

#### **Article 05: Charter Amendment 4:**

**Shall the Town of Salem approve the Charter Amendments relative to Article 6 of the Charter by revising language to be more cohesive and clarifying expectations of public officials; the proposed amendments will also aid the Ethics Committee in their responsibilities and carrying out the initial intent of the charter commission?**

The amendment relates to Article 6 of the Town Charter by defining Elected/Appointed Officials (EOs) throughout the Code of Ethics, removing employees from the requirements of this Article 6, and adding annual training requirements for EOs by the Ethics Committee.

#### **Full Text of Proposed changes:**

### **ARTICLE 6 - Conduct of Officials/Code of Ethics**

#### **§ 6.1 Preamble**

It is the policy of the Town of Salem to uphold, promote and demand the highest standards of ethics and conduct from all of its ~~employees and~~ officials, whether elected ~~or~~, appointed ~~or~~ hired. ~~The Town Council, all Town employees and a~~ All members of the Town Council, Boards, Commissions, and Committees (hereafter Elected / Appointed Officials (EOs)) shall maintain the highest standards of personal integrity, truthfulness, honesty and fairness in is charging their public duties, and never abuse their positions or powers for improper or personal gain.

#### **§ 6.2 Purpose**

The purpose of this code is to establish guidelines for the ethical standards of conduct for ~~Elected /Appointed Officials (EOs) Town officials, board members and employees.~~ The citizens expect public servants and volunteers to act in the best interest of the Town. The citizens expect ~~EOs Town officials, board members and employees~~ to disclose any personal, financial or other interests in matters affecting the Town that come before them for action. The citizens expect ~~EOs Town officials, board members and employees~~ to remove themselves from decision making if they have a conflict of interest. The citizens expect ~~EOs Town officials, board members and employees~~ to be independent, impartial, and responsible to their fellow townspeople in their actions. The citizens expect that the Town's official decisions and policies be made through the proper channels of government. The citizens expect that public office or a volunteer position in the Town not be used for personal gain. It is important that the public has confidence in the integrity of its government and that ~~EOs Town officials, board members, volunteers and employees~~ have an opportunity to protect their personal reputation. This code establishes a process by which one may obtain guidance regarding potential ethical issues and it establishes a course of action for resolving disputes in a manner that is fair to all of the parties involved.

#### **§ 6.3 Explanation of Code Provisions**

##### **§6.3.1 Conditions for Holding Office:**

A. Any person while holding a Town office, convicted of a Class A Felony in New Hampshire or its equivalent under the law of any other state or federal law shall forfeit such office.

~~B. No employee of the town shall be eligible to serve as a Councilor.~~

B. Any person elected to the Town Council shall not serve on any other town boards, commission or trusteeships (with the exception of a Charter Commission), unless serving as a representative to that board from the Town Council.

C. The Zoning Board of Adjustment shall not have any members (including alternates) who also serve on the Planning Board.

D. Except as otherwise provided by this Charter, no department head or regular employee of the town shall serve on the Town Council or Budget Committee.

### **§6.3.2 No Conflicts of Interest**

~~Officials, board members and employees~~ EAOs of the Town of Salem shall avoid conflicts of interest. ~~An EAO Town official, board member or employee,~~ shall not participate in any matter in which they, or a member of their family, have a personal interest that may directly or indirectly affect or influence the performance of their duties. In such instances, they shall recuse themselves from discussion and decision-making. Recusal means to remove themselves completely from all further participation in the matter in question. ~~Officials, board members or employees~~ EAOs who have been recused shall immediately leave the room or shall seat themselves with the other members of the public who are present. When recused, they shall not participate in further discussions, unless they clearly state for the record that they are doing so only as a general member of the public. As a recused person, they shall not deliberate or vote on the matter in question.

### **§6.3.3 A Duty to Recuse in Quasi-Judicial Actions**

A "quasi-judicial action" is any action where the board or committee is acting like a judge or a jury. ~~Jurors are not qualified to sit on a case if they have advised or assisted either party in a matter being decided, are prejudiced to any degree regarding the pending matter, or believe they cannot for any reason be totally fair and impartial.~~ The work of the planning and zoning boards is largely quasi-judicial. Not only do ~~officials, board members and employees~~ EAOs of the Town of Salem have a duty to recuse themselves as outlined in the Section above, board members must recuse themselves in a quasi-judicial action if they would not be qualified to sit as a juror in that case. ~~For example, jurors are not qualified to sit in a case if they have advised or assisted either party in a matter being decided, are prejudiced to any degree regarding the pending matter, or believe they cannot for any reason be totally fair and impartial.~~

### **§6.3.4 A Duty to Disclose**

Any ~~EAO official, board member or employee~~ of the Town of Salem, shall not participate in the conduct of business on behalf of the Town or enter into discussion or deliberation of any matter without first, publicly, and on the record, stating all possible conflicts that may exist between themselves or their family, and the principals or the issue under consideration.

### **§6.3.5 No Unfair Personal Use of Town Property**

No ~~EAO official, board member or employee~~ of the Town of Salem shall use Town property, services, or labor personally, or make the same available to others unless such use is available to other residents upon request on equal terms.

### **§6.3.6 No Misuse of Confidential Information**

No ~~EAO official, board member or employee~~ of the Town of Salem shall use any confidential information acquired by virtue of that individual's official position for personal benefit, or for the benefit of any other person or business. This does not apply to information which is readily available to the general public. In addition, no ~~EAO official, board member or employee~~ of the Town of Salem shall violate the privacy of others by publicizing, gossiping, or discussing information confidentially acquired in the course of official duties without a legitimate reason to do so.

### **§6.3.7 No Improper Gifts**

No ~~EAO board, committee or commission member~~ shall accept any valuable gift, whether in the form of service, loan, thing or promise, from any person, firm or corporation which to their knowledge is interested directly or indirectly in any manner whatsoever in business dealings with the Town, nor shall any such ~~EAO official~~ accept any gift, favor or thing of value that may tend to influence them in the discharge of their duties or grant in the discharge of their duties any improper favor, service or thing of value. **As used in this section "valuable gift" shall mean a gift exceeding \$50 in the aggregate from any single source during any calendar year. "Valuable gift" shall not include tickets or free admission from any source to a charitable or ceremonial event provided that acceptance of any tickets or free admission as permitted by this section shall be limited to \$250 in the aggregate from any single source during any calendar year.**

### **§6.3.8 Disposition of Fees**

No ~~EAO elected or appointed officer or employee~~ of the Town shall collect any fees, salaries or other payments in connection with official duties for personal use, except as provided for by ordinance or State Law.

### **§6.3.9 A Duty to Cooperate**

All ~~EAOs officials, board members and employees~~ of the Town of Salem shall cooperate with the Ethics Committee regarding any complaint or inquiry alleging violation of this Code of Ethics.

### **§6.3.10 Fair and Equal Treatment**

Acting in their official capacity, all ~~EAOs officials, board members and employees~~ of Town government shall give each and every person fair and equal treatment. No ~~official, board member or employee~~ EAO shall in the course of their official duties give or deny any person special consideration, advantage, or treatment as a result of the person's public status, position, sex, race, religion, creed, sexual orientation, or national origin.

### **§6.3.11 Future Employment**

No ~~elective or appointive officer or employee~~ EAO of the Town shall solicit, negotiate for, or promise to accept employment with any person, firm or corporation with which the ~~officer's or employee's department, body or agency~~ EAO's Council or Board is engaged on behalf of the Town in the transaction of business which is, or may be, affected by the ~~officer's or employee's~~ EAO's official action. No ~~elective~~ elected officer may become employed by the Town within one year after their term of office ends.

### **§6.3.12 Municipal Code**

Nothing in this charter shall prohibit the Town Council from establishing more stringent or specific ethics rules in a Municipal Code.

## § 6.4 Definitions

As used in this Article, the following terms shall have the meanings indicated:

**Board:** Any board, committee or commission, permanent or special, established by the Town Council under New Hampshire State Law or this Charter.

**Complainant:** A ~~resident of the Town of Salem person~~ who has submitted a petition to the Ethics Committee requesting an inquiry or alleging a violation of the Code of Ethics.

**Conflict of Interest:** A situation, circumstance, or financial interest that has the potential to cause a private or personal interest to interfere with the proper exercise of a public duty.

**EAO: Elected / Appointed Official of the Town of Salem. This definition does not include appointed department heads who are contract employees of the Town of Salem (e.g. fire chief, police chief, etc)**

**Employee:** ~~A person who is paid by the Town of Salem for their services, but who is not an independent contractor.~~

**Ethics Committee:** The committee established by Article ~~VI~~ 6 of this Charter.

**Family:** Any person who is related to the ~~official, board member or employee~~ EAO in one of the following ways: spouse, domestic partner, parent, grandparent, child, grandchild, sibling, or similar relation to the individual's spouse. This includes all persons who are members of the same household as the ~~EAO official, board member or employee~~ in question, regardless of whether or not they are related.

**Interest:** Any legal or equitable right, share, or claim, whether or not subject to an encumbrance or a condition, which is owned or held, in whole or in part, jointly or severally, including but without limitation, a right, share or claim to land.

**Official:** ~~Any elected or appointed officer, board member, or agent of the Town of Salem.~~

**Principals:** ~~Those people~~ Persons who are the subject of the action or application that is before the board.

**Public Servant:** A person who serves the Town of Salem in an official capacity, whether elected or appointed, paid or unpaid, any Town ~~EAO official, board member or employee.~~

**Respondent:** ~~Board member or employee~~ EAO named in a petition submitted to the Ethics Committee as an inquiry or alleging a violation of the Code of Ethics.

**Resident:** A resident of the Town of Salem.

**Quasi-judicial Action:** Any action where the board or committee has a duty to notify the potential parties, hear the parties, and can only decide after weighing and considering such evidence and arguments as the parties choose to lay before them.

**Town:** The Town of Salem, including all of its departments, boards, commissions, and committees.

## § 6.5 Exclusions

The provisions of this Code of Ethics shall not be interpreted so as to bar:

A. Any ~~EAO official, board member or employee~~ who is a ~~Rr~~ Resident of the Town of Salem from fully participating in any public proceeding conducted by the Town;

B. Acceptance of donations for the expressed purpose of financing a political campaign, provided such contributions are reported in accordance with all local, state and federal laws that pertain to such donations;

C. Participation in a matter that relates to a person or business from which an **EAO official,** ~~board member or employee~~ has merely purchased goods or services, if the individual in question has no other conflict of interest relating to that person or business.

~~D. Police officers, firefighters, and other emergency personnel from acting in the course of their official capacities when responding to emergencies in accordance with the rules and regulations of their departments; and~~

~~E. Supervisors of Town employees from appropriately carrying out personnel policies.~~

## **§ 6.6 Ethics Committee**

The Ethics Committee shall: Educate **EAOs officials,** ~~board members and employees~~ of the Town government regarding the provisions of the ethics code; Provide advice and counsel to **EAOs officials,** ~~board members and employees~~ regarding ethical issues with which they are confronted; and hear and resolve ethics complaints, which are filed against EAOs officials, and board members and employees of Town government.

A. Structure of the Ethics Committee: The Ethics Committee shall consist of five (5) members whose appointments must be approved by six (6) members of the Town Council for three-year terms. Such terms shall be staggered so that no more than two terms end in the same year.

B. Duties: Committee members shall familiarize themselves with the By-Laws and Salem's Code of Ethics, and be fair and impartial in investigating all written complaints. Members of the Committee shall sign any written decisions of the Committee.

C. Clerk: The Clerk shall be provided by the Town to maintain a record of all meetings, votes, motions, and decisions of the Committee; and shall also perform other such duties as the Committee may direct.

D. Officers: The Committee shall elect a chair, and a vice chair, to one (1) year terms, eligible for reelection. The Chair shall preside over all meetings, hearings, and non-public sessions, establish agenda items, appoint such committees as directed by the Committee, request support from the Town, and shall perform other such duties as the Committee may direct. The Vice-Chair shall assume the duties of the Chair during the absence of the Chair, and shall swear in those who plan to give testimony before the Committee.

E. Education: **The Ethics Committee shall provide training annually to EAOs including members of each board, committee, commission, and council to familiarize them with the provisions of this code. At the time that each newly EAO elected or appointed official, board member or employee takes the oath of office, they shall receive a copy of this code, and acknowledge in writing that they have received a copy of this code. The Ethics Committee shall hold a meeting each spring for newly EAOs elected or appointed officials, board members and employees so they may familiarize themselves with the provisions of this code.**

F. Meetings: At least one regular meeting of the Committee per year shall be held at a date and time indicated in the notice of public hearing published and posted by the Committee pursuant to RSA 91-A:2. All regular meetings shall be open to the public. The following general rules of procedure shall govern the conduct of such meetings.

i. Nonpublic Sessions shall be called in conformity with the requirements of RSA 91-A:3.

ii. All investigations into complaints against ~~members of employees, board members, or officials~~ **EAOs** shall be conducted in nonpublic sessions, according to RSA 91-A:3.

G. Inquiries: The Ethics Committee shall establish a mechanism by which ~~officials, board members, employees~~ **EAOs** and Residents of the Town of Salem may obtain advice and

counsel from the committee regarding ethical issues that may arise from time to time. Upon request of an ~~Town official, board member or employee~~ EAO, the Ethics Committee may issue a written advisory opinion in response to such an inquiry.

H. Complaints: The Ethics Committee shall have the power to investigate all written complaints ~~against EAOs, which are filed by citizens. They~~ It shall establish forms ~~to be used to by which officials, board members, employees, and residents of the Town of Salem may~~ file complaints or request that an inquiry be made. The Ethics Committee may only review complaints based on alleged violations of §6.3.1 ~~through §6.3.11 (A—K)~~ of this Article and/or any Municipal Code of Ethics adopted by the Town Council. All such requests or complaints must be in writing, shall specify the provision of the code which the complainant believes was violated, and must be signed by ~~the complainant a resident of Salem~~. When signing the complaint, the complainant shall certify that he or she has read the Code of Ethics, that they believe the matter within the complaint is a fair subject of inquiry, that they have exhausted all other avenues of relief available to them within our Town government, and that they will keep the complaint confidential until the Ethics Committee has completed its work.

i. All investigatory proceedings of the Ethics Committee will be conducted in a Non-public session according to RSA 91-A:3.

ii. Any ~~EAO official, board member or employee~~ against whom a written complaint is filed shall be given a copy of the complaint, and upon written request shall be afforded an opportunity to be heard and to present evidence to the Ethics Committee.

iii. The Ethics Committee shall have sole discretion for setting rules regarding the conduct of hearings. The Committee shall seek to make sure that both the complainant and the respondent have an opportunity to be heard and to present evidence, but the committee may limit the testimony and evidence which is presented to it if in the opinion of the committee the testimony and evidence in question are irrelevant, unnecessary, redundant, or unreliable.

iv. The Ethics Committee may require, with sufficient written notice, any ~~EAO official or, board member or employee~~ of the Town government to appear before it to provide testimony regarding pending complaints. The Ethics Committee, for this purpose, may administer oaths and require the production of evidence such as documents.

v. The Ethics Committee may, at any time, terminate their investigation and refer the matter to law enforcement, if there is reason to believe that any criminal activity has taken place.

vi. Within thirty (30) days of concluding an investigation into a written complaint, the Ethics Committee shall issue a written statement setting forth its findings, and recommended ~~punishment action~~ (see §6.7). The Ethics Committee shall not have the power to impose any monetary or other penalties, only to issue a written statement as set forth above. The Ethics Committee may also find no evidence of any violations, and that shall also be reported.

vii. The written statement setting forth the Committee's findings shall be transmitted to the Town Council. It is only at this juncture that the findings of the Committee will be read into the public record.

## **§ 6.7 Consequences**

When the Town Council has received a written statement from the Ethics Committee regarding the results of their investigation, ~~they~~ it may choose to impose the following penalties.

- A. Censure: An official admonishment of behavior, approved by a vote of five (5) Town Councilors.
- B. Suspension: The Town Council may vote to suspend the ~~EAO official, employee, or board member~~ from their duties for a period of up to ninety (90) days.
- C. Training: The Town Council may require the ~~EAO official, employee or board member~~ to undergo Ethics training with an organization determined by the Council. (This penalty may be issued in conjunction with others.)
- D. Removal: In addition to the provisions of § 3.3.2, **Town** Councilors and ~~members of standing town commissions and boards~~ **other EAOs** may be removed from office by a vote of six members of the Town Council, upon such a recommendation having been forwarded to the **Town** Council by the Ethics ~~Commission~~ **Committee**.