Town of Tonawanda, NY
Monday, April 1, 2019

Chapter 10. Ethics, Code of

§ 10-1. Statutory authority; purpose.

This chapter is adopted pursuant to the General Municipal Law of the State of New York, relating in part to conflicts of interest of municipal officers and employees, in order to establish standards of ethical conduct expected of public officers and employees of the Town of Tonawanda; to provide for effective administration of government and its services; to help ensure high standards of integrity and public service; to provide for annual financial disclosure by persons listed herein; and to establish a Board of Ethics.

§ 10-2. Definitions.

[Amended 4-25-2005 by L.L. No. 2-2005]
The terms used in this chapter, and unless otherwise expressly stated or unless the context otherwise requires, shall have the same meaning as those similar terms defined in §§ 800 and 810 of the General Municipal Law of the State of New York. In addition, the following terms shall be defined as indicated:

CANDIDATE
Any individual seeking election to a public office of the federal government, state, county, municipality, school district or political organization at an election.

CONTRIBUTION
Includes all loans and transfers of money or other things of value to or by any candidate, elected official or political organization and all pledges or other commitments or assumptions of liability to make any such transfer. Contributions shall be deemed to have been made upon the date when such commitment is made or liability assumed.

DEPENDENT
Any person claimed as a dependent for federal or state income tax purposes any time during the preceding calendar year.

INTEREST
A direct or indirect pecuniary or material benefit accruing to a Town officer or employee as the result of a contract with the Town. For the purposes of this chapter, a Town officer or employee shall be deemed to have an interest in the contract of his or her spouse and dependents,

except a contract of employment between the Town and such officer or employee, a firm, partnership or association of which such officer or employee is a member or employee, a corporation of which such officer or employee is an officer, director or employee and a corporation, any stock of which is owned or controlled directly or indirectly by such officer or employee.

POLITICAL ORGANIZATION

Any corporation, partnership or any other incorporated or unincorporated association which is organized to, or does, aid or promote the nomination, election or defeat of any candidate or candidates for federal, state, county, municipal or school board office. "Political organization" includes, but is not limited to, organizations otherwise defined as a "political committee," "joint candidates committee" and legislative leadership committee."

PROPERTY OF THE TOWN

Buildings, land vehicles, phones, fax machines, computers or other office equipment or supplies and other real or personal property owned, leased or controlled by the Town, except for public roads.

SOLICIT

To seek, by oral or written communication, a contribution, as same is defined herein.

TOWN

This Town and any officer, department, board, commission or agency thereof.

TOWN EMPLOYEE

Any officer or employee of the Town of Tonawanda, whether paid or unpaid, whether serving in a full-time, part-time or advisory capacity, but not including any judge, justice, officer or employee of the Unified Court System, or any person deemed to be a municipal officer or employee solely by reason of being a volunteer fireman or civil defense volunteer.

§ 10-3. Applicability.

This chapter shall be applicable to all Town of Tonawanda employees. The Town of Tonawanda Board of Ethics, created by this chapter, shall have jurisdiction over all Town employees, exclusive of those employed by the Village of Kenmore.

§ 10-4. Conflicts of interest.

Except as provided in this chapter:

A. No Town employee shall have an interest in any contract with the Town, when such Town employee, individually or as a member of a board, has the power or duty to:

(1) Negotiate, prepare, authorize or approve the contract or authorize or approve payment thereunder;

(2) Audit bills or claims under the contract; or

(3) Appoint a Town employee who has any of the powers or duties set forth above.

B. The Supervisor, Comptroller or his deputy or employee shall not have an interest in a bank or trust company designated as a depository, paying agent, registration agent or for investment of funds of the Town of Tonawanda. The provisions of this section shall in no event be construed to preclude the payment of lawful compensation and necessary expenses of any Town employee in one or more positions of public employment, the holding of which is not prohibited by law. No Town employee or former Town employee shall maintain, solicit or accept future or present employment in conflict in any manner whatsoever with the discharge of the duties and functions of that Town office or employment.

§ 10-5. Disclosure of interest.

A. Any Town employee who has, will have or later acquires an interest in any actual or proposed contract with the Town of Tonawanda shall publicly disclose the nature and extent of such interest in writing to the Town Board as soon as he or she has knowledge of such actual or prospective interest. Such written disclosure shall be made part of and set forth in the official record of the proceedings of the Town Board. Once disclosure has been made by a Town employee with respect to an interest in a contract with a particular person, firm, corporation or association, no further disclosures need be made by such Town employee with respect to additional contracts with the same party during the remainder of the fiscal year.

B. Notwithstanding the provisions of Subsection **A** of this section, disclosure shall not be required in the case of an interest in a contract described in § 802, Subdivision 2, of the General Municipal Law of the State of New York.

§ 10-6. Certain actions prohibited.

No Town employee shall:

A. 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, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form.

B. Disclose confidential information acquired in the course of official duties or use such information to further personal interests.

C. Receive or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before

any Town agency of which he or she is an officer, member or employee or over which he or she has jurisdiction or to which he or she has the power to appoint any member, officer or employee.

D. Receive or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any agency of the Town, whereby his or her compensation is to be dependent or contingent upon any action by such agency with respect to such matter, provided that this subsection shall not prohibit the fixing at any time of fees based upon the reasonable value of the services rendered.

§ 10-7. Disclosure required in certain applications.

Every application, petition or request submitted for a variance, amendment, change of zoning, approval of a plat, exemption from a plat or official map, license or permit, pursuant to the provisions of any ordinance, local law, rule or regulation constituting the zoning and planning regulations of the Town shall state the name, residence and the nature and extent of the interest of any Town employee, or of a municipality of which the Town is a part, in the person, partnership or association making such application, petition or request (hereinafter called the applicant) to the extent known to such applicant.

A. For the purpose of this subsection a Town employee shall be deemed to have an interest in the applicant when the Town employee, a spouse or their brothers, sisters, parents, children, grandchildren or the spouse of any of them:

(1) Is the applicant.

(2) Is an officer, director, partner or employee of the applicant.

(3) Legally or beneficially owns or controls stock of a corporate applicant or is a member of a partnership or association applicant.

(4) Is a party to an agreement with such an applicant, express or implied, whereby he or she may receive any payment or other benefit, whether or not for services rendered, dependent or contingent upon the favorable approval of such application, petition or request.

B. Ownership of less than 5% of the stock of a corporation whose stock is listed on the New York or American Stock Exchanges shall not constitute an interest for the purposes of this section.

§ 10-8. Filing with state required.

The Town Clerk of the Town of Tonawanda shall file in the office of the State Comptroller:

A. A copy of this Code of Ethics or any amendments thereto, within 30 days after the adoption of such code or amendment.

B. A statement that the Town of Tonawanda has established a Board of Ethics, in accordance with § 808 of the General Municipal Law of the State of New York, and the composition of such Board, within 30 days after the establishment of such Board.

§ 10-9. Posting of ethics laws required.

The Supervisor of the Town of Tonawanda shall cause a copy of the most recent Article 18 of the General Municipal Law of the State of New York, or any amendment thereto, to be kept posted in each public building under the jurisdiction of the Town of Tonawanda in places conspicuous to its Town employees. Along with such copy, the Supervisor shall post a copy of this chapter. Failure to post any such copy shall have no effect on the duty of compliance with any such Town laws, nor with the Town's enforcement of the provisions thereof.

§ 10-10. Board of Ethics.

[Amended 4-25-2005 by L.L. No. 2-2005]

A. There is established the Town of Tonawanda Board of Ethics (hereinafter referred to as "Board of Ethics"), and the Town Board may appropriate moneys for maintenance and personal services in connection therewith as allowed by law. The members of such Board of Ethics shall be appointed by and serve at the pleasure of the Supervisor of the Town of Tonawanda subject to the review and acceptance of the Town Board. The Board of Ethics shall consist of at least five members, a majority of whom shall not be otherwise officers or employees of the Town of Tonawanda or any adjoining municipality, and at least one of whom shall be an elected or appointed officer or employee of the Town of Tonawanda. All members shall be residents of the Town of Tonawanda, inclusive of the Village of Kenmore. At least one member shall be affiliated with a different political party from other members.

B. The members of the Board shall be appointed within 60 days of the establishment of the Board and no later than January 20 of each year thereafter. When a vacancy occurs in the membership of the Board of Ethics, it shall be filled for only the unexpired portion of the vacant term, in the same manner as the original appointment, no later than 30 days after the vacancy occurs.

C. The Board of Ethics shall render advisory opinions to Town employees with respect to Article 18 of the General Municipal Law of the State of New York, any code of ethics adopted within the Town of Tonawanda pursuant thereto, and this Code of Ethics. Such advisory opinions shall be rendered pursuant to the written request of any such Town employee under such rules and regulations as the Board may prescribe and shall

have the advice of counsel which shall be employed by the Board of Ethics.

D. The duties of the Board of Ethics shall extend to only the Town of Tonawanda and its agencies and shall not extend into any other municipality within the Town that has established its own Board of Ethics.

E. The Board of Ethics shall be the repository for completed annual statements of financial disclosure and shall notify the temporary or permanent commission on local government ethics, if either such commission is in existence, and, if not, shall file a statement with the Town Clerk of the Town of Tonawanda that it is the authorized repository for completed annual statements of financial disclosure and that, on account thereof, such completed statements will be filed with it and not with the Commission. Should any local law, ordinance or resolution hereafter be adopted which provides for the filing of such completed annual statements with the temporary state commission on local government ethics instead of with such Board of Ethics, such Board of Ethics shall notify the temporary state commission on local government ethics of that fact.

F. Pursuant to the General Municipal Law of the State of New York, the Board of Ethics is hereby conferred power to enforce the filing provisions of this chapter, including to promulgate rules and regulations of the same import as those promulgated by the state commission on local government ethics.

G. Each member of the Board of Ethics shall serve until his or her successor has been appointed. The term of office of each member of the Board shall be five years and shall expire on December 31 of the year of expiration; however, respective Board members first appointed shall serve for terms of office which shall expire on December 31 of the successive years following the year of appointment so that no two of the terms of office of the first appointed shall expire on the same December 31.

§ 10-11. Filing of form of financial disclosure.

A. The herein referenced annual statement, entitled "Annual Statement of Financial Disclosure," is designed to assure yearly financial disclosure by listed Town employees, including all elected local officials, of the items of information set forth therein.

B. Employees required to file; filing date.

(1) Persons occupying the following listed offices, employment title classifications and elected offices are required to complete and file annually the herein referenced Annual Statement of Financial Disclosure with the Board of Ethics:

(a) Town Board.

(b) Assessment Review Board.

(c) Commission for the Conservation of the Environment.

(d) Deferred Compensation Board.

(e) Planning Board.

(f) State Environmental Quality Review Board.

(g) Merit Award Board.

(h) Plumbing Board.

(i) Tonawanda Housing Authority.

(j) Library Board.

(k) Zoning Board of Appeals.

(l) Assessor.

(m) Chief of Police.

(n) Comptroller.

(o) Deputy Town Attorney.

(p) Director of Labor Relations.

(q) Receiver of Taxes.

(r) Superintendent of Highways.

(s) Code Enforcement Officer.
[Amended 3-26-2007 by L.L. No. 2-2007]

(t) Town Attorney.

(u) Town Engineer.

(v) Board of Ethics.

(w) Any department head or deputy department head not enumerated above.

(2) Such statement shall be filed on or before the 15th day of May first following enactment of this chapter with respect to the preceding calendar year, and annually thereafter.

C. The Annual Statement of Financial Disclosure shall be signed and filed with the Town Board of Ethics, which shall designate one of its members to receive such statements.

D. Exceptions with respect to complying with timely filing of disclosure statements due to justifiable cause or undue hardship may be made by the Board of Ethics pursuant to rules and regulations it shall prescribe

governing extensions, additional periods of time and impositions of time limits for such extensions.

E. The form of financial disclosure to be completed and filed by the persons subject to the filing requirement(s) of this chapter shall be established by Town Board resolution and kept by the Board of Ethics. Blank samples shall be made available for public inspection by the Board of Ethics. Amendments to the form may be made only upon recommendation of the majority of the Board of Ethics and Town Board resolution.

§ 10-11.1. Political activity.

[Added 4-25-2005 by L.L. No. 2-2005]
It is hereby found and determined that political contributions could have the appearance of a negative impact on government decision making; and that a conflict may arise between the business of political fundraising and the business of government in the Town, which may cause a distraction from the people's business. The most appropriate method to prevent this conflict and to ensure the integrity of government decisions is to prohibit political fundraising by the use of public property by Town employees. The paramount public interest in a clean and accountable government requires the prohibition of political fund raising on public property and/or by the use of public facilities by Town employees.

A. Solicitation of political contributions on public property is prohibited.

(1) No Town employee may solicit, commit to pay or receive payment of, or a commitment to pay any contribution for any candidate, elected official or political organization while in or on the property of the Town or utilizing the property of the Town.

(2) Exception to prohibition. The prohibition contained in § **10-11.1A(1)** shall not apply to Town facilities that are made available to individuals, groups or organizations, including political organizations, for private events. Such Town facilities are made available pursuant to Town policy on an equal, nondiscriminatory basis.

B. Prohibited forms of fundraising. Prohibited forms of fundraising shall include, but not be limited to:

(1) Soliciting or accepting contributions using Town telephones, fax machines or computers.

(2) Soliciting or accepting contributions using personal telephones while on the property of the Town.

(3) Soliciting or accepting contributions through the use of publicly owned computers or privately owned personal computers while on the property of the Town.

(4) Use of Town letterhead or stationary to solicit or accept contributions.

(5) Sending correspondence from Town buildings or by the use of Town services, equipment or postage.

(6) Face-to-face soliciting of a Town employee, individual or an owner or representative of a business entity while on the property of the Town.

(7) Directly or indirectly coercing, attempting to coerce or commanding a Town employee to pay, lend or contribute anything of value to a political party, or to a committee, organization, agency or person for political purposes.

(8) Use of automobiles owned or leased by the Town to accept or solicit contributions.

C. No Town employee in the course of employment shall provide the names and home addresses of any Town employee for purposes of solicitation of political contributions or election campaign assistance.

D. No Town employee shall require any Town employee to engage in any campaign activities related to the election of any candidate or candidates. No Town employee shall engage in any type of partisan political activity while on Town time or while the employee should be at work.

E. Whistleblower provision. It shall be unlawful for any employee, elected official or appointee to be dismissed, reprimanded, retaliated against or otherwise intimidated for reporting any prohibited conduct mandated by this chapter.

§ 10-11.2. Unacceptable activity.

[Added 4-25-2005 by L.L. No. 2-2005]
No Town employee, on behalf of himself or anyone else, shall attempt to intervene in the affairs or business of any Town department or office for personal or political gain.

§ 10-12. Penalties for offenses.

A. A reporting individual who knowingly and willfully violates any provision of this chapter or fails to file an Annual Statement of Financial Disclosure or who knowingly and willfully with intent to deceive makes a false statement or gives information which such individual knows to be false on such Statement of Financial Disclosure filed pursuant to this chapter shall be subject to a civil penalty in an amount not to exceed $10,000 and suspension or removal from office or employment as provided in the Public Officers Law, Article 3, § 36; the Civil Service Law, Article 5, § 75; or other applicable laws. Assessment of a civil penalty hereunder shall be made by the Board of Ethics. For a violation of this chapter, other than for conduct which constitutes a violation of § 73, Subdivision 12 of the Public Officers Law of the State of New York, the Board of Ethics may, in lieu of a civil penalty, refer a violation to the appropriate prosecutor and, upon

such conviction, but only after such referral, such violation shall be punishable as a class A misdemeanor. A civil penalty for false filing may not be imposed hereunder in the event a category of value or amount reported hereunder is incorrect unless such reported information is falsely understated.

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

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

D. Assessment of a civil penalty shall be final unless modified, suspended or vacated within 30 days of imposition and upon becoming final shall be subject to review at the instance of the affected reporting individual in a proceeding commenced against the appropriate body, pursuant to Article 78 of the Civil Practice Law and Rules of the State of New York.

§ 10-13. Dissemination.

[Added 4-25-2005 by L.L. No. 2-2005]
All Town officials, employees and appointees shall receive a copy of this chapter.