

TOWN BOARD
TOWN OF GERMANTOWN
COLUMBIA COUNTY, NEW YORK

DRAFT

Local Law No. 3 of 2019

**A LOCAL LAW REVISING THE 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.

This Local Law shall be entitled “A Local Law Revising the Code of Ethics and Establishing a Board of Ethics for the Town of Germantown.”

SECTION 2. AUTHORITY.

This Local Law is adopted pursuant to the Municipal Home Rule Law (Chapter 36-a of the Consolidated Laws of the State of New York) and section 806 of the General Municipal Law.

SECTION 3. PURPOSE AND INTENT.

Officers and employees of the Town of Germantown 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 Board of the Town of Germantown recognizes that, in furtherance of this fundamental principle, there is a need for clear and reasonable standards of ethical conduct. This Local Law establishes those standards, creates a Board of Ethics to render advisory opinions and investigate and act on complaints, and provides penalties and corrective disciplinary action for violation of those standards.

SECTION 4. DEFINITIONS.

“Board” or “municipal board” means the governing board of the Town and any Town administrative board (e.g. planning board, zoning board of appeals), committee, or other agency or body comprised of two or more municipal officers or employees.

“Interest” means a direct or indirect 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 or indirectly owns or controls more than 5% of the organization’s outstanding stock.

“Town” means the Town of Germantown.

“Town Board” means the Town Board of the Town of Germantown.

“Officer or employee” means a paid or unpaid elected or appointed officer or employee of the Town, including, but not limited to, the members of any Town board.

“Relative” means a spouse, parent, step-parent, sibling, step-sibling, sibling’s spouse, child, step-child, uncle, aunt, nephew, niece, first cousin, or household member of a Town officer or employee, and individuals having any of these relationships to the spouse of the Town officer or employee.

SECTION 5. APPLICABILITY

This Local Law applies to all Town officers and employees and shall supersede any prior Town code of ethics or local laws enacting a code of ethics. The provisions of this Local Law shall apply in addition to all applicable State laws relating to conflicts of interest and ethics including, but not limited to, article 18 of the General Municipal Law and all rules, regulations, policies and procedures of the Town.

SECTION 6. IMPROPER INFLUENCE.

No Town officer or employee shall engage in any conduct that could give the reasonable impression that he or she could be improperly influenced by others in the performance of the Town officer’s or employee’s official duties or that the officer or employee is affected by the kinship, rank, position or influence of any party or person.

SECTION 7. PROHIBITION ON USE OF MUNICIPAL POSITION FOR PERSONAL OR PRIVATE GAIN.

No Town officer or employee shall use his or her municipal 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 is deemed to have an interest.

SECTION 8. 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 or indirect financial or material benefit to himself or herself, a relative, or any private organization in which he or she is deemed to have 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. The disclosure shall be filed with the Town Board, and in the case of a person serving on another municipal board, a copy of the disclosure shall also be filed with that municipal 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 9. RECUSAL AND ABSTENTION.

- A. No Town 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 has reason to know that the action could confer a direct or indirect financial or material benefit on himself or herself, a relative, or any private organization in which he or she is deemed to have an interest.
- B. No Town board member may participate in any decision or take any official action with respect to any proposed project before the board when the board member has already expressed opposition to the proposed project and his or her ability to make an impartial judgment solely in the public interest is compromised by prejudice or bias about the project. Even the appearance of impropriety should be avoided in order to maintain public confidence in government.
- C. A neighbor's opposition to a proposed project creates an appearance of partiality and bias which requires the individual, as a member of the Town Planning Board or Zoning Board of Appeals, to promptly recuse himself or herself from participating or acting on an application pertaining to the project.
- D. In the event that this section prohibits a Town officer or employee from exercising or performing a power or duty:
 - 1. if the power or duty is vested in a Town officer as a member of a board, then the power or duty shall be exercised or performed by the other members of the board;
 - 2. if the power or duty is vested in a Town officer individually, then the power or duty shall be exercised or perform by his or her deputy or, if the officer does not have a deputy, the power or duty shall be performed by another person to whom the officer may lawfully delegate the function; or
 - 3. if the power or duty is vested in a Town 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 10. PROHIBITION INAPPLICABLE; DISCLOSURE, RECUSAL AND ABSTENTION NOT REQUIRED.

- A. The prohibition on use of a municipal position, disclosure requirements, and requirements relating to recusal and abstention 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 of employees;
 - ii. all residents or taxpayers of the Town or an area of the Town; or
 - iii. the general public;

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;
2. which comes before a Town officer when the officer would be prohibited from acting and the matter cannot be lawfully delegated to another person.

SECTION 11. 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 sporadic recusal and abstention under this Local Law; 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. This section does not prohibit a Town officer or employee from acquiring any other investments or the following assets:

1. real property located within the Town and used as his or her personal residence;
2. less than five percent of the stock of a publicly traded corporation; or
3. bonds or notes issued by the Town and acquired more than one year after the date on which the bonds or notes were originally issued.

SECTION 12. 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 sporadic recusal and abstention pursuant to this Local Law;
- B. can be reasonably expected to require disclosure or use of privileged or confidential information gained by reason of serving as a municipal officer or employee;
- C. violates section 805-a(1)(c) or (d) of the 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 13. 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 30 days following final disposition of the matter.
- B. No Town officer or employee, for the two-year 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 serves.
- 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.

SECTION 14. PERSONAL REPRESENTATIONS AND CLAIMS PERMITTED.

This Local Law 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 15. USE OF TOWN RESOURCES.

- A. Town resources shall be used for lawful Town purposes. Town resources include, but are not limited to, Town personnel, and the Town's money, vehicles, equipment, materials, supplies or other property.
- B. No Town officer or employee may use or permit the use of Town resources for personal or private purposes, but this provision shall not be construed as prohibiting:

1. any use of Town resources authorized by law or 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; or
 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.
- 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 to be reimbursed by the Town.

Section 16. INTERESTS IN CONTRACTS.

- A. No Town officer or employee may have an interest in a contract that is prohibited by section 801 of the General Municipal Law.
- B. Every Town officer and employee shall disclose interests in contracts with the municipality at the time and in the manner required by section 803 of the General Municipal Law.

SECTION 17. CONFLICTS OF INTEREST PROHIBITED.

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 or her duties in the public interest.

SECTION 18. 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 municipal board; and
- B. No Town officer or employee may supervise a relative in the performance of the relative's official powers or duties.

SECTION 19. POLITICAL SOLICITATIONS.

- A. No Town officer or employee shall directly or indirectly to compel or induce a subordinate municipal 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.

SECTION 20. CONFIDENTIAL INFORMATION.

No Town officer or employee who acquires privileged or 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.

SECTION 21. GIFTS.

- A.** No municipal officer or employee shall solicit, accept or receive a gift in violation of section 805-a(1)(a) of the General Municipal Law as interpreted in this section.
- B.** No municipal officer or employee may directly or indirectly solicit any gift.
- C.** No municipal 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 (\$75.00) 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.
- D.** 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 (\$75.00) 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.

- E. A gift to a Town officer or employee is presumed to be intended 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 municipal action involving the exercise of discretion by or with the participation of the officer or employee.
- F. A gift to a Town officer or employee is presumed to be intended as a reward for official action when the gift is from a private person or organization that has obtained municipal action involving the exercise of discretion by or with the participation of the officer or employee during the preceding twelve (12) months.
- G. This section does not prohibit any other gift, including:
 - 1. gifts made to the municipality;
 - 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 Town 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 modest, 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 seventy-five dollars (\$75.00) 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 22. INTEREST IN APPLICATION BEFORE MUNICIPAL BOARD.

Each Town officer and employee shall, to the extent that he or she is cognizant thereof, promptly disclose any interest he or she may have in any matters or applications pending before the Town Planning Board or Zoning Board of Appeals.

SECTION 23. APPEARANCES BEFORE MUNICIPAL BOARD.

No Town officer or employee shall appear before any Town board, except on his or her own behalf, to represent any private interest.

SECTION 24. MISUSE OF OFFICE FOR PRIVATE GAIN.

No Town officer or employee shall use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others or to deny a legal right to others.

SECTION 25. BOARD OF ETHICS.

A. Establishment.

1. A Board of Ethics is hereby created.
2. The Board of Ethics shall consist of 3 or more members, a majority of whom are not otherwise Town officers or employees, but at least one of whom is an elected or appointed Town officer or employee.
3. The Town Board shall appoint the members to the Board of Ethics to serve without compensation and at the pleasure of the Town Board.
4. All members shall be residents of the Town of Germantown.

B. Powers and Duties of the Board of Ethics.

1. The Board of Ethics shall render advisory opinions to Town officers and employees with respect to this Local Law and article 18 of the General Municipal Law, upon the advice of the attorney for the Town. Such advisory opinions must be rendered pursuant to the written request of any Town officer or employee under such rules and regulations as the Board of Ethics may prescribe.
2. Upon receipt of a written complaint by a Town officer or employee 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.
3. At the conclusion of its investigation, the Board of Ethics shall render a finding and disposition, with recommendations to the Town Board of appropriate sanctions, discipline or other action to be taken by the Town Board with regard to any violation of this Local Law.
4. 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.
5. 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.

6. The Board of Ethics shall make recommendations with respect to the drafting and adoption of a code of ethics or amendments thereto upon the request of the Town Board.

SECTION 26. DISTRIBUTION OF CODE OF ETHICS.

The Town Supervisor shall promptly cause a copy of this Local Law to be distributed to every person who is or becomes a Town officer or employee. Failure to distribute any such copy or failure of any Town officer or employee to receive such copy does not affect either the applicability or enforceability of this Local Law.

SECTION 27. ENFORCEMENT.

- A. Disciplinary Action.** Any Town officer or employee who engages in any action that violates any provision of this Local Law may be warned, reprimanded, 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. The Town Board may initiate action in a court of appropriate jurisdiction to obtain said damages. Such damages may be imposed in addition to any other penalty contained in any other provision of law or in this Local Law.
- 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 or she received as a result of the conduct constituting 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.
- 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 fine for each such violation or a 15 day term of imprisonment or both.
- E. Injunctive Relief.** The Town Board may initiate an action or special proceeding on behalf of the Town in a court of competent jurisdiction for injunctive relief to enjoin a violation of this Local Law or to compel compliance therewith.
- F. Prosecutions.** The Town Board may refer possible criminal violations of this Local Law to the appropriate prosecutor. Nothing contained in this Local Law shall be construed to restrict the authority of any prosecutor to prosecute any violation of this Local Law or any other law.

SECTION 28. SEVERABILITY.

The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision or phrase of the aforementioned sections as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision or phrase, which shall remain in full force and effect.

SECTION 29. SUPERSESION.

Pursuant to the powers granted by the Municipal Home Rule, this Local Law supersedes any inconsistent provision of state or local law to the extent necessary to give this Local Law full force and effect.

SECTION 30. ENACTMENT.

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