



BOARD OF ADJUSTMENT / APPEALS REGULAR MEETING

July 22, 2021 // 7:00 p.m. // Town Board Chambers
301 Walnut Street, Windsor, CO 80550

AGENDA

- A. CALL TO ORDER
 - 1. Roll Call
 - 2. Review of Agenda by the Board and Addition of items of New Business to the Agenda for Consideration by the Board
 - 3. Reading of the statement of the documents to be entered into the record:
I enter into the record the Town's Comprehensive Plan, the Town's Zoning Ordinance, the staff report regarding the action items of this hearing, and all of the testimony received at this hearing.
- B. CONSENT CALENDAR
 - 1. Approval of the June 24, 2021 minutes. – T. Conway
- C. BOARD ACTION
 - 1. Elect Board Members (Board of Adjustment Amended Bylaws 2008: Board officers shall serve for a term of one (1) year and shall be elected annually at the January* meeting of the Board.)
 - a. Chairman
 - b. Vice Chair
 - c. Secretary
 - i. Ask for nominations
 - ii. Response
 - iii. Confirm the nominees and ask if there are any others
 - iv. Vote on the slate of nominees (Vice-Chair & Secretary)

2. Amend Bylaws to Allow Remote Attendance in Meetings Subsection III.M of the Amended Bylaws for the Town of Windsor;

a. Motion to amend the Bylaws per the attached

b. Second

c. Vote

D. COMMUNICATIONS

1. Communications from the Board Members

2. Communications from staff

E. ADJOURN

STATE LAW DICTATES THAT A FAVORABLE VOTE OF 4 OUT OF 5 MEMBERS OF THE BOARD OF ADJUSTMENT IS REQUIRED TO GRANT ANY VARIANCE.

A SIMPLE MAJORITY VOTE IS NOT SUFFICIENT.

NOTE TO APPLICANTS: This agenda is considered tentative and may be revised at any time prior to the meeting. Applicants are advised to be present at 7:00 p.m. Final agendas will be available at the meeting. Applicants may discuss the requests and the recommendations with staff during normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, except holidays. For the convenience of the applicants, appointments are recommended.

Upcoming Meeting Dates

Thursday, August 26, 2021	7:00 P.M.	Regular Board of Adjustment Meeting*
Thursday, September 23, 2021	7:00 P.M.	Regular Board of Adjustment Meeting*
Thursday, October 28, 2021	7:00 P.M.	Regular Board of Adjustment Meeting*

* All regular and special meetings of the Board of Adjustment are subject to the receipt of an item of business to be placed on the meeting agenda.



BOARD OF ADJUSTMENT / APPEALS REGULAR MEETING

June 24, 2021 // 7:00 p.m. // Town Board Chambers
301 Walnut Street, Windsor, CO 80550

MINUTES

A. CALL TO ORDER

Chairman Horner called the meeting to order at 7:00 p.m.

1. Roll Call

The following members were present:

Chairman Danny Horner
Stacey Shea
Jeffrey Gelvin
James Penfold
Don Threewitt

Alternate

Absent

Shawn Wherry
Patrick Miller

Senior Planner
Deputy Town Clerk

David Eisenbraun
Trisha Conway

2. Review of Agenda by the Board and Addition of items of New Business to the Agenda for Consideration by the Board of Adjustment / Appeals

There were no changes to the agenda.

3. Reading of the statement of the documents to be entered into the record: *I enter into the record the Town's Comprehensive Plan, the Town's Zoning Ordinance, the staff report regarding the action items of this hearing, and all of the testimony received at this hearing.*

Mr. Eisenbraun advised the board about changing the bylaws for remote attendance, and voting to be discussed during the next scheduled public hearing.

Chairman Horner reported we can have a discussion during the communication portion of the hearing.

B. CONSENT CALENDAR

1. Approval of the minutes from August 01, 2019

Ms. Shea moved to approve the consent calendar as presented; Mr. Penfold seconded the motion. Roll call on the vote resulted as follows; Yeas – Horner, Shea, Gelvin, Penfold, Threewitt; Nays – None; Motion carried.

C. BOARD ACTION

1. Public Hearing – Variance of Municipal Code Section 16-3-10 of the Municipal Code pertaining to location of accessory buildings on residential lots, in the

Single Family Residential (SF-1) Zone District at 1048 Pinyon Court (Lot 11, Block 4, Mountain View Addition); Steven and Rachel Workman, owners/applicants.

Ms. Shea moved to open the Public Hearing; Mr. Threewitt seconded the motion. Roll call on the vote resulted as follows: Yeas – Horner, Shea, Gelvin, Penfold, Threewitt; Nays – None; Motion carried.

The applicants, Mr. Steven Workman and Ms. Rachel Workman, are requesting a variance from Municipal Code Section 16-3-10 of the Municipal Code pertaining to location of accessory buildings on residential lots, in the Single Family Residential (SF-1) Zone District.

Municipal Code Section 16-3-10 states the following:

"No accessory building, regardless of its size, shall be located any closer to the front property line than the rear corners of the Principal building; that is, accessory buildings are only allowed in rear yards."

The applicants are proposing a 14'x16' or 224 square foot shed to be located in the east side of the property addressed as 1048 Pinyon Court. The property is a cul-de-sac lot. The shed, which would be constructed to match the features and colors of the main house, is proposed to be 12'- 6" high, which would mean a building permit would need to be obtained for the structure and setback / offsets observed.

The proposed location of the shed is the result of several site factors.

- A large portion of the rear (south) yard is taken up by the existing home, leaving only 10' from the principle structure and the property line.
- An 8-foot utility easement (with utilities) is located along the south property line, making it physically impossible to locate a structure in this area.
- The west side of the house does not have any access via the main driveway and is inhibited by large mature trees.

The proposed location is an area where the shed would be outside the drainage area and not located over utilities. The shed would also be largely screened from the public right-of-way due to an existing fence and the neighboring house to the East.

Based on the horizontal nature of the parcel and house orientation, the east and west side yards function as the typical backyard of most other developments.

Analysis

Municipal Code Section 16-6-60 (Variances) states the following:

Variances may be considered where, due to special conditions, a literal enforcement of the provisions of this Chapter would result in unnecessary hardship. Variances will not be granted contrary to the public interest and will only be considered when the spirit of this Chapter can be observed and public safety and welfare secured.

Section 16-6-60 defines unnecessary hardship as follows:

For purposes of this Article, unnecessary hardship shall be defined as a situation where the property cannot be reasonably used under the conditions allowed by

this Code. The situation shall result from circumstances unique to the property and shall not be created by the landowner. The variance, if granted, will not alter the essential character of the surrounding neighborhood. Economic considerations alone shall not constitute an unnecessary hardship if a reasonable use for the property exists under the provisions of the Code. It is the responsibility of the landowner to prove that an unnecessary hardship exists.

Municipal Code Section 16-1-10 (Declaration of Purpose) provides guidance on the purpose and spirit of the zoning code:

The regulations contained in this Chapter shall be held to be minimum requirements enacted to promote the health, safety and general welfare of the Town. To these ends such regulations have been prepared in accordance with the Comprehensive Development Plan for the Town and are designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to provide adequate light and air; to prevent the overcrowding of land and undue concentration of population.

Staff has analyzed whether an unnecessary hardship exists:

- a) Whether the property can be reasonable used under the conditions of the Code.
The property can be reasonably used under the conditions of the Code.
- b) Whether circumstances unique to the property exist that were not created by the landowner.
Based on the subdivision design of shallow, yet wide lots, it appears that the proposed placement of this shed is in line with the intent of how this lot was designed to be used. With the rear yard largely encumbered by a utility easement, and the screened side yards within the cul-de-sac are intended to function and serve the purpose of a traditional rear yard.
- c) Whether the essential character of the surrounding neighborhood would be altered.
The essential character of the surrounding neighborhood would not be altered. The shed will match the construction features and colors of the main house. The 6-foot privacy fence will also partially screen the shed from offsite vantage points.
- d) Public safety and welfare are not compromised. The shed's location should not negatively impact public safety and welfare.
The shed's location would not encroach into the sidewalk or block visibility at intersections.

Recommendation Staff considers that the literal enforcement of the Code will result in an unnecessary hardship as defined by the Municipal Code and outlined above. Therefore, staff is recommending approval of the variance request with the following conditions:

1. The shed is to be constructed and designed in a manner that is similar to the principle structure.
2. The applicant obtains a building permit for the shed.

Since all motions are to be made in the affirmative, staff recommends that the following motion, second and action on the petition be made as follows:

1. A motion to approve the request for a variance from Section 16-12-40 with the two conditions recommended by staff.
2. A second; and
3. The Chair calling for the vote as follows: All members in favor of the variance vote "yes"; all opposed to the variance request vote "no", with a minimum of four "yes" votes required to approve the variance request.

Furthermore, staff recommends the following findings of fact:

1. An undue hardship, as defined by the Municipal Code, exists in this case.

Should the BOA be inclined to approve the variance request, findings of fact supporting the decision are required.

Notification

- June 10, 2021 development sign posted on the subject property.
- June 11, 2021 public hearing notice published in the paper.
- June 12, 2021 letters mailed to neighboring residents (150')
- June 12, 2021 public hearing notice published on Town website.

Chairman Horner opened the meeting for Commissioner questions or comment.

Commissioner Threewitt asked Mr. Eisenbraun about other potential sites for the shed for economic consideration.

Mr. Eisenbraun reported it would still fall under the same variance request being considered a side-yard. The definition reads behind the rear corner of the principle building, and there is no functional use space for the easement.

Chairman Horner asked if there are any comments from public regarding the variance request to which there was none.

Mr. Gelvin moved to close the Public Hearing; Ms. Shea seconded the motion. Roll call on the vote resulted as follows: Yeas – Horner, Shea, Gelvin, Penfold, Threewitt; Nays – None; Motion carried.

Chairman Horner asked for a motion on the variance.

Ms. Shea moved to approve the request for a variance with the conditions recommended by staff; Mr. Gelvin seconded the motion. Roll call on the vote resulted as follows: Yeas – Horner, Shea, Gelvin, Penfold, Threewitt; Nays – None; Motion carried.

D. COMMUNICATIONS

1. Communications from the Board Members

- Discussion ensued among commissioner about changing the bylaws to support remote attendance and voting.
- Chairman Horner asked Mr. Eisenbraun about whether the Town of Windsor provides virtual training for Zoom participants.

Mr. Eisenbraun reported Commissioners can arrive 30 minutes early to scheduled public hearing to complete virtual training session for Zoom participation.

- Commissioner Shea asked Mr. Eisenbraun to have a draft revision of the bylaws at the next public hearing.
Mr. Eisenbraun reported the assistant/or Town attorney will draft a revision to the bylaws for board members to review as a board action item at the next public hearing.
- Chairman Horner set in action to exploring the option for amending the bylaws for remote access for board members, and the public at the next public hearing.

Ms. Shea moved for consideration of virtual attendance for board members, applicants, and general public on the agenda for the next public hearing; Mr. Threewitt seconded the motion. Roll call on the vote resulted as follows: Yeas – Horner, Shea, Gelvin, Penfold, Threewitt; Nays – None; Motion carried.

2. Communications from staff

- Mr. Eisenbraun reported IT updated the Board of adjustments Town's email address group for future correspondence.

E. ADJOURN

Upon a motion duly made, the meeting was adjourned at 7:36 p.m.

Deputy Town Clerk, Trisha Conway

PROPOSED AMENDMENT TO ARTICLE III OF THE WINDSOR BOARD OF
ADJUSTMENT/APPEALS BYLAWS

July 22, 2021

M. **Electronic Participation Voluntary.** The Board hereby authorizes the conduct of remote meetings and participation therein as set forth in this sub-section below:

(1) If a Board member reasonably determines that his or her in-person attendance at a regular or special meeting of the Board would not be prudent, such Board Member may participate by telephone, video conferencing, or other electronic means in any regular or special meeting (“Electronic Participation”). Any Board Member participating electronically shall be deemed present for purposes of determining a quorum and taking official action. Any Board Member may through Electronic Participation participate in discussion, make inquiry, refer questions to the Chair, and monitor the proceedings. A Board Member participating electronically under this Section may vote in any matter, but any such vote shall not be officially counted unless affirmed in writing within 24 hours of the vote under such verification requirements and upon such forms as are established by the Town Clerk. Electronic Participation is also available to Board Members during any duly-convened executive session. The Chair may direct discontinuance of Electronic Participation by one or more members during a meeting where the Electronic Participation results in delays or interference in the meeting process; *e.g.*, where the telephone connection or connection by other electronic means is repeatedly lost or interrupted, the quality of the connection is unduly noisy or otherwise prevents the orderly conduct of the meeting, or the listening member is unable to hear speakers using a normal speaking voice amplified to a level suitable for the meeting audience in attendance. Whenever a Board Member participates electronically in a Board meeting by telephone or other electronic means pursuant to this sub-section, the following additional requirements shall be observed:

- All Board participants in Board meetings must be able to hear one another or otherwise communicate with all other Board Members, and be able to hear all discussion and testimony in a manner providing maximum transparency and participation.
- Members of the public present for in-person public meetings or observing remotely must be given an opportunity to hear all discussion, testimony, and votes.
- All votes held at the meeting shall be conducted by roll call.
- To the extent possible, full and timely notice shall be given to the public advising that one or more members of the Board may participate in the meeting electronically.
- Electronic Participation in any regular or special Board meeting in accordance with this Section shall not be considered to be an absence or failure to attend for determining whether a Board vacancy in has occurred.

**AMENDED BYLAWS
For The Town of Windsor
Board of Adjustment**

**Article I
Introduction**

- A. The *Windsor Municipal Code* authorizes the Board of Adjustment to adopt amended bylaws for the transaction of business.
- B. The within Amended Bylaws have been adopted by the Town of Windsor Board of Adjustment, and all previously adopted bylaws are deemed repealed.
- C. Pursuant to the *Windsor Municipal Code*, this Board shall be known as the Town of Windsor Board of Adjustment, hereinafter referred to as “Windsor Board of Adjustment” or “the Board.”

**Article II
Membership and Officers**

- A. The Windsor Board of Adjustment shall be composed of members appointed by the Town Board of the Town of Windsor in accordance with the *Windsor Municipal Code*.
- B. The Board shall elect a chairman, vice chairman, and secretary.
 - 1. The chairman shall preside at all regular and special meetings of the Board and shall decide all points of procedure.
 - 2. The vice chairman shall assume the duties and responsibilities of the chairman in the chairman’s absence.
 - 3. In the absence of the chairman and vice chairman, the election of an acting chair shall be in accordance with the procedures outlined in Section G of Article III of these Amended Bylaws.
 - 4. The secretary shall keep, or cause to be kept, all records of the Board, and shall transmit all appropriate records to the Town Clerk to become part of the official Town Record.

5. Board officers shall serve for a term of one (1) year and shall be elected annually at the January meeting of the Board.
6. Officer vacancies shall be filled at the next regular meeting of the Board by election of the members. Officers elected to fill vacancies shall serve until the next regular election of officers.

Article III Meetings

- A. The chairman shall prepare, or cause to be prepared, an agenda for every regular or special meeting of the Board.
- B. The Board shall meet monthly on a date and at a time and location designated by the chairman. These regular meetings may be postponed or rescheduled upon a vote by the Board. In the event there is not any business scheduled to come before the Board, the Director of Planning or his or her Designee may cancel the respective meeting and shall in a timely manner provide written notice to the members of the meeting cancellation.
- C. The secretary shall prepare, or cause to be prepared and posted, a notice of each regular or special meeting of the Board. Such notice shall contain the meeting agenda.
- D. Special meetings may be called by the chairman at the request of two (2) members, provided that notice of same, including a listing of all items to be considered (agenda), is delivered to each member of the Board or to his or her residence at least forty-eight (48) hours prior to the time set for such meeting, and further provided that announcement of a special meeting, or any other meeting at which all members of the Board are present, shall be sufficient notice of such meeting. Formal action taken at a special meeting called in accordance herewith shall be considered as though it were taken in a regular meeting for those, and only those, matters referred to in the agenda contained in the notice of the meeting.
- E. All meetings of the Board shall be open to the public.
- F. Before official and formal action can be taken on any matter at any meeting of the Board, a quorum shall be present and in session. In accordance with Colorado law and the *Windsor Municipal Code*, a concurring vote of four (4) members of the Windsor Board of Adjustment shall be necessary to reverse any order, requirement, decision or determination of the Zoning Officer of the Town or to grant a variance or otherwise decide in favor of an applicant on any matter considered by the Windsor Board of Adjustment under the provisions of the *Windsor Municipal Code*.

- G. In the absence of the chairman, the vice chairman shall call the meeting to order. In the event neither the chairman nor the vice chairman are present but with the seating of alternate members a quorum is present, the first order of business shall be the election of an acting chair for the meeting. The secretary shall call the meeting to order, and the acting chair shall be elected by a majority of the members in attendance. In the event of a tie vote for the election of the acting chair, the secretary shall appoint the acting chair.
- H. All voting shall be by roll-call vote.
- I. The members of the Board shall be bound by Article V of the Town of Windsor Home Rule Charter, also known as the Town's Ethics Code. A copy of the Town's Ethics Code is attached hereto as the Appendix. Copies of the Town's Ethics Code, and any subsequent amendments thereto, shall be distributed to all current and future members of the Board.
- J. The order of business for all meetings shall be the order as it appears on the agenda except that the chairman may, under special circumstances, rearrange the order of business unless otherwise directed by a majority of the members there present and in session.
- K. The secretary shall keep, or cause to be kept, minutes and keep the same recorded to date, showing all important facts pertaining to each meeting and hearing, the vote of each regular member upon each matter, or those absent or failing to vote, and such other details as the Board or its chairman shall direct. The minutes of each meeting shall be approved by the Board at its next meeting.
- L. The secretary shall prepare, or cause to be prepared, written decisions of the Windsor Board of Adjustment as required by the *Windsor Municipal Code*.

Article IV Committees

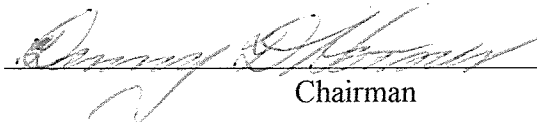
- A. There shall be no standing committees of the Board.
- B. With the consent of the Board, the chairman may appoint *ad hoc* committees of the Board for special study or review.

Article V Amendments

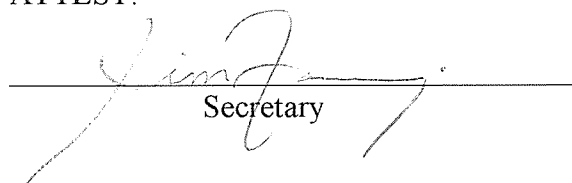
These Amended Bylaws may be amended by majority vote of a quorum of members present and in session at any regular meeting, provided that notice in writing has been given to each member at least ten (10) days prior to such meeting, or provided that such amendment was read at the last regular meeting of the Board.

THE WITHIN AMENDED BYLAWS WERE APPROPRIATELY ADOPTED BY THE TOWN OF WINDSOR BOARD OF ADJUSTMENT BY MAJORITY VOTE ON THE 26th DAY OF JUNE, 2008.

TOWN OF WINDSOR BOARD OF ADJUSTMENT


Chairman

ATTEST:


Secretary

APPENDIX

ARTICLE V OF THE TOWN OF WINDSOR HOME RULE CHARTER

Code of Ethics

5.1 Purpose

The purpose of this code is to establish guidelines for the ethical standards of conduct for Town officials, public body members and employees. Public servants and volunteers are expected to act in the best interest of the Town. Town officials, public body members and employees are expected to disclose any personal, financial or other interests in matters affecting the Town that come before them for action. Town officials, public body members and employees are expected to recuse themselves from decision making if they have a conflict of interest or even the appearance of one. Town officials, public body members and employees are expected to be independent, impartial, and responsible to their fellow townspeople in their actions. Official decisions and policies will be made following proper channels of town government. Public offices or volunteer positions in our Town will not be used for personal gain. It is important that the public has confidence in the integrity of its government and that town officials, public body members, volunteers and employees have an opportunity to protect their personal reputation. This code establishes a process by which one may obtain guidance regarding potential ethical issues and it establishes a course of action for resolving disputes in a manner that is fair to all of the parties involved.

5.2 Standards

A. The following requirements shall constitute reasonable standards and guidelines for the ethical conduct of elected or appointed officials, public body members, and employees.

B. No elected or appointed official, public body member, or employee who has the power or duty to perform, or has any influence over, an official action related to a contract, shall:

1. Have or acquire an interest in a contract between a business entity and the Town, unless the Town's procedures applicable to the solicitation and acceptance of such contract are followed and unless the elected or appointed official, public body member, or employee has complied with the provisions of Article 5.3;

2. Have an interest in any business entity, which is a party to the contract with the Town, unless the elected or appointed official, public body member, or employee has complied with the provisions of Article 5.3;

3. Represent or appear before the Town Board, any public body, or any other elected or appointed official, public body member, or employee, on behalf of any business entity which is a party to the contract with the Town;

4. Have solicited or accepted present or future employment with any business entity which is a party to a contract with the Town, if the offer or acceptance of such employment is related to or results from any official action performed by the elected or appointed official, public body member, or employee with regard to the contract; or

5. Solicit, accept, or be granted a present or future gift, favor, discount, items of perishable or nonpermanent value, service or thing of value from or for any person involved in the contract. Nothing in this paragraph shall prohibit any elected or appointed official, public body member, or employee from accepting an occasional non-pecuniary gift of an amount to be determined by ordinance, or from accepting an award, publicly presented, in recognition of public service. However, no elected or appointed official, public body member, or employee shall accept a non-pecuniary gift of any value if the gift is or may be in any way associated with a contract that is or may be one for which the elected or appointed official, public body member, or employee has the power or duty to perform an official action.

C. No elected or appointed official, public body member, or employee shall influence or attempt to influence the compensation, benefits, or other terms and conditions of Town office or Town employment applicable to a relative of the elected or appointed official, public body member, or employee.

D. No relative of an elected or appointed official, public body member, or employee shall be hired as a full time, permanent employee unless the Town's personnel procedures applicable to such employment have been followed.

E. No elected or appointed official, public body member, or employee shall use for personal or private gain, or for any other personal or private purposes, any information which is not available to the public and which is obtained by reason of his or her position with the Town, or disclose any such information except as required by law or for Town purposes.

F. No employee shall engage in or accept any employment or service, other than employment by the Town, if such employment or service reasonably would tend to impair the employee's independence of judgment in the performance of the employee's duties. This restriction shall not be construed to prohibit any other restrictions or prohibitions on outside employment applicable to an employee.

G. Neither the Town Manager, nor any employee who is the head of a Town department, shall be appointed to serve as a voting member of a public body, but this does not preclude town staff from serving in an advisory capacity.

H. No elected or appointed official, public body member, or employee shall request or direct the use of any Town resources for personal or private gain, including work time, except in the same manner and under the same circumstances applicable to any other person. No special consideration, treatment, or advantage beyond that which is available to every other person in similar circumstances or need shall be granted unless such use will substantially benefit the Town.

I. No elected or appointed official, public body member, or employee shall, at any time within two (2) years after termination from the Town:

1. Appear on behalf of the elected or appointed official's, public body member's, or employee's interest, or on behalf of the interest of any other person, before the Town Board, any public body, or department of the Town, in relation to any matter concerning which the elected or appointed official, public body member, or employee performed an official act; or

2. Represent the interest of the elected or appointed official, public body member, or employee, or of any other person, in any other matter before the Town Board, any public body, or department of the Town, without disclosing to the Town the elected or appointed official's, public body member's, or employee's prior relationship to the Town and present relationship to the interest.

J. Except as provided in Subsection K, no elected or appointed official, public body member, or employee shall appear before the Town Board or any public body on behalf of any business entity.

K. A member of a public body may appear on behalf of a business entity before the Town Board or before a public body other than the public body of which he or she is a member, so long as the appearance does not concern any matter that has or may come before the public body of which he or she is a member.

L. Nothing in the Code of Ethics shall preclude an elected or appointed official, public body member, or employee from appearing before the Town Board, any public body, or any other elected or appointed official, public body member, or employee on behalf of any person which is not a business entity, so long as the appearance does not concern the elected or appointed official's, public body member's, or employee's interest.

M. No elected or appointed official or public body member shall offer or promise to give his or her vote or influence in favor of or against any proposed official action in consideration or upon condition that any other elected or appointed official, public body member, will promise or assent to give his or her vote or influence in favor of or against any other proposed official action.

N. No elected or appointed official shall become a full-time employee of the Town at any time during the term of office, or for two (2) years after leaving office.

O. No elected or appointed official shall acquire or seek to acquire any real estate or interest therein if the elected or appointed official knows, or reasonably should know, that the Town Board is evaluating, proposing, or pursuing the acquisition of such real estate or interest therein. The elected or appointed official's knowledge shall be presumed. The prohibitions of this subsection shall continue to apply until after the Town Board has abandoned any effort to acquire such real estate or interest therein, and such abandonment has been reflected in the minutes or other record of a Town Board meeting.

5.3 A Duty to Disclose

An official, public body member or employee of the Town of Windsor shall not participate in the conduct of business on behalf of the Town or enter into discussion or deliberation of any matter without first, publicly and on the record, stating all possible conflicts of interest that may exist between themselves and their family members, and the principals or the issue under consideration.

5.4 No Misuse of Confidential Information

No official, public body member or employee of the Town of Windsor shall use any confidential information acquired by virtue of that individual's official position for personal benefit, or for the benefit of any other person or business. This does not apply to information, which is readily available to the general public. In addition, no official, public body member or employee of the Town of Windsor shall violate the privacy of others by discussing information confidentially acquired in the course of official duties.

5.5 Exclusions

The provisions of this Code of Ethics shall not be interpreted so as to bar:

- A. Any official, public body member or employee who is a resident of the Town of Windsor from fully participating in any Town Meeting;
- B. Acceptance of donations for the expressed purpose of financing a political campaign,

provided such contributions are reported in accordance with all local, state and federal laws that pertain to such donations;

C. Participation in a matter that relates to a person or business from which an official, public body member or employee has merely purchased goods or services, if the individual in question has no other conflict of interest relating to that person or business;

D. Police officers, fire fighters, and other emergency personnel from acting in the course of their official capacities when responding to emergencies in accordance with the rules and regulations of their departments.

5.6 Enforcement

A. The provisions of Articles 5.2 through 5.5 shall be enforced as follows:

1. The Town Attorney shall have the primary responsibility for administration of said provisions.

2. Any person who believes that an elected or appointed official, public body member, or employee has violated any of said provisions and wishes to initiate proceedings on such alleged violations shall file a written complaint with the Town Attorney. The complaint shall state in detail the facts of the alleged violation, shall specify the section or sections of the Code of Ethics alleged to have been violated, and shall contain a sworn or verified statement signed by the complainant and stating under penalty of perjury that the information in the complaint is true and accurate, and that the complaint is filed in good faith and not out of malice or any other improper motive or purpose. Any complaint that does not contain such a signed statement shall be returned forthwith to the complainant without action.

3. If the complaint is made against an officer or public body member, within ten (10) days after receipt of the complaint the Town Attorney shall forward a copy of the complaint to the elected or appointed official or public body member against whom the complaint is made, and to an advisory judge referred to in Article 5.7. The Town Attorney shall request the advisory judge to appoint a qualified disinterested attorney to serve as special prosecutor. If, within ten (10) days after the request, the advisory judge has not appointed a special prosecutor, the Town's Municipal Judge shall appoint a qualified disinterested attorney to serve as special prosecutor. The reasonable expenses and fees of an advisory judge making such an appointment and of the attorney serving as special prosecutor shall be paid by the Town. The attorney recommended or appointed pursuant to this paragraph shall serve as special prosecutor for purposes of investigation and action on the complaint, and shall take

such actions concerning the complaint as are consistent with the Code of Ethics, the Colorado municipal court rules of procedure, and the prosecutor's ethical responsibilities. Before completing the investigation, the special prosecutor shall provide the elected or appointed official or public body member against whom the complaint is made an opportunity to provide information concerning the complaint.

4. If the complaint is against an employee, the Town Attorney shall investigate the complaint and shall take such actions concerning the complaint as are consistent with the Code of Ethics, the Colorado municipal court rules of procedure, and the prosecutor's ethical responsibilities. Within ten (10) days after receipt of the complaint the Town Attorney shall forward a copy of the complaint to the employee against whom the complaint is made and, before completing the investigation, shall provide the employee an opportunity to provide information concerning the complaint.

B. A person commits false reporting of a complaint under this Article if:

1. The person makes a complaint of a violation under Articles 5.2 through 5.5 or knowingly causes the transmission of a complaint to the Town Attorney of such a violation when the person knows that the violation did not occur; or

2. The person makes a complaint or knowingly causes the transmission of a complaint to the Town Attorney pretending to furnish information relating to a violation of Articles 5.2 through 5.5 when the person knows that he or she has no such information or knows that the information is false.

C. A person who is convicted of false reporting of a complaint under this article shall be punished as provided in Article 16.5 of this Charter.

5.7 Advisory Opinions

A. The Municipal Judge shall maintain the consent of one (1) or more judges of municipalities other than the Town, to provide advisory opinions with respect to the applicability of Articles 5.2 through 5.6. The names of such advisory judges shall be provided to the Town Board, the Town Manager, and the Town Attorney. The reasonable expenses and fees of an advisory judge providing such an opinion shall be paid by the Town.

B. If any officer, public body member, or employee is uncertain as to the applicability of Articles 5.2 through 5.6 to a particular situation, or as to the definition of terms used in said Articles, the officer, public body member, or employee may apply in writing to the Town Board, Mayor, or Town Manager for an opinion from an advisory judge pursuant to these

Articles, and the Town Board, Mayor, or Town Manager may submit an application to the advisory judge for procurement of an opinion. Any officer or public body member may apply directly to an advisory judge for an opinion. The application shall state in detail the applicable facts and the Article or Articles of the Code of Ethics concerning which the opinion is requested.

C. Any person who requests and acts in accordance with an advisory opinion issued pursuant to this Article shall not be subject to any penalties for such action under the Code of Ethics, unless material facts were omitted or misstated in the request for the advisory opinion.

D. An opinion rendered by an advisory judge pursuant to these Articles shall be disclosed to the public by posting, unless the advisory judge who issued the opinion determines it in the best interest of the Town to delay such posting, in which case the opinion shall be posted as soon as the judge determines that the best interest of the Town will no longer be harmed by public disclosure of the opinion.

5.8 Violations - Injunction

The Town Prosecutor shall have the power and the duty, where a violation of the provisions of the Code of Ethics is threatened or has occurred, to bring a civil action or proceeding at law or in equity for a judgment enjoining any violation of the provisions of the Code of Ethics. Any member of the community shall have the opportunity to submit, in good faith, a sworn statement of any suspected violation of the Charter to the Town Attorney.

5.9 Violations - Voiding of Contract

Any contract that was the subject of any official action of the Town in which there was or is an interest prohibited by the Code of Ethics shall be voidable at the option of the Town, if legally permitted. Where the Town Attorney determines that the public interest may best be served by not voiding such contract, it may be enforced and an action or proceeding may be brought against any elected or appointed official, public body member, or employee in violation of the provisions of the Code of Ethics for damages in an amount not to exceed twice the damages suffered by the Town or twice the profit or gain realized by the elected or appointed official, public body member, or employee, whichever is greater.

5.10 Distribution

The Town Clerk shall cause any forms required for compliance with the Code of Ethics, to be distributed to each elected or appointed official, public body member, and employee of the Town within twenty (20) days after the adoption of the ordinance, and to each elected or appointed official,

public body member, and employee elected, appointed, or hired thereafter, before entering into any duties with the Town, and to each candidate for elective office at the time the candidate obtains a nomination petition. In addition, the Town Clerk shall cause a copy of any amendment to the Code of Ethics to be distributed to each elected or appointed official, public body member, and employee of the Town within twenty (20) days after the enactment of the amendment.