

LOCAL LAW FILING NEW YORK STATE DEPARTMENT OF STATE

99 Washington Avenue • Albany, New York 12231-0001

TOWN OF EAST GREENBUSH

LOCAL LAW NO. _____ OF THE YEAR 2013

A local law enacting a new code of ethics.

Be it enacted by the town board of the town of East Greenbush as follows:

Section 1 – Legislative Intent and Purpose

The town board finds that the town’s current code, as was originally enacted pursuant to local law no. 1 of 1974, has become outdated relative to the minimum, statutorily required provisions and to generally accepted provisions of current codes of ethics, and is, therefore, no longer adequate. It is, therefore, the intent of this local law to amend the current code by supplanting it with an entirely new code.

The purpose of this code is to establish minimum standards of conduct for officials and employees of the town to ensure that the business of town government is free from improper influence that may result from opportunities for private gain. By requiring public disclosure of financial interests and other actions that may influence or be perceived to influence the proper operation of town government, this code is intended to facilitate consideration of potential problems before they arise, to minimize unwarranted suspicion and to enhance the accountability of the town government to residents.

This code is designed:

- ▶ to establish transparent frameworks for government officials with respect to voting and other decision-making processes;
- ▶ to ensure transparency and ethical conduct by government employees and officials;
- ▶ to promote and foster public trust and citizen confidence in the administration of government; and
- ▶ to demonstrate a formal and codified commitment to ethical behavior by government officials.

Officers and employees of the town 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 recognizes that, in furtherance of this fundamental principle, there is a need for clear and reasonable standards of ethical conduct to prohibit acts or

actions incompatible with the discharge of public duties in the best interests of the town. This code establishes those standards.

Section 2 - Definitions

- (a) “Board” or “board members” means the governing board of a town and any town administrative board (e.g. planning board, zoning of board of appeals), commission, or other department or body comprised of two or more town officers or employees.
- (b) “Code” means this East Greenbush town code of ethics.
- (c) “Confidential information” is information that at the time of its disclosure or use by a town official is not generally available to the public or is exempt from disclosure by state or federal statute.
- (d) “Interest” means a direct 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 town or an area of the town, or a lawful class of such residents or taxpayers. A town 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, employee, or directly owns or controls more than 5% of the organization’s outstanding stock.
- (e) “Town” means town of East Greenbush.
- (f) “Town officer or employee” means a paid or unpaid officer or employee of the town of East Greenbush, including, but not limited to, the members of any town board.
- (g) “Recusal” means that the official shall not be present, deliberate, vote or participate in any way in a matter in which they or a relative has an interest. When an official recluses himself or herself, they may not provide input from the audience as a member of the public.
- (h) “Relative” means a spouse, parent, sibling, child, or household member of a town officer or employee, and individuals having any of these relationships to the spouse of the officer or employee, provided the sibling, child, or household member has reached the age of majority.

Section 3 - Applicability

This code applies to the officers and employees of the town, and shall supersede any prior code. The provisions of this code 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 New York General Municipal Law and all rules, regulations, policies, and procedures duly adopted of the town.

Section 4 - Financial Disclosure

(a) Financial disclosure statements as developed by the board of ethics are required to be completed by all elected officials and other certain officers and employees of the town, including:

- (1) assessor;
- (2) deputy assessor;
- (3) building inspector;
- (4) director of planning;
- (5) deputy town clerk;
- (6) comptroller;
- (7) commissioner of public works;
- (8) deputy commissioner of public works;
- (9) director of finance;
- (10) chief of police;
- (11) assistant chief of police;
- (12) director of youth and community services;
- (13) purchasing agent;
- (14) deputy supervisor;
- (15) town attorney;
- (16) deputy town attorney; and
- (17) town engineer.

(b) Financial disclosure statements shall be submitted on or before the fifteenth day of April with respect to the preceding calendar year, except that:

- (1) a person who is subject to the reporting requirements of this subdivision who is appointed, elected or hired after the fifteenth day of April shall file disclosure within 30 days of said appointment.

(c) Financial disclosure statements shall contain the following information:

- (1) household relatives;
- (2) list of positions currently held with town;
- (3) other positions currently held with public entities;
- (4) real property ownership (interest greater than 5%) within the town;
- (5) leased property (interest greater than 5%) within the town;
- (6) businesses with current ownership interest (interest greater than 5%);
- (7) current/past employers (past 12 months);

- (8) directorships/officer positions;
- (9) payments from the town for goods and services; and
- (10) appearances before a town department or board.

Section 5 - Prohibition on Use of Town Position for Personal or Private Gain

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

Section 6 - Disclosure of Interest in Legislation and Other Matters

- (a) Whenever a matter requiring the exercise of discretion comes before a town officer or employee, either individually or as a member of a board, and disposition of the matter could result in a direct financial or material benefit to himself or herself, a relative, or any private organization in which he or she is has an interest, the town officer or employee shall disclose in writing the nature of the interest.
- (b) The disclosure shall be made when the matter requiring disclosure first comes before the town officer or employee, or when the town officer or employee first acquires knowledge of the interest requiring disclosure, whichever is earlier.
- (c) In the case of a person serving in an elective office, the disclosure shall be filed with the town board. 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 town clerk, and with the town officer, employee, or board having the power to appoint the person's position.
- (d) In the case of a person serving on a town board, a copy of the disclosure shall be filed with that board. Any disclosure made to a board shall be made publicly at a meeting of the board and must be included in the minutes of the meeting.

Section 7 - Recusal and Abstention

- (a) 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 financial or material benefit on himself or herself, a relative, or any private organization in which he or she has an interest.

- (b) Any municipal officer or employee exercising the right to recuse and/or abstain shall state the reason therefore on the record before the board or department of which he or she is a member.
- (c) In the event that this section prohibits a municipal officer or employee from exercising or performing a power or duty:
 - (1) if the power or duty is vested in a municipal officer as a member of a board, then the power or duty shall be exercised or performed by the other members of the board; or
 - (2) if the power or duty is vested in a municipal officer individually, then the power or duty shall be exercised or performed by his or her deputy. If the officer does not have a deputy, the power or duty shall be performed by another person to whom the supervisor may lawfully delegate the function; or
 - (3) if the power or duty is vested in a municipal employee, he or she must refer the matter to his or her immediate supervisor, and the immediate supervisor shall designate another person to exercise or perform the power or duty.

Section 8 - Prohibition Inapplicable; Disclosure, Recusal, and Abstention not Required

- (a) This code's prohibition on use of a town position (section 5 hereof), disclosure requirements (section 6 hereof), and requirements relating to recusal and abstention (section 7 hereof), shall not apply with respect to the following matters:
 - (1) adoption of the town's annual budget;
 - (2) any matter requiring the exercise of discretion that directly affects any of the following groups of people or a lawful class of such groups:
 - (i) all town officers or employees;
 - (ii) all residents or taxpayers of the town or an area of the town;
 - (iii) the general public; or
 - (iv) any matter that is required by law, executive order or mandate.
- (b) Recusal and abstention shall not be required with respect to any matter:
 - (1) which comes before a board when a majority of the board's total membership would otherwise be prohibited from acting by section 7 hereof;

(2) which comes before a town officer when the officer would be prohibited from acting by section 7 hereof and the matter cannot be lawfully delegated to another person.

Section 9 - Investments in Conflict with Official Duties

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

(1) investments that can be reasonably expected to require more than excessive recusal and abstention under section 7 hereof; or

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

(b) The supervisor, town board, comptroller, or their deputies may not have a financial interest in any bank, trust company, or other financial institution named as a depository.

(c) This section does not prohibit a town officer or employee from acquiring any other investments or real property located within the town and used as his or her personal residence or for any other uses.

Section 10 - Private Employment in Conflict with Official Duties

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

(a) can be reasonably expected to require more than excessive recusal and abstention pursuant to section 7 hereof;

(b) can be reasonably expected to require disclosure or use of confidential information gained by reason of serving as a town officer or employee;

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

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

Section 11 - Future Employment

- (a) No town 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 town officer or employee, either individually or as a member of a board, while the matter is pending or within the thirty (30) days following the final disposition of the matter.
- (b) No town officer or employee, for a sixty (60) day period after serving as a town 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 town office, board, department, or comparable organizational unit for which he or she served. Additionally, the organizational unit for which the former town employee served, shall refuse to entertain the former employee if they seek to represent or render services to a private person or organization in connection with any matter involving discretion before that organizational unit for a sixty (60) day period.
- (c) No town officer or employee, at any time after serving as a town 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 town officer or employee. Additionally, the town, or organizational unit in which the town officer or employee served, shall refuse to entertain the former employee if they seek to 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 town officer or employee.
- (d) This section shall not apply to any former employee who is a member of a profession which is subject to its own ethical code of conduct which specifically contains provisions for representation before the former employer.

Section 12 - Personal Representations and Claims Permitted.

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

- (a) representing himself or herself, or his or her spouse or minor children before the town; or
- (b) asserting a claim against the town on his or her own behalf, or on behalf of his or her spouse or minor children.

Section 13 - Use of Town Resources

- (a) Town resources shall be used for lawful town purposes. Town resources include, but are not limited to, real property, personnel, money, vehicles, equipment, materials, supplies or other property owned or retained by the town.
- (b) No town officer or employee may use or permit the use of town resources, including time, for personal or private purposes, but this provision shall not be construed as prohibiting:
 - (1) any use of town resources authorized by law or written town policy;
 - (2) the use of town resources for personal or private purposes when provided to a town officer or employee as part of his or her compensation;
 - (3) the occasional and incidental use during the business day of town telephones and computers for necessary personal matters such as family care and changes in work schedule; or
 - (4) The occasional or incidental use when special circumstances necessitate, providing the employee has prior approval of their direct supervisor.
- (c) No town officer or employee shall cause the town to spend more than is reasonably necessary for transportation, meals or lodging in connection with official travel.

Section 14 - Interests in Contracts

- (a) No town officer or employee may have an interest in a contract that is prohibited by § 801 of the New York General Municipal Law.
- (b) Every town officer and employee shall disclose interests in contracts with the town at the time and in the manner required by § 803 of the New York General Municipal Law.

Section 15 - Nepotism

Except as otherwise required by law:

- (a) No town officer or employee, either individually or as a member of a board, may participate in any decision specifically to appoint, hire, promote, discipline or discharge a relative for any position at, for or within the town or a town board.
- (b) Prior to the appointment of a relative of a member of the town board, the following conditions shall be met:

(1) The Board Member must recuse himself or herself from any and all discussions regarding the hiring decision in accordance with section 7 hereof.

(2) Resumes must be submitted by any potential applicant for a position with the town.

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

(d) This section shall not apply to the reappointment of a relative of a member of the town board.

Section 16 - Political Solicitations

(a) No town officer or employee shall directly or indirectly compel or induce a subordinate town officer or employee to make, or promise to make, any political contribution, whether by gift of money, service or other thing of value.

(b) No town 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 town officer or employee, or an applicant for a position as a town officer or employee, on the basis of the giving or withholding or neglecting to make any contribution of money or service or any other valuable thing for any political purpose.

(c) No town officer or employee may engage in activities related to his/her political party while formally acting as a representative of the town. Activities prohibited include fund raising, collecting signatures, and organizing meetings.

(d) No town officer or employee shall request or require a subordinate by a third party to attend political functions, sign political forms, or otherwise engage in activities for a political party during normal business hours or while acting as a representative of the town.

(e) This section should not be construed to limit the right of town officers or employees to engage in political dialogues, discussions, or express political opinions and views.

Section 17 - Confidential Information

(a) No town 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.

- (b) No town officer or employee who acquires confidential information in the course of exercising or performing his or her official powers or duties shall use that information to further their own business, professional, or political career, or that of a relative.

Section 18 - Gifts

- (a) No town officer or employee shall solicit, accept or receive a gift in violation of § 805-a (1) (a) of the New York General Municipal Law as interpreted in this section.
- (b) No town officer or employee may accept or receive any gift, or multiple gifts from the same donor, having an annual aggregate value of seventy-five dollars or more when:
 - (1) the gift reasonably appears to be intended to influence the officer or employee in the exercise or performance of his or her official powers or duties;
 - (2) the gift could reasonably be expected to influence the officer or employee in the exercise or performance of his or her official powers or duties; or
 - (3) the gift is intended as a reward for any official action on the part of the officer or employee.
- (c) For purposes of this section, a “gift” includes anything of value, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form. The value of a gift is the gift’s fair market value, determined by the retail cost of the item or a comparable item. The fair market value of a ticket entitling the holder to food, refreshments, entertainment, or any other benefit is the face value of the ticket, or the actual cost to the donor, whichever is greater. Determination of whether multiple gifts from a single donor exceed seventy-five dollars must be made by adding together the value of all gifts received from the donor by an officer or employee during the twelve-month period preceding the receipt of the most recent gift.
- (d) A gift to a town officer or employee is presumed to be intended
 - (1) to influence the exercise or performance of his or her official powers or duties when the gift is from a private person or organization that seeks town action involving the exercise of discretion by or with the participation of the officer or employee.
 - (2) as a reward for official action when the gift is from a private person or organization that has obtained town action involving the exercise of discretion by or with the participation of the officer or employee during the preceding twelve months.

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

- (1) gifts made to the town;
 - (2) gifts from a person with a family or personal relationship with the officer or employee when the circumstances make it clear that the personal relationship, rather than the recipient's status as a municipal officer or employee, is the primary motivating factor for the gift;
 - (3) gifts given on special occasions, such as marriage, illness, or retirement, which are reasonable and customary;
 - (4) unsolicited advertising or promotional material of little intrinsic value, such as pens, pencils, note pads, and calendars;
 - (5) awards and plaques having a value of one hundred dollars or less which are publicly presented in recognition of service as a town officer or employee, or other service to the community; or
- (6) meals and refreshments provided when a town officer or employee is a speaker or participant at a job-related professional or educational conference or program and the meals and refreshments are made available to all participants.

Section 19 - Board of Ethics

(a) There is hereby established a board of ethics for the town.

(1) Composition. The board of ethics shall consist of

- i. five (5) members, a majority of whom shall not be officers or employees of the town, but at least one of whom must be a town officer or employee; and
- ii. two (2) alternate members for purposes of substituting for a member in the event such member is unable to participate because of a conflict of interest. Such alternate members shall serve for a term not to exceed one year.

(2) Terms of members first appointed. The terms of members of the 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 remaining members 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 successor shall be appointed for a term which shall be equal in years to the number of members of the board, excluding alternate members. The terms of the members first appointed shall be determined by lot drawn by the town clerk in the presence of the supervisor and one town board member selected by the town board.

- (3) Residency. The members of such board shall be residents of the town.
 - (4) Town board members ineligible. No person who is a member of the town board shall be eligible for membership on such board of ethics.
 - (5) Compensation. The members shall receive no salary or compensation for their services as members of the board of ethics.
 - (6) Political Activity. The members of such board shall not function as an officer (the chairperson, vice chairperson, secretary, treasurer or other elected or appointed office holder) or committee member of either a political party or a political organization.
- (b) The board of ethics shall render advisory opinions to the officers and employees of the town with respect to article 18 of the New York General Municipal Law and this code. Such advisory opinions must be rendered pursuant to the written request of any such officer or employee under such rules and regulations as the board of ethics may prescribe. The board of ethics shall have the advice of legal counsel employed by the board, or if none, the town's legal counsel, except in cases in which such counsel has a conflict. In cases of a conflict of said attorney, the town shall pass a resolution for the appointment of special counsel. In addition, the board of ethics may make recommendations with respect to the drafting and adoption of a code, or amendments thereto, upon the request of the town board.

Section 20 - Posting and Distribution.

- (a) The supervisor must 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 town's control. The code must be posted within ten days following the date on which the code takes effect. An amendment to the code must be posted within ten days following the date on which the amendment takes effect.
- (b) The supervisor must promptly cause a copy of this code, including any amendments to the code, to be distributed to every person who is or becomes an officer and employee of the town.

- (c) Every town officer or employee who receives a copy of this code or an amendment to the code must acknowledge such receipt in writing. Such acknowledgements must be completed annually prior to the first day of March. Such acknowledgments must be filed with the clerk of the town 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 town officer or employee to receive a copy of this code or an amendment to such code, or to acknowledge receipt thereof in writing, does not affect either the applicability or enforceability of the code or amendment to such code.

Section 21 - Training

- (a) Every town officer and employee shall be required to attend an annual code of ethics training seminar conducted by at least one member of the board of ethics.
- (b) Attendance at the annual code of ethics training seminar will be documented and such documentation will be filed with the town clerk and maintained as a public record.
- (c) The failure of an employee to attend the annual code of ethics training seminar will not affect either the applicability or enforceability of the code or the amendment thereto.

Section 22 - Enforcement

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

Section 23 - Annual Report to the Town Board

On or before the fifteenth day of February, the board of ethics shall present to the town board an annual report of its activities for the prior year.

Section 24 – Repeal of Local Law No. 1 of 1974

Local Law No. 1 of 1974 is hereby repealed.

Section 25 – Change of the Town Code

Section 15-2 of the town code is hereby replaced in its entirety by this local law as the town Code of Ethics.

Section 26 - Effective Date

This local law shall be effective immediately upon filing with the New York State Secretary of State.