

Chapter 43: ETHICS, CODE OF

[HISTORY: Adopted by the Annual Town Meeting of the Town of Old Lyme 1-28-2008. Amendments noted where applicable.]

GENERAL REFERENCES

Boards, committees and commissions — See Ch. 20.

Officers and employees — See Ch. 101.

General provisions — See Ch. 180.

§ 43-1. Declaration of policy.

- A. Public office is a public trust. In order for our Town government to function most efficiently, the trust of the public is critical. Public policy developed by government officials and employees impacts every citizen and property owner of the Town and, as such, must be consistently based on honest and fair deliberation and decisions. The process of policy formulation and decisionmaking must be free from threats, favoritism, undue influence and even the appearance of impropriety so that the confidence of the public in our Town government is maintained.
- B. By enacting this code, the Town of Old Lyme seeks to affirm its trust in our governmental officials and our Town policies. It will strengthen and increase the confidence of the citizens, business owners and property owners in the integrity of our government.

§ 43-2. Applicability.

- A. This Code shall apply to all public officials, officers and public employees, whether elected and/or appointed, paid or unpaid.
- B. If any provision(s) of this code shall conflict with a current municipal labor agreement or employment contract, the conflicting provisions of such agreement or contract shall supersede. The remaining provisions of this code shall, however, remain in full force and effect in such case.

§ 43-3. Definitions.

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

BUSINESS — Any entity through which business for profit or not for profit is conducted, including a corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization or self-employed individual.

BUSINESS WITH WHICH HE OR SHE IS ASSOCIATED — A business of which a public official or public employee or member of his or her immediate family is a director, officer, owner, employee, compensated agent or holder of stock that constitutes 5% or more of the total outstanding stock of any class.

CONFIDENTIAL INFORMATION — Information, whether transmitted orally or in writing, which is obtained by reason of the public position or office held and is of such a nature that it is not at the time of transmission a matter of public record or public knowledge.

CONFLICT OF INTEREST — A public official or public employee has an interest which is in substantial conflict with the proper discharge of his/her duties or employment in the public interest if he/she has reason to believe that he/she or a family member of his/hers will derive a direct monetary gain or suffer direct monetary loss, as the case may be, by reason of his/her official activity. A public official or public employee does not have an interest which is in substantial conflict with the proper discharge of duties in the public interest if any benefit or detriment accrues to him/her as a member of a business, profession, occupation or group to no greater extent than any other member of such business, profession, occupation or group. Specifically, a conflict of interest exists if a public official or public employee or family member of such official or employee has a financial or personal interest in the outcome of any matter under consideration before him/her in his/her official capacity within or before his/her department or a board or commission of which he/she is a member; a public official or public employee accepts employment which will either impair his/her independence or judgment with regard to his/her official duties or require him/her to disclose confidential information acquired by him/her in the course of his/her duties. All public officials, public employees and/or appointed members of the Town government shall seek to avoid even the appearance of impropriety as it relates to this section. Any

criminal misconduct will mean a violation of the law as defined in Connecticut General Statutes Titles 53, 53a and other applicable statutes, which include misdemeanors and felonies, as defined therein.

DISTRICT — A district established pursuant to the Connecticut General Statutes § 7-324.

FINANCIAL INTEREST — Any interest with a monetary value of \$100 or more which generates a financial gain or loss of \$100 or more in a calendar year.

GIFT — Anything of value, including entertainment, food, beverage, travel, or lodging, given or paid to a public official or public employee, to the extent that consideration of equal or greater value is not received. A "gift" does not include:

- A. A political contribution otherwise reported as required by law or a donation or payment as described in Subdivision (9) or (11) of Subsection (b) of Connecticut General Statutes § 9-601a, as amended.
- B. Services provided by persons volunteering their time for a political campaign.
- C. A commercially reasonable loan made on terms not more favorable than loans made in the ordinary course of business.
- D. A gift received from:
 - (1) An individual's spouse, fiance or fiancée;
 - (2) The parent, brother or sister of such spouse or such individual; or
 - (3) The child of such individual or the spouse of such child.
- E. Goods or services that are provided to the Town and which facilitate governmental action or functions.
- F. A certificate, plaque or other ceremonial award costing less than \$100.
- G. A rebate or discount on the price of anything of value given in the ordinary course of business without regard to the recipient's status.
- H. Printed or recorded informational material germane to governmental actions or functions.
- I. Items of nominal value, not to exceed \$10, containing or displaying promotional material.
- J. An honorary degree bestowed upon a public official or public employee by a public or private university or college.
- K. Food or beverage provided at an event, or the registration or entrance fee to attend such event, in which the public employee or public official participates in said person's official capacity.
- L. Food or beverage provided in the home by an individual who resides in the Town in which the employee or official serves.
- M. Gifts of nominal value not exceeding \$25 tendered on gift-giving occasions generally recognized by the public, including Christmas, Hanukkah, birthdays, the birth or adoption of a child, weddings, confirmations, bar or bat mitzvahs, provided the total dollar value of such gifts from any individual in any calendar year does not exceed \$100.

IMMEDIATE FAMILY — Any spouse, child, parent, fiancée, sibling or dependent relative.

INDIVIDUAL — A natural person.

PAID CONSULTANT — A person, firm or corporation hired by the Town to provide services to the Town for a fee.

PERSON — An individual, sole proprietorship, trust, corporation, union, company, association, firm, partnership, committee, club or other organization or group of persons.

PUBLIC EMPLOYEE — A person employed full or part time by the Town. "Public employee" does not include a public official.

PUBLIC OFFICIAL — An elected or appointed official employed/appointed full- or part-time by the Town, on either a paid or unpaid basis, including a district officer elected pursuant to Connecticut General Statutes § 7-327.

§ 43-4. Public employees and public officials.

- A. **Special interest.** No public employee or public official shall engage in or participate in any business or transaction, including outside employment with a private business, or have an interest, direct or indirect, that is in conflict with the proper discharge of the employee's or official's responsibilities in the public interest or that would impair the employee's or official's independent judgment or action in the performance of the employee's or official's responsibilities.
- B. **Gifts or favors.**
- (1) No public employee or public official shall solicit or accept any gift from any person that, to the employee's or official's knowledge, is interested in any matter within such individual's official responsibility. As used in this subsection, "official responsibility" means the direct administrative or operating authority, whether intermediate or final and whether exercisable personally or through subordinates, to approve, disapprove or otherwise direct governmental action.
 - (2) If a prohibited gift is offered, the public employee or public official shall refuse it, or pay the donor full value of the gift or donate it to a nonprofit organization, provided the employee or official does not take the corresponding tax deduction or credit. Alternatively, the gift may be deemed to be a gift to the Town, provided it permanently remains in the Town's possession.
- C. **Voting conflicts.**
- (1) A public employee or public official shall refrain from voting upon or otherwise participating in any matter on behalf of the Town if the employee or official, or a business with which he/she is associated, or a member of his/her immediate family has a financial interest in the matter, including, but not limited to, the sale of real estate, material supplies, or services to the Town. As used in this subsection, "personal interest" means an interest in any action taken by the Town in which an individual will derive a nonfinancial benefit or detriment but which will result in the expenditure of funds.
 - (2) Notwithstanding the prohibition in Subsection C(1) of this subsection and the provisions of this subsection, a public employee or public official may vote or otherwise participate in a matter that involves a determination of general policy if the employee's or official's interest in the matter is de minimus in nature or shared with a substantial segment of the population of the Town.
- D. **Voting restrictions.** In addition to the restrictions in Subsection C of this section, a public employee who serves on any governmental body of the Town shall not vote or participate in any matter involving, for the department or program employing such public employee, a) collective bargaining; b) compensation or benefits; c) personnel policies and procedures; d) the budget, other appropriation or capital funding; or e) employment, compensation, benefits or performance of personnel, unless such public employee is permitted to vote or participate pursuant to the provisions of state statutes or Town ordinance. This provision shall not prevent the individual from voting on the Town budget as a whole.
- E. **Incompatible service.**
- (1) No public employee or public official shall appear on behalf of private interests before any board, agency, or committee of the Town for which the employee or official serves.
 - (2) No public employee or public official shall represent private interests against the interest of the Town for which the employee or official serves, in any litigation to which the Town is a party.
 - (3) The provisions of Subsection E(1) and (2) of this subdivision shall not apply to a public official who receives no compensation for service to the Town other than per diem payments and reimbursement expenses.
- F. **Public employee or public official nonrestrictions.** Nothing in this section shall prohibit or restrict a public employee or public official from:
- (1) Appearing before any board or commission of the Town on the employee's or official's own behalf; or
 - (2) Being a party in any action, proceeding or litigation:
 - (a) In which the Town is a party; and
 - (b) That is brought by or against the public employee or official.
- G. **Disclosure of information.** No public employee or public official shall disclose or use confidential information concerning the affairs of the Town for the financial interests of the employee, official or others.
- H. **Public property use.** No public employee or public official shall request, use or permit the use of a vehicle,

equipment, facility, material or property, which is owned by the Town for which the employee or official serves, for personal convenience or profit, except when available to the public generally or provided as Town policy for the use of such public employee or public official in the conduct of official business, in which case the public employee or public official may use such vehicle, equipment, facility, or equipment for de minimus personal convenience.

- I. **Public contracts.** No public employee or public official, or a business with which he/she is associated, or a member of his or her immediate family shall enter into a contract with the Town for which the public employee or public official serves which has a value of \$1,000 or more unless approved by the First Selectman or by the Board of Selectmen if the First Selectman has a conflict.
- J. **Financial benefits.** No public employee or public official may use the employee's or official's position or office with the Town for which the employee or official serves for the financial benefit of the employee or official, a business with which he or she is associated, or a member of his or her immediate family. The provisions of this subsection shall not prohibit a public employee or public official from receiving compensation for writing, on the employee's or official's own time, a book or article relating to the employee's or official's service for such municipality or district.
- K. **Appearances.** No public employee or public official shall accept a fee or honorarium for an article, appearance or speech, or for participation in an event, in the employee's or official's capacity, provided the public official or public employee may receive payment or reimbursement for necessary expenses for any such activity in such official's or employee's official capacity.
- L. **Solicitation.** No public employee or public official, or member of such individual's immediate family or business with which he or she is associated, shall solicit or accept anything of value, including, but not limited to, a gift, loan, political contribution, reward or promise of future employment, based on any understanding that the vote, official action or judgment of the public employee or public official would be influenced thereby.
- M. **Political activity.** No public employee or public official or candidate for elected office of the Town shall utilize Town funds, supplies, vehicles, or facilities for the purpose of any political activity.

§ 43-5. Paid consultants.

- A. **Conflict of interest.** No paid consultant of the Town shall represent a private party in any action or proceeding against the Town. This restriction may be waived by the Ethics Commission.
- B. **Representation.** No paid consultant can represent anyone other than the Town concerning any matter in which the consultant participated personally and substantially as a consultant to the Town.
- C. **Confidentiality.** No paid consultant shall:
 - (1) Disclose confidential information learned while performing the consultant's duties for the Town; or
 - (2) Use such information for the financial interests of the consultant or others.

§ 43-6. Former public employees and public officials.

- A. **Six-month limitation.** No former public employee or public official shall appear for compensation before any Town board or agency in which the employee or official was formerly employed at any time within a period of six months after termination of the employee's or official's service with the Town without prior approval of the Ethics Commission.
- B. **Latter case interest.** No former public employee or public official shall represent anyone other than the Town concerning any particular matter in which the employee or official participated personally and substantially while in Town service without prior approval of the Ethics Commission.
- C. **Disclosure.** No former public employee or public official shall disclose or use confidential information acquired in the course of and by reason of the employee's or official's official duties for financial gain for himself/herself or others.

§ 43-7. Ethics Commission.

- A. **Creation and composition of Ethics Commission.** There shall be a municipal Ethics Commission composed of five electors of the Town of Old Lyme and at no time shall more than two members be of the same political party.

- (1) **Eligibility.** No member of said Commission shall hold or campaign for any public office, be a public official other than as a member of the Commission, or be an officer of Town party committees, as defined in Connecticut General Statutes § 9-601, or officers of political committees required by state law to report to and/or register with the Town Clerk. Any member who, within the last three years prior to receipt of a complaint, shall have held public office or was a candidate for public office for the board or committee or commission involved in that complaint, shall not participate in the investigation or hearing of that complaint.
 - (2) **Appointment/removal.** The initial Ethics Commission shall be appointed by the unanimous vote of the Ethics Formation Committee. The Ethics Formation Committee will conduct an open solicitation of community-minded individuals and create a pool of candidates based upon their citizenship, political affiliations if any, and business, professional and personal history. Subject to the requirements of this subsection, the Ethics Formation Committee will randomly select and thereafter appoint the above five electors as the Ethics Commission. Thereafter, Commission members shall be appointed and/or vacancies filled by a two-thirds vote of the existing Ethics Commission (appointing authority). Removal from said Commission shall only be by two-thirds vote of the appointing authority or by unanimous vote of the Board of Selectmen. Of the five members initially appointed, three shall be appointed for a term of two years, and two for a term of three years. All subsequent appointments and reappointments to the Commission shall be for a term of two years. All such terms will end during the month of January. If a vacancy occurs as a result of a resignation, the appointing authority will appoint a member to the Commission to complete the unexpired term. Commission members may serve without limitations on the number of terms served.
 - (3) **Alternate members.** The Ethics Commission shall select three alternates to include members of different political parties and/or unaffiliated voters. An alternate member(s) may act in the place of an absent or disqualified Ethics Commission member appointed pursuant to § 43-7A(2) upon majority vote of the Ethics Commission.
 - (4) **Ombudsman.** The Ethics Commission shall select an ombudsman, which ombudsman shall be an elector of the Town who meets eligibility requirements found in § 43-7A(1). The Ethics Commission shall select an ombudsman, an alternate member or a member of the Ethics Formation Committee. When any public official, officer, or public employee has a question as to the applicability of any provision of this code to a particular situation or as to the definition of terms used herein, he or she may apply, in writing, to the ombudsman for an advisory opinion. Good faith reliance by such public official, officer or public employee on such advisory opinion shall be considered by the Ethics Commission in any subsequent proceeding brought pursuant to § 43-8.
- B. **Meetings of Commission; quorum; minutes.** The Commission shall annually elect a chairperson, vice chairperson and secretary from among its members at its first meeting. Meetings shall be held at the call of the Chairman or three members of the Commission and at such other times as the Commission shall determine. The presence of three members at a meeting shall constitute a quorum, except that any meeting whose purpose is to hear a complaint of violation of this code against an official, employee or consultant shall have four members to constitute a quorum. Any action taken by the Commission, other than findings under § 43-8A(7), shall be by a majority vote of the members present and voting. Except as otherwise noted, the rules of Robert's Rules of Order will govern the meetings. The Commission shall only conduct business if a quorum is present. The Commission shall keep minutes of its meetings, which minutes shall be filed with the Town Clerk and be in compliance with the requirements of the Connecticut Freedom of Information Act. Editor's Note: See the Connecticut General Statutes, § 1-200 et seq.
- C. **Rules of procedure.** The Commission may adopt rules of procedure and regulations which it deems necessary to carry out the intent of this code, and the same, and any amendments thereto, shall be filed in the office of the Town Clerk and be available for public inspection. The discussions of the Commission held in executive session are to be confidential. The minutes of the Commission are public information and, unless confidential, will be made available to the public through the Town Clerk's office. Any substantial amendments to this code must be approved at a Town Meeting.
- D. **Finances.** The financial needs of the Commission, including necessary funds to retain legal counsel for said Commission, shall be funded in the same manner as other Town boards and commissions. It is anticipated that the Town Attorney or his/her designee will serve as counsel to the commission. Once funded, said finances shall not be diminished or reduced during the pendency of any Commission investigation or hearing.

§ 43-8. Enforcement; penalties for offenses.

- A. Investigations and hearings. The Ethics Commission shall have the authority to evaluate, investigate and/or hear written complaints concerning allegations of violations of this code. The complaint shall be on a form prescribed by the Commission and signed under oath by the individual making said complaint and shall name the person accused (respondent) and shall specify the acts alleged to constitute the violation and when they occurred. Upon the complaint of any person on a form prescribed by the Commission, signed under penalty of false statement, or upon its own complaint, the Commission shall evaluate any alleged violation of this code. It shall also state whether these allegations have been presented to other administrative or judicial authorities. If the individual(s) intentionally makes a false written statement under oath which he does not believe to be true and which statement is intended to mislead a public servant in the performance of his official function, he shall be in violation of this section, in addition to any other penalties provided by law.
- (1) Complaint. Unless the Commission makes a finding of probable cause for a hearing, or unless the respondent requests in writing that the entire record and any hearings be open to the public, the complaint and all information supplied to or received from the Commission during evaluation or investigation shall remain confidential, as specified by provisions of the Connecticut General Statutes, § 1-82a(a), relating to operations of an ethics commission. The provisions of Connecticut General Statutes § 1-82a are incorporated herein.
 - (2) Evaluation and acknowledgment. Upon presentation of a complaint to the Commission, it shall evaluate it to decide whether the allegations would constitute a violation if true, and are of sufficient gravity, and whether it would be more reasonable to refer the matter to another administrative or judicial authority. Based on this evaluation, it may, in its discretion, refuse the complaint and return notice to the complainant of its reasons for that action. If it accepts the complaint, acknowledgment of receipt shall be sent to the complainant within five days thereafter, and a copy of the complaint furnished the respondent. The respondent shall be notified that he/she is afforded at least 10 business days to submit any response he/she wishes the Commission to consider before it decides to open a hearing.
 - (3) Investigations. If the Commission accepts the complaint, it shall make or cause an investigation to be made, sufficient to decide whether there is probable cause to believe a violation of this code has occurred. The investigation shall be concluded within 90 days. In the conduct of its investigation, the Commission shall have the power to hold hearings, administer oaths, examine witnesses, receive oral and documentary evidence, subpoena witnesses and require the production for examination by the Commission of any books and papers which the Commission deems relevant in any matter under investigation or in question. The provisions of Connecticut General Statutes § 7-148h are incorporated herein. During the investigation, the respondent shall have the right to appear, be represented by counsel, and be heard and offer any information which may tend to clear him/her of probable cause to believe he/she has violated any provision of the Code of Ethics.
 - (4) No probable cause. If the Commission finds no probable cause, it shall, within three business days, advise the complainant and the respondent of its finding and a summary of the reasons therefor, and the complaint and the record of investigation shall remain confidential.
 - (5) Probable cause. If the Commission finds probable cause by the concurring vote of three of its members, it shall, within three business days after the termination of its investigation, advise the complainant and the respondent of its finding and a summary of the reasons therefor. If there is found such probable cause, the Commission shall make public its finding within five business days after the termination of its investigation, and the entire record of investigation shall become public, with exception for postponement of the release of said record for a period not to exceed 14 days during negotiations for the resolution of the matter by stipulation, agreed settlement or consent order and/or as provided for in § 4-177 of the Connecticut General Statutes as referenced in § 1-82a(e). It shall also, unless resolved as stated above, fix a date for a hearing on the complaint and shall give notice of that date to the respondent, such date to be not less than 10 days following notice, nor more than 90 days after the finding of probable cause.
 - (6) Hearings. Hearings shall be open to the public. Oral evidence shall be taken under oath. The respondent shall have the right to be represented by counsel, to present evidence and to examine and cross-examine witnesses. Hearings shall be recorded by a stenographer or a recording device provided by the Commission. If the Commission does not provide a stenographer, the complainant or respondent may employ a stenographer at his/her own expense. If a transcript is made, a copy shall be made available to the other party upon payment of 1/2 the cost of obtaining the transcript.

- (7) Finding. No finding of violation of this code shall be made except upon concurring vote of four members of the Commission. The Chairman shall render the finding of the Commission within 30 days after conclusion of the hearing. A copy of the finding shall be sent to the complainant, the respondent, and the Town Clerk.
 - (8) Board-initiated complaints. Upon a concurring vote of three or more members, the Commission may initiate its own complaint. In doing so, it is not required that the complaint be sworn.
 - (9) Advisory opinions. Reliance by a Town official, officer or employee on an advisory opinion issued by the ombudsman pursuant to § 43-7A(4) shall be considered by the Ethics Commission in any proceeding brought pursuant to this section.
- B. Penalties. Violation of any provision of this code shall constitute grounds for, and may be punished by, a) public censure and reprimand; b) in the case of a public employee, recommendations to the Board of Selectmen ranging from suspension from employment with or without pay up to dismissal from employment; c) a civil penalty of not more than \$250 per violation; and/or d) restitution of any pecuniary benefits received because of the violation committed. The Commission will also retain the authority to refer appropriate cases to other venues for proper adjudication (e.g., the police, etc.). At no time will the Commission have the authority to remove elected officials from office.
- C. Appeals. The respondent shall have the right to appeal the findings of the Commission within 30 days of receipt of its findings. Said notice of appeal shall be sent by mail or be hand-delivered to the First Selectman. The Appellate Board will consist of the Board of Selectmen. To the extent that the First Selectman exercises his/her right pursuant to Connecticut General Statute § 7-12a to sit as an ex officio member of the Ethics Commission, the First Selectman will be disqualified from sitting on the Appellate Board. In the event that the complaint involves one or more members of the Board of Selectmen and/or the First Selectman is disqualified, the remaining selectman/selectmen, or the Chairman of the Ethics Commission in the absence of an available selectman, shall appoint an attorney(s) to sit on said three-person Appellate Board. The Appellate Board will not review the case de novo. If, after hearing the appeal, a majority of the Appellate Board determines that the finding appealed was arbitrary, capricious or an abuse of discretion, the appeal shall be sustained; otherwise, the appeal shall be denied. The respondent shall have the right to a further appeal to Superior Court subject to the provisions of the Connecticut General Statutes, if any.

§ 43-9. Distribution of Code of Ethics.

The Board of Selectmen shall cause a copy of this code of Ethics to be distributed to every public official and public employee within 90 days after the enactment of this code of Ethics. Each public official and public employee elected, appointed or engaged thereafter shall be furnished a copy of this code by the Town Clerk before entering upon the duties of the office or employment. Any amendments to this code shall similarly be distributed by the Board of Selectmen within 90 days thereof. At the discretion of the Board of Selectmen and its designees, paid consultants shall be furnished a copy of this code. A signed receipt of all copies shall be returned to the Town Clerk and retained on file. Not receiving a copy of this code or any amendments thereto or not signing a receipt therefor does not exempt a public official or public employee from the provisions of the Code of Ethics. This Code shall be made available to individual(s), partnership(s), corporation(s) or other entities doing business with the Town and posted on the Town's website.