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CHAPTER 2.02

Administrative Departments

2.02.010 Departments enumerated.

The administrative departments of the Town shall be as follows:

- (1) Community Development.
- (2) Public Works.
- (3) Police.
- (4) Human Resources.
- (5) Finance.
- (6) Administrative Services.
- (7) Recreation.
- (8) Transportation.
- (9) Engineering. (Ord. 02-04 §1(part))

2.02.020 Directors' duties.

Each department shall be under the direction of a director (or police chief, in the case of the Police Department) whose functions and duties shall be in accordance with the provisions of the statutes of the State, the Town Charter, the ordinances of the Town and the procedures established by the Town Manager. Any reference in this Code to a department director shall include his or her designee. (Ord. 02-04 §1(part))

2.02.030 Functions and directions.

The Town Manager shall determine and direct the operation and function of each administrative department, including the employment of heads of the departments. (Ord. 02-04 §1(part))

CHAPTER 2.04

Compensation of Council Members

2.04.010 Compensation of Council Members.

Council Members shall receive compensation for their service in office in accordance with the following schedule:

- (1) Mayor: One thousand dollars (\$1,000.00) per month.

(2) Mayor Pro Tem: Seven hundred fifty dollars (\$750.00) per month.

(3) All other Council Members: Five hundred dollars (\$500.00) per month. (Ord. 96-18 §1)

CHAPTER 2.08

Municipal Court

2.08.010 Establishment.

There is established, pursuant to Section 10.2 of the Town Charter, a municipal court which shall be a qualified municipal court of record and shall be known as the Avon Municipal Court. (Ord. 79-8 §1)

2.08.020 Operation.

The operation and procedures of the Avon Municipal Court shall be governed by Title 13, Article 10, C.R.S., 1973, as amended, which is incorporated by reference herein and made a part hereof, excluding any provision or portion thereof in said statute which is inconsistent with any applicable provisions of the Town Charter, the Municipal Code or any ordinance of the Town. (Ord. 79-8 §2)

2.08.030 Resolutions.

The operation of the Municipal Court shall be governed as required by the Town Council through the adoption of resolutions. (Ord. 79-8 §3)

2.08.040 Jurisdiction, powers and procedures.

(a) The Municipal Court shall have original jurisdiction of all cases arising under the Municipal Code and other ordinances of the Town with the authority to punish violators thereof, in accordance with the provisions of Section 1.08.010 of this Code, together with court costs in the amount of fifteen dollars (\$15.00). The procedures of the Court shall be in accordance with the Municipal Court Rules of Procedure as promulgated by the Colorado Supreme Court.

(b) The Municipal Court shall not have jurisdiction over any civil action against the Town, including any claim brought pursuant to Rule 106, Colorado Rules of Civil Procedure. (Ord. 02-08 §2; Ord. 98-1 §1; Ord. 82-10 §1; Ord. 79-4 §4; Ord. 04-05 §1; Ord. 04-16 §1)

2.08.050 Sessions.

There shall be regular sessions of the Avon Municipal Court as determined by the presiding Judge with the approval of the Town Council. Such sessions shall be for the trial of cases and transaction of other court business. The presiding Judge may also authorize and hold special sessions of court as he or she shall determine. All sessions shall be open to the public, except where the nature of the case or some element of the anticipated testimony is such that the presiding Municipal Judge deems that it is in the best interest of justice to exclude persons not directly connected with the proceeding. Under such circumstances, the presiding Judge may order that the courtroom be cleared. (Ord. 79-8 §5)

2.08.060 Judge – deputy judge – term.

(a) The Municipal Court shall be presided over by a Municipal Judge who shall be an attorney at law admitted to practice in the State, having been in active practice for at least five (5) years prior to his or her appointment. He or she shall be appointed by the Town Council for a specified term of not less than two (2) years, except that the term of office of the Judge appointed initially shall expire on the date of the organizational meeting following the election on the first Tuesday after the first Monday in May, 1980.

(b) The Town Council may also appoint such deputy municipal judge or judges, as it deems necessary. Any such deputy municipal judge shall be an attorney admitted to practice in the State. The deputy municipal judge shall have all the powers of the Municipal Judge when acting as a municipal judge at the request of the presiding Municipal Judge or the Town Council. The deputy municipal judge shall serve at the pleasure of the Town Council. (Ord. 79-8 §6)

2.08.070 Judge – deputy judge – compensation.

(a) The salary of the presiding Municipal Judge shall be determined by the Town Council. The Town Council may alter the salary from time to time as it shall deem proper. The salary shall be paid monthly.

(b) The deputy municipal judge or judges shall receive such compensation for services rendered as the Town Council may determine. (Ord. 79-8 §7)

2.08.080 Judge – Oath.

Before entering upon the duties of his or her office, all municipal judges shall take an oath or affirmation that he or she will support the constitution and laws of the United States of America and the State and the Charter, Municipal Code and ordinances of the Town and that he or she will faithfully perform the duties of his or her office. (Ord. 79-8 §8)

2.08.090 Judge – Rule adoption authority.

In addition to his or her other powers, the presiding Municipal Judge shall have the authority to issue local rules of procedure consistent with any rules of procedure adopted or issued by the Colorado Supreme Court. (Ord. 79-8 §9)

2.08.100 Clerk – appointment – duties – compensation.

(a) There shall be a clerk of the Avon Municipal Court, appointed by the presiding Municipal Judge, subject to the approval of the Town Council. The clerk shall have and carry out such duties as are delegated to him or her by law, court rules or the presiding Municipal Judge.

(b) All fines, costs and other funds collected or received by the Municipal Court shall be reported and paid monthly by the clerk to whomever the Mayor or Town Manager, if there be one, shall designate. The clerk shall further keep such records and reports as designated by the Mayor or Town Manager, if there be one.

(c) The clerk shall be compensated according to a predetermined salary schedule and shall be paid on the same pay schedule as other regular, full-time employees of the Town. (Ord. 02-04 §2(part); Ord. 01-02 §1; Ord. 79-8 §10)

2.08.110 Schedule of fines.

The Municipal Court is authorized to establish a schedule of fines to be imposed for the following violations:

8.24.040	Keeping junk
8.24.042	Parking and driving in designated areas
8.24.045	Weeds
8.24.050	Depositing waste material
8.24.065	Driveways must be paved
8.24.070	Spilling loads on highways prohibited
8.24.085	Limitation of construction activity
8.24.100	Ice and snow overhangs and accumulations
8.24.110	Ice and snow on sidewalk, public passageway or parking area
10.04.040	Violations–Penalties
15.08.025	Cleanup during construction
15.08.300	Violations
15.12.060	Violations
15.20.110	Violation
15.24.110	Violation
17.12.030	Permit requirement
17.12.070B	Violations–Penalties and remedies

(Ord. 02-08 §11)

CHAPTER 2.16

Planning and Zoning Commission

2.16.010 Establishment and purpose.

(a) There is hereby established a Planning and Zoning Commission of the Town.

(b) The purposes of the Planning and Zoning Commission are as follows:

(1) To guide and accomplish a coordinated, adjusted and harmonious development of the municipality and its environs, which will, in accordance with present and future needs, best promote health, safety, morals, order, convenience, prosperity and general welfare, as well as efficiency and economy in the process of development, including, among other things, adequate provision for traffic, the promotion of safety from fire, floodwaters and other dangers, adequate provision for light and air, the promotion of healthful and convenient distribution of population, the promotion of good civic design and arrangement, wise and efficient expenditure of public funds and the adequate provision of public utilities and other public requirements;

(2) To secure safety from fire, panic, floodwaters and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue

concentration of population; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements;

(3) To preserve the natural beauty of the Town's site and setting, to prevent indiscriminate clearing of property, removal of trees and earthmoving, and to attain the objectives set out in this Chapter through design review of the exterior design of all new structures and property development and additions to all existing structures and property development.

(c) The objectives of the design review function of the Planning and Zoning Commission shall be as follows:

(1) To prevent excessive or unsightly grading of property which could cause disruption of natural watercourses or scar natural landforms;

(2) To ensure that the location and configuration of structures, including signs and signage, are visually harmonious with their sites and with surrounding sites and structures and that there shall be conformance to the master plan of record of the Town;

(3) To ensure that the architectural design of structures and their materials and colors are visually harmonious with the Town's overall appearance, with surrounding development, with natural and existing landforms and with officially approved development plans, if any, for the areas in which the structures are proposed to be located;

(4) To ensure that plans for the landscaping of property and open spaces conform with the rules and regulations as prescribed by the Town and by this Chapter and to provide visually pleasing settings for structures on the same site and on adjoining and nearby sites. (Ord. 83-11 §1(part))

2.16.020 Definitions.

Certain terms as used in this Chapter are defined in this Section. The Commission shall define such other terms as necessary to be used in its rules and regulations.

Clerk means the Town Clerk of the Town.

Commission means the Planning and Zoning Commission of the Town.

Council means the elected Town Council of the Town.

County means the County of Eagle, Colorado.

Town means the Town of Avon, Colorado. (Ord. 83-11 §1(part))

2.16.030 Created – membership – terms.

(a) Effective the first day of May, 1983, there is created a Planning and Zoning Commission of the Town composed of seven (7) members appointed by the Town Council, to which is delegated the powers and duties to administer this Chapter.

(b) The term *Planning and Zoning Commission* shall be deemed to refer to the full seven-member Commission, which Commission shall fulfill all duties and have all powers now or hereafter delegated to either the Planning and Zoning Commission of the Town or the Design Review Board of the Town.

(c) Effective the first day of May, 1983, the existence of the independent Design Review Board of the Town heretofore created is terminated; provided, however, that all matters pending before the Design Review Board on such date shall fall within the jurisdiction of the Planning and Zoning Commission, and the rules and regulations of the Design Review Board shall be the rules and regulations of the Commission until modified by the Commission and approved by the Town Council.

(d) Because of its dual role as both a Planning Commission and a Design Review Authority, it is recognized that a balance in the membership is necessary between the lay community and industry professionals (architects, landscape architects, designers, real estate developers and/or contractors). Registered electors residing in the County shall be eligible for appointment, but at least five (5) members shall be registered electors of the Town at the time of their appointment to the Commission. Appointments shall be made first to maintain the balance between industry professionals and the lay community (it is recommended that a minimum of two [2] to three [3] industry professionals hold positions on the Commission at all times and that two [2] of these professionals be architects, landscape architects or designers) and then by the following criteria in descending order:

(1) Registered electors of the Town shall be preferred over persons who are not registered electors.

(2) Persons who own real property or a business within the Town shall be preferred over persons who do not.

(3) Persons having special skills and experience of particular value to the Commission shall be preferred over persons who do not.

(e) The term of office for a member shall be two (2) years on an overlapping tenure; provided, however, that of the members initially appointed, three (3) members shall serve for terms of one (1) year and four (4) members shall serve for terms of two (2) years, respectively, and after the expiration of the initial terms, each member subsequently appointed shall serve for a term of two (2) years. (Ord. 05-06 §1; Ord. 94-9 §1; Ord. 83-31 §1; Ord. 83-11 §1(part))

2.16.040 Vacancies.

A vacancy on the Planning and Zoning Commission shall occur whenever a member of the Commission is removed by the Town Council, dies, becomes incapacitated and unable to perform his or her duties for a period of ninety (90) days, resigns, ceases to be a registered elector of the Town or is convicted of a felony. A member of the Commission who ceases to possess the qualifications for office possessed by him or her at the time of his or her appointment may be permitted by the Town Council to serve until the end of his or her term, provided he or she continues to reside in the County. A member of the Commission may be removed for misconduct, including but not limited to repeated absence from meetings or violation of the Town's code of ethics. In the event a vacancy occurs, the Town Council shall appoint a successor to fill the vacancy and serve the remainder of the term of the former member. Ord. 05-06 §2; Ord. 94-9 §2; Ord. 83-11 §1(part))

2.16.050 Compensation.

All members of the Commission shall serve with compensation at the rate of seventy-five dollars (\$75.00) per each attended meeting, not to exceed one hundred fifty dollars (\$150.00) per month, and be reimbursed for all authorized personal expenses incurred while performing duties as a Commission member. (Ord. 96-2)

2.16.060 Organization.

The Commission shall select its own chairman, a vice chairman and a secretary from among its members. The chairman or, in his or her absence, the vice chairman, shall be the presiding officer of its meeting. In the absence of both the chairman and the vice chairman from a meeting, the members present shall appoint a member to serve as acting chairman at the meeting. All meetings shall be held at the offices of the Town, unless otherwise specified, with adequate notice given to all interested parties. Four (4) members shall constitute a quorum for the transaction of business, but in the absence of a quorum, a lesser number shall adjourn any meeting to a later time or date and in the absence of all members, any staff member shall adjourn any meeting to a later time or date. (Ord. 83-11 §1(part))

2.16.070 Rules of procedure.

The Commission shall operate in accordance with its own rules of procedure as provided for in Section 11.2 of the Town Charter. The rules shall be filed with the Town Clerk and maintained in the records of the Town and shall be subject to public inspection; provided, however, that the Commission shall submit its proposed rules or any amendment thereto to the Town Council, which by motion shall approve the rules or amendment and direct their adoption by the Commission, or disapprove the proposal with directions for revision and resubmission. (Ord. 83-11 §1(part))

2.16.080 Authority to retain consultants.

The Commission is authorized to retain the services of one (1) or more consultants, provided funds have been appropriated by the Town for said purpose, to advise and assist the Commission in performing the functions prescribed in this Chapter. The consultants may be retained to advise the commission on a single project, on a number of projects, or on a continuing basis. (Ord. 83-11 §1(part))

2.16.090 Meetings.

The Planning and Zoning Commission shall meet in accordance with the rules of procedure governing the Commission, and otherwise upon the call of the chairman, or in the absence of the chairman, by the vice chairman. Meetings shall be called sufficiently frequently that the procedure prescribed in this Chapter shall commence within thirty (30) days of submission of all materials required by this Code. (Ord. 83-11 §1(part))

2.16.100 Staff.

The Planning Director shall serve as the staff of the Commission, and shall provide for the service of a recording secretary, who shall act in the capacity of secretary for the Commission for the purpose of receiving applications and other material for consideration for the Commission. (Ord. 83-11 §1(part))

2.16.110 Duties of the Commission.

The Planning and Zoning Commission shall have the following functions and duties:

(1) To make and recommend to the Town Council plans for the physical development of the Town, including any areas outside its boundaries, subject to the approval of the legislative or governing body having jurisdiction thereof, which in the Commission's judgment bear relation to the planning of the Town. The plan, with the accompanying maps, plats, charts and descriptive matter, shall show the Commission's recommendations for the development of the subject territory;

(2) To review and recommend to the Town Council desirable or necessary modifications to the zoning ordinance, with appropriate regulations, which may be specifically provided or required by ordinance of the Town;

(3) To review and recommend to the Town Council desirable or necessary modifications to the subdivision regulations, as may be provided or required by ordinance of the Town;

(4) To review and approve design review procedures and criteria as they relate to the zoning ordinance;

(5) To review and comment on programs and studies of planning issues for the Town and its environs;

(6) To conduct research and appropriate studies of planning issues for the Town and its environs;

(7) To act as the Design Review Board of the Town and to perform all duties and exercise all powers assigned to the Design Review Board of the Town;

(8) To consider any other matters pertaining to the Commission as provided by law, resolution or ordinance, and to act in an advisory capacity to the Town Council when so requested, and to perform all other powers and duties authorized and required by ordinance or state law;

(9) To review and approve, disapprove or conditionally approve design of all proposed structures in the Town, based upon criteria and procedures determined necessary for the health, safety and welfare of the residents of the Town and approved by the Town Council. The Town shall not authorize site preparation, building construction, sign erection or application, exterior alteration or enlargement of an existing structure or paving, fencing, planting or other improvements of open space unless design approval has been granted as prescribed in this Chapter. (Ord. 83-11 §1(part))

2.16.120 Performance bonding.

If the Commission determines such action is necessary to protect the health, safety and welfare of the residents of the Town, prior to issuing approval of any application, the Commission may require permittee to submit, prior to obtaining a building permit, a letter of credit, surety bond or other adequate security, in a form and an amount acceptable to the Town, guaranteeing to the Town the compliance with all requirements of the Commission, or regulations or ordinances of the Town. It is not the intention of this provision that duplicate bonding be a requirement. (Ord. 83-11 §1(part))

2.16.130 Material to be submitted.

(a) The Commission shall adopt rules and regulations for the submission of applications, materials and information requiring action by the Commission. The rules and regulations shall include procedures, schedules, content and quantities of materials to be submitted.

(b) The owner or authorized agent of any proposed project requiring action by the Commission shall submit all of the required material and information in accordance with the rules and regulations of the Commission. Any application found incomplete shall not come before the Commission. (Ord. 83-11 §1(part))

2.16.140 Variances.

The Commission may provide for certain variances, exceptions and exemptions from the requirements of its rules and regulations. (Ord. 83-11 §1(part))

2.16.150 Fees.

The Town Council shall establish a schedule sufficient to cover the cost of Town staff time, consultant's fees, public notices and incidental expenses of the Commission. (Ord. 83-11 §1(part))

2.16.160 Appeal to Town Council.

(a) Appeal of any decision of the Planning and Zoning Commission shall be governed by the provisions of this Section.

(b) Decisions of the Planning and Zoning Commission may be appealed to the Town Council by the applicant or any interested person or may be reviewed at the request of a majority of the Town Council at any time before the decision becomes final. An *interested person* is an adjacent property owner or a person entitled to have notice of the hearing mailed to him or her in association with the action of the Commission.

(c) Within five (5) working days following action of the Planning and Zoning Commission, notification of its decision shall be deposited in the United States mail to the applicant and his or her designated agent. The decision shall become final unless a written appeal or request for review by the Mayor is received by the Town Clerk within fifteen (15) days of the decision of the Planning and Zoning Commission.

(d) Not more than thirty (30) days following the filing of an appeal, or the request for review by the Town Council, the Town Council shall review the action of the Planning and Zoning Commission. The Town Council shall, in writing, confirm, modify or reverse the decision of the Commission within thirty (30) days following the commencement of review. If it deems insufficient information is available to provide the basis for a sound decision, the Town Council may postpone final action for not more than thirty (30) additional days. Failure of the Town Council to act within thirty (30) additional days shall be deemed action confirming the decision of the Commission unless the applicant consents to a time extension. Action of the Town Council shall become final immediately.

(e) Any decision by the Town Council which results in action modifying or reversing the decision of the Planning and Zoning Commission shall specifically describe the reasons therefor.

(f) Any appeal must be presented to the Town Clerk at the Town office, and each appeal must be accompanied by a processing fee of fifty dollars (\$50.00). (Ord. 04-07 §§1—5, Ord. 92-12 §1; Ord. 83-11 §1(part))

2.16.170 Lapse of approval.

Approval of an application of any nature except zoning shall lapse and shall become void two (2) years following the date of final approval of the application prescribed by ordinance, unless, prior to the expiration of two (2) years, a building permit based upon such approval is issued and construction is commenced and diligently pursued toward completion. (Ord. 83-11 §1(part))

CHAPTER 2.20

Board of Building Appeals

2.20.010 Establishment – membership – compensation – Town Clerk to act as secretary.

(a) There is established the Board of Building Appeals, which shall consist, until the Town Council otherwise determines by ordinance, of the complete and entire membership of the Town Council.

(b) Each member of the Board of Building Appeals shall be compensated in the amount of twenty-five dollars (\$25.00) for each meeting attended, unless that meeting is held immediately before or immediately after a regular or special

meeting of the Town Council, in which case no compensation shall be paid for attendance at the meeting of the Board of Building Appeals.

(c) The Town Clerk shall act as secretary of the Board of Building Appeals, which shall meet as necessary and upon call by the secretary as outlined in this Chapter. (Ord. 79-25 §2)

2.20.020 Organization.

At its first meeting the Board shall elect from its membership a chairperson and a vice chairperson. The chairperson shall preside thereafter and rule upon matters of procedure at meetings of the Board. Subsequent elections for chairperson and vice chairperson shall be held every one (1) year or as soon thereafter as the Board shall meet. Nothing shall prohibit the reelection of an incumbent chairperson or vice chairperson. (Ord. 79-25 §3)

2.20.030 Procedure – filing of request for ruling – contents – duties of secretary – call for meeting – duties of Town Attorney.

(a) In situations involving determination of suitability of alternate materials and methods of construction and involving the reasonable interpretations of the provisions of the *International Building Code* and other such codes as have been adopted by the Town Council, whether pursuant to Chapter 15.04, or by some other ordinance, as well as situations involving other, related determinations, the procedure shall be as set out in this Section.

(b) Any party in interest having a legitimate pending question may file a request for ruling. Such document shall be filed with the Town Clerk in his or her capacity as secretary to the Building Board of Appeals and shall include:

- (1) The complete name and address of the owners of the real property involved;
- (2) The location of the real property involved;
- (3) The question or questions, stated plainly and clearly, on which a ruling is sought;
- (4) A brief explanation of the way in which the question relates to the property or project involved;
- (5) A complete statement of the position, both factual and legal, of the party seeking the ruling;
- (6) Any supporting documentation, evidence, data, legal opinions or other material which the party seeking the ruling may wish to have considered by the Board.

(c) Upon receipt of this document, if it is complete, the secretary shall place the matter on the agenda at the next meeting of the Board, provided that no matter shall be heard sooner than fifteen (15) days after the filing of the request for ruling. Any request for ruling which is determined to have been incomplete shall be returned to the party seeking the request for ruling and no further action shall be taken until it has been completed and resubmitted.

(d) When a matter has been so docketed, the secretary shall transmit by mail a notice of the scheduled meeting to all members of the Board and shall include with each notice a complete copy of the request for ruling as filed with him or her. The party seeking the ruling shall also be sent a notice of the scheduled meeting. He or she shall also publish, at least seven (7) days prior to the meeting at which the matter is to be considered, a public notice of the time and place of the scheduled meeting and a summary of the items to be considered at such meeting.

(e) The Town Attorney shall attend all meetings of the Board and shall render opinions of questions of law and procedure as requested. The Town Attorney shall assist in the presentation of the position of the Building Official and his or her staff. (Ord. 79-25 §4)

2.20.040 Procedure at meetings – Board to render ruling – transmittal.

(a) At meetings of the Board of Building Appeals the party seeking the ruling shall have the initial opportunity to state its position and present testimony and evidence in support thereof. Argumentative material shall be ruled out of order at this stage of the proceedings. The Town Attorney shall be given an opportunity to cross-examine any witness called by the party seeking the ruling.

(b) The Building Official shall also attend meetings of the Board, either in person or by his or her designated representative. At the conclusion of the presentation by the party seeking the ruling, the Building Official and/or his or her staff shall present, with the assistance of the Town Attorney, the position of the Building Department. This may include the sworn testimony and opinion of experts, the presentation of tangible items as evidence and any other relevant testimony or evidence. The party seeking the ruling may cross-examine the witnesses called by the Building Department.

(c) The party seeking the ruling shall then have an opportunity to present testimony and evidence, provided such material is in rebuttal of the position or material presented by the Building Department. The Building Department shall then have an opportunity to present surrebuttal.

(d) Subsequent to the presentation of testimony and evidence, the Board shall reach a decision addressing the questions submitted. Nothing shall prevent the Board from holding private sessions to discuss the material presented and the questions involved. The Board may also make additional inquiry of any party or witness, if it so desires, and such inquiry shall be conducted at public sessions. The Board may also request an opinion from the Design Review Board if it determines to do so by a majority vote. The actual decision of the Board shall also be made in a public session and shall be reached by means of a roll call vote at which all members, including the chairperson, shall be entitled to vote. This final decision of the Board shall be reached not more than thirty (30) days after the conclusion of the final session of the formal hearing at which the matter was considered. The Board shall cause its findings, decision and ruling to be reduced to writing and not more than fifteen (15) days following its decision, the Board shall cause copies of its findings, decision and ruling to be transmitted to both the party seeking a ruling and to the Building Official. (Ord. 79-25 §5)

2.20.050 Proceedings to be of record – transcript.

(a) The Board shall cause all of its public proceedings to be recorded electronically or magnetically and shall preserve such recordings for a minimum of two (2) years following the date on which they were made. Such recordings shall be made available as matters of public record and to any party who wished to prepare a transcript of the proceedings or portions thereof. Such preparation shall be done under the supervision of the secretary of the Board of Building Appeals. It is highly recommended that the party seeking the preparation of the transcript be prepared to reproduce his or her own recordings which shall remain in the custody of the secretary of the Board.

(b) Nothing in this Chapter shall be interpreted to imply any obligation on the part of the secretary of the Board to actually produce any written transcript of any session. (Ord. 79-25 §6)

2.20.060 Relaxation of rules of evidence.

At all meetings of the Board of Building Appeals the chairperson shall rule upon matters involving the admissibility of testimony and evidence. The rules of evidence shall be relaxed to permit the introduction of documents and other items of evidence without undue formality. Substance shall be considered to be more important than form and the goal of such sessions shall be to receive credible, relevant material without unnecessary burdens being placed on any party or witness. (Ord. 79-25 §7)

CHAPTER 2.24

Personnel Merit System

2.24.010 Establishment of Personnel Merit Commission.

There is established a Personnel Merit Commission for the Town, for the purpose of reviewing and hearing appeals from specified disciplinary action affecting any employee of the Town entitled to such appeal by the provisions of the Town Charter. The Personnel Merit Commission shall be composed of three (3) members, appointed by resolution of the Town Council, who shall be qualified electors of the Town and shall serve for terms of two (2) years, subject to removal in accordance with the provisions of the

Charter of the Town, two (2) of whose terms shall expire on the date of organization of the new Town Council next following those members' date of appointment, and one (1) of whose terms shall expire on the date of organization of the new Town Council next following the expiration of the terms of the original two (2) members. The jurisdiction of the Personnel Merit Commission shall extend or be limited to the extent set forth in the Home Rule Charter. (Ord. 83-38 §1; Ord. 81-28 §1)

2.24.020 Disciplinary action – authorized.

Disciplinary guidelines shall be established by personnel policies and procedures established by the Town Manager. For purpose of this Chapter, the term *employee* shall not include any person excluded from the jurisdiction of the Personnel Merit Commission by the Town Charter, and nothing herein contained shall be construed as limiting the authority of the Town to discharge such persons with or without cause, an authority and right which is established and recognized. (Ord. 02-04 §4; Ord. 98-19 §1; Ord. 83-38 §2; Ord. 81-28 §2(A))

2.24.040 Administrative hearing.

(a) General. In the event an employee is the object of disciplinary action of any kind, that employee has the right to request an administrative hearing before the Personnel Merit Commission. Written notice of an appeal shall be filed with the Town Manager or his or her designee within five (5) days of the date the employee is notified, in person or by mail, of the disciplinary action. The purpose of the hearing shall be to allow the department head, supervisor, Human Resources Director and/or Town Manager to present reasons for dismissal and to allow the employee the opportunity to refute the evidence presented or to present mitigating evidence concerning the reasons brought by the department head, supervisor, Human Resources Director and/or Town Manager.

(b) Rules of the Personnel Merit Commission. The Personnel Merit Commission (the "Commission") shall elect its own chairperson, and the Commission, at its first meeting after its original organization or reorganization, shall adopt rules governing the conduct of its affairs. Such rules shall provide, at the minimum, for a recording of any hearing, the opportunity for either side to be represented by counsel at the expense of the party desiring counsel, and for the requirement that witnesses whose testimony is received shall be placed under oath prior to the receipt of their testimony. The rules shall further provide that the Town shall have the first opportunity to present evidence in support of its actions. Each party shall have the right of reasonable cross-examination. The rules shall further provide the employee with the opportunity to present evidence which the employee desires, in order to refute or mitigate the evidence presented by the Town. The rules shall make such further provision as the Commission deems necessary to provide it with all information necessary to determine the correctness of the disciplinary action. (Ord. 02-04 §5; Ord. 83-38 §4; Ord. 81-28 §2(C))

CHAPTER 2.28

Election of Council Members

2.28.010 Affidavit of intent required.

No write-in vote for the office of Council Member shall be counted unless an affidavit of intent has been filed with the Town Clerk by the person whose name is written in prior to five (5) days before the day of the election indicating that such person desires the office and is qualified to assume the duties of that office if elected. (Ord. 90-16 §1(part))

2.28.020 Election may be canceled.

If the only matter before the voters is the election of persons to office and if, at the close of business on the Friday before the election, there are not more candidates than offices to be filled at such election, including candidates filing affidavits of intent, the Town Clerk shall certify such fact to the Town Council, and it shall hold a meeting and may cancel the election and by resolution declare the candidates elected. (Ord. 90-16 §1(part))

CHAPTER 2.30

Town Code of Ethics

2.30.010 Citation.

This Chapter shall be known and may be cited as the "Avon Town Code of Ethics."

2.30.020 Declaration of policy.

The proper operation of democratic government requires that public officers be independent, impartial and responsible to the people; that government decisions and policy be made within the proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals, a code of ethics for all Town officers is adopted. The purpose of this code is to establish guidelines for ethical standards of conduct for all such officers by setting forth those acts or actions that are incompatible with the best interest of the Town, and by directing disclosure by such officers of private financial or other interests in matters affecting the Town. (Ord. 92-15 §1(part))

2.30.030 Finding of local concern.

The Town Council finds and determines that the matter of ethical municipal government is a matter of local concern upon which home rule municipalities in Colorado are fully empowered to legislate and to supersede conflicting state statutes. (Ord. 92-15 §1(part))

2.30.040 Effect of common law.

This Chapter shall supersede and override the common law as to the subject matter of this Chapter. (Ord. 92-15 §1(part))

2.30.050 Definitions.

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

Business means any corporation, limited liability corporation, partnership, sole proprietorship, trust or foundation, or other individual or organization carrying on a business operated for private profit.

Confidential information means all information, whether transmitted orally or in writing, which is of such a nature that it is not, at that time, a matter of public record or public knowledge.

Council or Town Council means the Town Council of the Town of Avon.

Council Member means any member of the Town Council.

Officer means any person holding a position by election or appointment in the service of the municipality, whether paid or unpaid, including the members of the Town Council and any other Town board, committee or commission.

Official act or *official action* means any vote, decision, recommendation, approval, disapproval or other action, including inaction, which involves the use of discretionary authority.

Substantial financial interest means an interest owned or held by an officer which is:

- a. An ownership interest in a business;
- b. A creditor interest in an insolvent business;
- c. An ownership interest in real or personal property;
- d. A loan or any other debtor interest;
- e. A directorship or officership in a business.

An officer shall be presumed to have a *substantial financial interest* in any of the abovementioned interests owned, held or controlled by such officer's spouse or dependent children. (Ord. 93-8 §1, 1993; Ord. 92-15 §1(part))

2.30.060 Conflict of interest.

A Town officer shall not:

- (1) Disclose or use confidential information acquired in the course of such officer's duties in order to further a business or other undertaking in which such officer has a substantial financial interest;
- (2) Engage in a substantial financial transaction for his or her private business purposes with a person whom such officer inspects or supervises in the course of his or her official duties;
- (3) Perform an official act which directly and substantially affects to its economic benefit a business or other undertaking in which such officer has a substantial financial interest;
- (4) Perform an official act which directly and substantially affects a business or other undertaking by whom the officer is employed, or by whom such officer is engaged as counsel, consultant, representative or agent;
- (5) Acquire or hold an interest in any business or undertaking which such officer has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by the agency over which he or she has substantive authority;
- (6) Perform an official act directly and substantially affecting to its economic detriment any business or other undertaking when such officer has a substantial financial interest in a competing business or undertaking;

(7) Solicit or accept a present or future gift, favor, loan, service or thing of value from a person under circumstances which would lead a reasonably prudent person to believe that such gift, favor, service or thing of value was made or given primarily for the purpose of influencing or attempting to influence such officer in connection with an official act, or as a reward for official action he or she has previously taken. The provisions of this Subsection shall not apply to those circumstances described in Subsection 2.30.070(3).

(8) Perform any official act under circumstances which give rise to appearance of impropriety on the part of the officer;

(9) Make or accept any ex parte communication or contact concerning a matter which is to be determined after a public hearing without making the contents of such communication or contact a part of the record of such public hearing;

(10) Appear on behalf of any private person, business or entity, other than himself or herself, his or her spouse, or minor children, before the Town Council, any Town Commission or the Municipal Court. (Ord. 92-15 §1(part))

2.30.070 Exemptions.

The provisions of Section 2.30.060 shall not prohibit an officer from:

(1) Accepting or receiving a benefit as an indirect consequence of the performance of an official act;

(2) Taking official action when such officer is similarly situated to other Town residents, such as adopting general land use regulations, owning property within a special or local improvement district, voting for taxes or bonds, adopting ordinances of general applicability or otherwise acting upon matters involving the common public interest;

(3) Soliciting or accepting gifts or loans which are:

a. Campaign contributions reported as required by law;

b. An occasional nonpecuniary gift, insignificant in value;

c. A nonpecuniary award publicly presented by a nonprofit organization in recognition of public service;

d. Payment of or reimbursement for actual and necessary expenditures for travel and subsistence or attendance at a convention or other meeting at which such officer is scheduled to participate;

e. Reimbursement for or acceptance of an opportunity to participate in a social function or meeting which is not extraordinary when viewed in light of the position held by such officer;

f. Items of perishable or nonpermanent value, including, but not limited to, meals, lodging, travel expenses or tickets to sporting, recreational, educational, or cultural events;

g. Payment for speeches, debates, or other public events, reported as honorariums to the Town Manager;

h. A loan at a rate of interest which is not substantially lower than the commercial rate then currently prevalent for similar loans within the Town.

(4) Receiving such compensation for his or her services to the Town as may be fixed by ordinance, pay plan, budget or other similar official action. (Ord. 92-15 §1(part))

2.30.080 Disclosure of conflict of interest in legislative action.

Any member of the Town Council who believes he or she has a conflict of interest as defined in Section 2.30.060 on any matter proposed or pending before the Town Council shall disclose such potential interest to the Town Council. Any member of the Council who believes that another member of the Council has a conflict of interest shall bring the matter to the attention of the Council prior to Council consideration of the issue involving the alleged conflict. The Council shall determine whether a conflict of interest exists. If the Council determines that an actual conflict of interest exists, the Council Member shall not attempt to influence other members of the Town Council in connection with such matter, and, except as provided in Section 2.30.100, the Council Member shall not vote upon such matter. The Council Member shall leave the room during council's discussion and action on the subject, and shall return only when the council has taken up the next agenda item. (Ord. 92-15 §1(part))

2.30.090 Disclosure of conflict of interest in Planning Commission action.

Any member of the Planning Commission who believes he or she has a conflict of interest as defined in Section 2.30.060 on any matter proposed or pending before the Planning Commission shall disclose such potential interest to the Planning Commission. Any member of the Planning Commission who believes that another member of the Planning Commission has a conflict of interest shall bring the matter to the attention of the Planning Commission prior to Planning Commission consideration of the issue involving the alleged conflict. The Planning Commission shall determine whether a conflict interest exists. If the Planning Commission determines that an actual conflict of interest exists, the member of the Planning Commission shall not attempt to influence other members of the Planning Commission in connection with such matter, and, except as provided in Section 2.30.100, the member of the Planning Commission shall not vote upon such matter. The member of the Planning Commission shall leave the room during the Planning Commission's discussion and action on the subject, and shall return only when the Planning Commission has taken up the next agenda item. (Ord. 92-15 §1(part))

2.30.100 When Council Member or member of the Planning Commission with conflict of interest may vote.

Notwithstanding the provisions of Sections 2.30.080 and 2.30.090, a Council Member or member of the Planning Commission may vote upon a matter as to which he or she has a conflict of interest if:

(1) His or her participation is necessary to obtain a quorum or to otherwise enable the Council or Planning Commission to act, and

(2) If he or she complies with the disclosure provisions of Section 2.30.110. (Ord. 92-15 §1(part))

2.30.110 Mandatory disclosure to Secretary of State.

No later than seventy-two (72) hours before voting pursuant to Section 2.30.100, the Council Member or member of the Planning Commission shall give written notice to the Secretary of State and to the Town Council. Such notice shall clearly state the nature of his or her conflict of interest. (Ord. 92-15 §1(part))

2.30.120 Public contracts.

(a) Except as provided in Subsection (b) of this Section, no officer shall have an interest in any contract made by the Town.

(b) The provisions of Subsection (a) of this Section shall not apply to:

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

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

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

(4) A contract between the Town and an officer if, because of geographic restrictions, the Town could not otherwise reasonably afford itself of the subject of contract. It shall be presumed that the Town could not otherwise reasonably afford itself of the subject of a contract if the additional cost to the Town is greater than ten percent (10%) of a contract with an officer 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;

(5) A contract with respect to which the officer has disclosed his or her personal or financial interest to the Town Council and has not voted thereon, or with respect to which the officer has voted therein in accordance with Section 2.30.100.

(c) No Town officer shall be a purchaser or vendor in connection with any sale or purchase made by him or her in his or her official capacity. The provisions of this Subsection shall not apply to those contracts described in Subsection (b) of this Section. (Ord. 92-15 §1(part))

2.30.130 Limitation on subsequent employment.

A former Town officer may not, within six (6) months following the termination of his or her office with the Town, contract with or become employed by an employer who contracts with the Town involving matters with which such officer was directly involved during the term of office or with the Town. (Ord. 92-15 §1(part))

2.30.140 Enforcement.

(a) The Town Council shall have the primary responsibility for the enforcement of this Chapter. It shall have the power to investigate any complaint, to initiate any suit and to prosecute any criminal or civil action on behalf of the Town wherein it believes such action is appropriate.

(b) The Town Council may direct the Town Attorney to investigate or prosecute any apparent violation of this Chapter or the Council may employ or appoint any qualified attorney to investigate or prosecute any violation or series of violations by one (1) or more persons of this Chapter.

(c) Any person who believes that a violation of any portion of this Chapter has occurred may file a complaint with the Town Council, which shall promptly investigate such complaint and take such action thereon as the Council shall deem to be appropriate. However, nothing in this Chapter shall be construed to

prevent complainants from instituting direct legal action through the appropriate judicial authority. (Ord. 92-15 §1(part))

2.30.150 Penalties and remedies.

(a) It is unlawful for any person to violate any provision of, or to fail to comply with any of the requirements of this Chapter. Any person who violates any provisions of this Chapter shall be punished in accordance with the provisions of Section 1.08.010 of this Code. Additionally, upon conviction such person shall be liable to the Town for such damages as may have been suffered or incurred as a result of such violation.

(b) Upon conviction for any violation of this Chapter such officer shall immediately forfeit his or her office or position. Nothing in this Chapter shall be construed to prohibit such public officer from being reelected, reappointed or otherwise rehired to any position forfeited under the provisions of this Chapter.

(c) Any court of competent jurisdiction called upon to enforce the provisions of this Chapter may, with the consent of the Town Council, exempt from the provisions of this Chapter any conduct of a Town officer upon the finding that the enforcement of this Chapter with respect to such officer's conduct would not be in the public interest. (Ord. 04-05 §1)

2.30.160 Distribution of code of ethics.

The Town Clerk shall cause a copy of this code of ethics to be distributed to every public officer of the Town within thirty (30) days after enactment of the ordinance adopting this Chapter. Each public officer elected, appointed, or engaged thereafter shall be furnished a copy before entering upon the duties of his or her office. (Ord. 92-15 §1(part))

CHAPTER 2.32

Determining Residency Qualifications of Council Members

2.32.010 Definitions.

For purposes of this Chapter the following definitions shall apply:

Home or place of abode. A *home* or *place of abode* shall mean a physical location in the Town where a person can carry on usual residential activities. This shall include the ownership of a residential accommodation or a lease of such an accommodation on a month-to-month or longer term. However, with the exception of short-term rentals of thirty (30) days or less, if the affected person does not have a present right to possession of the premises, then such location shall not be considered to be a home or place of abode.

Residency. The residence of a person is the principal or primary home or place of abode of a person. *Principal* or *primary home* or *place of abode* is that home or place in which his or her habitation is fixed and to which a person, whenever he or she is absent, has the present intention of returning after a departure or absence therefrom. A person shall not be considered to have lost his or her residence if he or she leaves his or her home in the Town to go out of Town merely for temporary purposes with an intention of returning. If the person moves out of Town with the intention of making it his or her permanent residence, he or she shall be considered to have lost his or her residence in the Town.

Residency within the Town shall be satisfied by ownership or leasehold interest of real property and contemporaneous use of the same as the affected member's primary home or place of abode. (Ord. 92-1 §1(part))

2.32.020 Loss of home or place of abode.

Unless a Council Member states that he or she has no intent to return to a home or place of abode in Avon, when a Council Member loses his or her home or place of abode within the Town, as defined herein, upon the expiration of thirty (30) days after the loss of such home or place of abode in the Town, such Council Member shall be considered disqualified as a Council Member for failure to maintain residency in the Town. However, the Town Council may continue such Council Member's residency qualification and membership on the Council if the Council determines, prior to the expiration of such thirty-day period, that the affected Council Member intends to regain a home or place of abode within the Town prior to the next general municipal election or within one (1) year of such determination, whichever first occurs. (Ord. 98-5 §1; Ord. 92-1 §1(part))

2.32.050 Lack of intent to return.

If the affected member, at the time that the person is no longer residing within the Town, has no intent to return, in the foreseeable future, to an abode within the Town, then, as of such date, the affected member is no longer a resident of the Town and no longer qualified to sit as a Council Member. (Ord. 92-1 §1(part))

2.32.060 Request for hearing.

Any Council Member may request of the Council that it consider the residency qualifications of one (1) of its own members, including the qualification of the requesting member. If the Council determines that a legitimate issue exists as to the residency of one (1) of its members, it shall set a public hearing on the issue with at least five (5) days' advance notice to the member (herein referred to as "affected member") whose residency qualifications are to be considered. (Ord. 92-1 §1(part))

2.32.070 Presentation of evidence.

At the public hearing the affected member, if present, shall remove herself or himself from the council seat and may present such evidence and testimony as he or she desires and as requested by members of the Council on the issue of residency. The affected member shall not be required to be present at the hearing. All such testimony, when given in person, shall be given under oath. The Council may consider letters, petitions and other evidence that it believes are relevant. The Council may terminate the presentation of evidence and bring the hearing to a conclusion at any time and at its own discretion. (Ord. 92-1 §1(part))

2.32.080 Decision of the Council.

Within thirty (30) days after the conclusion of the hearing, the Council shall render its decision. However, no delay in making such decision shall extend the thirty-day period of qualification as provided in Section 2.32.020 above. The decision shall not require any finding of fact, but findings of fact may be included if the Council so desires. The decision shall be a determination of the residency of the affected member as of the date of the hearing. (Ord. 92-1 §1(part))

2.32.090 Relevant evidence.

The Council may consider any relevant evidence on residency of the affected member, including but not limited to the following:

- (1) Expressed intent of the affected member to return to a home or place of abode in Avon within six (6) months after losing same. Although this expressed intent shall be very important in making the determination of continued residency, it shall not be the sole criteria;
- (2) Activities of the affected member in acquiring a home or place of abode in Avon;
- (3) Location of current habitation of the affected member;
- (4) Length of time the affected member has resided at the out-of-Town habitation;
- (5) Ownership (including type, length of time and whether residential) of real and personal property within the Town;
- (6) Mailing address;
- (7) Business interests in the Town including involvement of the affected member in the business;
- (8) Employment in the Town;
- (9) Income sources;
- (10) Age;
- (11) Marital status;
- (12) Residence of spouse, children or parents;
- (13) Leaseholds interests both within Town and at current out-of-Town habitation;
- (14) Voter registration;
- (15) Motor vehicle and driver's license registration;
- (16) Participation of the affected member in the meetings and affairs of the Council and Town. (Ord. 92-1 §1(part))

2.32.100 Current Council Members.

With regard to the residency qualifications of all Council Members sitting on the Council on the effective date of the ordinance codified in this Chapter, all time periods set forth in this Chapter shall commence as of the effective date of the ordinance codified in this Chapter. (Ord. 92-1 §1(part))