

Local Law #5 of the year 2004

A local law amending Chapter 17 of the Code of the Town of Rochester

§1 Chapter 17 of the Code of the Town of Rochester is repealed in its entirety and replaced with the following new Chapter 17.

ETHICS

Article I: Code of Ethics

17-1. Purpose and Intent

Pursuant to the provisions of Section 806 of the General Municipal Law, the Town Board of the Town of Rochester recognizes that there are rules of ethical conduct for public officers and employees which must be observed if a high degree of moral conduct is to be obtained and if public confidence is to be maintained in [our unit of] local government. It is the purpose of this article to promulgate these rules of ethical conduct for the officers and employees of the Town of Rochester, so that they may know the standards of conduct reasonably expected of them. These rules shall serve as a guide for official conduct of the officers and employees of the Town of Rochester. The rules of ethical conduct of this article as adopted shall not conflict with, but shall be in addition to, those rules promulgated in Article 18 of the General Municipal Law and any other general or special law relating to ethical conduct and interest in contracts of municipal officers and employees as may, from time to time, be promulgated by the State of New York.

17-2. Definitions

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

INTEREST - A pecuniary or other material benefit accruing to officers and employees, or to their relatives, as defined in Paragraph K of Section 17-3 of this article; or, where there is a material or pecuniary benefit accruing to: a firm, partnership or association of which such officers or employees are members or employees; a corporation of which such officers or employees are officers, directors or employees; a corporation any stock of which is accrued or controlled directly or indirectly by such officers or employees.

OFFICER or EMPLOYEE - An officer or employee of the Town of Rochester, whether paid or unpaid, including without limitation, all members of any administrative or advisory, council, board, or commission or other agency or department thereof. For purposes of this article, officers and employees shall not include any judge, justice, officer or employee of the court system; nor any volunteer firefighter or civil defense volunteer, except a Fire Chief or Assistant Fire Chief ; nor any member of an advisory board of the Town of Rochester if, but only if, the advisory board has no authority to implement its recommendations or to act on behalf of the Town or to restrict the authority of the Town to act. No entity established pursuant to the General Municipal Law of the State of new York shall be deemed an advisory board for purposes of this paragraph.

17-3. Standards of conduct.

Officers or employees of the Town of Rochester shall be subject to and abide by the following standards of conduct:

A. Recusal. Officers and employees shall promptly recuse themselves from acting on a matter before the Town, when acting on the matter, or failing to act on the matter, may benefit themselves or any of their relatives as defined in Paragraph K of Section 17-3 of this article, financially or otherwise, or give the reasonable appearance of a conflict of interest or impropriety. Whenever officers or employees are required to recuse themselves, they must refrain from further participation in the matter. Failure to recuse themselves may result in a preliminary finding of a violation of this Code.

B. Gifts. Officers and employees shall not, directly or indirectly, solicit any gift, or accept or receive any gift having a value of \$25 or more, whether in the form of money, services, loan, travel, entertainment, hospitality, material thing or promise or any other form under circumstances in which it could reasonably be inferred that the gift was intended to influence them or could reasonably be expected to influence them in the performance of their official duties or was intended as a reward for any official action on their part.

C. Confidential information. Officers and employees shall not disclose any confidential information acquired by them in the course of their official duties or use

such information to further anyone's private interests.

D. Representation before one's own agency. Officers and employees shall not receive or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any municipal agency of which they are officers, members or employees or of any municipal agency over which they have jurisdiction or to which they have the power to appoint any member, officer or employee.

E. Representation before any agency for a contingent fee. Officers and employees shall not 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 of Rochester, whereby their compensation is to be dependent or contingent upon any action by such agency with respect to such matter. This paragraph shall not prohibit the fixing at any time of fees based upon the reasonable value of the services rendered.

F. Disclosure of interest in legislation. All members of the Town Board and officers and employees of the Town of Rochester, whether paid or unpaid, who participates in the discussion or gives official opinion to the Town Board on any legislation before the Town Board shall publicly disclose on the official record the nature and extent of any direct or indirect financial or other private interest they have in such legislation or in any action of the Town Board in accordance with Section 803 of the General Municipal Law.

G. Investments in conflict with official duties. Officers and employees shall not invest or hold any investment directly or indirectly in any financial, business, commercial or other private transaction which creates or would create a conflict with their official duties. Officers and employees shall publicly disclose on the official record any and all such investments and divest themselves of any and all such investments prior to acceptance of public office or public employment or prior to any official action that may affect such investment.

H. Interest in contracts with the Town.

1. Prohibited interests. Officers and employees shall not hold an interest in a contract with the Town, or any interest in a bank or trust company, that

is prohibited by Section 801 of the General Municipal Law. Any contract willfully entered into by or with the Town in which there is an interest prohibited by that section shall be null, void, and wholly unenforceable, to the extent provided by Section 804 of the General Municipal Law.

2. Disclosure of interests. Officers and employees who have, will have, or may later acquire an interest in any actual or proposed contract with the Town shall publicly disclose the nature and extent of that interest in accordance with Section 17-5 of this article. The Town Clerk shall immediately file such disclosure with the Ethics Board.

3. Violations. Officers and employees who are found to have violated the provisions of this section shall be guilty of a misdemeanor, to the extent provided by Section 805 of the General Municipal Law.

I. Private employment. Officers and employees shall not engage in, solicit, negotiate for or promise to accept private employment or render services for private interests when such employment or service creates a conflict with or impairs the proper discharge of their official duties; and they shall not use the powers of their offices or the powers of their official duties to obtain outside employment.

J. Future employment. For a period of one year after termination of their term of office or employment with the Town, other than acting on behalf of themselves pursuant to Section 17-4 of this Code, no former officer or employee may appear before the Town, including on any boards and commissions on which the former officer or employee has represented the Town, in relation to any matter upon which they had discretionary power during their term of office or employment with the Town, unless requested to provide information by the Town Board.

K. Employment of relatives. Members of officers' or employees' immediate family may be considered for employment by the Town if the applicant possesses all of the qualifications for employment. An immediate family member may not be hired, however, if the employment would create either a direct or indirect supervisory/subordinate relationship with the family member; or create either an actual conflict of interest or the appearance of a conflict of interest. These criteria will also be considered when assigning, transferring or promoting an employee. As

used herein, "immediate family" includes any officer's or employee's spouse, partner or significant other, brother, sister, parents, children, step-children, father-in-law, mother-in-law, sister-in-law, brother-in-law, daughter-in-law, son-in-law, and any other member of the officer's or employee's household. Employees who marry or become members of the same household may continue employment as long as there is not a direct or indirect interest or the appearance of a conflict of interest. Should one of the above situations occur, the Town will attempt to find a suitable position with the Town to which one of the affected employees may be appointed. Such appointment must be in accordance with applicable state and local statutes, including Civil Service Law and related rules and regulations. If accommodations of this nature are not feasible, the employees will be permitted to determine which one of them will resign.

L. Discrimination. Town Board Members, officers and employees, or any services or other organizations chartered by or directly or indirectly sponsored or supported by the Town of Rochester shall not:

1. Permit, directly or indirectly, the use of any Town property, equipment or services by any person or persons, organizations, corporations, or any other group which directly or indirectly discriminates based upon creed, color, national origin, gender, sexual preference, veteran status, marital status, disability, or any other federal or state legally protected class; or
2. Allow the Town to knowingly have any financial or business dealing with any organization which discriminates as set forth above.

M. Use of public property. Officers and employees shall not request or permit the use of Town-owned vehicles, equipment, materials or property for personal convenience or profit except when such services are available to the public generally or are provided as municipal policy for the use of such officers and employees in the conduct of their official duties.

N. Political solicitation. Officers and employees shall not direct, request or authorize any other officers or employees, nor any subordinates of any officers or employees, to participate in an election campaign or contribute to a political committee.

17-4. Filing of claims.

Nothing herein shall be deemed to bar or prevent the timely filing by present or former officers or employees of any claim, account, demand or suit against the Town of Rochester or any agency thereof on behalf of themselves or any members of their families arising out of any personal injury or property damage or for any lawful benefit authorized or permitted by law.

17-5. Distribution of Code .

The Supervisor of the Town of Rochester shall cause a copy of this Code of Ethics to be distributed to every officer and employee of the Town within 15 days after the effective date of this article , or its amendment, or at such other times as the Supervisor deems necessary. All officers and employees elected or appointed thereafter shall be furnished a copy before entering upon the duties of their office or employment. Failure to distribute any such copy or failure of any officer or employee to receive such copy shall have no effect on the duty of compliance with such Code or the enforcement of provisions thereof.

17-6. Penalties.

In addition to any penalty contained in any other provision of law, any person who shall knowingly and intentionally violate any of the provisions of this Code may be fined, suspended or removed from office or employment, as the case may be, in the manner provided by law.

17-7. [Reserved]

Article II: Board of Ethics

17-8. Establishment; membership

A. There is hereby established a Board of Ethics consisting of three members to be appointed by a majority of the Town Board, who shall serve without

compensation and at the pleasure of the Town Board. A majority of such members shall be persons other than officers or employees of the Town of Rochester, except at least one member may be an elected or appointed officer or employee of the Town of Rochester.

B. Ethics Board members shall reside in the Town and shall not hold an office in any political organization. Members shall serve for a term of three years, except that as to the members first appointed, one shall serve until December 31 in the year 2005; one shall serve until the second December 31; and one shall serve until the third December 31. Consecutive service shall not exceed two full terms. When a vacancy occurs, it shall be filled within 60 days for the unexpired portion of the term. However, members shall serve until their successors have been appointed.

17-9. Powers and duties

A. The Board of Ethics shall have jurisdiction only with respect to officers and employees of the Town of Rochester. The Board shall render advisory opinions to the Town Board, officers and employees of the Town. Such advisory opinions shall be rendered pursuant to the written request of the Town Board and any such officer or employee under such rules and regulations as the Board may prescribe and shall have the advice of the Attorney for the Town.

B. The Board of Ethics may make recommendations to the Town Board with respect to the drafting and adoption of amendments to the Code of Ethics; prescribe its own rules and regulations governing its own internal organization and procedures in a manner consistent with this chapter; review and maintain on file lists of officers and employees and Annual Disclosure Statements; periodically review the laws governing the conduct of Town officers and employees and recommend changes to those laws. The Ethics Board shall, further, prepare and submit an annual report to the Town Board summarizing its activities and listing any recommended changes to the text or administration of this Code.

C. Public inspection of certain records. The Ethics Board shall make available for public inspection only those records 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. No meeting or proceeding of the Ethics Board concerning misconduct, non-feasance, or neglect in office by any officers or employees shall be

open to the public, except upon the request of the officers or employees or as required by the provisions of Article 7 of the Public Officers Law or by some other state or federal law or regulation.

D. The Board shall convene upon complaint of any individual who, having filed a written complaint with the Town of Rochester, alleges a violation of the Town of Rochester Code of Ethics by an officer or employee of the Town. This complaint must be signed by the complainant. The complaint shall be forwarded by the Town Supervisor to the Board of Ethics within five (5) business days. Upon convening, the Board of Ethics shall examine the complaint and may call individuals to testify relative to the complaint. The Board shall have access to any material held by the Town of Rochester government that the Board determines is relevant to the matter before the Board. All material requested by the Board shall be provided within five (5) business days. If the Board is not in receipt of the material within the specified time, it will notify the Town Board for further action. The Town Board will make this action as part of the next scheduled agenda. After reviewing all material and hearing all individuals concerned with the matter, the Board of Ethics shall render an advisory opinion. The Board shall not disclose the identity of any person who files a complaint.

E. In the event a member of the Board of Ethics is the subject of the complaint, that member shall remove him/herself from the Board of Ethics during consideration of the complaint and an alternate member shall be appointed by the Town Board.

F. If there is a finding of violation of the Code of Ethics, the Town Board shall take further action within the confines of power delegated to the Town Board pursuant to New York State law. If the determination of the Board of Ethics establishes that there is reason to believe that a crime may have been committed, then the Town Board, after reviewing the determination, shall forward the determination to the Ulster County District Attorney's office for any and all further action.

G. The Ethics Board shall monitor officers' and employees' compliance with decisions and recommendations made by the Ethics Board.

17-9. Appropriations

The Town Board may allocate funds for support staff, maintenance and personal services required in connection with the activities of the Board of Ethics.

17-10. Proceedings

A. If a written complaint pursuant to this article shall be submitted to the Town Board pursuant to Section 17-8 of this Code, the Ethics Board shall notify the reporting person in writing, state the failure to file or detail the deficiency, provide the person with fifteen (15) days to cure the deficiency, and advise the person of the penalties for failure to comply with the reporting requirements, pursuant to this section. This proceeding shall be confidential until and unless the Ethics Board makes a finding to the Town Board that a violation has occurred.

B. If the Ethics Board makes a reasonable cause finding that a violation of this Local Law has occurred, or if after any grace period granted by the Ethics Board such violation remains uncured, the Ethics Board shall send a notice of reasonable cause to (a) the reported/applicable person, (b) the complainant, if any, and (c) the Town Supervisor and the Town Board.

C. If the Ethics Board makes a preliminary finding of reasonable cause that a violation of this Local Law has occurred, the Board shall (a) notify in writing the affected person as to the possible or alleged violation; (b) afford the affected person an opportunity to submit in writing a response setting forth such information as said affected person deems relevant to the activities cited by the Board; and (c) upon written request, afford the affected person a hearing wherein the said person may provide either a written or oral response setting forth such information as the person deems necessary or appropriate in response to the preliminary findings of the Board.

D. Hearing procedure and representation. All hearings required to be conducted pursuant to this section shall be conducted to the maximum extent practicable in accordance with the provisions of Article 3 of the State of New York Administrative Procedure Act (Chapter 82 of the Consolidated Laws of the State of New York). Any person compelled to appear or who voluntarily appears before the Ethics Board shall be accorded the right to be accompanied, represented by, and/or advised by counsel.

E. Disciplinary Action. In its discretion, after a hearing pursuant to this section and a finding of reasonable cause that a violation of this section has occurred, or that a violation has not been cured after a grace period, the Ethics Board may recommend disciplinary actions to the Town Board which is authorized to impose such sanctions. Sanctions may include a warning, reprimand, or suspension or removal from office or employment, or any other sanction authorized by law or collective bargaining agreements.

F. Waivers. The Ethics Board may, in its discretion, grant waivers to the disclosure requirements promulgated by this section, and shall index and maintain on file applications, decisions, and other records and proceedings relating to such waivers. Waivers shall be granted upon written application and proof of compelling need by the applicant, and no waiver shall permit conduct otherwise prohibited by Article 18 of the General Municipal Law of the State of New York. Waivers shall be in writing and shall state the reasons for granting the waiver, and the Ethics Board shall make all waivers part of the public record.

17-11. Judicial Review.

Any person aggrieved by a decision of the Ethics Board may seek judicial review and relief pursuant to Article 78 of the Civil Practice Law and Rules of the State of New York.

17-12. Miscellaneous Provisions.

A. Wherever the requirements of this article are inconsistent with the provisions of Section 808 of the General Municipal Law, the more restrictive provision, or those imposing higher standards, shall govern.

B. If any provision of this article is held by a court of competent jurisdiction to be invalid, that decision shall not affect the validity and effectiveness of the remaining provisions of this article.

C. This Local Law shall supercede and repeal the existing Chapter 17 of the year 1970 as amended.

§2 Effective Date. This Local Law shall take effect immediately upon filing in the

Office of the Secretary of State in compliance with all applicable provisions of law.