

Chapter 16

ETHICS, CODE OF; BOARD OF ETHICS

ARTICLE I
General Provisions

§ 16-1. Title.

This chapter shall be entitled "A Local Law Enacting a Code of Ethics and Establishing a Board of Ethics for the Town of New Lebanon."

§ 16-2. Statutory authorization.

This chapter is enacted pursuant to § 806 of the General Municipal Law and § 10 of the Municipal Home Rule Law and is not intended to authorize any conduct prohibited by Article 18 of the General Municipal Law.

§ 16-3. Legislative intent.

The Town Board of the Town of New Lebanon recognizes that there are state statutory provisions mandating towns to establish rules and standards of ethical conduct for public officers and employees which, if observed, can enhance public confidence in local government. The purpose of this chapter is to implement this objective through the establishment of high standards of ethical conduct for officers and employees of the Town, to afford officers and employees of the Town guidance on such standards, to provide for punishment of the violation of such standards, to create a Board of Ethics to render advisory opinions to the Town's officers and employees as provided for herein, and to provide for the fair and effective administration of this chapter.

§ 16-4. Effect on other laws.

The standards, prohibited acts and procedures established herein are in addition to any prohibited acts, conflict-of-interest provisions or procedures prescribed by statute and case law relating to the conduct of Town officers and employees. To the extent this chapter is inconsistent with the provisions of § 808 of the General Municipal Law, this chapter shall supersede those provisions.

§ 16-5. Definitions.

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

TOWN — Any board, commission, district, council or other agency, department or unit of the government of the Town of New Lebanon.

TOWN OFFICER OR EMPLOYEE —

- A. Any officer or employee of the Town of New Lebanon, whether elected or appointed, whether paid or unpaid, including members of any administrative board, commission or other agency thereof, whether serving in a full-time, part-time or advisory capacity.
- B. The term "Town officer or employee" does not include:
 - (1) A person who is a member of a volunteer emergency services organization; or
 - (2) A person who serves without compensation on a temporary Town committee

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for a specified term of less than one year, and who is not otherwise an employee or officer of the Town.

ARTICLE II
Code of Ethics

§ 16-6. Standards of conduct; conflicts of interest.

- A. No Town officer or employee shall have any interest, financial or otherwise, direct or indirect, or engage in any employment, business, transaction or professional activity, or incur any obligation of any nature, which is in substantial conflict with the proper discharge of the Town officer's or employee's duties in the public interest.
- B. No Town officer or employee shall have an interest in any contract with the Town when such Town officer or employee, whether individually or as a member of a board, has the power or duty to negotiate, prepare, authorize or approve such contract or payment thereunder, audit bills or claims under such contract or appoint an officer or employee who has any of the powers or duties set forth herein.
- C. No chief fiscal officer, treasurer or deputy or employee of the Town shall have an interest in a bank or trust company designated as a depository of funds of the municipality. This subsection does not prohibit ownership of up to 5% of the outstanding shares of such bank or trust company.
- D. No Town officer or employee shall accept employment or engage in any business or professional activity which will require such Town officer or employee to disclose confidential information gained by reason of such person's official position or authority. Town officers and employees and former Town officers and employees shall not disclose any confidential information acquired by them in the course of their official duties or use it to further personal interests.
- E. No Town officer or employee shall use or attempt to use such person's official position to secure unwarranted privileges or exemptions for such Town officer or employee or for any third party.
- F. No Town officer or employee shall engage in any transaction as representative or agent of the Town with any business entity in which such Town officer or employee has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of such person's official duties.
- G. Each Town officer or employee shall refrain from making personal investments in enterprises which such Town officer or employee has reason to believe may be directly involved in decisions to be made by such person or which will otherwise create substantial conflict between such person's duty in the public interest and such person's private interest.
- H. Each Town officer or employee shall disclose any interest of which such Town officer or employee is aware that such person has in any matters pending before any board of the Town.
- I. No Town officer or employee shall, directly or indirectly, solicit any gift or accept or receive any gift having a value of \$75 or more, whether in the form of money, services, loans, travel, entertainment, hospitality, things or promises, or in any other form under such circumstances in which it could reasonably be inferred that the gift

was intended to influence or could reasonably be expected to influence such Town officer or employee in the performance of official duties or was intended as a reward for any official action.

- J. A Town officer or employee shall promptly withdraw from any participation or action on any matter before the Town when acting on the matter, or failing to act on the matter, may financially benefit any of the following persons:
- (1) The Town officer or employee or spouse thereof;
 - (2) The Town officer's or employee's outside employer or business;
 - (3) Any person who has resided in the same dwelling unit as the Town officer or employee for more than 120 calendar days in the current or immediately preceding calendar year;
 - (4) A customer or client of the Town officer or employee;
 - (5) The Town officer's or employee's parent or other direct ancestor, sibling, or child or other direct descendant, or a spouse of any of the foregoing; or
 - (6) A person from whom the Town officer or employee has received election campaign contributions of more than \$1,000 in the aggregate during the past 12 months.
- K. No Town officer or employee shall use Town resources in furtherance of campaign activities, including, but not limited to, mass mailings, telephones, office supplies, postage, copying machines, computers or support staff.
- L. No Town officer or employee shall knowingly act contrary to a lawful resolution or motion duly adopted by the Town Board.

§ 16-7. Disclosure of interest.

Any Town officer or employee who has, will have or later acquires an interest in an actual or proposed contract with the Town or other matter pending before any board or agency thereof shall publicly disclose the nature and extent of such interest, in writing, to such board or agency and to the Town Board as soon as the Town officer or employee has knowledge of such actual or prospective interest.

§ 16-8. Penalties for offenses.

- A. **Disciplinary action.** Any Town officer or employee who engages in any action that violates any provision of this chapter may be warned or reprimanded or be subject to any other sanction authorized by law or collective bargaining agreement by the appointing authority or person or body authorized by law to impose such sanctions. A warning, reprimand or other authorized sanction may be imposed in addition to any other penalty contained in this chapter or in any other provision of law.
- B. **Damages.** A Town officer or employee who violates any provision of this chapter shall be liable in damages to the Town for any losses or increased costs incurred by the Town as a result of the violation. Such damages may be imposed in addition to any other penalty contained in any other provision of law or in this chapter, other

than a civil forfeiture pursuant to Subsection C of this section.

- C. Civil forfeiture. A Town officer or employee who intentionally or knowingly violates any provision of this chapter may be subject to a civil forfeiture to the Town of a sum equal to three times the value of any financial benefit the Town officer or employee received as a result of the conduct that constituted the violation. A civil forfeiture may be imposed in addition to any other penalty contained in any other provision of law or in this chapter, other than a civil fine pursuant to Subsection D or damages pursuant to Subsection B of this section.
- D. Violation. A Town officer or employee who intentionally or knowingly violates any provision of this chapter may be guilty of a violation and be subject to a maximum fine of \$250 for each such violation or a fifteen-day term of imprisonment, or both.
- E. Enforcement. With the exception of Subsection A above, the Town Board shall have exclusive jurisdiction to enforce the provisions of § 16-6 by commencing an action in a court of competent jurisdiction in furtherance of such enforcement.

ARTICLE III
Board of Ethics

§ 16-9. Board established; advisory opinions.

- A. There is hereby established a Board of Ethics consisting of at least five members, three of whom shall constitute a quorum, to be appointed by the Town Board, all of whom shall reside in the Town of New Lebanon and who shall serve without compensation for a term of five years. A majority of such members shall be persons other than Town officers or employees, but at least one member shall be a Town officer or employee of the Town of New Lebanon.
- B. Advisory board. Upon the written request of any Town officer or employee, the Board of Ethics may render a written advisory opinion with respect to the interpretation or application of this chapter or of Article 18 of the General Municipal Law of the State of New York. Any other person may similarly request an advisory opinion but only with respect to whether that person's own action might violate a provision of this chapter or Article 18. The opinions of the Board of Ethics shall be advisory, and in no event shall the identity of the Town officer or employee be disclosed. Such opinions may be on the advice of the Town Attorney or such attorney as may be authorized for the Board of Ethics by the Town Board. Advisory opinions and requests for advisory opinions shall be indexed and maintained on file by the Board of Ethics.

§ 16-10. Chairperson; appointment, powers, and duties.

- A. The Town Board shall have the authority to appoint a member of the Board of Ethics as the chairperson of the Board of Ethics. Such appointment shall be made in January of each calendar year or as soon thereafter as practicable, and shall be for a term ending on the 31st day of December of such calendar year.
- B. The chairperson of the Board of Ethics shall have the following powers and duties:
- (1) To call meetings of the Board of Ethics and to cause notice of such meetings to be distributed and posted as required under the New York State Open Meetings Law; provided, however, that, in addition to any other applicable requirements of law, notice of the time, date, and location of any such meeting called by the chairperson shall be transmitted at least two days in advance of such meeting to any member of the Board of Ethics who does not execute a written waiver of notice of such meeting before, during, or after the meeting;
 - (2) To prepare a written agenda for any meeting of the Board of Ethics, which written agenda may be modified or amended by majority vote of the Board of Ethics at a meeting thereof;
 - (3) To serve as the presiding officer at all meetings of the Board of Ethics;
 - (4) To receive and open all mail, correspondence, complaints, requests, and related materials directed to the Board of Ethics, provided, however, that, except with respect to any written complaint governed by § 16-12G, below, the chairperson shall transmit copies of such mail, correspondence, complaints, requests, and related materials to each member of the Board of

Ethics within five business days of receipt;

- (5) Without transmission to other members of the Board of Ethics and without any meeting or action on the part of the Board of Ethics, to immediately transmit to the Town Board for its review and action pursuant to § 16-12G any written complaint received by the chairperson or the Board of Ethics in which the complainant alleges that any person serving as a member of the Board of Ethics has committed conduct that is asserted by the complainant to be unethical, in violation of any provision of this chapter, or in violation of any other law, or otherwise requests any action or investigation in relation to a member of the Board of Ethics; and
- (6) To transmit all notices, letters, and copies of actions, reports, recommendations, advisory opinions, and decisions of the Board of Ethics to the persons or entities entitled thereto under this chapter.

§ 16-11. Jurisdiction; powers and duties.

- A. The Board of Ethics may only act with respect to Town officers or employees.
- B. The termination of a Town officer's or employee's term of office or employment with the Town shall not affect the jurisdiction of the Board of Ethics with respect to the requirements imposed on the Town officer or employee by this chapter.
- C. The Board of Ethics shall have the following powers and duties:
 - (1) To prescribe and promulgate rules and regulations governing its own internal organization and procedures in a manner consistent with this chapter;
 - (2) To review, index, maintain on file and respond to written complaints and to make notifications and conduct investigations pursuant to § 16-12 of this chapter;
 - (3) To render, index and maintain on file advisory opinions and/or other necessary records pursuant to § 16-9B of this chapter;
 - (4) To provide training and education to Town officers and employees;
 - (5) To prepare an annual report and recommend changes to this chapter pursuant to § 16-14A of this chapter; and
 - (6) To provide for public inspection of certain records pursuant to § 16-15 of this chapter.

§ 16-12. Complaints and investigations.

- A. Any person may file a written complaint alleging a violation of this chapter in accordance with the following requirements and procedures:
 - (1) All written complaints shall set forth the essential facts underlying the complaint, including the relevant date(s) of alleged conduct, facts and circumstances constituting the alleged violation, and the location(s) at which the alleged conduct occurred.

- (2) All written complaints shall describe the complainant's basis of knowledge of the facts alleged (e.g., personal observation, received information from third party, etc.).
 - (3) All written complaints shall provide the identity of all known or suspected witnesses to the alleged facts and alleged conduct.
 - (4) All written complaints shall include the mailing address, telephone number, and email address of the complainant.
 - (5) All written complaints shall be signed by the complainant.
 - (6) All written complaints shall be submitted in a sealed envelope prominently bearing the legend "ETHICS COMPLAINT" on the face thereof. Such written complaints shall be hand delivered to the Town Clerk's office or mailed to the Town of New Lebanon Ethics Board, PO Box 328, New Lebanon, New York, 12125 (or to such other address for the Board of Ethics as may be established from time to time and published by the Town of New Lebanon).
- B. In the event any person shall submit a written complaint under this chapter to the Town Clerk's office, the Town Clerk shall not open the sealed envelope, shall date-stamp the envelope on the date of receipt, and shall immediately notify the chairperson of the Board of Ethics of the receipt of such written complaint and shall provide same to the chairperson for processing. The Town Clerk shall maintain a record of all written complaints received, reflecting the date received, the date of notification to the chairperson of the Board of Ethics, and the date on which the written complaint was provided to the chairperson.
- C. Upon receipt of a written complaint by the chairperson of the Board of Ethics either from a complainant or from the Town Clerk's office, such chairperson shall be authorized to open and initially review the written complaint solely to determine whether such written complaint must be forwarded to the Town Board for processing under Subsection G, below. If the written complaint must be forwarded to the Town Board for processing under Subsection G, below, the chairperson shall immediately forward the written complaint to the Town Board for processing without further action by the Board of Ethics. In the event such written complaint is not required to be forwarded to the Town Board for processing under Subsection G, below, the chairperson of the Board of Ethics shall notify the remaining members of the Board of Ethics of the receipt of a written complaint, shall transmit a copy of the written complaint to each member of the Board of Ethics, and shall promptly call a meeting of the Board of Ethics to begin processing. The chairperson shall maintain a record of all written complaints received reflecting the date received, the date of forwarding to the Town Board for processing under Subsection G, below (if applicable), the transmission of the written complaint to the remaining members of the Board of Ethics (if applicable), and the date on which a meeting of the Board of Ethics was called to begin processing (if applicable).
- D. The complainant shall be notified in writing of the receipt of said written complaint by the chairperson of the Board of Ethics within 10 days thereof. In the event the written complaint was forwarded to the Town Board for processing under Subsection G, below, such notification shall specify that fact and the date on which it was forwarded to the Town Board.

- E. Upon receipt of a written complaint by any person alleging a violation of this chapter in accordance with Subsection A, above, or upon determining on its own initiative that a violation of this chapter may exist, the Board of Ethics shall have the power and duty to conduct any investigation necessary to carry out the provisions of this chapter. Prior to making any findings that a Town officer or employee has committed or is committing one or more violations of this chapter, the Board of Ethics shall provide such Town officer or employee with notice of the alleged violation(s) and an opportunity to be heard consistent with the requirements of procedural due process and applicable law. Nothing herein shall be construed as superseding any applicable provisions of any collective bargaining agreement.
- F. The Board of Ethics shall state, in writing, the disposition of every written complaint it receives and of every investigation it conducts and shall set forth the reasons for the disposition. All such statements and all written complaints shall be indexed and maintained on file by the Board of Ethics. The Town officer or employee who was under investigation and the complainant shall be notified of the disposition of any written complaint received within 30 days of such disposition. In the event the Board of Ethics finds, after investigation and hearing, that a Town officer or employee violated any provision of this chapter, a copy of the written determination of the Board of Ethics shall be transmitted to the Town Board and, if applicable, to the appointing authority or person or body authorized by law to impose discipline within 30 days of such determination.
- G. Nothing in this section shall be construed to permit the Board of Ethics to conduct an investigation of itself or of any of its members or staff. If a written complaint alleges that any person serving as a member of the Board of Ethics has committed conduct that is asserted by the complainant to be unethical, in violation of any provision of this chapter, or in violation of any other law, or otherwise requests any action or investigation in relation to a member of the Board of Ethics, the chairperson of the Board of Ethics shall immediately transmit to the Town Board a copy of the written complaint. In such instance, the Town Board shall have all of the powers and duties of the Board of Ethics as set forth in this section of this chapter.

§ 16-13. Recommendation of disciplinary action; judicial review.

- A. In its discretion, after a hearing providing for due process procedural mechanisms and subject to any applicable provisions of law and collective bargaining agreements, the Board of Ethics may include in its written determination its recommendation of appropriate disciplinary action pursuant to § 16-8 of this chapter.
- B. Judicial review. Any person aggrieved by a decision of the Board of Ethics or the Town Board may seek judicial review and relief pursuant to Article 78 of the Civil Practice Law and Rules of the State of New York.

§ 16-14. Annual reports; review of ethics laws.

- A. The Board of Ethics shall prepare and submit an annual report to the Town Board of the Town of New Lebanon, summarizing the activities of the Board. The report may recommend changes to the text or administration of this chapter.

- B. The Board of Ethics shall periodically review this chapter and the Board's rules, regulations and administrative procedures to determine whether they promote integrity, public confidence and participation in Town government and whether they set forth clear, enforceable, common sense standards of conduct.

§ 16-15. Public inspection of records; public access to meetings.

- A. The only records of the Board of Ethics which shall be available for public inspection are those whose disclosure is required by Article 6 of the Public Officers Law of the State of New York (Freedom of Information Law) or by some other state or federal law or regulation.
- B. No meeting or proceeding of the Board of Ethics concerning misconduct, nonfeasance or neglect in office by a Town officer or employee shall be open to the public, except upon the request of the officer or employee or as required by the provisions of Article 7 of the Public Officers Law (Open Meetings Law) or by state or federal law.

ARTICLE IV
Administration

§ 16-16. Distribution and posting of code; appropriations for Board of Ethics.

- A. Upon the adoption of this chapter, the Town Supervisor shall cause a copy thereof to be distributed to every Town officer or employee. Failure to distribute any such copy or failure of any Town officer or employee to receive such copy shall have no effect on the duty of compliance with this chapter, nor the enforcement of provisions hereof. The Town Supervisor shall further cause a copy of this chapter to be kept posted conspicuously in each public building under the jurisdiction of the Town. Failure to post this chapter shall have no effect on the duty of compliance herewith, nor the enforcement provisions hereof.
- B. The Town Board may appropriate monies from the general Town funds for the maintenance of and for personnel services to the Board of Ethics established hereunder, but such Board of Ethics may not commit the expenditure of Town monies except within the appropriations provided herein.

