

FINANCE COMMITTEE MEETING

Monday, August 15, 2011

5:30 p.m.

Hampden Town Office

1. Review Minutes of 8/1/2011
2. Review & Signature of Warrants
3. Old Business
 - a. Mil Rate – 2011/2012 Tax Year
 - b. Pool Air Handler Replacement – Woodard & Curran Specs
 - c. Review of Code of Ethics, Council Rules, Charter Provisions
(continued)
4. New Business
 - a. Interview Lowell T. Sherwood, Jr. – Board of Assessment Review
 - b. Councilor Email Addresses Costs
5. Public Comment
6. Committee Member Comments

FINANCE COMMITTEE MEETING MINUTES

Monday, August 1, 2011

Attending:

Mayor Janet Hughes	Councilor Kristen Hornbrook
Councilor William Shakespeare	Councilor Shelby Wright
Councilor Jean Lawlis	Councilor Tom Brann (5:45 p.m.)
Councilor Andre Cushing	Town Manger Susan Lessard
Tax Collector Cheryl Johnson	
Interested residents	

1. Review Minutes of 7/18/2011 – Motion by Councilor Cushing, seconded by Councilor Lawlis to approve. Unanimous vote
2. Review & Signature of Warrants – Warrants were reviewed and signed.
3. Old Business
 - a. Review of Code of Ethics, Council Rules, Charter Provisions (continued) The Committee reviewed additional portions of the Code of Ethics and a number of items were identified as needing clarification and additional information. Those included
 1. change in definition of family
 2. clarification on gift policy
 3. definition of confidential information
 4. Conflict of Interest with regard to Political activities
 5. Separation in the Penalty section of Town Committees and Employees from Councilors
 6. Information on what other communities do in regard to an Ethics Board or CommitteeThese items are in addition to others that were identified at the last Finance Committee meeting that included
 1. definition of special interest
 2. definition of resident
 3. clarification of public records
 4. clarification of incompatibility of employment or officeThe Town Manager was directed to obtain the requested information and report back to the Committee at the next Finance Committee meeting.
4. New Business
 - a. Motor Vehicle Plate Issuance – Councilor Shakespeare – Town Motor Vehicle Agent Cheryl Johnson attended the meeting to provide the Committee with information related to what is

involved if the Town were to begin issuing license plates. That activity requires secure storage (vault or fireproof locked cabinets), requires that the Town do validation of prior titles and collect sales tax on behalf of the state, and increases staff time per transaction for very little additional money (\$1), and increased reporting to the State. The Town is able to do transactions for persons transferring plates from prior registrations if the vehicle to be registered was purchased from a dealer. The Motor Vehicle branch office in Bangor is on Union Street, only a few miles from Hampden, which is one of the main reasons that both Bangor and Hampden do not issue plates. It was the consensus of the Committee to keep the current practice in regard to plates in effect.

- b. Notice of Boat Abandonment – 12 M.R.S § 1866(2)(C) – Tabled until the August 15, 2011 meeting.
- c. Funding of Public Works Trucks – Motion by Councilor Wright, seconded by Councilor Cushing to recommend to the full Council the purchase of two public works trucks from Darlings to be funded through a 5 year purchase plan. Unanimous vote.
- d. Culvert Replacement Papermill Road – Funding – The Infrastructure Committee recommended to the full Council that Public Works go forward with the culvert replacement project on Papermill Road due to its current deteriorated state and because of safety issues related to that deteriorated state. Motion by Councilor Lawlis, seconded by Councilor Shakespeare to recommend to the full council that this project be funded from Public Works Reserve. Unanimous vote.
- e. URIP Funding Acceptance – Public Works & Bus – The Town Manager explained that it was necessary for the Council to approve acceptance of monies from the MDOT for use in town paving, road construction, or debt related to road work. Motion by Councilor Wright, seconded by Councilor Cushing to recommend to the full Council the acceptance of URIP funds for 2011-2012. Unanimous vote.
- f. MDOT Sidewalk Grant Discussion – This item was tabled until more information can be obtained on cost estimates submitted by Woodard and Curran for the proposed sidewalk.

5. Public Comment - None

6. Committee Member Comments – Discussion was held about when review of the Council Rules and Code of Ethics could be held that would allow sufficient time. Starting at 5 is not workable for Councilor Hornbrook. It was the consensus of the Committee to begin Finance Meetings at 5:30, and allow one hour of discussion on those items per meeting until the review is complete.

The meeting was adjourned at 6:55 p.m.

Respectfully submitted,

Susan Lessard
Town Manager

HAMPDEN TOWN COUNCIL RULES

1. The Town Council shall act only by ordinance order or resolve. All ordinances, orders and resolves shall be confined to one subject, which shall be clearly expressed in the title. All orders and resolves shall be dated, numbered and signed by the Town Clerk and all Councilors will receive a copy.
2. In all motions of command, the form of expression shall be "ordered" and in all motions concerning principles, facts, or purposes, the form shall be "resolved".
3. The name of the council member or other person, persons or group requesting an item on the agenda will be indicated on the agenda with the said item.
4. The Mayor shall take the chair at the appointed time for the meeting, call the members to order and proceed to the following order of business:
 - A. CONSENT AGENDA
 1. Signatures - Treasurer's Warrants, etc.
 2. Secretary's Report
 3. Communications
 4. Reports
 - B. PUBLIC COMMENTS
 - C. POLICY AGENDA
 1. Public Hearings
 2. Nominations - Appointments - Elections
 3. Unfinished Business
 4. New Business
 - D. COMMITTEE REPORTS
 - E. MANAGER'S REPORT
 - F. COUNCILORS COMMENTS
 - G. ADJOURNMENT
5. When a question is under debate, the Mayor shall receive no motion but to adjourn, or for the previous question, or to lay on the table, or to postpone to a day certain, or to refer to a committee or some administrative official or to amend, or to postpone indefinitely; which several motions shall have precedence in order in which they stand arranged.
6. When a vote is passed, it shall be in order for any member who voted in the majority, or in the negative on a tie vote, to move a reconsideration thereof at the same, or the next stated meeting, but not afterwards; and when a motion or reconsideration is decided, that vote shall not be reconsidered.
7. When any member is about to speak, they shall respectfully address the Mayor, confine themselves to the question under debate, and avoid personalities. No member speaking shall be interrupted by another, but by a call to order or to correct a mistake.

HAMPDEN TOWN COUNCIL RULES

8. Every member present, when a question is put, shall give their vote, unless the council, for special reasons, shall excuse them. Application to be so excused must be made before debate on the issue and the decision on the application shall be made by a majority vote of the council, without debate.
9. The rules cannot be dispensed with or suspended if one or more members of the council shall object. No rule or order shall be amended or repealed without notice, in writing, being given at the preceding meeting.
10. Any person wishing to address the Town Council will be given an opportunity to do so in accordance with the following procedure:
 - a) Persons wishing to address the council on an item which appears on the agenda shall wait until the Mayor announces the consideration of such item, at which time they may address the council on that particular item. However, once the council has begun its deliberations on an item, no person shall be permitted to address the council on such item.
 - b) Any person wishing to address the council on an item not appearing on the agenda shall be allowed to do so only in that section of the agenda referred to as "PUBLIC COMMENTS".
 - c) Any person wishing to address the council shall signify their desire by raising their hand and, when recognized by the Mayor, such person shall thereupon request permission to address the council, giving their name and address then designating the subject matter on which they desire to address the council.
11. At the commencement of the municipal year, or as soon thereafter as possible, there shall be chosen the following committees, each committee to consist of three (3) members of the council as the Mayor may designate or, upon a motion, the council may ballot.
 - a) Appointments Committee;
It shall be the purpose of the Appointments Committee to seek out individuals within the community to best serve in various positions on town boards and committees.
 - b) Charter and Ordinance Committee;
It shall be the purpose of the Charter and Ordinance Committee to assist with revisions and amendments to the town charter and various town ordinances so as to enable the town to reflect reasonable and consistent regulations.
 - c) Community Services Committee;
It shall be the purpose of the Community Services Committee to advise on matters of community recreation and development, parks and reserves,

HAMPDEN TOWN COUNCIL RULES

sports grounds, public halls, libraries, walkways, camping grounds, community and cultural facilities, and property management.

- d) Economic Development Committee;
It shall be the purpose of the Economic Development Committee to assist the community in becoming more "user friendly" for new and existing business, and to encourage ideas and support for a proactive economic development base.
 - e) Finance Committee;
It shall be the purpose of the Finance Committee to oversee treasurer's warrants for daily expenditures, to facilitate resolution of financial issues as they arise within the community such as debt obligations, major investments, etc.
 - f) Public Safety Committee;
It shall be the purpose of the Public Safety Committee to assist the public safety director with the emergency departments of police, fire and ambulance in the director's efforts to provide top quality emergency service to the entire community.
 - g) Public Works & Solid Waste Committee;
It shall be the purpose of the Public Works & Solid Waste Committee to advise on matters related to flood control, streets, sidewalks, lanes, bridges, drainage sewers, sewage disposal, water services, traffic safety, transportation, public transit, garbage collection and disposal, town cleanliness, pest and insect control; and also to provide input and research, on various environmental and solid waste issues including, but not limited to, recycling, demolition debris disposal and disposal fees.
 - h) Communications Committee;
It shall be the purpose of the Communications Committee to advise and assist the Town Manager, or town staff person whom he/she may designate on matters of communication related to citizen services including but not limited to the town newsletter, the town website, the town cable channels, and town sponsored communication activities. (2/19/08)
12. The Mayor of the council may appoint members of the council and/or citizens of the town to special committees as authorized by the council. No committee shall have the power of executive action unless specifically authorized and shall report back to the council for action on its recommendations or proposals.
13. In all cases where the parliamentary proceedings are not determined by the foregoing rules and orders, "Roberts' Rules of Order" shall be taken as authority to decide the course of proceedings.

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14. The first and third Mondays of each month are designated as regular council meetings with the provision that a unanimous vote of the council would cancel a meeting. Whenever a regular meeting falls on a legal holiday, such meeting will take place on the following day.
15. Any item on the consent agenda can be set aside for discussion at the request of any member, prior to a motion on the remainder of the consent agenda.
16. Councilors Comments - This section is reserved for the purpose of enabling any council member to discuss matters not previously mentioned on the agenda. No official council action can be taken at this time.

Maine Revised Statutes

[§2605 PDF](#)

§2604

Title 30-A:

§2606

[§2605 WORD/RTF](#)

MUNICIPALITIES AND COUNTIES

[STATUTE SEARCH](#)

HEADING: PL 1987, C. 737, PT. A, §2 (NEW)

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HEADING: PL 1987, C. 737, PT. A, §2 (NEW)

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§2605. Conflicts of interest

Certain proceedings of municipalities, counties and quasi-municipal corporations and their officials are voidable and actionable according to the following provisions. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

1. Voting. The vote of a body is voidable when any official in an official position votes on any question in which that official has a direct or an indirect pecuniary interest.

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

2. Contracts. A contract, other than a contract obtained through properly advertised bid procedures, made by a municipality, county or quasi-municipal corporation during the term of an official of a body of the municipality, county or quasi-municipal corporation involved in the negotiation or award of the contract who has a direct or an indirect pecuniary interest in it is voidable, except as provided in subsection 4.

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

3. Restrain proceedings. The Superior Court may restrain proceedings in violation of this section on the application of at least 10 residents of the municipality, county or area served by the quasi-municipal corporation.

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

4. Direct or indirect pecuniary interest. In the absence of actual fraud, an official of a body of the municipality, county government or a quasi-municipal corporation involved in a question or in the negotiation or award of a contract is deemed to have a direct or indirect pecuniary interest in a question or in a contract where the official is an officer, director, partner, associate, employee or stockholder of a private corporation, business or other economic entity to which the question relates or with which the unit of municipal, county government or the quasi-municipal corporation contracts only where the official is directly or indirectly the owner of at least 10% of the stock of the private corporation or owns at least a 10% interest in the business or other economic entity.

When an official is deemed to have a direct or indirect pecuniary interest, the vote on the question or the contract is not voidable and actionable if the official makes full disclosure of interest before any action is taken and if the official abstains from voting, from the negotiation or award of the contract and from otherwise attempting to influence a decision in which that official has an interest. The official's disclosure and a notice of abstention from taking part in a decision in which the official has an interest shall be recorded with the clerk or secretary of the municipal or county government or the quasi-municipal corporation.

A. This subsection does not prohibit a member of a city or town council or a member of a quasi-municipal corporation who is a teacher from making or renewing a teacher employment contract with the municipality or quasi-municipal corporation for which the member serves. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

5. Former municipal and county officials. This subsection applies to former municipal and county officials.

A. No former municipal or county official may, for anyone other than the municipality or county, knowingly act as an agent or attorney, or participate in a proceeding before a municipal or county government body for one year after termination of the official's employment or term of office with that government body in connection with any proceeding:

(1) In which the specific issue was pending before the municipal or county official and was directly within the responsibilities of that official; and

(2) Which was completed at least one year before the termination of that official's employment or term of office. [1989, c. 104, Pt. A, §22 (NEW); 1989, c. 104, Pt. C, §10 (NEW).]

B. No former municipal or county official may, for anyone other than the municipality or county, knowingly act as an agent or attorney, or participate in a proceeding before a municipal or county government body at any time after termination of the official's employment or term of office with that government body in connection with any proceeding:

(1) In which the specific issue was pending before the municipal or county official and was directly within the responsibilities of that official; and

(2) Which was pending within one year of the termination of the municipal or county official's employment or term of office. [1989, c. 104, Pt. A, §22 (NEW); 1989, c. 104, Pt. C, §10 (NEW).]

C. This subsection may not be construed to prohibit former municipal or county officials from doing personal business with the municipality or county. This subsection does not limit the application of Title 17-A, chapter 25. [1989, c. 104, Pt. A, §22 (NEW); 1989, c. 104, Pt. C, §10 (NEW).]

For the purpose of this subsection, a municipal or county government body includes an agency, board, commission, authority, committee, legislative body, department or other governmental entity of a municipality or county.

[1989, c. 104, Pt. A, §22 (NEW); 1989, c. 104, Pt. C, §10 (NEW) .]

6. Avoidance of appearance of conflict of interest. Every municipal and county official shall attempt to avoid the appearance of a conflict of interest by disclosure or by abstention.

[1989, c. 104, Pt. A, §22 (NEW); 1989, c. 104, Pt. C, §10 (NEW) .]

7. Municipal officers adopt ethics policy. In their discretion, the municipal officers may adopt an ethics policy governing the conduct of elected and appointed municipal officials.

[1989, c. 561, §19 (NEW) .]

SECTION HISTORY

1987, c. 737, §§A2,C106 (NEW). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§A22,C8,C10 (AMD). 1989, c. 561, §19 (AMD).

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Incompatible Offices

(from *Maine Townsman*, "Legal Notes," August 1987; updated February 2010)

Please Note: Despite this article's original publication date, it remains a valid resource on the relevant subject matter. Recent cases and statutory changes are footnoted to reflect current law. (8/98)

Question: In a small town, it's sometimes hard to find enough people to serve in the various elected or appointed positions in municipal government. Consequently people serve in one or more capacities, such as tax collector/treasurer/clerk. Are there any prohibitions against a person holding more than one office at the same time?

Answer: Yes. Local officials should be aware of the concept of "incompatible offices" which holds that a person serving in one office may not serve in certain other offices simultaneously because the duties of the offices conflict. In this context incompatible means that the nature of the duties of one office would prevent the office holder from discharging his or her duties in the other office with undivided loyalty. Incompatibility is often confused with "conflict of interest," but they are very different concepts. Whereas conflict of interest generally involves the placement of an official "in a situation of temptation to serve his own personal interest to the prejudice of the interests of those for whom the law authorized and required him to act . . ." (*Lesieur v. Inhabitants of Rumford*, 113 Me.317, (1915)), "incompatibility arises where the nature and duties of the two offices are such as to render it improper, from considerations of public policy, for one person to retain both." (*Howard v. Harrington*, 114 Me. 443, (1916)).

"Conflict of interest" involves a direct or indirect financial interest on the part of municipal officials. In contrast, incompatibility of office is concerned with an inconsistency in the function of two offices, as when one is subordinate to the other or where it is impossible to faithfully discharge the duties of both offices impartially. In short, a person cannot serve two masters or wear two hats that pull him/her in different directions.

While one can sometimes avoid a conflict of interest by abstaining from discussing and voting on an issue (see 30-A M.R.S.A. § 2605(6)), one person cannot simultaneously hold two incompatible offices and avoid the problem by abstaining from decisions. An office holder who accepts and qualifies for a second office which is incompatible with the one already held automatically causes a vacancy in the former, as if it had been resigned; that is, the mere acceptance of the second incompatible office per se terminates the

person's right to hold the first office as effectively as a resignation (Stubbs v. Lee, 64 Me. 195 (1814), Howard v. Harrington 114 Me. 443, (1916)).

Although the Legislature may specifically designate certain offices which may not be held simultaneously by the same person, incompatibility is generally a judicial question. There is no yardstick by which the rule prohibiting the holding of incompatible offices may be applied; each case must be judged on its own particular facts. Through the years, MMA legal staff has received inquiries regarding the compatibility of certain offices. The following is a list of offices about which the courts, the Attorney General, and the MMA legal staff have received inquiries and have rendered opinions about their incompatibility. Keep in mind that unless there is a specific prohibition in the State law or local charter or ordinance, only a court can declare that two positions are legally incompatible.

Selectmen

The following is a comprehensive, but not necessarily exhaustive, list of offices which a person is prohibited from holding while serving as a selectman, but each situation must be reviewed individually. Keep in mind the following conclusions may be different if the town operates under the Town Manager Plan or local charter and ordinance provisions provide otherwise.

Ballot Clerks: The authority to determine the results of a challenged election rests with the municipal officers. Recount challenge proceedings include supervising the ballot clerks during the recount. A municipal officer who is also serving as a ballot clerk would not be able to provide proper, impartial supervision (30-A M.R.S.A. § 2531-A).

Clerk: A selectman may not serve as the town clerk. This is because of the close interrelationship between the duties of the selectmen and the clerk in the supervision of elections and the appointment of wardens with the approval of the municipal officers. Further, there are various statutes which require the selectmen to officially file documents with the clerk; if one person served in both capacities, it would be difficult to determine when this act took place.

Constable, Assistant Constable, Dog Control Officer, or other law enforcement officers: These offices are incompatible with that of selectman because the selectmen are responsible for hiring and firing law enforcement officials (30-A M.R.S.A. § 2671 et seq.).

County Commissioner: State law prohibits a county commissioner from serving as a mayor or assessor of a city or as a selectman or assessor of a town (30-A M.R.S.A. § 52).

Fire Chief/Assistant Fire Chief (30-A MRSA § 3153): The decision of the fire chief or assistant is subject to the approval of the selectmen in the promulgation of administrative rules and regulations relating to municipal fire protection. The decisions of the fire chief

and assistant are also subject to the approval of the selectmen in budget matters and expenditure of money. Also, the chief or assistant chief or assistant may be appointed, and subject to removal, by the selectmen, unless the town has provided otherwise (30-A M.R.S.A. § 2601).

Building Inspector (30-A MRSA §4103): According to State law, a decision made by the building inspector can be appealed to the municipal officers. If a selectman is also the building inspector, an incompatibility would exist, since the person who issues the permit can't also serve as the appeal authority. This incompatibility would not exist if the town, by ordinance, has given a board of appeals the jurisdiction to hear appeals from the building inspector's decision (30-A M.R.S.A. § 2691(4)).

Road Commissioner: The board of selectmen exercises a supervisory function in relation to a single road commission (30-A M.R.S.A. § 2526(7)(B)). While a selectman may not act as the road commissioner, the board of selectmen may act as a board of road commissioners 30-A M.R.S.A. § 2526(7)(C)).

Treasurer/Tax Collector: Selectmen and assessors may not serve as treasurers and tax collectors until they have completed their duties and had a final settlement with the town. The treasurer and tax collector may be the same person (30-A M.R.S.A. § 2526(8)).

Town Manager: A Selectman may not serve simultaneously as town manager, nor may a selectman be appointed to fill a vacancy in the position of manager if the manager received salary increases during the selectman's term (30-A M.R.S.A. §§ 2606, 2632). This latter prohibition continues for one year after the expiration of the selectman's term of office.

School Committee Member/SAD or RSU Director: The basic duties and interrelationship of selectmen and school committee members or SAD or RSU directors make these positions incompatible. For example, one person could not adequately represent both the municipality and an SAD in meeting to reconsider the methods of sharing costs and assessments (20-A M.R.S.A. § 1301) or to dissolve a school union (20-A M.R.S.A. § 2103). Further, state requires warrants for school-related referenda to be drawn up and signed by the school board, then submitted to the municipal officers for countersignature and posting. (20-A M.R.S.A. §§ 1352, 1502). The intent is clearly that the same people will not be serving in both capacities.

Spouse of Selectman: Although being a spouse isn't holding an office, questions about spouses arise fairly frequently. It is permissible for the spouse of a selectman to serve as a member of the planning board, school committee, or as treasurer, tax collector, assessor or selectman. However, a spouse of a selectman may not serve on the board of appeals. 30-A M.R.S.A. § 2691.

Miscellaneous Offices

The following is a list of other common positions about which questions of incompatibility have arisen.

Assessors

An assessor may not serve as a county commissioner, tax collector, treasurer or member of a school committee. Assessors may serve as selectmen, deputy sheriffs, and members of planning boards.

Clerks

A clerk may not serve as a selectman, moderator, or dog control officer. A clerk may serve as a tax collector and/or treasurer.

Manager

A manager may not serve as a selectman, moderator, assessor, or member of a school committee (30-A M.R.S.A. § 2632).

Moderator

A moderator may not serve as an election official or clerk (30-A M.R.S.A. § 2524(3), 2528(8), and should not be a candidate (21-A M.R.S.A. § 504(3)).

Planning Board Member

A planning board member may not also serve as a member of the board of appeals if the appeals from the planning board decisions can be heard by the board of appeals.

Code Enforcement Officer

A code enforcement officer member may not also serve as a member of the board of appeals if the appeals from the planning board decisions can be heard by the board of appeals.

Other Appointer/Appointee Relationships

In general, it is an incompatibility of office for a person to serve in two offices where one office has the power of appointment, removal and supervision over the other. For instance, since the selectmen appoint, supervise, and can remove an appointed code enforcement officer or tax collector, a selectman could not serve in either of those offices.

Positions of Employment

The doctrine of incompatible offices applies to two or more *offices*, that is, positions

which are appointed or elected and for which an oath of office is required. Therefore, it is not an incompatibility if a person holds a municipal office and is also a municipal employee. See *Inhabitants of Town of Harpswell v. Wallace*, CV-08-184 (Me. Super. Ct., Cum. Cty., May 16, 2008) (Cole, J.)

The opinions printed above are written with the intent to provide general guidance as to the treatment of issues or problems similar to those stated in the opinion. The reader is cautioned not to rely on the information contained therein as the sole basis for handling individual affairs but he/she should obtain further counsel and information in solving his/her own specific problems.

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State Law and Ethics

(from *Maine Townsman*, July 1990)

By Geoff Herman, MMA Paralegal

Maine law does not reach deeply into the area of municipal governmental ethics. Appropriately, the setting of ethical standards for municipal officials is left to the municipal legislative body, except for some minimum standards which are found in the statutes or which have been developed over the years by related court decisions.

There are essentially four ethics-related situations that can occur at the level of municipal government which are covered to some degree by various statutes or common law: conflict of interest, incompatibility of office, prohibited appointments or employment, and various provisions regarding bias.

Some of these legal standards, such as the incompatibility of office or quasi-judicial bias provisions, are designed primarily to ensure fairness in government and a healthy system of checks and balances within the governmental machine. The legal provisions governing conflict of interest or prohibited appointments/employment, on the other hand, are designed more deliberately to frustrate a municipal official from furthering his or her own self interest at the expense of the broader municipal interest.

Conflict of Interest

In a sense, all issues regarding governmental ethics boil down to the situation of the municipal official being motivated by conflicting or competing interests. Municipal officials are sworn into public office to serve the interests of the public as a whole, and in the municipal official there is vested a public trust.

A betrayal of that trust occurs when an official is motivated to action as a result of a self interest rather than a common interest. The legal concept of "conflict of interest" as governed by statute, however, is limited to interests of a financial nature only.

30-A MRSA § 2605 is the statute which attempts to define the official who will be presumed by the law to be "self interested" when performing a particular governmental action, such as awarding a contract or voting in an official capacity on any question.

The standard found in § 2605 is essentially a 10% financial interest in the business or economic entity affected by a vote of a municipal board. The statute states that the vote of any municipal board can be vacated or voided by a court (which would occur upon complaint) when any official on that board votes on a question in which that official has a 'direct or indirect pecuniary (financial) interest A "direct or indirect pecuniary interest" in

a vote is deemed to occur when the voting official has at least a 10% interest in the business to which the vote relates as an officer director, partner, associate, employee or stockholder.

It should be noted that it is not merely the "interested" official's vote which is voided or discounted, but the entire vote of the Board. In order to protect the Board's vote, the statute requires the "interested" Board member to (1) make a full disclosure of his or her interest before any action is taken, (2) abstain from voting on the matter, and (3) otherwise refrain from attempting to influence the Board's decision.

The 10% standard is not a terribly strict conflict of interest standard. If the "interested" official has only a 5% interest in the company affected by his or her vote, but that 5% interest represented many thousands of dollars, many people would perceive there to exist a conflict of interest. There are at least two other guidelines in the law concerning conflict of interest which have the effect of more strictly controlling the actions of interested municipal officials.

In 1989 the Legislature added a subsection to § 2605 which reads "every municipal and county official shall *attempt* to avoid the appearance of a conflict of interest by disclosure or by abstention." From this subsection it is reasonable to conclude that even when a municipal official does not meet the 10% interest test, but that official still possesses in the mind of the public a financial self interest in the outcome of a vote sufficient to impinge on his or her duty to serve the public's interest, then that official should either provide full disclosure or abstain, or both.

From a practical perspective, this subsection of the conflict of interest law, if it stood on its own, is more advisory than it is enforceable, both because the substantiation of an "apparent conflict could be extremely difficult and because any violation of this subsection carries with it no clear judicial remedy.

There exists, however, rather straightforward case law on this issue which further defines activity which may constitute a conflict of interest. That standard is "whether the town official by reason of his interest, is placed in a situation of temptation to serve his own personal pecuniary interest to the prejudice of the interests of those for whom the law authorized and required him to act." Lesieur v. Inhabitants of Rumford, 113 Me. 317 (1915).

When the subsection in § 2605 which requires officials to attempt to avoid the appearance of a conflict is taken together with the conflict of interest standard defined in Lesieur there exists a sufficient body of law to suggest that even if the 10% financial threshold is not reached, the actions of municipal officers which are demonstrably guided by personal self interest could be held by a court to be without force.

Incompatibility of Office

In many cases one person may simultaneously hold more than one position or office in municipal government. Indeed, town and city managers frequently hold a dizzying number of offices in the performance of their duties.

There are certain positions in municipal government, however, which may not be held simultaneously by certain other officials. Although the concept of "incompatible offices" is often described as a 'conflict of interest', there is a significant difference between these two situations, particularly when viewed in the light of governmental ethics. As has been discussed, a statutory conflict of interest concerns a municipal official's divided loyalty between his or her financial self interest and the public interest. The common law doctrine of incompatibility of office is also intended to assure uncompromised loyalty, but this time the tension is found to exist between the legitimate duties of two separate offices which no single individual - no matter how capable, well-intentioned or altruistically motivated could be expected to perform with undivided loyalty.

The common law (court cases) exerts more influence on determinations of incompatibility than do the statutes, which expressly define the following as "incompatible":

- A town manager may not simultaneously serve as either the town moderator, selectman, assessor or school committee member (30-A MRSA § 2632);
- A tax collector or treasurer may not simultaneously serve as either selectman or assessor (30-A MRSA §2526);
- A full-time deputy sheriff may not simultaneously serve as selectman, city councilor or budget committee member (30-A MRSA § 355);
- A county commissioner may not simultaneously serve as either the mayor of a city, selectman of a town, or assessor (30-A MRSA § 52);
- A municipal officer or his or her spouse may not simultaneously serve as a board of appeals member or associate (30-A MRSA § 2691);
- Finally, if the municipal planning board is still constituted under the "old planning board law" found in then-existing 30 MRSA § 4952, a municipal officer may not simultaneously serve as a planning board member. This particular incompatibility does not pertain to planning boards created or recreated after September 23, 1971.

As can be seen, incompatibility can be generally held to exist where two municipal offices, which are separated vertically with regard to authority, may have occasion to perform the same function or authorize its performance. The incompatible offices expressly defined in the statutes serve also to establish some criteria to determine other incompatibilities, which are not expressly defined in the law.

For example, the statutes do not allow a treasurer to simultaneously serve as a selectman because the treasurer prepares the municipal disbursements while the selectmen actually authorize the disbursements to be made.

In order to achieve a similarly healthy system of checks and balances, the offices of selectman and school committee member would be incompatible, even though they are not expressly incompatible by statute. A town manager is not permitted by statute to serve simultaneously as a selectman because, among other reasons, the decisions made by the manager are regularly *reviewed* by the selectmen, who are in many cases empowered to affirm, modify or reverse those decisions. Similarly, even in the absence of a specific incompatibility statute, a person could not simultaneously be the town's Code Enforcement Officer (CEO) and a member of the planning board where the planning board is structurally empowered to review and modify decisions of the CEO. Finally, the selectmen hire/fire and directly *supervise* the manager, and so the statutes define the two offices as incompatible. Similarly, if a town does not operate under a town manager form of government, the selectmen are authorized to directly supervise the road commissioner, and those two positions would therefore be incompatible by the common law doctrine.

It is often impossible to generalize a determination of office incompatibility. The duties and authorities of a particular office, as controlled by local ordinance or charter, frequently differ from one town to the next. Therefore, it is important that before deciding on incompatibility there is a determination of the duties and authorities actually vested in the two separate offices to be filled by one person. If it is found that the duties of one office holder serve the purpose of providing a check with regard to the duties of the other, or that the one office could review, modify or supervise the work of the other, then the two offices should not be simultaneously held by the same person.

Prohibited Appointments/Employment

From the point of view of governmental ethics, the statute governing prohibited appointments or employment represents a return to the restriction on financial self-interest.

30-A MRSA § 2606 prohibits a municipal officer (a selectman or councilor) from being appointed to or employed in any "civil office of profit" in the municipal government when that position was either created or its level of compensation was increased during his or her term by action of its board of selectmen or town council. This prohibition extends throughout that officer's full term plus one calendar year thereafter. There is a similar prohibition for school committee members found in 20-A MRSA § 1002(3).

As is the case with much statutory law, § 2606 is either clumsy or broad enough not to care how the individual selectman might have voted on the salary increase, or whether the councilor is waling to accept the position at the original salary level; if the position was created or the position's salary increased by action of the board of municipal officers,

then none of those officers are eligible for that position for their term plus one year. The dynamics of this prohibition are straightforward; the law suggests that people should not be tempted to create for themselves a position of employment by means of their elected office.

Bias

The issue of bias emerges in the area of the municipality's quasi-judicial functions. The issuance of permits or governmental approvals of any kind (such as land use, business, or concealed weapons permits) the awarding of bids or contracts, employment removal proceedings, or the appeal processes for those permitting, award, or removal procedures or other fair hearing processes (such as welfare fair hearings) all would fall under the category of quasi-judicial functions.

It is mandatory that quasi-judicial functions are performed by municipal officials who are capable of being completely objective, or "disinterested," with regard to the outcome of the proceeding. This requirement for disinterestedness flows primarily from the due process clauses of both the Maine and U.S. constitutions inasmuch as the decision making process due to an individual would not in fact be available to them if it were not an inherently fair process.

Obviously, if an official responsible for making a quasi-judicial decision had a financial self-interest in the decision, he or she would have a conflict-of-interest type bias and would therefore be unable to sit as a quasi-judicial officer.

Setting aside the financial type of bias, there are essentially two other types of bias. One of these types might be called *familial* bias, which is covered to some degree in Maine law, where one might expect there to exist a temptation of a family member to find in favor of the related applicant or claimant. The other type of bias might be called *prejudicial* bias, which can only really be recognized by the quasi-judicial officer him or herself, and where more often than not there is a temptation to rule against the applicant or claimant.

1 MRSA § 71(6) is a disqualification statute which reads "When a person is required to be disinterested or indifferent in a matter in which others are interested, a relationship by consanguinity or affinity within the 6th degree according to civil law or within the degree of 2nd cousins inclusive, except by written consent of the parties, will disqualify."

What this means is that when an official is sitting as a quasi-judicial officer to decide on a matter involving a relative by blood (consanguinity) or marriage (affinity) who is a second cousin or more closely related, the related official should either step down as a quasi-judicial officer or seek written permission from all parties to the proceeding to remain.

In many of Maine's smaller communities, particularly, the invocation of this disqualification statute could significantly alter the voting membership of the planning board, for example, for land use proposals submitted by cousins, nephews or aunts or uncles of one or more planning board member.

What has been referred to as prejudicial bias is not subject to quantification on a consanguinity chart, although, like familial bias, it is also a bias of degree. It is entirely human to harbor some degree of positive or negative feelings toward other people, and a mere like or dislike of an applicant or claimant does not necessitate that a municipal official step down as a quasi-judicial officer.

On the other hand, a municipal official must abstain when there is a significant degree of bias for or against the applicant or claimant such that the official cannot make an impartial decision, thereby depriving the applicant of his or her due process right to a fair and objective determination. Because the presence of that degree of prejudicial bias can only truly be known to exist by the quasi-judicial officer, the decision to step down as a quasi-judicial officer for reasons of bias is a uniquely unguided, internal, and ethical decision most illuminative of a municipal official's sense of the public trust.

And from a purely practical perspective, even where extraordinary prejudice does not exist, but prior statements made by the municipal official might suggest the presence of bias, the municipal official might step down to avoid the appearance of making a biased quasi-judicial decision in order to remove one argument that could easily be used to subsequently challenge the municipal decision in a court appeal.

Summary

The municipality is, of course, free to strengthen by local code any of these guidelines found in the statutes and in common law governing conflict of interest, incompatible offices, prohibited appointments/employment, bias, or, for that matter, any other area of ethical concern.

In fact, in 1989 the Legislature added a section to 30-A MRSA § 2605 which authorized the municipal officers to adopt, at their discretion, an ethics policy governing the conduct of both elected and appointed officials. Even before this law was enacted, some towns had by charter already made some provisions relating to ethics. Despite the fact that the need for enabling legislation in this area is doubtful, it is probably more efficient to have either an ethics policy adopted by the municipal officers or a separate ethics ordinance than it is to have the municipal ethics policy entirely embedded in the charter, which requires a fairly major process to amend or revise.

This is presented as a sample only. It has not been reviewed by the Legal Services Department.

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Administrative Code

Town of Pittsfield, Maine
As passed by the Pittsfield Town Council 10/6/92

CHAPTER 2. ADMINISTRATIVE CODE

Division 4. Code of Ethics

Sec. 101 Code of Ethics

101.1. 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 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.

101.2 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 and their appointees whenever applicable as if more fully set forth therein, to wit:

17 MRSA SS 3104 Conflicts of Interest; Purchases by the State

17-A MRSA SS 456 Tampering with Public Records of Information

17-A MRSA SS 602 Bribery in Official and Political Matters

17-A MRSA SS 603 Improper Influence

17-A MRSA SS 604 Improper Compensation for Past Action

17-A MRSA SS 605 Improper Gifts to Public Servants

17-A MRSA SS 606 Improper Compensation for Services

17-A MRSA SS 607 Purchase of Public Office

17-A MRSA SS 608 Official Oppression

17-A MRSA SS 609 Misuse of Information

17-A MRSA SS 903 Misuse of Entrusted Property

21 MRSA SS 533 Persons Ineligible to Serve as Election Officials

30-A MRSA SS 2605 Conflicts of Interest

30-A MRSA SS 5122 Interest of Public Officials, Trustees or Employees

101.3. Definitions

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

B. *Town Councilor* - Sworn Member of the Pittsfield Town council.

C. *Council Appointee* - any sworn member or associate member of any board or committee appointed by the Town Council, including, but not limited to, the Board of Appeals, Board of Ethics, Planning Board, Assessment Review Board, Personnel Appeals Board, Pinnacle Park Board, Theater Committee, Parks and Recreation Committee, Manson Park Committee, Swimming Pool Committee, Library Trustees, Cemetery Board, Economic Development Revolving Loan Fund Committee Recycling Committee, Rehabilitation Housing Revolving Loan Fund Committee, and Board of Health.

D. *Town Employee* - Any individual working for, on a permanent or temporary basis, and drawing a salary, wages or stipend from the Town of Pittsfield, except employees of School Administrative District #53. The term "Town employee" shall not include consultants or special personnel providing services on a short-term contractual basis for less than one year.

E. *Immediate Family* - Spouse, and the following when living in the household of a Council member or appointee of the Council: children, parents, brothers, and sisters.

F. *Financial Interest* - A direct or indirect interest having monetary or pecuniary value including, but not limited to, the ownership of shares of stock.

G. *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 or disapproval thereof, by the Town Council or their appointees, and which interest is not shared by the general public.

H. *Censure* - a judgment or resolution condemning a person for misconduct.

101.4. Standards of Conduct - The purpose of this Code is to establish minimum ethical standards of conduct for all Town Councilors and their 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 interest of the Town of Pittsfield.

101.5. Conflicts of Interest - No Councilor or council appointee shall participate directly by means of deliberation, approval or disapproval, or recommendation, in the purchase of goods and services for the Town, and the award of any contracts with or by the Town (except that he or she may be allowed to submit bids for same in accordance with the Town ordinances and under the laws of the State of Maine), where to his or her knowledge there is a financial interest, or special interest other than that possessed by the public generally, in such purchase or award, held by:

A. himself or herself or a member of his or her immediate family

B. a business in which he or she or a member of his or her immediate family serves as an officer, director, trustee, partner or employee in a policy-making position; or

C. any other person or business with whom he or she or a member of his or her immediate family are in business, or are negotiating to have an arrangement concerning future employment.

No Town Councilor or council appointee shall participate by means of deliberation, approval or disapproval, or recommendation, in the decision to

hire, promote, discipline, lay off or to take any other personnel action in respect to any applicant for Town employment or Town employee, as the case may be, where the applicant or employee is:

A. a member of his or her immediate family; or

B. a person with whom either he or she or a member of his or her immediate family are in business

101.6. Disclosure of Confidential Information - No Town Councilor or Council appointee shall, without proper legal authorization, disclose confidential information concerning the property, government or affairs of the Town, nor shall he or she use such information to advance the financial or private interest of himself or herself or others. For purposes of this subsection, the term "confidential information" shall mean any information, oral or written, which comes to the attention of, or is available to, such Town Councilor or Council appointee only because of his or her position with the Town, and is not a matter of public record. Information received and discussed during an executive session of the Pittsfield Town Council or any Town agency, board or committee shall be considered within the constraints of this section, and shall not be disclosed to any third party unless permitted by affirmative vote of such body.

101.7. Gifts and Favors - No Town Councilor or Council appointee shall accept any valuable gift, whether in the form of service, loan, thing or promise, from any person and/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:

a) accept any gift, favor or thing of value that tends to influence him or her in the discharge of his or her official duties; or

b) grant in the discharge of his or her official duties any improper favor, service or thing of value.

101.8. 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.

101.9. Conflicts of Interest

(A) Deliberation and Vote Prohibited

No Town Councilor or Council appointee shall participate in the deliberation or vote, or otherwise take part in the decision-making process, on any agenda item before his or her collective body in which 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.

(B) Disclosure of Interest in Agenda Items

Any Town Councilor or council appointee who believes he, or a member of his 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 interest, and have it recorded by the Clerk on the Town records of such item.

Additionally, any Town Councilor, Board Member or Committee Member who believes that any fellow Town Councilor, Board Member or Committee Member, or a member of such fellow Town Councilor's, Board Member's or Committee Member'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 interest, and have it recorded by the Clerk on the Town records of such item.

(C) Determination of Conflict.

Once the issue of conflict has been initiated relative to an individual Town councilor, Board Member or Committee Member, and disclosure has been made as provided above, the individual initiating the issue of conflict may request unanimous consent for the affected individual to be excused from participating in the deliberation or vote on the agenda item; if there is any objection to this unanimous consent request, such individual's fellow Town Councilors, Board Members or Committee Members shall vote on whether or not such individual shall be excused from participating in the deliberation or vote, or otherwise taking part in the decision-making process, on the relevant agenda item. Such individual

shall be excused only upon a vote of the majority of his or her fellow Town Councilors, Board Members or Committee Members that a conflict of interest in fact exists.

(D) Avoidance of Appearance of Conflict

Once any individual Town Councilor, Board Member or Commission Member has been determined to have a conflict of interest in respect to any agenda item, said individual may immediately remove himself or herself from the meeting room, or to the area of the room occupied by the general public, until deliberation and action on the agenda item has been completed.

(E) Personal Interest

Nothing herein shall be construed to prohibit any Town Councilor, Committee Member, or Board Member from representing his or her own personal interest by appearing before his or her collective body on any such agenda item.

101.10. Disclosure Statement by Town Councilors and Council Appointees

- Every Town Councilor and Council appointee shall file with the Town Clerk within sixty (60) days after being elected or appointed, and thereafter during the month of April each subsequent calendar year a written statement under oath containing the following information, to the best of his or her knowledge and belief:

The name of each person or business entity doing business with the Town in an amount in excess of twenty-five hundred dollars (\$2,500.00) during the preceding calendar year from which such Councilor or Council appointee, or a member of his or her immediate family, has received money or other thing of value in an amount in excess of one thousand (\$1,000.00) during the preceding calendar year, including contributions.

For the purposes of this Code, a list prepared by the Finance officer of those persons or business entities doing business with the Town in an amount in excess of twenty-five hundred dollars (\$2,500.00) shall be determinative for purposes of reporting under this Section.

Income from, and financial investments in, policies of insurance,

and deposits and accounts from commercial or savings banks, savings and loan associations, or credit unions shall not be considered to be a financial interest within the meaning of this Section.

101.11. Political Activities - No 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 for the Town. In conjunction therewith:

No Town Councilor or Council appointee may solicit funds or contributions or accept or receive funds or contributions from Town employees for political purposes.

Nothing herein shall be construed to prohibit any Town Councilor, Board Member or Committee Member from participating in the political process in his or her capacity as a private citizen.

Sec. 102 Board of Ethics - There is hereby created and established a Board of Ethics consisting of five (5) members appointed by the Town council. All members shall be appointed for terms of three (3) years each, except that initial appointments shall be for a term of one year for one member, for a term of two years for two members, and for a term of three years for two members. All members must reside in the Town of Pittsfield. No member shall serve more than two consecutive terms.

A. Procedures and Records. The Board, upon its formation, shall establish such rules as may be necessary to govern its procedures. However, such rules shall not become effective until approved by majority vote of the Town Council. In addition, the Board shall at all times maintain in the office of the Town Clerk appropriate records of its opinions and proceedings.

B. Duties. The Board shall render advisory opinions to the Town Council when there is doubt as to the applicability of any provisions of this Code to any particular situation. In the performance of its duties, the Board shall limit its review and fact-finding only to those issues referred to it by the Town Council, it being the intent of the Town Council that the Board not function in an independent investigatory manner. The Board shall also perform such other duties as may be prescribed from time to time by the Town Council.

C. Initiation of Procedure. Any Town Councilor, Board Member, or Committee Member seeking advice as to whether a particular situation constitutes a violation of this Code shall first submit to the Town Council a written statement in the form of a Council Order describing the nature of the matter. If the Council, in its sole discretion, feels that an advisory opinion is

necessary, it shall adopt the Order, by majority vote, referring the matter to the Board. A tie vote on the order shall also cause the matter to be referred to the Board. If the Board finds any matter referred to it to have been based upon allegations it determines to have been frivolous, unfounded or with malice, it shall so advise the Council. It is the purpose and intent of this Code to provide a mechanism by which all such matters may be handled in an orderly and impartial fashion in such a manner as to protect the best interests of the citizens of the Town of Pittsfield and the personal and private interests of its Town Councilors, Board members and Committee members.

Sec. 103 Penalties - In addition to any other penalties or remedies as may be provided by law, violation of this Code shall constitute cause for censure, after notice and hearing conducted by the Town Council. A majority of the Pittsfield Town Council shall conduct such proceedings. In addition, on the application of at least ten (10) residents of the Town, the Superior Court may restrain proceedings in violation of this code.

Sec. 104 Separability - If any section, subsection, sentence, clause or phrase of this Code 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 Code.

This is presented as a sample only. It has not been reviewed by the Legal Services Department.

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Code of Ethics

Town of Mechanic Falls, Maine

Sec. 1. Ethical Standards for Councilors:

1.1 Statement of Public Policy:

The proper operation of democratic government requires that Town Councilors 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 simply for personal gain; and that such Councilors 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.

Sec. 2. Definitions:

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

2.2 Town Councilor: Member of the Mechanic Falls Town Council.

2.3 Town Employee: An individual working for, on a permanent or part-time basis, and drawing a salary from the Town of Mechanic Falls, except employees of the Mechanic Falls School Department. The term "town employee" shall not include consultants or special personnel providing services on a short-term contractual basis.

2.4 Immediate Family: Spouse, children, parents, brothers and sisters of a Council member.

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

2.6 Special Interest: A person or group having an interest in a particular part of the economy and receiving or seeking special advantages thereafter to the detriment of the general public.

Sec. 3. Standards of Conduct:

The purpose of this Code of Ethics is to establish standards of conduct for all Town Councilors 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 Mechanic Falls.

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 of the Town of Mechanic Falls whenever applicable, as if more fully set forth herein, to wit:

17 MRSA ss 3104 Conflict of Interest; Purchases by the State
17-A MRSA ss 456 Tampering with Public Records of Information
17-A MRSA ss 602 Bribery in Official and Political Matters
17-A MRSA ss 603 Improper Influence
17-A MRSA ss 604 Improper Compensation for Past Action
17-A MRSA ss 605 Improper Gifts to Public Servants
17-A MRSA ss 606 Improper Compensation for Services
17-A MRSA ss 607 Purchase of Public Office
17-A MRSA ss 608 Official Oppression
17-A MRSA ss 609 Misuse of Information
17-A MRSA ss 903 Misuse of Entrusted Property
21 MRSA ss 533 Persons Ineligible to Serve as Election Officials
30 MRSA ss 2251 Conflicts of Interest
30 MRSA ss 4819 Interest of Public Officials, Trustees or Employees

3.2 Conflicts of Interest: No Town Councilor shall participate directly or indirectly by means of deliberation, approval or disapproval, or recommendation, in the purchase of goods and services for the Town of Mechanic Falls, nor award any contracts with the Town, except as permitted by the laws of the State of Maine, where to his or her knowledge, there exists a financial interest, or special interest, other than that possessed by the public generally, in such purchase or award, held by:

3.2.1 The Town Councilor or a member of their immediate family;

3.2.2 A business in which the Town Councilor or a member of their immediate family serves as an officer, director, trustee, partner or employee in a supervisory or management position; or

3.2.3 Any other person or business with whom the Town Councilor or a member of their immediate family are in business, or are negotiating, or have an arrangement concerning future employment.

No Town Councilor shall participate directly or indirectly by means of deliberation, approval or disapproval, or recommendation, 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:

3.2.4 A member of their immediate family; or

3.2.5 A person with whom either the Town Councilor or a member of his immediate family are in business.

3.3 Disclosure of Confidential Information: No Town Councilor shall, without proper legal authorization, disclose confidential information concerning the property, government or affairs of the Town, nor shall he or she use such information to advance the financial or private interests of himself or herself or members of the Town Councilor's immediate family. For purposes of this subsection, the term "confidential information" shall mean any information, oral or written, which comes to the attention of, or is available to, such Town Councilor only due to his or her position with the Town, and is not a matter of public record. Information received and discussed during an executive session of the Town Council shall be considered within the constraints of this section, and shall not be disclosed to a third party unless permitted by an affirmative vote of a majority of such body.

3.4 Gifts and Favors: No Town Councilor shall accept any valuable gift, whether in the form of service, loan, thing or promise, from any person and/or business, which to their knowledge, is interested directly or indirectly in any manner whatsoever in business dealings with the Town; nor shall any Town Councilor: (1) accept any gift, favor, thing of value that tends to influence his or her official duties; or (2) grant in the discharge of his or her official duties any improper favor, service or thing of value.

3.5 Use of Town Property: No Town Councilor shall use or permit the use of any Town-owned property, including but not limited to, motor vehicles, equipment, buildings, and materials, for any private use or benefit. Nothing herein shall prohibit the use of Town buildings and equipment at rates and/or on terms as may be established for their rental.

3.6 Representing Third Party Interests before Town Agencies: No Town Councilor shall either appear on behalf of any third party interest before the

Town Council, or represent a third party interest in any action, proceeding or litigation in which the Town or one of its agencies is a party. Nothing herein shall prohibit a Councilor, on behalf of a constituent in the course of his or her duties as a representative of the electorate, or any Councilor, on behalf of his or her personal interests, from appearing before a Town agency.

3.7 Disclosure of Interests in Agenda Items: Any Town Councilor who believes they or a member of their immediate family has a financial or special interest, other than an interest held by the general public, in any proposed order, ordinance, or resolve on the agenda of the Mechanic Falls Town Council, shall disclose the nature and extent of such interest, and have it recorded by the Town Clerk on the Town records for such item.

Once such disclosure has been made, such Town Councilor shall refrain and shall be relieved, at the discretion of a majority of the other members of the Council, from voting or otherwise participating in the deliberations and decision-making process on such item. Nothing herein shall be construed to prohibit any Town Councilor from representing his or her own personal interests in any such item.

3.8 Disclosure Statement by Town Councilors: Every Town Councilor shall file with the Town Clerk within thirty (30) days after the effective date of this ordinance, and during the month of July during each fiscal year thereafter, a written statement, under oath, containing the following information, to the best of their knowledge and belief:

3.8.1 The name of each person or business doing business with the Town in an amount in excess of \$1,000 during the preceding fiscal year from which the Councilor or a member of his immediate family received money or other thing of value in an amount in excess of \$1,000 during the preceding fiscal year, including campaign contributions.

3.8.2 The name of any business doing business with the Town in an amount in excess of \$1,000 during the preceding fiscal year in which the Councilor or a member of his immediate family has a direct financial interest in an amount in excess of \$1,000.

3.8.3 The name of any business doing business with the Town in an amount in excess of \$1,000 during the preceding fiscal year in which the Councilor or a member of his immediate family holds a position of officer or member of the governing board, and the title of each such position held.

For purposes of this Code, a list prepared by the Deputy Town Clerk/Bookkeeper of those businesses doing business with the Town in an amount in excess of \$1,000 during the preceding fiscal year shall be determinative for purposes of reporting under this section. Income from, and financial investments in, policies of insurance, and deposits and accounts from commercial or savings banks, savings and loan associations, or credit unions shall not be considered to be a financial interest within the meaning of this section.

3.9 Political Activities: No Town Councilor shall participate in any political activity which would be in conflict or be incompatible with the performance of his or her official functions and duties for the Town. In conjunction therewith:

3.9.1 No Town Councilor may use his or her official authority or position for the purposes of influencing or interfering with or affecting the results of any election, nor shall they solicit funds or contributions or accept or receive funds or contributions from Town employees for political purposes. No Town Councilor may distribute pamphlets or handbills while he or she is performing their official functions and duties with the Town. Nothing herein shall be construed to prohibit any Town Councilor from participating in the political process in their capacity as private citizens.

3.10 Incompatible Employment or Office: No Town Councilor shall occupy any other office, elected or appointed, in any other governmental entity, when the duties of such office are incompatible with the proper discharge of his or her official functions and duties with the Town of Mechanic Falls. For purposes of this Code, the occupancy of any office, elected or appointed, in any other governmental entity by any Town Councilor is hereby prohibited in any one of the following circumstances:

3.10.1 Where the duties of the other office make it a physical impossibility to discharge the duties of the Town position; or

3.10.2 Where one office is subordinate to the other; or

3.10.3 Where one office carries the power of removal of the other;
or

3.10.4 Where occupancy of both offices is otherwise prohibited by charter or by law.

3.11 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 executive session for purposes of informally discussing and resolving 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 Council shall leave executive session, and the Council may proceed with formal action only by majority vote of the Councilors not so named in the preliminary resolution under Article II, Section 2, Subsection C.

3.11.1 The Council may elect to give written warning in lieu of the provisions for removal from office detailed in Article II, Section 2, Subsection C of the Town Charter.

3.11.2 All procedures under this section shall be in accord with due process requirements, including, but not limited to, a right to notice and hearing.

Sec. 4. Ethical Standards for Town Employees:

4.1 Statement of Public Policy: Public employment is a public trust. It is the policy and objective of this Code to promote and balance the objectives of protecting the integrity of the government of this Town, and of facilitating the recruitment and retention of personnel needed by the Town, by prescribing essential restrictions against conflict of interest without creating unnecessary barriers to public interest and to facilitate the development of fair and competitive access to Town purchasing by responsible suppliers.

Employees must discharge their duties and responsibilities fairly and impartially, and do so through official channels. They would also maintain a standard of conduct that will inspire public confidence in the integrity of the government of this Town.

Section 5. Specific Standards of Conduct of Town Employees:

5.1 Any effort to realize personal gain through public employment, inconsistent with the responsible discharge of that public employment, is a violation of public trust, as is any conduct which would create the justifiable impression in the public that such trust is being violated. In order to fulfill the ethical standards prescribed by this section of Code, employees must meet the standards of conduct set forth in this section.

5.2 Conflict of Interest: It shall be unlawful for any employee of the Town to participate directly or indirectly through decision, approval, disapproval, recommendation, preparation of any part of a purchase order, influencing the

content of any specifications or purchase standard, rendering of advice, investigation, auditing, or otherwise, in any (a) proceeding or application; (b) request for ruling or other determination; (c) claim or controversy; or (d) other matter, pertaining to any contract or subcontract and any solicitation or proposal therefor, where to the employee's knowledge, there exists a financial or special interest possessed by:

5.2.1 The employee or the employee's immediate family; or

5.2.2 A business, other than a public agency, in which the employee or a member of the employee's immediate family serves as an officer, director, trustee, partner or employee; or

[5.3.3] Any other person or business with whom the employee or a member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment.

5.4 Gratuities or Kickbacks:

(a) Gratuities. It is unlawful for any person to offer, give or agree to give to any person, while a Town employee, or for any person while a Town employee to solicit, demand, accept or agree to accept from another person anything of a pecuniary value for or because of:

5.4.1 An official action taken, to be taken, or could be taken; or

5.4.2 A legal duty performed, to be performed, or which could be performed; or

5.4.3 Knowingly failing to take an official action or knowingly failing to perform a legal duty.

(b) Kickbacks. It is unlawful for any payment, gratuity, or benefit to be made by or on behalf of a contractor or subcontractor or any person associated therewith, to a Town employee as an inducement for the award of a contract or subcontract or order. Further, it is unlawful for a Town employee to solicit, demand, accept or agree to accept from a contractor or subcontractor or any person associated therewith, anything of a pecuniary value as an inducement for the award of a contract, subcontract or order.

5.5 Covenant Relating to Contingent Fees: Representation of contractor. Every person, before being awarded a contract in excess of five thousand dollars (\$5,000) with the Town, shall represent that no Town employee or Town

Councilor has been retained to solicit or secure the contract with the Town upon an agreement or understanding for a commission, percentage, brokerage or contingent fee or other financial or special interest.

5.6 Restriction of Employment of Present and Former Town Employees:

5.6.1 Contemporaneous employment prohibited. It shall be unlawful for any Town employee to become or be an employee of any party contracting with the Town.

5.6.2 Disqualification of former employees in matters connected with former duties. Permanent disqualification of personally-involved former employees regarding a particular matter. It shall be unlawful for a former employee to knowingly act for anyone other than the Town in connection with any matter in which the employee personally participated while an employee, where the Town is a party to and has a direct and substantial interest.

5.6.3 Disqualification of Partners. It shall be unlawful for a person who is a partner of an employee or former employee of the Town to act as a principal or as an agent for anyone other than the Town, in connection with any matter in which the employee personally participated while an employee, where the Town is a party to and has a direct and substantial interest.

5.6.4 Selling to Town After Termination of Employment is Prohibited. It shall be unlawful for a former employee of this Town, unless the employee's last annual salary did not exceed the rate of five thousand dollars (\$5,000), to sell or attempt to sell any items or contracts to the Town for a period of one year following the date that employment ceased.

Provided, however, that this section is not intended to preclude a former Town employee from accepting employment with a private industry solely because the employer is a contractor with the Town.

5.7 Use of Confidential Information: It shall be unlawful for any employee or former employee of the Town to use confidential information for actual or anticipated personal gain, or the actual or anticipated personal gain of any other person.

5.8 Use of Town Property: No employee shall use or permit the use of any Town-owned property, including but not limited to, motor vehicles, equipment, buildings, and materials, for any private use or benefit.

5.9 Violations of Ethical Standards by Employees: The Town Council, at their discretion, may by majority vote, impose the following:

5.9.1 Oral or written reprimands or warnings; or

5.9.2 Suspension with or without pay for specified periods of time;
or

5.9.3 Termination of employment.

5.9.4 The value of anything transferred or received by an employee in violation of the ethical standards set forth in this Code, shall be recoverable by the Town from such employee.

5.9.5 All procedures under this section shall be in accord with due process requirements, including, but not limited to, a right to notice and hearing on any suspension or termination of employment, provided that a request for hearing will not stay a suspension before the hearing.

5.10 Violations by Contractors: The Town Council, at their discretion, may by majority vote, impose the following:

5.10.1 Oral or written reprimands or warnings; or

5.10.2 Cancellation of transactions; and

5.10.3 Suspension or disqualification from being a contractor or subcontractor under Town or Town-funded contracts.

5.10.4 The value of anything transferred in violation of the ethical standards set forth in this Code by a person or business entity, other than an employee, shall be recoverable by the Town from such person or business entity.

5.10.5 Suspension may be imposed during an investigation of charges of a serious and compelling nature based on adequate evidence indicating violation under this Code or other irregularities, which if true, would affect the person's integrity as a contractor.

5.10.6 All procedures under this section shall be in accord with due process requirements, including, but not limited to, a right to notice and hearing prior to any suspension from being a contractor or subcontractor under a Town contract.

5.11 Recovery of Kickbacks by the Town: Upon a showing that a contractor or subcontractor made a kickback to a contractor, a higher-tier subcontractor, or a Town employee, in connection with the award of a contract or subcontract, it shall be conclusively presumed that the amount thereof was included in the price of the contract or subcontract, and ultimately borne by the Town, and will be recoverable hereunder from the recipient. The contractor or subcontractor making such kickbacks shall be jointly and severally liable.

Sec. 6. Opinion of the Town Attorney:

On written request of employees, contractors or suppliers, the Town Attorney may render written advisory opinions regarding the appropriateness of the course of conduct to be followed in proposed transactions.

Sec. 7. Penalties:

Any person, firm or corporation violating any provision of this Code or of the ethical standards set forth herein shall be fined not less than fifty dollars (\$50) nor more than five-hundred dollars (\$500) for each offense; and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

Sec. 8. Separability:

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

Adopted this _____ day
of _____, 1993.

Wayne Hackett, Chair

Walter Lowe, Vice

Lloyd Boyd, Council

William Diehl, Council

Daniel Blanchard,

Council

Notary Signature/Seal: _____

This is presented as a sample only. It has not been reviewed by the Legal Services Department.

Code of Ethics, City of Bangor, Maine

CHAPTER I

*ARTICLE 6 - CODE OF ETHICS

Sec. 1 Declaration of Policy. The proper operation of democratic government requires that City 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 City's governmental structure; that public office not be used for personal gain; and that City Employees, City Councilors and City appointees maintain a standard of conduct that will inspire public confidence in the integrity of the City's government. In recognition of these goals, a Code of Ethics is hereby established for all City Employees, City Councilors, and member and associate members of all City Boards and Commissions now existing or hereafter created.

Sec. 2 Definitions.

**2.1 Board: All statutory and non-statutory boards now existing or hereafter created under the City Charter or by virtue of any ordinance, order or resolve adopted by the Bangor City Council, including without limitation the following:

Banair Corporation Board of Directors
Bangor Recreation District Board of Directors
Board of Appeals
Board of Assessment Review
Board of Ethics
Hersey Fund Board of Trustees
Planning Board
Sophia Kirstein Loan Fund Board of Trustees
Superintending School Committee

2.1.1 Board Member: Any person elected to membership or associate membership on a City Board or appointed to such a board by or under the authority of the Bangor City Council.

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

2.2 City Councilor: Member of the Bangor City Council.

2.3 City Employee: Any individual working for, on a permanent or temporary basis, and drawing an hourly wage or salary from the City of Bangor. The term "City Employee" shall not include outside consultants or professional personnel providing services to the City as independent contractors under a written professional services contract or other similar engagement.

2.3.1 Commission: All Committees, Commissions or other public bodies now existing or hereafter created by virtue of any ordinance, order or resolve adopted by the Bangor City Council including, without limitation, the following:

Bangor Housing Authority Commission
Economic Development Advisory Commission
Firearms Discharge Committee
Harbor Committee
Historic Preservation Commission
Nursing Facility Advisory Committee
Parks and Recreation Advisory Committee
Recycling Committee

2.3.2 Commission Member: Any person appointed to hip or associate hip on a City Commission or Committee by or under the authority of the Bangor City Council.

2.4 Immediate Family: Spouse, and the following when living in the household of a City Employee, City Councilor, Board Member or Commission Member: children, parents, brothers and sisters.

2.5 Financial Interest: A direct or indirect interest having monetary or pecuniary value, including, but not limited to, the ownership of shares of stock. A City Employee, City Councilor, Board Member or Commission Member or any member of that person's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to assets held by the trust.

2.6 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 or disapproval thereof, by the City Council, Board or Commission and which interest is not shared by the general public.

2.7 City Council: For purposes of this Code references to the City Council shall be construed to the City Council of the City of Bangor and any of the committees or subcommittees thereof.

Sec. 3 Standards of Conduct: The purpose of this Code is to establish ethical standards of conduct for all City Employees, City Councilors, Board Members and Commission Members 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 City of Bangor.

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 City Employees, City Councilors, Board Members and Commission Members of the City of Bangor whenever applicable as if more fully set forth therein, 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 Official and 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 or Employees

3.2 Contracts, Purchases and Employment.

(A) No City Employee, City Councilor, Board Member or Commission Member shall participate directly by means of deliberation, approval or disapproval, or recommendation, in the purchase of goods and services for the City, and the award of any contracts with the City, except as permitted under the City's Purchasing Regulations and under the laws of the State of Maine, where to his knowledge there is a financial interest, or special interest other than that possessed by the public generally, in such purchase or award, held by:

- (i) that individual or a member of his or her immediate family;
- (ii) a business in which that individual or a member of his or her immediate family serves as an officer, director, trustee, partner or employee in a supervisory or management position; or
- (iii) any other person or business with whom that individual or a member of his or her immediate family are in business, or are negotiating or have an arrangement concerning future employment.

(B) No City Councilor, Board Member or Commission Member shall participate by means of deliberation, approval or disapproval, or recommendation, in the decision to hire, promote, discipline, lay off or to take any other personnel action in respect to any applicant for City employment or City employee, where said applicant or employee is:

- (i) a member of the Councilor, Board Member, or Commission Member's immediate family; or
- (ii) a person with whom either the Councilor, Board Member, Commission Member or a member of his or her immediate family is in business.

(C) Except as authorized under the City's published Personnel Rules and Regulations, no City Employee shall participate by means of deliberation, approval or disapproval, or recommendation, in the decision to hire, promote, discipline, lay off or to take any other personnel action in respect to any applicant for City employment or City Employee, where said applicant or employee is:

- (i) a member of the City Employee's immediate family; or
- (ii) a person with whom either the City Employee or a member of his or her immediate family is in business.

Action by a City Employee shall be deemed authorized under this subsection when such action is permitted under the City's published Personnel Rules and Regulations, or when the City Council has waived those rules so as to allow creation of a supervisory relationship that would otherwise violate the published rules.

3.3 Disclosure of Confidential Information. No City Employee, City Councilor, Board Member or Commission Member shall, without proper legal authorization, disclose confidential information concerning the property, government or affairs of the City; nor shall he or she use such information to advance his or her financial or private interest or the financial or private interest of others. For purposes of this subsection, the term, "confidential information" shall mean any information, oral or written, which comes to the attention of, or is available to, such City Employee, City Councilor, Board Member or Commission Member only because of his or her position with the City, and is not a matter of public record. Information received

and discussed during an executive session of the Bangor City Council or any City agency called pursuant to 1 M.R.S.A. §§ 405 et seq. shall be considered within the constraints of this section, and shall not be disclosed to any third party unless permitted by affirmative vote of such body.

3.4 Gifts and Favors. No City Employee, City Councilor, Board Member or Commission Member shall 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 City; nor shall any City Employee, City Councilor, Board Member or Commission Member: (1) 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) grant in the discharge of his or her official duties any improper favor, service or thing of value. Nothing herein shall prohibit the acceptance of gifts or favors by City Employees, City Councilors, Board Members or Commission Members from members of their immediate families. In determining whether a violation of this subsection has occurred the Board of Ethics, in cases referred to it pursuant to subsection 4.6 of this Ordinance, shall consider the monetary or pecuniary value of the gift, favor or thing received; any special economic value the gift, favor or thing received may have to the recipient; the circumstances under which the gift, favor or thing concerned was received; and whether a public disclosure of the receipt was made by the recipient at the time.

3.5 Use of City Property. No City Employee, City Councilor, Board Member or Commission Member shall use or permit the use of any City-owned property, including but not limited to, motor vehicles, equipment and buildings, for any private purposes. Nothing herein shall prohibit the use of City buildings and equipment at rates and/or on terms as may be established. Nothing herein shall prohibit the use of City equipment or motor vehicles by City Employees in accordance with written policies established by the City Council, City Manager, or City department head concerned, nor shall this Ordinance be deemed to prohibit private use of surplus City property legally disposed of by the City or its departments in compliance with established procedures.

3.6 Representing Third Party Interest Before City Agencies.

(A) No City Employee shall appear on behalf of any third party interest before any City agency, or represent a third party interest in any action, proceeding, or litigation in which the City or one of its agencies is a party. Nothing herein shall prohibit any City Employee from appearing as a witness when duly called by a party for the purpose of giving non-privileged testimony before any City agency or in any such action, proceeding or litigation. Nothing herein shall prohibit any City Employee, on behalf of his or her personal interest, from appearing before any City agency. "Personal interest" shall include, for this purpose, any interest of the City Employee concerned as a resident, landowner, or taxpayer affected by the matter under consideration.

(B) No City Councilor shall either appear on behalf of any third party interest before any City agency, or represent a third party interest in any action, proceeding, or litigation in which the city or one of its agencies is a party. Nothing herein shall prohibit a Councilor, on behalf of a constituent in the course of his or her duties as a representative of the electorate, or any Councilor, on behalf of his or her personal interest, from appearing before a City agency.

(C) No Board or Commission Member shall appear on behalf of any third party interest before a City agency of which he or she is a current member. Nothing herein shall prohibit a Board or Commission Member, on behalf of his or her personal interest, from appearing before any City agency including that of which he or she is a current member, but such Board Member or Commission Member shall not deliberate or vote on the item concerned.

3.7 Conflicts of Interest. Bangor City Council Agenda Items.

(A) Deliberation and Vote Prohibited. No City Councilor, Board Member or Commission Member shall, in such capacity, participate in the deliberation or vote, or otherwise take part in the decision-making process, on any agenda item before his or her collective body in which 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.

(B) Disclosure of Conflict. Any City Councilor, Board Member or Commission Member who believes that 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 his or her collective body, shall disclose the nature and extent of such interest and the City Clerk or his designee shall make a record of such disclosure.

Such disclosure shall be made no later than the date of the first meeting of the City Council, Board, Commission or Committee thereof, at which the agenda item concerned is to be taken up for consideration, recommendation, discussion or vote and at which the City Councilor, Board Member or Commission Member is present. Additionally, any City Councilor, Board Member or Commission Member who believes that any fellow City Councilor, Board Member or Commission Member, or a member of such fellow City Councilor's, Board Member's or Commission Member'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 interest, and the City Clerk or his designee shall make a record of such disclosure.

(C) Determination of Conflict. Once the issue of conflict has been raised relative to an individual City Councilor, Committee Member or Commission Member, and disclosure has been made as provided above, such individuals, fellow City Councilors, Committee, Board or Commission Members 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 City Councilor, Committee, Board Member or Commission Member present shall be entitled to vote on all conflict of interest questions except those questions pertaining to that individual Councilor, Committee Member, Board Member or Commission Member's alleged conflict of interest.

All votes of conflict of interest questions shall be recorded. A majority vote shall determine the question; but a vote by Committee may later be reviewed by the full City Council upon the City Council's consideration of the same agenda item.

Upon determination that a conflict of interest in fact exists, the City Councilor, Committee Member, Board Member or Commission Member concerned shall be excused from participating in discussion, deliberation or vote on the relevant agenda item.

In lieu of the vote required by this subsection, the City Council, upon motion and by majority vote may refer the conflict of interest question to the City Board of Ethics in accordance with section 4.6

of this ordinance, or may table its consideration of the relevant agenda item. In the event a majority of the City 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 City Councilor, Board Member or Commission Member is determined to have a conflict of interest in respect to any agenda item, and once all conflict of interest questions relating to the agenda item concerned have been determined as provided in Section 3.7(C) above, said individual shall immediately remove himself 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, or 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 the 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 City Councilor, Board Member or Commission Member from representing his own personal interest by appearing before his or her collective body on any such agenda item.

3.8 Disclosure Statement. Within fifteen (15) days after each annual municipal election every City Councilor shall file a completed disclosure form with the City Clerk. Within thirty (30) days after his or her appointment, every Board Member and every Commission Member shall file a completed disclosure form with the City Clerk. Such forms shall be under oath and shall contain the following information to the best of the disclosing party's knowledge and belief:

3.8.1 The name of each person or entity, whether incorporated or not, doing business with the City in an amount in excess of \$1,000 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 \$1,000 during the preceding calendar year, including, but not limited to, campaign contributions where applicable.

3.8.2 The name of each entity, whether incorporated or not, doing business with the City in an amount in excess of \$1,000 for preceding calendar year in which such disclosing party or member of his immediate family has a financial interest in an amount in excess of \$1,000, including, but not limited to, the ownership of shares of stock.

3.8.3 The name of each nonprofit and/or for profit entity, whether incorporated or not, for which such disclosing party or member of his immediate family holds a position of officer or member of any board. For each such entity, such disclosing party shall provide the following information:

(i) a brief description of the purpose of each board and/or office;

(ii) a short summary of such disclosing party's or family member's duties relative to any such board and/or office;

(iii) the term of service on each such board and/or office; and

(iv) 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 subsection, "compensation" shall include, but not be limited to, monetary compensation, gifts, gratuities, perks, fringe benefits, services, and any other thing of value.

3.8.4 Every City Councilor, Board Member and Commission Member shall amend his annual disclosure statement as may be required from time to time to ensure the continued accuracy thereof. Each such amendment shall be made within fifteen (15) days following the occurrence which requires the amendment.

3.8.5 The City Clerk shall deliver a copy of each completed disclosure statement to every fellow member of the City Council, Board or Commission of each disclosing party within thirty (30) days after the expiration of the filing period.

3.8.6 For purposes of this Code, a list prepared by the Finance Director of those persons or entities doing business with the City in an amount in excess of \$1,000 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 in 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 to be a financial interest within the meaning of this section.

3.9 Political Activities. No City Employee, City Councilor, Board Member or Commission Member shall participate in any political activity which would be in conflict or incompatible with the performance of his or her official functions and duties for the City. In conjunction therewith:

3.9.1 No City Employee, City Councilor, Board Member or Commission Member may use his or her official authority or position for the purposes of influencing or interfering with or affecting the results of any election, nor shall he or she solicit funds or contributions or accept or receive funds or contributions from City Employees for political purposes. No City Councilor, Board Member or Commission Member may distribute pamphlets or handbills while he or she is performing official functions and duties with the City. Nothing herein shall be construed to prohibit any City Employee, City Councilor, Board Member or Commission Member from participating in the political process in their private capacity as candidates for elected office or as private citizens.

3.10 Incompatible Employment or Office. No City Employee, City Councilor, Board Member or Commission Member shall occupy any other office, elected or appointed, or any other governmental entity, when the duties of such office are incompatible with the proper discharge of his or her official duties with the City. For purposes of this Code, the occupancy of any office, elected or appointed, with

any other governmental entity by any City Councilor, Board Member or Commission Member is hereby prohibited in the following circumstances:

- (i) where the duties of the other office make it a physical impossibility to discharge the duties of the City position; or
- (ii) where one office is subordinate to the other; or
- (iii) where one office carries the power of removal of the other; or
- (iv) where the occupancy of both offices is prohibited by the City Charter or by other provisions of law.

3.11 Ethics in Contracting. The provisions of this Subsection (3.11) shall apply to all persons doing business with the City of Bangor as vendors, suppliers, or contractors, including potential vendors, suppliers and contractors submitting bids or proposals in response to a City solicitation or advertisement.

3.11.1 Gratuities and Kickbacks.

(A) Gratuities. It shall be a violation of this Code for any person to offer, give or agree to give any City Employee, City Councilor, Board Member or Commission Member a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation or award pertaining to a City 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 Code 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 City of Bangor prime contract for construction, procurement, or professional services. To be valid, any disclosure under this paragraph must be made in writing to the City of Bangor Purchasing Agent 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 Code to solicit, offer, give, accept or receive any such gratuity or offer of employment in violation of applicable State or Federal law.

3.11.2 Prohibition Against Contingent Fees.

It shall be a violation of this Code for a person to be retained, or to retain a person, to solicit or secure a City 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.

3.11.3 Recovery of Value Transferred or Received in Breach of Ethical Standards, Other Penalties.

(A) General Provisions. The value of anything transferred or received in breach of the ethical

standards of this Code by a City Employee, City Councilor, Board Member or Commission Member or other person may be recovered from both the City Employee, City Councilor, Board Member or Commission member concerned and from the other person concerned.

(B) Recovery of Kickbacks by the City. Upon a showing that a subcontractor made a kickback to a prim 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 City 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.

3.11.4 Penalties and Sanctions.

(A) In addition to the recoveries provided in Subsection 3.11.3 above, any violation of this subsection 3.11 shall be a civil violation. Upon conviction, any person, firm or corporation found to be in violation of this subsection shall be fined not less than three times the value of any improper gift or kickback paid, solicited or received, or \$500.00, whichever is greater. The penalties provided in this paragraph shall be in addition to the penalties provided in Section 5 of this Ordinance, and shall be in addition to any penalties imposed under State or Federal law.

(B) Upon conviction of a violation of this subsection 3.11, or upon a finding of a violation by the City Purchasing Agent, Board of Ethics, or the City Council following written notice and hearing, the City 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; or
- (iii) debarment or suspension as provided in the City's published Purchasing Policy (Authority to Debar or Suspend).

Termination of a contract under this paragraph shall also terminate the contractor's right to receive further payment thereunder.

The sanctions provided in this paragraph shall be in addition to the penalties provided in paragraph (A) above.

3.11.5 Incorporation in Certain Contracts.

The provisions of this Subsection (3.11) shall be provided to all interested bidders or proposers, and shall be incorporated by reference as agreed terms in any City of Bangor construction, procurement, or professional services contract with a base bid price in excess of \$10,000.00. In the case of a professional services contract, the "base bid price" for this purpose 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. 4 Board of Ethics.

4.1 Board of Ethics Established. There is hereby created and established a Board of Ethics consisting of five (5) members and two (2) associate members appointed by the City Council.

4.2 Terms. All members shall be appointed for terms of three (3) each. All associate members shall be appointed for terms of three (3) years each. Each member and associate member shall serve until his successor is appointed and qualified. All members must be residents of the City of Bangor. No member shall serve more than two (2) complete consecutive terms.

4.3 Other Offices Prohibited. No member or associate member of the Board shall hold any other City office or position or be the member of any City agency to which the City Council shall have appointing authority.

4.4 Procedures and Records. The Board shall establish such rules as it may determine to be necessary to govern its procedures. In addition, the Board shall at all times maintain in the office of the City Clerk appropriate records of its opinions and proceedings.

4.5 Duties. The Board shall make findings of fact and render opinions to the City Council concerning application of the provisions of this Code to any particular situation. In the performance of its duties, the Board shall limit its review and fact finding to those issues referred to by the City Council. The Board shall also make annual recommendations for necessary revisions to this ordinance and shall perform such other duties as may be prescribed from time to time by the City Council.

4.6 Procedure. Any City Councilor, Board Member or Commission Member seeking advice as to whether a particular situation constitutes an actual or potential violation of this Code shall first submit a written statement in the form of a Council Order describing the nature of the matter to the City Council. If the Council feels that an advisory opinion is necessary, it shall adopt the Order, by majority vote, referring the matter to the Board. A tie vote on the Order shall also cause the matter to be referred to the Board. Upon referral of a question, the Board shall have the power to request voluntary statements from all persons concerned, and to review all records on file with the City of Bangor or other public agencies. All Board hearings shall be conducted in accordance with rules of procedure to be adopted by the Board. The Board may conduct any fact finding and deliberations in executive session as provided in 1 M.R.S.A. §405 (6)(A). Upon conclusion of its fact finding and deliberations, the Board of Ethics shall issue written findings with respect to each matter and question referred to it. If the Board finds any matter referred to it to have been based upon allegations it determines to have been frivolous, unfounded or with malice, it shall so advise the Council. It is the purpose and intent of this Code to provide a mechanism by which all such matters may be handled in an orderly and impartial fashion in such a manner as to protect the best interests of the citizens of the City of Bangor.

4.6.1 Employee Conflicts.

Upon referral, the Board of Ethics may render advisory opinions with respect to potential or prospective conflicts of interest involving

City Employees. However, allegations of past or present misconduct involving alleged violations of this Code by City Employees shall not be reviewed by the Board, but shall be referred for disposition in accordance with the City's established employee disciplinary procedures.

4.7 All members shall attend an annual orientation meeting to be scheduled during the month of January of each calendar year.

4.8 The Board shall meet at least quarterly and, prior to December 31 of each calendar year, shall prepare and submit to the City Council an annual report outlining its doings during the preceding 12 month period.

Sec. 5 Penalties. Violations of this Code shall be punishable by civil fine as provided in Article 4, Section 4 of this Chapter. In addition to any other penalties or remedies as may be provided by law, violation of this Code shall constitute cause for censure, after notice and hearing conducted by the City Council. A majority of the Bangor City Council shall conduct such proceedings. A violation of this Code by a City Employee shall also constitute proper grounds for dismissal or other disciplinary action as provided in the City's published Personnel Rules and Regulations.

Sec. 6 Separability. If any section, subsection, sentence, clause or phrase of this Code is for any reason held to be invalid or unconstitutional, such validity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this Code.

*Amended 06/12/95 C.O. 95-234

**Amended 01/13/97 C.O. 97-59



Check One: Initial Application
 Reappointment Application

TOWN OF HAMPDEN APPLICATION FOR TOWN BOARDS AND COMMITTEES

NAME: Sherwood Lowell T. II
LAST FIRST MI

ADDRESS: 63 Griffin Ave Hampden 01444
STREET TOWN ZIP

MAILING ADDRESS (if different): _____

TELEPHONE: 802-2273 942-8849
HOME WORK

EMAIL: timhs@adl.co

OCCUPATION: Real Estate

BOARD OR COMMITTEE PREFERENCE:
FIRST CHOICE: Board of Assessment Review

SECOND CHOICE (OPTIONAL): _____

How would your experience, education and/or occupation be a benefit to this board or committee?

Are there any issues you feel this board or committee should address, or should continue to address?

- 3 YEAR
- CONSERVATION COMMITTEE
- BOARD OF ASSESSMENT REVIEW
- PERSONNEL APPEALS BOARD
- LURA HOIT MEMORIAL POOL
- ECONOMIC DEVELOPMENT COMMITTEE
- FRIENDS OF DOROTHEA DIX PARK
- DYER LIBRARY
- RECREATION COMMITTEE
- BOARD OF APPEALS
- HISTORIC PRESERVATION COMMITTEE
- TREE BOARD

5 YEAR
PLANNING BOARD

FOR TOWN USE ONLY		Date Application Received: <u>8/8/2011</u>
COUNCIL COMMITTEE ACTION: _____	DATE: _____	
COUNCIL ACTION: _____	DATE: _____	
<input type="checkbox"/> NEW APPT	<input type="checkbox"/> REAPPOINTMENT	DATE APPOINTMENT EXPIRES: _____



Susan Lessard <manager@hampdenmaine.gov>

Google Apps Email Upgrade Pricing

2 messages

Gretchen Heldmann <gheldmann@hampdenmaine.gov>

Mon, Jun 13, 2011 at
5:49 PM

To: Susan Lessard <manager@hampdenmaine.gov>

Hello,

We currently have a grandfathered version of Google Apps for Government, with an allotted 50 user accounts free, 43 of which are currently in use. Google hosts the entire email system, routing through our hampdenmaine.gov address. I am designated as the System Administrator and have access to the "Dashboard" to set up and delete user accounts, reset passwords, and create common group mailing lists.

From this site: <http://www.google.com/apps/intl/en/business/faq.html>

It appears we would have to not only pay for however many additional accounts, but would then have to start paying for every user account we currently have:

I'm upgrading from Standard to Google Apps for Business. Will I be charged for my existing Google Apps user accounts?

When you upgrade your domain, all of your Google Apps user accounts will become Google Apps for Business user accounts. You will be charged for all of your user accounts.

Here's how pricing works:

Pricing

How do the Google Apps for Business pricing plans work?

There are two pricing plans available for Google Apps for Business customers. You will have the option to choose one during billing setup.

- + Flexible Plan: You have the flexibility to add and delete user accounts at anytime for \$5/user account/month (a total of \$60/user account/year). You only pay for the service that you use during the month and will be billed at the end of each month.
- + Annual Plan: You commit to Google Apps for one year and get a discounted rate of \$50/user account/year. You can add additional users anytime and will be billed at the end of each month for a portion of the annual commitment.

One user account is considered to be one email inbox. The rates are not per domain. For example, if you're on the Flexible Plan, two email inboxes (user1@company.com, user2@company.com) would cost 2 x \$5 = \$10 per month. User aliases and domain aliases are not charged as additional user accounts.

See a [detailed description](#) of what's included.

Which pricing plan (Flexible or Annual) is right for me?

The right pricing plan is based on your unique needs. When making a decision, keep in mind the differences between the Flexible and Annual Plans:

- + Contract term: there is a one year contract with the Annual Plan and no contract with the Flexible Plan.
- + Price: the the Annual Plan is \$50/user account/year and the Flexible Plan is \$5/user account/month, totaling \$60/user account/year.

We have found that contract term is important for companies with a variable workforce. For example, companies that offer vacation services may double in size during the summer months. The Flexible Plan would allow these companies to provide temporary employees with Google Apps and only pay for the service while it's used. User accounts could be deleted when employees leave at the end of the summer.

So it depends on whether you pay per account by year or by month. By year is clearly cheaper, but employees do come and go, as do Councilors. While most of the town office emails are set up by position, that doesn't work for public safety employees, as they are all set up by name and it wouldn't make sense to have "policeofficer1" "policeofficer2" etc.

The current 43 accounts plus 7 Council accounts would cost \$2500 under the Annual Plan, and \$3000 under the Flexible Plan.

Yes, technically right now we have seven "extra" accounts and could set up Council accounts - perhaps as "CouncilDistrict1" "CouncilDistrict2" "CouncilorAtLarge1" etc...but this might confuse the people to try and figure out who's who. There also will come a time when 50 is just not enough - does the email question extend to Planning Board members?

Any other questions please let me know.

Thanks,
~G

Gretchen Heldmann
GIS/IT Specialist, Town of Hampden
GeoLibrary Board - Chair & Municipal Representative
<http://www.maine.gov/geolib/>