

Chairperson Teager called the meeting to order at 6:02 P.M.

ROLL CALL:

Members Present - Michael Teager, Chairperson
Teresa Funk, Vice-Chairperson
Anna Garvey
Lawrence Kavanaugh, Jr.
Paula Eade Newcomb, Deputy Town Attorney

Absent - Kayla Leonard

MINUTES TO BE APPROVED

Motion by Chairperson Teager, seconded by Ms. Funk, to approve Minutes of the April 10, 2024, board meeting.

Ayes: All Noes: None Motion Carried

Motion by Chairperson Teager, seconded by Mr. Kavanaugh, to approve Minutes of the May 8, 2024, work session.

Ayes: All Noes: None Motion Carried

PUBLIC COMMENTS

James Randolph, West Bihrowd Drive, referred to the draft of the Ethics Code and made the following comments and questions:

- Agreed with the changes, and suggested capitalizing “public” and changing the definition for town employees
- The disclosure statement was not provided with the agenda items – Chairperson Teager stated he can provide the updated draft and explained that the Ethics Board would like to remove the form from the code so future edits would not require the Ethics Code to be revised.
- The Erie County Ethics Board’s Rules and Regulations is more expansive by comparison
- Referred to the Town Board’s approval of the insurance package and reiterated his concern that some Town Board members received campaign contributions but did not recuse themselves from voting and questioned if there is a standard or threshold that creates a conflict of interest and requested the Ethics Board investigate this – Chairperson Teager stated the Ethics Board can discuss this at a future meeting.

Courtney Fallon, Treehaven Road, stated the changes were sufficient from the previous draft.

COMMUNICATIONS

Chairperson Teager stated Town Attorney Trapp is present to answer questions about the draft of the Ethics Code from the Ethics Board members.

Mr. Trapp stated the most recent draft is not the one attached to the meeting agenda and commented that some language was removed per the Ethics Board’s request. Mr. Trapp emailed his draft to Ms. Eade Newcomb and left the meeting to run copies noting he does not have access to a color copier at this time. Both drafts are attached.

Mr. Trapp stated he composed the Erie County Ethics Board Rules and Regulations and can answer questions about them.

The meeting was suspended and went off the record while Mr. Trapp left the meeting to run copies at 6:16 P.M.

The meeting resumed at 6:27 P.M. when Mr. Trapp rejoined the meeting.

Ms. Garvey commented that both drafts are being discussed during the meeting.

Mr. Trapp stated the Ethics Board's suggestions forwarded to himself by Ms. Eade Newcomb are recorded in green on the color copy and other sections were removed, such as receiving oral complaints.

Chairperson Teager referred to the first paragraph which still includes members of the public and questioned where the idea originated explaining the Ethics Board's initially suggested changes that only applied to the annual disclosure forms. When the request was addressed, the Ethics Board received a slate of updates including applying the Ethics Code to members of the public. Mr. Trapp stated this language is included as there could be vendors that could cause issues or violations of the Ethics Code similarly with the public. Additionally, the references to harassment will be dealt with in a separate local law and noted the Ethics Board has indicated they do not want to be involved with questions of harassment by the public against town officials or town employees. Rules that apply to public officials are different than rules that apply to employees.

Chairperson Teager read from the first paragraph, and it is his understanding the Ethics Code still includes members of the public. Mr. Trapp stated with the perspective that members of the public should be engaging in ethical behavior in their dealings with the town. Chairperson Teager requested an example of a municipality in NYS that applies the Ethics Code to a member of the public. Mr. Trapp stated he will investigate this question. Chairperson Teager stated he is not comfortable including the members of the public and questioned if this is related to the Town Board's attempt to limit public comments during Town Board meetings. Mr. Trapp stated that is a separate issue and noted General Municipal Law does not mandate that there be public comment at any meetings short of it being a public hearing and boards can limit the time spent on public comments. Chairperson Teager questioned what behavior and/or actions and/or speech is looking to be limited that is not harassment or legal in nature; it is being said that there are ethical behaviors that must be followed but harassment would be dealt with separately and requested an example that would apply to a member of the public that is not doing anything illegal but is just being a nuisance. Mr. Trapp stated someone supplying information to the town which is improper or creatively made up that they know is inaccurate but is being submitted for its accuracy. Chairperson Teager questioned if the Ethics Board would hold a hearing to prohibit an individual from ever communicating with the town in that instance, how is this enforced, and what is the end goal other than quieting those that are annoying who are not committing legal harassment. Mr. Trapp stated the Ethics Board can provide advisory opinions with respect to conduct, but it is outside the jurisdiction of this board to tell the Town Board what they can do at their meetings. Chairperson Teager questioned what purpose, other than to have the town, through the Ethics Board, publicly state that someone is a nuisance or providing inaccurate information. Mr. Trapp stated the Ethics Board is giving advice to other boards or employees of how to act in the future and he is hearing the Ethics Board does not want to do this. Chairperson Teager gave a personal example of speaking at multiple Town Board meetings about the proposed prohibition on marijuana dispensaries in town and is certain some Town Board members found him annoying. In this instance, is it feasible that someone would file a complaint, the Ethics Board would advise that Michael Teager was annoying regarding dispensaries, what would the end result be. Mr. Trapp stated Chairperson Teager added the word annoying. Chairperson Teager stated annoy and harass were in the original language. Mr. Trapp stated there are many

changes in the draft he has just provided. Ms. Eade Newcomb stated the penalty against a member of the public was removed from Mr. Trapp's version. Chairperson Teager again questioned why the Ethics Board would advise that a member of the public is a problem, but not a legal problem, if nothing will be done and there are no penalties to enforce. Mr. Kavanaugh stated the individual would already be aware of this. Chairperson Teager questioned if the Town Board could make a proclamation that someone is a problem without involving the Ethics Board. Mr. Trapp stated the Town Board could but may want the advice of the Ethics Board before acting.

Ms. Funk commented that there is misinformation everywhere and people need to sort through information they are given.

Chairperson Teager referred to the removal of the Ethics Board receiving an oral complaint which satisfies his concerns. Ms. Funk stated that providing an oral complaint should still be an option. Chairperson Teager agreed that receiving an oral complaint could be an option but insisted on a form for documentation purposes. Mr. Trapp questioned who the Ethics Board would like to designate to receive oral complaints. Chairperson Teager stated the Chair of the Board of Ethics, Counsel to the Board of Ethics, or the Town Attorney.

Chairperson Teager acknowledged Mr. Trapp's inclusion of a definition of "ethics."

Chairperson Teager referred to Ethics section 13.7.A. Creation of Board of Ethics and questioned how the limiting of members of political parties will work in practice and commented that throughout his time on the Ethics Board he is not aware, and the subject has not come up, about board members' political affiliations. Mr. Trapp stated there is not an interest in removing current board members, the concern was that a board composed of one political party may be perceived as biased against another.

Chairperson Teager stated his appointment to the Ethics Board was voted on by the Town Board and would like the Ethics Code to reflect this practice. Mr. Trapp agreed with this process as opposed to each Town Board member making their own appointment. Mr. Kavanaugh suggested the following language: on a rotating basis each Town Board member will nominate a candidate subject to Town Board approval. Ms. Eade Newcomb read from the most recent draft: The Board shall be composed of five members to be appointed by the Town Board with staggered terms, noting the language "appointment by each Town Board member" is removed. Mr. Trapp stated he was not aware of each members' terms. Chairperson Teager stated a draft of updated terms was composed and can be provided to Mr. Trapp, noting one person's term will expire each year.

Chairperson Teager stated the Ethics Board members have questions about political party membership prohibiting an individual from serving on the Ethics Board. Mr. Trapp stated this refers to being a member of the board of a political party because the purpose is to pull politics out of the situation. Chairperson Teager restated his understanding of the limitation to be a governing member or titled committee member. Mr. Trapp confirmed this is correct.

Chairperson Teager acknowledged the removal of employment by the State of New York, the County of Erie, the Erie County Water Authority, the Niagara Frontier Transportation Authority, and Erie County Community College.

Chairperson Teager referred to No. 2 of the same section and questioned the restriction of an elected official or candidate of the West Seneca Board of Education. Mr. Trapp stated that was an oversight and will be removed.

Secretary Martin questioned why the Creation of the Board of Ethics is toward the end of the code. Mr. Trapp

§ 13-1 The proper operation of Town government requires that its officers and employees be independent, impartial and responsible to the people; that government decisions and policy be made in the proper channels of the governmental structure; that public office not be used for personal gain; that public officers and employees observe in their official acts the highest standards of ethics and discharge faithfully the duties of their public office regardless of personal consideration; that the public have confidence in the integrity of its government and the officers and employees thereof; ~~and that officials and employees may perform their duties without being subject to harassment by individuals in the public.~~ It is the policy of the Town of West Seneca and the purpose of this chapter to establish standards and guidelines for ethical conduct of officers, and employees, ~~and members of the public.~~ Though assurance of such conduct will continue to rest primarily on personal integrity and community vigilance, the establishment of standards is another step toward providing the highest caliber of public administration for the Town and ensuring that government decisions are arrived at impartially and free of conflict of interests and thereby increasing confidence in public officials. It is also the purpose of this chapter to protect officials and employees from unwarranted assaults on their integrity by separating real conflict from the inconsequential, recognizing that for local government to attract and hold competent administrators ~~and employees,~~ public service must not require a complete divesting of all proprietary interests ~~and personal reputations.~~ In recognition of these goals, there is hereby established a Code of Ethics for all officers and for all employees of the Town of West Seneca, hereinafter referred to as the "Town," ~~and all vendors and contractors third parties, and members of the public.~~ In the event of any conflict between the provisions of this Code and provisions of Article 18 of the General Municipal Law, the latter shall control. This chapter shall be enforceable upon all Town officials, officers, ~~and employees, contractors, and vendors, and members of the public.~~ No acknowledgement, service or acceptance of this chapter shall be necessary for enforcement of its provisions.

§ 13-2 **Definitions and word usage.**

A. Definitions. As used in this chapter, the following terms shall have the meanings indicated:

AGENCY Any Town department, division, board, committee, or bureau, including the Town Board or any successor thereto.

APPEAR and APPEAR BEFORE Communicating in any form, including without limitation, personally, by letter, electronic communication, telephone or by any other device.

CONFIDENTIAL INFORMATION The same meaning as defined in the New York State Public Officer's Law⁽¹⁾ as well as any information discussed and/or revealed at an executive session of a Town Board meeting.

CONFLICT OF INTEREST Any action or omission which is in conflict or gives or may reasonably give the appearance of conflict with the performance of official Town business or government.

CUSTOMER or CLIENT Any entity or person to whom an official, officer or employee of the Town of West Seneca or his or her outside employer or business has supplied goods or services during the previous calendar year having, in the aggregate, a value greater than \$2,000.

FINANCIAL BENEFIT Any money, service, license, permit, contract, authorization, loan, travel, entertainment, hospitality, gratuity or other compensation of anything of value, or any promise thereof.

GOOD FAITH Information concerning potential wrongdoing is disclosed in good faith when the individual making the disclosure reasonably believes such information to be true and reasonably believes that it constitutes potential wrongdoing.

HOUSEHOLD All persons living in a single residence, whether related or not.

INDEPENDENT CONTRACTOR A person or entity performing work for the Town pursuant to an agreement and receiving non-employee compensation.

INTEREST Deemed to include the affairs of the official, officer or employee or their spouse, minor children and dependents, firm, partnership or association in which such official, officer or employee is a member or employee; a corporation in which such official officer or employee is an officer director, or employee; and a corporation of which any stock is owned or controlled directly by the official, officer or employee.

PERSONNEL ACTION Any action affecting compensation, appointment, promotion, transfer, assignment, reassignment, reinstatement or evaluation of performance.

PUBLIC Any individual, organization, entity, or corporation which engages in any manner with the Town, its officials, or employees.

RECUSE The act of abstaining from participation or influencing in an official action due to a conflict of interest.

RELATIVE A spouse, parent, grandparent, stepparent, sibling, step-sibling, sibling's spouse, child, grandchild, stepchild, uncle, aunt, nephew, niece or household member of a Town official, officer or employee and individuals having any of these relationships to the spouse of the Town official, officer or employee.

TOWN EMPLOYEE All board members, officers and staff employed by the Town, whether employed full-time or part-time, employed pursuant to a contract, employed temporarily or employees who are on probation, paid or unpaid.

VENDOR Any individual, organization, entity, or corporation that engages in any form of business, including the sale of goods or the provision of services, or other transaction with the Town.

WHISTLEBLOWER Any Town employee (as defined herein) who in good faith discloses information concerning wrongdoing by another Town employee or concerning the business of the Town itself.

WRONGDOING Any alleged corruption, fraud, criminal or unethical activity, misconduct, waste, conflict of interest, intentional reporting of false or misleading information or abuse of authority engaged in by a Town employee (as defined herein) that relates to the Town.

B. Word usage. The use of the masculine gender shall include the feminine where applicable.

§ 13-3 **Standards of conduct.**

Every official, officer and employee of the Town of West Seneca shall be subject to and abide by the following standards of conduct:

A.

No Town official, officer or employee shall use his or her official position or office to take or fail to take any action in a manner which he or she knows or has reason to know may result in a financial benefit or interest for any of the following persons or entities:

- (1)** The Town official, officer or employee;
- (2)** His or her outside employer or business;
- (3)** A member of his household;
- (4)** A customer or client; or
- (5)** A relative.

B. No Town official, officer or employee shall have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature that is in conflict with, or might reasonably tend to conflict with, the proper discharge of his duties in the public interest. Any officer or employee who has a direct or indirect financial or other private interest in any matter before any board of the Town shall publicly disclose in writing on the official record of such board the nature and extent of such interest prior to participating in the discussion or before making a recommendation or giving an opinion to such board on such matter.

C. No Town official, officer or employee shall represent private interests before any board, department, office or agency of the Town, nor represent private interests in any action or proceeding against the interests of the Town or in any litigation to which the Town is a party. The preceding sentence shall not preclude any such officers or employees from appearing in the performance of public or civic obligations or on their own behalf with respect to matters of a personal nature. All appearing parties before any board of the Town shall make a disclosure as provided under § 809 of Article 18 of the General Municipal Law. Every application, petition or request submitted for a variance, change of zoning, site plan approval or waiver, license or permit pursuant to the provisions of any ordinance, local law, rule or regulation constituting the zoning and planning regulations of the Town in which a Town officer or employee has an interest as defined in this chapter shall state the name, residence and the nature and extent of the interest of any officer or employee of the Town, in the person, partnership or association making such application, petition or request.

D. A Town Board member, official, officer or employee shall promptly recuse himself or herself from acting on a matter before the Town when acting on the matter or failing to act on the matter may provide a financial benefit to the persons or entities listed in § **13-3A** above. A Town Board member shall promptly recuse himself or herself from voting on the appointment, hiring, or other matter involving a person or entity described in § **13-3A** above.

E. No Town official, officer or employee, whether paid or unpaid, shall directly or indirectly solicit, accept or receive any gift, whether in the form of money, services, loan, travel, entertainment, hospitality, material goods, things, or promise of any other form, under circumstances in which it could reasonably be inferred or could reasonably be expected that the gift was intended to influence such official, officer or employee in the performance of his or her official duties or was intended to reward official action or inaction. Under no circumstances shall an official, officer or employee accept any gift valued in excess of \$25. No officer or employee of the Town shall grant in the discharge of his duties any improper favor, service or thing of value. Nothing contained herein shall be deemed to prohibit any officer or employee of the Town from borrowing money from any bank or banks designated as depositories by the Town Board.

F. No Town official, officer or employee shall disclose any confidential information or use said information to further their personal interest or the personal interests of others, unless required to do so by law or court order.

G. No Town official, officer or employee, whether paid or unpaid, shall engage in or accept private employment or render services for private interests when such employment or service is in conflict with the proper discharge of his official duties.

H. No Town official, officer or employee shall accept employment by any person, firm or corporation with which he or his department, office or agency is engaged on behalf of the Town in the transaction of business which is or may be affected by his official action. No officer or employee of the Town shall, within one year after termination of service or employment with the Town, appear before any board or agency of the Town in relation to any case, proceeding or application in which he personally participated during the period of his service or employment or which was under his active consideration.

I. No Town official, officer or employee shall use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others or grant any special consideration, treatment or advantage to any citizens beyond that which is available to every other citizen.

J. No Town official, officer or employee shall, by his conduct, give reasonable basis for the impression that any person can unduly influence him or improperly enjoy his favor in the performance of his official duties or that he is affected by the kinship, rank, position or influence of any party or person.

K. No Town official, officer or employee shall direct or cause any officer or employee of the Town to do or perform any service or work outside of public work or employment, or accept any such service or work, nor shall any officer or employee of the Town offer to or perform any such service or work for such officer or employee.

L. No Town official, officer or employee shall use or permit the use of Town property (including vehicles, equipment, materials and any other property) for personal convenience, profit, or political means except when such use is available to Town citizens generally or is provided as a matter of written Town policy.

M. No Town official, officer or employee shall require, authorize, or influence any other Town official, officer, or employee to participate in an election campaign or contribute to a political committee.

N. No Town official, officer or employee shall induce or aid other officials, officers or employees of the Town to violate any provisions of this chapter.

O. All Town Board members, officials, officers, employees, and volunteers are required to reasonably cooperate with any investigation of the Board of Ethics. Such reasonable cooperation shall include by way of example, but not be limited to, participating in investigatory interviews, producing documents or other tangible information in their possession or control, and appearing at scheduled hearings and giving testimony. Employees represented by a union will have the right to have a union

representative present with them for any investigatory interviews and to seek the advice of their union representative prior to appearing before or providing information to the Board of Ethics.

1. Any complaint filed by any individual or employee, regardless of its nature, may be made either orally or in writing to the Chair of the Board of Ethics, the counsel to the Board of Ethics, or the Town Attorney. Oral complaints will require the completion of an Ethics Complaint Form (see §13-6, B(2)) to be officially submitted for consideration, and this may be done with the assistance of one of the aforementioned individuals. The Board of Ethics shall investigate and render an opinion on all officially submitted complaints.

P. Every Ethics Board Member shall annually complete two hours of ~~approved~~ accredited ethics training and submit such evidence as may be required of such training to the Town Clerk. The failure to undertake such training shall be grounds for removal.

Q. This Ethics Code shall be annually available to all Town officials, Board members, employees, and volunteers.

~~R. No vendor or member of the public shall harass, annoy, or denigrate any employee of the Town, whether orally or in writing, with respect to that employee's duties and/or actions taken. Nothing herein shall prohibit the reasonable exercise of a member of the public's Constitutional rights.~~

§ 13-4 Penalties.

A. In addition to any penalty contained in any other provision of law, a violation of this chapter may result as follows:

(1) Forfeiture of pay, suspension or removal from office or employment or such other disciplinary action as the Town Board may consider advisable.

(2) Any contract knowingly entered into by and/or with the Town or any agency thereof in which there is an interest or financial benefit prohibited by this chapter shall be null, void, and wholly unenforceable.

(3) Recommend a civil fine, not to exceed \$10,000 for each violation, upon a Town Official, Board member, employee or volunteer found guilty of a violation of this code. Such fine shall be payable to the Town.

B. No action expressly or impliedly permitted under Article 18 of the General Municipal Law shall constitute a violation of this chapter.

C. Any violation of this code by a vendor or contractor may result in the Town ceasing all future purchases and operations with such vendor or contractor.

~~D. Any violation of this code by a member of the public may result in that member of the public being barred from attending any meeting of the Town Board or any committee, commission, or board thereof and the non-acceptance of any electronic or other messages from such individual.~~

§ 13-5 **Disclosure statements.**

A. The following Town officials, officers and employees of the Town of West Seneca shall be required to file annual disclosure statements by March 31 of each year in the form set forth in Exhibit "A" attached hereto:^[1]

(1) All elected officials.

(2) All department heads.

(3) Any and all Board members, Commission members, Committee members, whether elected, appointed, or volunteer.

B. Said forms shall be filed with the Town Clerk and shall be available for public inspection.

C. Any independent contractors hired by the Town to perform any work for the Town shall be required to file annual disclosure statements by March 31 of each year in a form as set forth by the Board of Ethics and approved by the Town Board. ~~in Exhibit "B" attached hereto.~~^[2] This shall not apply to any governmental entity doing business with the Town pursuant to an intermunicipal agreement.

§ 13-6 **Whistleblower Policy.**

A. This Whistleblower Policy applies to all board members, officers, employees of the Town of West Seneca, and the public, and provides them with a confidential means to report credible allegation of misconduct, wrongdoing or unethical behavior and to protect those individuals, when acting in good faith, from personal or professional retaliation.

B. Town employees who discover or have knowledge of potential wrongdoing concerning board members, officers or employees of the Town, or a person having business dealings with the Town, or concerning the Town itself, shall report such activity in accordance with the following procedures:

(1) The Town employee shall disclose any information concerning wrongdoing either orally or in a written report to his or her supervisor, to the Town Ethics Board Attorney, general counsel,

human resources representative, or the Erie County Whistle Blower Hotline at (716-858-7722) or email at whistleblower@erie.gov.

(2) Town employees who discover or have knowledge of wrongdoing shall report such wrongdoing in a prompt and timely manner. If reporting through the Town Ethics Board Attorney, then ~~the a form as set forth by the Board of Ethics and approved by the Town Board attached hereto as Exhibit "C"~~ shall be completed and submitted to the Town Ethics Board Attorney.

(3) The identity of the whistleblower and the substance of his or her allegations will be kept confidential to the best extent possible.

(4) The individual to whom the potential wrongdoing is reported shall investigate and handle the claim in a timely and reasonable manner, which may include referring such information to the authorities or an appropriate law enforcement agency where applicable.

(5) Should a Town employee believe in good faith that disclosing information within the Town would likely subject him or her to adverse personnel action or be wholly ineffective; the Town employee may instead disclose the information to the local authorities or to an appropriate law enforcement agency, if applicable.

(6) No Town employee who in good faith discloses potential violations of the Town's Code of Ethics or other instances of potential wrongdoing shall suffer harassment, retaliation or adverse personnel action.

(7) All allegations of retaliation against a whistleblower or interference with an individual seeking to disclose potential wrongdoing will be thoroughly investigated by the Town Ethics Board.

(8) Any Town employee who retaliates against or attempts to interfere with any individual for having in good faith disclosed potential violations of the Town's Code of Ethics or other instances of potential wrongdoing is subject to disciplinary action, which may include termination of employment.

(9) Any allegation of retaliation or interference will be taken and treated seriously and irrespective of the outcome of the initial complaint, will be treated as a separate matter.

(10) The Whistleblower Policy is not intended to limit, diminish or impair any other rights or remedies that an individual may have under the law with respect to disclosing potential wrongdoing free from retaliation or adverse personnel action.

(11) Specifically, the Whistleblower Policy is not intended to limit any rights or remedies that an individual may have under the laws of the State of New York, including but not limited to the following provisions: Civil Service Law § 75-b, Labor Law § 740, State Finance Law § 191 (commonly known as the "False Claims Act") and Executive Law § 55(1).

(12) With respect to any rights or remedies that an individual may have pursuant to Civil Service Law § 75-b or Labor Law § 740, any employee who wishes to preserve such rights shall, prior to disclosing information to a government body, have made a good faith effort to provide the appointing authority or his or her designee the information to be disclosed and shall provide the appointing authority or designee a reasonable time to take appropriate action unless there is imminent and serious danger to public health or safety. [See Civil Service Law § 75-b(2)(b); Labor Law § 740(3)].

C. Once a complaint has been submitted, the Ethics Board will investigate the allegations of the complaint. In conducting any such investigation, the Ethics Board may administer oaths or affirmations, issue subpoenas pursuant to Article 23 of the New York Civil Practice Law and Rules, compel witness attendance and require the production of any books or records which it may deem relevant and material. The Ethics Board shall require clear and convincing evidence before determining that a violation has occurred.

§ 13-7 **Creation of Board of Ethics; composition of membership; conditions of membership.**

A. A Board of Ethics is hereby established pursuant to Article 18, Section 808, Subdivision 3 of the General Municipal Law. The members of the Board of Ethics shall be appointed by the Town Board and shall receive no salary or compensation for their services as members of such Board. A member of the Board of Ethics may be removed for cause. The Board shall be composed of ~~one five members~~ to be appointed by ~~each member of~~ the Town Board with staggered terms. ~~Membership in the Board shall consist of no more than two members of the same political party. No member of the Board shall be a full-time employee member of the governing body of the State of New York, the County of Erie, the Erie County Water Authority, the Niagara Frontier Transportation Authority, or Erie Community College. Three members shall be appointed in 2021 and two members to be appointed in 2022. The term of each member shall be five years with one expiring each year on December 31st. with three more being appointed or reappointed in 2026 and two being appointed or reappointed in 2027, which shall continue on the same scheme.~~ A member of the Town Board shall not appoint himself or herself or any other current Town Board member. ~~The seventh member of the Board of Ethics shall be the Town Clerk, who shall be an ex officio member without the power to vote.~~ The members of the Board of Ethics shall be residents of the Town of West Seneca ~~and up to only one member shall be a current Town official, officer or employee. The Town Attorney representing the Town shall be an ex officio member of the Board of Ethics without the power to vote. In the event that the Town Board increases to five board members, the Board of Ethics shall become a five-member Board. One member shall be appointed by~~

~~each Town Board member and the terms shall be five years as decided by a majority of the Town Board members.~~

1. A member of the Town Attorney's office ~~who is not the Town Attorney~~ shall act as counsel to the Ethics Board and shall be appointed annually by the Town Board.

2. ~~No candidate for political office, including the Town Board, Town Justice, Town Clerk, Superintendent of Highways, Supervisor, or West Seneca Board of Education shall be a member or ex-officio member of the Board of Ethics.~~

3. No Ethics Board member or ex-officio member shall be a ~~board member~~ of a political party committee or officer therein.

4. A member of the Town Clerk's office who is not the Town Clerk shall act as secretary to the Ethics Board and shall be appointed annually by the Town Board.

B. Advisory opinions. Upon written request of any Town official, ~~member of the public~~, officer or employee, the Board of Ethics established herein shall render advisory opinions regarding this chapter of Ethics or the provisions contained in Article 18 of the New York State General Municipal Law. ~~Requests for advisory opinions and reviews may be submitted after the commencement and/or completion of the matter for which an opinion is sought.~~ The Board of Ethics shall also make recommendations as to any amendments to this chapter upon the request and majority vote of the Town Board. The opinions of the Board of Ethics shall be advisory and under no circumstances shall the identity of the Town officer, official or employee be disclosed except to authorized persons and agencies or pursuant to a court order.

C. Rules and regulations. The Board of Ethics shall promulgate its own rules and regulations as to its form and procedures and shall maintain appropriate records of its opinions and proceedings. ~~All decisions and opinions of the Board shall be delivered to the Town Attorney, Town Board, any complainant, and any individual against whom a complaint has been filed. In the event that the complaint or an advisory opinion is sought with respect to the individual with whom complaints and advisory requests are to be filed, such complaint or request shall be filed with the Town Attorney for submission for a full review by the Board of Ethics.~~

1. All meetings of the Board of Ethics shall be subject to the provisions of the Open Meetings Law.

D. All recommendations, advisory opinions and rules and regulations of the Board of Ethics shall be kept in the Town Clerk's Office.

~~E. The Board of Ethics shall have non-exclusive jurisdiction to investigate and render an opinion with respect to any allegations of harassment against any Town employee by a third party.~~

1. In the event that it is determined that a third party, whether it be by a volunteer, a member of the public, or a third party vendor or contractor has engaged in acts of harassment against a Town employee, the Board of Ethics may make such recommendations to the Town Board with respect to the termination of any relationship or the barring of such individual(s) from the proceedings of any Board and/or committee of the Town for such period as may be reasonable.

§ 13-8 **Severability.**

If any portion of this chapter shall be adjudged by a court of competent jurisdiction to be invalid or unconstitutional, such portion thereof shall be deemed inoperative and the balance of the code deemed to be in full force and effect.

§ 13-9 **Permissible claims.**

Nothing herein shall be deemed to bar or prevent the timely filing by a present or former Town official, officer or employee of any claim, account, demand or suit against the Town or any agency thereof on behalf of himself or any relative or household member arising out of any personal injury or property damage or for any lawful benefit authorized or permitted by law.

§ 13-10 **Compliance required; distribution of copies.**

Compliance with this Code of Ethics shall be deemed a condition of employment for all Town officials, officers and employees. The Town Human Resources Department must promptly cause a copy of this code, including any amendments, to be distributed to every person who is or becomes an official, officer or employee of the Town of West Seneca and a receipt of the same shall be signed by such official, officer or employee. Such receipts shall be filed with Human Resources, who shall supply the necessary forms, and a photocopy shall be filed in the officer's or employee's personnel folder and with the Board of Ethics.

§ 13-11 **When effective.**

This chapter shall become effective immediately upon its enactment by the Town Board after proper filing, including filing with the office of the State Comptroller and the office of the Secretary of State.

§ 13-1 The proper operation of Town government requires that its officers and employees be independent, impartial and responsible to the people; that government decisions and policy be made in the proper channels of the governmental structure; that public office not be used for personal gain; that public officers and employees observe in their official acts the highest standards of ethics and discharge faithfully the duties of their public office regardless of personal consideration; that the public have confidence in the integrity of its government and the officers and employees thereof; **and that officials and employees may perform their duties without being subject to harassment by individuals in the public.** It is the policy of the Town of West Seneca and the purpose of this chapter to establish standards and guidelines for ethical conduct of officers, **and** employees, **and members of the public.** Though assurance of such conduct will continue to rest primarily on personal integrity and community vigilance, the establishment of standards is another step toward providing the highest caliber of public administration for the Town and ensuring that government decisions are arrived at impartially and free of conflict of interests and thereby increasing confidence in public officials. It is also the purpose of this chapter to protect officials and employees from unwarranted assaults on their integrity by separating real conflict from the inconsequential, recognizing that for local government to attract and hold competent administrators **and employees**, public service must not require a complete divesting of all proprietary interests **and personal reputations.** In recognition of these goals, there is hereby established a Code of Ethics for all officers and for all employees of the Town of West Seneca, hereinafter referred to as the "Town," **and all vendors, third parties, and members of the public.** In the event of any conflict between the provisions of this Code and provisions of Article 18 of the General Municipal Law, the latter shall control. This chapter shall be enforceable upon all Town officials, officers, **and** employees, **vendors, and members of the public.** No acknowledgement, service or acceptance of this chapter shall be necessary for enforcement of its provisions.

§ 13-2 **Definitions and word usage.**

A. Definitions. As used in this chapter, the following terms shall have the meanings indicated:

AGENCY Any Town department, division, board, committee, or bureau, including the Town Board or any successor thereto.

APPEAR and APPEAR BEFORE Communicating in any form, including without limitation, personally, by letter, electronic communication, telephone or by any other device.

CONFIDENTIAL INFORMATION The same meaning as defined in the New York State Public Officer's Law⁽¹⁾ as well as any information discussed and/or revealed at an executive session of a Town Board meeting.

CONFLICT OF INTEREST Any action or omission which is in conflict or gives or may reasonably give the appearance of conflict with the performance of official Town business or government.

CUSTOMER or CLIENT Any entity or person to whom an official, officer or employee of the Town of West Seneca or his or her outside employer or business has supplied goods or services during the previous calendar year having, in the aggregate, a value greater than \$2,000.

EHTICS Moral and economic principles that govern behavior and conduct based upon well-founded standards of universal fairness and right and wrong that prescribe human and organizational activity.

FINANCIAL BENEFIT Any money, service, license, permit, contract, authorization, loan, travel, entertainment, hospitality, gratuity or other compensation of anything of value, or any promise thereof.

GOOD FAITH Information concerning potential wrongdoing is disclosed in good faith when the individual making the disclosure reasonably believes such information to be true and reasonably believes that it constitutes potential wrongdoing.

HOUSEHOLD All persons living in a single residence, whether related or not.

INDEPENDENT CONTRACTOR A person or entity performing work for the Town pursuant to an agreement and receiving non-employee compensation.

INTEREST Deemed to include the affairs of the official, officer or employee or their spouse, minor children and dependents, firm, partnership or association in which such official, officer or employee is a member or employee; a corporation in which such official officer or employee is an officer director, or employee; and a corporation of which any stock is owned or controlled directly by the official, officer or employee.

PERSONNEL ACTION Any action affecting compensation, appointment, promotion, transfer, assignment, reassignment, reinstatement or evaluation of performance.

PUBLIC Any individual, organization, entity, or corporation which engages in any manner with the Town, its officials, or employees.

RECUSE The act of abstaining from participation or influencing in an official action due to a conflict of interest.

RELATIVE A spouse, parent, grandparent, stepparent, sibling, step-sibling, sibling's spouse, child, grandchild, stepchild, uncle, aunt, nephew, niece or household member of a Town official, officer or employee and individuals having any of these relationships to the spouse of the Town official, officer or employee.

TOWN EMPLOYEE All board members, officers and staff employed by the Town, whether employed full-time or part-time, employed pursuant to a contract, employed temporarily or employees who are on probation, paid or unpaid.

VENDOR Any individual, organization, entity, or corporation that engages in any form of business, including the sale of goods or the provision of services, or other transaction with the Town.

WHISTLEBLOWER Any Town employee (as defined herein) who in good faith discloses information concerning wrongdoing by another Town employee or concerning the business of the Town itself.

WRONGDOING Any alleged corruption, fraud, criminal or unethical activity, misconduct, waste, conflict of interest, intentional reporting of false or misleading information or abuse of authority engaged in by a Town employee (as defined herein) that relates to the Town.

B. Word usage. The use of the masculine gender shall include the feminine where applicable.

§ 13-3 **Standards of conduct.**

Every official, officer and employee of the Town of West Seneca shall be subject to and abide by the following standards of conduct:

A.

No Town official, officer or employee shall use his or her official position or office to take or fail to take any action in a manner which he or she knows or has reason to know may result in a financial benefit or interest for any of the following persons or entities:

- (1)** The Town official, officer or employee;
- (2)** His or her outside employer or business;
- (3)** A member of his household;
- (4)** A customer or client; or
- (5)** A relative.

B. No Town official, officer or employee shall have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature that is in conflict with, or might reasonably tend to conflict with, the proper discharge of his

duties in the public interest. Any officer or employee who has a direct or indirect financial or other private interest in any matter before any board of the Town shall publicly disclose in writing on the official record of such board the nature and extent of such interest prior to participating in the discussion or before making a recommendation or giving an opinion to such board on such matter.

C. No Town official, officer or employee shall represent private interests before any board, department, office or agency of the Town, nor represent private interests in any action or proceeding against the interests of the Town or in any litigation to which the Town is a party. The preceding sentence shall not preclude any such officers or employees from appearing in the performance of public or civic obligations or on their own behalf with respect to matters of a personal nature. All appearing parties before any board of the Town shall make a disclosure as provided under § 809 of Article 18 of the General Municipal Law. Every application, petition or request submitted for a variance, change of zoning, site plan approval or waiver, license or permit pursuant to the provisions of any ordinance, local law, rule or regulation constituting the zoning and planning regulations of the Town in which a Town officer or employee has an interest as defined in this chapter shall state the name, residence and the nature and extent of the interest of any officer or employee of the Town, in the person, partnership or association making such application, petition or request.

D. A Town Board member, official, officer or employee shall promptly recuse himself or herself from acting on a matter before the Town when acting on the matter or failing to act on the matter may provide a financial benefit to the persons or entities listed in § **13-3A** above. A Town Board member shall promptly recuse himself or herself from voting on the appointment, hiring, or other matter involving a person or entity described in § **13-3A** above.

E. No Town official, officer or employee, whether paid or unpaid, shall directly or indirectly solicit, accept or receive any gift, whether in the form of money, services, loan, travel, entertainment, hospitality, material goods, things, or promise of any other form, under circumstances in which it could reasonably be inferred or could reasonably be expected that the gift was intended to influence such official, officer or employee in the performance of his or her official duties or was intended to reward official action or inaction. Under no circumstances shall an official, officer or employee accept any gift valued in excess of \$25. No officer or employee of the Town shall grant in the discharge of his duties any improper favor, service or thing of value. Nothing contained herein shall be deemed to prohibit any officer or employee of the Town from borrowing money from any bank or banks designated as depositories by the Town Board.

F. No Town official, officer or employee shall disclose any confidential information or use said information to further their personal interest or the personal interests of others, unless required to do so by law or court order.

G. No Town official, officer or employee, whether paid or unpaid, shall engage in or accept private employment or render services for private interests when such employment or service is in conflict with the proper discharge of his official duties.

H. No Town official, officer or employee shall accept employment by any person, firm or corporation with which he or his department, office or agency is engaged on behalf of the Town in the transaction of business which is or may be affected by his official action. No officer or employee of the Town shall, within one year after termination of service or employment with the Town, appear before any board or agency of the Town in relation to any case, proceeding or application in which he personally participated during the period of his service or employment or which was under his active consideration.

I. No Town official, officer or employee shall use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others or grant any special consideration, treatment or advantage to any citizens beyond that which is available to every other citizen.

J. No Town official, officer or employee shall, by his conduct, give reasonable basis for the impression that any person can unduly influence him or improperly enjoy his favor in the performance of his official duties or that he is affected by the kinship, rank, position or influence of any party or person.

K. No Town official, officer or employee shall direct or cause any officer or employee of the Town to do or perform any service or work outside of public work or employment, or accept any such service or work, nor shall any officer or employee of the Town offer to or perform any such service or work for such officer or employee.

L. No Town official, officer or employee shall use or permit the use of Town property (including vehicles, equipment, materials and any other property) for personal convenience, profit, or political means except when such use is available to Town citizens generally or is provided as a matter of written Town policy.

M. No Town official, officer or employee shall require, authorize, or influence any other Town official, officer, or employee to participate in an election campaign or contribute to a political committee.

N. No Town official, officer or employee shall induce or aid other officials, officers or employees of the Town to violate any provisions of this chapter.

O. All Town Board members, officials, officers, employees, and volunteers are required to reasonably cooperate with any investigation of the Board of Ethics. Such reasonable cooperation shall include by way of example, but not be limited to, participating in investigatory interviews, producing documents or other tangible information in their possession or control, and appearing at scheduled hearings and giving testimony. Employees represented by a union will have the right to have a union representative present with them for any investigatory interviews and to seek the advice of their union representative prior to appearing before or providing information to the Board of Ethics.

1. Any complaint filed by any individual or employee, regardless of its nature, may be made in writing to the Chair of the Board of Ethics, the Town Attorney, or counsel to the Board of Ethics. The Board of Ethics shall investigate and render an opinion on all matters raised. All such reports shall be filed with the Town Board and the Town Attorney upon completion.

P. Every Ethics Board Member shall annually complete two hours of approved ethics training and submit such evidence as may be required of such training to the Town Clerk. The failure to undertake such training shall be grounds for removal.

Q. This Ethics Code shall be annually available to all Town officials, Board members, employees, and volunteers.

§ 13-4 Penalties.

A. In addition to any penalty contained in any other provision of law, a violation of this chapter may result as follows:

(1) Forfeiture of pay, suspension or removal from office or employment or such other disciplinary action as the Town Board may consider advisable.

(2) Any contract knowingly entered into by and/or with the Town or any agency thereof in which there is an interest or financial benefit prohibited by this chapter shall be null, void, and wholly unenforceable.

(3) Recommend a civil fine, not to exceed \$10,000 for each violation, upon a Town Official, Board member, employee or volunteer found guilty of a violation of this code. Such fine shall be payable to the Town.

B. No action expressly or impliedly permitted under Article 18 of the General Municipal Law shall constitute a violation of this chapter.

C. Any violation of this code by a vendor may result in the Town ceasing all future purchases and operations with such vendor.

§ 13-5 **Disclosure statements.**

A. The following Town officials, officers and employees of the Town of West Seneca shall be required to file annual disclosure statements by March 31 of each year in the form as set forth by the Board of Ethics and approved by the Town Board.

(1) All elected officials.

(2) All department heads.

(3) Any and all Board members, Commission members, Committee members, whether elected, appointed, or volunteer.

B. Said forms shall be filed with the Town Clerk and shall be available for public inspection.

C. Any independent contractors hired by the Town to perform any work for the Town shall be required to file annual disclosure statements by March 31 of each year in a form as set forth by the Board of Ethics and approved by the Town Board. ~~in Exhibit "B" attached hereto.~~¹² This shall not apply to any governmental entity doing business with the Town pursuant to an intermunicipal agreement.

§ 13-6 **Whistleblower Policy.**

A. This Whistleblower Policy applies to all board members, officers, employees of the Town of West Seneca, and the public, and provides them with a confidential means to report credible allegation of misconduct, wrongdoing or unethical behavior and to protect those individuals, when acting in good faith, from personal or professional retaliation.

B. Town employees who discover or have knowledge of potential wrongdoing concerning board members, officers or employees of the Town, or a person having business dealings with the Town, or concerning the Town itself, shall report such activity in accordance with the following procedures:

(1) The Town employee shall disclose any information concerning wrongdoing either orally or in a written report to his or her supervisor, to the Town Ethics Board Attorney, general counsel, human resources representative, or the Erie County Whistle Blower Hotline at (716-858-7722) or electronically. ~~email at whistleblower@erie.gov.~~

(2) Town employees who discover or have knowledge of wrongdoing shall report such wrongdoing in a prompt and timely manner. If reporting through the Town Ethics Board Attorney, then the form developed by the Ethics Board ~~attached hereto as Exhibit "C"~~ shall be completed and submitted to the Town Ethics Board Attorney.

(3) The identity of the whistleblower and the substance of his or her allegations will be kept confidential to the best extent possible.

(4) The individual to whom the potential wrongdoing is reported shall investigate and handle the claim in a timely and reasonable manner, which may include referring such information to the authorities or an appropriate law enforcement agency where applicable.

(5) Should a Town employee believe in good faith that disclosing information within the Town would likely subject him or her to adverse personnel action or be wholly ineffective; the Town employee may instead disclose the information to the local authorities or to an appropriate law enforcement agency, if applicable.

(6) No Town employee who in good faith discloses potential violations of the Town's Code of Ethics or other instances of potential wrongdoing shall suffer harassment, retaliation or adverse personnel action.

(7) All allegations of retaliation against a whistleblower or interference with an individual seeking to disclose potential wrongdoing will be thoroughly investigated by the Town Ethics Board.

(8) Any Town employee who retaliates against or attempts to interfere with any individual for having in good faith disclosed potential violations of the Town's Code of Ethics or other instances of potential wrongdoing is subject to disciplinary action, which may include termination of employment.

(9) Any allegation of retaliation or interference will be taken and treated seriously and irrespective of the outcome of the initial complaint, will be treated as a separate matter.

(10) The Whistleblower Policy is not intended to limit, diminish or impair any other rights or remedies that an individual may have under the law with respect to disclosing potential wrongdoing free from retaliation or adverse personnel action.

(11) Specifically, the Whistleblower Policy is not intended to limit any rights or remedies that an individual may have under the laws of the State of New York, including but not limited to the following provisions: Civil Service Law § 75-b, Labor Law § 740, State Finance Law § 191 (commonly known as the "False Claims Act") and Executive Law § 55(1).

(12) With respect to any rights or remedies that an individual may have pursuant to Civil Service Law § 75-b or Labor Law § 740, any employee who wishes to preserve such rights shall, prior to disclosing information to a government body, have made a good faith effort to provide the appointing authority or his or her designee the information to be disclosed and shall provide the appointing authority or designee a reasonable time to take appropriate action unless there is imminent and serious danger to public health or safety. [See Civil Service Law § 75-b(2)(b); Labor Law § 740(3)].

C. Once a complaint has been submitted, the Ethics Board will investigate the allegations of the complaint. In conducting any such investigation, the Ethics Board may administer oaths or affirmations, issue subpoenas pursuant to Article 23 of the New York Civil Practice Law and Rules, compel witness attendance and require the production of any books or records which it may deem relevant and material. The Ethics Board shall require clear and convincing evidence before determining that a violation has occurred. **A copy of any such determination shall be provided to the Town Attorney.**

§ 13-7 **Creation of Board of Ethics; composition of membership; conditions of membership.**

A. A Board of Ethics is hereby established pursuant to Article 18, Section 808, Subdivision 3 of the General Municipal Law. The members of the Board of Ethics shall be appointed by the Town Board and shall receive no salary or compensation for their services as members of such Board. A member of the Board of Ethics may be removed for cause. The Board shall be composed of ~~one five members~~ to be appointed by ~~each member of~~ the Town Board with staggered terms. **Membership in the Board shall consist of no more than two members of the same political party. No member of the Board shall be a full-time employee of the State of New York, the County of Erie, the Erie County Water Authority, the Niagara Frontier Transportation Authority, or Erie Community College. Three members shall be appointed in 2021 and two members to be appointed in 2022.** The term of each member shall be five years expiring on December 31st. ~~with three more being appointed or reappointed in 2026 and two being appointed or reappointed in 2027, which shall continue on the same scheme.~~ A member of the Town Board shall not appoint himself or herself or any other current Town Board member. ~~The seventh member of the Board of Ethics shall be the Town Clerk, who shall be an ex officio member without the power to vote.~~ The members of the Board of Ethics shall be residents of the Town of West Seneca and only one member shall be a current Town ~~official, officer or~~ employee. ~~The Town Attorney representing the Town shall be an ex officio member of the Board of Ethics without the power to vote. In the event that the Town Board increases to five board members, the Board of Ethics shall become a five member Board. One member shall be appointed by each Town Board member and the terms shall be five years as decided by a majority of the Town Board members.~~

1. A member of the Town Attorney's office shall act as counsel to the Ethics Board and shall be appointed annually by the Town Board.

2. No elected official or candidate for political office, including the Town Board, Town Justice, Town Clerk, Superintendent of Highways, Supervisor, or West Seneca Board of Education shall be a member or ex-officio member of the Board of Ethics.

3. No Ethics Board member or ex-officio member shall be a member of a political party committee or officer therein.

4. The Town Clerk shall appoint an individual from the Town Clerk's office to act as secretary to the Ethics Board.

B. Advisory opinions. Upon written request of any Town official, member of the public, officer or employee, the Board of Ethics established herein shall render advisory opinions regarding this chapter of Ethics or the provisions contained in Article 18 of the New York State General Municipal Law. Requests for advisory opinions and reviews may be submitted after the commencement and/or completion of the matter for which an opinion is sought or in the advance of same. The Board of Ethics shall also make recommendations as to any amendments to this chapter upon the request and majority vote of the Town Board. The opinions of the Board of Ethics shall be advisory and under no circumstances shall the identity of the Town officer, official or employee be disclosed except to authorized persons and agencies or pursuant to a court order.

1. All requests for advisory opinions shall be provided in writing to the Chair of the Board of Ethics, the Town Attorney, or counsel to the Board of Ethics. All such advisory opinions shall be filed with the Town Board and the Town Attorney upon completion.

C. Rules and regulations. The Board of Ethics shall promulgate its own rules and regulations as to its form and procedures and shall maintain appropriate records of its opinions and proceedings. All decisions and opinions of the Board shall be delivered to the Town Attorney, Town Board, any complainant, and any individual against whom a complaint has been filed. In the event that the complaint or an advisory opinion is sought with respect to the individual with whom complaints and advisory requests are to be filed, such complaint or request shall be filed with the Town Attorney for submission for a full review by the Board of Ethics.

1. All meetings of the Board of Ethics shall be subject to the provisions of the Open Meetings Law.

2. Members of the Board of Ethics shall recuse themselves from any matter in which a conflict of interest exists.

D. All recommendations, advisory opinions and rules and regulations of the Board of Ethics shall be filed in the Town Clerk's Office.

If any portion of this chapter shall be adjudged by a court of competent jurisdiction to be invalid or unconstitutional, such portion thereof shall be deemed inoperative and the balance of the code deemed to be in full force and effect.

§ 13-9 **Permissible claims.**

Nothing herein shall be deemed to bar or prevent the timely filing by a present or former Town official, officer or employee of any claim, account, demand or suit against the Town or any agency thereof on behalf of himself or any relative or household member arising out of any personal injury or property damage or for any lawful benefit authorized or permitted by law.

§ 13-10 **Compliance required; distribution of copies.**

Compliance with this Code of Ethics shall be deemed a condition of employment for all Town officials, officers and employees. The Town Human Resources Department must promptly cause a copy of this code, including any amendments, to be distributed to every person who is or becomes an official, officer or employee of the Town of West Seneca and a receipt of the same shall be signed by such official, officer or employee. Such receipts shall be filed with Human Resources, who shall supply the necessary forms, and a photocopy shall be filed in the officer's or employee's personnel folder and with the Board of Ethics.

§ 13-11 **When effective.**

This chapter shall become effective immediately upon its enactment by the Town Board after ~~proper filing, including filing with the office of the State Comptroller and the office of~~ the Secretary of State.