

LOCAL LAW NO. 3 OF 2014

**TOWN BOARD
TOWN OF NEW CASTLE**

**PROPOSED LOCAL LAW AMENDING
CHAPTER 9
OF THE CODE OF THE TOWN OF NEW CASTLE**

A LOCAL LAW to amend Chapter 9 of the Code of the Town of New Castle concerning conflicts of interest of Town officials and employees

BE IT ENACTED by the Town Board of the Town of New Castle as follows:

Section 1. Chapter 9 of the Code of the Town of New Castle, entitled “Ethics, Code of” is hereby repealed in its entirety.

Section 2. Chapter 9 of the Code of the Town of New Castle, entitled “Ethics, Code of” is hereby adopted as follows:

§ 9-1. Purpose and applicability.

A. Purpose. It is the policy of the Town of New Castle and the purpose of this chapter to establish standards and guidelines for the ethical conduct of its officers and employees. It is also the purpose of this chapter to protect officials and employees from unwarranted accusations that impugn their integrity by distinguishing material conflicts of interest from those that are inconsequential, recognizing that for local government to attract and hold competent and professional public servants, public service must not require a complete divesting of all proprietary interests. In the event of any conflict or inconsistency between the provisions of this code and the provisions of Article 18 of the General Municipal Law, this code shall prevail, except that nothing in this code shall authorize conduct otherwise prohibited by Article 18 of the General Municipal Law.

B. Applicability. This Code of Ethics is enacted pursuant to § 806 of the General Municipal Law and § 10 of the Municipal Home Rule Law. Officers and employees of the Town must comply with the provisions of the Code of Ethics, as well as the conflict of interest standards prescribed by Article 18 of the General Municipal Law. This Code of Ethics

supplements the standards contained in Article 18, and is not intended to authorize any conduct prohibited by Article 18 of the General Municipal Law.

§ 9-2. Definitions.

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

EMPLOYEE

Any person that receives a salary or wage from the Town of New Castle.

FAMILY MEMBER

A parent, stepparent, sibling, stepsibling, spouse, child, stepchild, grandparent, household member, or domestic partner of a Town officer or employee, and individuals having any of these relationships to the spouse of the officer or employee.

INTEREST

A direct or indirect monetary, financial or material benefit, but does not include any benefit arising from the provision or receipt of any services generally available to the residents or taxpayers of the Town or an area of the Town, or a lawful class of such residents or taxpayers. A Town officer or employee is deemed to have an interest in any matter involving:

A. Any firm, partnership, association of which he or she, his or her spouse, or a member of his or her household, is an owner, partner, member, director, officer or employee; and

B. Any corporation of which any such person is a director, officer or employee, or directly or indirectly owns or controls more than 5% of the corporation's outstanding stock.

TOWN OFFICER OR EMPLOYEE

An officer, employee or member of any board, committee, commission, agency or department of the Town of New Castle.

OFFICER

A person serving as a paid or unpaid official of the Town of New Castle including, but not limited to, elected officers, members of the Town's governing board, any of its administrative boards (e.g., Planning Board, Zoning Board of Appeals), commissions, committees, agencies, department heads and others who serve in a similar capacity.

§ 9-3. Acting in the public interest; appearance of impropriety.

A. No Town officer or employee shall exercise or perform his or her official powers and duties on the basis of family or private business, nor create an appearance of impropriety by giving the impression that he or she will exercise or perform his or her official powers or duties on the basis of any consideration other than the best interests of the Town.

B. Town officers or employees shall treat all members of the public, whether a person, firm or corporation, or other organization, without special advantage in carrying out his or her official duties.

§ 9-4. Use of position for personal or private gain; use of Town property.

A. No Town officer or employee may use his or her position to secure personal or private gain for himself or herself, or for any other person or any organization. Personal or private gain does not include payment, benefit or opportunity that is customarily and legally provided to Town residents, taxpayers and the general public in the ordinary course of the Town's municipal operations.

B. No Town officer or employee shall cause the Town to expend more money and or Town resources than is reasonably necessary for transportation, meals or lodging in connection with official travel.

C. This section does not prohibit a Town officer or employee from:

(1) Voting to approve the Town's annual budget;

(2) Receiving lawful compensation for services as a Town officer or employee;

(3) Receiving payment or reimbursement for actual and necessary expenses reasonably incurred in the performance of official duties;

(4) Receiving payments on behalf of the Town of New Castle under a lawful municipal contract;

(5) Using Town personnel, vehicles, equipment, materials, supplies or property in connection with execution of their official duties; or

(6) Performing a ministerial function that does not require the exercise of discretion.

D. No officer or employee of the Town of New Castle may request or permit the use of Town-owned vehicles, equipment, materials, resources, property or facilities for a non-Town purpose, except when such use:

(1) Is available to the public generally and on the same terms as a member of the public,
or

(2) Is provided as a duly adopted Town policy for the use of the officer or employee in the conduct of official duties.

§ 9-5. Disclosure of interest.

- A. Except as otherwise provided by this section, every Town officer and employee shall disclose the nature of his or her interest that is known or should be known to him or her, or the interest of a family member known or should be known to him or her, in any matter coming before the Town of New Castle or any officer, administrative board, commission or other agency of the Town.
- B. For purposes of this section, a "matter coming before" an officer or employee of the Town means any decision, issue or question requiring the exercise of discretion by the individual officer or employee. A "matter coming before" the Town of New Castle, or any administrative board, commission or other agency or department of the Town means a local law, ordinance, resolution, motion or any other decision, issue or question requiring a vote, decision or determination of a body of Town officers.
- C. The disclosure required by this section shall be made when the Town officer or employee first acquires knowledge of the interest requiring disclosure. The disclosure shall be made in writing to the Town Clerk and to the Town officer or employee, administrative board, commission or other agency having the power or duty to act in relation to the matter in which the Town officer or employee or family member has the interest. The Town Clerk shall present the disclosure at the next scheduled meeting of the Town Board and shall summarize the substance of the disclosure on the record.

§ 9-6. Holding of investments in conflict with official duties.

- A. No Town officer or employee may have or acquire the following investments:
- (1) Personal investments that will be directly and materially affected by the exercise or performance of the person's official powers and duties; or
 - (2) Personal investments that would otherwise impair a reasonable person's independence of judgment in the exercise or performance of his or her official powers and duties.
- B. This section does not prohibit a Town officer or employee from acquiring any of the following assets:
- (1) Real property located within the Town;
 - (2) Stock in a publicly traded corporation; or
 - (3) Bonds or notes issued by the Town and acquired more than one year after the date on which the bonds or notes were originally issued.

§ 9-7. Private employment in conflict with official duties.

A. No Town officer or employee may accept employment or engage in any business or professional activity, or pursue any private endeavor, which:

(1) Impairs the person's independence of judgment in the exercise or performance of his or her official powers and duties;

(2) Is likely to require or be facilitated by the disclosure or use of confidential information gained by reason of serving as a Town officer or employee; or

(3) Requires representation of a person or organization other than the Town in connection with litigation, negotiations or any other matter to which the Town is a party.

B. No Town officer or employee may in a private capacity represent another person or organization before the Town of New Castle, or any officer, administrative board, commission or other agency of the Town.

C. This section does not prohibit a Town officer or employee from:

(1) Representing him or herself, or his or her spouse or minor children, before the Town of New Castle, or any officer, administrative board, commission or other agency of the Town, in connection with any personal matter that does not arise from or involve a business, commercial or professional activity; or

(2) Asserting a claim against the Town on his or her own behalf, or on behalf of his or her spouse or minor children, in connection with any personal matter that does not arise from or involve a business, commercial or professional activity.

§ 9-8. Recusal and abstention.

A. Except as otherwise required by law or as provided by this section, no Town officer or employee may participate in the discussion or vote on any matter, or exercise or perform any other official powers or duties in connection with any matter, when he or she has an interest in the matter and knows or should know that a family member has an interest in the matter.

B. In the event that Subsection A of this section prohibits a Town officer or employee from exercising or performing his or her official powers or duties:

- (1) If the person is an officer serving as a member of a body of Town officers, the power or duty shall be exercised or performed by the other members of the body.
- (2) If the person is an officer, and does not serve as a member of a body of Town officers, and has a deputy who is not prohibited from exercising or performing the power or duty, the deputy shall exercise or perform the power or duty.
- (3) If the person is an employee, he or she must refer the matter to his or her immediate supervisor, and the immediate supervisor shall designate another person to exercise or perform the power or duty that is not prohibited from doing so by Subsection A of this section.

§ 9-9. Interests in contracts.

- A. No Town officer or employee may have an interest in a contract that is prohibited by § 801 of the General Municipal Law.
- B. Every Town officer and employee shall disclose interests in contracts with the Town at the time and in the manner required by § 9-5 of this chapter.

§ 9-10. Nepotism.

- A. No Town officer or employee may participate in any decision whether to appoint, hire, promote, discipline or discharge a family member from any position at, for or within the Town of New Castle or an administrative board, commission or other agency of the Town.
- B. No Town officer or employee may directly supervise a family member in the performance of the family member's official powers or duties.

§ 9-11. Political solicitations and activities.

- A. No Town officer or employee shall directly or indirectly use his or her official authority to compel or induce another Town officer or employee to make or promise to make any political contribution, whether by gift of money, service or other thing of value.
- B. No Town officer or employee may act or decline to act in relation to appointing, hiring or promoting, discharging, disciplining, or in any manner changing the official rank, status or compensation of any Town officer or employee, or an applicant for a position as a Town officer or employee, on the basis of the giving or withholding or neglecting to make any contribution of money or service or any other valuable thing for any political purpose.

C. No Town employee shall engage in political campaign activities during their official Town of New Castle workday.

D. No Town officer or employee shall use Town resources for any political campaign or political activities.

E. No Town officer or employee shall hold any office in a political party or political organization.

F. No Town officer or employee may serve as a committeeperson of any political party or political organization.

G. Nothing contained herein shall prevent those Town officers and employees who, as of the effective date of this Code of Ethics, currently serve as committeepersons, or who currently hold an office in a political party or political organization, from continuing to do so, provided, they shall be prohibited from seeking additional or different political positions following expiration of their current term of office for such organization.

§ 9-12. Confidential information.

No Town officer or employee or former Town officer or employee who acquires confidential information in the course of exercising or performing his or her official powers or duties may disclose or use such information unless the disclosure or use is required or allowed by law or in the course of exercising or performing his or her official powers and duties. For purposes of this section, “confidential” shall mean any information which is prohibited from disclosure by law or privilege; information which is of a personal or financial nature concerning any Town officer or employee; and any information which, if disclosed, will compromise the interests of the Town of New Castle.

§ 9-13. Gifts.

A. Soliciting gifts. No Town officer or employee may use their position with the Town to directly or indirectly solicit any gift from any person, firm or organization.

B. Per gift. No Town officer or employee may accept or receive any gift, or multiple gifts, from the same donor within a continuous twelve-month period valued at \$75 or more when:

(1) It appears that the gift is intended to influence the officer or employee in the exercise or performance of his or her official powers or duties;

(2) The gift could reasonably be expected to influence the officer or employee in the exercise or performance of his or her official powers or duties; or

(3) The gift is intended as a reward for any official action on the part of the officer or employee.

C. Per year. The total value of all gifts accepted by a Town officer or employee during any continuous twelve-month period may not exceed \$75.

D. For purposes of this section, a "gift" includes anything of value, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form. The value of a gift is the gift's fair market value, determined by the retail cost of the item or a comparable item. The fair market value of a ticket entitling the holder to food, refreshments, entertainment, or any other benefit is the face value of the ticket, or the actual cost to the donor, whichever is greater. Determination of whether multiple gifts from a single donor exceed \$75 must be made by adding together the value of all gifts received from the donor by an officer or employee during the calendar year preceding the receipt of the most recent gift. A "gift" does not include a lawful campaign contribution.

E. This section does not apply to:

(1) Gifts made to the Town;

(2) Gifts from a person with a family or personal relationship with the officer or employee when the circumstances make it clear that it is that personal relationship, rather than the recipient's status as a Town officer or employee, that is the primary motivating factor for the gift;

(3) Gifts which are of *de minimis* value and customarily given on special occasions, such as marriage, illness, or retirement;

(4) Unsolicited advertising or promotional material of little intrinsic value, such as pens, pencils, notepads, and calendars;

(5) Awards and plaques having no resale value which are publicly presented in recognition of service as a Town officer or employee, or other service to the community; or

(6) Legal campaign and political contributions.

§ 9-14. Board of Ethics.

A. Membership.

- (1) The Board of Ethics shall consist of five (5) members appointed and approved by the Town Board.
- (2) The Board of Ethics in existence at the time of the enactment of this section is hereby dissolved.
- (3) Each member of the Board of Ethics shall serve for a term of three (3) years, except that two members of the initial Board of Ethics shall serve two-year terms.
- (4) The Board of Ethics shall select a chairperson from among its members for a term of two (2) years.
- (5) A member of the Board of Ethics may be removed from office by a minimum of four votes of the Town Board for failure to fulfill the duties of the office or for violation of this chapter. The Town Board must give such Board member written notice and an opportunity to reply.
- (6) Alternative members. Any member of Board of Ethics may, with approval of the Town Board, appoint such person as may be necessary for the performance of that Board member's official duties where that member is unable to serve due to conflict or health.

B. Qualification of Board members.

- (1) All members of the Board of Ethics must be residents of the Town.
- (2) The members of the Board of Ethics should be qualified by temperament and experience to carry out the duties and responsibilities of the Board.
- (3) No member of the Board of Ethics shall be a committeeperson or hold office in a partisan political organization or hold elective office in the Town of New Castle. A Board member may make campaign contributions and vote, but not otherwise participate in any Town of New Castle election or campaign.
- (4) Not more than three (3) members of the Board of Ethics may be members of the same political party.

(5) No officer or employee of the Town of New Castle is eligible to serve on the Board of Ethics.

C. Compensation. Members of the Board of Ethics shall serve without compensation, but may be reimbursed for reasonable and necessary expenses approved by the Town Board.

D. Powers and duties of the Board of Ethics.

(1) To request and receive, from any Town body or any Town official or employee, such assistance and information as will enable the Board of Ethics properly to carry out its functions and powers.

(2) To render written advisory opinions with respect to the interpretation and application of this chapter. Such opinions shall be rendered at the written request of the Town Board, the Town Attorney, or the Town official or employee whose conduct is in question. The Board of Ethics shall notify the Town Board whenever any request for an advisory opinion is received and furnish a copy of any advisory opinion which it shall render to the Town Board and the Town Attorney. The Board of Ethics shall keep a record of its proceedings and maintain a confidential indexed file of all advisory opinions.

(3) To prescribe forms for disclosures required under this chapter, and to distribute and make available to every town official and employee copies of all rules and regulations enacted by the Board of Ethics and all forms prescribed by the Board of Ethics.

(4) To receive legal assistance from the Town Attorney, who shall serve as counsel to the Board of Ethics. In the event that the Town Attorney has recused himself or herself from a particular matter due to a conflict of interest, then the Town Board shall provide the Board of Ethics with the services of substitute counsel at the request of the Board of Ethics or at the pleasure of the Town Board.

(5) To perform such other functions as may from time to time be requested by the Town Board.

§ 9-15. Penalties for Violations.

A. Any Town official or employee who shall willfully and knowingly violate any provision of this chapter shall, upon conviction thereof by a court of competent jurisdiction, be guilty of a violation and be subject to:

(1) A fine of not more than \$100 for the first offense and not more than \$250 for each subsequent offense;

(2) A civil penalty owed to the Town and equal to the amount of any profit or gain realized by such person from such violation;

(3) Suspension or removal from office or employment pursuant to the discretion of the Town Board; or

(4) Any combination thereof, as determined in the sole discretion of the Town Board.

B. If an ethics violation is committed in connection with any transaction or contract said transaction or contract shall be void and unenforceable in accordance with GML § 804.

§ 9-16. Posting and distribution.

A. This Code of Ethics shall be posted publicly and conspicuously in each public building under the jurisdiction of the Town. The Town also shall cause a copy of this Code of Ethics, including any amendments thereto, to be distributed to every person who is or becomes an officer and employee of the Town of New Castle.

B. The failure to post this Code of Ethics or any amendment thereto does not affect either the applicability or enforceability of the code or the amendment. The failure of a municipal officer or employee to receive a copy of this Code of Ethics or an amendment to the code does not affect either the applicability or enforceability of the code or amendment to the code.

Section 3. This local law shall take effect immediately upon filing with the Office of the Secretary of State.

Approved April 8, 2014