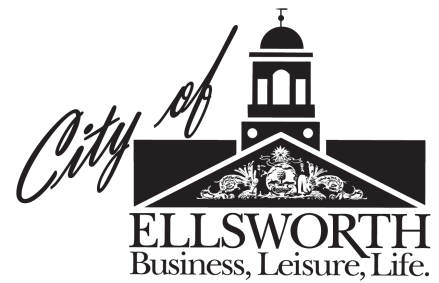


CHAPTER 40
CODE OF ETHICS/CONDUCT
CITY OF ELLSWORTH, MAINE

A true copy –

Attest: Heidi-Noel Grindle
City Clerk



Repealed/Replaced 02/14/2011

Section 1. DECLARATION OF POLICY

A Code of Ethics is hereby established for all City Officials in order to ensure that the proper operation of City government includes:

- That City Officials 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 within the proper channels of the City's governmental structure.
- That public office not be used for personal gain.
- That City Officials maintain a standard of conduct that will inspire public confidence and the integrity of the City's government.

Section 2. STANDARDS OF CONDUCT

The purpose of this code is to establish ethical standards of conduct of all City business. To that end, City Officials shall strive to perform their duties with professionalism, endeavor to avoid even the appearance of impropriety wherever practicable, and conduct themselves with utmost civility and respect for members of the public, City staff, and other City Officials.

Section 3. PERFORMANCE OF DUTIES

- City Officials shall perform their duties in accordance with the processes and rules of order established by the City Council, boards, commissions, and committees, governing the deliberation of public policy issues, meaningful involvement of the public, and implementation of policy decisions of the City Council by City staff.
- Stewardship of the public interest shall be the City Official's primary concern, working for the common good of the citizens of Ellsworth, and avoiding actions that are inconsistent with the best interests of the City. All persons, claims, and transactions coming before the City Council or any City board, commission, or committee, shall be assured of fair and equal treatment.
- City Officials are agents of public purpose and hold office for the benefit of the public. They are bound to uphold the laws of the nation, state, and municipality, and to carry out impartially these laws in the performance of their public duties to foster respect for all government. These laws include, but are not limited to, the United States, the State of Maine, and City of Ellsworth ordinances.
- City Officials shall prepare themselves for the public issues, listen courteously and attentively to all public discussion before the body, and focus on the business at hand. Officials shall refrain from interrupting other speakers, making personal comments not

germane to the business of the body or otherwise interfere with the orderly conduct of meetings.

- City Officials shall give due consideration to the objectives expressed by the electorate and the programs developed to attain those objectives.
- City Officials shall base their decisions on the merits and substance of the matter at hand.

Section 4. ATTENDANCE POLICY

The purpose of this attendance policy is to ensure the highest standard in the performance of City Official functions. In recognition of these goals, the following attendance policy is established:

- a) Attendance is expected at all Council, Board or Commission meetings including special meetings, emergency meetings, workshops, and budget workshops. When a City official cannot attend a meeting, the member must contact the Council/Board/Commission Chair or its designee in advance.
- b) Committee Meetings – It is expected that City Officials not miss more than 50% of overall assigned meetings. City Officials shall have the option to be replaced as a committee member if the Official is unable to meet the demands of committee attendance.

Section 5. CONFLICTS OF INTEREST

- City Officials shall not 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, where there is knowledge of financial interest or special interest other than that possessed by the general public or if the purchase or award is held by:
 - a) The City Official or a relative of the Official.
 - b) A Business in which the City Official or a relative serves as an officer, director, trustee, partner or employee in a supervisory or management position.
 - c) Any other person or business with whom the City Official or a relative are in business or are negotiating or have an arrangement concerning future employment.
- City Officials shall not 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 employee or applicant for employment where the applicant is:

- a) A relative of the City Official.
 - b) A person with whom the City Official or a relative is in business.
- City Councilors shall not appear on behalf of any third party before the City Council or any City department, board, commission, or other such agency of the City. Other City Officials shall not appear on behalf of any third party before the board, commission, or other such agency of which that Official is a member. No City Official, including City Councilor shall represent a third party in any action, proceeding, or litigation in which the City is a party. Nothing herein shall prohibit any City Official from representing themselves in a personal capacity before the City Council or any City department, board, commission, or other such agency of the City.
 - City Officials shall not participate in any political activity which would be in conflict or incompatible with the performance of their official functions and duties of the City.
 - City Officials shall not use official authority or position for the purposes of influencing or interfering with or affecting the results of any election.
 - City Officials shall not solicit any assessments, contributions, or services for any political party from any employee in the municipal service if the person soliciting holds a compensated appointive City position
 - City Officials shall not distribute pamphlets or handbills while performing their official functions and duties with the City.

Section 6. DISCLOSURE OF INTEREST IN AGENDA ITEMS

Any City Official, who believes there is a conflict of interest as defined in Section 5 above, shall disclose the nature and extent of such interest and have it recorded on the record of the meeting at which it arises. Once such disclosure has been made, the City Official shall refrain from deliberation or voting on the item concerned.

Section 7. DISCLOSURE OF CONFIDENTIAL INFORMATION

- City Officials shall not, without proper legal authorization, disclose confidential information concerning the property, government or affairs of the City nor shall any Official use such information to advance the financial or private interest of the Official or others.
- Information received and discussed during an executive session shall be considered within the constraints of this, and shall not be disclosed to any third person unless permitted by affirmative vote of the body.

Section 8. GIFTS AND FAVORS

City Officials shall not accept any valuable gift, whether in the form of service, loan, thing, or promise:

- a) from any person and/or business which to the City Officials knowledge is interested directly or indirectly in any manner whatsoever in business dealings with the City;
- b) that tends to influence the Official in the discharge of official duties.
- c) City Officials shall not grant in the discharge of official duties any favor, service, or thing of value.

Section 9. USE OF CITY PROPERTY / PUBLIC RESOURCES

- City Officials shall not use or permit the use of any City owned property for private purposes including but not limited to:
 - a) City Vehicles
 - b) City Equipment
 - c) City Buildings
- A City Official may only use the City's name, letterhead, logo, or seal when it would be perceived as representing the City of Ellsworth or the body as a whole and only with prior consent of the Council or designee.
- City Officials shall not utilize the City's name, letterhead, logo, or seal for the purpose of endorsing any political candidate, business, commercial product, or service. Nothing herein shall prohibit a City Official from endorsing any of the above in their personal capacity. A City Official may disclose the fact of their position provided it is made clear that they are acting in a personal capacity and not as a representative of the City.

Section 10. PROHIBITIONS

- Except where required by law, or pursuant to an agreement under the Interlocal Cooperation Act or other similar statutory provision, a Council member may not hold any other City position or City employment during the term for which the Council member was elected, and a former Council member is not eligible to be employed by the City for one year after the expiration of the term for which they are elected.
- No Council member may dictate or interfere in the appointment or removal of any City employee whom the City Manager is empowered to appoint or hire. The Council may express its views and discuss with the City Manager anything pertaining to appointment and removal of such employees.
- No Council member may publicly or privately give orders to any City employee who is subject to the direction and supervision of the City Manager, but the Council may express its views and discuss with the City Manager anything pertaining to any City employee.
- No City Official may in such capacity:
 - a) Unlawfully discriminate against any person with respect to any position or appointive City administrative office because of race or color, sex, sexual orientation, physical or mental disability, religion, political opinions or affiliations, or ancestry or national origin.
 - b) Willfully make any false statement or attempt to commit any fraud that would prevent the impartial execution of the laws of the state of Maine, the City of Ellsworth Charter, or any ordinance adopted by the Council.
 - c) Knowingly and willfully violate any provision of this Ordinance or any rules of ethics adopted by the City Council.

Section 11. DISCLOSURE STATEMENT BY CITY OFFICIALS

- City Officials shall annually and/or within 14 days of change provide to the City Clerk a physical address, mailing address, e-mail address, and contact telephone numbers.

- City Officials shall file with the City Clerk annually during the month of April a written statement under oath containing the following information, to the best of the Official's knowledge and belief:
 - a) The name of each person or business doing business with the City in an amount in excess of one thousand dollars (\$1,000) during the preceding calendar year from which such Official or a relative has received money or other thing of value in an amount in excess of one thousand dollars (\$1,000) during the preceding calendar year, including campaign contributions.
 - b) The City Treasurer shall provide a list of the persons or businesses doing business with the City in an amount in excess of one thousand dollars (\$1,000) during the preceding year.
 - c) Income, financial investments, and deposits and account with 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.

Section 12. REGULATION OF COUNCILOR CONDUCT

The purpose of this section is to establish procedures for the City Council to address the conduct of members of the City Council in accordance with Ellsworth City Charter, § 2.07(b) and determinations of vacancy under § 2.10(b).

- In the event that a member of the City Council reasonably believes that another member has violated or is violating any provision of the Code of Ethics or any policy or rule established by the Council, the member of the City Council should attempt to informally address and resolve the matter with the other member if doing so is appropriate under the circumstances. If the matter is not resolved informally, the complaining member of the Council may ask for an executive session under the Maine Freedom of Access law to discuss a complaint against a City Official.
- The member of the Council against whom the complaint is being made shall be given reasonable advance notice of the meeting at which the matter will be discussed and the right to be heard. The member of the Council against whom the complaint is being made shall also have the option of having the discussion conducted in open session.

1. Action or nonaction on complaints.

- A. Following the Council discussion, a Council member in open session may, but is not required to, move to sanction the member against whom the complaint is being made.
- B. If the motion is seconded, the motion may be adopted by a Majority Vote (as defined in the City Charter).
- C. If the motion passes, the Council shall issue a brief public statement explaining the reason for the sanction.
- D. The Council may issue the following forms of sanctions (from least severe to most severe):
 - a. Oral Reprimand
 - b. Written Reprimand
 - c. Formal Sanction

2. Expulsion and determinations of vacancy.

- A. In the event that (1) a member of the Council has engaged in malfeasance, misfeasance, or nonfeasance in office of such severity that a Formal Sanction is insufficient to address the conduct and that justice leave no other alternative, or (2) the Council seeks a determination of vacancy based on abandonment of office, the Council may schedule a public hearing to determine whether to expel the member from the City Council and declare the position vacant.
- B. The public hearing shall be scheduled so as to give the member of the Council against whom the complaint is being made at least one week's advance notice. The member of the Council may be represented by counsel and shall have the right to offer testimony, present witnesses, and cross examine and rebut all witnesses and public comments.
- C. The Council may by Super-Majority Vote (as defined in the City Charter) expel a member from the City Council based on the record created at the public hearing under a clear and convincing standard of proof.
- D. The Council's decision to expel a member may be appealed to Superior Court in accordance with M.R.Civ.P. 80B.
- E. For the purpose of this section, the term "malfeasance, misfeasance, or nonfeasance in office" shall mean conviction of a felony criminal offense, a serious and significant violation of the Code of Ethics or other City Ordinance, or other conduct (or lack thereof) of such a nature as to cast serious and significant doubt regarding one's ability to carry out the functions of the office of City Councilor.

Section 13. 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.

Section 14. DEFINITIONS

- A. **BUSINESS:** Any corporation, partnership, individual, sole partnership, sole proprietorship, joint venture, or any other legally recognized entity organized for the purpose of making a profit.
- B. **CITY OFFICIALS:** Any and all persons appointed by the City Council or City Manager and/or elected by the voters of the City of Ellsworth, including but not limited to:
 - a) City Councilors
 - b) Library Trustees
 - c) Planning Board Members
 - d) Appeals Board Members
 - e) Members of Boards and Commissions
 - f) Any person whose office or position is deemed a municipal office by the laws of the State of Maine.
- C. **CITY EMPLOYEE:** Any individual working for, on a permanent or temporary basis, and drawing a salary, wages or stipend from the City of Ellsworth. The term “City Employee” shall not include consultants or special personnel providing services on a short-term contractual basis.
- D. **FINANCIAL INTEREST:** A direct or indirect interest having monetary or pecuniary value including, but not limited to, the ownership of shares of stock.
- E. **MALFEASANCE:** The performance by a City Official of an act that is legally unjustified, harmful, or contrary to law.
- F. **MISFEASANCE:** The misuse of power; misbehavior in office; the wrongful exercise of lawful authority.
- G. **NONFEASANCE:** The intentional failure to perform an official duty or a legal requirement.
- H. **PERSONAL INTEREST:** Any interest of the City Official or City Employee concerned as a resident, landowner, or taxpayer affected by the matter under consideration.
- I. **PHYSICAL ADDRESS:** A person’s street, street number, and municipality.
- J. **RELATIVE:** Any person who is related by blood or marriage, or whose relationship is similar to that of persons who are related by blood or marriage such as domestic partners, adopted children, and foster children.
- K. **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.