

TOWN OF HALFMOON

Local Law No. 1-2013

A Local Law relating to a code of ethics and a Board of Ethics for the Town of Halfmoon superseding and replacing Local Law No. 2-1970.

Be it enacted by the Town Board of the Town of Halfmoon as follows:

Intent

The Town Board of the Town of Halfmoon recognizes the importance of establishing a minimum standard of conduct for the employees and appointed/elected officials. Employees and appointed/elected officials of the Town of Halfmoon 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 of Halfmoon recognizes that, in furtherance of this fundamental principal, there is a need for clear and reasonable standards of ethical conduct. At the same time, it is recognized that public service cannot require a complete divesting of all proprietary interest nor impose intrusive disclosure requirements if the town government is to attract and retain competent administrators and employees. It is the purpose of this Local Law to supplement and implement the provisions of Article 18 of the General Municipal Law of the State of New York by establishing standards of conduct for the town's officials, officers, appointees and employees.

The standards, prohibited acts and procedures established herein are in addition to any prohibited acts, conflicts of interest provisions or procedures prescribed by any statutes of the State of New York, through common law, advisory opinions and Executive Orders to the extent that the same are more severe in their application to this Local Law.

Definitions

When used in this chapter and unless otherwise expressly stated, the following terms shall have the meanings indicated:

ADVISORY OPINIONS – The Committee may accept and consider written requests from officials, employees, appointees or volunteers for advisory opinions regarding conflicts of interest or the appearance thereof. Such advisory opinions shall be deemed to be in the nature of a personnel matter and shall remain confidential except as provided for herein.

BUSINESS DEALING

- A. Having or providing any contract, service or benefit to or for the town.
- B. Buying, selling, renting, leasing or otherwise acquiring from or dispensing to the town any goods, services or property.
- C. Applying for, petitioning, requesting or obtaining any approval, grant, license, permit or other privilege from the town government that involve a commercial venture. This shall not apply to applications involving an individual's residence.

CONFIDENTIAL INFORMATION ACQUIRED IN THE COURSE OF HIS OR HER OFFICIAL DUTIES — 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 and which knowledge or information is not available through a freedom of information request of the

town.

FAMILY MEMBER — A spouse, child, brother, sister or dependent or domestic partner.

MINISTERIAL ACT — An action performed in a prescribed manner imposed by law without the exercise of judgment or discretion as to the propriety of the action.

PERSON — Includes natural persons, corporations, partnerships, unincorporated associations and all other entities.

RELATED PERSON

- A. A family member.
- B. Any partnership or unincorporated association of which the town officer or employee is a member or employee or in which he or she has a proprietary interest.
- C. Any corporation of which the town officer or employee is an officer, director or employee or of which he or she legally or beneficially owns or controls more than 5% of the outstanding stock.
- D. Any person from whom the town officer or employee or his or her spouse has received within the previous twelve-month period a pecuniary or material benefit having an aggregate value greater than \$5,000.

SOLICIT — To make a specific request of a person not otherwise disposed to be a recipient of such request.

TOWN — The Town of Halfmoon governmental and administrative operations, including officials, officers and employees of the Town of Halfmoon who act under the auspices of the Town of Halfmoon or on its behalf including Board members, commissions, districts or other agency, department or unit of the government of the Town of Halfmoon.

TOWN CLERK — The Clerk of the Town of Halfmoon pursuant to § 30 of the New York State Town Law.

TOWN OFFICER OR EMPLOYEE — Any officer or employee of the town including town officials, whether paid or unpaid. No person shall be deemed to be a "town officer or employee" solely by reason of being a volunteer firefighter or civil defense volunteer.

TOWN OFFICIAL

- A. The Town Supervisor, County Supervisor, Deputy Town Supervisor, Town Superintendent of Highways, Town Clerk, Collector and Assessor of Taxes, and Town Attorney.
- B. Any person designated by New York State Town Law or the Town Code of the Town of Halfmoon or by town resolution as the head of a department or bureau of the town.
- C. Any person who has the authority to approve, authorize or audit any grant, permit, license, application or other privilege or any purchase, sale, rental or lease of goods, services or property on behalf of the town.
- D. Any elected or appointed member of the Town Board, Planning Board, Zoning Board of Appeals, Town Commissions, Town Committees and any other Town Board, commission or committee hereinafter created, the authority of which includes approval, authorization or audit of any grant, application or other privilege or of any purchase, sale, rental or lease of goods, services or property on behalf of the town, but "town official" does not include a

Judge, Justice, officer or employee of the unified court system, but does include those personnel employed by the Town of Halfmoon who work in the Court Offices. Individuals who are members of an ad hoc or temporary board, committee or body not set forth otherwise hereinabove and which is designated by the Town Board to provide advisory services to the town are not "town officials".

VENDOR — Any person or entity that sells or provides to the town any property, goods or services, whether on a regular basis or pursuant to periodic agreement, and does not include a town officer or employee.

Prohibited activities

No town officer or employee shall:

- (1) Directly or indirectly, solicit any gift or accept or receive money or any gift or gifts having a cumulative value of \$75 or more over the course of one year, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part, including any financial transaction on terms not available to the general public, except professional fees or salaries for services rendered from any persons, other than a spouse, who, to the recipient's knowledge, is considering, has pending or within the previous 12 months has had any business dealings with the town that requires any negotiation, approval, recommendation, authorization, audit or other action, other than ministerial action, by the town officer or employee, either individually or as a member of any board, commission, committee or department. For purposes of this Subsection A(1), a campaign contribution shall not be deemed a gift nor shall attendance at events that are attended in the course of official duties.
- (2) Act as attorney, agent, broker, employee, consultant or representative for any person in connection with any business dealing that person has with the town.
- (3) Appear as attorney, agent, broker, employee, consultant or representative against the interest of the town in any matter in which the town is a party.
- (4) Take or refrain from taking any action or agree to take or refrain from taking any action or induce or attempt to induce any other town officer or employee to take or refrain from taking any action on any matter before the town in order to obtain a pecuniary or material benefit for himself or herself or a related person.
- (5) Appear before the town, except on behalf of the town or on his or her own behalf. This Subsection A(5) shall not prohibit any town officer or employee from appearing without compensation before any town agency, board, committee, commission or department solely on behalf of his or her constituents or in connection with his or her official duties.
- (6) Except as compelled by law, disclose any confidential information acquired in the course of his or her official duties or use any confidential information acquired in the course of his or her official duties to advance the financial or other private interest of himself or herself or any other person.
- (7) Knowingly accept employment to commence on or after termination of his/her town employment which will require disclosure of confidential information gained by reason of their official position or authority.
- (8) During his or her term of office or employment with the town, solicit, negotiate for or accept any employment from which he or she would be disqualified under Subsection A(10) of this section.

- (9) Accept other employment which will impair their independence of judgment in the exercise of their official duties or require them to disclose confidential information which may be gained through employment with the Town.
 - (10) Shall use or attempt to use their official position to secure unwarranted privileges or exemptions for himself/herself or others.
 - (11) No Town Board Member shall hold the Chairman, Vice Chairman, Secretary or Treasurer or any other elected or appointed office holder of a political party organization, and shall not include committee members of either a political party or a political organization who are not otherwise officers thereof.
- B. No partnership or unincorporated association or corporation of which a town official is a member, employee or agent or in which he or she has a proprietary interest nor any corporation of which he or she is an officer or director or of which he or she legally or beneficially owns or controls more than 5% of the outstanding stock shall appear before the town on behalf of any person other than the town or itself.
 - C. Nothing in this section shall be construed to prohibit a town officer or employee or any other person from receiving a town service or benefit or using a town facility which is generally available to residents or a class of residents in the town.
 - D. Nothing in this chapter shall be construed to prohibit any public officer listed in § 11 of the Domestic Relations Law from accepting any gift or benefit having a value of \$100 or less for the solemnization of a marriage by that public officer at a place other than the town officer's normal place of business or at a time other than the officer's normal hours of business.
 - E. Nothing in this section shall be construed to prohibit a town officer or employee from performing any ministerial act.
 - F. Any contract entered into by or with the town, which contract results in or from a violation of any provision of this chapter, shall be null and void and unenforceable, unless the town has obtained a waiver of that provision from the State of New York.
 - G. A person who knowingly violates any provision of this section shall be guilty of a violation.

Transactional disclosure

- A. Whenever a town officer or employee is requested or required to take any action on a matter before the town and, to his or her knowledge, the performance of that action would provide a pecuniary or material benefit either to the town officer or employee or to any related person, the town officer or employee shall not participate in any manner whatsoever in that matter. The town officer or employee shall file promptly with his or her immediate superior, if any, and with the Town Clerk a statement disclosing the nature and extent of that interest.
- B. Nothing in this section shall be construed to prohibit a town officer or employee from performing any ministerial act or to require a town officer or employee to file a disclosure statement pursuant to Subsection A prior to performing any ministerial act.
- C. Nothing in this section shall be construed to prohibit a town officer or employee from taking any action that would otherwise be prohibited by Subsection A if this action has general application to all residents or class of residents of the town.
- D. Any person who knowingly violates this section shall be guilty of a violation.

Annual disclosure

- A. The following Town Officials shall be required to file with the Town Clerk a financial disclosure statement within 30 days after taking office and no later than April 30 of each year thereafter: Members of the Town Board, Members of the Planning Board, Members of the Zoning Board, Assessor, Highway Superintendent, Town Attorney, Town Clerk, Department Heads/Managers, and Members of the Board of Ethics. within 30 days after any substantial change in the information, the official shall file an amendment to the statement indicating the change.
- B. Matters to be disclosed by all town officials on the disclosure forms shall include:
 - (1) The location of any real property within the town in which the town official or spouse has an ownership or other financial interest.
 - (2) The name of any partnership, unincorporated association or other unincorporated business of which the town official or spouse is an officer, employee or partner or in which the town official or spouse has a proprietary interest, and the spouse's position, if any, with the partnership, association or business, if any such entity has engaged within the past 12 months or which is anticipated to have any business dealings with the town.
 - (3) The name of any corporation of which the town official or spouse is an officer, director or employee or of which he or she or his or her spouse or of which the town official or spouse legally or beneficially owns or controls more than 5% of the outstanding stock, and any such entity that he or she has engaged within the past 12 months or which he or she is anticipated to have any business dealings with the town, and the town official's and spouse's position, if any, with the corporation.
 - (4) The name of any persons from whom the town official or his or her spouse has derived during the previous calendar year and any income whereby such income was derived from business dealings with the town.
- C. A person who knowingly violates any provision of this section shall be guilty of a violation.

Maintenance of disclosure statements

Transactional disclosure statements filed pursuant to this Local Law and financial disclosure statements filed pursuant to this Local Law shall be public records and shall be indexed and maintained on file in an appropriate manner by the Town Clerk. The Town Clerk shall promptly transmit a copy of all statements to the town's Ethics Board. The Town Clerk shall retain disclosure statements in his or her files for not less than seven years from the date of filing.

List of officials; verification of filing

- A. On or before March 10 of each year, the Town Supervisor shall cause to be filed with the Town Clerk and with the Town Ethics Board a list of the names and offices or positions of all town officials and notify all town officials of the financial disclosure requirements of this Local Law.
- B. On or before May 15 of each year, the Town Supervisor shall verify that every town official has filed his or her financial disclosure statement.
- C. Failure of the Town Supervisor to comply with this section shall not relieve any town official of his or her duty to file an annual disclosure statement.

Disclosure by applicants

A. Information to be included.

- (1) Any person who submits to the town a written application, petition or other request or a written bid or submission or at the time of retaining shall include therein at said time the name of any town officer or employee who, to the applicant's knowledge, has an interest in the submission and is required, either individually or as a member of any board, committee or department, to negotiate, approve, recommend, authorize, audit or take any other action, other than a ministerial act, on the submission.
- (2) The applicant also shall identify in the submission the nature of the interest. This section shall apply only to those applications which require approval by the Planning Board, Town Board and/or Zoning Board of Appeals.

B. For the purpose of this section, a town officer or employee shall be deemed to have an interest in the submission or in the applicant when the town officer or employee or his or her spouse:

- (1) Is the applicant.
- (2) Is a family member of the applicant.
- (3) Is an officer, director, partner, member or employee of the applicant.
- (4) Legally or beneficially owns or controls more than 5% of the outstanding stock of the applicant.
- (5) Will receive, pursuant to an agreement between the applicant and any person, a pecuniary or material benefit if the town's disposition of the submission is favorable to the applicant.

Training

The Town Ethics Board shall provide bi-annual training for town employees and elected/appointed officials. The Ethics Board may utilize whomever they deem appropriate to assist them in providing the training.

Inducement of offenses

Any person, whether or not a town officer or employee, who intentionally induces any town officer or employee to take action or to refrain from taking action, which action or inaction violates any provision of this chapter, and knows that such action or inaction violates this chapter shall be guilty of a violation.

Penalties for offenses

A. Debarment.

- (1) Any person convicted of a violation under this chapter shall be prohibited, for a period of three years after the date of the conviction, from entering into any contract with the town.
- (2) Nothing in this section shall be construed to prohibit any person from receiving a service or benefit or using a facility which is generally available to the public.
- (3) A person who knowingly violates any provision of this subsection shall be guilty of a violation.

B. Additional penalties.

- (1) Any town officer or employee who engages in any action that violates any provision of this chapter may be warned or reprimanded or suspended or removed from office or employment by the appointing person or body authorized by the Town Board. A warning, reprimand, suspension or removal may be imposed in addition to any other penalty contained in this chapter or in any other provision of law.
- (2) Any town officer or employee who violates any provision of this chapter shall be liable in damages to the town for any losses or increased costs incurred by the town as a result of the violation. Such damages may be imposed in addition to any other penalty contained in this chapter [other than a civil forfeiture pursuant to Subsection B(4)] or in any other provision of law, subject to Section 75 of the Civil Service Law and/or any other applicable laws of the State of New York or Federal Government.
- (3) Any town officer or employee who has knowingly or intentionally violated any provision of this chapter shall be subject to a civil forfeiture to the town of a sum equal to three times the value of any financial benefit he or she received as a result of the conduct that constituted the violation. A civil forfeiture may be imposed in addition to any other penalty contained in this chapter [other than a civil fine pursuant to Subsection B(3) or damages pursuant to Subsection B(3) hereof] or in any other provision of law.

Ethics Board

- A. The Town Board herein establishes an Ethics Board and shall on a year-to-year basis appropriate adequate funds for said Board's operation.
- B. There shall be five appointed members of the Ethics Board. Each member shall serve for a three-year term. At least one of the members shall be either an elected or appointed town employee of the Town of Halfmoon.

The terms of members of the Ethics Board shall be for terms so fixed that the term of one member shall expire at the end of the calendar year in which such members were initially appointed. The terms of the members appointed thereafter shall be so fixed that one term shall expire at the end of each calendar year thereafter. At the expiration of the term of each member first appointed, his or her successors shall be appointed for a term of three years.

There shall be two appointed alternate members of the Ethics Board. The Chairperson of the Ethics Board may designate an alternate member to substitute for a member when such member is unable to participate because of a conflict of interest on a matter before the Ethics Board. Alternate members of the Ethics Board shall be appointed by resolution of the Town Board, for a three year term.

Neither Ethics Board members or alternates shall miss more than three (3) meetings in any calendar year. Missing more than three (3) meetings in a calendar year without good cause will result in automatic removal from the Ethics Board.

- C. The Ethics Board shall select its own Chairman for a one-year term.
- D. The Ethics Board members shall be appointed by resolution of the Town Board.
- E. Upon the establishment of the Town Ethics Board or, thereafter, within 90 days after the expiration of a term or the occurrence of a vacancy, the Town Board shall make the appointment or fill the vacancy, as the case may be.
- F. In the event the Town Board is unable to fill vacancies as set forth hereinabove, then, in such

case, the County Board of Ethics shall select the individuals to fill any vacancies.

- G. The Town Ethics Board shall have the following powers and duties:
 - (1) To prescribe and promulgate rules and regulations governing its own internal organization and procedures in a manner not inconsistent with this chapter.
 - (4) To review lists of town officials and disclosure statements.
 - (5) To conduct investigations pursuant to this Local Law.
 - (6) To conduct hearings, recommend disciplinary action, assess penalties and initiate appropriate actions and proceedings pursuant to this Local Law.
 - (7) To issue advisory opinions pursuant to this Local Law.
 - (8) To provide training and education to town officers and employees on the provisions of the Town Ethics Law.
 - (9) To prepare an annual report and recommend changes to the Town Ethics Law, if required.
- H. The Town Board may prescribe additional powers and duties for its Ethics Board, provided that such additional powers and duties do not conflict with the New York State Municipal Ethics Act.
- I. The Ethics Board of the town may act only with respect to officers and employees of the town and persons having business dealings with the town. The termination of a town officer's or employee's term of office or employment with the town shall not affect the jurisdiction of the Town Ethics Board with respect to the requirements imposed by this chapter on the former town officer or employee to the extent permitted by law.
- J. The Town Ethics Board may refer any matter within its jurisdiction to the County Ethics Board.
- K. The Town Ethics Board shall have the authority to utilize Executive Session where appropriate pursuant to the laws of the State of New York.

Review of lists and disclosure statements

- A. The Town Ethics Board shall review the lists of town officials prepared pursuant to this Local Law to determine whether the lists are complete and accurate. The Board shall add to the list the name of any other town officer or employee whom the Board determines to be a town official pursuant to this chapter.
- B. The Town Ethics Board shall review all annual financial disclosure statements to determine whether any person required to file such a statement has failed to file it, has filed a deficient statement or has filed a statement that reveals a possible violation of this chapter.
- C. The Town Ethics Board shall promptly review every transactional disclosure statement. If the Board determines that the statement is deficient or reveals a possible violation of this chapter, it shall notify the person, in writing, of the deficiency or possible violation and of the penalties for failure to comply with this chapter.

Investigations of alleged violations

- A. Upon receipt of a form duly sworn to by the person requesting an investigation of an alleged violation of this chapter or upon the Board determining on its own initiative that a violation of this chapter may exist, the Ethics Board shall have the power and duty to conduct any investigation necessary to carry out the provisions of this chapter. In conducting any such investigation, the Board may administer oaths or affirmations, subpoena witnesses and

compel their attendance and require the production of any books or records which it may deem relevant and material. A written statement acknowledging receipt of the request for investigation shall be sent to the complainant. The Board shall convene to discuss an alleged violation within seven (7) days of receipt thereof. The form to be utilized in requesting an investigation of an alleged violation of this chapter shall be the form available in the office of the Town Clerk.

Requests for investigations of alleged violations shall be determined in the order in which they are received.

- B. Nothing in this section shall be construed to permit the Town Ethics Board to conduct an investigation of any of its members.
- C. The Town Ethics Board shall state, in writing, its disposition of every sworn complaint it receives and of every investigation it conducts and shall set forth the reasons for the disposition. All such statements and all sworn complaints shall be public records and shall be indexed and maintained on file by the Ethics Board and the Town Clerk.
- D. The Town Ethics Board shall refer to the Saratoga County District Attorney's office sworn statements or complaints made to it or any sworn testimony presented before it that, upon investigation, is determined by the Town Ethics Board to be intentionally false. The person offering the false statement shall be liable for civil penalty to any persons harmed by the false statements.

Recommendation of disciplinary action; assessment of penalties; injunctions; damages

- A. In its discretion and after a hearing held in accordance with Article 3 of the State Administrative Procedure Act and subject to § 75 of the Civil Service Law the Town Ethics Board may make a determination if there has been any violations of this Local Law and forward same to the Town Board. The Ethics Board shall conduct and complete the hearing with reasonable promptness.
- B. The Ethics Board, on behalf of the town, may sue in the Supreme Court of the State of New York for injunctive relief to enjoin a violation or to compel compliance with the provisions of this chapter.
- C. The Ethics Board, on behalf of the town, may initiate a proceeding in the Supreme Court of the State of New York to obtain a civil forfeiture. The civil forfeiture shall be payable to the town.

Advisory opinions

- A. Upon the filing of a sworn request for an advisory opinion of any board, commission, department or individual town officer or employee, filed by a person who is subject to the jurisdiction of the Ethics Board, the Town Ethics Board may render written advisory opinions with respect to the interpretation or application of this chapter. To prevent misuse of requests for advisory opinions, each written request for an advisory opinion shall not involve hypothetical situations, but shall detail specific conduct with respect to specific employees and officers. The Ethics Board reserves the right to reject a request for an advisory opinion for failure to comply with this section or to request supplemental information. The form to be utilized in requesting an advisory opinion from the Ethics Board shall be the form available in the office of the Town Clerk.

Requests for Advisory Opinions shall be handled in the order in which they are received.

- B. Opinions and requests for opinions shall not be public records but shall be filed in an appropriate manner by the Ethics Board and Town Clerk. The opinions shall be on the advice of counsel employed by the Board of Ethics, or, if none, the Town Attorney.

The Ethics Board shall convene to discuss a request for an Advisory opinion within ten (10) days of receipt thereof, where practicable. A written acknowledgment of receipt of the request for an Advisory Opinion shall be mailed to the person so requesting upon receipt of said request.

Applicability; other remedies

- A. The provisions of this Local Law shall apply, notwithstanding any inconsistent provision of any general, special or Local Law.
- B. No existing right or remedy shall be lost, impaired or affected by reason of this chapter.
- C. Nothing in this chapter shall be deemed to bar or prevent the timely filing by a present or former town officer or employee of any claim, account, demand or suit against the town on behalf of himself or herself or any member of his or her family arising out of personal injury or property damage or for any lawful benefit authorized or permitted by law.

Administration

The Town Board may appropriate moneys from the General Town funds for the maintenance of and for personnel services to the Board of Ethics established hereunder, but such Board of Ethics may not commit the expenditure of town moneys except within the appropriations provided herein.

Severability Clause

If any clause, sentence, paragraph, section or part of this Local Law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not effect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have rendered.

Effective Date

This Local Law shall take effect immediately.