

Section 1. Legislation

The following shall be added as a new Chapter 34 to the Town Code.
Code of Ethics of the Town of Washington

WHEREAS, article 18 of the General Municipal Law prohibits the officers and employees of a municipality from having certain conflicts of interest, and

WHEREAS section 806 of the General Municipal Law requires the governing body of each county, city (other than the City of New York), town, village, school district and fire district to adopt a code of ethics that sets forth for the guidance of its officers and employees standards of conduct reasonably expected of them, and

WHEREAS section 806 of the General Municipal Law also authorizes the governing body of any other municipality to adopt such a code of ethics, and

WHEREAS, a code of ethics adopted by the governing body of a municipality must set forth standards of conduct for the guidance of the officers and employees of the municipality with respect to disclosure of interests in legislation before the local governing body, holding of investments in conflict with official duties, private employment in conflict with official duties, future employment, and such other standards as may be deemed advisable.

NOW, THEREFORE, be it resolved that the Town Board of the Town of Washington hereby amends and restates its code of ethics to read as follows:

Code of Ethics of the Town of Washington

Section 1. Purpose.

Officers and employees of the Town of Washington hold their positions to serve and benefit the public, and not for obtaining unwarranted personal or private gain in the exercise and performance of their official powers and duties. The Town Board recognizes that, in furtherance of this fundamental principle, there is a need for clear and reasonable standards of ethical conduct. This code of ethics establishes those standards by amending and restating the code of ethics previously adopted by the Town of Washington on June 14, 2012.

Section 2. Definitions.

(a) "Board" means the governing board of the Town of Washington and any Town of Washington administrative board (e.g., planning board, zoning board of appeals, board of assessment review, board of ethics, conservation advisory commission, comprehensive plan review committee), commission, or other agency or body comprised of two or more municipal officers or employees.

(b) "Code" or code of ethics means this code of ethics.

(c) "Confidential information" is defined in Section 17.

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(d) “Exercise of discretion” means any action or decision that requires the use of judgment. For example, awarding professional service contracts or voting to approve or deny applications for zoning variances require the exercise of discretion. As another example, the issuance of a hunting or fishing license does not require the exercise of discretion.

(e) “Interest” means a direct or indirect 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 municipality or an area of the municipality, or a lawful class of such residents or taxpayers. A municipal officer or employee is deemed to have an interest in any private organization when he or she, his or her spouse, domestic partner, or a member of his or her household, is an owner, partner, member, director, officer, employee, or directly or indirectly owns or controls more than 5% of the organization’s outstanding stock.

(f) “Municipality” means the Town of Washington. The word “municipal” refers to the municipality.

(g) “Municipal officer or employee” means a paid or unpaid officer or employee of the Town of Washington, including, but not limited to, the members of any elected or appointed municipal board.

(h) “Relative” means a spouse, domestic partner, parent, step-parent, sibling, step-sibling, sibling’s spouse, child, step-child, uncle, aunt, nephew, niece, first cousin, or household member of a municipal officer or employee, and individuals having any of these relationships to the spouse of the officer or employee.

(i) “Town” means Town of Washington.

(j) “Town Board” means the Town Board of the Town of Washington.

Section 3. Applicability.

This code of ethics applies to all municipal officers and employees and shall supersede any prior municipal code of ethics. The provisions of this code of ethics shall apply in addition to all applicable State and local laws relating to conflicts of interest and ethics including, but not limited to, article 18 of the General Municipal Law and all rules, regulations, policies, and procedures of the Town of Washington.

Section 4. Prohibition on use of municipal position for personal or private gain.

No municipal officer or employee shall use his or her municipal position or official powers and duties to secure a financial or material benefit for himself or herself, a relative, a customer or client, or any private organization in which he or she is deemed to have an interest.

Section 5. Disclosure of interest in legislation and any other matter requiring the exercise of discretion.

(a) Whenever a matter requiring the exercise of discretion comes before a municipal officer or employee, either individually or as a member of a board, and disposition of the matter could result in a direct or indirect financial or material benefit to himself or herself, a relative, a customer or client, or any private organization in which he or she is deemed to have an interest, the municipal officer or employee shall disclose in writing the nature of the interest and recuse himself or herself as required by section 6.

(b) The disclosure and recusal shall be made when the matter requiring disclosure and recusal first comes before the municipal officer or employee, or when the municipal officer or employee first acquires knowledge of the interest requiring disclosure, whichever is earlier.

(c) Disclosures made pursuant to this section 5 shall be made in writing on the form set forth as Schedule A hereto and shall be promptly filed with the board of ethics. In the case of a person serving in an elective office, the disclosures shall also be filed with the governing board of the municipality. In all other cases, the disclosure shall be filed with the person's supervisor or, if the person does not have a supervisor, the disclosure shall be filed with the municipal officer, employee, or board having the power to appoint to the person's position.

Section 6. Recusal.

(a) In addition to the disclosure requirements set forth in section 5, no municipal officer or employee may participate in any decision or take any official action with respect to any matter requiring the exercise of discretion, including discussing the matter and/or voting on it, when he or she knows or has reason to know that the action could confer a direct or indirect financial or material benefit on himself or herself, a relative, a customer or client, or any private organization in which he or she is deemed to have an interest. In the case of any such recusal by a member of the Town Board or other municipal board, such recusal shall be made publicly at a meeting of the municipal board and be included in the minutes of the meeting, but the specific reason for the recusal need not be disclosed at such meeting.

(b) In the event that this section 6 prohibits a municipal officer or employee from exercising or performing a power or duty:

(1) if the power or duty is vested in a municipal officer as a member of a board, then the power or duty shall be exercised or performed by the other members of the board; or

(2) if the power or duty that is vested in a municipal officer individually, then the power or duty shall be exercised or performed by his or her deputy or, if the officer does not have a deputy, the power or duty shall be performed by another person to whom the officer may lawfully delegate the function; or

(3) if the power or duty is vested in a municipal 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.

Section 7. Prohibition inapplicable; disclosure and recusal not required.

This code's prohibition on use of a municipal position (section 4), disclosure requirements (section 5), and requirements relating to recusal (section 6), shall not apply with respect to the adoption of the municipality's annual budget or any matter that does not require the exercise of discretion.

Section 8. Investments in conflict with official duties.

(a) No municipal officer or employee may acquire or retain the following investments:

(1) investments that can be reasonably expected to require more than sporadic recusal under section 6 of this code; or

(2) investments that would otherwise impair the 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 municipal officer or employee from acquiring or retaining any other investments, specifically including but not limited to the following assets:

(1) real property located within the municipality and exclusively used as his or her personal residence;

(2) less than five percent of the stock of a publicly traded corporation; or

(3) bonds or notes issued by the municipality and acquired more than one year after the date on which the bonds or notes were originally issued.

Section 9. Appearance of impropriety.

All municipal officers and employees should refrain from conduct that creates an appearance of impropriety, which means giving the reasonable impression that he or she will exercise or perform his or her official duties on the basis of family, private business, or social relationships, or any consideration other than the welfare of the Town of Washington.

Section 10. Private employment or services in conflict with official duties.

No municipal officer or employee, during his or her tenure as a municipal officer or employee, may engage in any private employment or other enterprise, including the rendition of any business, commercial, professional, or other types of services, when the employment or services:

(a) can be reasonably expected to require more than sporadic recusal pursuant to section 6 of this code;

(b) can be reasonably expected to require disclosure or use of confidential information (as defined in this code of ethics) gained by reason of serving as a municipal officer or employee;

(c) violates section 805-a(1)(c) or (d) of the General Municipal Law; or

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

Section 11. Future employment or services.

(a) No municipal officer or employee may ask for, pursue, or accept a private post-government employment opportunity with any person or organization that has a matter requiring the exercise of discretion pending before the municipal officer or employee, either individually or as a member of a board, while the matter is pending or within the six months following final disposition of the matter.

(b) No municipal officer or employee, for the two-year period after serving as a municipal officer or employee, may represent or render services to a private person or organization in connection with any matter involving the exercise of discretion before the municipal office, board, department, or comparable organizational unit for which he or she has served.

(c) No municipal officer or employee, at any time after serving as a municipal officer or employee, may represent or render services to a private person or organization in connection with any particular transaction in which he or she personally and substantially participated while serving as a municipal officer or employee.

Section 12. Personal representations and claims permitted.

This code shall not be construed as prohibiting a municipal officer or employee from:

(a) representing himself or herself, or his or her spouse or minor children before the municipality; or

(b) asserting a claim against the municipality on his or her own behalf, or on behalf of his or her spouse or minor children.

Section 13. Use of municipal resources.

(a) Municipal resources shall be used for lawful municipal purposes. Municipal resources include, but are not limited to, municipal personnel, and the municipality's money, real estate, facilities, vehicles, equipment, materials, supplies or other property.

(b) No municipal officer or employee may use or permit the use of municipal resources for personal or private purposes, but this provision shall not be construed as prohibiting:

- (1) any use of municipal resources authorized by law or written municipal policy;
 - (2) the use of municipal resources for personal or private purposes when provided to a municipal officer or employee as part of his or her compensation; or
 - (3) the occasional and incidental use during the business day of municipal telephones and computers for necessary personal matters such as family care and changes in work schedule.
- (c) No municipal officer or employee shall cause the municipality to spend more than is reasonably necessary for transportation, meals or lodging in connection with official travel.

Section 14. Interests in contracts and related disclosures.

- (a) No municipal officer or employee may have an interest in a contract with the Town of Washington that is prohibited by section 801 of the General Municipal Law.
- (b) Every municipal officer and employee shall disclose interests in contracts with the Town of Washington at the time and in the manner required by section 803 of the General Municipal Law.
- (c) Violations of this section 14 and related provisions of the General Municipal Law may result in nullification of the applicable contract and misdemeanor penalties, as provided by sections 804 and 805 of the General Municipal Law.

Section 15. Nepotism.

Except as otherwise required by law:

- (a) No municipal officer or employee, either individually or as a member of a board, may participate in any decision specifically to appoint, hire, promote, discipline, or discharge a relative for any position at, for or within the municipality or a municipal board.
- (b) No municipal officer or employee may supervise a relative in the performance of the relative's official powers or duties.

Section 16. Political solicitations.

- (a) No municipal officer or employee shall directly or indirectly compel or induce a subordinate municipal 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 municipal 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 municipal officer or employee, or an applicant for a position as a municipal 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.

Section 17. Confidential information.

No municipal 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 by law or in the course of exercising or performing his or her official powers and duties. For purposes of this code of ethics, confidential information means any nonpublic information acquired in the course of exercising or performing official duties that is not required by law to be disclosed to the public.

Section 18. Gifts.

(a) No municipal officer or employee shall solicit, accept or receive a gift in violation of section 805-a(1)(a) of the General Municipal Law as interpreted in this section.

(b) No municipal officer or employee may directly or indirectly solicit any gift.

(c) No municipal officer or employee may accept or receive any gift, or multiple gifts from the same donor, having an annual aggregate value of seventy-five dollars or more when:

(1) the gift reasonably appears to be 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.

(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 seventy-five dollars must be made by adding together the value of all gifts received from the donor by an officer or employee during the twelve-month period preceding the receipt of the most recent gift.

(e) (1) A gift to a municipal officer or employee is presumed to be intended to influence the exercise or performance of his or her official powers or duties when the gift is from a private person or organization that seeks municipal action involving the exercise of discretion by or with the participation of the officer or employee.

(2) A gift to a municipal officer or employee is presumed to be intended as a reward for official action when the gift is from a private person or organization that has obtained municipal action

involving the exercise of discretion by or with the participation of the officer or employee during the preceding twelve months.

(f) This section does not prohibit any other gift, including:

(1) gifts made to the municipality;

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

(3) gifts given on special occasions, such as marriage, illness, or retirement, which are modest, reasonable and customary;

(4) unsolicited advertising or promotional material of little intrinsic value, such as pens, pencils, note pads, and calendars;

(5) awards and plaques having a value of seventy-five dollars or less which are publicly presented in recognition of service as a municipal officer or employee, or other service to the community; or

(6) meals and refreshments provided when a municipal officer or employee is a speaker or participant at a job-related professional or educational conference or program and the meals and refreshments are made available to all participants.

Section 19. Cooperation and avoiding obstruction.

All municipal officers and employees have a duty to uphold the standards set forth in this code of ethics. Obstruction of, or failure to reasonably cooperate with, any inquiry or investigation by the board of ethics shall be a violation of this code of ethics.

Section 20. Penalties.

(a) Any municipal officer or employee who engages in any action that violates any provision of this code of ethics may be warned, reprimanded, suspended or removed from office or employment, or be subject to any other sanction authorized by law or collective bargaining agreement, by the Town Board or other appointing authority or person or body authorized by law to impose such sanctions. A warning, reprimand, suspension, removal, or other authorized sanction may be imposed in addition to any other penalty contained in this code of ethics or in any other provision of law. In its discretion, the board of ethics may make recommendations regarding the matter to the Town Board or other authority or person or body authorized by law to impose disciplinary action or refer the matter to the appropriate prosecutor.

b. Any municipal officer or employee who violates any provision of this code of ethics may be subject to a civil fine of up to \$500 for each violation. Such civil fine may be imposed by the

Town Board after a finding of a violation by the Town Board and shall be payable to the Town of Washington.

- c. Any resident, officer, or employee of the Town of Washington or the Town Board may initiate an action or special proceeding, as appropriate, in the court of appropriate jurisdiction for injunctive relief to enjoin a municipal officer or employee of the Town of Washington from violating this code of ethics or to compel an officer or employee of the Town of Washington to comply with the provisions of this code of ethics. In lieu of, or in addition to, injunctive relief, the action or special proceeding, as appropriate, may seek a declaratory judgment.

Section 21. Board of ethics.

- a. There is hereby established a board of ethics for the municipality. The board of ethics shall consist of five members, a majority of whom shall not be officers or employees of the municipality, but at least one of whom must be a municipal officer or employee. All members must be residents of the Town. The members of such board of ethics shall be appointed by the Town Board for three-year terms and receive no salary or compensation for their services as members of the board of ethics. Consecutive service on the board of ethics shall not exceed three full terms.
- b. No member of the board of ethics shall hold office in a political party or act as a lobbyist.
- c. When a vacancy occurs in the membership of the board of ethics, the vacancy shall, within 60 days, be filled for the unexpired portion of the term in the same manner as the original appointment. Any person appointed to fill a vacancy on the board of ethics shall meet the qualifications set forth in this section.
- d. A member of the board of ethics may be removed from office in the same manner in which he or she was appointed, after written notice and opportunity for reply. Grounds for removal shall be failure to meet the qualifications set forth in this section, substantial neglect of duty, gross misconduct in office, inability to discharge the powers or duties of office, or violation of this code of ethics.
- e. The board of ethics shall elect a chair from among its members. A majority of the board of ethics shall be required for such board to take any action. The chair or a majority of the board of ethics may call a meeting of such board.
- f. The Town attorney shall serve as counsel to the board of ethics, except in any matter where the board of ethics or such attorney determines that he or she is unable to serve due to a

conflict of interest or lack of subject matter expertise. In such event, the board of ethics may retain separate counsel of its choosing at Town expense.

Section 22. Board of ethics: jurisdiction, powers, and duties.

- a. The board of ethics may act only with respect to officers and employees of the Town of Washington. The termination of a municipal officer or employee's term of office or employment with the Town of Washington shall not affect the jurisdiction of the board of ethics with respect to the requirements imposed on him or her by this code of ethics while in office.
- b. The board of ethics shall possess, exercise, and enjoy all the rights, powers, and privileges necessary and proper to the administration of this code of ethics, including but not limited to the following powers and duties:
 1. To prescribe and promulgate rules and regulations governing its own internal organization and procedures, including the conduct of investigations and hearings, in a manner consistent with this code of ethics;
 2. To review and maintain disclosure statements filed with the board of ethics pursuant to section 5 and section 14;
 3. Make recommendations to the Town Board as provided in section 20;
 4. To review and dispose of complaints and to conduct related investigations and hearings pursuant to section 23; and
 5. To provide training and education to Town of Washington officers and employees on Article 18 of the General Municipal Law and this code of ethics, and to make information concerning Article 18 of the General Municipal Law and this code of ethics available to the public and to persons interested in doing business with the Town of Washington.
- c. The board of ethics shall render advisory opinions to the officers and employees of the Town of Washington with respect to article 18 of the General Municipal Law and this code of ethics. Such advisory opinions must be rendered pursuant to the written request of any such officer or employee under such rules and regulations as the board of ethics may prescribe.

- d. In addition, the board of ethics may make recommendations to the Town Board with respect to the drafting and adoption of a code of ethics, or amendments thereto. It is anticipated that the entire code of ethics shall be reviewed by the board of ethics for potential revisions at least once every five years. The board of ethics may also make other recommendations to the Town Board in support of the goals of this code of ethics.

Section 23. Complaints, investigations, and hearings.

- a. The board of ethics may accept from the general public, any of its own members, or any municipal officer or employee a complaint of an actual or potential conflict of interest or an actual or potential code of ethics violation involving any municipal officer or employee. Complaints must be made in writing. Complaints should remain confidential with the board of ethics to the extent permitted by law, but such complaints may nonetheless be disclosed if there has been a finding of a violation of this code of ethics. In addition, complaints may be disclosed to the Town Board and others who the board of ethics determines, in its discretion, have a need to know the disclosed information.
- b. Upon receipt of a complaint by any person alleging a violation of this code of ethics, or upon determining on its own initiative that a violation of this code of ethics is occurring or may have occurred, the board of ethics shall have the power and duty to conduct any investigation necessary to carry out the provisions of this code of ethics. In conducting any such investigation, the board of ethics may administer oaths or affirmations, subpoena witnesses, compel their attendance, and require the production of any books or records which it may deem relevant and material.
- c. 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. If the board of ethics receives a written complaint alleging that such board or any of its members has violated any provision of this code of ethics, or any other law, the board of ethics shall promptly transmit to the Town Board a copy of such complaint.

Section 24. Public records.

- 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 or by some other State or Federal law or regulation.
- b. No meeting or proceeding of the board of ethics concerning misconduct, non-feasance, or neglect in office by a Town of Washington 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 or by some other State or Federal law or regulation.

Section 25. Posting and distribution; annual certification.

(a) The Town Supervisor must promptly cause a copy of this code, a copy of any amendment to this code, and a copy of New York State General Municipal Law, Sections 800-809 to be posted publicly and conspicuously in each building under the municipality's control. The code must be posted within ten days following the date on which the code takes effect. An amendment to the code must be posted within ten days following the date on which the amendment takes effect.

(b) The Town Supervisor must promptly cause a copy of this code, including any amendments to the code, to be distributed to every person who is or becomes an officer and employee of the Town of Washington.

(c) Every municipal officer or employee who receives a copy of this code or an amendment to the code must, in writing, acknowledge such receipt and truthfully certify that to the best of his or her knowledge, he or she is in compliance with the code of ethics. In addition, once each calendar year, every municipal officer or employee shall truthfully certify in writing that to the best of his or her knowledge, he or she is in compliance with this code of ethics. Such acknowledgments and certifications must be filed with the Town Clerk who must maintain such records as public records.

(d) The failure to post this code or an amendment to the code 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, or to acknowledge receipt thereof in writing, does not affect either the applicability or enforceability of the code or amendment to the code.

Section 26. Effective date.

This code takes effect on the date of adoption by the Town Board.

SCHEDULE A

TOWN OF WASHINGTON CODE OF ETHICS DISCLOSURE FORM

Name:

Position with the Town of Washington:

Description of the matter:

Description of the conflict of interest:

Section 2. Authority

This local law is enacted by the Town Board of the Town of Washington pursuant to its authority to adopt local laws under the New York State Constitution Article IX and Municipal Home Rule Law §10.

Section 3. Effect

This local law shall take effect immediately upon filing with the New York State Secretary of State.