

Comments Regarding Proposed Code of Ethics & Ethics Commission Ordinance

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1. §5 (page 3) is titled “Conflict of Interest Provisions.”

However, §5 contains 15 mandatory “shall” requirements. As such, the title of Section 5 should be “Conflict of Interest Requirements.”

2. §5-1, §5-2, §5-3, and §5-4 (page 3) together provide that the Mayor and members of the Town Council and BOE shall not have a financial interest in any contract or purchase orders by the Town.

However, what if the Mayor, or a member of the Town Council or the BOE, owns shares in a publicly traded company that provides services to the Town? I believe the four requirements are unnecessary because §5-5 prohibits the Mayor and elected Council and Board members from participating in any matter in which they may have a financial or personal interest in the transaction. Sections 5-1, 5-2, 5-3, and 5-4 should be deleted because they will deter qualified individuals from running for office.

3. §6-1 (page 5) in the Disclosure section, allows a town official or town employee to participate in a discussion or give an official opinion if he discloses the nature and extent of his financial interest in an issue being decided. However, under §5-5 (page 4), he is not allowed to participate if he has a financial or personal interest in the issue. As such, §6-1, which allows participation in the event of disclosure, is in conflict with §5-5, which does not permit participation, even with disclosure. All of §6-1 should be deleted.

4. §6-2 (page 5) requires Town Councilors, BOE members, and the Mayor to disclose real estate that they have owned or leased for five or more years, excluding the principal residence. It also requires elected officials who are employees of companies that do business with the Town to publicly disclose their employer if the employer has conducted more than \$10,000 of business per year during the preceding two years.

Ownership of real estate should not have a negative connotation.

Additionally, the Mayor and unpaid elected volunteer officials should be permitted to work for employers that conduct business with the Town. I also suspect that most employees may not be aware if their employer conducts business with the Town, especially if it is a large employer, or if the amount of business conducted with the Town exceeds \$10,000 in each of the previous two years. The required disclosures provide no helpful information regarding ethics, and they conflict with the Town Charter, which only requires that an elected official be an elector at the time of their appointment.

5. §6-2-c (top of page 6) has to do with income paid by the Town to elected officials who were town employees during the two years before their election to office. The income paid by the Town to the Mayor and to town employees is for salaries, which has no significance as far as ethics is concerned. §6-2-a, §6-2-b, and §6-2-c should be deleted because they will deter qualified individuals from running for office.

[However, if retained, the phrase, "immediate proceeding," in §6-2-c should be replaced with the word "preceding."]

6. §7-2-c (page 7) limits membership for the inaugural members to a total of three three-year terms. Why is there a limit? It isn't easy to find conscientious residents to fill volunteer positions. If an inaugural member is experienced and qualified, why not allow their service to continue until they are no longer qualified, effective, or they report that they do not wish to be reappointed? §7.2-c should be deleted.
7. §7-2-g should be added to require an annual meeting to choose a chairman, vice chairman, and secretary.
8. §7-3 (page 7) has to do with the authority and duties of the Commission. As stated, the Commission has no authority or duties except to consult with attorneys and to request that the Town Council provide advisory opinions. §7.3 is incomplete.

§7-3-a should be added to include "The review and determination of whether there is probable cause that a violation of the Code of Ethics has occurred."

§7-3-b should be added to include "Conduct formal investigation processes."

§7-3-c should be added to include, "Conduct public hearings and executive sessions to determine whether or not a violation occurred."

9. §7-5 (page 8) is titled "Evaluation and Acknowledgement." However, the phrase "evaluation and acknowledgement" is not in §5. The title of §5 should be changed to "Procedural Requirements."
10. §7-5-b. (page 8) includes a statement that if it finds probable cause, it will begin an "investigation process." It is unclear who performs the investigation process, who pays for it, or if the investigation report is confidential or available to the public.
11. §7-6 (page 8) is titled "Hearings."

It states that the Commission will conduct a "public hearing" if it finds probable cause. However, unless the respondent requests otherwise, such a hearing should be in an executive session.

12. Section 7-6 is titled "Final Decisions." As worded, the entire process, from the time the complaint is filed to its conclusion, is a maximum of 155 days, which is too long.

- Day 1: Completed complaint form filed with the Clerk.
- Day 5: Copy of complaint form sent to the Chairman
- Day 35: During the next regular meeting of the Commission, its Chairman will notify the respondent that it will conduct a probable cause determination hearing and invite the respondent to attend.
- Day 60: The Ethics Commission reviews the application to determine if there is probable cause.
- Day 70: Notification to parties that probable cause exists and the Commission will begin a formal investigation process.
- Day 85 [Assumes a 15-day investigation]: The required public hearing is opened and closed.
- Day 145: A decision rendered
- Day 155: A copy of the findings and memorandum, and a notice of the right to appeal, are provided to the respondent, Mayor, and Council.

13. §8 (page 9) is titled "Penalties for Violations of the Code of Ethics."

It is unclear whether the penalties issued by the Commission are orders or suggestions.

For example, a cease and desist order, an order to pay a civil penalty, and an order for restitution of pecuniary benefits are appropriate penalties that the Commission can impose. However, because their enforcement would require cooperation from other entities, suspensions without pay, demotion, and termination of employment should be suggestions, rather than orders.

There are also unanswered questions about how the civil penalty is calculated and what happens if a civil penalty is not paid or cannot be paid.

In summary, the draft version of the ordinance is not ready to be adopted. Although the proposed ethics ordinance is better than nothing, unless its deficiencies are corrected, its adoption would likely deter qualified individuals from public service.