

MEMO

TO: Honorable Town Board

From: West Seneca Town Councilman Gene Hart

RE: Proposed Local Law Rescinding and Replacing Chapter 13 of Our Town Code, Code of Ethics

After consulting with Town Attorney John Fenz, Attached please find a proposed local law which rescinds the Town's current chapter 13 of its Code, entitled ethics, and would replace it with new legislation. I kindly request that the Town board set a public hearing within the statutorily required time frame.

From the Desk of Gene Hart
66 Maplewood Ave.
West Seneca, NY 14224
Phone: 716-235-6511
E Mail: gene7746@ymail.com

Chapter 13: Ethics, Code of

[HISTORY: Adopted by the Town Board of the Town of West Seneca 12-7-2009 by L.L. No. 4-2009; ⁱⁱⁱ **amended in its entirety ??? -2018 by L.L. No. ???2018.** Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Administration of government — See Ch. 4.

Defense and indemnification — See Ch. 14.

[1]

Editor's Note: This local law also repealed former Ch. 13, Ethics, Code of, adopted 12-7-2009.

Chapter 13 :Ethics, Code of

§ 13-1**Title.**

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§ 13-10**Board of Ethics.**

§ 13-11**Duty to report.**

§ 13-1**Title.**

This chapter may be cited as "The Code of Ethics."

§ 13-2 **Statutory authority; intent.**

The Code of Ethics is enacted pursuant to Article 18 of the General Municipal Law and in recognition of the policy of the State of New York and the Town of West Seneca to maintain the highest standards of integrity in public service. It is intended to afford Town officers and employees guidance in conforming to ethical standards; to promote public confidence in the integrity of Town government; to require public disclosure of financial interests that may influence or be perceived as influencing actions of Town officers and employees; to minimize unwarranted suspicion; and, to provide for fair and effective administration of this code. This Code of Ethics shall be in addition to all of the restrictions, standards and provisions pertaining to the conduct of Town officers and employees.

§ 13-3 **Definitions.**

As used in the Code of Ethics, the following terms shall have the meanings indicated:

AGENCY

Any office, board, body, advisory board, council, commission, agency, department, district, administration, division, bureau or committee of the Town of West Seneca; and shall include but not be limited to the Town Board, Zoning Board of Appeals, Planning Board, Recreation Commission, Library Board of Trustees, Board of Ethics, Youth Board, Board of Assessment Review, **Industrial Park Review Board**, Board of Electrician Examiners, Board of Plumbing and Drainage Examiners, **or an improvement district as provided by Article 12 of the Town Law. This section will also apply to any future board created by state, town or local law as allowed.**

APPEAR and APPEAR BEFORE

Communicating in whatever form, whether personally or through another person.

BUSINESS DEALING

Having or providing any contract, service or work with a municipality; buying, selling, renting, leasing or otherwise acquiring from or dispensing to a municipality any goods, services or property; or applying for, petitioning, requesting or obtaining any approval, grant, loan, license, permit or other privilege from the municipality.

DISCRETIONARY ACT

Any action involving the exercise of judgment or discretion by a municipal officer or employee, either individually or as a member of any agency, and includes but is not limited to negotiation, approval, advice, recommendation, authorization or audit.

FAMILY MEMBER

A spouse, child, stepchild, brother, sister, parent, half-child, nephew, brother/sister-in-law, parent-in-law, **first cousin** or **dependent of a municipal officer or employee**.

GOVERNING BODY

The Town Board of the Town of West Seneca.

MINISTERIAL ACT

An action performed in a prescribed manner without the exercise of judgment or discretion as to the propriety of the act.

PAID TOWN OFFICER, EMPLOYEE OR OFFICIAL

Any Town officer, employee or official who receives a salary from the Town or who is compensated by the Town on a per-diem or hourly basis, but does not include a Town officer, employee or official who is solely reimbursed by the Town for expenses incurred in the course of his or her duties.

PARTICULAR MATTER

Any business dealing with the Town or any application there for or any case, proceeding, determination, investigation, charge, accusation or arrest or any other matter involving a discretionary act of a Town officer or employee, but does not include the proposal, consideration or enactment of local laws, ordinances or regulations of general application.

PERSON

An individual, corporation, partnership, unincorporated association, LLC, LLP and all other legal entities.

SPOUSE

A husband or wife from whom the Town officer or employee is not legally separated.

TOWN

The Town of West Seneca, and includes all agencies thereof and officers, employees and officials thereof.

TOWN CLERK

The Clerk of the Town of West Seneca.

TOWN OFFICER OR EMPLOYEE

Any officer or employee of the Town of West Seneca, whether paid or unpaid, including public officials and all other members of any agency in the Town of West Seneca, but does not include the Town Justices, officers or employees of the Unified Court System. Volunteer firemen and civil defense volunteers shall not be deemed to be Town officers or employees.

TOWN OFFICIAL

Any Town officer or employee who has the authority, either alone or as a member of an agency/committee/board to perform discretionary acts on behalf of the Town with respect to any business dealing. "Town official" shall not include Town Justice and any Town officer or employee who performs only ministerial acts and duties.

§ 13-4 **General regulations.**

A.

No Town official or employee shall:

(1)

Act as attorney, agent, broker, employee, consultant or representative for any person in connection with any business dealing that person has with the Town.

(2)

Directly or indirectly, solicit any gift or accept or receive any gift or series of gifts having an annual value of \$75 or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him or could reasonably be expected to influence him in the performance of his official duties or was intended as a reward for any official action on his part. The foregoing limitation shall not apply to campaign contributions not otherwise prohibited by law.

(3)

Investment and conflict with official duties: A Town official, officer or employee shall not invest or hold any investment directly or indirectly, in any financial, business, commercial or other private transaction which creates a conflict with his or her official duties.

(4)

Take or refrain from taking any action or agree to take or refrain from taking any action or induce or attempt to induce any other Town officer or employee to take or refrain from taking any action on any matter before the Town in order to obtain a pecuniary or material benefit for:

(a)

Himself or herself;

(b)

A family member;

(c)

Any partnership, LLP or unincorporated association of which the Town officer or employee or family member, is a member or employee or in which he or she has a proprietary interest;

(d)

Any corporation, LLC of which the Town officer or employee, or family member is an officer or director or of which he or she legally or beneficially owns or controls more than 5% of the outstanding stock;

(e)

Any person with whom the Town official, or his or her family member, has an employment, professional, business or financial relationship; or

(f)

Any person from whom the Town officer or employee or his or her spouse has received within any twelve-month period during the previous 24 months a pecuniary or material benefit having an aggregate value greater than \$1,000, unless said individuals make up less than 5% of a class of individuals benefited.

(5)

Appear before the agency/committee/board served by or which employs such Town officer or employee except on behalf of the Town or on his or her own behalf.

(6) Appear before the Town except on behalf of the Town or on his or her own behalf. This subsection shall only apply to officers and employees who are elected or who are paid by the Town.

(7)

Appear as attorney or counsel against the interests of the Town in any matter in which the Town is a party or a complainant.

(8)

Solicit any nonelected officer or employee of the Town to participate in an election campaign. This subsection shall not prohibit an elected officer from soliciting such participation from officers and employees who are appointed by and directly subordinate to such elected officer and who serve in positions which are in the exempt classification or the unclassified service under the Civil Service Law.

(9)

Directly or through a person, campaign committee or other organization authorized to act on his or her behalf solicit any nonelected officer or employee of the Town to pay or promise to pay any assessment, subscription or contribution to a political party, political party organization or election campaign. This subsection shall not prohibit a general solicitation of a class of persons.

(10)

Directly or through a person or campaign committee or other organization authorized to act on his or her behalf, solicit participation in an election campaign or payment or promise of payment of any assessment, subscription or contribution to a political party, political party organization or election campaign from any person who, to the knowledge of the municipal officer or employee, has or, within the previous 12 months, has had any business dealing with the municipality. This subsection shall not prohibit a general solicitation of a class of persons.

(11)

Directly or through a person or campaign committee or other organization authorized to act on his or her behalf, utilize Town property, the Town Seal, the Town Logo or stationery where the header or footer states the person's employment as a Town of West Seneca employee, to solicit participation in an election campaign or payment or promise of payment of any assessment, subscription or contribution to a political party, political party organization or election campaign. **In any event, no political activity is allowed in or on any**

town facility including soliciting participation in a political campaign, soliciting donations including the sale of tickets to political fundraisers or the display of campaign materials in support of a particular candidate where such display may be viewed as putting undue pressure on subordinates or colleagues to support a particular candidate.

(12)

Except where such disclosure is authorized by law, disclose any confidential information acquired in the course of his or her official duties or use any such information to advance the financial or other private interest of himself or herself or any other person.

(13)

After termination of his or her term of office or employment with the Town, appear before the Town or receive compensation for any services rendered on behalf of any person other than the Town in relation to any particular matter upon which he or she took any discretionary act during his or her term of office or employment with the Town.

B.

No partnership, LLP, LLC or corporation or unincorporated association of which a Town official is a member or employee or in which he or she has a proprietary interest nor any corporation, LLC of which he or she is an officer or director or legally or beneficially owns or controls more than 5% of the outstanding stock shall appear before the agency served by such Town official on behalf of any person other than the Town or itself.

C.

No partnership, LLP or unincorporated association of which a Town official who is elected or paid by the Town is a member or employee or in which he or she has a proprietary interest nor any corporation, LLC of which he or she is an officer or director or of which he or she legally or beneficially owns or controls more than 5% of the outstanding stock shall appear before the Town on behalf of any person other than the Town or itself.

D.

Nothing in this section shall be construed to prohibit a Town officer or employee or any other person from receiving a municipal service or benefit or using a municipal facility which is generally available to residents or a class of residents in the Town.

E.

Nothing in this section shall be construed to prohibit any Town officer or employee listed in § 11 of the Domestic Relations Law from accepting any gift or benefit having a value of \$75 or less for the solemnization of a marriage by that Town officer or employee at a place other than the Town officer's or employee's normal place of business or at a time other than the officer's or employee's normal hours of business and except as may be otherwise restricted by law.

F.

Nothing in this section shall be construed to prohibit a Town officer or employee from performing any ministerial act.

G.

A person who knowingly violates any provision of this section may, in addition to any penalty contained in any other provisions of law, be dismissed, suspended or removed from office or employment in the manner provided by law.

§ 13-5 **Transactional disclosure and recusal; definitions.**

A.

Whenever a Town official is requested or required to take any action on a matter before the Town and, to his or her knowledge, either the performance or nonperformance of that action would provide a pecuniary or material benefit to himself or herself or to any related person different from that which would be derived from the action by reason of its general application to a broad class of persons deriving such benefit, the Town official shall not participate in that matter unless the official's recusal prohibits Town action, then said officer or employee shall participate after full disclosure and reference to the particular legislation otherwise prohibiting Town action. The Town officer or employee also shall file promptly with his or her immediate superior, if any, and with the Town Clerk a signed statement disclosing the nature and extent of that interest. The **Town official, not otherwise participating under conditions**

described in 13.5 where recusal prohibits or prevents Town action on the matter before him/her is prohibited from participating, conversing or contributing in any manner where recusal from voting is required.

B.

For purposes of this section, the following terms shall have the meanings indicated:

RELATED PERSON

(1)

A family member.

(2)

Any corporation of which the municipal officer or employee is an officer or director or of which he or she legally or beneficially owns or controls more than 5% of the outstanding stock.

(3)

Any person with whom the municipal officer or employee or his or her family member has an employment, business or financial relationship.

(4)

Any person from whom the municipal officer or employee or his or her spouse has received within any twelve-month period during the previous twenty-four (24) months a pecuniary or material benefit having an aggregate value greater than \$1,000.

C.

Nothing in this section shall be construed to prohibit a Town officer or employee from performing any ministerial act or to require a Town officer or employee to file a disclosure statement pursuant to Subsection **A** of this section prior to performing any ministerial act. The award of a contract by an officer or employee pursuant to the public bidding requirements of § 103 of the General Municipal Law shall be deemed a ministerial act.

§ 13-6 Disclosure statement.

A.

Long Form Disclosures: All elected Town officials, all department heads and all Town Officials who are elected, appointed, paid or unpaid, who are members of the Zoning Board of Appeals, Planning Board, Board of Assessment Review, West Seneca Industrial Park Board, Board of Ethics, Board of Electrician Examiners, Board of Plumbing and Drainage Examiners, shall file with the Town Clerk as hereinafter set forth, a signed, annual disclosure statement within thirty (30) days of taking office and no later than April 30 of each year thereafter. Within thirty (30) days of any change in the information contained in his or her most recently filed statement, the public official shall file a signed amendment to the statement indicating the change.

The form and content of the both the Long and Short form Financial Disclosure form shall be determines by the Board of Ethics (as appointed in § 13.10: following) and be in accordance with laws, rules and standards as established by the New York State Committee on Open Government.

B.

Information to be disclosed by all those Town officials defined in Section 13-6A shall be included in Attachment A, attached. (Or we can include detail here)

C.

Short Form Disclosure. All Town officials who are **appointed, paid or unpaid, to any board of committee not listed in 13-6A.** above for who a long form disclosure is not required shall file a Short Form Disclosure form containing information included in Attachment B (Or we can include detail here??)

§ 13-7 Civil penalty; penalties for offenses.

A.

Statement of financial disclosure.

(1)

A reporting individual who knowingly and willfully fails to file an annual statement of financial disclosure as provided shall be presumed to have voluntarily withdrawn from membership on the committee/board they were appointed to.

(2)

A reporting individual who knowingly and willfully with intent to deceive makes a false statement or gives information which such individual knows or should have known to be false on such statement of financial disclosure filed pursuant to this Chapter shall be assessed a civil penalty in an amount not exceed Ten Thousand Dollars (\$10,000.00). Assessment of a civil penalty hereunder shall be made by the Town of West Seneca Board of Ethics following a hearing which follows the procedure set forth in the rules of procedure adopted by the Board of Ethics.

(3)

A reporting individual fails to file an amended financial disclosure within thirty (30) days of any change in information contained in his/her most recently filed financial disclosure statement shall be presumed to have withdrawn from membership in the committee or board that they were appointed to.

(4)

For a violation of this subsection 2, the Town of West Seneca Board of Ethics may, in lieu of a civil penalty, refer said violation to the District Attorney and, upon such conviction, but only after such referral, such violation shall be punishable as a misdemeanor.

(5)

Notwithstanding any other provision of law to the contrary, no other penalty, civil or criminal, may be imposed for failure to file or for false filing of such statement, except that the appointing authority may impose disciplinary actions as otherwise provided by law.

B.

For violations of the conflict of interest and transactional disclosure provisions of this chapter, the Town of West Seneca Board of Ethics shall assess a civil penalty in an amount not to exceed \$10,000 or, in lieu thereof, issue a public censure or private admonition. In addition, the appointing authority may impose disciplinary action as otherwise provided by law.

C.

For violations of the Section 13-4(A) (10) the Town of West Seneca Board of Ethics shall assess a civil penalty in an amount not to exceed \$10,000.00 or, in lieu thereof, issue a public censure or private admonition. In addition, the appointing authority may impose disciplinary action as otherwise provided by law including removal from office/employment. For a violation of Section 13-4(A)(10), the Town of West Seneca Board of Ethics may, in lieu of a civil penalty, refer a violation to the District Attorney and upon such conviction but only after such referral, such violation shall be punishable as a Class A misdemeanor.

D.

The Town of West Seneca Board of Ethics shall adopt rules governing the conduct of adjudicatory proceedings and appeals relating to the assessment of civil penalties herein authorized. Such rules shall provide for due process procedural mechanisms substantially similar to those set forth in Article 3 of the State Administrative Procedures Act, but such mechanisms may not be identical in terms or scope.

E.

No reporting individual shall be subject to the sanction contained in Subsections 1 or 2 for any offense that occurred more than two (2) years before Notice is provided to that individual that he/she has violated the provisions of the Ethics Code.

F.

Assessment of a civil penalty shall be final unless modified, suspended or vacated within thirty (30) days of imposition and, upon becoming final, shall be subject to review at the instance of the affected reporting individual in a proceeding commenced against the Town of West Seneca Board of Ethics pursuant to Article 78 of the Civil Practice Law and Rules.

§ 13-8 **Maintenance of disclosure statements.**

Transitional disclosure statements and annual disclosure statements shall be a matter of public record and shall be filed and indexed with the Town Clerk. The Town Clerk shall retain such disclosure statements for a period of not less than seven years from the date of filing.

§ 13-9 **List of officials; notice and verification of filing.**

A.

On or before the first day of April of each year the Town Supervisor, together with the Town Clerk, shall:

(1)

File with the Town Clerk a list of names and offices or positions of all officials and employees required to file annual disclosures; and

(2)

Notify all persons required to file annual disclosure forms and request that the same be filed with the Town Clerk no later than April 30th of each year. Said notifications are to be sent to the person's current residence on file with the Town Clerk and also be sent via email, if email is available.

B.

On or before the 15th day of May of each and every year, the Board of Ethics shall meet to ascertain and verify that every required individual has filed the required disclosure statement.

C.

Failure of the Supervisor and the Town Clerk to notify any or all individuals required to file disclosure statements shall not relieve Town officials or employees of their duty to file the disclosure statements.

§ 13-10 Board of Ethics.

A.

A Board of Ethics is established and shall be known as the "Town of West Seneca Board of Ethics."

B.

The Board of Ethics, (Board), appointed by the Town Board, shall consist of five (5) members who shall serve five (5) year terms of office, one such term expiring each year. To allow for continuity, initially members will be appointed to staggered terms, one for one year, one for two (2) years, one for three (3) years one for four (4) years and one for five (5)years.

In the event that a vacancy occurs prior to the expiration of any term, such vacancy shall be filled for the balance of such term in the same manner as members are appointed to full terms. All members shall reside within the Town of West Seneca. All members shall serve without compensation.

The initial organizational meeting of the Board of Ethics shall be called and moderated by the Town Clerk of the Town of West Seneca. At that meeting the Chairman of the Board of Ethics shall be selected by a majority vote of members of the Board and shall immediately assume all the duties and responsibilities of Chairman of the Board. *Participation of the Town Clerk of the Town of West Seneca ends with the election of the Chairman of the Board of Ethics.* The Board will establish practices and procedures as it deems necessary to fairly and honestly administer its charge as outlined in § 13.1 Intent.

C.

No member of the Board of Ethics may hold an officer's position in any political party except such person may be a member of a county committee of a political party. For purposes of this section, "political party" shall mean any political party which appears on the ballot in the last biennial Town election. The members shall elect from among themselves such other officers as may be deemed necessary.

D.

A Board of Ethics member may be removed by the Town Supervisor with the approving consent of not fewer than two (2) members of the Town Board after a finding of substantial neglect of duty, gross misconduct in office, inability to discharge the powers or duties of the office or violation of this chapter after written notice of the charges and an opportunity for reply.

E.

The Town Board shall appoint both an Attorney, who will represent the Board in all matters before the Board, and a Clerk of the Board, it shall be the responsibility of the Clerk to keep accurate records of Board meetings and actions. All documents must be filed within fourteen days of Board meetings with the Town Clerk and shall be deemed for the purposes of this chapter to be filings with the Board of Ethics and shall post the minutes to the town's official web site and make the minutes available for view during regular business hours.

F.

The Board of Ethics shall have all the powers and duties as prescribed by Article 18 of the General Municipal Law. The Board of Ethics may adopt and amend such rules or procedures as are appropriate.

§ 13-11 Duty to report.

Every Town officer or employee shall report to the Erie County District Attorney or the Town Attorney any action which may reasonably be interpreted as an improper attempt to influence him in the conduct of his office.