

### Section 1. Purpose

The purpose of this local law is to enact a Code of Conduct to:

- Convey standards of ethical conduct to officers and employees of the Town, which shall serve as a guide for the official conduct of the officers and employees of the Town.
- Establish a Board of Ethics having duties and powers as described herein and as prescribed by Article 18 of the General Municipal Law of the State of New York.

This local law is intended to foster integrity in government, promote public confidence, and help municipal officers and employees to discharge their official duties without fear of unwarranted accusations of unethical conduct. This local law shall not conflict with, but shall be in addition to any prohibition of Article 18 of the General Municipal Law or any other general or special law relating to ethical conduct and interests in contracts of municipal officers and employees.

### Section 2. Scope

- a) This local law applies to all Town officers, employees, and members of all boards and commissions (Town Representatives). The proper operation of Town government requires that its Town Representatives be independent, impartial, objective, unbiased and responsible to the people of the Town and to discharge faithfully the duties of their position, regardless of personal considerations. The Code of Conduct is intended to maintain high standards of fairness, honesty, integrity and respect for others. The Code of Conduct provides general principles of appropriate conduct and includes provisions to help avoid even the appearance of impropriety. It would be nearly impossible and overly cumbersome to try and capture all possible circumstances and situations that might present themselves in the conduct of business within the Town. Therefore this Code of Conduct is not intended to be all-inclusive. The absence of a specific circumstance or situation does not relieve Town Representatives from acting responsibly and to exercise high ethical standards. Town Representatives should conduct themselves within the spirit and intent of this Code of Conduct, and should seek advice or guidance if necessary.
- b) By issuing this Code of Conduct, the Town does not wish to preclude neighborly conduct and acts of good will. This Code of Conduct is not intended to preclude either extending or receiving acts of kindness, expressions of appreciation, lending a helping hand, helping out in a personal emergency and other similar circumstances. Should a complaint of misconduct arise, it will be viewed by the Board of Ethics in terms of whether the act was intended to gain or give special favor, gain or give special consideration, influence a decision or to receive personal gain or position.
- c) Any Town resident, Town Representative, supplier/contractor, outside government official or the general public may approach Town government with ethical misconduct or conflict of interest concerns as provided for herein.

### Section 3. Definitions

- a) "Town Representative" means an employee of the Town, an elected officer of the Town, whether paid or unpaid, a member of any administrative board, commission or other agency thereof whether elected or assigned or paid or unpaid. However, no person shall be deemed to be a Town Representative by reason of being an independent contractor performing services under contract or agreement with the Town. No person shall be deemed to be a Town Representative solely by reason of being a volunteer, such as a fireman or civil defense volunteer.
- b) "Interest" means any direct or indirect monetary or material benefit accruing to a Town Representative or a Town Representative's 1) spouse, child, step-child, sibling, or parent of the

Town Representative, or a person claimed as a dependent on his or her latest individual state income tax; 2) a firm, partnership or association of which such Town Representative is a member or employee; 3) a corporation of which such Town Representative is an officer, director or employee; and 4) a corporation any stock of which is accrued or controlled directly or indirectly by such Town Representative.

- c) "Immediate Family" means the husband, wife, son, daughter, father, mother, brother, sister, father-in-law, and/or mother-in-law. It shall also pertain to any relative living in the Town Representative's household.

#### Section 4. Code of Conduct

Every Town Representative shall be subject to and abide by the following code of conduct.

- a) Accepting Gifts / Financial Benefit / Personal Favors. No Town Representative or immediate family member shall directly or indirectly solicit any gift or personal favor nor accept any unsolicited gift or personal favor, whether in the form of money, services, authorizations, loan, travel, entertainment, hospitality, meals, other things of value, or any promise thereof from suppliers/contractors, other Town Representatives, Town residents or governmental personnel.

#### EXCEPTIONS:

1. Employees may accept gifts of nominal value (less than \$25) from Town residents if such gifts are expressions of good will or appreciation for services provided. All board members, members on commissions and the Town tax assessor/collector are not included in this exception, to help avoid the appearance of impropriety. Cash or cash equivalent gifts and all gifts from suppliers/contractors are excluded from this exception. Employees must exercise good judgment in accepting such gifts and should not accept gifts under circumstances in which it could reasonably be inferred that the gift was intended to influence such employee in the performance of his or her official duties or was intended as a reward for any official action on his or her part.
2. Promotional items and mementos (e.g. pens, pencils, trinkets) having nominal value are commonplace in the work environment. They can find their way into the work place in many harmless ways. Their existence in the Town work environment is not considered a violation of this Code of Conduct. Since acceptance of such items may imply some form of obligation, or favor in return, acceptance of work related promotional items by Town Representatives is discouraged.
3. Participation in various non-Town sponsored activities may have valid business purposes. When no outside procurement decision is pending, it may be acceptable for a Town Representative to participate at the sponsor's cost. Such situations should receive Town Supervisor or Town Board approval before participation. Participation of Town Representatives at sponsored activities is permissible if the cost of participation is borne by the Town and the Town Representative has received appropriate approval in writing to participate.
4. Attendance at a hosted meal provided in conjunction with a meeting, seminar, conference, etc. which relates directly to Town business.
5. Refreshments or other similar forms of hospitality that are commonplace in the work place.
6. Acceptance of an award.

7. Any gift which would have been offered or given to the Town Representative regardless of their affiliation with the Town.

- b) Offering Gifts. The Town Supervisor is the only Town Representative authorized to offer a gift from time to time, as the Town Supervisor may deem appropriate. Such gifts should not exceed a value of \$75. Such gifts should never be in the form of cash or cash equivalent. Contemplation of a gift deemed appropriate by Town government, that exceeds \$75 in value should receive approval by the Town Board. A record of all gifts given by the Town should be maintained in the Town Hall. The record should include the reason for the gift, who the gift was given to, who authorized the gift and the date the gift was given to the recipient.
- c) Confidential information. No Town Representative shall disclose confidential information acquired by him or her in the course of his or her official duties or use such information to further his or her personal interests.
- d) Representation before one's own agency. No Town Representative shall receive, or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any Town agency or board of which he or she is an officer, member or employee, or of any municipal agency over which he or she has jurisdiction or to which he or she has the power to appoint any member, officer or employee.
- e) Representation before any agency for a contingent fee. No Town Representative shall receive or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any agency of the Town, whereby his or her compensation is to be dependent or contingent upon any action by such agency with respect to such matter, provided that this paragraph shall not prohibit the fixing at any time of fees based upon the reasonable value of the services rendered.
- f) Disclosure of interest in legislation. To the extent that he or she knows thereof, a Town Representative, whether paid or unpaid, who participates in the discussion or gives official opinion to the Town Board on any legislation before the Town Board shall publicly disclose on the official record the nature and extent of any direct or indirect financial or other private interest he or she has in such legislation.
- g) Investments in conflict with official duties. No Town Representative shall invest or hold any investment directly or indirectly in any financial, business, commercial or other private transaction, which creates a conflict with his or her official duties.
- h) Private employment. No Town Representative shall engage in, solicit, negotiate for or promise to accept private employment or render services for private interests when such employment or service creates a conflict with or impairs the proper discharge of his or her duties. Otherwise, Town Representatives may engage in outside employment. Full time employees of the Town must notify their immediate supervisor should they choose to engage in private employment. Town supervision should then seek and obtain Town Board authorization for such employment. Any outside employment must be kept completely separate from Town responsibilities. Town Representatives are prohibited from using Town equipment, tools, time, property or other Town resources for their outside employment activities. Any activity seeking private gain or pursuit of a personal business endeavor by an Employee during work hours is prohibited.

- i) Use of Town Assets. Town Representatives may not use small tools, or property for personal use or profit. Town equipment and vehicles may not be used for personal use unless specifically authorized by a supervisor. Some circumstances where use may be authorized include:
- Employees subject to on-call responses.
  - Town Representatives authorized to attend work-related meetings, conferences, etc. in which the Town Representative travels out of Town.

Use of Town resources for community or charitable activities must be approved in advance by appropriate Town authorization.

- j) Relationships with Suppliers and Contractors. Town Representatives must disclose to the Town Board if they or immediate family have any direct or indirect interest in a company doing business with or being considered to do business with the Town. In such a case, the Town Representative must disqualify himself or herself from any review, recommendation or selection of any procurement transaction that involves such company.

Town Representatives shall abstain from making personal investments in enterprises, which are doing business with the Town or are being considered to do business with the Town.

Town Representatives are prohibited to convey to a third party, proprietary information obtained from a supplier or contractor unless the supplier or contractor gives permission

- k) Future employment. No Town Representative shall, after the termination of service or employment with the Town, appear before any board or agency of the Town in relation to any case, proceeding or application in which he or she personally participated during the period of his or her service or employment or which was under his or her consideration.
- l) Political Solicitation. No Town Representative may request, or authorize any other person to request, any subordinate of the officer or employee to participate in an election campaign or in any other political activity, or to contribute in any way to a political campaign, committee, or any other political activity.
- m) Discrimination. The Town work environment should be free from discrimination on the basis of race, religion, sex, age, disability, national origin, marital status, veteran status or sexual orientation. This policy applies to hiring practices, administration of activities within Town operations and government and between Town Representatives and Town Residents.
- n) Use of Alcohol or Illegal Drugs. No Town Representative shall consume alcoholic beverages or illegal drugs during working hours. No Town Representative should report to work under the influence of alcohol or illegal drugs.
- o) Deadly Weapons. No Town Representative while carrying out responsibilities of their Town position, shall be in the possession of a deadly weapon as defined in Section 10:00 Subdivision 12 of the NYS Penal Law.
- p) Procurement. Procurement of goods and services should be conducted in accordance with Town procurement policies and guidelines. Procurement transactions should be conducted fairly and decisions made objectively without favoritism.
- q) Conflict of Interest. It is each Town Representative's responsibility to avoid situations that present conflicts of interest. If a Town Representative has a question regarding conflict of interest matters, they should seek advice from the Town Supervisor. Town governance should be mindful

of activity that may create a potential for conflict of interest situations and should take necessary steps to mitigate such situations.

- r) Retaliation. There shall not be any form of retaliation for reporting a misconduct or conflict of interest concern or for supplying information about a misconduct concern.
- s) Violations. In addition to any penalty contained in any other provision of law, any Town Representative who shall violate any of the provisions of this local law may be reprimanded, fined, suspended or removed from office or employment in the manner provided by law.

#### **Section 5. Board of Ethics**

- a) The Town hereby establishes a Board of Ethics consisting of 5 members to be appointed by the Town, who shall serve at the pleasure of the Town Board. A majority of the members of the Board of Ethics shall be persons other than officers or employees of the Town but shall include at least one member who is an elected or appointed officer or employee of the Town. All members shall reside in the Town of Virgil. The Board of Ethics shall elect its own chairperson and secretary and act by a majority vote of its total members. The Town's attorney shall serve as counsel to the Board of Ethics, except in any matter where a conflict of interest may exist.
- b) The term of office for Board of Ethics members shall be five years, except for the first five appointees whose terms started August 29, 2006. The term of these members shall be for one year, two years, three years, four years and five years. No member shall serve more than two consecutive terms.
- c) Meetings of the Board shall be held at the call of any member on at least three days written notice, mailed to the last-known address of the members. It shall adopt rules of proceeding for the conduct of its meetings, including the requirement that minutes shall be kept for every meeting. It is recognized that reputations of Town Representatives can be wrongfully tarnished by false or misleading complaints. Therefore, to the extent allowed by law, the Board of Ethics shall be exempt from the Freedom of Information Law and from the Open Meetings Law when reviewing complaints. Discussions held in Executive Session shall remain confidential and will not be disclosed.
- d) Board of Ethics members shall receive no salary or compensation for their services, but shall be entitled to actual and necessary reimbursement of expenses in performing the duties of their office.
- e) Should a vacancy in the Board of Ethics arise, the Town Board shall appoint a Town citizen to serve out the remainder of the term. Any tie shall be resolved by the vote of the Town Supervisor.
- f) Any member of the Board of Ethics may be removed by the Town Board for substantial neglect of duty, gross misconduct in office, inability to discharge the powers or duties of his or her office or violation of the Code of Conduct.

#### **Section 6. Powers and Duties of the Board of Ethics.**

- a) The Board of Ethics shall have the powers and duties prescribed by Article 18 of the General Municipal Law of the State of New York and as set forth herein, and shall render advisory opinions to the officers and employees of the Town with respect to the Code of Conduct and Article 18 of the General Municipal Law, and under such rules and regulations as the Town Board may prescribe. In addition, the Board of Ethics may make recommendations with respect to the drafting and adoption of changes or amendments of the Code of Conduct.

- b) The Board of Ethics shall have the authority to take testimony under oath recognizing that false statements given under oath will be forwarded to the Cortland County's District Attorney for possible criminal prosecution.

#### **Section 7. Receipt of Complaints**

- a) In addition to the other powers and duties granted to the Board of Ethics, the Board shall have the authority to receive from any person a written complaint:
  - (i) Questioning the compliance of any Town Representative with the provisions of the Code of Conduct.
  - (ii) Addressing conflict of interest concerns.
- b) The complaint shall be in writing, must include the complainant's name, address and phone number and shall be signed by the complainant. The written complaint shall set forth reasonable detail and documentation, if any, of the facts alleged to constitute the violation(s), or the condition(s) that exists that creates a potential for a conflict of interest. The complaint should include date(s), time and place of each occurrence, and the name of the Town Representative(s) charged with the violation(s). Preferably, the complaint shall identify the section of the Code of Conduct that has been allegedly violated.
- c) Any document identified as a complaint that is received by the Town Board or a Town Representative shall be forwarded, unaltered, to the Board of Ethics.
- d) The Board of Ethics may on its own initiative conduct an inquiry of a Town Representative's alleged non-compliance with the provisions of the Code of Conduct upon receipt of substantial, reliable evidence, including, but not limited to, documents, written material, or other forms of proof. The Board of Ethics shall also have the power to initiate complaints as a result of information discovered during the course of its duties.
- e) Upon receipt of a complaint, the Board of Ethics shall acknowledge receipt to the complainant and forward the complaint simultaneously to the Town Representative who is the subject of the complaint and to the Town's attorney.
- f) All complaints until completely investigated, are considered alleged violations or conflicts of interest, and as such, are to be kept in the confidential records of the Board of Ethics. Board of Ethics members, the Town Board or any other Town Representative having knowledge about a complaint, and any details there from, shall keep all complaints, information and discussions thereof, confidential before and during investigation.
- g) Within 30 days after receipt of a complaint, the Board of Ethics shall conduct a preliminary investigation.

#### **Section 8. Investigation and Disposition of Complaints**

- a) After the complaint has been filed and prior to any investigation undertaken of a complaint before the Board of Ethics, no member of the Board of Ethics or any of the Board's authorized agents may communicate directly or indirectly with any party or other persons about any issue of fact or law regarding the complaint, except that:
  - 1) the members of the Board of Ethics may obtain legal advice from the Town's attorney or special counsel as the case may be;
  - 2) the members of the Board of Ethics may discuss the complaint among themselves;

- 3) if any person attempts to influence a Board of Ethics member regarding the pending complaint, the Board member shall report the substance of the communication to the Board of Ethics at the next meeting of the Board of Ethics.
- b) The Board of Ethics shall then conduct a preliminary analysis of the complaint and determine whether there is probable cause for the complaint. In the event that the Board of Ethics should find no probable cause for the complaint, the Board of Ethics shall dismiss the complaint. If the complaint is dismissed, it shall be done in writing, setting forth the facts and the provisions upon which the dismissal is based, and shall provide a copy of the written dismissal to the complainant, to the Town Representative who is the subject of the complaint, to the Town Board and to the Town's attorney. The complaint shall not be disclosed to the public (other than to the complainant) and all records maintained in the confidential files of the Board of Ethics for a period of seven years, after which it shall be destroyed. The Town Representative who is the subject of the complaint may make a written request to the Town Board to make the findings public. The Town shall then honor any such request.
- c) In the event that the Board of Ethics has no basis to dismiss the complaint, it shall proceed with an investigation. At such point the Board of Ethics shall forward to the Town Board a copy of its initial position together with any information and documentation acquired by the Board of Ethics regarding the complaint.
- d) An investigation should then proceed. Since complaints will vary in nature, so too may the approach taken to investigate a complaint vary. The Board of Ethics may seek advice on how to proceed with individual investigations. The Board of Ethics shall have final say in determining how an investigation shall proceed. The Board of Ethics shall seek to make sure that both the complainant and the Town Representative who is the subject of the complaint have an opportunity to be heard and to present evidence. The Board of Ethics may limit the testimony and evidence that is presented to it, if in the opinion of the Board the testimony and evidence in question is irrelevant, unnecessary, redundant, or unreliable.
- e) The members of the Board of Ethics shall have the right to obtain opinions from qualified people other than themselves provided that the majority of the members of the Board of Ethics agree with such a course of action and the names of the individuals involved in the complaint are withheld, to the extent possible, from such other qualified people.
- f) The Board of Ethics may require, with sufficient written notice, any Town Representative to appear before it to provide testimony regarding pending complaints. The Board of Ethics, for this purpose, may administer oaths and require the production of evidence such as documents.
- g) The Town Representative who is the subject of the complaint may submit a written sworn response to the Board of Ethics.
- h) Should satisfactory cooperation not be forthcoming by the accused Town Representative, or by any witness, the Board of Ethics upon a majority vote of the total voting membership of the Board, may issue subpoenas to compel the attendance of the Town Representative charged with the violation or necessary witnesses, to a hearing. Subpoenas may also be used to obtain the production of documents and other materials pertinent to the investigation. The Town's attorney will advise and assist the Board in the use, preparation and issuance of subpoena(s).
- i) A copy of the transcript of the testimony of the Town Representative, who is the subject of the complaint, shall be provided at no cost to the Town Representative.

- j) The Town Representative who is the subject of the complaint shall have the right to be represented by counsel.
- k) Upon completion of its investigation, the Board of Ethics shall prepare a written report detailing its review and provide a recommendation to the Town Board regarding the disposition of the complaint. A copy shall be forwarded to the Town's attorney. The complaint, records, other proceedings related thereto and report, up to this point in the process, shall remain confidential.
- l) The Board of Ethics' report will identify, in the Board's judgement, whether or not the complaint is a violation of the Code of Conduct or if a conflict of interest exists. The Board's assessment shall be binding unless new evidence is brought to bear on the subject. Upon review and authorization of the report by the Town Board and concurrence from the Town's attorney, the Board of Ethics shall furnish the complainant and the Town Representative who is the subject of the complaint with a disposition of the complaint.
- m) Should a complaint be deemed to not violate the Code of Conduct or be a conflict of interest, the complaint shall not be disclosed to the public (other than to the complainant), to avoid the potential for tarnishing the accused Town Representative's reputation. The Town Representative who is the subject of the complaint may make a written request to the Town Board to make the findings public. The Town shall then honor any such request. All records shall be maintained in the confidential files of the Board of Ethics for a period of seven years, after which it shall be destroyed.
- n) Should a complaint be deemed to be a violation of the Code of Conduct, The Town Board shall determine disciplinary action. Should the complaint be deemed to be a conflict of interest matter, the Town Board shall take appropriate steps to mitigate the matter. Details of the report shall not be made public (other than to the complainant) unless decided to do so by the Town Board. The Town Representative who is the subject of the complaint may make a written request to the Town Board to make the findings of the report public. The Town shall then honor any such request. All records shall be maintained in the Town Representative's confidential personnel file for a period consistent with NYS Law.

**Section 9. Distribution of Code of Conduct**

The Town Supervisor shall ensure that a copy of the Code of Conduct be distributed to every Town Representative within 30 days after the effective date of this local law or any revision there to. Each Town Representative elected or appointed thereafter shall be furnished a copy of the Code of Conduct before entering upon the duties of his or her office or employment.

It shall be the responsibility of the supervisor of any new employee to ensure that the new employee familiarizes themselves with the provisions of this local law and the Code of Conduct.

**Section 10. Penalties**

In addition to any penalty contained in any other provisions of law, any person who shall violate any of the provisions of the Code of Conduct may be reprimanded, fined, suspended or removed from office or employment, as assessed by the Town Board, in the manner provided by law.

The Board of Ethics shall not have the power to impose any monetary or other penalty.



Section 11. Supersession

This Local Law shall supersede Local Law #1 of the Town of Virgil for the year 1994.

Section 12. Effective Date

This local law and any amendments thereto shall take effect immediately after enactment and upon their filing in the office of the Secretary of State in accordance with section 27 of the Municipal Home Rule Law.