

# Ethics Code – Town of Bethlehem, NY

## Chapter 16. ETHICS, CODE OF

**[HISTORY: Adopted by the Town Board of the Town of Bethlehem 6-13-2012 by L.L. No. 2-2012.**

*Editor's Note: This local law also repealed former Ch. 16, Ethics, Code of, adopted 9-23-1970, as amended. Amendments noted where applicable.]*

### Article I. Intent; Definitions; Standards

#### § 16-1. Legislative declaration; purpose; Code of Ethics established.

A. Article 18 of the General Municipal Law prohibits the officers and employees of a municipality from having certain conflicts of interest. 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. Section 806 of the General Municipal Law also authorizes the governing body of any other municipality to adopt such a Code of Ethics.

B. The citizens of the Town of Bethlehem should expect that the Town's officers and employees behave honestly and ethically and that such officers and employees do not use their positions for personal gain.

C. This Code of Ethics is intended to provide all Town officers and employees, as well as the public, with the standards of ethical conduct that are intended to ensure that Town government functions in an ethical manner, and that the needs and interests of the public come before any private or political interests. It is intended to provide guidance and support to the Town's officers and employees, as well as to those who do business with the town or who wish to do so.

D. In furtherance of these fundamental principles, the Bethlehem Town Board establishes the following Code of Ethics.

#### § 16-2. Definitions.

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

#### **BOARD**

The Town Board and any other Town administrative board (e.g. Planning Board, Zoning Board of Appeals), commission or agency, but shall not include any ad hoc or temporary board, committee or body which is established to provide advisory services to the Town but with no power to commit the Town to any particular course of action.

#### **CODE**

This Code of Ethics.

## **CONFIDENTIAL INFORMATION**

Knowledge or information imparted or made available to a Town officer or employee while in the conduct of Town duties, which knowledge or information is not generally public.

## **DISCRETION and DISCRETIONARY**

Refers to those actions or decisions performed in a manner that allows for the exercise of judgment, as opposed to ministerial acts, which must be performed in a manner prescribed by law without the ability to exercise any independent judgment as to the propriety of the action.

## **EMPLOYEE**

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

## **INTEREST**

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, or a member of his or her household is an owner, partner, member, director, officer or employee, or directly or indirectly owns or controls more than 5% of the organization's outstanding stock.

## **OFFICE IN A POLITICAL PARTY**

The Chairman, Vice Chairman, Secretary or Treasurer, or any other elected or appointed officeholder of a political party, but shall not include committee members.

## **OFFICER**

Any paid or unpaid official of the Town of Bethlehem, including but not limited to, all elected officers, anyone required to file an oath of office pursuant to § 25 of the Town Law, and any member of a Town administrative board, commission, committee or agency, as well as any department head or other person serving in a similar or like capacity.

## **POLITICAL PARTY**

A party as defined in Election Law § 1-104(3).

## **RELATIVE**

A spouse, parent, stepparent, sibling, stepsibling, sibling's spouse, child, stepchild, 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.

§ 16-3. Applicability; supersession of prior provisions.

This Code of Ethics applies to the officers and employees of the Town of Bethlehem 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 Bethlehem.

#### § 16-4. Standards of conduct.

Every officer or employee of the Town of Bethlehem shall be subject to and abide by the following standards of conduct:

A. 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 knowingly secure a financial or material benefit for himself or herself, a relative, or any private organization in which he or she is deemed to have an interest.

B. Disclosure of interest in legislation and other matters.

(1) 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, 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.

(2) The disclosure shall be made when the matter requiring disclosure 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.

(3) In the case of a person serving in an elective office, the disclosure shall 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. In addition, in the case of a person serving on a municipal board, a copy of the disclosure shall be filed with the board. In addition, all disclosures shall be made to the Ethics Board, the Town Board and the Town Clerk.

C. Recusal and abstention.

(1) 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 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, or any private organization in which he or she is deemed to have an interest.

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

(a) 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

(b) If the power or duty 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

(c) 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.

D. Prohibition inapplicable; disclosure, recusal and abstention not required.

(1) This code's prohibition on use of a municipal position (§ **16-4A**), disclosure requirements (§ **16-4B**), and requirements relating to recusal and abstention (§ **16-4C**), shall not apply with respect to the following matters:

(a) Adoption of the municipality's annual budget;

(b) Any matter requiring the exercise of discretion that directly affects any of the following groups of people or a lawful class of such groups:

[1] All municipal officers or employees;

[2] All residents or taxpayers of the municipality or an area of the municipality; or

[3] The general public; or

(c) Any matter that does not require the exercise of discretion.

(2) Recusal and abstention shall not be required with respect to any matter:

(a) Which comes before a board when a majority of the board's total membership would otherwise be prohibited from acting by § **16-4C** of this code;

(b) Which comes before a municipal officer when the officer would be prohibited from acting by § **16-4C** of this code, and the matter cannot be lawfully delegated to another person.

E. Investments in conflict with official duties.

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

(a) Investments that can be reasonably expected to require more than sporadic recusal and abstention under § **16-4C** of this code; or

(b) Investments that would otherwise impair the person's independence of judgment in the exercise or performance of his or her official powers and duties.

(2) This section does not prohibit a municipal officer or employee from acquiring any other investments or the following assets:

(a) Real property located within the municipality and used as his or her personal residence;

(b) Less than 5% of the stock of a publicly traded corporation; or

(c) 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.

F. Outside employment 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 outside employment, including the rendition of any business, commercial, professional, government or other types of services, when the employment:

(1) Can be reasonably expected to require more than sporadic recusal and abstention pursuant to § 16-4C of this code;

(2) Can be reasonably expected to require disclosure or use of confidential information gained by reason of serving as a municipal officer or employee;

(3) Violates § 805-a(1)(c) or (d) of the General Municipal Law;

(4) 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.

G. Future employment.

(1) 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 30 days following final disposition of the matter.

(2) No municipal officer or employee, for the one-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 serves.

(3) 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.

H. Personal representations and claims permitted. This code shall not be construed as prohibiting a municipal officer or employee from:

(1) Representing himself or herself or his or her spouse or minor children before the municipality; or

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

I. Use of municipal resources.

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

(2) 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:

(a) Any use of municipal resources authorized by law or municipal policy;

(b) 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

(c) 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 or other such occasional and incidental uses of resources as permitted by written Town policy approved by the Town Board.

(3) 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.

J. Interests in contracts.

(1) No municipal officer or employee may have an interest in a contract that is prohibited by § 801 of the General Municipal Law.

(2) Every municipal officer and employee shall disclose interests in contracts with the municipality at the time and in the manner required by § 803 of the General Municipal Law.

K. Nepotism. Except as otherwise required by law:

(1) No municipal officer or employee, either individually or as a member of a board, may participate in any decision whether to appoint, hire, promote, discipline or discharge a relative for any position for or within the Town of Bethlehem.

(2) No municipal officer or employee may directly supervise a relative in the performance of the relative's official powers or duties.

(3) Nothing contained herein shall prevent those Town officers and Town employees who, as of the effective date of this Code of Ethics, currently serve the Town from continuing to do so. Those persons shall be grandfathered in. Additionally, for such grandfathered individuals, the performance review, job duties or assignments and awards of overtime are subject to annual review by the Director of Human Resources, and in the event that problems are identified, they may be referred to the Town Board.

(4) Whenever a known relative of a Town officer or employee would be approved for seasonal or other employment with the Town, the appointment will be forwarded to the Human Resources Department for final review to assure compliance with the Town's current hiring guidelines.

L. Political solicitations.

(1) No municipal officer or employee shall directly or indirectly use his or her official authority to compel or induce another municipal officer or employee to make or promise to make any political contribution, whether by gift of money, service or other thing of value.

(2) 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 current municipal officer or employee, or an applicant for a position as a municipal officer or employee, on the basis of the giving or withholding of, or neglecting to make, any contribution of money or service or any other valuable thing for any political purpose.

(3) No employee shall engage in political campaign activities during his or her assigned working hours.

(4) No Town officer or employee shall use Town resources for any political campaign or political activities.

M. 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.

N. Gifts.

(1) No municipal officer or employee shall solicit, accept or receive a gift of any value.

(2) This section does not prohibit accepting or receiving gifts which meet any of the following criteria:

(a) Gifts made to the municipality;

(b) 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;

(c) Gifts given on special occasions, including marriage, illness or retirement, which are modest, reasonable and customary;

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

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

(f) Meals and refreshments provided when a municipal officer or employee is a speaker or participant at a professional or educational conference, program or meeting related to his or her job or office, and the meals and refreshments are made available to all participants.

(g) Contributions to political candidates or parties.

§ 16-5. Posting; distribution; written acknowledgement; failure to post; employee orientation.

A. The Town Supervisor shall promptly cause a copy of this code, and a copy of any amendment to this code, to be posted publicly and conspicuously in each building under the municipality's control and on the Town website. The code shall be posted within 10 days following the date on which the code takes effect. An amendment to the code shall be posted within 10 days following the date on which the amendment takes effect.

B. The Town Supervisor shall 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 or employee of the Town of Bethlehem.

C. Every municipal officer or employee who receives a copy of this code or an amendment to the code shall acknowledge such receipt in writing. Such acknowledgments shall be filed with the Town Clerk, who must maintain such acknowledgments as a public record.

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.

E. Upon distribution of this Code of Ethics, each officer and employee shall be given an orientation to the code and opportunity to ask questions regarding its application. Further information and training will be provided to all officers and employees of the Town.

§ 16-6. Failure to comply.

Any municipal officer or employee who violates this code may be censured, fined or suspended or removed from office or employment in the manner provided by law.

## Article II. Ethics Board

§ 16-7. Membership; compensation.

A. Membership and qualifications.

(1) The Ethics Board shall consist of five residents, appointed by the Town Board, who are not officers or employees of the Town.

(2) Appointments shall be for terms of three years, provided that the initial appointments shall have three members appointed for three-year terms and two members appointed for two-year terms. All terms shall run through December 31 of the year in which the terms expire.

**[Amended 11-13-2013 by L.L. No. 4-2013]**

(3) No member of the Ethics Board shall hold office in a political party, including serving as a committee person.

(4) No more than two members of the Ethics Board may be members of the same political party.

(5) No person shall be removed from the Ethics Board except for cause.

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

**§ 16-8. Advisory opinions.**

A. The Ethics Board shall render advisory opinions only to officers and employees of the Town of Bethlehem with respect to Article 18 of the General Municipal Law and this Code of Ethics. Officers and employees of the municipality are encouraged to seek advisory opinions whenever they are uncertain whether their conduct may violate the Code of Ethics.

B. The Ethics Board will prepare an advisory opinion based on a thorough review of the facts and applicable law. The Board's opinion is to be based solely on the facts presented in the request or subsequently submitted in a written signed document. The opinion will be rendered in writing to the requester as expeditiously as is practicable, with special attention to the time requirements of a given case. An advisory opinion issued by the Ethics Board is binding on the requester upon the date of issuance unless overturned on appeal by the Town Board, and a failure to follow such opinion may be interpreted as a violation of the Code of Ethics. Requestors may appeal an advisory opinion from the Ethics Board to the Town Board by appealing in writing to the Town Board within 30 days of the date of the Ethics Board opinion. Submissions for advisory opinions and appeals shall be confidential, except as required by law.

**[Amended 11-13-2013 by L.L. No. 4-2013]**

C. An officer or employee of the municipality whose conduct or action is the subject of an advisory opinion will not be subject to penalties or sanctions by virtue of acting, or failing to act, due to a reasonable reliance on the opinion, unless material facts were omitted or misstated in the material submitted by the requester. These provisions shall also apply to any decisions rendered by the Town Board should an advisory opinion of the Ethics Board be appealed to and decided by the Town Board

**[Amended 11-13-2013 by L.L. No. 4-2013]**

D. The advisory opinion shall remain confidential to the extent permitted by law, except in the case where the person requesting the advisory opinion chooses to appeal the Ethics Board decision to the Town Board.

**[Amended 11-13-2013 by L.L. No. 4-2013]**

§ 16-9. Adoption of procedures; Chair; quorum; voting; confidentiality; annual report.

- A. The Ethics Board shall adopt its own procedures, consistent with state law and this code.
- B. Chair. Each year, the Ethics Board shall elect one member to serve as Chair for a one-year term. No person shall serve two consecutive terms as Chair.
- C. Quorum. Three members shall constitute a quorum of the Ethics Board.
- D. All actions of the Ethics Board shall require a majority of the members appointed.
- E. Confidentiality. Except as otherwise required by law, all records of the Ethics Board, including those of its investigations and deliberations, shall be confidential.
- F. The Ethics Board shall provide an annual report to the Town Board during the last quarter of each calendar year providing an overview of its activities, and which may also contain suggestions for improvement in the Town Code of Ethics, training, or any related issues.

**[Added 11-13-2013 by L.L. No. 4-2013]**

§ 16-10. Complaints.

A. Any person may file a complaint with the Ethics Board regarding conduct of a Town officer or employee that is or may violate this code, Article 18 of New York's General Municipal Law, or state law. The Ethics Board shall not consider or pass upon conduct occurring more than one year prior to the filing of the complaint. Additionally, the Ethics Board may by its own action initiate a complaint against an individual in instances where it has knowledge that such individual has received an advisory opinion from the Board and is acting in a manner that is not consistent with that opinion.

**[Amended 11-13-2013 by L.L. No. 4-2013]**

- B. A complaint shall be made to the Ethics Board Chair in writing, must be signed, and must describe the specific conduct alleged to be unethical and/or illegal and include all information relevant to the request, including the identities and contact information for third persons who may have, or be reasonably expected to have, information relevant to the complaint.
- C. No officer or employee may be penalized by the Town for submitting a complaint request to the Ethics Board unless the Ethics Board makes a specific finding that the complaint was submitted without adequate factual basis and in bad faith.
- D. Upon receipt of a complaint, the Chair shall convene the Ethics Board within one month. The Ethics Board may request that the Town Board provide it with legal counsel and with resources necessary to conduct an investigation.
- E. Town officials and employees shall provide cooperation and assistance to the Ethics Board as requested in the conduct of its business.

F. Except where the Ethics Board concludes upon its initial review that a complaint is clearly without merit and should be dismissed, every person who is the subject of a complaint shall be provided with a notice of the complaint and an opportunity to be heard on the substance of such complaint.

G. All officers and employees shall provide relevant financial information to the Ethics Board, upon request, in connection with a sworn complaint involving such individuals.

H. The Ethics Board shall require clear and convincing evidence before determining that a violation has occurred.

I. Any determination made by the Ethics Board regarding a complaint shall be provided to the Town Board, the requester, and the individual whose conduct was the subject of the complaint. Should the Ethics Board determine that past or present conduct is in violation of law or of this policy, it shall include with its determination proposed action by the Town Board or the appropriate supervisory authority.

J. The Town Board shall accept, modify or reject the recommendations of the Ethics Board in an open session within 60 days of their receipt, except in cases where the Ethics Board concludes upon its initial review that a complaint is clearly without merit and should be dismissed. Nothing herein shall be construed to limit the Town Board's ability to discuss the matter in executive session.