

TOWN OF WEST SENECA



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MEMO

To: The Honorable Town Board
From: Tina M. Hawthorne, Town Attorney
Date: October 4, 2019
Subject: Local Law No. 2019-05 – Ethics Code

I hereby request a public hearing be held before this Board to repeal Chapter 13 of the Town of West Seneca Code and replace with a new proposed Chapter 13. I have attached a copy of the proposed new Ethic Code hereto, which will be the subject of the public hearing on November 4, 2019. The Ethics Board will plan to present on the revisions to new Code at the public hearing.

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§ 13-1 Legislative intent.

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; and that the public have confidence in the integrity of its government and the officers and employees thereof. 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. 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, public service must not require a complete divesting of all proprietary interests. 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." 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. 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 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 reasonable believes such information to be true and reasonable believes that it

constitutes potential wrongdoing.

HOUSEHOLD

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

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.

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.

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. Every Ethics Board Member shall annually complete two (2) hours of ethics training.
- P. 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 \$10,000.00 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.
 - (4) Assess a financial sanction up to \$200.00 per day and/or suspend without pay for noncompliance with reasonable requests of the Ethics Board during an investigation, which would include, but not

be limited to, failure to appear at a scheduled hearing; or failure to produce documents or information material and relevant to the investigation. Such sanction shall be payable to the Town. If a sanction is assessed under this section, it shall be a final determination of the Ethics Board. The aggrieved party may challenge such determination in New York State Supreme Court.

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

§ 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) 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 set forth in Exhibit "B" attached hereto.

§ 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 personnel 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 form 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 member to be appointed by each member of the Town Board with staggered terms. 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 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.

- B. Advisory opinions. Upon written request of any Town official, 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. 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.
- D. All recommendations, advisory opinions and rules and regulations of the Board of Ethics shall be kept in the Town Clerk's Office.

§ 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 Effective date.

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.