

Approved by the Town Council
October 6, 2014

Revised 2018

Town of Cape Elizabeth
Code of Ethics for the Town Council

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Statement of Policy

The proper operation of the government of the Town of Cape Elizabeth (hereinafter "Town") requires that elected members of the Town Council (hereinafter "Councilors") be fair, impartial and responsive to the needs of the people they serve and to each other in the performance of their functions and duties; that decisions and policies be made in proper channels of the Town's governmental structure; that public office not be used for personal gain, family gain, or third party gain; and that Councilors shall maintain a standard of ethical conduct that will inspire public confidence in the integrity of the Town's government. In recognition of these goals, this Code of Ethics is hereby adopted as the standard of ethical conduct for the Town Council.

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Section 1. Title

This policy shall be known as the Code of Ethics for the Cape Elizabeth Town Council.

Section 2: Legal Standards

It is the duty of every Councilor to support the Constitution of the United States and the Constitution of the State of Maine. There are also certain provisions of the general statutes of the State of Maine, which, while not set forth herein, should be considered an integral part of this Code of Ethics. Accordingly, the provisions of the following sections of the general statutes of the State of Maine, as they may be amended, are incorporated into this Code of Ethics by reference to the extent applicable:

- 17-MRSA § 3104 Conflict 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
- 30-A MRSA § 2605 Conflicts of Interest
- 30-A MRSA § 5122 Interest of Public Officials, Trustees or Employees

Section 3. Conflicts of Interest

All Councilors must be fair and impartial in carrying out their duties and responsibilities. All Councilors must ensure that their official actions are not intended to create actual or the potential for personal or financial gain, either directly or indirectly, for themselves, family members, personal friends or third parties. Any actual or potential conflicts between personal interests (financial, personal relationships, or otherwise) and Town business must be fully disclosed in a timely fashion to the Town Council. If the Town Council determines that a conflict of interest does exist, then the Councilor must recuse him/herself from officially participating in any discussion or decision-making action on the issue.

If a Councilor has accepted money or other consideration from a citizen, group of citizens, business or other entity that has an interest in an issue before the Town Council, and if such money or other consideration was received by the Councilor within a twelve-month period prior to Council taking any action on the issue in question, that Councilor should not participate in deliberations relating to that issue. This prohibition shall not apply to the sale of consumer goods or services at fair retail value. This conflict of interest provision does not prohibit a Councilor from acting as a private citizen, outside of any official duties.

Section 4. Gifts and/or Gratuities

The conduct of public business shall be free of any influence arising from gifts, favors, donations, or special privileges. It is the obligation of every Councilor to refuse personal gifts, favors, donations or special privileges in every instance where favor or special privilege would not have been extended but for the position of such Councilor; where there exists a reasonable belief that the giver's interests are likely to be affected by the actions of the Councilor; or where the gift is or may reasonably be considered to be designed to influence the actions of the Councilor.

Section 5. Appearance of Conflict of Interest and Improper Influence.

Councilors should conduct their official and personal affairs in such a manner as to avoid any appearance of conflict of interest and/or improper influence in the performance of their official duties. No Councilor shall seek personal or financial advantage by means of his/her public office, nor by his or her actions create the appearance of personal or financial advantage, or the appearance of personal or financial advantage on the part of relatives, personal friends or third parties having some affiliation with that Councilor. Councilors shall not directly or indirectly solicit any gift, gratuity or donation, or accept or receive any such gift if it could be reasonably inferred or expected that the gift was intended to influence them in the performance of their official duties or the gift or gratuity was intended to serve as a reward for any official action on their part.

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<#>personal investments in, or possible financial gain from, companies or businesses that contract with the Town; ¶
<#>family members or personal friends who work for a company or business that contracts with the Town; ¶
<#>recommending a company or service provider in which the Councilor has a financial interest while acting in his/her official capacity; ¶
<#>soliciting or receiving money, donations or gifts; or ¶
<#>discussing and voting (except Town wide votes) on Town ordinances, policies, or plans that directly or indirectly result in financial benefit to the Councilor, personal friends, or the Councilor's employer, provided the employer is not the Town. ¶

To the extent any Councilor believes that there is the appearance of a conflict, the Councilor should disclose the facts and circumstances giving rise to the possible conflict and to determine what, if any, steps should be taken to address it.

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Section 6. Representing Third Party Interests Before Town Agencies

No Councilor shall either appear on behalf of any third party interest before the Council or any Town board, commission or other agency (individually, "agency"; collectively, "agencies"), or represent a third party interest in any action, proceeding, or litigation in which the Town or one of its agencies is a party, without explicitly stating that he/she is appearing as a citizen or representative of a citizen as opposed to ~~as~~ a member of the Council. 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 Town agency. Notwithstanding the provisions of this Section 6, a Councilor may appear before an agency in his/her capacity as a Councilor while acting on behalf of the Town.

Section 7. Bias

If a Councilor believes that he/she is biased for or against an individual or entity that has a matter pending before the Council, and the Councilor believes that such bias will interfere with his/her ability to make a fair and impartial decision, then he/she shall recuse himself/herself from participating in any discussion or decision-making action on the issue.

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Section 8. Standards of Conduct

The following specific standards of conduct further the policies and goals set forth in this Code of Ethics:

- A. Councilors shall take reasonable steps to preserve written communications in order to comply with Maine's "right to know" laws and, more specifically, a request made pursuant to the Freedom of Access Act ("FOAA"). To that end, Councilors shall preserve incoming and outgoing emails or other written communications that are subject to FOAA either (i) on their own computers or filing system or (ii) by copying them to a Town-designated computer account, so that these communications are preserved and readily available in the event of a FOAA request.

- B. Councilors should conduct public business in as transparent a manner as possible. Although one-on-one conversations or meetings are legally permissible ~~if not used to defeat the purposes of FOAA~~, to the extent information is exchanged that would be of value to the entire Council, such information should be shared at a public meeting.
- C. Councilors shall annually provide a list of any gifts received in the immediate prior year having a value of \$100 or greater, from any person or entity within the Town or having a matter pending before the Council, other than family members or close personal friends. In addition, if a person, business or other entity organized an event that benefitted the Councilor or his/her family or a related business in an amount of \$100 or more, the Councilor shall disclose the name of such person or entity. These disclosures shall be filed with the Town Clerk. For purposes of this section, "gifts" include payments made to a Councilor that exceed the fair market value of any goods or services provided in return.
- D. All Councilors shall be required to attest that they have read and understand this Code of Ethics and will comply with its provisions at the first meeting of the Council each year.

Section 9. Enforcement

All Councilors shall comply with this Code of Ethics. If any member of the Town Council believes that a violation has occurred or if a conflict of interest exists, he/she shall report the matter to the Town Clerk, who shall distribute the report to the Town Council. Pursuant to the Town Charter, the Town Council shall be the judge of whether any violation of this Code of Ethics has occurred and shall determine the appropriate remedy or response.

Section 10. Authority

The Town Council adopts this Code of Ethics pursuant to 30-A MRSA 2605(7).

Section 11. Applicability

This policy shall apply to all members of the Cape Elizabeth Town Council.

Section 12. Effective Date

This policy was adopted effective October 6, 2014, and revised 2018.

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Section 13. Amendment

This policy may be amended or revised by a majority vote of the Town Council.

Section 14. Severability

If any provision of this policy is found to be unenforceable or invalid, the remaining provisions shall remain in full force and effect.

Section 15. Conflict with other Policies, Ordinances, or Jurisdictions

Whenever a provision of this Code of Ethics conflicts with or is inconsistent with another provision of this Code, or conflicts with or is inconsistent with the Town Charter, any Town Ordinance, state statute or regulation, or any other applicable law, the more restrictive provision shall apply.