

WINDHAM MUNICIPAL CODE OF ETHICS

1. Declaration of Policy: Authority

The proper operation of the Town of Windham requires that all Town officials with executive decision-making authority, whether elected or appointed, be impartial, equitable and responsive to the needs of the people and each other in the performance of their respective functions and duties; that proper conduct by Town officials will promote public confidence in the integrity of government and will be maintained by all Town officials; that public office not be used for personal or financial gain or advantage; that the structure of Town government be used properly in decision and policy making.

The Town Council seeks to actively promote the equal enjoyment of all Town services and programs by citizens throughout the community, free from discriminatory viewpoints or treatment, and without regard to race, color, age, sex, sexual orientation, gender identity or expression, national origin or ancestry, religion, genetic information, physical or mental disability, veteran status, or any other legally protected status.

In recognition of these goals and the importance of protecting public interest and Town officials, a Code of Ethics is hereby established for all Town officials, as defined herein.

This Code is adopted pursuant to and consistent with 30-A M.R.S. § 2605(7), as well as the municipal home rule powers as provided for in Article VIII, Part 2, Section 1 of the Constitution of the State of Maine and § 30-A M.R.S. § 3001.

2. Definitions

BUSINESS - any corporation, partnership, individual, sole proprietorship, joint venture, or any other legally recognized entity, whether for-profit or non-profit.

CENSURE - a judgment or resolution condemning a person for a violation of this Code.

EXECUTIVE BOARDS - Town Council, Board of Assessment Review, Planning Board and Zoning Board of Appeals.

FINANCIAL INTEREST - a direct or indirect interest having monetary or pecuniary value, including, but not limited to, the ownership of shares of stock constituting at least a 10% interest.

IMMEDIATE FAMILY - spouse, parent, grandparent, child, grandchild, sister, half-sister, brother, half-brother, stepparent, stepgrandparent, stepchild, stepgrandchild, stepsister, stepbrother, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, guardian, former guardian, domestic partner, the half-brother or half-sister of a person's spouse or domestic partner, the spouse or domestic partner of a person's half-brother or half-sister, or the immediate family of a domestic partner.

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 executive board, and which interest is not shared by the general public.

TOWN OFFICIAL - any individual who is a member of an executive board.

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Deleted: IMMEDIATE FAMILY - spouse, and the following when living in the household of a Council member, board member or commission member: children, parents, brothers and sisters.¶

¶ SPECIAL INTEREST - any interest which will allow some form of personal gain, usually of pecuniary nature.¶

3. Standards of Ethical Conduct

The purpose of this Code is to establish standards of ethical conduct for Town officials by setting forth those acts or actions that may be in conflict or incompatible with the best interests of the Town of Windham, or that may create the appearance of impropriety.

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4. 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 Code. 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, and shall apply to all Town officials, whenever applicable as if more fully set forth therein, to wit:

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17-A M.R.S. § 456 Tampering with Public Records of Information

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17-A M.R.S. § 602 Bribery in Official and Political Matters

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17-A M.R.S. § 603 Improper Influence

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17-A M.R.S. § 604 Improper Compensation for Past Action

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17-A M.R.S. § 605 Improper Gifts to Public Servants

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17-A M.R.S. § 606 Improper Compensation for Services

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17-A M.R.S. § 607 Purchase of Public Office

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17-A M.R.S. § 608 Official Oppression

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17-A M.R.S. § 609 Misuse of Information

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17-A M.R.S. § 903 Misuse of Entrusted Property

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21-A M.R.S. § 504 Persons Ineligible to Serve as Election Officials

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30-A M.R.S. § 2605 Conflicts of Interest

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30-A M.R.S. § 5122 Interest of Public Officials, Trustees or Employees

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For the avoidance of doubt, any of statutory provisions referenced above that are contained within Title 17-A (Maine Criminal Code) are criminal acts that are enforceable by the Office of the Attorney General and/or District Attorney, and not by the Town Council; however, a Town official's conviction of any of the above-referenced crimes constitute a per se violation of this Code.

5. Disclosure of Confidential Information

No Town official shall, to the detriment of the Town, disclose confidential information concerning the property, government or affairs of the Town; nor shall he/she use such information to advance the financial or private interest of him/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

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is available to, such Town official 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 an executive board duly called pursuant to 1 M.R.S. § 405 shall be considered confidential information under this section, and shall not be disclosed to any third party unless such disclosure is approved by an majority vote of the executive board and is permissible under the law.

6. Contracts, Purchases and Employment

A. No Town official shall participate directly by means of deliberation, approval or disapproval, or recommendation, in the purchase of goods or services for the Town, or in the award of any contracts with the Town, where to his/her knowledge there is a financial interest or special interest in such purchase or award, other than that possessed by the public generally, held by:

1. him/herself or a member of his/her immediate family;
2. a business in which he/she or a member of his/her immediate family serves as an officer, director, trustee, partner or employee; or
3. any other person or business with whom he/she or a member of his/her immediate family are in business, or are negotiating or have an arrangement concerning future employment.

B. No Town official 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 employment or employee, as the case may be, or vote for appointed positions, where said applicant, employee or nominee is:

1. a member of his/her immediate family; or
2. a person with whom either he/she or a member of his/her immediate family are partners or co-owners of any business.

7. Solicitation of Future Employment

A Town official shall not solicit future employment with any business or person who has a substantial matter pending before the executive board of which the official is a member. A matter is "substantial" if it involves a financial value of one thousand (\$1,000) dollars or more or involves a question of policy of comparable significance.

An individual who has served as a Town official shall not, within one (1) year after termination of his/her service; (a) assist any business or person, other than the Town, in any matter that was pending before the executive board of which he/she was a member; (b) appear before the executive board of which he/she was a member; or (c) assist any other person to make such an appearance; provided that nothing herein shall prohibit a Town official, on behalf of his or her own personal interest, from appearing before any executive board.

8. Gifts and Favors

No Town official shall accept anything of value, whether in the form of service, loan, thing or promise, from any person and/or business which, to his/her knowledge, is interested directly or indirectly in any

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¶ No Town official shall engage in or accept private employment or render or sell services or goods for private interests when such employment or service is incompatible with the proper discharge of his/her official duties.¶

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manner whatsoever in business dealings with the Town ~~or seeking an approval from any executive board~~; nor shall any ~~Town~~ official accept ~~anything~~ of value that tends to influence or could reasonably be expected to influence him/her in the performance of official duties or was intended as a reward for any official action. This ~~section~~ does not prohibit:

- A. gifts or social courtesies related to a ~~familial~~ relationship or friendship between the ~~Town~~ official and the donor, which are not designed to influence the proper judgment or action of the ~~Town official~~ in a matter within his/her authority;
- B. ~~attendance at~~ public, government-sponsored or informational events, where refreshments may be served, which are not designed to influence the proper judgment or action of the elected or appointed official in a matter within his/her authority;
- C. political contributions received in compliance with law;
- D. loans obtained according to commercial practice at the prevailing rate of interest; ~~or~~
- E. customary performance, merit awards or ~~honoraria~~, consistent with municipal practices.

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9. Use of Town Property and Facilities

No Town official shall use or authorize others to use Town-owned property, including but not limited to, motor vehicles, equipment and buildings except for the following:

- A. for Town business;
- B. for purposes and on terms generally available to other persons;
- C. according to a contract of employment with the Town in which use of such property is part of the compensation or a term of employment.

10. Representing Third Party Interests Before Town Agencies

No Town official shall either appear on behalf of any third party ~~before~~ any Town agency, or represent a third party, in any action, proceeding, or litigation in which the Town or one of its agencies is a party. Nothing herein shall prohibit a Town official, on behalf of a constituent in the course of his or her duties as a representative of the electorate, or any Town official, on behalf of his or her ~~own~~ personal interest, from appearing before ~~any~~ Town agency, including that of which he/she is a current member. ~~A Town~~ official who is employed or under retainer by a ~~third party~~ having a matter pending before the agency of which the official is a member shall disclose that fact and shall abstain from ~~any~~ participation in the matter. Participation includes but is not limited to discussion and/or voting on the matter.

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11. Conflicts of Interest

- A. ~~Conflicts Prohibited.~~ No Town official shall, in such capacity, participate in the deliberation or vote, or otherwise take part in the decision-making process, ~~with regard to~~ any agenda item before ~~the executive board of~~ which he/she or a member ~~when~~ he/she or a member of his/her immediate family has a financial or special interest of a pecuniary nature ~~in the matter~~, other than an interest held by the public generally.

B. Disclosure of Conflict. Any Town official who believes that he/she or a member of his/her immediate family has a financial or special interest, other than an interest held by the public generally, in any matter before his or her executive board, shall disclose the nature and possible extent of such interest at the start of the agenda item.

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C. Reporting of Conflict. Any Town official who believes that any fellow Town official, or a member of the fellow Town official's immediate family, has a financial or special interest, other than an interest held by the public generally, in any item before his/her executive board, shall disclose the possibility of such interest, and the Town Clerk or his/her designee shall make a record of such disclosure, with a copy forwarded to the chair of the applicable executive board.

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D. Determination of Conflict. Once the issue of conflict has been initiated relative to an individual Town official, and disclosure has been made as provided in Sections 11(B) or (C) above, the remaining members of the executive board shall vote on whether or not such individual shall be excused from participating in the deliberation or vote on the item.

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E. Avoidance of Appearance of Conflict. If any Town official is determined to have a conflict of interest in respect to any matter before his/her executive board, said Town official shall immediately remove him/herself from the dais and relocate to the area of the room occupied by the general public. The Town official shall not return to his/her regular seat as a member of the executive board until deliberation and action on the item is completed. Nothing herein shall require an individual Town official to remove him/herself from the dais for any item contained on a "Consent Agenda" on which there is no deliberation, when the individual's conflict has been determined by the other members of the executive board and the right to abstain from voting on the item has been granted.

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¶ To avoid the appearance of a violation of this section, once any individual...

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¶ Nothing herein shall be construed to prohibit any Town official from representing his/her own personal interest by appearing before his/her collective body on any such agenda item.¶

12. Bias

A. Bias Defined. A Town official is biased with regard to an application pending before his/her executive board if he/she cannot make a fair or impartial decision on that matter because of a prejudice for or against the applicant or has a familial relationship with the applicant, as defined in 1 M.R.S. § 71(6).

B. Disclosure of Bias. If any Town official believes that he/she is biased for or against a person or business that has an application pending before the executive board of which the Town official is a member, and the Town official believes that such bias will interfere with his/her ability to make a fair and impartial decision on such application, then he/she shall recuse himself/herself from participating in any discussion or decision-making action on that application.

C. Reporting of Bias. Any Town official who believes that any fellow Town official is biased for or against a person or business that has an application before the executive board shall disclose the possibility of such bias, and the Town Clerk or his/her designee shall make a record of such disclosure, with a copy forwarded to the chairperson of the applicable executive board.

D. Determination of Bias. Once the issue of bias has been initiated relative to an individual Town official, and disclosure has been made as provided in Sections 12(B) or

(C) above, the remaining members of the executive board shall vote on whether or not such individual shall be excused from participating in the deliberation or vote.

- E. Avoidance of Appearance of Bias. If any Town official is determined to be biased for or against any person or business in respect to any application before his/her executive board, said Town official shall immediately remove him/herself from the dais and relocate to the area of the room occupied by the general public. The Town official shall not return to his/her regular seat as a member of the executive board until deliberation and action on the item is completed.

13. Disclosure Statement by Town Officials

- A. Within fifteen (15) days after each annual municipal election, every elected Town official shall file a completed disclosure form with the Town Clerk with a copy forwarded to the Chair of the Town Council. Within thirty (30) days after his/her appointment to an executive board, every appointed Town official shall file a completed disclosure form with the Town Clerk, with a copy forwarded to the Chair of the appropriate executive board. Each executive board is responsible for ensuring that its members comply with the filing of a disclosure statement. An extension beyond the stated time frame for filing a disclosure statement may be approved with a majority vote of the appropriate executive board. Each executive board will review the financial reports of its members. Should a conflict of interest be discovered, a majority vote of the executive board may refer the matter to the Board of Ethics for an advisory opinion.

- B. The disclosure forms shall be under oath and shall contain the following information to the best of the disclosing party's knowledge and belief:

1. the name of each person or business, whether incorporated or not, doing business with the Town in an amount in excess of \$1,000 during the preceding calendar year from which such disclosing Town official or member of his/her 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;

2. the name of each business, whether incorporated or not, doing business with the Town during the preceding calendar year in which such disclosing Town official or member of his/her immediate family has a financial interest;

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

- a brief description of the purpose of each board and/or office;
- a short summary of such disclosing party's or family member's duties relative to any such board and/or office;
- the term of service on each such board and/or office;

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- d) whether or not such disclosing party or family member receives compensation for service on such board and/or office and the extent to which such compensation exceeds \$1,000 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.

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- C. Every Town official shall annually amend his/her disclosure statement as may be required to ensure the continued accuracy thereof. Each such amendment shall be made within fifteen (15) days following the occurrence which requires the amendment.

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- D. The Town Clerk shall deliver a copy of each completed disclosure statement to every fellow executive board member of each disclosing party within thirty (30) days after the expiration of the filing period.

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- E. For purposes of this Code, a list prepared by the Finance Director of those persons or entities doing business with the Town in an amount in excess of \$1,000 for the preceding year shall be determinative for purposes of reporting under this section.

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- F. For purposes of this section, "financial interest" shall not include 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, or the ownership of less than 5% of the outstanding shares of stock in a publicly held corporation.

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14. Political Standards of Conduct

- A. No Town official may use his/her official authority or position for the purposes of influencing or interfering with or affecting the results of any election, nor shall he/she solicit funds or contributions or accept or receive funds or contributions from Town employees for political purposes.

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- B. No Town official may distribute pamphlets/handbills while he or she is performing their official functions and duties with the Town.

- C. Nothing herein shall be construed to prohibit any Town official from participating in the political process in their capacity as private citizens.

- D. Except for official functions and duties, including executive board meetings, political pins can be worn. During Council or Board meetings, view of such pins would not be appropriate.

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15. Use of Titles and Disclaimers

- A. Background. Town officials retain their full, constitutionally guaranteed, First Amendment rights as private individuals, and this Code respects and protects these rights. One of the responsibilities of Town officials is to separate protected personal discourse from matters of governance. This section of the Code addresses this responsibility.

- B. Use of titles. In making written or oral statements, Town officials may use their official titles upon, and only upon, the following circumstances:

(1) When so doing does not violate any other provision of this Code or any provision of the Code of Ordinances, state law, or federal law; and

(2) When:

(a) The executive board has specifically authorized the Town official to speak on behalf of the executive board or the Town; or

(b) The information conveyed:

(i) Is consistent with the official position of the Town as that position was adopted by the Town Council or is consistent with the official decision of an applicable executive board and the context of the communication only involves that applicable executive board; and

(ii) References the appropriate decision by or position of the Town Council, or to the decision of the applicable executive board; or

(c) When the Town official makes a clear and unambiguous statement that the Town official is speaking in his/her individual capacity and not on behalf of the Town or the executive board.

C. Disclaimers. Disclaimers are only required when there could be ambiguity regarding the capacity in which a Town official is communicating. In a typical disclaimer, a Town official could say (or write), "Speaking for myself;" or "Speaking as an individual;" or "Although I hold the office of [insert office], I am speaking tonight as a private individual. My remarks should not be interpreted as representing my office or the Town of Windham's official policy." A Town official could also say (or write), "I make these remarks in my personal capacity, and not as [insert office]. These remarks should not be interpreted as representing the Town of Windham." The most important aspect of any disclaimer is to remove ambiguity. In this regard, Town officials should be cautious of the circumstances or conditions of any statement and be wary of concerted or group action, which increases the likelihood that such action will be perceived as an act or endorsement of the Town itself.

D. Other considerations. Town officials must comply with any other provisions of law related to the use of official titles.

16. Incompatible Employment or Office

A. No Town official shall occupy any other office, elected or appointed, (including employment positions), where the duties of such office are incompatible with the proper discharge of his or her official duties as a Town official. For purposes of this Code, the occupancy of any office, elected or appointed, with the Town or any other governmental entity by any Town official is hereby prohibited in any one of the following circumstances:

J. Where the duties of the two offices are so inconsistent or in conflict with one another that one person holding both would not be able to simultaneously perform the duties of both with undivided loyalty in every instance;

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2. Where one office is subordinate of the other;

3. Where one office carries the power of removal of the other; or

4. Where the occupancy of both offices is otherwise prohibited by law.

B. A Town official automatically vacates his/her first office upon the acceptance of a second incompatible office.

17. Violations and Penalties

A. In the event that a Town official believes that another Town official has violated this Code, or that a situation may result in a violation of this Code, the following steps will be taken:

1. Written Statement. Any Town official seeking advice as to whether a particular situation constitutes a violation of this Code, or wishing to assert that another Town official has violated this Code, will submit a written statement describing the nature of the matter to the Chair and Vice Chair of the Town Council.

2. Notification. The Chair and Vice Chair will notify the individual Town official that a complaint has been raised against him/her.

3. Referral. The Chair and Vice Chair will review the matter and determine whether to refer the matter for an investigation and an advisory opinion from an attorney experienced in the area of municipal law, other than the Town Attorney. If either the Chair or the Vice Chair determine that an advisory opinion is needed, the matter will be referred to the outside attorney.

4. Investigation. Upon referral of the matter, the outside attorney will investigate the complaint (which may include reviewing records and interviewing persons involved) and prepare an advisory report summarizing his/her conclusions as to whether there has been a violation of this Code, and send the report to the Chair and Vice Chair.

5. Executive Session. The Chair and Vice Chair will schedule an executive session of the Town Council, in accordance with 1 M.R.S. § 405(6)(A), to review the outside attorney's advisory report and hold a hearing on the complaint. The Town official who is the subject of the complaint will be permitted to be present at the executive session, and may request the hearing to be conducted in open session, which request must be honored.

6. Voting. By a two-thirds (2/3) majority vote, the Council will make a determination about whether a violation of the Code has occurred, except that any Councilor who is the subject of the complaint may not vote on the question.

7. Non-Referral; Overrule. If Chair and Vice Chair decide not to refer the matter for an outside review, the written statement of the complaint will be included in the correspondence portion of the agenda for the next Council meeting along with a statement from the Chair and Vice Chair with an explanation of the

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Board of Ethics¶

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BOARD OF ETHICS ESTABLISHED - There is hereby created and established a Board of Ethics consisting of three (3) members who will be sworn in on appointment by the Town Council.¶

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TERMS - All members shall be appointed for terms of three (3) years each. Each member shall serve until May 15th of the final year on term, subject to continuance in

Deleted: office for a period not to exceed six (6) months until a successor is appointed. All members must be residents of the Town of Windham. No member shall serve more than two (2) complete consecutive terms.¶

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OTHER OFFICES PROHIBITED - No member of

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Deleted: Council appointed committees. A rare exception can be made by majority vote of the Town Council, if so warranted.¶

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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 Town Clerk appropriate records of its opinions and proceedings subject to the State's "Right to Know" Law.¶

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decision not to refer. If three (3) or more members of the Council object to the decision not to refer the matter for outside review, the matter will be referred for review by the outside attorney following the procedures set forth above.

B. When a violation of this Code is found by the Town Council after notice and hearing conducted by the Town Council, the Town Council is authorized to take one or more (or none) of the following actions, by a 2/3 majority of the disinterested members:

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1. ordering the Town official to meet with the Chair and Vice Chair to review the findings and this Code to ensure understanding;

2. issuing a written warning to the Town official, to be signed by the Chair (or by the Vice Chair if the complaint involves the Chair);

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3. adopting a formal censure resolution of the Town official;

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4. for elected Town officials (i.e., Town Councilors), removing the committee or liaison assignments for a duration of time; and/or

5. for appointed Town officials (i.e., Planning Board, Zoning Board of Appeals, or Board of Assessment Review members), removing the appointee for cause, after notice and hearing, pursuant to 30-A M.R.S. § 2601.

18. Severability

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 the Code.

Adopted: May 28, 1991

Amended: February 25, 1992

March 9, 1993

January 11, 2011 (Order 11-005. Changed board member term end date from December 31 to May 15.)

August 24, 2011 (Order 11-142. Cleaned up document formatting, added ability of three or more members of a board to seek advisory opinions.)

, 2023