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Amendment 41 and Municipal Officials and Employees: A Practical Introduction

Introduction

At the statewide general election held on Tuesday, November 7, 2006, Colorado voters overwhelmingly approved Amendment 41, which adds a new Article XXIX, entitled "Ethics in Government," to our state constitution. Article XXIX addresses a variety of topics, from limitations on receipt of gifts by various public officials and employees to strict limitations on giving by "professional lobbyists," limitations on how soon former state legislators may become lobbyists, and creation of an independent "Ethics Commission," at the state level. Certain of these provisions, especially those limiting receipt of gifts or "things of value," as well as those provisions creating the state Ethics Commission, should be of immediate interest to municipal officials and employees in Colorado.

This memo responds to numerous requests from our membership for guidance concerning the provisions of Amendment 41. It should be understood that the observations contained in this memo are preliminary, as local government attorneys across Colorado continue to wrestle with numerous ambiguities and questions concerning the requirements of this complicated amendment. *Consequently, while we hope this material provides a useful introduction and some guidance concerning Amendment 41, this material should not be viewed as a substitute for legal advice from your own municipal attorney.*

Additionally, municipal officials and their attorneys should be aware that the Office of Legislative Legal Services, which advises members of the General Assembly, has recently produced guidance concerning Amendment 41, which you may find useful. The Legislative Legal Service' memo is at http://www.state.co.us/gov_dir/leg_dir/olls/PDF/Amendment%2041.pdf

Structure of this memo

The language of Amendment 41 (attached) is somewhat dense and difficult to track. Thus, we have presented the requirements of the amendment in an "outline" format, in hopes that this may aid understanding. We have paraphrased the requirements, while retaining critical language. When appropriate, we have inserted our own comments and observations, denoted by a check mark.

The principal limitations of Amendment 41 that affect municipal officials and employees are found in sections 3(1) and (2) of the amendment. The reach of these prohibitions is determined by the definitions of “government employee” and “local government official,” which are found in section 2 of Amendment 41. This outline begins with discussion of these prohibitory provisions, followed by an introduction to the provisions creating the state Ethics Commission and defining its role. Finally, we address the home rule provision in §7 of the amendment, which presents home rule municipalities with a significant alternative to the requirements of Amendment 41.

Prohibitory Provisions Affecting Municipal Officials and Employees

Who’s covered?

The Amendment 41 restrictions apply to various classes of persons. Among those covered are the following, which include municipal officials and employees.

- a) “Government Employee”
 - ✓ Defined (section 2(1)), in pertinent part, as “any employee, including independent contractors, of ... any local government.”
- b) “Local government official”
 - ✓ Defined (section 2(3)), in pertinent part, as “an elected or appointed official of a local government.”
- ✓ “Local government,” as used in the foregoing definitions, is defined in section 2(2) to include *only* counties and municipalities. Thus, when Amendment 41 limits receipt of gifts, etc., by “government employees” or “local government officials,” those limits do not apply to officials and employees of Title 32 special districts or school districts, among others.

What Prohibitions does Amendment 41 Impose on Receipt of Money or Gifts?

Sections 3(1) and (2) are the principal sections of the amendment potentially affecting municipal officials and employees. Note that these provisions limit what may be *received*. The donee, not the donor, is the object of these sections.¹

- §3(1) A government employee/local government official shall not “accept” or “receive” any:

¹ Which is not to say, however, that donors have nothing to be concerned about under Amendment 41. See the discussion below of the Amendment’s penalty section, where those “inducing” a violation are subject to punishment.

- a) money
- b) “forbearance” or
- c) forgiveness of indebtedness

without receiving “lawful consideration of equal or greater value” in return.

§3(2) A government employee/local government official shall not, directly or indirectly (via gift to spouse or dependant child) solicit, accept, or receive:

any “gift or thing of value,” having a fair market value or “aggregate actual cost” greater than \$50.00 “in any calendar year,”

without receiving “lawful consideration of equal or greater value” in return.

- ✓ Notably, these limits apparently apply regardless of whether the gift or fiscal benefit is provided in relation to or for the purpose of influencing official action. The disability to receive these items is due solely to one’s status as a “public official” or “employee” under Amendment 41.
- ✓ The \$50.00 limit in section 3(2) is on the “fair market value” or “aggregate actual cost” of gifts *received* by the covered official or employee, from “a person,” in “any calendar year.” So it’s a limit of \$50 per year, per donor, per covered official or employee.
- ✓ The limitation is on gifts, etc. received, per year, from “any person.” “Person” is defined as “any individual, corporation, business trust, estate, trust, limited liability company, partnership, labor organization, association, political party, committee, or other legal entity.” (Section 2(4))

One question: Is “person” the interested *entity*, on whose behalf a number of natural persons may provide gifts/meals, etc.? In other words, may an unlimited number of persons who work at West, Inc., buy lunch for legislator X (and bring along the company’s lobbyist...), so as long as no *one* West, Inc., employee spends over \$50? Or is West, Inc., *as an entity*, limited to \$50 per year, no matter who it sends to lunch with the company credit card?

- ✓ This section of the amendment declares that a “gift or thing of value” includes, but is “not limited to, gifts, loans, rewards, promises or negotiations of future employment, favors or services, honoraria, travel, entertainment, or special discounts.” Amendment 41 contains no formal definition of the terms “gift or thing of value,” (which terms also appear in subsection 3(4), limiting what may be given by professional lobbyists).

This list in subsection 3(2) is thus as close as we get to a definition of these terms in Amendment 41.

- ✓ Receptions, etc. The actual costs of food, drink, etc., for a reception or similar event, to which covered officials and/or employees are invited, may fairly be divided equally among everyone that attends. As a consequence, the distributed “gift” or “value” received by each *individual* official or employee attending could be quite minimal (e.g., if 200 people attend a \$2000.00 reception, covered officials/employees receive a \$10 “gift” or “thing of value” from the event sponsor). See also exception (e), below.
- ✓ Scholarships, etc. A common question is whether sections 3(1) or 3(2) preclude award of scholarships to covered officials and employees, or their children. Whether treated as a “forbearance” or a “gift or thing of value,” scholarships or similar benefits are apparently prohibited to covered officials and employees, pursuant to Amendment 41. This was clearly not a result intended by proponents, and clarifying legislation in the 2007 session of the General Assembly is anticipated.

What are the Exceptions to these Prohibitions? – The exceptions set forth in section 6 of the amendment provide that the limitations contained in subsection 3(1) and 3(2), described above, do not apply, if the gift or thing of value received by a municipal official or employee is:

- a) Campaign contributions “as defined by law”
- ✓ “Contribution” is defined very broadly in the Colorado Constitution, Article XXVIII, Sec. 2(5).
 - b) An “unsolicited item of trivial value,” less than \$50, such as a “pen, calendar, plant, book, note pad or other similar item.”
- ✓ Some have suggested that this exception may be read as including finger food and beverages provided at receptions or similar events attended by covered officials or employees. Complicating this interpretation is that none of the listed items in this exception is food or drink, while these items are expressly mentioned in exception (e), below.
 - c) An “unsolicited token or award” in form of plaque, trophy, etc.
 - d) Unsolicited publications, subscriptions, or “informational material” related to “recipient’s performance of official duties.”
 - e) Admission and the “cost of food or beverages” at a:

(1) reception, (2) meal, or (3) “meeting”

before whom the recipient appears to:

(1) speak or (2) answer questions,

as part of a “scheduled program.”

- ✓ Note that it’s the “program” that has to be scheduled, not the attendees. If attendees are amendable to answering questions, neither the cost of admission, nor the cost of food/drink that they consume counts against their \$50 annual limit on gifts, etc., from the sponsoring entity or group. Note also that, strictly speaking, questions need not relate to public business, in order to qualify the respondent to not count admission cost or the value of food/drink consumed against his or her annual \$50 limit.

f) “Reasonable expenses” paid by a non-profit organization or local government for “attendance” by covered officials or employees at a:

(1) convention, (2) fact-finding mission, (3) trip, or (4) “other meeting”

if the person is “scheduled” to:

(1) deliver a speech, (2) make a presentation, (3) participate on a panel, or
(4) “represent” the state or local government,

provided the non-profit organization receives “less than 5% of its funding from for-profit organizations or entities.”

- ✓ Note that for this exception to apply, the actual “person” has to be scheduled, not just the “program,” as is the case with exception (e), above.

g) Gift, etc., that is given by “an individual” who is a:

(1) relative or
(2) “personal friend” of recipient,

“on a special occasion.”

- ✓ Note: Neither “personal friend” nor “special occasion” is defined – thus, these terms could presumably be as defined by the donor. This language is ripe for abuse. Prudent officials and employees will avoid clever or artful use of this exception. Look for the General Assembly to address this section.

- h) Compensation/incentive given to an employee.

Section 5: The Independent Ethics Commission

Section 5 of Amendment 41 concerns creation of an Independent Ethics Commission. The amendment does not specify what it is that the Commission is to be “independent” of, nor whether or where the Commission will be located in the state bureaucracy. The amendment provides, however, that the General Assembly “shall appropriate reasonable and necessary funds to cover staff and administrative expenses” of the Commission.

- ✓ The Commission will be comprised of 5 non-paid members, one of whom will be a local government official or employee.
- ✓ The purpose of the Commission is to: (a) hear complaints, (b) issue “findings,” (c) “assess penalties,” and (d) issue advisory opinions.
- ✓ The Commission is authorized to do these things in connection with: (a) ethics issues arising under the provisions of Amendment 41, and (b) ethics issues arising under “any other standards of conduct and reporting requirements as provided by law.” The latter language could fairly be read as giving the Commission jurisdiction to hear complaints, assess penalties, etc., in connection with alleged violations of existing “ethics” statutes, such as the Public Official’s Code of Ethics, 24-18-101-205, C.R.S., the gifts & honoraria reporting statute, at 24-6-203, C.R.S., and the voting disclosure and abstention statute, at 31-4-404, C.R.S., among others.
- ✓ The Commission is given the authority to adopt rules for the purpose of “administering and enforcing”: (a) the provisions of Amendment 41, as well as (b) “any other standards of conduct and reporting requirements as provided by law.” The Commission’s authority apparently includes rulemaking for the enforcement of various state “ethics” statutes, of the sort mentioned in the foregoing paragraph.
- ✓ Complaints to the Commission. Subsection 5(3) describes the Commission’s complaint process:
 - (a) “Any person” may file a complaint.
 - ✓ No entity is designated as responsible for policing or enforcing compliance with Amendment 41.
 - (b) The complaint must be in writing.

- (c) The complaint must ask the Commission to determine whether a covered official or employee failed to comply with:
 - (i) the requirements of Amendment 41, or
 - (ii) “any other standards of conduct or reporting requirements as provided by law”

within “the preceding twelve months.”
- (d) The Commission may dismiss “frivolous” complaints without a public hearing.
 - ✓ “Frivolous” is not defined in Amendment 41. Implementing legislation or commission rules will likely address this issue.
- (e) As to non-frivolous complaints, Amendment 41 requires the Commission to: (i) “conduct an investigation,” (ii) hold a public hearing, and (iii) “render findings,” pursuant to written Commission rules.
- (f) The Commission is authorized to assess penalties for “violations,” (i) as prescribed in Amendment 41, and (ii) as “provided by law.” (Penalties for violation of Amendment 41 are set forth in section 6 of the amendment, discussed below.)
- (g) Members of the Commission are authorized to subpoena documents or witnesses.

Section 6: The Penalty Section of Amendment 41

Section 6 of the amendment provides that: (a) any covered official or employee “who breaches the public trust for private gain,” and (b) “any person or entity inducing such breach,” shall be liable to the state or local jurisdiction for “double the financial equivalent of any benefits obtained by such actions.”

- ✓ Amendment 41 provides that the “manner of recovery” of these penalties may be provided by law, as may “additional penalties.”
- ✓ Interestingly, section 6 makes no express reference to the requirements of Amendment 41 itself, nor to the requirements of any of the various state ethics statutes. The penalty for breach of the “public trust” apparently complements section 1(1)(d) of the amendment’s “Purposes and Findings” section, in which it is declared that “any effort to realize personal financial gain through public office other than compensation provided by law is a violation of that [public] trust.” This language may provide helpful direction to courts and the General Assembly, in construing or

clarifying Amendment 41 to avoid some of the unintended consequences that the language of the amendment might be otherwise be read as supporting.

- ✓ The language of the penalty section making the person or entity that *induces* a breach of the public trust liable to the state or local government stands out in an amendment that, except for its provisions concerning professional lobbyists, focuses on covered officials or employees as *recipients* of gifts, etc. The jurisdiction of the Commission would apparently extend to assessing penalties on those who have led covered officials or employees astray.

Section 7: Local Authority, and the Home Rule Provision

Section 7 of Amendment 41 provides first that “any” county or municipality may adopt ordinances or charter provisions with respect to ethics matters that are “more stringent” than the requirements of Amendment 41.

Home rule municipalities and counties are then given substantial additional authority. Section 7 provides that the requirements of Article XXIX (Amendment 41) “shall not apply” to home rule counties or municipalities “that have adopted charters, ordinances, or resolutions that address the matters covered by [Article XXIX].”

This language has raised a number of questions among municipal attorneys and advise home rule jurisdictions. First among these has been whether the “have adopted” language means that a home rule municipality must have had its local enactment on the books *prior* to Amendment 41 taking effect. CML endorses the interpretation that this language allows ordinances, charter provisions or resolutions, adopted after the effective date of Amendment 41 to remove officials and employees of that municipality from the Amendment 41 restrictions.

A second major issue has been what the “matters covered by” language requires to be included in the local ordinance, charter provisions or resolutions. It’s safe to assume the local provision should address gift limits of some sort, but what else, if anything, should be required? A complaint process? Penalty provisions? A cutoff for violations? Attorneys for home rule jurisdictions have been and will continue to analyze and discuss these and other interpretive issues arising out of Amendment 41. We have attached several recent municipal ethics enactments, for your information.

Attachments

Be it enacted by the People of the State of Colorado:

The constitution of the state of Colorado is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE XXIX

Ethics in Government

Section 1. Purposes and findings. (1) THE PEOPLE OF THE STATE OF COLORADO HEREBY FIND AND DECLARE THAT:

(a) THE CONDUCT OF PUBLIC OFFICERS, MEMBERS OF THE GENERAL ASSEMBLY, LOCAL GOVERNMENT OFFICIALS, AND GOVERNMENT EMPLOYEES MUST HOLD THE RESPECT AND CONFIDENCE OF THE PEOPLE;

(b) THEY SHALL CARRY OUT THEIR DUTIES FOR THE BENEFIT OF THE PEOPLE OF THE STATE;

(c) THEY SHALL, THEREFORE, AVOID CONDUCT THAT IS IN VIOLATION OF THEIR PUBLIC TRUST OR THAT CREATES A JUSTIFIABLE IMPRESSION AMONG MEMBERS OF THE PUBLIC THAT SUCH TRUST IS BEING VIOLATED;

(d) ANY EFFORT TO REALIZE PERSONAL FINANCIAL GAIN THROUGH PUBLIC OFFICE OTHER THAN COMPENSATION PROVIDED BY LAW IS A VIOLATION OF THAT TRUST; AND

(e) TO ENSURE PROPRIETY AND TO PRESERVE PUBLIC CONFIDENCE, THEY MUST HAVE THE BENEFIT OF SPECIFIC STANDARDS TO GUIDE THEIR CONDUCT, AND OF A PENALTY MECHANISM TO ENFORCE THOSE STANDARDS.

(2) THE PEOPLE OF THE STATE OF COLORADO ALSO FIND AND DECLARE THAT THERE ARE CERTAIN COSTS ASSOCIATED WITH HOLDING PUBLIC OFFICE AND THAT TO ENSURE THE INTEGRITY OF THE OFFICE, SUCH COSTS OF A REASONABLE AND NECESSARY NATURE SHOULD BE BORN BY THE STATE OR LOCAL GOVERNMENT.

Section 2. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "GOVERNMENT EMPLOYEE" MEANS ANY EMPLOYEE, INCLUDING INDEPENDENT CONTRACTORS, OF THE STATE EXECUTIVE BRANCH, THE STATE LEGISLATIVE BRANCH, A STATE AGENCY, A PUBLIC INSTITUTION OF HIGHER EDUCATION, OR ANY LOCAL GOVERNMENT, EXCEPT A MEMBER OF THE GENERAL ASSEMBLY OR A PUBLIC OFFICER.

(2) "LOCAL GOVERNMENT" MEANS COUNTY OR MUNICIPALITY.

(3) "LOCAL GOVERNMENT OFFICIAL" MEANS AN ELECTED OR APPOINTED OFFICIAL OF A LOCAL GOVERNMENT BUT DOES NOT INCLUDE AN EMPLOYEE OF A LOCAL GOVERNMENT.

(4) "PERSON" MEANS ANY INDIVIDUAL, CORPORATION, BUSINESS TRUST, ESTATE, TRUST, LIMITED LIABILITY COMPANY, PARTNERSHIP, LABOR ORGANIZATION, ASSOCIATION, POLITICAL PARTY, COMMITTEE, OR OTHER LEGAL ENTITY.

(5) "PROFESSIONAL LOBBYIST" MEANS ANY INDIVIDUAL WHO ENGAGES HIMSELF OR HERSELF OR IS ENGAGED BY ANY OTHER PERSON FOR PAY OR FOR ANY CONSIDERATION FOR LOBBYING. "PROFESSIONAL LOBBYIST" DOES NOT INCLUDE ANY VOLUNTEER LOBBYIST, ANY STATE OFFICIAL OR EMPLOYEE ACTING IN HIS OR HER OFFICIAL CAPACITY, EXCEPT THOSE DESIGNATED AS LOBBYISTS AS PROVIDED BY LAW, ANY ELECTED PUBLIC OFFICIAL ACTING IN HIS OR HER OFFICIAL CAPACITY, OR ANY INDIVIDUAL WHO APPEARS AS COUNSEL OR ADVISOR IN AN ADJUDICATORY PROCEEDING.

(6) "PUBLIC OFFICER" MEANS ANY ELECTED OFFICER, INCLUDING ALL STATEWIDE ELECTED OFFICEHOLDERS, THE HEAD OF ANY DEPARTMENT OF THE EXECUTIVE BRANCH, AND ELECTED AND APPOINTED MEMBERS OF STATE BOARDS AND COMMISSIONS. "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.

Section 3. Gift ban. (1) NO PUBLIC OFFICER, MEMBER OF THE GENERAL ASSEMBLY, LOCAL GOVERNMENT OFFICIAL, OR GOVERNMENT EMPLOYEE SHALL ACCEPT OR RECEIVE ANY MONEY, FORBEARANCE, OR FORGIVENESS OF INDEBTEDNESS FROM ANY PERSON, WITHOUT SUCH PERSON RECEIVING LAWFUL CONSIDERATION OF EQUAL OR GREATER VALUE IN RETURN FROM THE PUBLIC OFFICER, MEMBER OF THE GENERAL ASSEMBLY, LOCAL GOVERNMENT OFFICIAL, OR GOVERNMENT EMPLOYEE WHO ACCEPTED OR RECEIVED THE MONEY, FORBEARANCE OR FORGIVENESS OF INDEBTEDNESS.

(2) NO PUBLIC OFFICER, MEMBER OF THE GENERAL ASSEMBLY, LOCAL GOVERNMENT OFFICIAL, OR GOVERNMENT EMPLOYEE, EITHER DIRECTLY OR INDIRECTLY AS THE BENEFICIARY OF A GIFT OR THING OF VALUE GIVEN TO SUCH PERSON'S SPOUSE OR DEPENDENT CHILD, SHALL SOLICIT, ACCEPT OR RECEIVE ANY GIFT OR OTHER THING OF VALUE HAVING EITHER A FAIR MARKET VALUE OR AGGREGATE ACTUAL COST GREATER THAN FIFTY DOLLARS (\$50) IN ANY CALENDAR YEAR, INCLUDING BUT NOT LIMITED TO, GIFTS; LOANS, REWARDS, PROMISES OR NEGOTIATIONS OF FUTURE EMPLOYMENT, FAVORS OR SERVICES, HONORARIA, TRAVEL, ENTERTAINMENT, OR SPECIAL DISCOUNTS, FROM A PERSON, WITHOUT THE PERSON RECEIVING LAWFUL CONSIDERATION OF EQUAL OR GREATER VALUE IN RETURN FROM THE PUBLIC OFFICER, MEMBER OF THE GENERAL ASSEMBLY, LOCAL GOVERNMENT OFFICIAL, OR GOVERNMENT EMPLOYEE WHO SOLICITED, ACCEPTED OR RECEIVED THE GIFT OR OTHER THING OF VALUE.

(3) THE PROHIBITIONS IN SUBSECTIONS (1) AND (2) OF THIS SECTION DO NOT APPLY IF THE GIFT OR THING OF VALUE IS:

- (a) A CAMPAIGN CONTRIBUTION AS DEFINED BY LAW;
- (b) AN UNSOLICITED ITEM OF TRIVIAL VALUE LESS THAN FIFTY DOLLARS (\$50), SUCH AS A PEN, CALENDAR, PLANT, BOOK, NOTE PAD OR OTHER SIMILAR ITEM;
- (c) AN UNSOLICITED TOKEN OR AWARD OF APPRECIATION IN THE FORM OF A PLAQUE, TROPHY, DESK ITEM, WALL MEMENTO, OR SIMILAR ITEM;

(d) UNSOLICITED INFORMATIONAL MATERIAL, PUBLICATIONS, OR SUBSCRIPTIONS RELATED TO THE RECIPIENT'S PERFORMANCE OF OFFICIAL DUTIES;

(e) ADMISSION TO, AND THE COST OF FOOD OR BEVERAGES CONSUMED AT, A RECEPTION, MEAL OR MEETING BY AN ORGANIZATION BEFORE WHOM THE RECIPIENT APPEARS TO SPEAK OR TO ANSWER QUESTIONS AS PART OF A SCHEDULED PROGRAM;

(f) REASONABLE EXPENSES PAID BY A NONPROFIT ORGANIZATION OR OTHER STATE OR LOCAL GOVERNMENT FOR ATTENDANCE AT A CONVENTION, FACT-FINDING MISSION OR TRIP, OR OTHER MEETING IF THE PERSON IS SCHEDULED TO DELIVER A SPEECH, MAKE A PRESENTATION, PARTICIPATE ON A PANEL, OR REPRESENT THE STATE OR LOCAL GOVERNMENT, PROVIDED THAT THE NON-PROFIT ORGANIZATION RECEIVES LESS THAN FIVE PERCENT (5%) OF ITS FUNDING FROM FOR-PROFIT ORGANIZATIONS OR ENTITIES;

(g) GIVEN BY AN INDIVIDUAL WHO IS A RELATIVE OR PERSONAL FRIEND OF THE RECIPIENT ON A SPECIAL OCCASION.

(h) A COMPONENT OF THE COMPENSATION PAID OR OTHER INCENTIVE GIVEN TO THE RECIPIENT IN THE NORMAL COURSE OF EMPLOYMENT.

(4) NOTWITHSTANDING ANY PROVISIONS OF THIS SECTION TO THE CONTRARY, AND EXCEPTING CAMPAIGN CONTRIBUTIONS AS DEFINED BY LAW, NO PROFESSIONAL LOBBYIST, PERSONALLY OR ON BEHALF OF ANY OTHER PERSON OR ENTITY, SHALL KNOWINGLY OFFER, GIVE, OR ARRANGE TO GIVE, TO ANY PUBLIC OFFICER, MEMBER OF THE GENERAL ASSEMBLY, LOCAL GOVERNMENT OFFICIAL, OR GOVERNMENT EMPLOYEE, OR TO A MEMBER OF SUCH PERSON'S IMMEDIATE FAMILY, ANY GIFT OR THING OF VALUE, OF ANY KIND OR NATURE, NOR KNOWINGLY PAY FOR ANY MEAL, BEVERAGE, OR OTHER ITEM TO BE CONSUMED BY SUCH PUBLIC OFFICER, MEMBER OF THE GENERAL ASSEMBLY, LOCAL GOVERNMENT OFFICIAL OR GOVERNMENT EMPLOYEE, WHETHER OR NOT SUCH GIFT OR MEAL, BEVERAGE OR OTHER ITEM TO BE CONSUMED IS OFFERED, GIVEN OR PAID FOR IN THE COURSE OF SUCH LOBBYIST'S BUSINESS OR IN CONNECTION WITH A PERSONAL OR SOCIAL EVENT; PROVIDED, HOWEVER, THAT A PROFESSIONAL LOBBYIST SHALL NOT BE PROHIBITED FROM OFFERING OR GIVING TO A PUBLIC OFFICER, MEMBER OF THE GENERAL ASSEMBLY, LOCAL GOVERNMENT OFFICIAL OR GOVERNMENT EMPLOYEE WHO IS A MEMBER OF HIS OR HER IMMEDIATE FAMILY ANY SUCH GIFT, THING OF VALUE, MEAL, BEVERAGE OR OTHER ITEM.

(5) THE GENERAL ASSEMBLY SHALL MAKE ANY CONFORMING AMENDMENTS TO THE REPORTING AND DISCLOSURE REQUIREMENTS FOR PUBLIC OFFICERS, MEMBERS OF THE GENERAL ASSEMBLY AND PROFESSIONAL LOBBYISTS, AS PROVIDED BY LAW, TO COMPLY WITH THE REQUIREMENTS SET FORTH IN THIS SECTION.

(6) THE FIFTY-DOLLAR (\$50) LIMIT SET FORTH IN SUBSECTION (2) OF THIS SECTION SHALL BE ADJUSTED BY AN AMOUNT BASED UPON THE PERCENTAGE CHANGE OVER A FOUR-YEAR PERIOD IN THE UNITED STATES BUREAU OF LABOR STATISTICS CONSUMER PRICE INDEX FOR DENVER- BOULDER-GREELEY, ALL ITEMS, ALL CONSUMERS, OR ITS SUCCESSOR INDEX, ROUNDED TO THE NEAREST LOWEST DOLLAR. THE FIRST ADJUSTMENT SHALL BE DONE IN THE FIRST QUARTER OF 2011 AND THEN EVERY FOUR YEARS THEREAFTER.

Section 4. Restrictions on representation after leaving office. NO STATEWIDE ELECTED OFFICEHOLDER OR MEMBER OF THE GENERAL ASSEMBLY SHALL PERSONALLY REPRESENT ANOTHER PERSON OR ENTITY FOR COMPENSATION BEFORE ANY OTHER STATEWIDE ELECTED OFFICEHOLDER OR MEMBER OF THE GENERAL ASSEMBLY, FOR A PERIOD OF TWO YEARS FOLLOWING VACATION OF OFFICE. FURTHER RESTRICTIONS ON PUBLIC OFFICERS OR MEMBERS OF THE GENERAL ASSEMBLY AND SIMILAR RESTRICTIONS ON OTHER PUBLIC OFFICERS, LOCAL GOVERNMENT OFFICIALS OR GOVERNMENT EMPLOYEES MAY BE ESTABLISHED BY LAW.

Section 5. Independent ethics commission. (1) THERE IS HEREBY CREATED AN INDEPENDENT ETHICS COMMISSION TO BE COMPOSED OF FIVE MEMBERS. THE PURPOSE OF THE INDEPENDENT ETHICS COMMISSION SHALL BE TO HEAR COMPLAINTS, ISSUE FINDINGS, AND ASSESS PENALTIES, AND ALSO TO ISSUE ADVISORY OPINIONS, ON ETHICS ISSUES ARISING UNDER THIS ARTICLE AND UNDER ANY OTHER STANDARDS OF CONDUCT AND REPORTING REQUIREMENTS AS PROVIDED BY LAW. THE INDEPENDENT ETHICS COMMISSION SHALL HAVE AUTHORITY TO ADOPT SUCH REASONABLE RULES AS MAY BE NECESSARY FOR THE PURPOSE OF ADMINISTERING AND ENFORCING THE PROVISIONS OF THIS ARTICLE AND ANY OTHER STANDARDS OF CONDUCT AND REPORTING REQUIREMENTS AS PROVIDED BY LAW. THE GENERAL ASSEMBLY SHALL APPROPRIATE REASONABLE AND NECESSARY FUNDS TO COVER STAFF AND ADMINISTRATIVE EXPENSES TO ALLOW THE INDEPENDENT ETHICS COMMISSION TO CARRY OUT ITS DUTIES PURSUANT TO THIS ARTICLE. MEMBERS OF THE COMMISSION SHALL RECEIVE NO COMPENSATION FOR THEIR SERVICES ON THE COMMISSION.

(2) (a) MEMBERS OF THE INDEPENDENT ETHICS COMMISSION SHALL BE APPOINTED IN THE FOLLOWING MANNER AND ORDER:

(I) ONE MEMBER SHALL BE APPOINTED BY THE COLORADO SENATE;

(II) ONE MEMBER SHALL BE APPOINTED BY THE COLORADO HOUSE OF REPRESENTATIVES;

(III) ONE MEMBER SHALL BE APPOINTED BY THE GOVERNOR OF THE STATE OF COLORADO;

(IV) ONE MEMBER SHALL BE APPOINTED BY THE CHIEF JUSTICE OF THE COLORADO SUPREME COURT; AND

(V) ONE MEMBER SHALL BE EITHER A LOCAL GOVERNMENT OFFICIAL OR A LOCAL GOVERNMENT EMPLOYEE APPOINTED BY THE AFFIRMATIVE VOTE OF AT LEAST THREE OF THE FOUR MEMBERS APPOINTED PURSUANT TO SUBPARAGRAPHS (I) TO (IV) OF THIS PARAGRAPH (a).

(b) NO MORE THAN TWO MEMBERS SHALL BE AFFILIATED WITH THE SAME POLITICAL PARTY.

(c) EACH OF THE FIVE MEMBERS SHALL BE REGISTERED COLORADO VOTERS AND SHALL HAVE BEEN CONTINUOUSLY REGISTERED WITH THE SAME POLITICAL PARTY, OR CONTINUOUSLY UNAFFILIATED WITH ANY POLITICAL PARTY, FOR AT LEAST TWO YEARS PRIOR TO APPOINTMENT TO THE COMMISSION.

(d) MEMBERS OF THE INDEPENDENT ETHICS COMMISSION SHALL BE APPOINTED TO TERMS OF FOUR YEARS; EXCEPT THAT, THE FIRST MEMBER APPOINTED BY THE COLORADO SENATE AND THE FIRST MEMBER APPOINTED BY THE GOVERNOR OF THE STATE OF COLORADO SHALL INITIALLY SERVE TWO YEAR TERMS TO ACHIEVE STAGGERED ENDING DATES.

(e) IF A MEMBER IS APPOINTED TO FILL AN UNEXPIRED TERM, THAT MEMBER'S TERM SHALL END AT THE SAME TIME AS THE TERM OF THE PERSON BEING REPLACED.

(f) EACH MEMBER SHALL CONTINUE TO SERVE UNTIL A SUCCESSOR HAS BEEN APPOINTED, EXCEPT THAT IF A MEMBER IS UNABLE OR UNWILLING TO CONTINUE TO SERVE UNTIL A SUCCESSOR HAS BEEN APPOINTED, THE ORIGINAL APPOINTING AUTHORITY AS DESCRIBED IN THIS SUBSECTION SHALL FILL THE VACANCY PROMPTLY.

(3) (a) ANY PERSON MAY FILE A WRITTEN COMPLAINT WITH THE INDEPENDENT ETHICS COMMISSION ASKING WHETHER A PUBLIC OFFICER, MEMBER OF THE GENERAL ASSEMBLY, LOCAL GOVERNMENT OFFICIAL, OR GOVERNMENT EMPLOYEE HAS FAILED TO COMPLY WITH THIS ARTICLE OR ANY OTHER STANDARDS OF CONDUCT OR REPORTING REQUIREMENTS AS PROVIDED BY LAW WITHIN THE PRECEDING TWELVE MONTHS.

(b) THE COMMISSION MAY DISMISS FRIVOLOUS COMPLAINTS WITHOUT CONDUCTING A PUBLIC HEARING. COMPLAINTS DISMISSED AS FRIVOLOUS SHALL BE MAINTAINED CONFIDENTIAL BY THE COMMISSION.

(c) THE COMMISSION SHALL CONDUCT AN INVESTIGATION, HOLD A PUBLIC HEARING, AND RENDER FINDINGS ON EACH NON-FRIVOLOUS COMPLAINT PURSUANT TO WRITTEN RULES ADOPTED BY THE COMMISSION.

(d) THE COMMISSION MAY ASSESS PENALTIES FOR VIOLATIONS AS PRESCRIBED BY THIS ARTICLE AND PROVIDED BY LAW.

(e) THERE IS HEREBY ESTABLISHED A PRESUMPTION THAT THE FINDINGS SHALL BE BASED ON A PREPONDERANCE OF EVIDENCE UNLESS THE COMMISSION DETERMINS THAT THE CIRCUMSTANCES WARRANT A HEIGHTENED STANDARD.

(4) MEMBERS OF THE INDEPENDENT ETHICS COMMISSION SHALL HAVE THE POWER TO SUBPOENA DOCUMENTS AND TO SUBPOENA WITNESSES TO MAKE STATEMENTS AND PRODUCE DOCUMENTS.

(5) ANY PUBLIC OFFICER, MEMBER OF THE GENERAL ASSEMBLY, LOCAL GOVERNMENT OFFICIAL, OR GOVERNMENT EMPLOYEE MAY SUBMIT A WRITTEN REQUEST TO THE INDEPENDENT ETHICS COMMISSION FOR AN ADVISORY OPINION ON WHETHER ANY CONDUCT BY THAT PERSON WOULD CONSTITUTE A VIOLATION OF THIS ARTICLE, OR ANY OTHER STANDARDS OF CONDUCT OR REPORTING REQUIREMENTS AS PROVIDED BY LAW. THE COMMISSION SHALL RENDER AN ADVISORY OPINION PURSUANT TO WRITTEN RULES ADOPTED BY THE COMMISSION.

Section 6. Penalty. ANY PUBLIC OFFICER, MEMBER OF THE GENERAL ASSEMBLY, LOCAL GOVERNMENT OFFICIAL OR GOVERNMENT EMPLOYEE WHO BREACHES THE PUBLIC TRUST FOR PRIVATE GAIN AND ANY PERSON OR ENTITY INDUCING SUCH BREACH SHALL BE LIABLE TO THE STATE OR LOCAL JURISDICTION FOR DOUBLE THE AMOUNT OF THE

FINANCIAL EQUIVALENT OF ANY BENEFITS OBTAINED BY SUCH ACTIONS. THE MANNER OF RECOVERY AND ADDITIONAL PENALTIES MAY BE PROVIDED BY LAW.

Section 7. Counties and municipalities. ANY COUNTY OR MUNICIPALITY MAY ADOPT ORDINANCES OR CHARTER PROVISIONS WITH RESPECT TO ETHICS MATTERS THAT ARE MORE STRINGENT THAN ANY OF THE PROVISIONS CONTAINED IN THIS ARTICLE. THE REQUIREMENTS OF THIS ARTICLE SHALL NOT APPLY TO HOME RULE COUNTIES OR HOME RULE MUNICIPALITIES THAT HAVE ADOPTED CHARTERS, ORDINANCES, OR RESOLUTIONS THAT ADDRESS THE MATTERS COVERED BY THIS ARTICLE.

Section 8. Conflicting provisions declared inapplicable. ANY PROVISIONS IN THE STATUTES OF THIS STATE IN CONFLICT OR INCONSISTENT WITH THIS ARTICLE ARE HEREBY DECLARED TO BE PREEMPTED BY THIS ARTICLE AND INAPPLICABLE TO THE MATTERS COVERED BY AND PROVIDED FOR IN THIS ARTICLE.

Section 9. Legislation to facilitate article. LEGISLATION MAY BE ENACTED TO FACILITATE THE OPERATION OF THIS ARTICLE, BUT IN NO WAY SHALL SUCH LEGISLATION LIMIT OR RESTRICT THE PROVISIONS OF THIS ARTICLE OR THE POWERS HEREIN GRANTED.

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO,
ADOPTING A COMPREHENSIVE SET OF STANDARDS FOR CONDUCT AND
ETHICS FOR ALL CITY ELECTED OFFICIALS, OFFICERS, EMPLOYEES AND
INDEPENDENT CONTRACTORS**

WHEREAS, the City Council of the City of Aurora considers it extremely important to maintain a strong sense of confidence in the operations of the Aurora Municipal Corporation by the residents of the City of Aurora; and

WHEREAS, the City Council upon advice of the City Attorney has chosen to adopt all of the existing state laws regarding standards of conduct and ethics; and

WHEREAS, the City Council has determined that the previous resolution, R88-63, be readopted with those amendments that have occurred since 1988.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

The Aurora City Council does hereby formally adopt each and every provision found in Article 18 of Title 24 of the Colorado Revised Statutes entitled "Standards of Conduct" as they existed on October 30, 2006, and does hereby declare that all such provisions shall apply with full force and effect to all of the City's elected officials, City officers, City employees, and all independent contractors under contract with the City.

RESOLVED AND PASSED this _____ day of _____, 2006.

EDWARD J. TAUER, Mayor

ATTEST:

DEBRA JOHNSON, City Clerk

APPROVED AS TO FORM:

First Reading_____

Second Reading_____

ORDINANCE NO. _____

**AN ORDINANCE ADDING A NEW CHAPTER 2.73 TO THE
LOVELAND MUNICIPAL CODE CONCERNING
PROHIBITED GIFTS TO CITY OFFICIALS**

WHEREAS, in 1988, the Colorado General Assembly adopted a comprehensive code of ethics applying to all state and local government officials and employees; and

WHEREAS, C.R.S. Section 24-18-104 of this code of ethics defines when it would be a breach of the public trust for state and local government officials and employees to accept gifts and further defines the kinds of gifts received by state and local government officials and employees that would not be considered a breach of the public trust; and

WHEREAS, the Colorado electorate recently adopted Amendment 41 adding a new Article XXIX to the Colorado State Constitution proposing similar but more restrictive gift limitations for state and local government officials and employees; and

WHEREAS, Section 7 of Amendment 41 provides that the gifting prohibitions of Amendment 41, as well as the other provisions of Amendment 41, will not apply to a home rule municipality that has adopted its own charter, ordinance or resolution provisions that address the ethical matters addressed in Amendment 41; and

WHEREAS, the City does not currently have its own gift provisions that have either been adopted into the Charter or adopted by ordinance or resolution; and

WHEREAS, the City Council has reviewed the gift prohibitions of both Amendment 41 and C.R.S. Section 24-18-104 and has determined that the City, as a home rule municipality, should have its own adopted provisions to regulate the kinds of gifts that City officials are prohibited from receiving; and

WHEREAS, by the City adopting its own gift prohibitions for City officials and employees as set out in this ordinance, the public trust will be better served by clearly and directly defining what gifts are prohibited and what gifts are permitted and by providing for more certain enforcement and penalties through the Loveland Municipal Court with respect to gifts hereafter received by the City's councilmembers, board and commission members, and employees.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF
THE CITY OF LOVELAND** as follows:

Section 1. That a new Chapter 2.73 is hereby added to the Loveland Municipal Code to read as follows:

Chapter 2.73 – Prohibited Gifts to City Officials

Sections

- 2.73.010 – Definitions
- 2.73.020 – Prohibited Gifts
- 2.73.030 – Permitted Gifts
- 2.73.040 – Violations

Section 2.73.010 – Definitions. As used in this Chapter, the following words, terms and phrases shall have the following meanings, except where the context clearly indicates otherwise:

- A. “Board and commission member” shall mean any person duly appointed by the council to any board or commission of the city as authorized in City Charter Article 10 and as established in City Code Chapter 2.60, but shall not include any person who is a duly appointed commissioner of the Loveland Housing Authority established in City Code Section 2.60.160.
- B. “City official” shall mean a councilmember, an employee or a board and commission member.
- C. “Councilmember” shall mean a member of the council.
- D. “Employee” shall mean each compensated person in the service of the city who is designated as an employee in the city’s personnel rules and regulations, but shall not include any person providing services for the city who is considered for federal income tax purposes to be an independent contractor.
- E. “Gift” shall mean the transfer of a thing of value by one person to another person without the person transferring the thing of value receiving in return lawful compensation or consideration of equal or greater value from the person receiving the thing of value. However, a “gift” shall not mean any thing of value given to a person by a local, state or the federal government as authorized by law.
- F. “Person” shall mean any individual, corporation, business trust, estate, trust, limited liability company, partnership, labor organization, association, political party, committee or other legal entity.
- G. “Thing of value” shall mean any tangible or intangible thing having a market value, including, without limitation, money, real property, personal property, services, loans of money or property, favors, gratuities, rewards, awards, grants, scholarships, discounts, promises of future

employment, honoraria, event tickets, travel, lodging, meals, and the forbearance and forgiveness of debt.

Section 2.73.020 – Prohibited Gifts. Unless permitted under City Code Section 2.73.030, a city official shall not solicit or accept any gift from any person either directly or indirectly through the city official's spouse or dependent child which gift the city official knows or which a reasonable person in the city official's position should know under the circumstances, is either:

- A. a gift that would tend to improperly influence that city official to depart from the faithful and impartial discharge of his or her public duties; or
- B. is a gift being solicited or given for the primary purpose of rewarding the city official for an official action he or she has taken.

Section 2.73.030 – Permitted Gifts. The gift prohibitions of City Code Section 2.73.020 shall not apply to city officials with respect to the following permitted gifts:

- A. campaign contributions as authorized by law;
- B. a non-monetary award, publicly presented, in recognition of public service;
- C. gifts similarly available to the general public;
- D. educational scholarships and grants available to members of the general public similarly situated;
- E. grants and services provided for medical, respite or hospice care or other social welfare needs available to members of the general public similarly situated;
- F. an occasional, unsolicited gift having a fair market value of fifty dollars (\$50) or less;
- G. unsolicited informational material, publications, or subscriptions related to the city official's performance of his or her official duties;
- H. an unsolicited token or award of appreciation in the form of a plaque, trophy, desk item, wall memento or similar item;
- I. payment of or reimbursement for actual and necessary expenditures for registration, travel, lodging and meals for attendance at a convention, training seminar, or other meeting at which the city official is

scheduled to participate as a representative of the city or to attend as part of his or her official duties;

J. an occasional, unsolicited opportunity to participate in a business meeting or social function where a meal is served and/or entertainment is provided if the city official's attendance would not be considered extraordinary when viewed in light of the position held by the city official;

K. payment received by a councilmember for a speech, appearance or publication required to be reported by the councilmember pursuant to C.R.S. Section 24-6-203;

L. gifts received by a councilmember or a board and commission member arising from his or her employment and that is unrelated to his or her official city duties; and

M. gifts received by an employee from the city as authorized in the city's personnel rules and regulations, and any gifts received by an employee arising from his or her non-city employment and that is unrelated to his or her official city duties.

Section 2.73.040 – Violations.

A. It shall be unlawful for any city official to violate any provision of this Chapter. Proof of a violation shall be established by a preponderance of the evidence presented at trial.

B. Any city official determined by the municipal court to have violated any provision of this Chapter shall be deemed to have committed a civil infraction and shall be punished by a civil fine not to exceed one thousand dollars (\$1,000). In addition to any civil fine imposed, a judgment in the amount of twice the fair market value of the prohibited gift received shall also be entered by the municipal court against the city official. If the city official fails to pay the total judgment amount entered for the civil fine and for twice the fair market value of the prohibited gift within thirty (30) days of the entry of the final judgment, the city may pursue any legal means available to it for the collection of the judgment.

Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

Signed this ____ day of _____, 200 ____.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

TOWN OF TIMNATH

RESOLUTION NO.
Series of 2006

A RESOLUTION ADOPTING BY REFERENCE C.R.S. § 24-18-104, AS
APPLICABLE TO PUBLIC OFFICERS AND EMPLOYEES, INCLUDING
INDEPENDENT CONTRACTORS WITHIN THE TOWN

WHEREAS, on November 7, 2006, the voters approved Amendment 41 on the statewide general election ballot; and

WHEREAS, Amendment 41 adopts a new Article XXIX of the Colorado Constitution entitled "Ethics in Government"; which article deals in detail with receipt of gifts and things of value by, and lobbying and ethical principles applicable to public officials; and

WHEREAS, by its terms, Amendment 41 applies to local government officials and employees, including those of the Town; and

WHEREAS, Section 7 of Amendment 41 provides that home rule municipalities may act by charter, ordinance or resolution to adopt regulations on the subjects covered by Amendment 41, which regulations may be more or less stringent than those contained in Amendment 41; and

WHEREAS, the Town's Home Rule Charter at Section 2.9 presently addresses only conflicts of interest; and

WHEREAS, the Town Council wishes to act by resolution, as permitted by Amendment 41, to adopt regulations addressing the matters covered by Amendment 41; and

WHEREAS, the Town Council is of the opinion that C.R.S. § 24-18-104, as such statute presently exists on the effective date of this Resolution, contains appropriate restrictions on the matters covered by Amendment 41; and

WHEREAS, the Town Council finds that it is in the best interests of the public officers and employees of the Town that such requirements be confirmed as applicable within the Town rather than the requirements contained in Amendment 41, all as permitted by Amendment 41 itself.

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

Section 1. C.R.S. § 24-18-104 Adopted by Reference. Pursuant to the Authority vested in it by Article XXIX, Section 7 of the Colorado Constitution, Article XX, Section 6 of the Colorado Constitution, the Town Council hereby adopts by reference C.R.S. § 24-18-104, as such statute presently exists as of the date of this Resolution, as a binding regulation applicable to all elected and appointed officials, employees and independent contractors within the Town, as more fully described in said statute. A true and correct copy of C.R.S. § 24-18-104 as adopted hereby is attached hereto as **Exhibit A** and fully incorporated herein by this reference.

Section 2. Complaints; Enforcement; Penalty. The Town Council shall have exclusive authority for enforcement of this Resolution. All complaints hereunder shall be filed with the Council within one (1) year after the date of the alleged violation. The Council shall take such action and impose

such penalty, if any, thereon as it deems appropriate. Final action by the Council shall be final action by the Town on the matter.

Section 3. This Resolution shall be effective immediately upon adoption.

INTRODUCED, READ, PASSED AND ADOPTED BY A VOTE OF THE COUNCIL OF THE TOWN
OF TIMNATH AS A RESOLUTION AND ORDERED PUBLISHED THIS ____ DAY OF
_____, 2006

Donna Benson, Mayor

ATTEST:

Linda Thompson, Town Clerk