendas are provided and posted for public inspection.

COUNCIL INITIATED AGENDA ITEM: An individual Councilor who desires to place an item on the agenda must submit the request on the appropriate form found in Exhibit F or equivalent written format. This document must be received by the City Clerk by 5:00 p.m. on the Monday of the week prior to the Council meeting (9 days prior to the meeting). Council will discuss the item at the meeting it is presented, and make a decision either by consensus or motion whether or not to move forward with action at a future meeting.

STAFF INITIATED AGENDA ITEM: The process for staff-initiated agenda items have a similar deadline and documentation requirements, as set forth by the City Clerk and City Manager.

CITIZEN INITIATED AGENDA ITEM: Citizens may request to be placed on the agenda under this segment by submitting a form to the City Clerk prior to the agenda deadline. Presentations will generally be limited to ten minutes. The City Manager or his/her designee has authority to determine if the item should be placed on an agenda or if it could be addressed under the Citizen Comment section of the agenda. If the topic warrants being placed on the agenda, the City Manager will choose the meeting most appropriate for the presentation.

D. ORDER OF BUSINESS

The Mayor, or in his/her absence, the Mayor Pro Tem, shall take chair at the hour appointed for the Council meeting and call the meeting to order. If both are unavailable, Council will choose someone to preside. The business of the Council is normally taken up for consideration and disposition in the order as shown on the attached sample agenda.

See Exhibit A -- Sample Agenda, City of Alamosa Council Meeting.

CITIZEN COMMENT: Speakers fill out a speaker card, available from the City Clerk at the meeting. The Speaker cards will contain the following information: Name of the speaker, whether or not the speaker is a resident of the City of Alamosa, and the topic. The City Clerk will submit the completed cards to the Mayor, who will offer the floor to speakers one at a time. Speakers will have a three-minute time limit. Staff will operate a timing device, and signal the Mayor when the time limit is up. The Mayor may use his/her discretion as to whether to allow the speaker to continue after the time limit. Speakers may speak on any topic, but the following limitations are encouraged:

1. Quasi-judicial matters (liquor licensing, land use). Speakers are encouraged to speak on these matters at the appropriate hearing.
2. Agenda items where public comment is taken at a different time. Speakers are encouraged to speak at the designated time.
3. Matters outside the jurisdiction of the City of Alamosa. Speakers are encouraged to speak to matters appropriate to Council consideration.

This segment of the agenda is meant solely for the purpose of receiving citizen comments. Neither Council nor staff will offer response to comments during this segment of the agenda.

Considerations for Implementation of Follow Up to Audience Comments: The purpose of providing an agenda item for response to Audience Comments is to allow for appropriate follow-up to audience comments that require a response from Council but that might otherwise be unaddressed in a fashion readily available to the public present who might be interested in the topic. In many instances Audience Comments are statements and not questions, and as such may not require a response from Council. It is important to bear in mind that City Council meetings are for the purpose of Council deliberation, not direct democracy, and that it is neither feasible nor desirable to use the Audience Comments as a means of engaging in direct democracy. Items requiring extensive Council discussion must be placed on the agenda, as must items requiring action by Council. Council may, if it chooses, respond by requesting that a topic of interest be placed on a future agenda.

At the discretion of the Council, an agenda item that is being discussed during the Citizen Comment period, may be advanced on the agenda to be voted on by the Council after the Citizen Comment period.

PRESENTATIONS: Citizens may request to be placed on the agenda under this segment by submitting a form to the City Clerk prior to the agenda deadline. Presentations will generally be limited to ten minutes. The City Manager or his/her designee has authority to determine if the item should be placed on an agenda or if it could be addressed under the Citizen Comment section of the agenda. If the topic warrants being placed on the agenda, the City Manager will choose the meeting most appropriate for the presentation.

E. PROCEDURE AND DEBATE

Four members of the Council shall constitute a quorum sufficient to transact business. Approval by a majority of the members present at any regular or special meeting of the Council shall be sufficient to authorize any action of the Council except the passage of any ordinance and the passage of any resolution or motion authorizing the expenditure of money or approving contracts involving the expenditure of money, which shall require the affirmative vote of a majority of the Council membership.

The following provides some guidance in procedure:

- a. The presiding officer is responsible for the conduct of the meeting. It is his/her duty to maintain order and decorum, limit length and repetitive orations, but allow all interested parties an opportunity to discuss and present their position.
- b. When a public hearing is to be conducted, the presiding officer opens the public hearing, asks for comments from those supporting or opposing the matter, and closes the hearing. After the hearing is closed the Council generally discusses the matter further then votes on it. Council Members may ask questions of any speaker providing comments at a public hearing.
- c. At each and every Council meeting, time shall be allotted for the public to address the Council. Individuals who address the Council are required to address the Council from the podium set up for that purpose. Individuals shall state their name and whether they are residents of the city of Alamosa prior to addressing the Council. Individuals should refrain from speaking while any Council Member is speaking and should conduct themselves in a manner appropriate for the meeting. Speakers shall not address other members of the public during a meeting without the prior approval of the presiding officer. Obscene language or other disorderly behavior will not be tolerated.
- d. Each speaker shall be limited to a three-minute time period which may be extended at the discretion of the Mayor. Should the speaker yield to a question from a Council person, the time yielded shall not be included in the three minutes. Said time limits will be enforced by the presiding officer or an appropriate member of the City staff.
- e. Council persons may ask questions of supporters and opponents of a matter at any time during the debate.

- f. Council persons may ask questions of the City Manager and City Attorney at any time during the Council meeting.
- g. Only one Council Member has the floor to speak at any one time.
- h. Once a motion is brought to the floor, discussion is limited to Council Members, the Mayor, City Manager, and City staff only.
- i. Once a motion is made and seconded, the presiding officer restates the motion for clarification.
- j. A Council Member who intends to abstain or disqualify him/herself because of personal or financial reasons or a conflict of interest explains this at the opening of any discussion on the issue and refrains from entering the discussion.
- k. A Council Member may explain his/her intended vote prior to the roll call.
- l. A vote may be postponed to a definite future date.
- m. Amendments are voted on before the main issue is voted on.
- n. When discussion ceases, the Mayor or presiding officer calls for a vote.
- o. Calling the question. A motion to call the question (to close debate) will close further debate and require a vote on the motion pending before Council, even though discussion may be ongoing. The motion applies only to the motion on the floor, and is not debatable and does not require a second. Because the motion will close discussion, majority of the members present are required for approval in order to establish strong evidence that continuing debate is not necessary.
- p. A break may be taken during the Council meeting by a motion and second from the Council.
- q. Reconsideration of Action. A motion to reconsider is an extraordinary motion that requires a degree of care in presenting and, if approved, care in processing the matter to be reconsidered. A successful Motion to Reconsider will effectively void the prior vote taken on the previously decided motion and cause the matter to be reopened for another motion and a new consideration.

A Motion to Reconsider is only in order at the same meeting at which the decision to be reconsidered was made or at the next regular meeting. It is further only in order if, pursuant to the prior decision, no contract that by its terms may not be cancelled by the City has been executed, no funds have been spent, and no third party has detrimentally relied on the action taken. No ordinance shall be subject to any delay in its effective date in consideration of the possibility of reconsideration, and any person may rely on the effective date of any ordinance as stated therein.

The motion must be made by a member on the prevailing side of the original motion to be reconsidered. The required second on the motion need not be a member from prevailing side. The motion is debatable but only for the reasons to explain or justify reconsideration and not for the purpose of debating the merits of the original motion.

A supermajority vote of 2/3rds of the members present is required for approval. All proceedings, testimony, evidence, and debate on the matter presented during the initial consideration of the matter will remain part of the official record; only the decision or vote taken is voided.

In the event of a successful Motion for Reconsideration, it is recommended that the reconsideration of the original matter be continued to a future date as opposed to being heard at the same meeting in which the Motion for Reconsideration was approved. This recommendation stems from the fact that the matter under reconsideration will likely require new public notice so that interested parties (and possibly an applicant whose rights are being decided) are apprised of the new consideration and can attend and participate in the new consideration. Even when a successful Motion for Reconsideration was presented in the same night as the matter was decided, those interested in the matter may have departed the meeting after what appeared to those attending to be a final decision on the original motion. Fairness will often dictate that the reconsideration be scheduled for a future date.

Exhibit B. Chart of Sample Motions.

F. REMOTE PARTICIPATON

The following policy is established for members' remote electronic participation in City Council meetings due to an emergency or personal matter, or temporary disability or medical condition that prevents his or her physical presence. Remote participation is otherwise discouraged.

a. No later than by 6:00 p.m. the day of a meeting, the member shall notify the Mayor or City Clerk that the member is unable to attend the meeting due to an emergency or a personal matter, or temporary disability or medical condition. The member must identify with specificity the nature of the emergency or personal matter, but need not specify the nature of the disability or medical condition.

b. A quorum of the Council must be physically assembled at the meeting location. The Council Members present must approve the participation by a majority vote of those members physically present. The decision shall be based on the reason for remote participation, without regard to the identity of the member or matters that will be considered or voted on during the meeting. The Clerk shall record in the Council's minutes the specific nature of the emergency or personal matter, or the fact of disability or medical condition, and the remote location from which the absent member participated. If the absent member's remote participation is disapproved, such disapproval shall be recorded in the Council's minutes.

- c. Remote participation by the absent member shall be limited in each calendar year to three regular or special meetings. Remote participation is allowed for executive sessions.
- d. Remote participation is allowed for work sessions, but should not be abused.
- e. For any remote participation, the City shall make arrangements for the voice of the absent member or members to be heard by all persons in attendance at the meeting location. The Clerk shall ensure that the electronic voting record reflects the absent member's vote.
- f. The meeting may not be chaired by remote participation.
- g. Remote participation shall not be allowed for any quasi-judicial matters where Council has been required to ascertain facts and circumstances from the testimony of sworn witnesses, and to make individualized decisions based on its determination of such facts and circumstances.
- h. If remote participation is approved, the absent member shall participate for the entire meeting. Remote participation is not allowed for single agenda items unless approved by present Council members.

G. VOTES BY MEMBERS NOT PRESENT FOR DISCUSSION

Situations can arise where a matter discussed at one council meeting is not voted on until another council meeting. A member may have missed the meeting at which the matter was discussed, but be present for the meeting at which the matter is voted upon. In such a situation, the member who missed the discussion is strongly encouraged to satisfy the following:

- a. The member has read and reviewed all of the agenda materials posted for the matter;
- b. The member has reviewed the video tape of the missed meeting where the matter was discussed, and so affirms to the Council before the vote is taken; and
- c. The matter is not a quasi-judicial matter where Council has been required to ascertain facts and circumstances from the testimony of sworn witnesses, and to make individualized decisions based on its determination of such facts and circumstances.
- d. The member can vote on appointments to advisory boards even if the member missed the interviews. It is strongly encouraged that the member review the applications and talk to a member who attended the interviews for background information.

H. METHODS OF VOTING

The usual method of voting is by an electronic vote. The other method of voting is by ballot. Any Council Member may request a roll call vote. This method of voting is administered by the City Clerk or Deputy who conducts roll call.

I. MINUTES

The minutes of the Council Meeting are prepared by the City Clerk or Deputy and sent to Council Members, along with the agenda packet, prior to the next regularly scheduled Council meeting.

J. LOCAL LIQUOR LICENSING AUTHORITY

City Council serves as the Local Licensing Authority (LLA) with regard to liquor licenses, under the Colorado Liquor Code C.R.S. § 12-47-101, et. seq. (§ 44-3-101 et seq. after October 1, 2018), the Colorado Beer Code, C.R.S. § 12-46-101, et. seq. (§ 44-4-101 et seq. after October 1, 2018), and the Colorado Special Events Code C.R.S. § 12-48-101, et. seq. (§ 44-5-101 et seq. after October 1, 2018). The LLA is a separate body, but its action occur concurrent with regular Council meetings.

The City Clerk's office administers the licenses, with Council having the decision-making authority except for those items for which Council has delegated authority to the City Clerk pursuant to Resolution No. 17-2010.

The most common actions requested of Council include new license applications, change of location applications, or transfers of ownership of existing licenses if there are character concerns. Many actions that do not require a hearing have been delegated to the City Clerk for administrative action.

Council has the authority and responsibility to take action and call for hearings in the event of liquor code violations. Liquor hearings are quasi-judicial and Council may only consider evidence presented during the hearing when making its decision.

A. Licensing Hearing Procedure

The Liquor Code makes no procedural provision as to the conduct of a licensing hearing. However, this is a quasi-judicial action, subject to review by the District Court. It is important that the applicant be afforded due process and all interested parties given a full and fair opportunity to present their case. The applicant is given notice of the procedure and their obligation in writing as part of the application documents, and asked to sign and return the written advisement. This clearly documents the fact that the applicant is aware of this obligation.

I. Introduction

As an introduction to the hearing, the City Attorney gives an overview of the procedure and the applicant's obligation to persuade Council that the license is both needed and desired. It is customary for Council to ask the City Attorney to conduct the hearing.

II. Applicant Presents its Case

This is the opportunity for the applicant to present to City Council the reasons why they are applying for the license at the location and provide the necessary background in relation to proving needs and desires.

III. Public Hearing is Opened by City Attorney.

The Code requires that “any party in interest shall be allowed to present evidence and to cross-examine witnesses. A party in interest is defined as:

- i. The applicant
- ii. An adult resident of the neighborhood under consideration
- iii. The owner or manager of a business located in the neighborhood under consideration
- iv. The principal or representative of any school located within 500 feet of the premises

Other considerations for the public hearing:

- A representative of an organized group within the neighborhood may present evidence, as long as the representative lives within the neighborhood. This person is not entitled to cross-examine or seek judicial review of the LLA’s decision.
- A witness has no standing to testify if they are opposed to consumption of alcohol due to a religious or moral belief, or is opposed as a competitor in the liquor industry.
- The Code provides that the LLA may limit presentation of evidence and cross-examination so as to prevent repetitive and cumulative evidence or examination.
- The hearing is not subject to the same evidentiary standards as a trial. Findings should be based on “preponderance of the evidence,” rather than “beyond a reasonable doubt.” A good rule of thumb is to ask would reasonable persons reach the same conclusions based on the evidence submitted. Hearsay is permitted.
 1. The City Attorney opens the public hearing and states that anyone in favor or against the application may speak at this time.
 2. Other parties in interest who wish to speak in favor or opposed may speak next.
 3. The applicant may make a rebuttal to any opposition and/or make a closing statement.

IV. Needs and Desires

“Needs and Desires” is the shortened term to reflect the “reasonable requirements (needs) of the neighborhood and the desires of the adult inhabitants of the neighborhood.

Colorado Liquor Code C.R.S. § 12-47-312 (§ 44-3-312 after October 1, 2018). Results of investigation – decision of authorities.

(2)(a) Before entering any decision approving or denying the application, the local licensing authority shall consider, except where this article specifically provides otherwise, the facts and evidence adduced as a result of its investigation, as well as any other facts, the reasonable requirements of the neighborhood for the type of license for which application has been made, the desires of the adult inhabitants, the number, type, and availability of alcohol beverage outlets located in or near the neighborhood under consideration, and any other pertinent matter affecting the qualifications of the applicant for the conduct of the type of business proposed; except that the reasonable requirements of the neighborhood shall not be considered in the issuance of a club liquor license.

“Reasonable Requirements” (needs) are commonly addressed through testimony arguing that there is a market for the proposed business; that the market needs of the neighborhood are not being met with current similar businesses, if any exist. Often the applicant will make a case that the business needs the profit from alcohol sales to be profitable; or that the government needs the increased sales tax. One can question whether these needs are actually the needs of the residents or simply the perceived need of the business owner.

The “Desires” portion of the equation is simply that the adults who live and work in the neighborhood want the benefits of the license. This is commonly expressed by testimony from potential customers who say that they would “desire” to patronize the business and have alcohol available through granting the license.

Petition: There is no statutory requirement for the use of a petition, but it is a common practice. It is an efficient way for the applicant to show needs and desires, although it is by no means the only way. A petition may be worded to show needs, desires, or both. An example of what an applicant may create for a petition is provided to them in the initial application packet.

V. Decision

Council usually chooses to act upon the application approval or denial at the conclusion of the hearing so long as the decision is clear-cut. Should it not be a clear-cut decision, Council may delay action until the next meeting. In either case, after the hearing, the City Attorney will prepare written findings for consideration at the following meeting consistent with the decision made after the hearing, or in the case of delayed actions, findings that are both for approving and denial of the license. The Liquor Code requires the LLA to notify the applicant of the decision in writing, and Findings serve this purpose well.

B. Suspension/Revocation Hearings

Violations should be dealt with as they occur. Most violations warrant action that is less severe than taking away the license (non-renewal).

The majority of violation actions arise from a licensee failing a compliance check. The Police Department hires an underage person (between 18 and 20 years old) to act on their behalf and attempt to purchase alcohol. The transaction is monitored by the Police, and evidence obtained by audio recording and witness statements. LED (Liquor Enforcement Division) has issued guidelines for conducting these compliance checks and also for the corresponding penalties. Council has adopted the penalty structure by ordinance (Ordinance No. 2-2011, updated by Ordinance No. 13-2018).

The City is required to notify the licensees that the City conducts these checks. Licensees are given the Compliance Check letter annually at the renewal inspection.

The first step upon a compliance check failure is for the Prosecutor, Police Officers, City Clerk, and Licensees to meet for a pre-hearing stipulation conference. The Prosecutor and Police review the facts as they occurred. In most cases, the Licensee stipulates that the violation occurred and agrees to the penalty proposed by the Prosecutor. A Stipulation Agreement is then signed, and presented to Council for final action. At this point, Council may approve the stipulation as presented, or call for a hearing. The hearing is conducted as a more formal quasi-judicial hearing than that for actions on a license application, with witnesses being sworn before giving testimony, and the hearing officer holding the prosecution to a higher standard with respect to hearsay testimony.

C. Show Cause Hearings

Other types of violations are less common, but also more severe. They originate through Department investigations, and are brought to Council through the City Clerk as a request for a Show Cause Hearing.

“Show Cause Hearing” is short for “a hearing to show cause why the license should not be suspended or revoked.”

These are generally more severe than compliance check hearings, and generally bypass the prehearing stipulation meeting process and go straight to a Show Cause Hearing.

Procedure: The hearing procedure, again, is not defined in detail, but Regulation 47-600 does provide some guidance. You will rely on your City Attorney or hearing officer for procedural direction.

For extremely egregious violations, there is a provision for Summary Suspensions. This would be a situation where allowing the license to operate would jeopardize the safety, health, or welfare of the public. In this situation, the license may be summarily suspended immediately. No later than 15 days after suspension, a hearing must be held to determine the permanent sanction for the license. From there, the process proceeds just as any other violation hearing.

D. Penalties

Penalties for minor violations are specified in your Ordinance. For more serious violations, penalty may include a suspension of up to six months or revocation of the license.

Under certain circumstances, a Licensee may be eligible to pay a fine in lieu of serving an active suspension. This applies to the less serious offenses, and requires that the Licensee generally not be a repeat offender. These circumstances are included in the penalty ordinance.

In addition to administrative sanctions you make take against a Licensee, the person committing the violation is subject to criminal charges. Council has an ordinance specifying that serving to a minor carries a minimum \$500 fine.

E. Appeals

Any LLA action may be appealed. The process for appeals can be found in Rule 106 of the Colorado Rules of Civil Procedure. Appeals must be filed in the District Court within 30 days pursuant to C.R.S. § 12-14-802 (§ 44-3-802 after October 1, 2018).

VII. BOARDS

The Council may establish boards or commissions to serve solely in an advisory capacity. Unless otherwise required by law, such boards or commissions shall be appointed by the Council.

The Council shall establish and maintain a Planning and Zoning Commission whose powers and duties are prescribed by ordinance in a manner consistent with the Charter and the requirements of State statutes.

No person shall be eligible for appointment to office as a member of board or commission unless at the time of appointment the appointee is a qualified elector of the City or if a resident of Alamosa County own property within the city, own a business located within the city, or be employed full-time within the city. Members of the Planning Commission and the Personnel Board shall be registered electors of the city. If any office-holder for the City shall cease to be a qualified elector of the city or not meet the criteria as a county resident, the office held forthwith and automatically shall be deemed to be vacant.

Any person may serve on more than one City board or commission at a time, so long as doing so does not create scheduling conflicts. Any current board or commission member desiring to apply to another board or commission, must submit an appropriate application form for that board or commission.

Except for the Planning Commission, which has certain decision making powers conferred by Charter and Ordinance, and other boards or commissions which may have decision making powers defined by Charter or ordinance, each board or commission enumerated herein shall act solely as an advisory group to the City Council and City Manager regarding the betterment of administrative operations within its field and as to any specific problems referred to it by ordinance, resolution, motion or by the City Manager.

Appointment – Appointments to a City Advisory Board shall be by ballot and shall only be effective when appointed by a majority of Council present at a meeting for which a quorum has been declared. In no circumstances, will a board member be seated who has had less than three councilors vote for their appointment.

- a. All ballots shall include a “none of the above” option for the Council. The candidates and none of the above line shall be referenced as “council options” below.
- b. When appointing for one vacancy with two candidates the candidate receiving votes from a majority of the Council present shall be appointed.
- c. In the event the “none of the above” line receives a majority of the vote, then no candidate shall be appointed.
- d. If multiple candidates exist for a single vacancy then the voting may occur in rounds.
- e. If after the initial vote, none of the Council options shall have received a majority vote, then a second round shall occur.
- f. In the instances of multiple candidates, the top two vote getters from the Council options shall proceed to the next round. This shall continue until a candidate is selected or Council directs staff to re-advertise the opening.
- g. When multiple vacancies occur with multiple candidates, then Council shall proceed as listed above with the understanding that no candidate shall be appointed who has not received a majority vote from the City Council.
- h. Order of Appointments
 - i. When appointing both a regular position and an alternative, the regular position should be selected first as a separate ballot. The Council can then work to appoint an alternate, or not, from the remaining candidates through subsequent votes.

- ii. When making appointments of varying length, the longest term shall be voted first with the shortest term voted last as separate actions of the Council.
- i. Once all ballots have been counted, Council will affirm those votes by a voice motion ratifying the selection done by ballot.

Removal – a board member may be removed by Council action, or by abandonment of the position. The information below outlines when and under what circumstances this will occur.

- a. Removal: A majority of the City Council may remove any appointed board member at any time for good and sufficient cause. Cause shall include, but be not limited to, violations of the conflict of interest policy of the City; any violation of any applicable law, regulation or policy; neglect of duty; and actions that reflect poorly upon the City.
- b. Abandonment of the Position – a position shall be considered abandoned if the board member has more than three unexcused absences in 12 months or misses half of the meetings held within 12 months excused or not.
 - i. The following shall constitute grounds for an excused absence:
 - 1. Serious illness or injury
 - 2. Maternity leave
 - 3. Serious family emergencies
 - 4. Religious observances
 - 5. Jury duty
 - 6. Work conflicts outside of normal duties such as required training or emergencies
 - 7. The affected board or commission may also excuse absences in cases where they make a finding that an unusual hardship justifies excusing an absence or absences.
 - ii. Excused absences shall only be approved if a member of the board or commission calls the Secretary for each board or commission twenty- four (24) hours before the meeting to explain the absence, except as those absences the reason for which does not arise at least twenty- four (24) hours ahead of time, or absences which arise under circumstances which make it impossible for a board or commission member to give advance notice.
 - iii. The Secretary for each board and commission shall record attendance in the official minutes of the advisory board and indicate if an absence is excused.
 - iv. The Secretary for each advisory board shall monitor attendance requirements for non-compliance. Upon notification of such non-compliance, the City Clerk shall submit a report to the City Council for appropriate action.
 - v. At the request of any member of the City Council, the City Clerk shall agendize consideration of removal of any board or commission member who has not met the attendance requirement established by the City.

- vi. All applicants for membership of a board or commission shall be notified prior to City Council appointment regarding time requirements for serving and the policy regarding removal.
- vii. Candidates whose schedules will preclude them from serving on their desired board shall not be appointed with caveats that boards change their times to accommodate them. Boards may change their times and places of meeting in conjunction with the City Clerk, but shall not be compelled to do so.

PLANNING AND ZONING COMMISSION: The recommendation of Planning Commission regarding the approval or denial of a special use review application routinely shall be placed on Council's Consent Calendar for summary action. Removal from the Consent Calendar should be for the following limited purposes:

- To consider whether the record before Planning Commission is sufficient to support the recommendation; or
- To consider returning the question to Planning Commission for further public hearing if it appears that material information was not reasonably available for consideration at the public hearing before Planning Commission; or
- To allow City Council to discuss whether City Council concurs with the conclusions drawn by Planning Commission, based exclusively on the record of Planning Commission's proceedings, especially when the recommendation was the product of a split vote of the Planning Commission; or
- To schedule the matter for an additional public hearing before City Council, but only if extraordinary circumstances warrant such action.

VIII. DEPARTMENTS

The Council by ordinance may create, change, and abolish offices, departments or agencies, other than the offices, departments and agencies established by the City's Charter.

All departments established by the Council shall be under the direction and supervision of the City Manager. Directors of such departments shall be appointed by and responsible to the City Manager. Exception to this would be the City Clerk's Office and Municipal Court, which shall be under the direction of the City Clerk. Two or more departments may be headed by the same person, and the City Manager may serve as director of one or more departments.

The City Manager shall also have the power, whenever the interests of the City require, to assign any employee of one department to the performance of duties in another department.

The current organization structure can be found on Exhibit D, Organizational Chart.

It is the policy of City Council that the salary for the City Manager, City Clerk, Municipal Judge, City Attorney, and Municipal Prosecutor be adjusted in the same manner afforded other City employees whenever across-the-board or cost-of-living adjustments are made. The salary and benefits for these Council-Appointed employees are set by separate contract. Unless otherwise stated in the contract, these positions are subject to general City personnel policies.

IX. ORDINANCES, RESOLUTIONS, AND MOTIONS

A. DEFINITIONS

Ordinances: Those legislative acts of the Council permanent in nature shall be by ordinance. An ordinance may be introduced by any member of the Council at any regular meeting, or at a special meeting wherein said proposed ordinance appears on the agenda for the meeting.

The most formal and dignified act taken by the Council is the passage of an ordinance. It is generally recognized that the ordinance is distinctly a legislative act which prescribes some permanent law or conduct of government. Charter requires that inter-governmental agreements be done by ordinance. See Code of Ordinances Art. III, Sec.21.

Resolutions: The Council may act on matters of a transitory or limited scope by resolution. A resolution may be adopted at the meeting at which it is presented after only one reading. Almost any act not required by ordinance may be in the form of a resolution. In this respect, it can be broadly stated that a resolution represents an act done through the ministerial powers of the Council, and is either limited in scope to less than all residents of the City, or is temporary in nature as opposed to legislative power and permanency represented by an ordinance.

Motions: Motions, as used in parliamentary procedures, constitute the formal tool for taking action. Motions are used in adopting resolutions and passing or amending ordinances. Motions are also useful in acting on business not requiring an ordinance or resolution.

B. PROCEDURE TO PASS AN ORDINANCE

An ordinance may be introduced at any regular or special meeting and be read a first time, and a day and hour set at which time the Council or a committee shall hold a public hearing thereon. Such hearing may be at a regular meeting of the Council, or at such time and place as the Council may order, and may be adjourned from time to time. An ordinance may be read and finally passed at any regular or special meeting of the Council following the meeting at which it is introduced. Such final reading and passage of an ordinance may be at the same meeting at which such public hearing thereon is held. The reading upon introduction or upon final passage or both shall be in full unless the proposed ordinance shall be in writing or printed and a copy furnished to each Councilor at least three days prior to such reading.

Except as otherwise provided herein, every proposed ordinance shall be published once in full in a daily newspaper of the city at least seven days before its final passage, unless Council finds, in the ordinance, that publication by title gives sufficient notice, in which case the ordinance may be published by title only. After such final passage it shall again be published once in full or by title, as appropriate, in a daily newspaper and shall not take effect until ten days after publication

following final passage unless another date is specified therein; except that an emergency ordinance shall take effect upon publication following passage.

Emergency Measures: No ordinance shall be passed finally on the date it is introduced, except in cases of emergency, for the preservation of the public peace, health, or property, and then only by two-thirds vote of the Council present. The facts showing such urgency and need shall be specifically stated in the measure itself. No ordinance making a grant of any franchise or special privilege shall ever be passed as an emergency measure.

X. FINANCIAL ADMINISTRATION

A. FISCAL YEAR

The fiscal year of the City of Alamosa begins on the first day of January of any calendar year and ends on the last day of December of that calendar year.

B. BUDGET

On or before the first Monday in October of each year, the City Manager shall submit to the Council a proposed budget for the next ensuing budget year with an explanatory message. The proposed budget shall provide a complete financial plan for the City and shall include the following:

- a) Proposed expenditures for each office, department and agency for the ensuing fiscal year.
- b) Debt service requirements for the ensuing fiscal year.
- c) An estimate of the amount of anticipated income from all sources other than taxes on property during the ensuing fiscal year, including estimated cash surplus at the end of the current year.
- d) The probable amount required to be levied and raised by property taxes during the ensuing fiscal year.
- e) A general budget summary.

The budget shall be in detail and show for each fund estimated revenues by source and estimated expenditures by organization units, activities, character, and object. The budget shall be so arranged as to show comparative figures for receipts and expenditures for the last completed fiscal year, for the current year, and the City Manager's recommendations for the ensuing year.

The budget estimates shall be a public record and open to the public for inspection and copy. The Council shall, within ten days after the filing of the budget estimates, set a time certain for public hearing thereon and cause notice of such public hearing to be given by publication. At the hearing all persons may appear and object to any or all items and estimates in the proposed budget. Upon completion of the public hearing Council may revise the budget estimates.

After said public hearing and before the last day of October of each year, the Council shall adopt the budget for the ensuing fiscal year and shall fix the tax levy.

Upon said budget as adopted, Council shall, not later than the last day of October in each year, pass the "Annual Appropriation Ordinance" in which shall be appropriated such sums of money as Council deems necessary to defray all expenses and liabilities of the City during the ensuing budget year. The annual appropriation ordinance shall be based upon the budget as adopted but need not be itemized further than by departments and the major divisions thereof, and by each independent office and agency.

C. BUDGET AMENDMENTS AND TRANSFER APPROPRIATIONS

The City Council may, by resolution, appropriate additional funds to any purpose recommended by the City Manager for expenditure during the budget year after the formal adoption of the budget. Such resolution must identify the source of additional funds, the purpose of the proposed expenditure, and whether the amendment is for an on-going or a one-time expenditure. The Council may by resolution, upon the recommendation of the City Manager, transfer and appropriate any unused balance of any general fund appropriation or portion thereof from one department or agency to another. All such transfers and appropriations shall constitute budget amendments.

ADMINISTRATION BUDGET APPROPRIATION TRANSFER: The City Council hereby authorizes the City Manager or the Director of Finance to administratively transfer appropriation between line items within a division within the following guidelines:

- a) Transfers must be within the same division and may not increase the total approved expenditures for that division.
- b) Transfers may be made between operational line items.
- c) Transfers will not be authorized, without Council approval, for transfers from operations to personnel.
- d) Transfers from personnel to operations must have City Manager approval.

The City Manager will notify City Council about any changes to total approved full-time positions, but formal action is not required.

D. CAPITAL IMPROVEMENT PLAN

As a part of the budget message or as a separate report attached thereto, the City Manager shall also present a plan of proposed capital projects for the ensuing year and the four fiscal years thereafter. Estimates of the cost of such projects shall be submitted together with suggested methods of financing the same.

In such proposed plan, the City Manager shall include only those projects previously considered by the Planning Commission, as provided in Article XIV of the Charter, but he/she may recommend the omission or deferment of projects proposed by the Planning Commission, giving his/her reasons therefor.

The Council shall consider the plan submitted by the City Manager and adopt a five-year Capital Improvement Plan, including estimated costs and methods of financing; provided, however, that projects shall be budgeted and appropriations made therefor only by including them in the budget for the ensuing year as provided in the City's Charter.

In order to facilitate the carrying out of the Capital Improvement Plan, Council may create a Capital Reserve Fund. Monies may be appropriated to this fund directly or transferred from the appropriate funds (General, Enterprise, and Recreation); may be accumulated and invested; and may be expended only for capital projects, including, but not limited to, the purchase of lands, buildings, or equipment and the construction or improvement of public works.

The Council adopts the Capital Improvement Plan by resolution.

E. PUBLIC FUNDING GUIDELINES

Application Process

The City's funding of non-profits will only be considered during the standard budget process. A request outside of the normal timeline will not be considered. The standard application period will generally run from July 1 through the early part of August. A standardized application will be posted on the City's website no later than July 1 of each year and will include the due date for the year in question. All requests must use the standardized application form. Requests not on the approved form or lacking the required backup will be rejected without further consideration.

Limits on requests

Due to the competitive nature of these requests and the Council's desire to assist as many as possible, the maximum request is \$40,000 and the minimum request is \$1,000.

Eligibility Requirements

As these funds are intended to assist non-profits that further the goals of the City, the City restricts these funds to non-profits as defined by the IRS 501(c) guidelines (note, need not have formal 501©(3) recognition from the IRS). Other governments or quasi governments are ineligible for funding. If an ineligible group desires to partner for a specific purpose that can be considered separately and will require the appropriate IGA. Eligibility requirements are as follows:

- Each organization shall be a registered, non-profit organization
- Each organization must demonstrate a need for the funds requested.
- Each project, event or organization must clearly benefit the community, and the activity must be municipal in nature.
- Matching funds from other sources may be required.
- Under normal circumstances, only one request per organization will be considered in a calendar year.
- The City of Alamosa will consider funding to organizations for new programs or the enhancement of existing programs.

- Funding may be considered for ongoing operational and maintenance costs.
- Organizations must demonstrate other active fund-raising efforts; i.e., list other possible funding sources contacted.
- Priority will be given to projects with matching funding.

The City Council will not consider requests for the following:

- Colleges or universities
- Individuals
- Scholarship programs
- Research projects
- Endowment campaigns
- State agencies
- Religious programs
- International or foreign-based programs
- Other Government or Quasi Government Agencies
- Mortgage payments or debt repayment
- Funds which would be re-granted to an agency other than the original requestor
- Unsupported requests (i.e., no methodology for the project amount) insufficient back up materials etc.

Once awarded, it is the responsibility of the successful applicant to submit a written request for funds awarded following January 1 of the ensuing year. Successful applicant organizations will be required to sign an approved contract for services. Funds will not be available until such contract for services is signed by both parties and on file with the City Clerk.

The City reserves the right to change this policy at any time. Additionally, this policy shall not be construed to obligate the City to fund any non-profits. The City may at its discretion decide not to provide any funding for outside groups. Additionally, funding in one year does not guarantee funding in future years.

F. INVESTMENT POLICY

It is the policy of City of Alamosa (“the City”) to invest public funds in a manner that will provide preservation of capital, meet the daily liquidity needs of the City, diversify City investments, conform to all local and state statutes governing the investment of public funds, and generate market rates of return.

This Investment Policy addresses the methods, procedures and practices which must be exercised to ensure effective and judicious fiscal and investment management of City funds.

Scope

This Investment Policy shall apply to all funds accounted for in the City Comprehensive Annual Financial Report.

Cash shall be pooled for investments purposes. The investment income derived from the pooled investment account shall be allocated to the contributing funds based upon the proportion of the respective balances relative to the total pooled balance in the investment portfolio.

Investment Objectives

City of Alamosa principal investment objectives are:

- Preservation of capital and protection of investment principal.
- Maintenance of sufficient liquidity to meet anticipated cash flows.
- Attainment of a market rate of return.
- Diversification to avoid incurring unreasonable market risks.
- Conformance with all applicable City of Alamosa policies, State statutes and Federal regulations
- Maximization of funds available for investment earnings consistent with the objectives outlined in this section.

Delegation of Authority

Pursuant to the *Charter of the City of Alamosa*, Art. V, Part B, Section 13, Council may by resolution determine monies that will not be needed for 90 or more days, and in its discretion invest such monies. Council shall enact a resolution at the beginning of each fiscal year setting the amount of money required to be held in cash or cash equivalents to satisfy the intent of this Charter requirement, and directing the Finance Director, in consultation with the Investment Committee established below, to invest any remaining balances consistent with this Investment Policy. The Finance Director is vested with responsibility for managing the City investment program and for implementing this Investment Policy. The Finance Director may delegate the authority to conduct investment transactions and to manage the operation of the investment portfolio to other specifically authorized staff members. No person may engage in investment transactions except as expressly provided under the terms of this Investment Policy.

The Investment Committee shall consist of: two City Council Members appointed by Council, the City Manager, the City Attorney and the Finance Director. The Investment Committee shall review the City's procedures related to investments, designed to prevent losses of public funds arising from imprudent investments. Pursuant to Art. V, Part B, Section 13 of the Charter, the Council, or any member thereof, the director of finance, and the members of the Investment Committee shall not be personally liable to the City for any loss incurred through the investment of any funds as herein provided, except in the case of fraud or willful and wanton misconduct.

City of Alamosa Investment Committee or Finance Director may engage the support services of outside investment advisors with respect to its investment program, so long as it can be demonstrated that these services produce a net financial advantage or necessary financial protection of City financial resources. Such services may include engagement of financial advisors in conjunction with debt issuance, portfolio management, third party custodial services, and appraisals by independent rating services.

Prudence

The standard of prudence to be used for managing City investment program is the “prudent investor” standard applicable to fiduciary, which states that a prudent investor “shall exercise the judgment and care, under circumstances then prevailing, which men of prudence discretion, and intelligence exercise in the management of property of another, not in regard to speculation but in regard to permanent disposition of funds, considering the probable income as well as probable safety of capital. “(Colorado Revised Statutes 15-1-304, Standard for Investments.)

The City’s overall investment program shall be designed and managed with a degree of professionalism that is worthy of public trust. The City recognizes that no investment is totally without risk and that its investment activities are a matter of public record. Accordingly, the City recognizes that occasional measured losses may occur in a diversified portfolio and shall be considered within the context of the overall portfolio’s return provided that adequate diversification has been implemented and that the sale of a security is in the best long-term interest of the City.

The Investment Committee and other authorized persons acting in accordance with established procedures and exercising due diligence shall be relieved of personal responsibility for an individual security’s credit risk or market price changes.

Ethics and Conflicts of Interest

City employees involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the City investment program or that could impair or create the appearance of an impairment of their ability to make impartial investment decisions. Employees shall disclose to the Investment Committee any material financial interest they have in financial institutions that conduct business with the City, and they shall subordinate their personal investment transactions to those of the City.

Authorized Securities and Transactions

The *Charter of the City of Alamosa* provides, at Art. V, Part B, Section 13, that investments may be made in securities permitted by the statutes of Colorado governing investment of public funds, or in bonds payable out of the revenues of any service or facility furnished by the city; or in general obligation bonds of the city. All investments will be made in accordance with the Colorado Revised Statutes as follows: C.R.S. § 11-10.5-101, et seq. Public Deposit Protection Act; C.R.S. § 24-75-702, local governments –authority to pool surplus funds, and C.R.S. § 24-75-601.1, legal investment of public funds, as those statutes may be amended from time to time. A copy of the statutes is included as Appendix I.

The limitation herein on authorized securities and transactions shall be strictly interpreted. The City may, from time to time issue bonds, the proceeds of which must be invested to meet specific cash flow requirements. In such circumstances and notwithstanding the paragraph immediately above, the reinvestment of debt issuance or related reserve funds may, upon the advice of Bond Counsel or financial advisors, deviate from the provisions of this Investment Policy with the written approval of the Finance Director and City Manager.

Investment Diversification

The City shall diversify its investments to avoid incurring unreasonable risks inherent in over-investing in specific instruments, individual financial institutions or maturities. Nevertheless, the asset allocation in the investment portfolio shall be flexible depending upon the outlook for the economy, the securities markets and the City's anticipated cash flow needs.

Investment Maturity and Liquidity

The investment portfolio shall remain sufficiently liquid to meet all cash requirements that may be reasonably anticipated. To the extent possible, investments shall be matched with anticipated cash flows and known future liabilities. Investments shall be limited to maturities not exceeding five years from the date of trade settlement.

Competitive Transactions

All investment transactions shall be conducted competitively with broker/dealers. At least three broker/dealers shall be contacted for each transaction and their bid or offering prices shall be recorded. If the City is offered a security for which there is no other readily available competitive offering, quotations for comparable or alternative securities will be documented.

Performance Benchmarks

The investment portfolio shall be designed to attain a market rate of return throughout budgetary and economic cycles, taking into account prevailing market conditions, risk constraints for eligible securities, and cash flow requirements. The performance of the investment portfolio shall be compared to the average yield on the U.S. Treasury security that most closely corresponds to the investment portfolio's weighted average effective maturity. When comparing the performance of the investment portfolio, all fees involved with managing it shall be included in the computation of its rate of return net of fees.

Reporting

The Finance Director will submit, at minimum, a quarterly report to the City Council listing the investments held by the City, book values of the investments and performance results. The report shall include a summary of investment earnings during the period.

G. CASH MANAGEMENT

- A. Cash Pool. All monies from all of the City's different funds are centralized in the City's main checking account (pooled account) unless stipulated under federal or state provisions to be segregated or as required for special projects. For financial reporting purposes, the monies are reported in the appropriate fund. Interest earned by the pool is proportionately divided among the funds based on their month-end cash balance.
- B. Centralized Depository. Various City departments have the capability to accept cash

payments. Monies collected are forwarded on a recurring basis, as determined by the Finance Director, to the Finance Department which performs the actual depository function. A deposit is made daily to ensure funds are available for immediate use or investment. Monies collected after the deposit is made are kept secure in a locked vault with access limited to authorized personnel.

- C. Check 21. The City accepts substitute checks that meet the standards as outlined under the Check Clearing for the 21st Century Act (Check 21 Act). Any checks that are not in compliance with the promulgated standards will be subject to refusal of acceptance.
- D. Credit Card. The City maintains compliance with the Payment Card Industry (PCI) data security requirements for security controls over customer card data.
- E. Receivables. The City actively pursues collection on returned checks and bad debts. Returned checks are subject to additional processing costs incurred by the City as approved by City Council. Checks will not be accepted from individuals who have not satisfied outstanding debts or who have a history of writing bad checks. Procedures for the collection of delinquencies conforms with the provisions of the Fair Debt Collection Practices Act Subchapter V, Section 1692 of the U.S. Code, which requires the elimination of abusive debt collection practices, limits communications with debtors, prohibits harassment or abuse, prohibits unfair practices, requires written validation of the debt, provides for civil liability of debt collectors and uses the Federal Trade Commission to enforce its provisions. Special tax liens are instigated against real property whose owners have failed to pay debt obligations to the City related to that specific property.
- F. Cash Flow Monitoring. Temporarily idle cash is invested until needed. Cash inflows and outflows are monitored to ensure that the supply of liquid cash is available to meet appropriation requests. During peak periods, cash outflows increase and cash on hand is generally maintained at a level to meet three months of appropriation requests. Cash flow monitoring ensures the City has the ability to meet future cash requirements and eliminates the need for short-term borrowing in addition to maximizing the time available for investment.
- G. Investment Policy. The City has adopted an investment policy that provides for preservation of capital, meets the daily liquidity needs of the City, diversifies the City's investments, conforms to all local and state statutes governing the investment of public funds, and generates market rates of return. Investments shall be made in conformance with the policy, which shall be reviewed from time to time by the City's Investment Committee.
- H. Fund Balance Policy. The City shall adopt a fund balance policy to ensure adequate levels of fund balance are maintained to mitigate current and future risks, meet emergency obligations, avoid interruptions in cash flow, generate interest income, and maintain a sound bond rating. In addition to the TABOR requirement, the City maintains an additional 5% fund balance reserve.

- I. Vendor Disbursements. Cash disbursements are typically made on a weekly basis, with checks being prepared only after approval of the check request according to the City's Purchasing Policy. Exceptions to the weekly disbursement cycle include the need for an advance check or for an electronic transfer for payment of payroll taxes, bonds, bond fees, sales tax remittance, etc. The City strives to make timely payment and take advantage of every applicable discount possible and avoid the payment of late fees.
- J. Payroll Disbursements. Payroll is performed bi-weekly. City employees are required to have their payroll checks to be directly deposited into their respective bank accounts.
- K. Check Fraud Protection. The City secures its check stock in a locked location with access limited to authorized personnel. Two authorized signatures are required on all checks disbursed. Duties are segregated among the staff for initiating, authorizing, preparing, signing, mailing payments and reconciling bank statements.
- L. Unclaimed Property. All refunds of monies are remitted back to the rightful owners as applicable. The City makes every possible effort to find the owner of property; if refunds are "abandoned" or go unclaimed, the City will remit unclaimed property to the Great Colorado Payback or Energy Outreach Colorado, depending upon the type of unclaimed property.

H. Grants Management

Funding through grants is encouraged as a means of financing a project or one-time expenditures. The City should, however, discourage the use of intergovernmental grant assistance for routine, ongoing operational costs where programming may be cancelled if grants are not sustained. If personnel is funded through an ongoing grant source, such personnel shall be notified that continued availability of that position is contingent upon future availability of grant funding. Costs associated with grant reimbursements shall be separated into general ledger accounts or groups of accounts as is appropriate according to the specific grantor requirements.

- A. Conflict of Interest. No employee or official of the City shall have any interest, financial or otherwise, direct or indirect, or have any arrangement concerning prospective employment that will, or may be reasonably expected to, bias the design, conduct, or reporting of a grant funded project on which he or she is working. It shall be the responsibility of the Grant Administrator for each particular grant-funded project to ensure that in the use of sponsored funds, officials or employees of the City and nongovernmental recipients or sub-recipients shall avoid any action that might result in, or create the appearance of:
 - 1) Using his or her official position for private gain.
 - 2) Giving preferential treatment to any person or organization.
 - 3) Losing complete independence or impartiality.
 - 4) Making an official decision outside official channels.
 - 5) Affecting adversely public confidence in the grant funded program in particular and

the City in general.

B. Accounting and Reporting.

- 1) The accounting system will separate revenues and expenditures by funding source for all grants. The accounting system will break down revenues and expenditures for each individual grant via the project system and supporting documentation will be maintained in the financial system for all grant expenditures, as is required of all expenditures.
- 2) The accounting system has a project system that tracks all revenues and expenditures by the specific grant or project by line item or by broad category as may be included in a grant application budget. Grant Administrators will reconcile on a regular basis to ensure all revenues and expenditures are being appropriately coded to the correct grant. Project system reports can be run to accommodate different grant time periods that may differ from calendar year reporting.
- 3) Federal grant funds will not be commingled with funds from other Federal grants or other local match money. When applicable, any matching funds for a grant will be tracked by the department responsible for the grant and will only include items that directly correlate to an approved activity identified in the grant proposal or grant agreement.
- 4) Capital assets are tracked through the fixed asset system and, if a grant has purchased a capital asset, that fact will be noted in the fixed asset system using the project system identified above. The City also tracks related award information as required per 2 CFR 200, §200.313(d), Management Requirements.
- 5) Only allowable costs will be allocated to a grant.
- 6) Grants will only be budgeted when a grant award letter or statement of grant award has been received.
- 7) City departments are responsible for all aspects of the grant process including planning for grant acquisition, preparing and submitting grant proposals, preparing Resolution requests to accept funds, developing grant implementation plans, managing grant programs, preparing and submitting reports to grantors, and properly closing out grant projects. Department staff and Finance staff will maintain a close working relationship with respect to any grant activity to ensure a clear understanding of the project status.

C. Documentation. All grant expenses must comply with the terms set forth in the grant application, grant award letter, City procurement policies and the guidelines in the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), 2 CFR

200.

1) Documentation for all expenditures must be retained by the department for audit purposes and shall include:

- Timesheets certified or signed by the employee and approved by their supervisor and/or project director for all payroll expenses, with grant name and number or other unique identifier tied to the appropriate time entries.
- Purchasing documents for expenditures (if necessary based on dollar amount of purchase).
- City, state or governmental agreement number.
- Formal bids for all purchases requiring such a process per City or Federal regulation, and price or rate quotation documentation for all purchases that do not exceed the Simplified Acquisition Threshold on Federally funded grants per 2 CFR 200, §200.320(b).
- Detailed receipts or invoices, with grant name and number or unique identifier marked on the invoice.
- General Ledger detail showing revenue and expenditure activity, reviewed on a regular basis, and reconciled to detail provided to granting agencies.

2) The City's Finance Department, with the assistance of specific grantee City departments, shall maintain the following information:

- Identify, through a project and account structure, all federal awards received and expended and the federal programs under which they were received. All awards should be identifiable by the Catalog of Federal Domestic Assistance (CFDA) title and number, award number, award year, name of federal agency, and the name of the pass-through agency (if applicable).
- Maintain internal control over federal programs that provides reasonable assurance that the grantee is managing the award in compliance with the laws, regulations, and the provisions of the contract or grant agreement.
- Comply with laws, regulations and the provisions of contract or grant agreements related to each grant award.
- Prepare required financial statements, including financial statements that

reflect the entity's financial position, results of operations or changes in net assets, and where appropriate, cash flows for the fiscal year audited. In addition, a schedule of federal assistance will be prepared for the external auditors which includes all federal grants.

- 3) Grant documents should be read carefully to ensure compliance with all grant requirements. Additional documentation may be required under the terms and conditions of the specific grant award to include, but not limited to, procurement justification, grant reconciliation frequency, cash match calculation and tracking, and records retention.
- 4) Grant administrators are responsible for confirming that the information in the financial system is accurate as outlined above.

D. Audit. Per OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR 200 §200.501, all non-federal entities that expend \$750,000 or more in a year on Federal awards, either as the grantee or the sub-grantee, shall have a single or program-specific audit conducted for that year in accordance with the provisions of the Uniform Guidance. The single audit encompasses both the entity's financial statements and the Federal awards received by the entity; whereas a program-specific audit will audit one Federal program and can only be used when the grantee receives grant awards only from one Federal program. The City contracts with an external firm to conduct a single audit for years where that is required. The awarding agency may also specify additional audit requirements in the grant award letter or grant guidance. The Finance Department, with the assistance of the specific grantee City departments, shall follow up and take corrective action on all audit findings.

I. Internal Controls

A. City management is responsible for establishing and maintaining an internal control structure. The internal control structure is designed to provide reasonable, but not absolute, assurance that the following objectives are met. The concept of reasonable assurance recognizes that the cost of control should not exceed the benefits likely to be derived and that the evaluation of costs and benefits requires estimates and judgments by management. We believe the City's internal control structure adequately safeguards assets and provides reasonable assurance of proper recording of financial transactions. Internal controls are defined as the organization and methods used to:

- 1) Safeguard assets from loss by fraud or by unintentional errors;
- 2) Assure the reliability of the accounting data which management may use in making decisions; and
- 3) Promote operational efficiency and encourage adherence to adopted policies.

- B. The City will utilize the INCODE 10 accounting software system to maintain its financial accounting and reporting. All records and reporting will be in accordance with GAAP. The City will maintain an accounting system which provides internal budgetary and accounting controls designed to provide reasonable assurance regarding both the safeguarding of assets against the loss from unauthorized use or disposition and the reliability of financial information used in preparation of financial statements and reports.
- C. An independent certified public accounting firm will perform an annual audit and will publicly issue a financial opinion and a statement on internal controls. A management letter will be part of this report.
- D. The City will maintain and update procedures designed for position control, as it relates to authorized positions, hours budgeted and worked, and filling vacancies. All positions dependent on grant funding will require the employee to verify their understanding that if grant funding decreases or ends, their compensation will also decrease or end.
- E. The Finance Department will maintain a fixed assets inventory for assets greater than \$5,000. Capitalization thresholds will not be applied to groups of similar items if they individually do not meet the capitalization criteria.
- F. City Departments will maintain an inventory of items that require special attention to ensure legal compliance. Legal or contractual provisions may require a higher than ordinary level of accountability over certain items (i.e., items acquired through grant contracts).
- G. City Departments will maintain an inventory of theft sensitive items (i.e., computers, laptops, monitors).
- H. The City Departments will maintain an inventory of items that require special attention to protect public safety and avoid potential liability (i.e., Police firearms).
- I. Internal control procedures should be formally documented and reviewed periodically, and a Fiscal Internal Control Worksheet shall be updated as changes occur.

J. FACADE IMPROVEMENT GUIDELINES

Facade improvements represent an effort and an investment by building owners to improve the aesthetic of the community. The following guidelines outline eligibility requirements and procedures for use of such funds.

1. The applicant will need to provide the City appropriate backup for the expenditures such as a signed contract for improvements or invoices matching the application form. Financing including

personal funds must be two times the amount of the requested grant. For example, if a grant in the amount of \$500 is requested, other financing must equal at least \$1,000.

2. Participant must fill out a form identifying the private source of funding and include plans for work to be done. Funds will not be available for such items as power washing sidewalks, moveable furniture, etc. All improvements must be to an actual building and visible to the public. Interior improvements are not eligible for the grant. The City will fund buildings for improvements that have previously been improved using City funds, but priority will be given to those who have not been previously provided funding. City funds may only be used for facade improvements, specifically materials.

3. While not as competitive as façade and structural improvements, signs are eligible for funds.

4. Minimum Grant \$500. Maximum grant \$5,000.

5. All facilities to be improved must be within city limits, specifically within the City's Downtown Overlay District or in a Commercial Business Zone.

6. Applicants must present City staff with the application form and its required attachments. Successful applicants will be able to provide the City with necessary invoices and documentation to show the City funds were spent on the required items. All improvements using City funds must be completed within one year of award. Funds will be provided on a reimbursement basis. Funds will only become available after the City and applicant sign an award letter. The City reserves the right to limit the number of participants or the total amount available in any year. While the City typically sets aside \$20,000 for this program, funding is dependent upon Council action. The City reserves the right to suspend the program at any time and the submittal of an application is not a guarantee of funding or of funding availability.

K. ROLLING STOCK CAPITAL IMPROVEMENTS FUND

The City of Alamosa has established a Capital Improvement Fund, in part, to accumulate resources to purchase rolling stock. The Fund shall accumulate resources from the sale of rolling stock, interest earnings and cash transfers from the various divisions of the City. All cash transfers into the Fund need Council approval. This can be accomplished either in the annual budget or by amendment to the budget. A separate accounting of each division's transfers in, sale of rolling stock, interest earnings and transfers out will be maintained for the Capital Improvement Fund.

No rolling stock will be purchased in the Capital Improvement Fund. To purchase rolling stock, cash will be transferred from the Fund to the originating division's budget. All cash transfers to the Fund, along with revenue generated from the sale of rolling stock and interest earnings, may be transferred back to the originating division's budget and expended for rolling stock in that division at the request of the department director.

Council approval for the appropriation of funds is necessary and the request may not exceed the cash accumulated in the Fund for that division.

Transfers from the Capital Improvements fund to the originating division budget will be via an appropriation transfer request and budget amendment.

L. LONG RANGE FINANCIAL PLANNING

City Council prepares long-range financial plans for each of the City's major funds (General Fund, Community Recreation Fund, and Enterprise Fund) and updates those plans periodically. The Council intends to maintain, at a minimum, an estimated eight percent of projected expenditures unreserved cash balance at year end throughout the long-range financial plan. When approval of additional appropriations is requested of Council the effect on the long-range financial plan should be considered. A requested appropriation that would cause the estimated end of year cash reserve in any year of the long-range financial plan to drop below eight percent needs to be submitted with a plan to insure the fiscal stability of the major fund's financial position. During the budget process, City Council will evaluate the cash balance to determine if adequate levels of cash are maintained based on the economic conditions of the area or other circumstances.

For the general governmental funds, the long-range financial plan should cover a 10-year planning horizon. For the Enterprise fund, the plan should reflect a 5 year planning horizon. The difference in length of view comes from the enterprise funds capital intensive nature, its fluctuating costs of service for such items as electricity and chemicals, and its flexibility with rates.

Revenues for all plans should be projected at a conservative level, for example, using a 3 or 5 year rolling average to account for economic cycles. In no instance should this policy be construed to keep staff from making adjustments to a projection based on current market conditions or regulatory changes. It is Council's desire that all projections be conservative in nature.

Expenditures should be analyzed for trends to assure that the City is not realizing unanticipated increases. The hiring of full-time personnel has the potential to impact the budget most significantly. As such adding staff should only be done after careful consideration of the impacts.

Enterprise fund rates should be analyzed periodically to assure that costs are in line with other utilities costs and revenues should be adjusted appropriately.

XI. COUNCIL EXPENSES

At times Councilors are required to travel in the course of their service to the City. City Councilors shall be reimbursed in the same fashion as employees for official business. See Exhibit G.

Each fiscal year, incumbent Council Members will be able to choose City clothing up to \$50 in value and new Council Members will be able to choose City clothing up to \$100. Following their election/reelection, Council Members can choose between a City issued tablet or phone.

For the annual Colorado Municipal League meeting, it is the policy of the City to pay for reasonable meal expenses (for those meals provided as part of the Conference and requiring prepayment at the time of registration) for a spouse who travels with the Councilor. The spouse is not entitled to per diem outside of these meals. The City will not reimburse or pay for other expenses related to tours generally offered at the summer conference.

The City may pay for expenses related to a retirement open house type of event. Any food purchased with City funds should represent light snacks rather than a meal, with a total cost not to exceed \$400. Under no circumstances shall City funds be used to purchase alcohol. Where possible, the event should take place in City facilities to eliminate the need for building rental. If a more elaborate event is desired, the cost will be paid by those attending the function. (i.e. if the event is dinner in a restaurant, each person would pay for their own meal).

An employee may be honored under this policy if he/she has 8 or more years of service to the City; and it may apply to retiring Council Members at Council's discretion.

XII. PERA

PERA (Public Employees Retirement Association) is the retirement plan subscribed to by City employees and City Council Members. Council Members are not eligible for Social Security.

XIII. PROFESSIONAL ORGANIZATIONS

Each Council Member receives a membership to the Colorado Municipal League. This includes a subscription to the CML, and a standing invitation to the League's annual meeting.

XIV. CONFLICTS OF INTEREST

Conflicts of interest arise when a Council Member's personal or private interests are involved in matters coming before the City, and the Councilor is in a position to derive private benefit from actions taken in his or her official capacity or from actions brought before City boards, commissions, or staff over whom he or she has direct or indirect authority. In order to assist Council, staff is willing to point out potential conflicts of interest to individual Council Members on items they are aware of based on previously submitted individual Council information pertaining to business interests, income sources, property, and potential family interests. However, there is no possible way for staff to anticipate every potential conflict so Council Members should remain diligent in their efforts to avoid conflicts of interest. The following is a guideline for determining and addressing conflicts of interest.

1. The Council as a whole and individual Councilors strive to serve the citizens of Alamosa with the highest ethical standards in carrying out their duties as Council Members.

2. Council Members are governed by, and abide by, ethical principles set out in State Statute, Charter, and City Ordinances. In particular, the following ethical principles govern the conduct of Council Members (Exhibit H):
 - a. The Code of Ethics found at C.R.S. § 24-18-101 et seq.
 - b. The Municipal disclosure and abstention statute found at C.R.S. § 31-4-404(2) and (3). This statute mimics the provisions of C.R.S. § 24-18-109(3).
 - c. Charter Article III, Section 10
 - d. Code of Ordinances Section 2-17(9).
3. The purpose of this policy is not to supplant these provisions, but to provide guidance in situations where the application of the provisions may be unclear. This policy is intended to be more restrictive than the statutory and ordinance provisions referenced above. No set of policies can prescribe action in every situation that may come before a Councilor. In any determination of whether a conflict of interest exists, the guiding principle shall be to ensure that any decision made by Council is made impartially, with no bias on the part of any Council Member.
4. Council Members have an obligation under City Charter and general principles of good government to vote on every matter that comes before Council, unless they have a conflict of interest.
5. Instances where Council Members have direct financial interests, as defined in C.R.S. § 24-18-102(4) provide clear conflicts of interest, and Council Members will disclose the nature of their financial interest and shall be excused from and refrain from voting or participating in the discussion of such issues.
6. Employment interests, as defined in § 24-18-102(4)(c) can provide potential for conflict which is less clear. C.R.S. § 24-18-109(2) prohibits a Councilor from performing an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he/she either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent. To clarify such situations, the following principles shall apply
 - a. For purposes of this policy, a Councilor shall not only refrain from performing official acts as addressed in C.R.S. § 24-18-101 et seq, where the Councilor has a conflict of interest, but also from performing any act where the City is party to the act. In other words, a Councilor with a conflict shall not only refrain from matters coming before Council, but also before boards, commissions, and City staff.
 - b. Unless the conflicted Councilor is a management level employee, it shall not be a conflict to perform an official act relating to an employer of the Councilor, where the act does not result in a direct economic benefit to the employer. For example, a Councilor may vote on a zoning request of his or her employer, but may not vote on a request concerning taxation, or a request for a waiver of fees. A councilor may not vote on a contract relating to the Councilor's employer, pursuant to provisions of the Code of Ethics. As noted in the introduction to this paragraph 6, where the Councilor is engaged as counsel, consultant, representative, or agent of a party with a matter before the City, the Councilor has

- a conflict of interest no matter the nature of the matter for which the Councilor is engaged.
- c. Where a Councilor's employer is in front of Council as an agent for another entity (ex. an attorney or architect), it shall not be a conflict to perform an official act that may benefit that other entity so long as the Councilor's employer does not receive any economic benefit that is contingent upon the outcome of the question before Council
 - d. It shall not be a conflict of interest to perform an official act relating to a competitor in the same business as a Councilor's employer. It shall not be a conflict to approve monthly expenditure reports of expenses paid to the Councilor's employer or any entity in which the Councilor has a financial interest.
7. Instances where Council Members have personal or private interests present a difficult determination under C.R.S. § 24-18-109(3): A member of the governing body of a local government who has a personal or private interest in any matter proposed or pending before the governing body shall disclose such interest to the governing body and shall not vote thereon and shall refrain from attempting to influence the decisions of the other members of the governing body in voting on the matter. To clarify such situations, the following principles shall apply:
- a. A Councilor has a personal or private interest where the Councilor or any member of the Councilor's immediate family (spouse, parents or step parents, siblings or step siblings, children or step-children or anyone playing an essentially equivalent role in the Councilor's personal life to any such identified immediate family member) have a direct interest, whether financial or otherwise, in the matter pending before the body. A direct interest shall be understood to exist where the person with the interest is interested in the matter in the sense of advocating on one side or the other of the issue, or will experience a direct economic impact as a result of the determination of the issue.
 - b. A Councilor has a personal or private interest where the Councilor is so connected to the matter that either (1) a reasonable person would conclude, or (2) the Councilor, in his or her own judgment concludes, that the Councilor will not be able to render an impartial decision, i.e. will not be able to separate consideration of his or her interest in the matter from the general public interest. When declaring any such interest, a Councilor shall bear in mind his or her obligation to vote on every matter pending before the Council, and shall not lightly declare a private interest. In no event should a Councilor declare a private interest merely because to vote on an issue pending before Council may present the Councilor with uncomfortable political choices.
8. A Councilor who has a conflict of interest in any matter pending before the Council shall inform the Council of the existence and nature of the conflict, and shall refrain from voting on or participating in the discussion of that matter. Council construes the provisions of Art. X, Section 10 of the Alamosa Charter to apply to any conflict of interest defined by the laws of the State of Colorado, including personal interests as set forth in C.R.S. § 24-18-109(3). Thus, in any situation in which a Councilor has declared

a conflict of interest, whether personal or financial, the Councilor shall be excused from voting, and the Councilor's abstention shall not be recorded as a vote in the affirmative.

XV. CODE OF CONDUCT

A. GENERAL CONDUCT

Councils 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 improve the quality of life in the community. In all cases, this common goal should be acknowledged even as Council may "agree to disagree" on contentious issues. All members of the City Council have equal votes. No Council Member has more power than any other Council Member, and all should be treated with equal respect. When acting as a Councilor, Council Members should:

- Demonstrate honesty and integrity in every action and statement.
- Behave ethically while carrying out responsibilities.
- Actively listen, keeping an open mind, and suspending judgment. Participate in discussion before making a decision.
- Serve as a model of leadership and civility to the community.
- Inspire public confidence in Alamosa government.
- Be consistent in process and operation.
- Work for the common good, not personal interest.
- Prepare in advance of Council meetings and be familiar with issues on the agenda.
- Maintain the confidentiality of material discussed during executive sessions. Information presented or discussed in executive session should not be shared with anyone at any time.
- Fully participate in City Council meetings and other public forums while demonstrating respect, kindness, consideration, and courtesy to others.
- Participate in scheduled activities to increase Council effectiveness.
- Be responsible for the highest standards of respect, civility and honesty in ensuring the effective maintenance of intergovernmental relations.
- Respect the proper roles of elected officials and City staff in ensuring open and effective government.
- Be cautious in representing City positions on issues.
- Use formal titles in public meetings.
- Practice civility and decorum in discussions and debate.
- Honor the role of the presiding officer in maintaining order and equity.
- Demonstrate effective problem-solving approaches.
- Be respectful of other people's time.

B. CONDUCT WITH THE PUBLIC

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 individual Council Members

toward an individual participating in a public forum. Every effort should be made to be fair and impartial in listening to public testimony.

- Be welcoming to speakers.
- Be fair and equitable in allocating public hearing time to individual speakers.
- Actively listen.
- Ask for clarification, but avoid debate and argument with the public.

C. CONDUCT WITH CITY STAFF

Governance of a City relies on the cooperative efforts of elected officials, who set policy, and City staff who implement and administer the Council's policies. Therefore, every effort should be made to be cooperative and show mutual respect for the contributions made by each individual for the good of the community.

- Channel communications through the City Manager.
- Treat all staff as professionals.
- All Council Members should have the same information with which to make decisions.
- Submit questions on Council agenda items in advance of the meeting.
- Never publicly criticize an individual employee. Criticism is different from questioning facts or the opinion of staff.
- Do not get involved in administrative functions.
- Respect the "two hour" rule for staff work.
- Depend upon the staff to respond to citizen concerns and complaints as appropriate rather than applying pressure to solve a problem in a particular way.

D. CONDUCT WITH BOARDS AND COMMISSIONS

The City has established several boards and commissions as a means of gathering more community input. Citizens who serve on boards and commissions become more involved in government and serve as advisors to the City Council. They are a valuable resource to the City's leadership and should be treated with appreciation and respect. Council Members serve as liaisons to boards and commissions, according to appointments, and in this role are expected to represent the full Council in providing guidance to the board or commission and to report activities to the full Council. In other instances, Council Members may attend board or commission meetings as individuals, and should follow these protocols:

- If attending a board or commission meeting, identify your comments as personal views or opinions.
- Limit contact with board and commission members to questions of clarification.
- Remember that boards and commissions are advisory to the Council as a whole, not individual Council Members.
- Be respectful of diverse opinions.

E. ATTENDANCE

Council Members who have more than three unexcused absences in 12 months, missed half of the regular or special meetings held within 12 months excused or not, or missed six independent work sessions excused or not may face a sanction such as a written letter of admonition or censure. The City Clerk will provide regular updates on attendance.

City Council retreats are mandatory. It is regular practice to have a one-day, abbreviated retreat in either January or February and a two-day retreat sometime between May through August.

The following shall constitute grounds for an excused absence (this is the same for Advisory Boards):

- Serious illness or injury
- Maternity/paternity leave
- Serious family emergencies
- Religious observances
- Jury duty
- Work conflicts outside of normal duties such as required training or emergencies
- Council may also excuse absences in cases where it makes a finding that an unusual hardship justifies excusing an absence or absences.

F. VIOLATIONS

Council Members who intentionally and repeatedly do not follow proper conduct may be reprimanded or formally censured by the Council and lose committee assignments. Serious infractions of the Code of Conduct could lead to other sanctions as deemed appropriate by Council.

Council Members should address infractions with the offending Council Member. If the offenses continue, then the matter should be referred to the Mayor in private. If the Mayor is the individual whose actions are being questioned, then the matter should be referred to the Mayor Pro Tem. It is the responsibility of the Mayor to initiate action if a Council Member's behavior may warrant action. If no action is taken by the Mayor, the alleged violation(s) can be brought up with the full Council in a public meeting.

If the violation is outside the observed behaviors by the Mayor or Council Members, the Mayor can ask the City Manager and/or the City Attorney to investigate the allegation and report the findings to the Mayor. It is the Mayor's responsibility to take the next appropriate action. These actions can include, but are not limited to: discussing and counseling the individual on the violation(s); recommending sanction to the full Council to consider in a public meeting; or forming a Council ad hoc subcommittee to review the allegation, investigation, and findings as well as to recommend sanction options for Council consideration.

G. USE OF SOCIAL MEDIA BY CITY COUNCILORS

If Council Members wish to or have already created social media sites, it is important the appropriate guidelines are followed. Whether the social media site is used for personal use, City use, or is being used for campaigning, the following guidelines should be followed.

a. Link to the City Website

Your social media sites should contain links directing users to the City website for online services.

b. Do Not Conduct City Business

Social media should not be used as mechanisms for conducting City business. City business is any matter relating to the policy making functions of the City, including the discussion of the adoption of any proposed policy, position, resolution, rule, regulation, or formal action of the City. Any communication concerning City business that occurs with constituents on a personal social media site may be a public record and must be treated as such. It may trigger open meetings, public records and document retention obligations. It may also trigger public forum First Amendment protection. Neither the City, nor City Councilors may restrict any person's ability to view or post comments on social media pages that are maintained or operated in a City Councilor's official capacity, based in any way, upon the viewpoint of that person or the content of that person's speech. If a City Councilor posts matters relating to City business on a personal social media page, the Councilor shall disable comments on such matters. Councilor's personal social media pages should be set to privacy settings allowing only friends to see the page.

c. Respect Copyright and Fair-Use Laws

For the City's protection and your own, it is important that you show proper respect for the laws governing copyright and fair use of copyrighted material owned by others.

d. Quasi-Judicial Proceedings

Receiving or making comments regarding quasi-judicial matters via social media may violate due process rules applicable to quasi-judicial proceedings. To mitigate the impact of constituent comments received on matters in which Council may have a quasi-judicial role, Council Members are advised to immediately inform the author that such contacts are prohibited. Furthermore, Council Members are reminded that their comments regarding such matters are likewise prohibited, and they must refrain from any engagement on the topic.

Personal use of social media

If Council Members wish to or have already created **personal** social media sites, it is important that the line between official City business and personal communications is vigilantly maintained. Allowing communications regarding official City business to occur on a personal social media site may trigger open meetings, public records and document retention obligations. The City's recommended best management practice is to direct those communications regarding official City business to the Council Member's City email account for the reasons discussed above.

The City recognizes that despite Council Members' best intentions and efforts, some spill-over of communications regarding official City business may occur on a personal social media site. Council Members' use of personal social media shall be limited as follows:

a. Content associated with you should be consistent with your office as a Council Member.

The lines between public and private and personal and professional communications are

blurred in online social networks. By virtue of identifying yourself as a City of Alamosa Council Member within a social network, you are now connected to your colleagues and citizens.

- b. Use a Disclaimer - Whether you publish to a blog or some other form of social media, make it clear that what you say there is representative of your views and opinions and not the views and opinions of the City of Alamosa or of the City Council. At a minimum, in your own blog, you should include the following standard disclaimer: “The postings on this site are my own and don’t necessarily represent the City of Alamosa’s positions, strategies, or opinions or those of the Alamosa City Council.”
- c. Personal sites kept by elected officials are not subject to Colorado Open Records Law unless the writings on the site are made, maintained, or kept for use in the exercise of the functions of the organization. If communication concerning City business occurs on a personal social media site, that likely triggers Open Records provisions and First Amendment protection. If a City Councilor posts matters relating to City business on a personal social media page, the Councilor shall disable comments on such matters. Councilor’s personal social media pages should be set to privacy settings allowing only friends to see the page. While a Councilor may “unfriend” or take similar action with respect to people relating to a personal social media page, a Councilor may not block any person from such page.
- d. Content on a personal site relating to City business may not be removed based in any way, upon the viewpoint of that person or the content of that person’s speech. As noted above, comments should be disabled for any posting on a personal social media site related to City business, so there should not be any scope for this restriction.

Use of social media sites for City Use or Campaigning

- a. Comply with the Colorado Open Records Law
Any content related to City business on a Council Member’s social media profile page may be considered a public record subject to disclosure under the Colorado Open Records Law, C.R.S. 24-72-101 et. seq. This includes communication between a Council Member and constituents or the general public, and a site’s listing of “friends” or “followers.” As with any correspondence sent in his or her capacity as a Council Member, when a Council Member posts something as a social media page visitor, he/she should retain a record of that posting. Printouts of postings to others’ sites may suffice for retention purposes. Content may not be removed from an official social media site unless it violates a policy, clearly stated on the site, that sets forth certain guidelines for removal, such as comments not topically related to the particular topic being commented upon; profane language or content; discourteous communication including personal attacks on an individual’s character or appearance; content that promotes, fosters or perpetuates discrimination based on any protected class; sexual content or links to sexual content; solicitations of commerce; conduct or encouragement of illegal activity; information that may tend to compromise the safety or security of the public or public systems; or content that violates legal ownership interests of another party. Any content removed should be retained, including the time, date, and identity of the poster when available

Furthermore, a Council Member's profile page should clearly state that all content submitted by members of the public is potentially subject to public disclosure pursuant to the Colorado Open Records Act, C.R.S. 24-72-101 et. seq. If it is not possible to display this notice prominently on the site, Council Members should notify new users via response to posts, and/or periodically notify existing users via broadcast message.

b. Comply with Open Meetings Law

Colorado's Open Meetings Law applies to a gathering of three or more Council Members to discuss official City business. The three basic requirements set forth in C.R.S. 24-6-402 are: (1) such meetings must be open to the public; (2) reasonable public notice of such meetings must be given; and (3) minutes of the meeting must be taken promptly and recorded. Although the Open Meetings Law ordinarily applies to meetings of three or more Council Members, the physical presence of those persons is not always necessary. Social media exchanges among three or more Council Members regarding official City business is likely subject to Open Meetings Law public notice and access requirements. For this reason, you are strongly discouraged from "friending" other Council Members.

While Council Members may post comments on a social media site, Council Members should not engage in an exchange or discussion of official City business. Engaging in an exchange of ideas or discussion on such matters is a slippery slope, and comment strings made on a social media site by Council Members in response to another Council Member may be broadly construed to trigger Open Meetings Law requirements. To avoid these legally ambiguous situations, the best management practice is for Council Members to discuss their position during noticed open meetings and not on social media sites.

c. Post a Policy Concerning Content

A Council Member's social media site may be considered a limited public forum where the public does not have a constitutional First Amendment free speech right to post any comment one desires. The City recommends that Council Members post a policy that describes what will be deemed acceptable for their social media site along the parameters described above, and note that if a citizen wishes to enter a comment in the official record regarding some public issue, they may do so by contacting Council via email or by attending a City Council meeting.

Elected officials should be diligent about their use of official, personal, and campaign sites. **Campaign activities should be kept separate from any site a person maintains in his or her elected official capacity.** Personal sites and campaign sites may provide a link to the organization's official site, but should take care to note that the organization's site does not endorse any candidate or any individual elected official's position. However, elected officials can be open about the positions they hold for the organization. Elected officials should work with the City Manager or City Clerk to handle social networking site issues in order to avoid missteps and misstatements (similar to working with a communications team before being interviewed by the media). The elected official should be aware of the possible implication of the Colorado Open Records Act and Open Meetings Law (addressed above).

It is a simple fact that the state of the law is lagging behind the state of the art in social media technology. This presents unique challenges in following the intent and the letter of the laws regulating public meetings and communications of local government. For this reason, the City

cautions Council Members who have personal, official, and/or campaign social media sites to be aware of their responsibilities under applicable laws when communicating via these emerging technologies.

XVI. EFFECTIVE GOVERNANCE

Below are tips and “lessons learned” gathered from former public servants and intentionally presented in a casual tone.

- Try to enjoy yourself; it’s a unique experience being on the front lines of democracy.
- Remember ordinances are laws; they are not resolutions or policies. Before you grant an exception to an ordinance (and you will be asked to do that fairly often), make sure you have a good reason that you can defend publicly.
- Citizens have the right to expect consistency in policy and in the application of laws and administrative regulations.
- Remember that you represent all the people of your city, not just neighbors and friends. Be wary of personal experiences coloring your public decisions.
- Don’t be misled by the strong demands of special interest groups who want it done now, their way. Your job is to find the long-term public interest of the city as a whole, and you may be hearing from the wrong people.
- Don’t burn yourself out on the little things while still recognizing that they often are important to the public. Save some energy and time for the important matters.
- Staff has dealt with dozens of governing body members and seen some problems over and over so they forget that you are a novice. Don’t be afraid to ask questions.
- Don’t give quick answers when you are not sure of the real answer. It may be embarrassing to appear ignorant, but it can be more embarrassing and damaging, to tell a person something that is wrong.
- Do not introduce issues during a meeting that have not been put on the agenda in advance. This surprises people. If a matter is worth bringing up for discussion, it is worth being on the agenda. Surprises may get you some publicity, at the embarrassment of others, and tend to erode the “team” approach to governance.
- Don’t rush to judgment. Few final actions have to be taken at the first meeting they are considered. Avoid “crisis management.”
- The governing body has to act as a unit otherwise, staff gets confused and very cautious. Develop trust by sharing information, being open to the ideas of other members of the governing body, and by not trying to control what other Council Members think or do.
- Don’t act as a committee of one; governing a city requires a team effort – practically and legally.
- As an individual Council Member do not make promises you cannot deliver! Most decisions and actions require approval of the governing body.
- Don’t do it or say it if you aren’t willing to read about it in the newspaper.
- Don’t expect to be interested in everything that comes before the governing body. It is appropriate to defer to other members if they seem more interested in the issue than you do. You do not have to express an opinion about every issue.
- Don’t let honest differences of opinion degenerate into personality conflicts.

- Appoint citizen advisory committees when you need them, but be prepared to follow their advice if you use them.
- Take care in your appointments to boards and commissions. Make sure they are capable as well as representative of the whole city.
- Don't try to out-engineer the engineer. Be willing to rely appropriately on staff expertise and technical training.

XVII. NAMING OF CITY OWNED FACILITIES INCLUDING PARKS AND OPEN SPACE AREAS

Section 1.

A. The naming/renaming of City parks and other City facilities shall be in accordance with the procedures and criteria set forth below. Once adopted, name changes should occur on an exceptional basis only.

B. The following criteria shall be considered:

1. Neighborhood or geographical identification;
2. Natural or geological features;
3. Historical or cultural significance;
4. The articulated preference of residents of the neighborhood surrounding the public facility;
5. Facilities may be named for living persons provided they have made a significant contribution of land or money and the donor stipulates naming of the facility as a condition of the donation(s) or when the individual has made an unusually outstanding public service contribution.

C. The following procedures shall be followed for naming/renaming of City parks and other City facilities.

1. If the City Council determines that a City park or other City facility should be named or re-named, the City shall solicit suggestions for names. All suggestions, whether solicited or independently offered, shall be acknowledged and recorded by the City. The City Council may authorize the Community Recreation Advisory Board to take public input and make a recommendation.
2. Following a review of recommendations, suggestions, and public comments, the City Council shall determine the name for City parks and other City facilities.

D. The provisions of this procedure shall not apply to the application of donor recognition for such minor items as benches, trees, refuse cans, flagpoles, water fountains, or similar items.

Section 2.

The following policies shall govern the placement of memorial trees and benches within the City of Alamosa:

A. General Provisions

1. Requests shall be submitted in writing to the City Manager. Memorials must be in honor or in memory of a current or past Alamosa resident or business owner. Any exceptions must receive the approval of the City Council.
2. The request shall be reviewed by the Community Recreation Advisory Board and the Director of Parks and Recreation. Requests in honor of a current or past Alamosa resident in a City park or open space must be approved by the Community Recreation Advisory Board.
3. If the request is approved, the requestor shall make payment to the City for the cost of the memorial bench or tree, pursuant to the fee schedule. The fees shall be adjusted from time to time to reflect the actual costs of purchasing and installing the appropriate memorial bench or tree. The cash payment shall be paid in full and in advance of ordering the appropriate products. The City will not collect monies nor hold donations in escrow. Any funds remaining after the purchase and installation of the tree and/or bench shall be returned to the individual(s) or organization(s) making the payment.
4. If the donor wishes, a standard plaque, approved by the City, may be installed. The donor will be responsible for the cost of the plaque and the labor to install it. The maximum size of the plaque shall be 4"x8". The plaque shall be of a design and material determined by the City. Wording on such plaque shall not include any language other than that reflecting the name of the person for whom the tree or bench is being installed.
5. The donor shall sign a statement acknowledging and agreeing that if the installed facilities (tree, bench, plaques, and appurtenant facilities) are damaged, vandalized, removed, or stolen, the City will have no duty to repair or replace it.

Section 3 Memorial Tree

1. A donation of a tree or trees, whether or not in honor or memory of someone, may be accepted with the approval of the City. Acceptance of a tree or trees, except those being donated in honor or memory of someone, shall be at the discretion of the Director of Parks and Recreation. The donor will be required to bear the cost of planting or transplanting the tree.
2. The donor shall sign a statement that he/she acknowledges and agrees:
 - That the City has no duty to guarantee or maintain the tree(s) beyond the guarantee given by the nursery where the tree(s) were purchased;
 - That the City has no duty to replace tree(s) that die or are damaged by vandalism, weather, disease, etc.;
 - That the City has no duty to transplant or replace tree(s) that have been removed due to construction, paving, change in park design, etc.
3. The Community Recreation Advisory Board and City staff may confer with the donor concerning his or her preference regarding the species, size (caliper or spread), and location of the tree(s). The donor shall sign a statement that he or she acknowledges and agrees that the final decision concerning the type and size of tree(s) to be planted and their placement shall rest with the City. Staff will confer with the Tree Board as appropriate.

4. Requests for installation of other accessories in conjunction with the tree planting (e.g., park bench, paved path, memorial garden, shelter, etc.) must be reviewed and approved by the Board and Director of Parks and Recreation. If approved, the donor will be responsible for the cost of the accessories and the labor to install them, as indicated above. The donor shall sign a statement acknowledging and agreeing that the final decision for the placement and arrangement of the accessories shall rest with the City.

Section 4 Memorial Bench

1. Memorial benches may be placed at pre-determined locations along City trails or within City parks pursuant to review and approval of the Community Recreation Advisory Board and Director of Parks and Recreation. These locations will be selected based on needs of each park and/or trail.
2. Bench styles shall be as selected by the Community Recreation Advisory Board and Director of Parks and Recreation and are based on park design, function, aesthetics, and maintenance.
3. The fee associated with the bench will provide for the purchase, installation, and maintenance of the bench. Maintenance will be the responsibility of the Parks Division.

XVIII. ECONOMIC DEVELOPMENT, TOURISM

Economic development is a high priority of the City Council. Efforts should be made to aggressively pursue economic development opportunities. Such efforts should be coordinated with other local businesses, tourism and economic development groups. Economic development is defined as those activities that will bring additional outside funds to the community and improve the local wage rates. Such activities may include:

- Job creation
- Job retention
- Industrial attraction
- Retail development
- Tourism efforts
- Creative industry
- Business expansion
- Entrepreneurship

The City Council of Alamosa will consider offering economic development incentives on a case by case basis. Incentives will depend upon the value to the community, i.e. number of jobs created or wage rates.

In order to more effectively pursue economic development opportunities, the City Council will create an “Economic Development Committee” consisting of two Council Members, the City Manager, Economic Development Director, and other staff as assigned by the City Manager. All final decisions will be retained to the Council as a whole.

City Council recognizes that there might be instances where property becomes available that would significantly further economic development efforts and require both extreme confidentiality and timely handling. During these unique circumstances, the City Manager is authorized to negotiate and work with the Economic Development Committee as part of a rapid

response team. Any final contract will be presented to the entire City Council for consideration and approval.

XVIV. LEGISLATIVE POLICY

Every year the Colorado Municipal League and National League of Cities engage in lobbying efforts at the state and national level on bills that are of critical importance to local municipalities. Often times, CML or NLC will ask municipalities for support or opposition on bills of interest and cities must be able to act quickly. Many cities have developed a legislative platform to help them take quick action on top priority bills.

This policy in conjunction with the Alamosa Legislative Agenda will work as a guideline when determining which bills the City of Alamosa should weigh in on and will give guidance on how communication on the City's behalf should be sent to our state and national representatives.

This policy will coincide with the Alamosa Legislative Agenda which consists of several major legislative items. When legislation or policy issues are considered, the Legislative Review Committee, which is comprised of the Mayor, City Manager, and Mayor Pro-tem will look first to the Alamosa Legislative Agenda to develop recommendations and formal positions. If a specific issue is not found within the Alamosa Legislative Agenda it will be referred to the full City Council for consideration before any position is taken. If for some reason, time is not available for Council consideration, the Legislative Review Committee will make its best effort to communicate on an issue as it reasonably anticipates Council would authorize and such communication will be shared with Council.

Staff supports the Legislative Review Committee by contributing expertise in various areas of municipal service. Staff members will follow bills in accordance to their expertise and notify the City Manager with their thoughts, concerns and ideas about current legislative activities. Staff will draft legislative communication for the Legislative Review Committee's consideration. Once approved, the communication will be sent with either the Mayor's or City Manager's signature. All communication will be copied to the entire City Council and the Colorado Municipal League.

**EXHIBIT A
SAMPLE AGENDA**

**ALAMOSA CITY COUNCIL
Regular Meeting Minutes**

Council Chambers
300 Hunt Avenue, Alamosa, CO
Month XX, 20XX

Mission Statement: We are committed to providing balanced, effective and efficient public services for our residents, visitors and businesses by cultivating a vibrant, resilient and livable city.

Any person needing reasonable accommodation to attend or participate in a public meeting, please contact the Alamosa City Clerk's office by telephone (719) 589-2593, by email cityclerk@ci.alamosa.co.us, in person at 300 Hunt Avenue, or by mail at POB 419, Alamosa, CO 81101.

Council Calendar
Advisory Board Minutes

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

II. ROLL CALL

III. AGENDA APPROVAL

IV. CITIZEN COMMENT

Alamosa City Council welcomes your comments. Citizens wishing to speak may obtain and complete a speaker card through the City Clerk at the start of the meeting.

1. Audience Comments
2. Follow-Up

V. CEREMONIAL ITEMS

VI. CONSENT CALENDAR A

VII. REGULAR BUSINESS

A. Presentations from Outside Agencies

B. Board/Commission Business

C. Business Brought Forward by City Staff

- 1. Public Works**
- 2. Finance**
- 3. Police**
- 4. Parks/Recreation/Library**
- 5. Information Technology**
- 6. Fire**
- 7. City Clerk/Municipal Court**
- 8. City Manager/Legal**
- 9. Human Resources/Risk Management**

D. Request for Future Agenda Items Brought Forward by Council Members

E. Committee Reports

F. Staff Announcements

VIII. LOCAL LIQUOR LICENSING AUTHORITY ACTIONS

A. CONSENT CALENDAR B

The Consent Calendar allows multiple actions with one motion. Consent Calendar B contains routine items that are under Council's jurisdiction as the Local Licensing Authority. Council may remove a consent calendar item for separate consideration.

B.1.

B. Liquor Licensing Items

COUNCIL COMMENT

EXECUTIVE SESSION

ADJOURNMENT

EXHIBIT B CHART OF SAMPLE MOTIONS

Council Members making motions, resolutions or ordinances may introduce them in the form shown below:

Main Motion: I move

Motion to Call the Question: “I call the question.” Mayor: “There has been a motion to call the question on this matter, which requires a 2/3 vote. Please vote on whether to call the question.”

Ordinances:

First Reading:

I move the first reading of Ordinance # be approved and that it be placed on the next regularly scheduled meeting agenda for further consideration.

Adoption of Ordinance (Second Reading):

I move that the second reading of Ordinance # be approved and that the ordinance be adopted.

Resolutions:

I move the reading of Resolution # be approved and the resolution adopted.

Amendments:

- 1) I move to amend the motion by inserting between . . . and . . .
- 2) I move to amend the motion by adding after
- 3) I move to amend the motion by striking out . . .
- 4) I move to amend the motion by striking out . . . and inserting . . .
- 5) I move to amend by striking out the motion and substituting the following . . .

Planning and Zoning Commission:

I move that this matter be referred to the Planning and Zoning Commission.

I move that this matter be tabled (the matter may be brought back for consideration if a request for a public hearing is received by the City Clerk within ten days of Council tabling.)

I move that a public hearing be set for the Council meeting scheduled on

I move to reconsider the vote by which was voted.

EXHIBIT C CITIZEN ADVISORY BOARDS

The City Council appoints a number of boards to serve in an advisory capacity, or, in the case of the Planning Commission and the Personnel Board, in both an advisory and a decision making capacity. The Council welcomes all citizens to apply for appointment to any advisory board they are interested in. To apply, applicants should complete the Board Application Form(s) found on the City's website or from the City Clerk's Office. Citizens can apply for more than one board.

* * * * *

Golf Board: Four year term. 3rd Thursday at 5:30 p.m. at Cattails Golf Course. Board provides advice on issues surrounding the operation of Cattails Golf Course. Council Member may serve as liaison. Staff contact – Parks & Recreation Director.

Historic Preservation Commission: Four year term. Meetings held second Tuesdays, quarterly, at 5:30 p.m. in City Council Chambers. Commission administers the Historic Preservation Ordinance and applications for landmarks and historical districts. Staff Contact –Planning/Development Specialist.

Homeless Coalition: Four year term. Meetings held fourth Tuesdays monthly at 6:00 p.m. at City Hall. Coalition was created for the purpose of discussion and identification of causes, effects, and potential solutions to the homelessness issues in Alamosa, and to assist in development of strategic partnerships, collaborative responses, and engagement of community resources to address homelessness. Staff contact – City Manager.

Library Board: Five year term. Meetings held fourth Tuesdays (bi-monthly) at 5:30 p.m. at City Hall. Council Member may serve as liaison. Staff contact – Library Director.

Main Street Advisory Committee: Four year term. 3rd Tuesdays at 8:00 a.m. at City Hall. The Committee was create to identify enhancements to the Central Business District to create a more vibrant and welcoming downtown. Staff contact – Economic Development Director.

Noxious Weed Advisory Board: Standing advisory committee which contains the appointments of the sitting citizen members of the Alamosa Recreation Advisory Board and one City Staff Representative (Parks & Recreation Director), together with the Mayor (and the Mayor Pro-Tem, as an alternate). Board meets at least annually at a date, time and place as determined by the Board. Meetings of the Noxious Weed Advisory Board may take place such that they are coordinated with meetings of the Recreation Advisory Board, at the discretion of the Board.

Personnel Board: Six year term. Meetings held as necessary. Board may recommend rules and regulations and investigate conditions of employment. Staff contact – Human Resources Manager.

Planning Commission: Five year term. Meetings held fourth Wednesday monthly except November and December at 6:00 p.m. in the City Council Chambers. Commission reviews and recommends actions on zoning changes and land subdivision, and plans for the city. Staff contact – Planning/Development Specialist.

Recreation Advisory Board: Three year term. Meetings held second Tuesdays, bimonthly at 11:30 a.m. at the Alamosa Family Recreation Center. Purpose is to develop and promote new and existing park and recreational facilities. Staff contact – Parks & Recreation Director.

Tree Board: Four year term. Meetings held second Wednesday of each month, at 12:00 p.m. at City Hall. Administers plan for care of public trees in parks and on streets. Staff contact – Parks & Recreation Director.

EXHIBIT D ORGANIZATION CHART

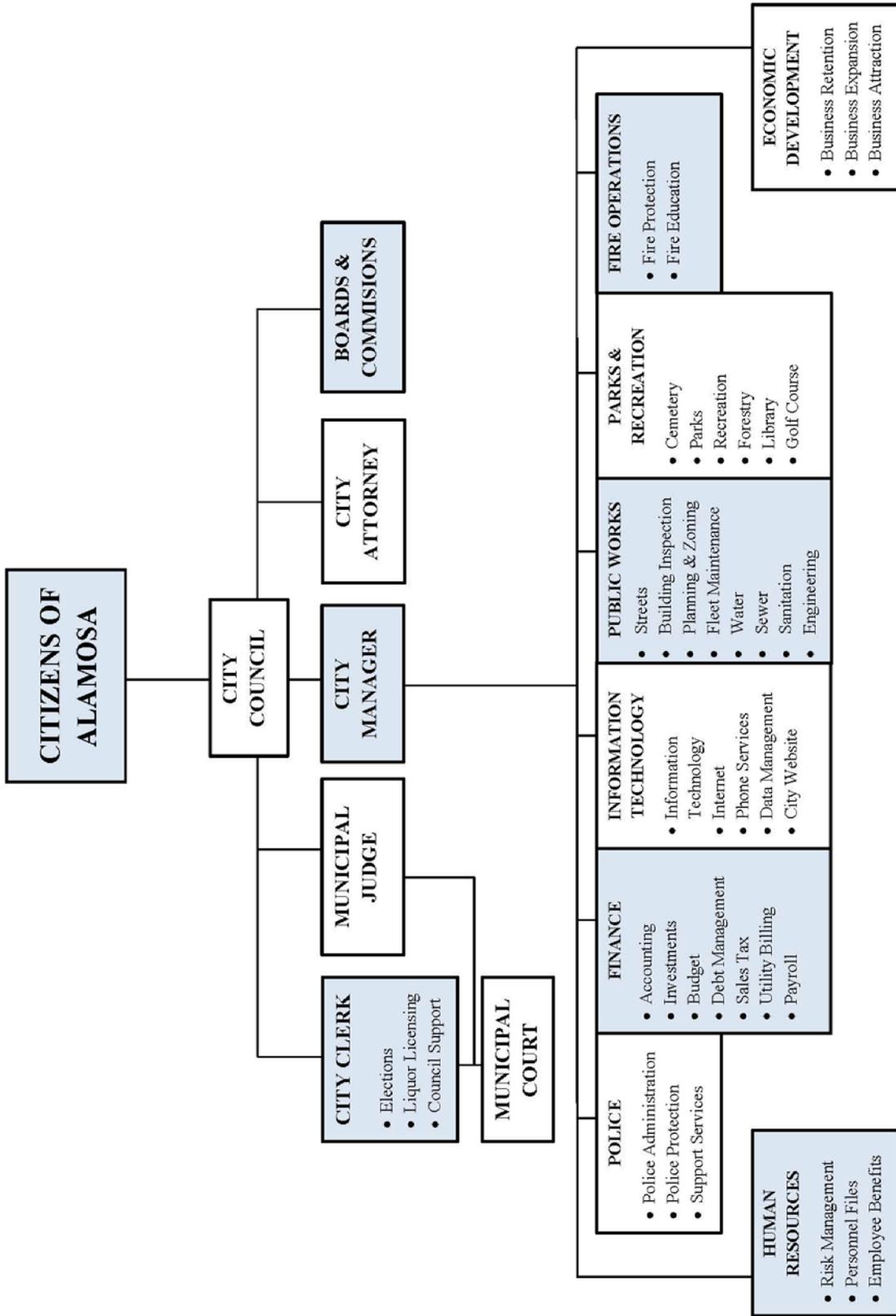


EXHIBIT E

COLORADO SUNSHINE LAW

Colorado Revises Statutes § 24-6-401 states that it is the policy of the State of Colorado that the formation of public policy is public business and may not be conducted in secret. This means that meetings, records, votes, actions, and deliberations of public governmental bodies are open to the public. This section, commonly referred to as the “Sunshine Law”, is to be liberally construed to promote the public policy of open and public discussion, debate and decision making.

GENERAL PROVISIONS

All public governmental bodies are subject to the provisions of the Sunshine Law. Alamosa is a “Local Public Body” as that term is defined in the statutes. The Sunshine Law is applicable to the city council, advisory boards and commissions, and any committee appointed by or at the direction of any of these entities and which is authorized to report to any of these entities. Hence, even though boards and commissions may only be “advisory”, those boards and commissions, as well as any committees or subcommittees formed under them, are subject to the requirements of the Sunshine Law.

The Sunshine Law requires that whenever a quorum, or three or more members (whichever is less) of a council or board meet to discuss public business, that meeting is a public meeting. Proper notice of the meeting including agenda must be provided, and the meeting is open to the public.

A “meeting” can occur electronically, by telephone, or in person, and even by the electronic polling of votes of members who are not physically present. This term “public meeting” also includes conference calls, video chats, internet conferences and internet message boards. It does not include an informal gathering of members of the governmental body for ministerial or social purposes when there is no discussion of public business and no intent to avoid the purposes of the Sunshine Law.

When a meeting of a governmental body is held and the adoption of any proposed policy, position, rule, regulation or formal action could occur, that meeting shall be open to the public. Thus, even email discussions between board members can trigger the open meeting requirements of the Sunshine Law.

Minutes of all public meetings must be taken, and shall be open to the public for inspection and duplication. Those minutes must include the subjects that were discussed as well as a record of which members were present and of all votes that were taken at the meeting. However, this rule only relates to elected bodies, such as the City Council, and not to advisory boards and commissions they appoint.

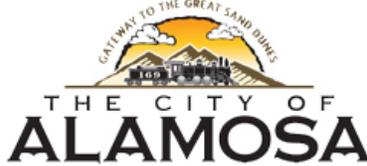
NOTICE REQUIREMENTS

The Sunshine Law establishes specific requirements for providing notice of meetings to the public. Under the statute, the notice must include the time, date, place, and agenda, and must be given in a manner so as to reasonably apprise the public of that information. Typically, the staff contact for your board will take care of posting these notices by sending the agendas to the City Clerk's Office in advance of the meeting to post at the designated posting place.. Each meeting shall be held at a place reasonably accessible to the public and of sufficient size to accommodate the anticipated attendance by members of the public and at a time reasonably convenient to the public. Efforts must be made to permit access to the handicapped or disabled. Generally, twenty-four (24) hours' notice, exclusive of weekends and holidays, is required for a meeting, and no topic not included on the agenda may be acted upon at the meeting unless an emergency exists for taking such action absent inclusion of the topic on the agenda 24 hours before the meeting. The nature of that emergency must be reflected in the minutes of the meeting.

VIOLATIONS

Any person denied rights conferred on the public by the sunshine law may bring an action to enforce the Sunshine Law. If a violation occurred, the court will void the action taken by the governmental body. Further, the court will award costs and reasonable attorney fees to the person successfully enforcing the sunshine law. When in doubt as to any of the provisions of the Sunshine Law, you should discuss the matter with your staff contact and ask for an opinion from the City Attorney.

**EXHIBIT F
COUNCIL INITIATED AGENDA ITEM FORM**



COUNCIL MEMBER AGENDA ITEM

An individual Council Member who desires to place an item on the agenda must submit this form. This document must be received by the City Clerk by 5:00 p.m. on the Monday of the week prior to the Council meeting (9 days prior to the meeting). Council will discuss the item at the meeting it is presented, and make a decision either by consensus or motion whether or not to move forward with action at a future meeting.

Requesting Councilor Member:: _____

Subject of Agenda Item

Request: _____

Background: _____

Proposed Action: _____

Type of Staff Input Requested: _____

Timeframe for Placement on Agenda: _____

Signature of Councilor: _____ Date: _____

For Staff Use Only:

Signature of Clerk: _____ Received Date: _____

Signature of City Manager: _____ Date: _____

On Council Agenda: _____

EXHIBIT G
TRAVEL REIMBURSEMENT INFORMATION

Department of Finance
Travel Reimbursement Guidelines
Effective January 1, 2018

Meals

Breakfast	\$11.00
Lunch	\$12.00
Dinner	\$23.00

The City will reimburse meals at a standard per diem rate. The schedule of rates will be published and effective as of January 1 of each year by the Finance Department. In the event the travel is in certain high cost areas, maximum reimbursement will be at the rate established by the City for those specific areas. Contact the Finance Department prior to requesting higher per diem rates.

*Note: The City does not consider all areas listed by the IRS as high cost reimbursable areas.

Mileage Reimbursement

The City shall reimburse mileage in a personal vehicle at \$0.58 per mile.

Signatures Required

Supervisor
Department Head
Finance Director

City Manager on all Department Head, City Council and requests in excess of \$500.00.

EXHIBIT H ETHICAL PRINCIPLES

Section 10. - Ordinances, Resolutions, Motions.

In all legislative matters coming before it, the Council shall act only by ordinance, resolution or motion. The ayes and nays shall be taken upon the passage of all ordinances, resolutions and motions and entered into the journal of the Council proceedings. Should any Councilor being present refuse to vote on any measure, said Councilor's vote shall be recorded in the affirmative. A Councilor shall be excused from voting on matters involving the consideration of the Councilor's own official conduct, or where the Councilor's financial interests are involved.

(Ord. No. 26, § 1, 9-19-79, approved, election of 11-6-79; Ord. No. 8, 1987, § 1(3), 9-16-87, approved, election of 11-3-87)

Sec. 2-17. - Rules and order of business.

The following are the rules and order of business of the city council:

- (1) *Rule 1: Meetings.* Two (2) regular meetings of the city council shall be held during each month, such meetings to be held on the first and third Wednesdays of each month at the city hall at the hour of 7:00 p.m., mountain daylight time, and at the hour of 7:00 p.m., mountain standard time, provided that the city council may by resolution at any time change the time and place of any such meeting. The mayor or any three (3) members of the city council may call special meetings by written or verbal notice to each of the members of the city council, such notice to be served in person or left at the usual place of business of each member, if served during business hours, or at the residence of each member if not served during business hours, at least one (1) hour in advance of the time set for such meeting. Any regular or special meeting may be adjourned by majority vote of those present to any other time or place.
- (2) *Rule 2: Quorum.* At all meetings of the city council a majority of the whole number of members elected shall constitute a quorum for the transaction of business. Absent members not excused by the councilors may be fined.
- (3) *Rule 3: Suspension of rules.* The rules of procedure and order of business shall be strictly adhered to by the city council, unless they shall be temporarily suspended by a majority vote of the members present, but the failure to observe any of the requirements of this section shall not be held to invalidate any acts, orders, ordinances or resolutions of the city council that otherwise might be lawful.
- (4) *Rule 4: Mayor.* The mayor shall preside at all meetings of the city council.
- (5) *Repealed.*

- (6) *Rule 6: Ordinances.* All ordinances shall be presented in writing and shall be introduced, published, passed and recorded as is now or may hereafter be required by law.
- (7) *Rule 7: Petitions.* All petitions, memorials and remonstrances to the council, shall be in writing, and shall be addressed "To the Honorable Mayor and City Council of the City of Alamosa, State of Colorado."
- (8) *Rule 8: Bills.* All bills shall be itemized, dated and verified and shall be approved by the director of finance before being passed by the city council.
- (9) *Rule 9: Yeas and nays.* Each member present shall vote upon every question put by the chair, unless excused by council. The yeas and nays may be called for by any member, in which case the names of the members, with their votes, shall be recorded on the minutes.
- (10) *Rule 10: Appointment to office.* Council appointments to office shall be by ballot, and a majority of all the members elected to the council shall be necessary. The names of those who voted and the vote for each candidate shall be recorded.

(Code 1964, § 2-6; Ord. No. 4-2001, § 1, 4-4-01)

Charter reference— City council shall establish regular or special meetings, dates, etc., by ordinance, art. III, § 9; mayor shall preside at meetings, mayor pro-tempore, art. II, § 1.

§ 24-18-101. Legislative declaration

The general assembly recognizes the importance of the participation of the citizens of this state in all levels of government in the state. The general assembly further recognizes that, when citizens of this state obtain public office, conflicts may arise between the public duty of such a citizen and his or her private interest. The general assembly hereby declares that the prescription of some standards of conduct common to those citizens involved with government is beneficial to all residents of the state. The provisions of this part 1 recognize that some actions are conflicts per se between public duty and private interest while other actions may or may not pose such conflicts depending upon the surrounding circumstances.

Cite as C.R.S. § 24-18-101

History. L. 88: Entire article added, p. 899, § 1, effective July 1.

§ 24-18-102. Definitions

As used in this part 1, unless the context otherwise requires:

- (1) "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.
- (2) "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 him/her or another.
- (3) "Employee" means any temporary or permanent employee of a state agency or any local government, except a member of the general assembly and an employee under contract to the state.
- (4) "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.
- (5) "Local government" means the government of any county, city and county, city, town, special district, or school district.
- (6) "Local government official" means an elected or appointed official of a local government but does not include an employee of a local government.
- (7) "Official act" or "official action" means any vote, decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.
- (8) "Public officer" means any elected officer, the head of a principal department of the executive branch, and any other state officer. "Public officer" does not include a member of the general assembly, a member of the judiciary, any local government official, or any member of a board, commission, council, or committee who receives no compensation other than a per diem allowance or necessary and reasonable expenses.
- (9) "State agency" means the state; the general assembly and its committees; every executive department, board, commission, committee, bureau, and office; every state institution of higher education, whether established by the state constitution or by law, and every governing board thereof; and every independent commission and other political subdivision of the state government except the courts.

Cite as C.R.S. § 24-18-102

History. L. 88: Entire article added, p. 899, § 1, effective July 1. L. 90: (1) amended, p. 447, § 10, effective April 18. L. 91: (8) amended, p. 837, § 1, effective March 29.

Case Notes:

ANNOTATION

Negotiations for future employment began when respondent submitted his/her resume to potential employer as contemplated in subsection (4)(c). Colo. Ethics Watch v. McCasky, Indep. Ethics Comm'n 11-03.

Acceptance of gift of season ski passes by nearby town for its employees may lead the public to conclude that the ski area has received, or its employees may receive, some benefit from the town employees in return. Public employees should avoid any conduct that may violate the public trust or appear to violate the public trust. Indep. Ethics Comm'n Advisory Opinion 14-21.

§ 24-18-103. Public trust - breach of fiduciary duty

(1) The holding of public office or employment is a public trust, created by the confidence which the electorate reposes in the integrity of public officers, members of the general assembly, local government officials, and employees. A public officer, member of the general assembly, local government official, or employee shall carry out his/her duties for the benefit of the people of the state.

(2) A public officer, member of the general assembly, local government official, or employee whose conduct departs from his/her 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/her trust. The district attorney of the district where the trust is violated 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 state or local government. Judicial proceedings pursuant to this section

shall be in addition to any criminal action which may be brought against such public officer, member of the general assembly, local government official, or employee.

Cite as C.R.S. § 24-18-103

History. L. 88: Entire article added, p. 900, § 1, effective July 1.

Case Notes:

ANNOTATION

This section falls within the ambit of § 5 of art. XXIX of the state constitution because it sets forth specific standards of conduct. *Gessler v. Grossman*, 2015 COA 62, __ P.3d __.

Secretary of state breached the public trust for private gain in violation of this section by using funds from his/her discretionary account for purposes other than official business. *Colo. Ethics Watch v. Gessler*, *Indep. Ethics Comm'n* 12-07.

Acceptance of gifts from partner nonprofit organ procurement organization by driver's license examiners may result in appearance of impropriety. *Indep. Ethics Comm'n Advisory Opinion* 14-08.

Parties' stipulation that, by admitting to facts sufficient to prove embezzlement of public property and official misconduct, respondent has admitted to breach of public trust and fiduciary duty pursuant to this section. *King v. King*, *Indep. Ethics Comm'n* 14-16.

§ 24-18-104. Rules of conduct for all public officers, members of the general assembly, local government officials, and employees

- (1) Proof beyond a reasonable doubt of commission of any act enumerated in this section is proof that the actor has breached his/her
 - (2) fiduciary duty and the public trust. A public officer, a member of the general assembly, a local government official, or an employee shall not:
 - (a) Disclose or use confidential information acquired in the course of his/her official duties in order to further substantially his/her personal financial interests; or
 - (b) Accept a gift of substantial value or a substantial economic benefit tantamount to a gift of substantial value:
 - (I) Which would tend improperly to influence a reasonable person in his/her position to depart from the faithful and impartial discharge of his/her public duties; or
 - (II) Which he/she knows or which a reasonable person in his/her position should know under the circumstances is primarily for the purpose of rewarding him/her for official action he/she has taken.
- (2) An economic benefit tantamount to a gift of substantial value includes without limitation:
 - (a) 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
 - (b) The acceptance by a public officer, a member of the general assembly, a local government official, or an employee of goods or services for his or her own personal benefit offered by a person who is at the same time providing goods or services to the state or a local government under a contract or other means by which the person receives payment or other compensation from the state or local government, as applicable, for which the officer, member, 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 officer, member, official, or employee does not

receive any substantial benefit resulting from his or her 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 section 1-45-108, C.R.S.;

(b) An unsolicited item of trivial value;

(b.5) A gift with a fair market value of fifty-three dollars or less that is given to the public officer, member of the general assembly, local government 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 state constitution;

(c.5) Unsolicited informational material, publications, or subscriptions related to the performance of official duties on the part of the public officer, member of the general assembly, local government 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 state 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 state constitution;

(f) A gift given by an individual who is a relative or personal friend of the public officer, member of the general assembly, local government official, or employee on a special occasion.

(g) Payment for speeches, appearances, or publications that may be accepted or received by the public officer, member of the general assembly, local government official, or employee in accordance with the provisions of section 3 of article XXIX of the state constitution that are reported pursuant to section 24-6-203(3) (d) ;

(h) Payment of salary from employment, including other government employment, in addition to that earned from being a member of the general assembly or by reason of service in other public office;

(i) A component of the compensation paid or other incentive given to the public officer, member of the general assembly, local government official, or employee in the normal course of employment; and

(j) Any other gift or thing of value a public officer, member of the general assembly, local government official, or employee is permitted to solicit, accept, or receive in accordance with the provisions of section 3 of article XXIX of the state constitution, the acceptance of which is not otherwise prohibited by law.

(4) The provisions of this section are distinct from and in addition to the reporting requirements of section 1-45-108, C.R.S., and section 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.

(5) The amount of the gift limit specified in paragraph (b.5) of subsection (3) of this section, set at fifty-three dollars as of August 8, 2012, shall be identical to the amount of the gift limit under section 3 of article XXIX of the state constitution, and shall be adjusted for inflation

contemporaneously with any adjustment of the constitutional gift limit pursuant to section 3 (6) of article XXIX.

Cite as C.R.S. § 24-18-104

History. L. 88: Entire article added, p. 901, § 1, effective July 1. L. 92: (3)(g) and (3)(h) amended, p. 874, § 103, effective January 1, 1993. L. 94: (3) amended and (4) added, p. 1827, § 4, effective January 1, 1995. L. 2012: (2) amended, (SB12-146), ch. 93, p. 306, §1, effective April 12; (3) amended and (5) added, (HB12-1070), ch. 167, p. 584, §4, effective August 8.

Case Notes:

ANNOTATION

It is a violation of this section for a clerk and recorder's office to accept a gift box from the Denver Broncos the motivation for which was likely to thank the office for providing individual players with private appointments for official services and with a private entrance policy not available to the general public. Indep. Ethics Comm'n Advisory Opinion 14-01.

Driver's license examiners would likely know that gifts from partner nonprofit organ procurement organization are given in return for official action taken, such as asking driver's license applicants for a monetary donation, designating an organ donor by putting a Y on the driver's license, or educating applicants who choose to be donors, and therefore would violate subsection (1)(b)(II). Indep. Ethics Comm'n Advisory Opinion 14-08.

There is no conflict or appearance of impropriety created by the president of History Colorado paying fair market value from his/her personal funds to fly on the personal plane of one of History Colorado's largest donors to participate in a trip to Washington, D.C. Indep. Ethics Comm'n Advisory Opinion 13-09.

§ 24-18-105. Ethical principles for public officers, local government officials, and employees

(1) 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 state or local government.

(2) A public officer, a local government official, or an employee should not acquire or hold an interest in any business or undertaking which he/she has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by an agency over which he/she has substantive authority.

(3) A public officer, a local government official, or an employee should not, within six months following the termination of his/her office or employment, obtain employment in which he/she will take direct advantage, unavailable to others, of matters with which he/she was directly involved during his/her term of employment. These matters include rules, other than rules of general application, which he/she actively helped to formulate and applications, claims, or contested cases in the consideration of which he/she was an active participant.

(4) A public officer, a local government official, or an employee should not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when he/she has a substantial financial interest in a competing firm or undertaking.

(5) Public officers, local government 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.

Cite as C.R.S. § 24-18-105

History. L. 88: Entire article added, p. 902, § 1, effective July 1. L. 2012: (5) added, (SB12-146), ch. 93, p. 307, §2, effective April 12.

Case Notes:

ANNOTATION

It would not violate this section for a former employee of the department of health care policy and financing to enter into a contract with a consulting company to work on project management issues relating to a major health care provider where the state agency indicated there is no conflict. Indep. Ethics Comm'n Letter Ruling 10-02.

It would violate this section for a former employee of the department of human services to enter into a contract or seek employment before the passage of six months with one of the direct service organizations that continues to contract with the department since the former employee has information not readily available to others as a result of the former state employment. Indep. Ethics Comm'n Letter Ruling 14-02.

This section specifically prevents a state employee from revealing information unavailable to others that the employee has acquired through his or her employment with the state when the employee is in the process of seeking employment outside of state government. Indep. Ethics Comm'n Advisory Opinion 13-13.

There was no violation of this section where city council member voted on a matter in which she had neither a personal or private interest nor a financial interest. Arnett v. Brandau, Indep. Ethics Comm'n 12-06.

§ 24-18-106. Rules of conduct for members of the general assembly

(1) Proof beyond a reasonable doubt of commission of any act enumerated in this section is proof that the member of the general assembly committing the act has breached his/her fiduciary duty and the public trust. A member of the general assembly shall not accept a fee, a contingent fee, or any other compensation, except his/her official compensation provided by statute, for promoting or opposing the passage of legislation.

(2) It shall not be a breach of fiduciary duty and the public trust for a member of the general assembly to:

- (a) Use state facilities or equipment to communicate or correspond with a member's constituents, family members, or business associates;
- (b) Accept or receive a benefit as an indirect consequence of transacting state business; or
- (c) Accept the payment of or reimbursement for actual and necessary expenses for travel, board, and lodging from any organization declared to be a joint governmental agency of this state under section 2-3-311(2), C.R.S., if:

(I)

(A) The expenses are related to the member's attendance at a convention or meeting of the joint governmental agency at which the member is scheduled to deliver a speech, make a presentation, participate on a panel, or represent the state of Colorado or for some other legitimate state purpose;

(B) The travel, board, and lodging arrangements are appropriate for purposes of the member's attendance at the convention or meeting;

(C) The duration of the member's stay is no longer than is reasonably necessary for the member to accomplish the purpose of his or her attendance at the convention or meeting;

(D) The member is not currently and will not subsequent to the convention or meeting be in a position to take any official action that will benefit the joint governmental agency; and

(E) The attendance at conventions or meetings of the joint governmental agency has been approved by the executive committee of the legislative

council or by the leadership of the house of the general assembly to which the member belongs; or

(II) The general assembly pays regular monthly, annual, or other periodic dues to the joint governmental agency that are invoiced expressly to cover travel, board, and lodging expenses for the attendance of members at conventions or meetings of the joint governmental agency.

(3) Notwithstanding any other provision of law, no member of the general assembly shall lobby, solicit lobbying business or contracts, or otherwise establish a lobbying business or practice respecting issues before the general assembly prior to the expiration of his or her term. Where the member tenders his or her resignation prior to the expiration of his or her term, the requirements of this subsection (3) shall apply up through the date of the member's resignation from office.

Cite as C.R.S. § 24-18-106

History. L. 88: Entire article added, p. 902, § 1, effective July 1. L. 2003: (3) added, p. 1230, § 1, effective July 1. L. 2010: (2) amended, (SB10-099), ch. 184, p. 662, §4, effective August 11.

Cross References:

For the legislative declaration in the 2010 act amending subsection (2), see section 1 of chapter 184, Session Laws of Colorado 2010.

§ 24-18-107. Ethical principles for members of the general assembly

(1) The principles in this section are intended only as guides to a member of the general assembly in determining whether or not his or her conduct is ethical.

(2) A member of the general assembly who has a personal or private interest in any measure or bill proposed or pending before the general assembly shall disclose the fact to the house of which he/she is a member and shall not vote thereon. In deciding whether or not he/she has such an interest, a member shall consider, among other things, the following:

(a) Whether the interest impedes his/her independence of judgment;

(b) The effect of his or her participation on public confidence in the integrity of the general assembly; and

(c) Whether his or her participation is likely to have any significant effect on the disposition of the matter.

(3) An interest situation does not arise from legislation affecting the entire membership of a class.

(4) If a member of the general assembly elects to disclose the interest, he/she shall do so as provided in the rules of the house of representatives or the senate, but in no case shall failure to disclose constitute a breach of the public trust of legislative office.

Cite as C.R.S. § 24-18-107

History. L. 88: Entire article added, p. 902, § 1, effective July 1.

§ 24-18-108. Rules of conduct for public officers and state employees

(1) Proof beyond a reasonable doubt of commission of any act enumerated in this section is proof that the actor has breached his/her fiduciary duty.

(2) A public officer or a state employee shall not:

(a) Engage in a substantial financial transaction for his/her private business purposes with a person whom he/she inspects, regulates, or supervises in the course of his or her official duties;

(b) Assist any person for a fee or other compensation in obtaining any contract, claim, license, or other economic benefit from his or her agency;

(c) Assist any person for a contingent fee in obtaining any contract, claim, license, or other economic benefit from any state agency; or

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

(3) A head of a principal department or a member of a quasi-judicial or rule-making agency may perform an official act notwithstanding paragraph (d) of subsection (2) of this section if his or her participation is necessary to the administration of a statute and if he/she complies with the voluntary disclosure procedures under section 24-18-110.

(4) Repealed.

Cite as C.R.S. § 24-18-108

History. L. 88: Entire article added, p. 903, § 1, effective July 1. L. 91: (4) repealed, p. 837, § 2, effective March 29.

Case Notes:

ANNOTATION

The housing division of the department of local affairs may hire a qualified individual whose business has outstanding loans with the division where the individual would not have the ability to take an official act relating to the current contracts, have access to computer files or data regarding his/her contracts, and would not be able to inspect or manipulate agency data relating to his or her contracts. Independent Ethics Commission Advisory Opinion 11-11.

§ 24-18-108.5. Rules of conduct for members of boards and commissions

(1) Proof beyond a reasonable doubt of commission of any act enumerated in this section is proof that the actor has breached his or her fiduciary duty.

(2) A member of a board, commission, council, or committee who receives no compensation other than a per diem allowance or necessary and reasonable expenses shall not perform an official act which may have a direct economic benefit on a business or other undertaking in which such member has a direct or substantial financial interest.

Cite as C.R.S. § 24-18-108.5

History. L. 91: Entire section added, p. 837, § 3, effective March 29.

§ 24-18-109. [Effective Until 8/9/2017] Rules of conduct for local government officials and employees

(1) Proof beyond a reasonable doubt of commission of any act enumerated in this section is proof that the actor has breached his/her fiduciary duty and the public trust.

(2) A local government official or local government employee shall not:

(a) Engage in a substantial financial transaction for his/her private business purposes with a person whom he/she inspects or supervises in the course of his or her official duties;

(b) Perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he/she either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or

(c) Accept goods or services for his or her own personal benefit offered by a person who is at the same time providing goods or services to the local government for which the official or employee serves, under a contract or other means by which the person receives payment or other compensation from the local government, 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 his or her official or governmental status that is unavailable to members of the public generally.

(3)

(a) A member of the governing body of a local government who has a personal or private interest in any matter proposed or pending before the governing body shall disclose such interest to the governing body and shall not vote thereon and shall refrain from attempting to influence the decisions of the other members of the governing body in voting on the matter.

(b) A member of the governing body of a local government may vote notwithstanding paragraph (a) of this subsection (3) if his/her participation is necessary to obtain a quorum or otherwise enable the body to act and if he/she complies with the voluntary disclosure procedures under section 24-18-110.

(4) It shall not be a breach of fiduciary duty and the public trust for a local government official or local government employee to:

(a) Use local government facilities or equipment to communicate or correspond with a member's constituents, family members, or business associates; or

(b) Accept or receive a benefit as an indirect consequence of transacting local government business.

Cite as C.R.S. § 24-18-109

History. L. 88: Entire article added, p. 903, § 1, effective July 1. L. 2012: (2)(c) added, (SB12-146), ch. 93, p. 307, §3, effective April 12.

Note: *This section is set out twice. See also C.R.S. § 24-18-109 , as amended by 2017 Ch. 291, §1, eff. 8/9/2017.*

Case Notes:

ANNOTATION

A local official should avoid engaging in financial business with the entity he or she represents, but if he/she does, he/she should not participate in the vote on the matter or urge his/her fellow local officials to vote a particular way. *Indep. Ethics Comm'n Advisory Opinion 12-01.*

Respondent violated subsections (2) and (3)(a) since he/she took official action by voting on an increased contribution to an entity with which he/she had begun negotiations for future employment and therefore had a personal or private interest in the vote on the entity's budget. *Colo. Ethics Watch v. McCasky, Indep. Ethics Comm'n 11-03.*

There is no violation of subsection (3)(a) where city council member voted on a matter in which he/she did not have a personal or private interest. *Arnett v. Brandau, Indep. Ethics Comm'n 12-06.*

§ 24-18-109. [Effective 8/9/2017] Rules of conduct for local government officials and employees

(1) Proof beyond a reasonable doubt of commission of any act enumerated in this section is proof that the actor has breached his or her fiduciary duty and the public trust.

(2) A local government official or local government employee shall not:

(a) Engage in a substantial financial transaction for his/her private business purposes with a person whom he/she inspects or supervises in the course of his or her official duties;

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

(c) Accept goods or services for his or her own personal benefit offered by a person who is at the same time providing goods or services to the local government for which the official or employee serves, under a contract or other means by which the person receives payment or other compensation from the local government, 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 his or her official or governmental status that is unavailable to members of the public generally.

(3)

(a) A member of the governing body of a local government who has a personal or private interest in any matter proposed or pending before the governing body shall disclose such interest to the governing body and shall not vote thereon and shall refrain from attempting to influence the decisions of the other members of the governing body in voting on the matter.

(b) A member of the governing body of a local government may vote notwithstanding paragraph (a) of this subsection (3) if his/her participation is necessary to obtain a quorum or otherwise enable the body to act and if he/she complies with the voluntary disclosure procedures under section 24-18-110.

(4) It shall not be a breach of fiduciary duty and the public trust for a local government official or local government employee to:

(a) Use local government facilities or equipment to communicate or correspond with a member's constituents, family members, or business associates; or

(b) Accept or receive a benefit as an indirect consequence of transacting local government business.

(5)

(a) Notwithstanding any other provision of this article 18, it is neither a conflict of interest nor a breach of fiduciary duty or the public trust for a local government official who is a member of the governing body of a local government to serve on a board of directors of a nonprofit entity and, when serving on the governing body, to vote on matters that may pertain to or benefit the nonprofit entity.

(b)

(I) Except as provided in subsection (5)(b)(II) of this section, a local government official is not required to provide or file a disclosure or otherwise comply with the requirements of subsection (3) of this section unless the local government official has a financial interest in, or the local government official or an immediate family member receives services from, the nonprofit entity independent of the official's membership on the board of directors of the nonprofit entity.

(II) A local government official who serves on the board of directors of a nonprofit entity shall publicly announce his or her relationship with the nonprofit entity before voting on a matter that provides a direct and substantial economic benefit to the nonprofit entity.

Cite as C.R.S. § 24-18-109

History. Amended by 2017 Ch. 291, §1, eff. 8/9/2017.

L. 88: Entire article added, p. 903, § 1, effective July 1. L. 2012: (2)(c) added, (SB12-146), ch. 93, p. 307, §3, effective April 12.

Note: 2017 Ch. 291, was passed without a safety clause. See Colo. Const. art. V, § 1(3).

Note: *This section is set out twice. See also C.R.S. § 24-18-109 , effective until 8/9/2017.*

Case Notes:

ANNOTATION

A local official should avoid engaging in financial business with the entity he/she represents, but if he/she does, he/she should not participate in the vote on the matter or urge his/her fellow local officials to vote a particular way. Indep. Ethics Comm'n Advisory Opinion 12-01.

Respondent violated subsections (2) and (3)(a) since he/she took official action by voting on an increased contribution to an entity with which he/she had begun negotiations for future employment and therefore had a personal or private interest in the vote on the entity's budget. Colo. Ethics Watch v. McCasky, Indep. Ethics Comm'n 11-03.

There is no violation of subsection (3)(a) where city council member voted on a matter in which she did not have a personal or private interest. Arnett v. Brandau, Indep. Ethics Comm'n 12-06.

§ 24-18-110. 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 member of the general assembly, a public officer, a local government official, or an employee may, prior to acting in a manner which may impinge on his fiduciary duty and the public trust, disclose the nature of his/her private interest. Members of the general assembly shall make disclosure as provided in the rules of the house of representatives and the senate, and all others shall make the disclosure in writing to the secretary of state, listing the amount of his/her financial interest, if any, the purpose and duration of his/her services rendered, if any, and the compensation received for the services or such other information as is necessary to describe his/her interest. If he/she then performs the official act involved, he/she 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.

Cite as C.R.S. § 24-18-110

History. L. 88: Entire article added, p. 904, § 1, effective July 1. L. 91: Entire section amended, p. 838, § 4, effective March 29.

§ 24-18-111. Powers of the secretary of state. (Repealed)

Cite as C.R.S. § 24-18-111

History. L. 88: Entire article added, p. 904, § 1, effective July 1. L. 2010: Entire section repealed, (HB10-1404), ch. 405, p. 2003, §2, effective June 10.

§ 24-18-112. Board of ethics for the executive branch - created - duties

(1) There is hereby created a board of ethics for the executive branch of state government in the office of the governor. The board shall consist of five members to be appointed by and serve at the pleasure of the governor.

(2) The board of ethics for the executive branch shall:

- (a) Comment, when requested by the governor, on each proposed gubernatorial appointment, including the heads of the principal departments and the senior members of the governor's office based upon the provisions of this article;
- (b) Upon written request of the governor, review complaints of any violation of the provisions of this article by a member of the executive branch of state government;
- (c) Make written recommendations to the governor concerning his/her requests; and
- (d) Review appeals brought before the board of ethics pursuant to section 24-30-1003(4).

Cite as C.R.S. § 24-18-112

History. L. 88: Entire article added, p. 905, § 1, effective July 1. L. 94: (2) amended, p. 1249, § 2, effective July 1.

§ 24-18-113. Board of ethics for the general assembly - created - duties

(1)

(a) There is hereby created a board of ethics for the general assembly. The board shall consist of four legislative members. One member shall be appointed by and serve at the pleasure of the majority leader of the house of representatives; one member shall be appointed by and serve at the pleasure of the majority leader of the senate; one member shall be appointed by and serve at the pleasure of the minority leader of the house of representatives; and one member shall be appointed by and serve at the pleasure of the minority leader of the senate.

(b) The terms of the members appointed by the majority and minority leaders of the house of representatives and the senate and who are serving on March 22, 2007, shall be extended to and expire on or shall terminate on the convening date of the first regular session of the sixty-seventh general assembly. As soon as practicable after such convening date, the majority and minority leaders of the house of representatives and the senate shall each appoint or reappoint members in the same manner as provided in paragraph (a) of this subsection (1). Thereafter, the terms of members appointed or reappointed by the majority and minority leaders of the house of representatives and the senate shall expire on the convening date of the first regular session of each general assembly, and all subsequent appointments and reappointments by the majority and minority leaders of the house of representatives and the senate shall be made as soon as practicable after such convening date. The person making the original appointment or reappointment shall fill any vacancy by appointment for the remainder of an unexpired term. Members appointed or reappointed by the majority and minority leaders of the house of representatives and the senate shall continue in office until the member's successor is appointed.

(c) The members of the board of ethics for the general assembly are entitled to receive compensation and reimbursement of expenses as provided in section 2-2-326, C.R.S.

(2) The board of ethics for the general assembly shall, upon written request of a member of the general assembly, issue advisory opinions concerning issues relating to the requesting member's conduct and the provisions of this article.

Cite as C.R.S. § 24-18-113

History. Amended by 2014 Ch. 390, §13, eff. 6/6/2014.

L. 88: Entire article added, p. 905, § 1, effective July 1. L. 2007: (1) amended, p. 181, § 13, effective March 22. L. 2014: (1)(c) added, (SB14-153), ch. 390, p. 1963, §13, effective June 6.

Colorado Statutes

**Title 24. GOVERNMENT - STATE
ADMINISTRATION**

Article 18. Standards of Conduct

Part 2. PROSCRIBED ACTS RELATED TO CONTRACTS AND CLAIMS

Current through Chapter 421 of the 2017 Legislative Session

§ 24-18-201. Interests in contracts

(1) Members of the general assembly, public officers, local government 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 months following the termination of his/her employment, contract or be employed by an employer who contracts with a state agency or any local government involving matters with which he/she was directly involved during his/her employment. For purposes of this section, the term:

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

(b) "Contract" does not include:

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

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

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

(IV) A contract with an interested party if, because of geographic 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 ten percent 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.

(V) A contract with respect to which any member of the general assembly, public officer, local government 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 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; in accordance with the rules of the house of representatives and the senate, for members of the general assembly; and to the secretary of state, for all others.

Cite as C.R.S. § 24-18-201

History. L. 88: Entire article added, p. 905, § 1, effective July 1.

Case Notes:

ANNOTATION

Local government officials should not be interested in any contract made by them in their official capacity and an official who has a private interest in any matter proposed or pending before the governing body should disclose the interest to the governing body and not vote on it; however, this section specifically exempts any contract awarded to the lowest responsible bidder based on competitive bidding procedures. Indep. Ethics Comm'n Advisory Opinion 12-01.

It would not pose a violation of this section for a retired community college accounting professor to enter into a contract with the college since he/she was not involved in the accounting procedures at the college when he/she was employed there and the proposed contract does not involve a matter in which he/she was directly involved as a professor. Indep. Ethics Comm'n Advisory Opinion 10-08.

It would not violate this section for a former employee of the department of health care policy and financing to enter into a contract with a consulting company to work on project management issues relating to a major health care provider, where the state agency indicated there is no conflict. Indep. Ethics Comm'n Letter Ruling 10-02.

It would violate this section for a former employee of the department of human services to enter into a contract or seek employment before the passage of six months with one of the direct service organizations that continues to contract with the department since the former employee

possesses knowledge not readily available to members of the public as a result of the former state employment. Indep. Ethics Comm'n Letter Ruling 14-02.

Because employee's duties as area maintenance manager for the governor's office of information technology (OIT) have been reassigned and he/she no longer has responsibilities or duties over the site in question and the employee has made a full disclosure to his/her supervisors and there is no information that he/she took advantage of information unavailable to others not in government employment, the employee is not in violation of this section if he/she leases properties owned by a limited liability corporation controlled by his/her spouse to the OIT. Indep. Ethics Comm'n Advisory Opinion 13-05.

A state agency is in the best position to determine whether a state employee's future employment outside of state government poses a conflict of interest given the agency's superior understanding of the duties performed by the state employee involved. Indep. Ethics Comm'n Advisory Opinion 13-13.

There is no violation of the public trust or appearance of impropriety if state employee receives profits from his/her patented design since he/she developed the design at the request of the employer, patented it only after obtaining permission from the agency, and agreed to put the needs of the people of the state first by not charging the department for present or future use of the design. Indep. Ethics Comm'n Advisory Opinion 15-04.

Colorado Statutes

Title 31. GOVERNMENT - MUNICIPAL

CORPORATE CLASS - ORGANIZATION AND TERRITORY

Article 4. Organizational Structure and Officers

Part 4. REQUIREMENTS AND COMPENSATION OF OFFICERS

Current through Chapter 421 of the 2017 Legislative Session

§ 31-4-404. Not to be appointed to office

(1) During the time for which he/she has been elected or for one year thereafter, no member of the governing body of any city or town shall be appointed to any municipal office which is created or the emoluments of which are increased during the term for which he/she has been elected except in the cases provided in this title.

(2) Any member of the governing body of any city or town who has a personal or private interest in any matter proposed or pending before the governing body shall disclose such interest to the governing body, shall not vote thereon, and shall refrain from attempting to influence the decisions of the other members of the governing body in voting on the matter.

(3) A member of the governing body of any city or town may vote notwithstanding subsection (2) of this section if his/her participation is necessary to obtain a quorum or otherwise enable the body to act and if he/she complies with the voluntary disclosure provisions of section 24-18-110, C.R.S.

Cite as C.R.S. § 31-4-404

History. L. 75: Entire title R&RE, p. 1035, § 1, effective July 1. L. 88: Entire section amended, p. 1127, § 1, effective March 18; entire section amended, p. 907, § 2, effective July 1.

Editor's Note:

This section is similar to former § 31-5-304 as it existed prior to 1975.

Case Notes:

ANNOTATION

Law reviews. For article, "Conflicts of Interest in Government", see 18 Colo. Law. 595 (1989).

EXHIBIT I
INVESTMENT POLICY - C.R.S. § 24-75-601.1

§ 11-10.5-101. Short title

This article shall be known and may be cited as the "Public Deposit Protection Act".

Cite as C.R.S. § 11-10.5-101

History. L. 89: Entire article R&RE, p. 593, § 1, effective September 1.

Editor's Note:

This section is similar to former § 11-10.5-101 as it existed prior to 1989.

§ 11-10.5-102. Legislative declaration

(1) The general assembly hereby declares that the purpose of this article is to serve the taxpayers and the citizens of Colorado by establishing standards and procedures to ensure the preservation and protection of all public funds held on deposit by a bank that are either not insured by or are in excess of the insured limits of federal deposit insurance, and to ensure the expedited repayment of such funds in the event of default and subsequent liquidation of a bank which holds such deposits.

(2) The general assembly further finds, determines, and declares that the protection of public funds on deposit in banks is a matter of statewide concern and importance and that as such:

(a) The provisions of this article shall prevail over any local government ordinance or resolution and over any home rule or territorial charter provision in conflict therewith; and

(b) The requirement that a national bank comply with the provisions of this article neither encroaches upon the prerogatives of a nationally chartered bank nor exceeds the authority of the state of Colorado.

Cite as C.R.S. § 11-10.5-102

History. L. 89: Entire article R&RE, p. 593, § 1, effective September 1.

Editor's Note:

This section is similar to former § 11-10.5-102 as it existed prior to 1989.

§ 11-10.5-103. Definitions

As used in this article, unless the context otherwise requires:

(1) "Aggregate uninsured public deposits" means the total amount of cash, checks, or drafts on deposit at the close of a business day for credit to the official custodian accounts in an eligible public depository, and which are either not insured by or are in excess of the insurable limits of federal deposit insurance.

(2) "Bank" means any bank organized or chartered under this article and articles 101 to 109 of this title or any bank organized or chartered under chapter 2 of title 12 of the United States Code. For purposes of section 11-10.5-104 and 11-10.5-111(1) only, the definition of "bank" also includes those banks chartered under the laws of other states.

(3) "Banking board" means the banking board established by section 11-102-103.

(4) "Defaulting depository" means any eligible public depository to which an event of default has occurred.

(5) "Eligible collateral" means, with respect to the securing of uninsured public funds, those instruments or obligations approved to be used for such purposes by the banking board pursuant to the provisions of section 11-10.5-107.

(6) "Eligible public depository" means any bank which has been designated as an eligible public depository by the banking board.

(7) "Event of default" means the issuance of an order by a supervisory authority or a receiver which restrains an eligible public depository from paying its deposit liabilities.

(8) "Federal deposit insurance" means deposit insurance or guarantees provided by the federal deposit insurance corporation or any successor agency thereto.

(9) "Official custodian" means:

(a) A designee with plenary authority, including control over public funds of a public unit which the official custodian is appointed to serve. For purposes of this paragraph (a), "control" includes possession of public funds, as well as the authority to establish accounts for such public funds in banks and to make deposits, withdrawals, or disbursements of such public funds. If the exercise of plenary authority over the public funds of a public unit requires action by or the consent of two or more putative official custodians, then such official custodians shall be treated as one official custodian with respect to such public funds.

(b) A designee, other than a designee described in paragraph (a) of this subsection (9), with authority, including control, over public funds of an entity, including the state of Colorado; any institution, agency, instrumentality, authority, county, municipality, city and county, school district, special district, or other political subdivision of the state of Colorado, including any institution of higher education; any institution, department, agency, instrumentality, or authority of any of the foregoing, including any county or municipal housing authority; any local government investment pool organized pursuant to part 7 of article 75 of title 24, C.R.S.; any public entity insurance pool organized pursuant to state statute; any public body corporate created or established under the constitution of the state of Colorado or any state statute; and any other entity, organization, or corporation formed by intergovernmental agreement or other contract between or among any of the foregoing. For purposes of this paragraph (b), "control" includes possession of public funds, as well as the authority to establish accounts for such public funds in banks and to make deposits, withdrawals, or disbursements of such public funds. If the exercise of authority over such public funds requires action by or the consent of two or more putative official custodians, then such official custodians shall be treated as one official custodian with respect to such public funds.

(10)

(a) "Political subdivision" includes any subdivision or any principal department of a public unit:

(I) The creation of which subdivision or principal department has been expressly authorized by state statute;

(II) To which some functions of government have been delegated by state statute;
and

(III) To which funds have been allocated by ordinance or state statute for its exclusive use and control.

(b) "Political subdivision" also includes drainage, irrigation, navigation, improvement, levee, sanitary, school, and power districts and bridge and port authorities and any other special district created by state statute or compact between the state of Colorado and one or more states.

(c) "Political subdivision" does not include subordinate or nonautonomous divisions, agencies, or boards within principal departments of a public unit.

(11) "Public deposits" means all public funds on deposit in an eligible public depository in any form, whether time, savings, or demand.

(12) "Public funds" means all funds of a public unit and all funds of any entity referred to in paragraph (b) of subsection (9) of this section.

(13) "Public unit" means the state of Colorado, any county, city and county, city, or municipality, including any home rule city or town or territorial charter city, or any political subdivision thereof.

Cite as C.R.S. § 11-10.5-103

History. L. 89: Entire article R&RE, p. 594, § 1, effective September 1. L. 91: (2) amended, p. 650, § 8, effective May 1. L. 2003: (3) amended, p. 1206, § 5, effective July 1. L. 2004: (2) amended, p. 324, § 9, effective April 7; (2) amended, p. 1190, § 17, effective August 4.

Editor's Note:

(1) This section is similar to former § 11-10.5-103 as it existed prior to 1989.

(2) *Subsection (2) was amended in House Bill 04-1110. Those amendments were superseded by the amendment of subsection (2) in Senate Bill 04-239.*

§ 11-10.5-104. Applicability of article

The provisions of this article shall apply to all banks which elect to become eligible public depositories. No bank shall hold any public funds unless such bank has been designated as an eligible public depository pursuant to the provisions of this article.

Cite as C.R.S. § 11-10.5-104

History. L. 89: Entire article R&RE, p. 595, § 1, effective September 1.

§ 11-10.5-105. Authority of banking board

The banking board shall have the authority to implement any provision of this article by order and by rule and regulation and may obtain restraining orders and injunctions to prevent violation of or to enforce compliance with the provisions of this article and the orders and rules and regulations issued under such provisions. The authority of the banking board shall be liberally construed to ensure that the purposes of this article are properly implemented.

Cite as C.R.S. § 11-10.5-105

History. L. 89: Entire article R&RE, p. 595, § 1, effective September 1.

Editor's Note:

This section is similar to former § 11-10.5-104 as it existed prior to 1989.

§ 11-10.5-106. Designation as eligible public depository - acceptance of provisions

(1) No bank shall be a public depository or shall hold public funds without first being designated as an eligible public depository by the banking board pursuant to the provisions of this section.

(2) No bank shall be designated an eligible public depository unless the bank meets the following criteria:

- (a) The deposits of such bank are insured or guaranteed by federal deposit insurance;
- (b) The bank is in compliance with the capital standards established by the banking board; and
- (c) The bank agrees in writing to abide by all regulatory directives, reporting requirements, examination requirements, and other criteria established for the administration and enforcement of the provisions and purposes of this article.

(3)

(a)

(I) Any bank which meets the criteria established in subsection (2) of this section and which desires to accept and hold public funds on and after September 1, 1989, shall file a written application with the banking board requesting designation as an eligible public depository. The request shall be signed by an executive officer of the bank and shall state that the bank agrees to abide by the provisions of this article and all rules and regulations promulgated by the banking board for the administration and enforcement of the provisions of this article.

(II) If the bank requesting such designation was an eligible public depository under applicable law in effect prior to September 1, 1989, and desires to continue to be an eligible public depository subject to the provisions of this article, it shall file the required written application within thirty days following August 1, 1989. If the banking board has no reason to believe that the bank would fail to meet the criteria or fail to follow the provisions of this article, it may designate such bank as an eligible public depository and issue an appropriate certificate evidencing such designation. Such immediate designation is provided for the convenience of the banking board in order to expedite transition from laws governing the protection of public funds in effect prior to September 1, 1989, and is not to be construed as granting a right or privilege to any bank to be designated as an eligible public depository.

(III) Any bank which was not an eligible public depository under applicable law in effect prior to September 1, 1989, or any bank which was granted a charter on or after said date, or any bank which has had its certificate as an eligible public depository withdrawn or revoked by either the banking board or the commissioner may at any time make written application to the banking board for designation as an eligible public depository. Such application shall be made on such forms or in such format as may be prescribed by the banking board. Upon submittal, the application shall contain all required information and shall be accompanied by a fee to be determined by the banking board. The banking board shall review the application and, not more than sixty days from the date that the application was submitted, shall either grant and issue or deny issuance of a certificate evidencing such designation. The banking board may extend the sixty-day review period for not more than thirty additional days.

(b)

(I) Designation as an eligible public depository shall not constitute either a right or a license, and such designation may be revoked, suspended, or placed under restrictions, limitations, or other conditions by the banking board if the board

determines that the eligible public depository has failed to comply with the provisions of this article or any rule and regulation promulgated by the banking board for the administration or enforcement of this article or with the provisions of any order of the banking board.

(II) Once granted, designation as an eligible public depository may be retained by the bank to which it was granted unless the banking board acts to suspend, revoke, or otherwise limit the designation. Designation is unique to the bank to which it was granted and may not be sold or transferred to another bank. In the event that a bank designated as an eligible public depository is acquired or merged with another entity, the banking board shall review the continuation of such designation under either this paragraph (b) or paragraph (a) of this subsection (3).

Cite as C.R.S. § 11-10.5-106

History. L. 89: Entire article R&RE, p. 595, § 1, effective September 1.

Editor's Note:

This section is similar to former § 11-10.5-105 as it existed prior to 1989.

§ 11-10.5-107. Eligible collateral - uninsured public deposits

(1) The banking board shall establish by rule and regulation a list of approved instruments and obligations to be used as eligible collateral by an eligible public depository in order to comply with the provisions of this section. As part of its findings, the banking board shall determine that each approved obligation or instrument meets at least the following criteria:

- (a) The obligation or instrument is characterized by attributes of safety, liquidity, and soundness meeting the purposes of this article for the preservation and protection of public funds;
- (b) The obligation or instrument, with respect to its market value, shall be marketable or convertible into cash within such time periods as shall be prescribed by the banking board to assure that any claim made pursuant to section 11-10.5-110 is fully and promptly paid;
- (c) The standards and relevant factors required to establish and evaluate the current market value of the obligation or instrument are prescribed by the banking board at the time the obligation or instrument is approved for use as eligible collateral, which standards and relevant factors may include statistical standards for deviations from the original market value assigned at the time of approval for use that would result in an automatic deletion from the list of approved eligible collateral;
- (d) The market value of each obligation or instrument is verified at least monthly, unless the banking board prescribes a different period for a particular obligation or instrument;
- (e) The banking board has at its disposal adequate resources to monitor and evaluate the market value of the obligation or instrument; and
- (f) The obligation or instrument satisfies such other criteria as the banking board may establish.

(2)

- (a) Except as provided in subsection (4) of this section, the banking board shall not treat any eligible public depository differently than any other eligible public depository.
- (b) In promulgating the list of eligible collateral pursuant to subsection (1) of this section, the banking board, within the bounds of safety and soundness, shall not establish market values or other evaluation criteria which are disproportionately more restrictive for banks than comparable market values or evaluation criteria for any other class of eligible public depositories operating under this article or any other state law. It is the intent of the

general assembly that, to the extent practicable, competitive parity among eligible public depositories which existed under applicable law in effect prior to September 1, 1989, should be maintained.

(3) The banking board shall establish procedures to notify each eligible public depository in a timely manner of the obligations and instruments that have been approved for use as eligible collateral and of obligations and instruments that have been deleted from the list of approved eligible collateral. Any eligible public depository utilizing as collateral an obligation or instrument which has been deleted from the list of approved eligible collateral shall, within three business days of receiving notice of the deletion or within such longer period as prescribed by the banking board, remove it from its portfolio of collateral and substitute sufficient other obligations or instruments that are approved for use as eligible collateral to properly secure public funds as required by this article.

(4)

(a) The banking board shall by rule establish criteria and procedures for reducing or removing any uninsured public funds deposited in an eligible public depository if said depository fails to comply with the capital or safety and soundness standards established by the banking board.

(b) The banking board shall require an eligible public depository to increase, substitute, add to, or modify the amount or type of eligible collateral held to secure any uninsured public funds so that the collateral is adequate to fully protect the public funds if the capital or financial condition of the eligible public depository fails to comply with the capital or safety and soundness standards established by the banking board. The banking board shall establish such procedures as may be necessary to ensure that all collateral held pursuant to an action taken under this paragraph (b) is characterized by the highest degree of marketability and liquidity so that, in the event of default, all public deposits may be promptly and fully repaid.

(5) As an ongoing requirement of designation as an eligible public depository, any such depository shall pledge collateral having a market value in excess of one hundred two percent of the aggregate uninsured public deposits.

(6) An eligible public depository shall remove any obligation or instrument pledged as eligible collateral if the banking board determines that the obligation or instrument has failed in some manner to meet the criteria required by this section and shall substitute another obligation or instrument of eligible collateral that is satisfactory to the banking board.

Cite as C.R.S. § 11-10.5-107

History. L. 89: Entire article R&RE, p. 597, § 1, effective September 1. L. 2009: (4) amended, (HB09-1053), ch. 159, p. 687, §2, effective August 5.

§ 11-10.5-108. Collateral - where held - right of substitution - income derived

(1)

(a) Eligible collateral shall be held as provided in this article or by rules and regulations of the banking board. Eligible collateral shall be held in the custody of any bank, including a federal reserve bank, or any depository trust company which has been approved by the banking board to hold eligible collateral and is supervised by the

banking board, or an equivalent governmental agency responsible for the regulation of banks in the state in which such bank or depository trust company is located.

(b) An eligible public depository which has its own trust department may make application to the banking board to be allowed to segregate its required eligible collateral from the other assets of the eligible public depository and to hold such collateral in its own trust department under such conditions as the banking board shall prescribe by rule and regulation. The banking board may require an eligible public depository that is holding its own eligible collateral in its own trust department to cease doing so and to have the eligible collateral held by some other entity authorized to hold collateral by paragraph (a) of this subsection (1). Any eligible public depository which holds collateral for any other eligible public depository and which is granted permission by the banking board to hold its own collateral as well shall at all times keep the collateral held for each such eligible public depository segregated.

(2) Under circumstances where eligible collateral is maintained as required by this article, and where such eligible collateral is not held by the eligible public depository's own trust department, each eligible public depository shall provide in a written deposit or pledge agreement between the said eligible public depository and the custodian of the collateral, or in such other manner as shall be prescribed by the banking board by rule and regulation, that:

(a) In the event of default or insolvency of the eligible public depository for which the collateral is held, the custodian shall surrender such collateral to the banking board; and

(b) The custodian shall make available to the banking board the eligible collateral and any books, records, and papers pertaining thereto for any examination or other reason necessary for the administration of this article.

(3) An eligible public depository may at any time make substitutions of eligible collateral maintained or pledged for the purposes of this article pursuant to collateral substitution procedures established by the banking board and shall at all times be entitled to collect and retain all income derived from such collateral without restriction. The privilege granted under this subsection (3) may be suspended or revoked by the banking board if the eligible public depository has become the subject of increased regulatory oversight as a result of its failure to maintain capital standards required by the banking board for the holding of public funds.

Cite as C.R.S. § 11-10.5-108

History. L. 89: Entire article R&RE, p. 598, § 1, effective September 1. L. 91: (1) and (3) amended, p. 650, § 9, effective May 1.

Editor's Note:

This section is similar to former § 11-10.5-109 as it existed prior to 1989.

§ 11-10.5-109. Verification of collateral held - reports required

(1) Each eligible public depository shall submit reports at least monthly to the banking board in such format as the banking board may prescribe. Such report shall demonstrate that the eligible public depository is in full compliance with the provisions of this article. In addition, each eligible public depository shall submit copies of its quarterly call reports to the banking board thirty days after the close of each fiscal quarter.

(2) The board of directors of an eligible public depository shall cause an annual audit to be completed at least annually, but at intervals of not more than fifteen months, by an independent accounting firm composed of certified public accountants or a director's examination by a public

accountant or any other independent person or persons as determined by the banking board. The banking board shall adopt regulations regarding the qualifications of such public accountant and other independent person or persons who shall assume the responsibility for due care in such directors' examinations. The banking board's regulations shall also establish the scope of such directors' examinations which shall include safeguards to insure that such examinations adequately describe the financial condition of the financial institution. Such independent audit or directors' examination shall be completed and submitted to the banking board within the time lines the banking board requires. Such audits or directors' examinations shall include, but shall not be limited to, the following information:

- (a) The official custodian on whose behalf any public funds are held;
- (b) The name and address of each such official custodian;
- (c) The amount of public funds on deposit for each such custodian;
- (d) The amount of federal deposit insurance coverage for each such official custodian;
- (e) The eligible collateral pledged for aggregate uninsured public deposits and the market value of such eligible collateral; and
- (f) Any other information which may be required by the banking board by rule and regulation.

(3) The banking board may examine all public deposits held by and all eligible collateral required to be maintained by an eligible public depository, and all books, records, and papers pertaining thereto.

(4) Each eligible public depository shall be assessed reasonable expenses by the banking board to meet the costs of any examinations made in accordance with the provisions of this section.

Cite as C.R.S. § 11-10.5-109

History. L. 89: Entire article R&RE, p. 599, § 1, effective September 1. L. 90: IP(2) amended, p. 667, § 35, effective June 7.

Editor's Note:

This section is similar to former §§ 11-10.5-109.5 and 11-50-111 as they existed prior to 1989.

§ 11-10.5-110. Procedures when event of default occurs

(1) When the banking board has determined that an eligible public depository has experienced an event of default, the banking board shall proceed in the following manner:

- (a) The board shall seize and take possession of all eligible collateral belonging to or held on behalf of the defaulting depository from wherever such eligible collateral is held.
- (b) The board shall ascertain the aggregate amounts of public funds held by the defaulting depository as disclosed by the records of such depository. The board shall determine for each official custodian for whom public funds are held by the defaulting depository the accounts and the amount of federal deposit insurance that is available for each account. It shall then determine for each such official custodian the amount of uninsured public funds and the eligible collateral that is pledged to secure such funds. Upon completion of this analysis, the board shall provide each such official custodian with a statement that reports the amount of public funds held by the defaulting depository in his/her behalf, the amount that may be protected by federal deposit insurance, and the amount that is safeguarded by eligible collateral as required by this article. Each such official custodian shall verify this information from his/her records within ten working days after receiving the report and information from the banking board.

(c) Upon receipt of a verified report from such official custodian and if the defaulting eligible public depository is to be liquidated or otherwise removed from status as an eligible public depository, the banking board shall proceed to liquidate all eligible collateral held for the safeguarding of public deposits and shall repay each official custodian for the uninsured public deposits held by the depository in his/her behalf.

(2) In the event that a federal deposit insurance agency is appointed and acts as liquidator or receiver of any eligible public depository under state or federal law, those duties under this article that are specified to be performed by the banking board in the event of default may be delegated to and performed by the said federal deposit insurance agency. Any liquidation occurring under the provisions of this section shall conform to the procedures established in section 11-103-804.

Cite as C.R.S. § 11-10.5-110

History. L. 89: Entire article R&RE, p. 600, § 1, effective September 1. L. 2003: (2) amended, p. 1206, § 6, effective July 1.

Editor's Note:

This section is similar to former § 11-10.5-113 as it existed prior to 1989.

§ 11-10.5-111. Public funds to be deposited only in eligible public depositories - responsibilities of official custodians and eligible public depositories - penalty

(1) Any official custodian may deposit public funds in any bank which has been designated by the banking board as an eligible public depository. It is unlawful for an official custodian to deposit public funds in any bank other than one that has been so designated.

(2) Each official custodian shall inform an eligible public depository that the public funds on deposit are subject to the provisions of this article before entering into a depository agreement with the eligible public depository. It is the responsibility of the official custodian to maintain documents or other verification necessary to properly identify the public funds which are subject to the provisions of this article.

(3) The division, in consultation with the state treasurer and the state controller, shall establish the necessary controls to ensure the proper identification of public depository accounts.

(4)

(a) An official custodian who acted in good faith in selecting, designating, or approving any eligible public depository for the deposit of public funds shall not be liable for any loss of public funds deposited in an eligible public depository if such loss is caused by the occurrence of an event of default of such eligible public depository.

(b) Any official custodian who violates the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than two hundred dollars nor more than five hundred dollars, which fine shall be mandatory and may not be reimbursed nor paid by the public unit. Upon any such conviction, the court may adjudge that the official custodian be removed from public office.

(c) Any director, bank officer, or manager who knowingly violates the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than two hundred dollars nor more than two thousand dollars, which fine shall be mandatory.

(5) It is unlawful for any director, bank officer, or manager of any bank to accept or receive any public funds while such bank is insolvent or while under verbal or written order from the banking board not to accept or receive any public funds.

(6) Notwithstanding any other provision of this section to the contrary, nothing shall be construed to prevent a bank which is an eligible public depository operating pursuant to the provisions of this article from being or acting as an agent on behalf of any official custodian for the purposes of making investments as authorized by part 6 of article 75 of title 24, C.R.S. Any such bank shall maintain such accounting records as are necessary to readily distinguish between the activities authorized by said part 6 and the purposes of the public deposit protection requirements imposed upon it as a condition of being an eligible public depository. The banking board may promulgate such rules and regulations as it deems necessary to ensure that the activities authorized under part 6 of article 75 of title 24, C.R.S., and the protection of public funds pursuant to this article are not commingled.

Cite as C.R.S. § 11-10.5-111

History. L. 89: Entire article R&RE, p. 601, § 1, effective September 1. L. 2001: (3) amended, p. 155, § 1, effective March 28.

Editor's Note:

This section is similar to former §§ 11-10.5-118, 11-10.5-119, and 11-10.5-121 as they existed prior to 1989.

§ 11-10.5-112. Annual fees and assessments

(1) There is hereby created in the state treasury the public deposit administration fund. The fund shall consist of moneys required to be credited to the fund pursuant to subsection (2) of this section and all interest earned on the investment of the moneys in the fund. Any such interest shall be credited at least annually to said fund. Moneys in the fund shall be subject to appropriation by the general assembly to the banking board to be used solely for the administration and enforcement of the provisions of this article. No moneys shall be appropriated from the general fund for payment of any expenses incurred under this section, and no such expenses shall be charged against the state.

(2) Every eligible public depository shall be assessed an annual fee in an amount established by the banking board for the costs of enforcement and administration of this article. Such fees shall fairly and equitably apply to all eligible public depositories calculated according to the proportion of aggregate public funds that each depository holds in relation to the total of all aggregate public deposits held by all eligible public depositories for each annual period for which they were eligible public depositories. The banking board shall transmit such fees to the state treasurer who shall credit the same to the public deposit administration fund.

(3) All fees assessed against an eligible public depository in accordance with the provisions of section 11-10.5-109(4) shall be transmitted to the state treasurer who shall credit the same to the public deposit administration fund.

(4) In setting fees, the banking board shall apply the standards imposed on boards and commissions of the division of professions and occupations in the department of regulatory agencies for determining the amount of fees pursuant to the provisions of section 24-34-105(2) (b) and (2) (c), C.R.S.

Cite as C.R.S. § 11-10.5-112

History. L. 89: Entire article R&RE, p. 602, § 1, effective September 1. L. 90: (2) amended, p. 667, § 36, effective June 7.

Editor's Note:

This section is similar to former § 11-10.5-120 as it existed prior to 1989.

Colorado Statutes

Title 24. GOVERNMENT - STATE

STATE FUNDS

Article 75. State Funds

Part 7. INVESTMENT FUNDS - LOCAL GOVERNMENT POOLING

Current through Chapter 421 of the 2017 Legislative Session

§ 24-75-702. Local governments - authority to pool surplus funds

(1) In accordance with the provisions of this part 7, it is lawful for any local government to pool any moneys in its treasury, which are not immediately required to be disbursed, with the same such moneys in the treasury of any other local government and to deposit such moneys in a local government investment pool trust fund in order to take advantage of short-term investments and maximize net interest earnings.

(2) Any trust fund formed pursuant to this part 7 shall be subject to part 4 of article 6 and part 2 of article 72 of this title and shall be considered a local public body for purposes of those provisions.

Cite as C.R.S. § 24-75-702

History. L. 93: Entire part R&RE, p. 320, § 1, effective July 1.

Editor's Note:

This section is similar to former § 24-75-701 as it existed prior to 1993.

Colorado Statutes

Title 24. GOVERNMENT - STATE

STATE FUNDS

Article 75. State Funds

Part 6. FUNDS - LEGAL INVESTMENTS

Current through Chapter 421 of the 2017 Legislative Session

§ 24-75-601.1. Legal investments of public funds

(1) It is lawful to invest public funds in any of the following securities:

(a) Any security issued by, fully guaranteed by, or for which the full credit of the United States treasury is pledged for payment and, notwithstanding paragraph (a) of subsection (1.3) of this section, inflation indexed securities issued by the United States treasury. The period from the date of settlement of this type of security to its maturity date shall be no more than five years unless the governing body of the public entity authorizes investment for a period in excess of five years.

(b)

(I) Any security issued by, fully guaranteed by, or for which the full credit of the following is pledged for payment: The federal farm credit bank, the federal land bank, a federal home loan bank, the federal home loan mortgage corporation, the

federal national mortgage association, the export-import bank, the Tennessee valley authority, the government national mortgage association, the world bank, or an entity or organization that is not listed in this paragraph (b) but that is created by, or the creation of which is authorized by, legislation enacted by the United States congress and that is subject to control by the federal government that is at least as extensive as that which governs an entity or organization listed in this paragraph (b). The period from the date of settlement of this type of security to its maturity date shall be no more than five years unless the governing body of the public entity authorizes investment for a period in excess of five years.

(II) No subordinated security may be purchased pursuant to this paragraph (b).

(c) (Deleted by amendment, L. 2006, p. 552, §3, effective August 7, 2006.)

(d)

(I) Any security that is a general obligation of any state of the United States, the District of Columbia, or any territorial possession of the United States or of any political subdivision, institution, department, agency, instrumentality, or authority of any of such governmental entities.

(II) No security may be purchased pursuant to this paragraph (d) unless:

(A) At the time of purchase, the security carries at least two credit ratings at or above "A" or its equivalent from nationally recognized statistical rating organizations if it is a general obligation of this state or of any political subdivision, institution, department, agency, instrumentality, or authority of this state or carries at least two credit ratings at or above "AA" or its equivalent from such organizations if it is a general obligation of any other governmental entity listed in subparagraph (I) of this paragraph (d);

(B) (Deleted by amendment, L. 2006, p. 552, §3, effective August 7, 2006.)

(C) The period from the date of settlement of this type of security to its maturity date or date of optional redemption that has been exercised as of the date the security is purchased is no more than five years unless the governing body of the public entity authorizes investment for a period in excess of five years.

(e)

(I) Any security that is a revenue obligation of any state of the United States, the District of Columbia, or any territorial possession of the United States or of any political subdivision, institution, department, agency, instrumentality, or authority of any of such governmental entities.

(II) No security may be purchased pursuant to this paragraph (e) unless, at the time of purchase, the security carries at least two credit ratings at or above "A" or its equivalent from nationally recognized statistical rating organizations if it is a revenue obligation of this state or of any political subdivision, institution, department, agency, instrumentality, or authority of this state or carries at least two credit ratings at or above "AA" or its equivalent from such organizations if it is a revenue obligation of any other governmental entity listed in subparagraph (I) of this paragraph (e).

(III) The period from the date of settlement of this type of security to its maturity date or date of optional redemption that has been exercised as of the date the security is purchased shall be no more than five years.

(f) and (g) (Deleted by amendment, L. 2006, p. 552, §3, effective August 7, 2006.)

(h) Any security of the investing public entity or any certificate of participation or other security evidencing rights in payments to be made by the investing public entity under a lease, lease-purchase agreement, or similar arrangement;

(h.5) Any certificate of participation or other security evidencing rights in payments to be made by a school district under a lease, lease-purchase agreement, or similar arrangement if the security, at the time of purchase, carries at least two credit ratings from nationally recognized statistical rating organizations and is rated at or above "A" or its equivalent by all such organizations that have provided a rating;

(i) Any interest in any local government investment pool organized pursuant to part 7 of this article;

(j) The purchase of any repurchase agreement concerning any securities referred to in paragraph (a) or (b) of this subsection (1) that can otherwise be purchased under this section if all of the conditions of subparagraphs (I) to (VI) of this paragraph (j) are met:

(I) The securities subject to the repurchase agreement must be marketable.

(II) The title to or a perfected security interest in such securities along with any necessary transfer documents must be transferred to the investing public entity or to a custodian acting on behalf of the investing public entity.

(III) Such securities must be actually delivered versus payment to the public entity's custodian or to a third-party custodian or third-party trustee for safekeeping on behalf of the public entity.

(IV) The collateral securities of the repurchase agreement must be collateralized at no less than one hundred two percent and marked to market no less frequently than weekly.

(V) The securities subject to the repurchase agreement may have a maturity in excess of five years.

(VI) The period from the date of settlement of a repurchase agreement to its maturity date shall be no more than five years unless the governing body of the public entity authorizes investment for a period in excess of five years.

(j.5) Any reverse repurchase agreement concerning any securities referred to in paragraph (a) or (b) of this subsection (1) that can otherwise be purchased under this section if all of the conditions of subparagraphs (I) to (VII) of this paragraph (j.5) are met:

(I) Any necessary transfer documents must be transferred to the investing public entity.

(II) Cash must be received by the investing public entity or a custodian acting on behalf of the investing public entity in a deliver versus payment settlement.

(III) The cash received from a reverse repurchase agreement must be collateralized at no more than one hundred and five percent and marked to market no less frequently than weekly.

(IV) The repurchase agreement is not greater than ninety days in maturity from the date of settlement unless the governing body of the public entity authorizes investment for a period in excess of ninety days.

(V) The counter-party meets the credit conditions of an issuer that would qualify under paragraph (m) of this subsection (1).

(VI) The value of all securities reversed under this paragraph (j.5) does not exceed eighty percent of the total deposits and investments of the public entity.

(VII) No securities are purchased with the proceeds of the reverse repurchase agreement that are greater in maturity than the term of the reverse repurchase agreement.

(j.7) A securities lending agreement in which the public entity lends securities in exchange for securities authorized for investment in this section, if all of the following conditions are met:

(I) Any necessary transfer documents must be transferred to the investing public entity.

(II) Securities must be received by the investing public entity or a custodian acting on behalf of the investing public entity in a simultaneous settlement.

(III) The securities received in the securities lending agreement must be no less than one hundred two percent of the value of the securities lent and marked to market no less frequently than weekly.

(IV) The counter-party meets the conditions of an issuer specified in paragraph (m) of this subsection (1).

(V) In the case of a local government, the securities lending agreement shall be approved and designated by written resolution adopted by a majority vote of the governing body of the local government, which resolutions shall be recorded in its minutes.

(k) Any money market fund that is registered as an investment company under the federal "Investment Company Act of 1940", as amended, if, at the time the investing public entity invests in such fund:

(I) The investment policies of the fund include seeking to maintain a constant share price;

(II) No sales or load fee is added to the purchase price or deducted from the redemption price of the investments in the fund and no fee may be charged unless the governing body of the public entity authorizes such a fee at the time of the initial purchase;

(III) The investments of the fund consist only of securities with a maximum remaining maturity as specified in rule 2a-7 under the federal "Investment Company Act of 1940", as amended, or any successor regulation under such act regulating money market funds, so long as such rule 2a-7 is not amended to, or such successor regulation does not, increase the maximum remaining maturity of such securities to a period that is greater than three years, and if the fund has assets of one billion dollars or more, or has the highest current credit rating from one or more nationally recognized statistical rating organizations.

(IV) The dollar-weighted average portfolio maturity of the fund meets the requirements specified in rule 2a-7 under the federal "Investment Company Act of 1940", as amended, or any successor regulation under such act regulating money market funds, so long as such rule 2a-7 is not amended to increase the dollar-weighted average portfolio maturity of a fund to a period greater than one hundred eighty days.

(l)

(I) Any guaranteed investment contract, guaranteed interest contract, annuity contract, or funding agreement if, at the time the contract or agreement is entered into, the long-term credit rating, financial obligations rating, claims paying ability rating, or financial strength rating of the party, or of the guarantor of the party, with whom the public entity enters the contract or agreement is, at the time of issuance, rated in one of the two highest rating categories by two or more nationally recognized statistical rating organizations.

(II) (Deleted by amendment, L. 2004, p. 950, 7, effective May 21, 2004.)

(III)

(A) Except as provided in sub-subparagraph (B) of this subparagraph (III), the contracts or agreements purchased under this paragraph (I) shall not have a maturity period greater than three years.

(B) Contracts or agreements with a maturity period greater than three years shall only be purchased with proceeds of the sale of securities of a public entity and proceeds of certificates of participation or other securities evidencing rights in payments to be made by a public entity under a lease, lease-purchase agreement, or other similar arrangement or if purchased by revenues pledged to the payment of such securities or certificates; except that no contract or agreement may be purchased pursuant to this paragraph (I) with the proceeds of any of the foregoing that are held in an escrow or otherwise for the purpose of refunding bonds or other obligations of a public entity.

(m)

(I) Any corporate or bank security that is denominated in United States dollars, that matures within three years from the date of settlement, that at the time of purchase carries at least two credit ratings from any of the nationally recognized statistical ratings organizations, and that is not rated below:

(A) "A1, P1, or F1" or their equivalents by either rating used to fulfill the requirements of this subparagraph (I) if the security is a money market instrument such as commercial paper or bankers' acceptance; or

(B) "AA- or Aa3" or their equivalents by either rating used to fulfill the requirements of this subparagraph (I) if the security is any other kind of security.

(II) At no time shall the book value of a public entity's investment in notes evidencing a debt pursuant to this paragraph (m) exceed the following:

(A) Fifty percent of the book value of the public entity's investment portfolio unless the governing body of the public entity authorizes a greater percent of such book value; or

(B) Five percent of the book value of the public entity's investment portfolio if the notes are issued by a single corporation or bank unless the governing body of the public entity authorizes a greater percent of such book value.

(III) No subordinated security may be purchased pursuant to this paragraph (m). No security issued by a corporation or bank that is not organized and operated within the United States may be purchased pursuant to this paragraph (m) unless the governing body of the public entity authorizes investment in such securities.

(n) (Deleted by amendment, L. 2006, p. 552, §3, effective August 7, 2006.)

(1.3)

(a) Except as provided in paragraph (a) of subsection (1) of this section and except as provided in paragraph (b) of this subsection (1.3), public funds shall not be invested in any security on which the coupon rate is not fixed, or a schedule of specific fixed coupon rates is not established, from the time the security is settled until its maturity date, other than shares in qualified money market mutual funds, unless the coupon rate is:

(I) Established by reference to the rate on a United States treasury security with a maturity of one year or less or to the United States dollar London interbank offer rate of one year or less maturity, or to the cost of funds index or the prime rate as published by the federal reserve; and

(II) Expressed as a positive value of the referenced index plus or minus a fixed number of basis points.

(b) A municipal index may be used for the investment of bond or note accounts from issues with coupons linked to the same index.

(c) For purposes of this section, "maturity date" means the last possible date, barring default, that principal can be repaid to the purchaser.

(1.5) Any firm that sells any financial instrument that fails to comply with the provisions of this section to any public entity in the state of Colorado shall, upon demand of the public entity through the state treasurer, repurchase such instruments for the greater of the original purchase principal amount or the original face value, plus any and all accrued interest, within one business day of the demand.

(2) Investments made pursuant to this section shall be made in conformance with the standard set forth in section 15-1-304, C.R.S.

(2.3) Public entities shall adopt criteria designating eligible broker-dealers for the purchase of term securities, except for bond proceed investments, under this section.

(2.5)

(a) If a public entity invests public moneys through an investment firm offering for sale corporate stocks, bonds, notes, debentures, or a mutual fund that contains corporate securities, the investment firm shall disclose, in any research or other disclosure documents provided in support of the securities being offered, to the public entity whether the investment firm has an agreement with a for-profit corporation that is not a government-sponsored enterprise, whose securities are being offered for sale to the public entity and because of such agreement the investment firm:

(I) Had received compensation for investment banking services within the most recent twelve months; or

(II) May receive compensation for investment banking services within the next three consecutive months.

(b) For the purposes of this subsection (2.5), "investment firm" means a bank, brokerage firm, or other financial services firm conducting business within this state, or any agent thereof.

(3) Nothing in this section is intended to limit:

(a) The power of any public entity to invest any public funds in any security or other investment permitted to such public entities under any other valid law of the state; or

- (b) The power of any home rule city, city and county, town, or county to invest any public funds in any security or other investment permitted under the charter or ordinance of such home rule city, city and county, town, or county; or
- (c) The authority of the state board of regents to invest any funds available to the board in any security or other investment otherwise provided by law.

(3.5) (Deleted by amendment, L. 2006, p. 552, §3, effective August 7, 2006.)

(4) Nothing in this section is intended to apply to public funds held or invested as part of any pension plan, full or supplemental retirement plan, or deferred compensation plan.

Cite as C.R.S. § 24-75-601.1

History. Amended by 2014 Ch. 81, §1, eff. 3/27/2014.

L. 89: Entire section added, p. 1102, § 2, effective July 1. L. 91: (4) amended, p. 1917, § 39, effective June 1. L. 93: (1)(k)(II), IP(1)(k)(III), and (1)(k)(III)(C) amended and (1)(k)(IV) added, p. 1260, § 7, effective June 6. L. 94: (1)(k)(III) amended and (1)(m) added, p. 449, § 1, effective March 29. L. 95: IP(1)(j), (1)(k)(III), (1)(k)(III)(C), and (1)(k)(III)(D) amended and (1.3) and (1.5) added, p. 772, § 1, effective May 24. L. 2000: (1)(n) added, p. 182, § 2, effective August 2; (3.5) added, p. 811, § 1, effective August 2. L. 2002: (1)(d)(II) and (3.5) amended, pp. 258, 259, §§ 2, 3, effective April 12. L. 2003: (1)(l)(I) amended, p. 623, § 40, effective July 1; (2.5) added, p. 674, § 3, effective August 6. L. 2004: (1)(j)(I) and (1)(l) amended, p. 950, § 7, effective May 21. L. 2006: Entire section amended, p. 552, § 3, effective August 7. L. 2009: (1)(h.5) added, (SB09-256), ch. 294, p. 1569, §36, effective May 21. L. 2012: (1)(b)(II) and (1)(m)(I) amended and (1)(m)(III) added, (HB12-1005), ch. 6, p. 19, §1, effective March 7. L. 2014: (1)(d)(II)(A), (1)(d)(II)(C), (1)(e)(II), (1)(e)(III), (1)(h.5), (1)(k)(III), and (1)(l)(I) amended, (HB14-1103), ch. 81, p. 322, §1, effective March 27.

Case Notes:

ANNOTATION

This section is not preempted by federal law. It is not preempted by 15 U.S.C. § 77r of the National Securities Markets Improvement Act because it does not impose any broad registration or qualification requirements or other merit-based conditions on the offering or sale of covered securities within the state, nor does it achieve a similar objective by totally prohibiting the sale of such securities within the state for failure to fulfill a merit-based condition. *Griffin v. Capital Sec. of Am.*, 298 P.3d 970 (Colo. App. 2010), rev'd on other grounds, 2012 CO 39, 278 P.3d 342.

It is not preempted by the Federal Home Loan Mortgage Corporation Act, as the act contains an express allowance for state laws such as the one contained in this section. The state's enforcement of this section by holding violators liable does not create a conflict. *Griffin v. Capital Sec. of Am.*, 298 P.3d 970 (Colo. App. 2010), rev'd on other grounds, 2012 CO 39, 278 P.3d 342.

When a public entity purchases unlawful securities under this section, disgorgement is not an available remedy against the seller. While the legislature expressly provided a damages remedy, an equitable remedy, and a regulatory remedy, it did not provide a disgorgement remedy under a theory of common law restitution. Under these circumstances, the addition of disgorgement would impermissibly alter the extensive and detailed remedial scheme adopted by the legislature. *Capital Sec. of Am. v. Griffin*, 2012 CO 39, 278 P.3d 342.

Cross References:

For the legislative declaration contained in the 2002 act amending subsections (1)(d)(II) and (3.5), see section 1 of chapter 94, Session Laws of Colorado 2002.