

LOCAL LAW 2-2020
A LOCAL LAW TO AMEND CHAPTER 12 OF THE
VILLAGE CODE IN RELATION TO A CODE OF ETHICS

WHEREAS, Article 18 of the New York General Municipal Law prohibits the officers and employees of a municipality from having certain conflicts of interest; and

WHEREAS Section 806 of the New York General Municipal Law requires the governing body of therein designated municipalities, including villages, to adopt a code of ethics that sets forth for the guidance of its officers and employees standards of conduct reasonably expected of them; and

WHEREAS Section 806 of the General Municipal Law also authorizes the governing body of any municipality to adopt such a code of ethics; and

WHEREAS, such code of ethics must set forth standards of conduct for the guidance of the officers and employees of the municipality with respect to disclosure of interests in legislation before the local governing body, holding of investments in conflict with official duties, private employment in conflict with official duties, future employment, and such other standards as may be deemed advisable; and

WHEREAS, the State of New York provides for certain protections for employees under Subsection 740 of the New York State Labor Laws and the Village of Garden City may also adopt "whistleblower" procedures and protections and intends that the Board of Ethics shall be a responsible party on behalf of the Village of Garden City to receive any whistleblower complaints.

NOW, THEREFORE, BE IT RESOLVED that the Board of Trustees of the Village of Garden City hereby adopts a code of ethics to read as follows:

Section 1: The Current Chapter 12 of the Village Code of Garden City is hereby repealed in its entirety and the following is substituted therefore:

12-1. Purpose.

Officers, elected officials and employees of the Village of Garden City ("Village") hold their positions to serve and benefit the public, and not for obtaining personal or private gain in the exercise and performance of their official powers and duties. The Board of Trustees of the Village recognizes that, in furtherance of this fundamental principle, there is a need for clear and reasonable standards of ethical conduct. This code of ethics is designed to establish those standards, while recognizing that many persons serving the Village serve as volunteers to the Village in various capacities and maintain private employment with third parties not affiliated with the Village.

12-2. Definitions.

(a) "Board" means the Board of Trustees of the Village, inclusive of the Mayor of the Village ("Board of Trustees"), and any municipal administrative board, commission, agency or body of the Village, the membership of which is subject to approval by the Board of Trustees including, without limitation, those board and commissions listed on the Village website or established under Village law, from time to time.

(b) "Code" means this code of ethics.

(c) An Officer or Employee shall be deemed to have an "Interest" in any entity or 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, any of the organization's outstanding stock or membership interests or is entitled to any portion of the profits or losses of any such entity.

(d) "Officer or Employee" means a paid or unpaid officer or employee of the Village including, but not limited to, the members of any Board, whether paid or unpaid, but shall not include professionals and consultants retained by the Village or third parties retained through public bidding contracts or other contracts which may be entered into by the Village.

(e) "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 municipal officer or employee, and individuals having any of these relationships to the spouse of the officer or employee.

(f) "Senior Staff" shall mean the Village Administrator; Secretary to the Board of Trustees; Village Clerk; Village Treasurer; Village Auditor; Chairman, Board of Police Commissioners; Fire Chief; Chairman of the Board of the Recreation and Cultural Affairs; Superintendent of Building Department; and Superintendent of Public Works, Library Director, or any comparable senior staff position reporting to the Village Administrator, and such other titles as may be established from time to time by the Board of Trustees.

12-3. Applicability.

This Code applies to the Officers and Employees of the Village, and, effective on the date of its adoption by the Board of Trustees, shall supersede any prior Village code of ethics. The provisions of this Code shall apply in addition to all applicable State and local laws relating to conflicts of interest and ethics, including, but not limited to, Article 18 of the New York General Municipal Law, and all rules, regulations, policies and procedures of the Village.

12-4. Prohibition on use of Village position for personal or private gain.

No Officer or Employee shall use his or her Village position or official powers, duties and discretion to secure a material financial or other benefit, directly or indirectly, for himself or herself, a Relative, or any organization or entity in which he or she or a Relative is deemed to have an Interest. Notwithstanding the foregoing, it is not the intention of this section to prohibit any Officer or Employee (or any Relative of an Officer or Employee) who is a resident and/or

taxpayer of the Village from receiving any goods, services or other benefit available generally to residents and/or taxpayers of the Village provided that such are made available to such Officer or Employee in amounts and on terms comparable to residents and/or taxpayers generally. For purpose of this Section and of this Code generally, "material" means any benefit other than one which is so trivial or *de minimus* as not to raise the reasonable prospect that it would affect the judgment, decision- making or advocacy of the Officer or Employee.

12-5. Disclosure of Interest in legislation and other matters.

(a) Whenever a matter requiring the exercise of discretion comes before a Village Officer or Employee, either individually or as a member of a Board, and disposition of the matter could result in a violation of Section 4, the 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 Officer or Employee, or when the Officer or Employee first acquires knowledge of the Interest requiring disclosure, whichever is earlier.

(c) In the case of a person serving in an elective office, the disclosure shall be filed with the Board of Trustees and the Village Administrator. In all other cases, the disclosure shall be provided to the person's supervisor (with a copy provided by the Officer or Employee to the Village Clerk) or, if the person does not have a supervisor, the disclosure shall be filed with the Officer, Employee or Board having the power to appoint to the person's position. In addition, in the case of a person serving on a Board, a copy of the disclosure shall be filed with such Board. Any disclosure made to a Board or the Public Administrator shall be made publicly at a meeting of the Board prior to the taking of any action and must be included in the minutes of the meeting and shall be deemed proper notice under this Code.

12-6. Recusal and Abstention.

(a) No Officer or Employee shall participate in any decision or take (or forbear from taking) any official action with respect to any matter or proceeding requiring the exercise of discretion, including discussing the matter and voting on it, if he or she knows or has reason to know that the action or forbearance could confer a benefit prohibited by Section 12-4 (an "Offending Officer or Employee").

(b) In the event that this section prohibits an Officer or Employee from acting or forbearing:

- (1) if the action or forbearance is vested in an Officer as a member of a Board, then it shall be exercised or performed by the other members of the Board without the participation of the Offending Officer or Employee; or
- (2) other than as provided in sub-clause (b)(i) above, if the action or forbearance is vested in an Officer or Employee individually, he or she must refer the matter to his or her immediate supervisor, and the immediate supervisor shall designate another person to act or forbear as appropriate. In the case of the

Village Administrator, the referral shall be made to the Village Mayor ("Mayor") who shall act or forbear as appropriate or designate another person to do so.

(c) In the event that a member of the Senior Staff is subject to a prohibition under this Section 12-6, the Village Administrator shall promptly report this matter to the Mayor, and shall report it to the Board of Trustees at the next Board of Trustees meeting, and such report shall be recorded in the minutes of such meeting. Such report shall be in addition to the obligations imposed by subsection (b).

12-7. Prohibition inapplicable; disclosure, recusal and abstention not required.

(a) Subject to state or federal laws and regulations stating otherwise, the provisions of Sections 12-4, 12-5 and 12-6 of this Code shall not apply to the Board of Trustees with respect to the following matters:

- (1) adoption of the Village's annual budget;
- (2) any matter requiring the exercise of discretion or forbearance that directly affects any of the following groups of people or a lawful class of such groups:
 - (i) all Officers or Employees;
 - (ii) all residents or taxpayers of the Village or an area of the Village;
or
 - (iii) the general public;
- (3) any matter that does not require the exercise of discretion; or
- (4) any matter related to general tax laws, zoning laws or building laws or other regulations or policies or the approval or expenditure of funds which affect all residents or taxpayers of the Village or an area of the Village.

(b) Recusal and abstention shall not be required with respect to any matter:

- (1) which comes before a Board when a majority of the Board's total membership would otherwise be prohibited from acting by section 12-6 of this Code;
- (2) which comes before an Officer when the Officer would be prohibited from acting by section 12-66 of this Code and the matter cannot be lawfully delegated to another person.

(c) Matters which are acted upon pursuant to the exemptions of subsection (b) of this Section 7 shall be promptly reported to the Board of Trustees and shall be voidable by the majority vote of the Board of Trustees within 60 days of such notice or at the next regularly scheduled meeting of the Board of Trustees, whichever shall be later.

12-8. Investments in conflict with official duties.

(a) No Officer or Employee while employed by the Village may acquire the following investments:

- (1) investments that can be reasonably expected to require more than sporadic recusal and abstention under section 12-6 of this Code; 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 an Officer or Employee from acquiring any other investments or the following assets:

- (1) real property located within the Village and used as his or her personal residence;
- (2) less than ten percent (10%) of the stock of a publicly traded corporation or an affiliate thereof that transacts business with the Village; or
- (3) bonds or notes publicly issued by the Village.

12-9. Private employment in conflict with official duties.

(a) No Officer or Employee, during his or her tenure as an 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:

- (1) can be reasonably expected to require more than sporadic recusal and abstention pursuant to section 6 of this code;
- (2) can be reasonably expected to require disclosure or use of confidential information gained by reason of serving as an Officer or Employee;
- (3) violates any applicable law, regulation or rule, including without limitation, section 805- a(l)(c) or (d) of the New York General Municipal Law; or
- (4) requires representation of a person or organization other than the Village in connection with litigation, arbitrations, negotiations or any other matter or proceeding in which the Village is also a party.

(b) The Village recognizes under this Code that Section 805-a (1) (c) of the New York State General Municipal Law prohibits any municipal Officer or Employee from, among other things, receiving or entering into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any municipal agency of which he is an officer, member or employee or of any municipal agency over which he has jurisdiction or to

which he has the power to appoint any member, officer or employee. Therefore, notwithstanding anything to the contrary appearing elsewhere in this Code, including, without limitation Section 12-6 (b)(1) above, no member of the Architectural Design Review Board, Planning Commission or Zoning Board of Appeals may serve on such boards or commissions, or continue to serve on such boards or commission if such person would be required to recuse themselves, from acting on matters to be considered by, or in proceedings before, such board or commission on which such person then is serving, or if appointed, would serve.

12-10. Future employment.

(a) No 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 Officer or Employee, either individually or as a member of a board, while the matter is pending or within the one year following final disposition of the matter.

(b) No Officer or Employee, for the one-year period after serving as an 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 municipal office, Board, department or comparable Village organizational unit for which he or she serves.

(c) No Officer or Employee, at any time after serving as such, 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 an Officer or Employee.

12-11. Personal representations and claims permitted.

This Code shall not be construed as prohibiting an Officer or Employee from:

(a) representing himself or herself, or his or her spouse or minor children before the Village;

or

(b) asserting a claim against the Village on his or her own behalf, or on behalf of his or her spouse or minor children.

12-12. Use of Village resources

(a) Village resources shall be used only for lawful Village purposes. Village resources include, but are not limited to, Village personnel, Village funds, vehicles, equipment, materials, supplies, real property or other property. Village resources shall also be deemed to include access to and the ability to utilize the sanitation and/or refuse disposal facilities of the Village.

(b) No Officer or Employee may use or permit the use of Village resources for personal or private purposes or the personal or private purposes of a Relative, nor may an Officer or Employee allow any unauthorized party to use Village resources, but this provision shall not

be construed as prohibiting:

- (1) any use of Village resources authorized by law or written Village policy established by the Board and evidenced by resolutions duly adopted by the Board;
- (2) the use of Village resources for personal or private purposes when expressly provided to an Officer or Employee as part of his or her compensation provided that such use has been expressly approved by the Board of Trustees and evidenced by resolutions duly adopted by the Board or in conformity with policies established by the Board of Trustees from time to time in connection with terms of employment or general employee policies.
- (3) the occasional and incidental use during the work day of Village telephones and computers for necessary personal matters such as family care, medical reasons and changes in work schedule.

(c) No Village Officer or Employee shall cause the Village to spend more than is reasonably necessary for transportation, meals or lodging in connection with official travel.

12-13. Interests in Contracts.

(a) No Officer or Employee may have an Interest in a contract that is prohibited by section 801 of the New York General Municipal Law.

(b) Every Officer and Employee shall disclose Interests in contracts with the Village at the time and in the manner required by section 803 of the New York General Municipal Law.

12-14. Nepotism.

Except as otherwise required by law:

(a) No 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 control of the Village or a Board.

(b) No Officer or Employee may supervise a Relative in the performance of the Relative's official powers or duties.

(c) No Relative shall be hired or retained as an Employee of the Village, and no entity controlled by a Relative shall be hired or retained as a contract party or consultant or perform services for monetary gain for the Village unless such relationship is disclosed to the Board of Trustees prior to any such employment or retention, and such employment or retention is approved in writing by the Board of Trustees. For purposes of this Section 12-14 (c), the term "control" shall mean that such Relative (or such Relative's Relatives as defined above) (i) beneficially owns more than 5% of the equity interests or the right to receive more than 5% of

the profits or losses of any such entity and evidenced by resolutions duly adopted by the Board or (ii) is a partner, officer, manager or director of any such entity.

12-15. Political Solicitations.

(a) No Officer or Employee shall directly or indirectly to compel or induce a subordinate 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 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 Officer or Employee, or an applicant for a position as an Officer or Employee, on the basis of the giving or withholding or failing to make any contribution of money or service or any other valuable thing for any political purpose.

(c) No member of the Board shall: (i) coerce, or conspire with, third parties or any business(es) to promise the grant of gifts, favors, special treatment or similar entitlements not available to the public at large; or (ii) without disclosure in writing to the Board or in publicly disseminated speeches or campaign materials available to the public at large, promise changes or promise to seek changes in Village laws or policies which changes in Village policies or laws are intended to benefit either (X) a specific interest group or class of residents of the Village or (Y) customers or recipients of services from any third party or business in the Village, or (Z) a particular business or entity providing products or services in the Village, in order to induce or influence the vote of residents in connection with the election of Board members.

12-16. Confidential Information.

No Officer or Employee who acquires confidential information in the course of exercising or performing his or her Village 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 in good faith his or her powers and duties. All confidential information so obtained is the property of the Village.

12-17. Gifts.

(a) No Officer or Employee shall solicit, accept or receive a gift in violation of section 805- a(l)(a) of the New York General Municipal Law as interpreted in this section.

(b) No Officer or Employee may directly or indirectly solicit any gift.

(c) No Officer or Employee may accept or receive any gift or multiple gifts from the same donor which exceed the Limit when:

- (1) the gift reasonably appears to be intended to influence the Officer or Employee in the exercise or performance of his or her powers or duties (including forbearance from action);

- (2) the gift could reasonably be expected to influence the Officer or Employee in the exercise or performance of his or her powers or duties (or forbearance from action); or
- (3) the gift is intended as a reward for any action or forbearance 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. A gift or gifts may not exceed an annual aggregate value of seventy-five (\$75.00) dollars or more, or such amount as the Board of Trustees may reasonably determine ("Limit"). Determination of whether multiple gifts from a single donor exceeds the Limit 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) (1) A gift to an Officer or Employee is presumed to be intended to influence the exercise, performance or forbearance of his or her powers or duties when the gift is from a private person or organization that seeks Village action involving the exercise of discretion by or with the participation of the Officer or Employee or in exchange for information, treatment or opportunities that otherwise would not be given;

(2) A gift to an 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 or is about to obtain Village action or forbearance involving the exercise of discretion by or with the participation of the officer or employee during the preceding twelve months including, without limitation, action or forbearance that violates Village policy or and law or regulation.

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

- (1) gifts made to the Village;
- (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 Village Officer or Employee, is the primary motivating factor for the gift;
- (3) gifts given on special occasions, such as marriage, illness, death of a Relative, 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 not in excess of \$300 which are publicly presented in recognition of service as an Officer or Employee, or other service

to the community;

- (6) meals and refreshments provided when an Officer or Employee is: (i) 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; (ii) an attendee with one or more members of the Board for a meeting at which Village business is being discussed; or (iii) such other Village or Village-related functions including those sponsored by volunteer, charitable or benevolent organizations;
- (7) gifts made by the Village to the Officer or Employee which are evidenced by resolutions duly adopted by the Board and otherwise allowed under law; or
- (8) subject to federal and state laws providing for more limited amounts, pledges or donations not to exceed the sum of \$250 per pledgee or donor made as political contributions in connection with the recipient's election campaign for public office.

12-18. Board of Ethics.

(a) The Village has established a Board of Ethics for the Village. The Board of Ethics shall consist of three members, none of whom shall be Officers or Employees of the Village. The members of the Board of Ethics shall be appointed by the Mayor, subject to approval by a majority of the Board of Trustees, to serve at the pleasure of the Board of Trustees for a term of three years, and shall receive no salary or compensation for their service. In the event that one or more vacancies occur, and the Mayor fails to nominate one or more persons to fill such vacancies within 90 days of any such vacancy, then the Board of Trustees, acting by majority, may appoint one or more persons to fill such vacancies. For the avoidance of doubt, members of the Board of Ethics may be removed solely upon the vote of a majority of the Board of Trustees.

(b) The Board of Ethics shall render advisory opinions to the Officers and Employees of the Village with respect to Article 18 of the New York General Municipal Law and this Code. Such advisory opinions must be rendered pursuant to the written request of any such Officer or Employee or the Village Board of Trustees under such rules and regulations as the Board of Ethics may prescribe. The Board of Ethics shall have the ability to obtain advice of legal counsel which, in the discretion of the Board of Ethics may include Village Counsel, at the cost of the Village. In addition, the Board of Ethics may make recommendations with respect to the amendment of this Code upon the request of the Mayor and/or Board of Trustees.

(c) The Board of Ethics shall also be deemed an appropriate party to receive whistleblower complaints on behalf of the Village.

12-19. Posting and distribution.

(a) The Village Clerk must promptly cause a copy of this Code, and a copy of any amendment to this Code, to be posted publicly and conspicuously in each Village building at

which any Village Officer or Employee regularly performs the majority of his or her duties. The Code must be posted within ten days following the date on which the Code takes effect. An amendment to the Code must be posted within ten days following the date on which the amendment takes effect.

(b) The Village Clerk must promptly cause a copy of this Code, including any amendments to the Code, to be distributed to every person who is or becomes an Officer or Employee.

(c) Every Officer or Employee who receives a copy of this Code or an amendment to the Code must acknowledge such receipt in writing. Such acknowledgments must be filed with the Village Clerk who must maintain such acknowledgments as a public record.

(d) The failure to post this Code or an amendment to the Code does not affect either the applicability or enforceability of the Code or the amendment. The failure of an Officer or Employee to receive a copy of this Code or an amendment to the Code, or to acknowledge receipt thereof in writing, does not affect either the applicability or enforceability of the Code or amendment to the Code.

12-20. Compliance and Enforcement; Interpretation.

(a) Subject to the provisions and procedures contained in any federal or state law or contractual agreement stating otherwise, any Village Officer or Employee or member of the Board who violates this code may be censured, fined, suspended or removed from office or employment in the manner provided by law or as determined by the Board of Trustees. Violations of this Code of Ethics may be deemed, in the opinion of the Board of Trustees acting upon majority vote, sufficient "cause" to require removal from a Board or employment by the Village. The Board of Trustees may, in its discretion, require, in order to ensure compliance with this Code, annual or other periodic certifications of compliance from members of any Board, Senior Staff, Officers or Employees or third party vendors.

(b) Upon request of the Village Board of Trustees, the Board of Ethics may render opinions to the Village Board of Trustees regarding the applicability of, violations of, or interpretations of matters contained within, this Code.

Section 2: Effective date.

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