

LOCAL LAW NO. 4 of 2009

A LOCAL LAW AMENDING LOCAL LAW NO. 1 OF 1992: A LOCAL LAW ENACTING A CODE OF ETHICS AND ESTABLISHING A BOARD OF ETHICS FOR THE TOWN OF GERMANTOWN.

BE IT ENACTED by the Town Board of the Town of Germantown as follows:

Section 1. Title of Local Law:

This Local Law shall be entitled A LOCAL LAW AMENDING LOCAL LAW NO. 1 OF 1992: A LOCAL LAW ENACTING A CODE OF ETHICS AND ESTABLISHING A BOARD OF ETHICS FOR THE TOWN OF GERMANTOWN.

Section 2. Authorization:

This Local Law is enacted pursuant to section 806 of the General Municipal Law and section 10 of the Municipal Home Rule Law and is not intended to authorize any conduct prohibited by Article 18 of the General Municipal Law.

Section 3. Amendment of Local Law No. 1 of 1992:

[Bracket represents deletions]; underline represents additions

SECTION 1: Statement of legislative intent.

The Town Board of the Town of Germantown recognizes that there are state statutory provisions mandating towns to establish rules and standards of ethical conduct for public offices and employees which, if observed, can enhance public confidence in local government. [In the light of a tendency today on the part of some people to downgrade our local governments and to discredit our public servants and our free institutions generally, it appears necessary that every effort be made to assure the highest caliber of public administration of this town as part of our states important system of local government. It is the] The purpose of this Local Law is to implement this objective through the establishment of high standards of ethical conduct for officers and employees of the Town, to afford officers and employees of the Town of Germantown guidance on such standards, to provide for punishment of the violation of such standards, to create a board of ethics to render advisory opinions to the town=s officers and employees as provided for herein, and to provide for the fair and effective administration of this Local Law.

SECTION 2: Supersession of General Municipal Law section 808; Repeal of Existing Town Ethics Laws [Nature of Law].

The standards, prohibited acts and [pressures] procedures established herein are in addition to any prohibited acts, conflicts of interest provisions or procedures prescribed by statutes [s of the State of New York and also in addition to common law rules and judicial decisions] and case law relating to the conduct of town officers and employees. [to the

extent that the same are more severe in their application than this Local Law]. To the extent this Local Law is inconsistent with the provisions of section 808 of the General Municipal Law, this Local Law shall supersede those provisions.

SECTION 3: Definitions.

As used in this local law, the term Town shall mean any board, commission, district, council or other agency, department or unit of the government of the Town of Germantown.

The term town employee shall mean any officer or employee of the Town of Germantown whether paid or unpaid, including members of any administrative board, commission or other agency thereof, whether serving in a full-time, part-time or advisory capacity. [No person shall be deemed to be a town officer or employee solely by reason of being a volunteer fireman or civil defense volunteer, except a Fire Chief or Assistant Fire Chief]. The term town employee does not include a membership in a volunteer emergency services organization.

SECTION 4: Rules With Respect to Conflicts of Interest.

(a) No town officer or employee shall have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.

(b) No town officer or employee shall have an interest in any contract with the municipality of which he is an officer or employee, whether individually or as a member of a board, nor shall any such town officer or employee have the power or duty to negotiate, prepare, authorize or approve such contract or payments thereunder, audit bills or claims under such contract or appoint an officer or employee who has any of the powers or duties set forth herein.

(c) No chief fiscal officer, treasurer or deputy or employee of the Town shall have an interest in a bank or trust company designated as a depository of funds of the municipality. This subsection does not prohibit ownership of up to five percent of the outstanding shares of such bank or trust company.

(d) No town officer or employee shall accept other employment which will impair his independence of judgment in the exercise of his official duties.

(e) No town officer or employee shall accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority. [No town officer or employee shall disclose confidential information acquired by him in the course of his official duties or use such information to further his personal interests.] Town officers and employees and former Town officers and employees shall not disclose any confidential information acquired by him in the course of his official duties or use it to further personal interests.

(f) No town officer or employee shall use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.

(g) No town officer or employee shall engage in any transaction as representative or agent of the town with any business entity in which he has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his official duties.

(h) No town officer or employee shall conduct himself in a manner which presents a reasonable basis for the impression that another party can improperly influence him or unduly enjoy his favor in the performance of his official duties.

(i) Each town officer or employee shall [abstain] refrain from making personal investments in enterprises which he has reason to believe may be directly involved in decisions to be made by him or which will otherwise create substantial conflict between his duty in the public interest and his private interest.

(j) Each town officer or employee shall endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaging in acts that are in violation of his trust.

[(k) No town officer or employee employed on a full-time basis, nor any firm or association of which such employee is a member, nor a corporation a substantial portion of the stock of which is owned or controlled directly or indirectly by such employee, shall sell goods or services to any person, firm, corporation or association which is licensed or whose rates are fixed by the town in which such employee serves or is employed].

(l) Each town officer or employee shall [, to the extent that he is cognizant thereof], disclose any interest of which he is aware in any matters pending before any board of the Town. [or any agency or board thereof].

[(m) No town officer or employee shall be involved in any contractual matter affecting the town involving a person who has been a town officer or employee within the preceding two (2) years or with any entity in which such former town officer or employee is associated. If any contract is made under such circumstances, the Town shall have the right to declare such contract to be null and void upon the discovery of such circumstances].

(n) No town officer or employee shall directly or indirectly solicit any gift or accept or receive any gift having a value of Seventy-Five Dollars (\$75.00) or more whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise or in any other form under such circumstances in which it could reasonably be inferred that the gift was intended to influence him or could reasonable 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.

(o) A Town officer or employee shall promptly recuse himself self from acting on a matter before the Town when acting on the matter, or failing to act on the matter, may

financially benefit any of the following persons: (i) the town officer or employee; (ii) his outside employer or business; (iii) member of his household; (iv) a customer or client; (v) a relative; or (vi) person from whom the officer or employee has received election campaign contributions of more than \$1000 in the aggregate during the past twelve months.

(p) No Town officer or employee may use his official title, position or authority in any campaign activities, including untargeted mass mailings, or fundraising efforts. No Town resources may be used in furtherance of such activities, including, but not limited to, telephones, office supplies, postage, copying machines, computers or support staff.

(q) No Town officer shall knowingly act contrary to a lawful resolution or motion duly adopted by the Town Board.

SECTION 5: Disclosure of Interest.

Any municipal officer or employee who has, will have, or later acquires an interest in an actual or proposed contract with the municipality or other matter pending before any board or agency thereof, shall publicly disclose the nature and extent of such interest in writing to the governing body thereof as soon as he has knowledge of such actual or prospective interest.

SECTION 6: Penalties [Violations].

[In addition to any penalty contained in any other provision of law, any such town officer or employee who shall knowingly and intentionally violate any of the provisions of this local law may be fined, suspended or removed from office or employment in the manner provided by law.]

(a) **Disciplinary action.** Any Town officer or employee who engages in any action that violates any provision of this Local Law may be warned or reprimanded or suspended or removed from office or employment, or be subject to any other sanction authorized by law or collective bargaining agreement, by the appointing authority or person or body authorized by law to impose such sanctions. A warning, reprimand, suspension, removal, or other authorized sanction may be imposed in addition to any other penalty contained in this Local Law or in any other provision of law.

(b) **Damages.** A Town officer or employee who violates any provision of this Local Law 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 any other provision of law or in this Local Law, other than a civil forfeiture pursuant to subdivision (d) of this section.

(c) **Civil forfeiture.** A Town officer or employee who intentionally or knowingly violates any provision of this Local Law may be subject to a civil forfeiture to the Town of a sum equal to three times the value of any financial benefit he 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 any other provision of law or in this Local Law, other than a civil fine pursuant to subdivision (b) or damages pursuant to subdivision (c) of this section.

(d) **Violation.** A Town officer or employee who intentionally or knowingly violates any provision of this Local Law may be guilty of a Violation and be subject to a \$250 for each such violation or a 15 day term of imprisonment or both.

(e) **Enforcement.** With the exception of subsection (e) above, the Town Board shall have exclusive jurisdiction to enforce the provisions of Section 6 and may commence an action in a court of competent jurisdiction in furtherance of such enforcement.

SECTION 7: Board of Ethics.

(a) There is hereby established a Board of Ethics consisting of at least three (3) members to be appointed by the Town Board, all of whom reside in the Town of Germantown and who shall serve without compensation at the pleasure of the Town Board [of the Town of Germantown]. A majority of such members shall be persons other than town officers or employees but shall include at least one member who is an elected or appointed town officer or employee of the Town of Germantown.

(b) [The Board of Ethics established hereunder shall render advisory opinions to town officers or employees on written request and upon the request of the Town Board make recommendations to such Town Board as to any amendments of this local law.] Advisory Board. Upon the written request of any Town officer or employee, the Board of Ethics may render a written advisory opinion with respect to the interpretation or application of this Local Law or of Article 18 of the General Municipal Law of the State of New York. Any other person may similarly request an advisory opinion but only with respect to whether his own action might violate a provision of this Local Law or Article 18. The opinions of the Board of Ethics shall be advisory and confidential and in no event shall the identity of the town officer or employee be disclosed except to authorized persons and agencies. Such opinions shall be on the advice of [counsel employed by the Board of Ethics, or if none, of] the Town Attorney.

- i. Advisory opinions and requests for advisory opinions shall be indexed and maintained on file by the Board of Ethics.
- ii. Any person who has submitted to the Board of Ethics a written request for an advisory opinion may bring a special proceeding pursuant to Article 78 of the Civil Practice Law and Rules for an order compelling the Board of Ethics to issue the advisory opinion. In addition to, or in lieu of, such injunctive relief, the person may seek a judgment in accordance with section 3001 of the Civil Practice Law and Rules determining the question posed in the request for the advisory opinion. No action or special proceeding shall be prosecuted or maintained pursuant to this subdivision unless (a) it shall appear by and as an allegation in the petition or complaint that at least six

months have elapsed since the filing of the request and that the Board of Ethics has failed to file any determination in the matter.

[(c) Such Board of ethics upon its formation shall promulgate its own rules and regulations as to its form and procedures and shall maintain appropriate records of its opinions and proceedings.]

SECTION 7-A: Board of Ethics jurisdiction, powers and duties.

(a) The Board of Ethics may only act with respect to officers and employees of the Town.

(b) The termination of a municipal officer's or employee's term of office or employment with the Town shall not affect the jurisdiction of the Board of Ethics with respect to the requirements imposed on the officer or employee by this Local Law.

(c) The Board of Ethics shall have the following powers and duties:

- i. To prescribe and promulgate rules and regulations governing its own internal organization and procedures in a manner consistent with this Local Law;
- ii. To review index, maintain on file, and dispose of written complaints and to make notifications and conduct investigations pursuant to 7-B of this Local Law;
- iii. To render, index, and maintain on file advisory opinions and/or other necessary records pursuant to section 7(b) of this Local Law;
- iv. To provide training and education to Town officers and employees pursuant to section 7-D of this Local Law;
- v. To prepare an annual report and recommend changes to this Local Law pursuant to section 7-E of this Local Law; and
- vi. To provide for public inspection of certain records pursuant to 7-F of this Local Law.

SECTION 7-B: Investigations.

(a) Upon receipt of a written complaint by any person alleging a violation of this Local Law, or upon determining on its own initiative that a violation of this Local Law may exist, the Board of Ethics shall have the power and duty to conduct any investigation necessary to carry out the provisions of this Local Law.

(b) The Board of Ethics shall state in writing the disposition of every written complaint it receives and of every investigation it conducts and shall set forth the reasons

for the disposition. All such statements and all written complaints shall be indexed and maintained on file by the Board. The Town officer or employee who was under investigation shall be notified of the outcome of the investigation in writing within thirty (30) days of the Board's decision.

(c) Any person filing a written complaint with the Board of Ethics shall be notified in writing of the disposition of the written complaint.

(d) Nothing in this section shall be construed to permit the Board of Ethics to conduct an investigation of itself or of any of its members or staff. If the Board of Ethics receives a written complaint alleging that the Board or any of its members or staff has violated any provision of this Local Law, or any other law, the Board shall promptly transmit to the Town Board a copy of the written complaint. In such instance, the Town Board shall have all of the powers and duties of the Board of Ethics as set forth in Sections 7-A and 7-B of this Local Law.

SECTION 7-C: Hearings, assessment of penalties, and disciplinary action.

In its discretion, after a hearing providing for due process procedural mechanisms and subject to any applicable provisions of law and collective bargaining agreements, the Board of Ethics may recommend appropriate disciplinary action pursuant to Section 6(a) of this Local Law. The recommendation of the Board of Ethics shall be made to the Town Board. The Board shall conduct and complete the hearing with reasonable promptness, unless in its discretion the Board refers the matter to the Town. If such a referral is made, the Board may adjourn the matter pending determination by the Town Board.

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

SECTION 7-D: Training and Education.

Educating officials and the public on Article 18 of the General Municipal Law and the local ethics laws are among the most important functions of a Board of Ethics. Therefore, the Board of Ethics shall:

(a) Make information concerning this Local Law and Article 18 of the General Municipal Law available to the officers and employees of the Town, to the public, and to persons interested in doing business with the Town; and

(b) Develop educational materials and an educational program for the officers and employees of the Town on the provisions of this Local Law and on Article 18 of the General Municipal Law.

SECTION 7-E: Annual Reports; Review of Ethics Laws.

(a) The Board of Ethics shall prepare and submit an annual report to the Town Board of the Town of Germantown, summarizing the activities of the Board. The report may recommend changes to the text or administration of this Local Law.

(b) The Board of Ethics shall periodically review this Local Law and the Board's rules, regulations, and administrative procedures to determine whether they promote integrity, public confidence, and participation in Town government and whether they set forth clear and enforceable, common sense standards of conduct.

SECTION 7-F: Public Inspection of Records; Public Access to Meetings.

(a) The only records of the Board of Ethics which shall be available for public inspection are those 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.

(b) No meeting or proceeding of the Board of Ethics concerning misconduct, nonfeasance, or neglect in office by a Town officer or employee shall be open to the public, except upon the request of the officer or employee or as required by the provisions of Article 7 of the Public Officers Law or by State or Federal law.

SECTION 8: Administration.

(a) Upon the adoption of this local law, the Town Supervisor shall cause a copy thereof to be distributed to every officer or employee of this town. Failure to distribute any such copy or failure of any town officer or employee to receive such copy shall have no effect on the duty of compliance with this code, nor the enforcement of provisions hereof. The Town Supervisor shall further cause a copy of this local law to be kept posted conspicuously in each public building under the jurisdiction of the town. Failure to so post this local law shall have no effect on the duty of compliance herewith, nor the enforcement provisions hereof.

[(b) As soon as is practicable after the adoption of this local law, the Town Clerk shall file a copy thereof in the office of the State Comptroller and an additional copy with the Temporary State Commission on Local Government Ethics.]

[(c)] (b) The Town Board may appropriate monies 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 monies except within the appropriations provided herein].

SECTION 9: Severability Clause.

If any clause, sentence, paragraph, section or part of this local law shall be adjudicated by any Court of competent jurisdiction to be invalid, such judgment shall not affect, 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 been rendered.

SECTION 10: Effective Date.

This Local Law shall take effect immediately upon its filing with the Secretary of State.