

The Town of Hampden hereby ordains:

## **TOWN OF HAMPDEN Code of Ethics**

### **Section 1. Declaration of Policy.**

The proper operation of democratic government requires that Town Councilors and their appointees be fair, impartial and responsive to the needs of the people and each other in the performance of their respective functions and duties; that decisions and policy be made in proper channels of the Town's governmental structure; that public office not be used for personal gain; and that such Councilors and their appointees maintain a standard of conduct that will inspire public confidence in the integrity of the Town's government. In recognition of these goals, a Code of Ethics is hereby established for all Town Councilors and all members and associate members of any Board or Committee appointed by the Town Council. This Code of Ethics is not intended to deny Council members, nor Board or Committee members, their constitutional rights nor violate their civil rights.

### **Section 2. Definitions.**

As used in this Ordinance, the following terms shall have the meanings indicated.

**Business:** Any corporation, partnership, individual, sole proprietorship, joint venture, or any other legally recognized entity, organized for the purposes of making profit.

**Censure:** A judgment or resolution condemning a person for misconduct.

**Confidential Information:** Any information, whether oral, written, digital or electronic, which comes to the attention of, or is available to, a Town Official only because of his or her position with the Town and which is not a matter of public record. Information received or discussed during an executive session called pursuant to 1 M.R.S. §405 shall be considered confidential information, and shall not be disclosed to any third party unless permitted by affirmative vote of the body which held the executive session.

**Council Appointee:** Any sworn member or associate member of any board or committee appointed by the Town Council, including but not limited to appointed Board members, Committee members, and Commission members.

**Financial Interest:** a direct or indirect interest having monetary or pecuniary value, including but not limited to the ownership of stock.

**Immediate Family –** Spouse, children, parents, brothers, and sisters. This includes family members related by marriage and adoption.

**Special Interest:** A direct or indirect interest having value peculiar to a certain individual or group, whether economic or otherwise, which value may accrue to such individual or group as a result of the passage or denial of any order, ordinance or resolution, or the

approval, approval with conditions or denial of any application by the Town Council or Council Appointees, and which interest is not shared by the general public.

Town Councilor: Sworn member of the Hampden Town Council

Town Employee: Any individual working for, on a permanent or temporary basis, and drawing a salary, wages or stipend from the Town of Hampden. The term "Town Employee" shall not include consultants or professional personnel providing services to the Town as independent contractors under a written professional services contract or other similar engagement.

Town Official: A member of the Town Council or a member of any appointed committee, board or commission of the Town Council.

### **Sec 3. Standards of Conduct.**

The purpose of this Code of Ethics is to establish standards of conduct for all Town Councilors and Council Appointees by setting forth those acts or actions deemed to be in conflict or incompatible, or to create the appearance of conflict or incompatibility, with the best interests of the Town of Hampden.

**3.1 Statutory Standards:** There are certain provisions of the general statutes of the State of Maine, which should, while not set forth herein, be considered an integral part of this Ordinance. Accordingly, the provisions of the following sections of the general statutes of the State of Maine, as may be amended, are hereby incorporated by reference and made a part of this Code of Ethics, and shall apply to all Town Councilors or Council Appointees whenever applicable, as if more fully set forth herein, to wit:

- 17 MRSA §3104 Conflicts of Interest; Purchases by the State
- 17-A MRSA §456 Tampering with Public Records or Information
- 17-A MRSA §602 Bribery in Office with Political Matters
- 17-A MRSA §603 Improper Influence
- 17-A MRSA §604 Improper Compensation for Past Action
- 17-A MRSA §605 Improper Gifts to Public Servants
- 17-A MRSA §606 Improper Compensation for Services
- 17-A MRSA §607 Purchase of Public Office
- 17-A MRSA §608 Official Oppression
- 17-A MRSA §609 Misuse of Information
- 17-A MRSA §903 Misuse of Entrusted Property
- 21-A MRSA §504 Persons Ineligible to Serve
- 30-A MRSA §2605 Conflicts of Interest
- 30-A MRSA §5122 Interest of Public Officials, Trustees of Employees

**3.2 Disclosure of Confidential Information:** No Town Councilor or Council Appointee shall, without proper legal authorization, disclose confidential information concerning the property, employees or applicants for employment, government or affairs of the

Town, nor shall he or she use such information to advance the financial or private interest of him or herself or others. Information received and discussed during an executive session of the Hampden Town Council or any Town Board, Committee, or Commission pursuant to 1 M.R.S. §405 shall be considered within the constraints of this subsection, and shall not be disclosed to any third party unless permitted by affirmative vote of such body.

**3.3 Gifts and Favors:** No Town Councilor or Council Appointee shall solicit or accept any gift, favor or thing of value, whether in the form of service, loan, thing or promise, from any person or business which to his or her knowledge is interested directly or indirectly in any manner whatsoever in business dealings with the Town; nor shall any Town Councilor or Council Appointee: 1) solicit or accept any gift, favor or thing of value that tends to influence that individual in the discharge of his or her official duties or 2) solicit or grant in the discharge of his or her official duties any improper favor, service or thing of value. The foregoing is not intended to prohibit normal social practices where gifts from friends, associates, and relatives are appropriate for certain occasions.

**3.4 Use of Town Property:** No Town Councilor or Council Appointee shall use, or permit the use of, any Town-owned property including, but not limited to, motor vehicles, equipment and buildings, for any private purposes. Nothing herein shall prohibit the use of Town buildings and equipment at rates and/or on terms as may be established for the public at large.

### **3.5 Conflicts of Interest.**

#### **A. Deliberation and Vote Prohibited**

1. No Town Councilor or Council Appointee shall participate directly or indirectly by means of deliberation, voting, approval or disapproval, or recommendation, or otherwise take part in the decision making process, on any agenda item before the body of which he or she is a member if he or she, or a member of his or her immediate family, has a financial or special interest, other than that possessed by the public generally, in such purchase, award, or approval, held by:
  - a. The Town Councilor or Council Appointee, or a member of their immediate family; or
  - b. A business in which the Town Councilor or Council Appointee, or a member of their immediate family, serves as an officer, director, trustee, partner or employee in a supervisory or management position; or
  - c. Any other person or business with whom the Town Councilor, or Council Appointee, or a member of their immediate family, are in

business or are negotiating, or have an arrangement concerning future employment.

2. No Town Councilor or Council Appointee shall participate directly or indirectly by means of deliberation, approval or disapproval, or recommendation of an application, purchase, contract, or other legal matter, or in the decision to hire, promote, discipline, lay off or to take any other personnel action in respect to any applicant for employment or employee, where said applicant or employee is:
  - a. A member of their immediate family; or
  - b. A person with whom either the Town Councilor or Council Appointee, or his or her immediate family, are in business.

**B. Disclosure of Conflict.** Any Town Councilor or Council Appointee who believes he or she, or a member of his or her immediate family, has a financial or special interest, other than an interest held by the public generally, in any agenda item before the body on which he or she serves shall disclose the nature and extent of such interest, and the Town Clerk or his or her designee shall make a record of such disclosure. Such disclosure shall be made no later than the date of the first meeting of the Town Council, Committee, Board, or Commission at which the agenda item concerned is to be taken up for consideration, recommendation, discussion or vote and at which the Town Councilor or Council Appointee is present. Additionally, any Town Councilor or Council Appointee who believes that any fellow Town Councilor or Council Appointee, or a member of such fellow Town Councilor's or Council Appointee's immediate family, has a financial or special interest, other than an interest held by the public generally, in any agenda item before his or her collective body shall disclose the nature and extent of such agenda item before his or her collective body shall disclose the nature and extent of such interest, and the Town Clerk or his or her designee shall make a record of such disclosure.

**C. Determination of Conflict.** In the event that a conflict has been raised relative to an individual Town Councilor or Council Appointee, and disclosure has been made as described above, such individual's fellow Town Councilors or Council Appointees shall review the facts as disclosed to them and shall vote on whether or not such individual has a financial or special interest with respect to the agenda item concerned. All conflict of interest questions relating to a particular agenda item shall be resolved prior to any consideration of the item concerned, and each Town Councilor or Council Appointee present shall be entitled to vote on all conflict of interest questions except those questions pertaining to that individual Councilor's or Appointee's alleged conflict of interest.

1. All votes of conflicts of interest questions shall be recorded. A majority vote shall determine the question; but a vote by Boards, Committees, and

Commissions may later be reviewed by Town Council upon the Town Council's consideration of the same agenda item.

2. Upon determination that a conflict of interest in fact exists, the Town Councilor or Council Appointee concerned shall be excused from participating in discussion, deliberation or vote on the relevant agenda item.
3. In lieu of the vote required by this subsection, the Town Council, upon motion and by majority vote may refer the conflict of interest question to the Town Attorney for a legal opinion, or may table its consideration of the relevant agenda item. In the event a majority of the Town Council, Board, or Commission concerned, or Committee thereof, shall require disclosure of further information not immediately available, or shall require confirmation of the information disclosed, consideration of the relevant agenda item shall be postponed to an appropriate time.

**D. Avoidance of Appearance of Conflict:** To avoid the appearance of a violation of this Section, once any individual Town Councilor, committee member, board member or commission member is determined to have a conflict of interest in respect to any agenda item and once all conflicts of interest questions relating to the agenda item concerned have been determined as provided in Subsection C above, said individual shall immediately remove him or herself from the meeting room or to the area of the room occupied by the general public. He or she shall not return to his or her regular seat as a member of the body until deliberation and action on the item is completed. Nothing herein shall require an individual councilor, committee member, board member or commission member to remove himself or herself for any item contained on a consent agenda on which there is no deliberation, the individual's conflict has been determined by other members and the right to abstain from voting on the item has been granted.

**E. Personal Interest.** Nothing herein shall be construed to prohibit any Town Councilor or Council Appointee from representing his or her own personal interest by appearing before his or her collective body on any such agenda item, as long as the representation occurs in the area of the meeting room occupied by applicants or members of the general public.

**F. Disclosure Statement.** By no later than January 15<sup>th</sup> of each year, or within fifteen (15) days of being sworn in for a Town Councilor elected at a special election to fill a vacancy, every Town Councilor shall file a completed disclosure form with the Town Clerk. Within thirty (30) days after his or her appointment, every Council Appointee shall file a completed disclosure form with the Town Clerk. Such forms shall be under oath and shall contain the following information to the best of the disclosing party's knowledge and belief:

1. The name of each person or entity whether incorporated or not, doing business with the Town in an amount in excess of \$1000 during the preceding calendar year from which such disclosing party or member of his

immediate family has received money or other thing of value in an amount in excess of \$1000 during the preceding fiscal year, including, but not limited to campaign contributions, where applicable.

2. The name of each entity, whether incorporated or not, doing business with the Town in an amount in excess of \$1000 for the preceding calendar year in which such disclosing party or member of his/her immediate family has a financial interest in an amount in excess of \$1000 , including, but not limited to, the ownership of shares of stock.
3. The name of each nonprofit and/or for profit entity, whether incorporated or not, for which such disclosing party or member of his/her immediate family holds a position of officer or member of any board which does business or may potentially do business with the Town. For such entity, such disclosing party shall provide the following information:
  - a. A brief description of the purpose of each board and/or office;
  - b. A short summary of such disclosing party's or family member's duties relative to any such board and/or office;
  - c. The term of service on each such board and/or office; and
  - d. Whether or not such disclosing party or family member receives compensation for service on such board and/or office and the extent to which such compensation exceeds \$100 in the aggregate annually.

For purposes of this section "compensation" shall include, but not be limited to, monetary compensation, gifts, gratuities, perks, fringe benefits, services and any other thing of value.

4. Every Town Councilor or Council Appointee shall amend his or her annual disclosure statement as may be required from time to time to ensure the continued accuracy thereof. Each amendment shall be made within fifteen days following the occurrence which requires the amendment.
5. The Town Clerk shall deliver a copy of each completed disclosure statement to every fellow member of the Town Council/Board/Committee of each disclosing party within thirty days of filing.
6. For the purposes of this Ordinance, a list prepared by the Treasurer of those persons or entities doing business with the Town in an amount in excess of \$1000 for the preceding year shall be determinative for purposes of reporting under this section. Income from and financial investments in, policies of insurance, and deposits from accounts from commercial or savings banks, savings and loan associations, or credit unions and the ownership of less

than 5% of the outstanding shares of stock in a publicly held corporation shall not be considered a financial interest within the meaning of this section.

**Sec 4. Political Activities.**

No Town Employee, Town Councilor or Council Appointee shall participate in any political activity which would be in conflict or incompatible with the performance of his or her official functions and duties of the Town. In conjunction therewith, no Town Councilor or Council Appointee may use his or her official authority or position for the purposes of influencing or interfering with or affecting the results of any election for public office, nor shall he or she solicit funds or contributions or accept or receive funds or contributions from Town Employees for political purposes. No Town Councilor or Council Appointee may distribute handbills or pamphlets while he or she is performing official functions or duties on behalf of the Town, unless such distribution has been authorized by the body of which he or she is a member. Nothing herein shall be construed to prohibit any Town Councilor or Council Appointee from participating in the political process in their private capacity as candidates for elected office or as private citizens.

**Sec 5. Incompatible Employment or Office.**

No Town Councilor or Council Appointee shall occupy any other office, elected or appointed, in another governmental entity when the duties of such office are incompatible with the proper discharge of his or her official duties with the Town. For purposes of this section, the occupancy of any office, elected or appointed, with any other governmental entity by any Town Councilor or Council Appointee is hereby prohibited in the following circumstances:

- A. Where the duties of the other office make it a physical impossibility to discharge the duties of the Town position; or
- B. Where one office is subordinate to the other; or
- C. Where one office carries the power of removal of the other; or
- D. Where the occupancy of both offices is prohibited by the Town Charter or by other provisions of law.

**Sec 6. Violations of Ethical Standards by Councilors.**

When any Councilor believes there has been a breach of the ethical standards set forth herein by another Town Councilor, he or she may ask to enter into executive session pursuant to 1 M.R.S. §405 for purposes of informal discussion of and resolution of an ethical issue. During such session, the Councilor shall specify which area(s) of this Ordinance he or she feels have been breached and by whom. After discussion among all Councilors, the Town Council shall leave executive session, and may proceed with

formal action only by majority vote of the Councilors not alleged to have breached the ethical standards.

- A. Based on information provided in said executive session, the Town Attorney shall provide the Council with an opinion on whether the cited matter(s) constitute a violation of this Ordinance.
- B. All procedures under this section shall be in accord with due process requirements, including, but not limited to, a right to notice and hearing.
- C. The Council may elect to give written warning in lieu of any other remedy or civil penalty available under this Ordinance or any other law or ordinance.

## **Sec 7. Ethics in Contracting.**

The provisions of this Section shall apply to all persons doing business with the Town of Hampden as vendors, suppliers and contractors submitting bids or proposals in response to a Town solicitation or advertisement.

### **7.1 Gratuities and Kickbacks**

- A. **Gratuities.** It shall be a violation of this Ordinance for any person to offer, give, or agree to give any Town Councilor or Council Appointee a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or award pertaining to a Town purchase order, contract, construction contract, or professional services contract, or with respect to any solicitation, advertisement, request for bids, request for proposals, or any bid, proposal, or other response thereto.
- B. **Kickbacks.** It shall be a violation of this Ordinance for any person to solicit, offer, give, accept, or receive any undisclosed gratuity or offer of employment in connection with the award or potential award of any subcontract or contract modification or change order under a Town of Hampden contract for construction, procurement or professional services. To be valid, any disclosure under this paragraph must be made in writing to the Town of Hampden Town Manager prior to the date of opening of any proposals or bids on the prime contract concerned. Notwithstanding an otherwise valid written disclosure, it shall be a violation of this Ordinance to solicit, offer, give, accept, or receive any such gratuity or offer of employment in violation of applicable State or Federal Law.

### **7.2 Prohibition against Contingent Fees**

It shall be a violation of this Ordinance for a person to be retained, or to retain a person, to solicit or secure a Town contract upon an agreement or

understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

### **7.3 Recovery of Value Transferred or Received in Breach of Ethical Standards.**

The value of anything transferred or received in breach of the ethical standards of this Ordinance by a Town Councilor or a Council Appointee or other person may be recovered from both the Town Councilor or Council Appointee concerned and from the other person concerned.

### **7.4 Recovery of Kickbacks by the Town**

Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or modification or change order, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract, modification or change order and ultimately borne by the Town and such amount shall be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

### **7.5 Penalties and Sanctions**

- A. In addition to the recoveries provided in Subsections 7.3 and 7.4 above, any violation of Section 7 shall be a civil violation. Upon conviction, any person, firm or corporation found to be in violation of this Section 7 shall be fined not less than three times the value of any improper gift or kickback paid, solicited, or received, or \$500, whichever is greater. The penalties provided in this paragraph shall be in addition to any penalties imposed under State or Federal Law.
- B. Upon conviction of a violation of this Section 7 or upon finding a violation by the Town Council or any Council Appointee following written notice and hearing, the Town Council may impose one or more of the following sanctions on the person, firm, or corporation convicted or found to be in violation:
  - i. written warnings or reprimands
  - ii. termination of contracts
  - iii. debarment or suspension of Town purchasing
- C. Termination of a contract under this Section 7.5 shall also terminate the contractor's right to receive further payment thereunder.

- D. The provisions of this Section 7 shall be provided to all interested bidders or proposers and shall be incorporated by reference as agreed terms in any Town of Hampden construction, procurement, or professional services contract with a base bid in excess of \$10,000. In the case of a professional services contract, the 'base bid price' shall be the expected value of services to be billed during the contract term, or on an annual basis if the contract is of indefinite duration.

**Sec 8. Penalties for Town Council or Town Council Appointees.**

Any Town Councilor or Council Appointee who violates a provision of this Ordinance shall be subject to a civil penalty of not less than \$100.00 and not more than \$500.00 for each offense, which civil penalty shall inure to the benefit of the Town. In addition, violation of this Ordinance shall constitute cause for censure by the Town Council after notice and hearing conducted by that body.

**Sec 9. Severability.**

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this Ordinance.

**Sec 10. Repeal of Prior Ordinance**

The existing Code of Ethics Ordinance adopted on May 15, 2000 is hereby repealed in its entirety.

**Sec 11. Effective Date**

Pursuant to Section 213(c) of the Town Charter, the foregoing provisions shall be effective 30 days after the adoption of this Ordinance by the Town Council.

ADOPTED BY TOWN COUNCIL: May 7, 2012  
Effective Date: June 6, 2012

TOWN OF HAMPDEN  
ELECTED / APPOINTED OFFICIAL DISCLOSURE FORM

Date: \_\_\_\_\_

Last name: \_\_\_\_\_ First name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Email Address: \_\_\_\_\_

1. List of entities doing business with the Town from which the person named on this form or any member of his/her immediate family received more than \$1,000 during the preceding fiscal year.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2. List of entities doing business with the Town that the person named on this form or any member of his/her immediate family has an ownership interest in that exceed \$1,000, including, but not limited to the ownership of shares of stock.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

3. List of any non-profit or for-profit entities which does business or may potentially do business with the Town for which the person named on this form or a member of his/her immediate family holds a position of officer or board member. Please include the name of position served, the term of service, and compensation received (if it is more than \$1,000 per year in the aggregate.)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Signature of Town Councilor / Council Appointee