

**Village Board, Village of Mount Kisco, Proposed Local Law
Chapter 9 of the Code of the Village/Town of Mount Kisco**

A Local Law to amend Chapter 9 of the Code of the Village/Town of Mount Kisco concerning the Code of Ethics:

BE IT ENACTED by the Village Board of the Village of Mount Kisco as follows:

Section 1. Chapter 9 of the Village of Mount Kisco entitled “Ethics, Code of” is hereby repealed in its entirety.

Section 2. Chapter 9 of the Village of Mount Kisco entitled “Ethics, Code of” is hereby adopted as follows:

WHEREAS, Article 18 of the General Municipal Law prohibits the officers and employees of a municipality from having certain conflicts of interest, and

WHEREAS Section 806 of the General Municipal Law requires the governing body of each county, city (other than the City of New York), town, village, school district and fire district to adopt a code of ethics that sets forth for the guidance of its officers and employees standards of conduct reasonably expected of them, and

WHEREAS Section 806 of the General Municipal Law also authorizes the governing body of any other municipality to adopt such a code of ethics, and

WHEREAS, a code of ethics adopted by the governing body of a municipality must set forth standards of conduct for the guidance of the officers and employees of the municipality with respect to disclosure of interests in legislation before the local governing body, holding of investments in conflict with official duties, private employment in conflict with official duties, future employment, and such other standards as may be deemed advisable, and

WHEREAS Article IX of the New York State Constitution grants home rule powers to local governments, wherein municipalities may adopt and amend local laws so long as they are not inconsistent with the provisions of the Constitution or with any general law. See NY Constitution, Article IX, Section 2(c); Municipal Home Rule Law s 10(1)(i) and (ii)(a)(1). This authority includes the ability of a Board of Trustees to grant to its Board of Ethics the authority to receive complaints alleging violations of ethics regulations, to investigate these complaints, and to conduct investigations and issue advisory opinions as to whether violations of ethics standards have occurred. See 191 N.Y. Op. Atty. Gen (Inf.) 1135.

Code of Ethics of the Village of Mount Kisco

§ 9-1. Purpose.

Officers and employees of the Village of Mount Kisco hold their positions to serve and benefit the public, and not for obtaining unwarranted personal or private gain in the exercise and performance of their official powers and duties. The Village of Mount Kisco recognizes that, in furtherance of this fundamental principle, there is a need for clear and reasonable standards of ethical conduct. This Code of Ethics establishes those standards.

§ 9-2. Definitions.

“Board” means the governing Board of a municipality and any municipal administrative Board (e.g. planning Board, zoning of Board of appeals), commission, or other agency or body comprised of two or more municipal officers or employees.

“Code” means this Code of Ethics.

“Conflict of interest” is a limitation on the holding of a municipal office when the holder of the office has certain other private interests affecting the municipality.

“Interest” means a direct or indirect financial or material benefit, but does not include any benefit arising from the provision or receipt of any services generally available to the residents or taxpayers of the municipality or an area of the municipality, or a lawful class of such residents or taxpayers. A Municipal Officer or Employee is deemed to have an interest in any private organization when he or she, his or her spouse, or a member of his or her household, is an owner partner, member, director, or officer, or directly or indirectly owns or controls more than 5% of the organization’s outstanding stock.

“Municipality” means Village of Mount Kisco. The word “municipal” refers to the municipality.

Municipal Officer or Employee” means a paid or unpaid officer or employee of the Village of Mount Kisco, including, but not limited to, the members of any municipal Board. This term also means unpaid members of any administrative Board, commission or committee. No person will be deemed to be a Municipal Officer or Employee solely by reason of being a volunteer fireman or civil defense volunteer, except a fire chief or assistant fire chief.

“Relative” means a spouse, parent, step-parent, sibling, step-sibling, sibling’s spouse, child, step-child, uncle, aunt, nephew, niece, first cousin, or household member of a Municipal Officer or Employee, and individuals having any of these relationships to the spouse of the officer or employee.

§ 9-3. Exceptions.

Certain contracts are exempt as conflicts of interest under Article 18 of the General Municipal Law. Such exemptions include, but are not limited to:

- A. Contracts of less than \$750 in value per fiscal year
- B. Contracts which were in existence prior to election or employment

§ 9-4. Applicability.

This Code of Ethics applies to the officers and employees of the Village of Mount Kisco as defined herein and shall supersede any prior municipal Code of Ethics. The provisions of this Code of Ethics shall apply in addition to all applicable State and local laws relating to conflicts of interest and ethics including, but not limited to, Article 18 of the General Municipal Law, the Constitution of the State of New York, and all rules, regulations, policies and procedures of the Village of Mount Kisco.

§ 9-5. Prohibition on Use of Municipal Position for Personal or Private Gain.

No Municipal Officer or Employee shall directly or indirectly use his or her municipal position or official powers and duties to secure a financial or material benefit for himself or herself, a relative, or any private organization in which he or she is deemed to have an interest. Financial or material benefit does not include payment, benefit or opportunity that is customarily and legally provided to residents, taxpayers and the general public in the ordinary course of municipal operations.

§ 9-6. Acting in the Public Interest; Appearance of Impropriety.

- A. No Municipal Officer or Employee shall exercise or perform his or her official powers and duties in furtherance of family or private interest, nor create an appearance of impropriety by giving the impression that he or she will exercise or perform his or her official powers or duties on the basis of any consideration other than the best interests of the Village of Mount Kisco.
- B. Municipal Officers or Employees shall treat all members of the public, whether a person, firm or corporation, or other organization, without special advantage in carrying out his or her official duties.

§ 9-7. Disclosure of Interests.

- A. Whenever a matter requiring the exercise of discretion comes before a Municipal Officer or Employee, either individually or as a member of a Board, and disposition of the matter could result in a direct or indirect financial or material benefit to himself or herself, a relative, or any private organization in which he or she is deemed to have an interest, the Municipal Officer or Employee shall disclose in writing or on the record at a public hearing the nature of the interest.

- B. The disclosure shall be made when the matter requiring disclosure first comes before the Municipal Officer or Employee, or when the Municipal Officer or Employee first acquires knowledge of the interest requiring disclosure, whichever is earlier.
- C. In the case of a person serving in an elective office, the disclosure shall be filed with the Board of Trustees. In all other cases, the disclosure shall be filed with the person's supervisor or, if the person does not have a supervisor, the disclosure shall be filed with the municipal officer, employee or Board having the power to appoint the person's position.
- D. In the case of a person serving on a municipal Board, a copy of the disclosure shall be filed with the Board. Any disclosure made to a Board shall be made publicly at a meeting of the Board and shall be included in the minutes of the meeting.

§ 9-8. Recusal and Abstention.

- A. No Municipal Officer or Employee may participate in any decision or take any official action with respect to any matter requiring the exercise of discretion, including discussing the matter and voting on it, when he or she knows or has reason to know that the action could confer a direct or indirect financial or material benefit on himself or herself, a relative, or any private organization in which he or she is deemed to have an interest.
- B. In the event that this section prohibits a Municipal Officer or Employee from exercising or performing a power or duty:
 - 1) if the power or duty is vested in a municipal officer as a member of a Board, then the power or duty shall be exercised or performed by the other members of the Board; or
 - 2) if the power or duty that is vested in a municipal officer individually, then the power or duty shall be exercised or performed by his or her deputy or, if the officer does not have a deputy, the power or duty shall be performed by another person to whom the officer may lawfully delegate the function.
 - 3) if the power or duty that is vested in a municipal employee, he or she must refer the matter to his or her immediate supervisor, and officer's supervisor or appointing authority shall appoint another municipal officer or employee to perform the function.

- 4) if the power or duty vested in an official that has neither a subordinate or a supervisor, the Village Board shall select an alternative acting appointment.
- C. Recusal and abstention shall not be required with respect to any matter which comes before a Municipal Officer when the officer would be prohibited from acting by section 9-8 of this Code and the matter cannot be lawfully delegated to another person.

§ 9-9. Investments in Conflict with Official Duties.

- A. Municipal Officer or Employee may not acquire the following investments:
- 1) personal investments that will be directly and materially affected by the exercise or performance of the person's official powers and duties; or
 - 2) personal investments that would otherwise impair the person's independence of judgment in the exercise or performance of his or her official powers and duties.
- B. This section does not prohibit a Municipal Officer or Employee from acquiring any other investments or the following assets:
- 1) real property located within the municipality;
 - 2) less than five percent of the stock of a publicly traded corporation; or
 - 3) bonds or notes issued by the municipality and acquired more than one year after the date on which the bonds or notes were originally issued.

§ 9-10. Private Employment in Conflict with Official Duties.

During his or her tenure as a Municipal Officer or Employee, a Municipal Officer or Employee should not engage in any private employment, including the rendition of any business, commercial, professional or other types of services, when that employment:

- A. can be reasonably expected to require disclosure or use of confidential information gained by reason of serving as a Municipal Officer or Employee;
- B. violates General Municipal Law; § 805-a(1)(c) or (d); or
- C. requires representation of a person or organization other than the municipality in connection with litigation, negotiations or any other matter to which the municipality is a party.

§ 9-11. Personal Representations and Claims Permitted.

This section does not prohibit a municipal officer or employee from:

- A. Representing him or herself, or his or her spouse or minor children, before the Village of Mount Kisco, or any officer, administrative Board, commission or other agency of the Village of Mount Kisco, in connection with any personal matter that does not arise from or involve a business, commercial or professional activity; or
- B. Asserting a claim against the Village of Mount Kisco on his or her own behalf, or on behalf of his or her spouse or minor children, in connection with any personal matter that does not arise from or involve a business, commercial or professional activity.

§ 9-12. Use of Municipal Resources

- A. Municipal resources shall be used for lawful municipal purposes. Municipal resources include, but are not limited to, municipal personnel, and the municipality's money, vehicles, equipment, materials, supplies or other property.
- B. No Municipal Officer or Employee may use or permit the use of municipal resources for personal or private purposes, but this provision shall not be construed as prohibiting:
 - 1) any use of municipal resources authorized by law or municipal policy;
 - 2) the use of municipal resources for personal or private purposes when provided to a Municipal Officer or Employee as part of his or her compensation; or
 - 3) the occasional and incidental use during the business day of municipal telephones and computers for necessary personal matters.
- C. No Municipal Officer or Employee shall cause the municipality to spend more than is reasonably necessary for transportation, meals or lodging in connection with official travel.

§ 9-13. Interests in Contracts.

- A. No Municipal Officer or Employee may have an interest in a contract that is prohibited by section 801 of the General Municipal Law.
- B. Every Municipal Officer and Employee shall disclose interests in contracts with the municipality at the time and in the manner required by this Code.

§ 9-14. Nepotism.

- A. No Municipal Officer or Employee, either individually or as a member of a Board, may participate in any decision specifically to appoint, hire, promote, discipline or discharge a relative for any position at, for or within the municipality or a municipal Board.
- B. No Municipal Officer or Employee may directly supervise a relative in the performance of the relative's official powers or duties.
- C. This section shall not apply to temporary or seasonal employment.

§ 9-15. Political Activity.

- A. No Municipal Officer or Employee shall directly or indirectly use his or her official authority to compel or induce another Municipal Officer or Employee to make, or promise to make, any political contribution, whether by gift of money, service or other thing of value.
- B. No Municipal Officer or Employee may act or decline to act in relation to appointing, hiring or promoting, discharging, disciplining, or in any manner changing the official rank, status or compensation of any Municipal Officer or Employee, or an applicant for a position as a Municipal Officer or Employee, on the basis of the giving or withholding or neglecting to make any contribution of money or service or any other valuable thing for any political purpose.
- C. No Municipal Officer or Employee shall engage in political campaign activities during their official Village of Mount Kisco workday.
- D. No Municipal Officer or Employee shall use Village resources for any political campaign or political activities.

§ 9-16. Confidential Information.

No Municipal Officer or Employee who acquires confidential information in the course of exercising or performing his or her official powers or duties may disclose or use such information unless the disclosure or use is required by law or in the course of exercising or performing his or her official powers and duties. For purposes of this section, "confidential" shall mean any information which is prohibited from disclosure by law or privilege; information which is of a personal or financial nature concerning any Municipal Officer or Employee; and any information which, if disclosed, will compromise the interests of the Village of Mount Kisco.

§ 9-17. Gifts.

- A. No Municipal Officer or Employee shall solicit, accept or receive a gift in violation of section 805-a(1)(a) of the General Municipal Law as interpreted in this section.
- B. No Municipal Officer or Employee may directly or indirectly solicit any gift.
- C. No Municipal Officer or Employee may accept or receive any gift, or multiple gifts from the same donor within a twelve-month period, having an annual aggregate value of seventy-five dollars or more when:
 - 1) the gift reasonably appears to be intended to influence the officer or employee in the exercise or performance of his or her official powers or duties;
 - 2) the gift could reasonably be expected to influence the officer or employee in the exercise or performance of his or her official powers or duties; or
 - 3) the gift is intended as a reward for any official action on the part of the Municipal Officer or Employee.
- D. For purposes of this section, a “gift” includes anything of value, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form. The value of a gift is the gift’s fair market value, determined by the retail cost of the item or a comparable item. The fair market value of a ticket entitling the holder to food, refreshments, entertainment, or any other benefit is the face value of the ticket, or the actual cost to the donor, whichever is greater. Determination of whether multiple gifts from a single donor exceed seventy-five dollars must be made by adding together the value of all gifts received from the donor by a Municipal Officer or Employee during the twelve-month period preceding the receipt of the most recent gift.
- E. A gift to a Municipal Officer or Employee is presumed to be intended to influence the exercise or performance of his or her official powers or duties when the gift is from a private person or organization that seeks municipal action involving the exercise of discretion by or with the participation of the officer or employee.
- F. A gift to a Municipal Officer or Employee is presumed to be intended as a reward for official action when the gift is from a private person or organization that has obtained favorable municipal action involving the exercise of discretion by or with the participation of the Municipal Officer or Employee during the preceding twelve months.

G. This section does not prohibit any other gift, including:

- 1) gifts made to the municipality;
- 2) gifts from a person with a family or personal relationship with the Municipal Officer or Employee when the circumstances make it clear that the personal relationship, rather than the recipient's status as a Municipal Officer or Employee, is the primary motivating factor for the gift;
- 3) gifts given on special occasions, such as marriage, illness, or retirement, which are modest, reasonable and customary;
- 4) unsolicited advertising or promotional material having a value of seventy-five dollars or less during a twelve-month period, such as pens, pencils, note pads, and calendars;
- 5) awards and plaques having a value of seventy-five dollars or less which are publicly presented in recognition of service as a Municipal Officer or Employee, or other service to the community; or
- 6) meals and refreshments provided when a Municipal Officer or Employee is a speaker or participant at a job-related professional or educational conference or program and the meals and refreshments are made available to all participants.

§ 9- 18. Board of Ethics Established.

A. Membership.

- 1) The Board of Ethics shall consist of five members appointed and approved by the Village Board.
- 2) The Board of Ethics in existence at the time of the enactment of this section shall be deemed re-appointed with the same term expiration as their present terms.
- 3) Each member of the Board of Ethics shall serve for a term of three years.
- 4) The Board of Ethics shall select a chairperson from among its members for a term of two years.
- 5) A member of the Board of Ethics may be removed from office by a minimum of four votes of the Village Board for failure to fulfill the

duties of the office or for violation of this chapter. The Village Board must give such Board member written notice and an opportunity to reply.

B. Qualification of Board members.

- 1) All members of the Board of Ethics must be residents of the Village.
- 2) The members of the Board of Ethics should be qualified by temperament and experience to carry out the duties and responsibilities of the Board.
- 3) No member of the Board of Ethics shall be a committeeperson or hold office in a partisan political organization or hold elective office in the Village of Mount Kisco.
- 4) Not more than three members of the Board of Ethics may be members of the same political party.
- 5) No officer or employee of the Village shall be eligible to serve on the Board of Ethics, except that the Village Attorney shall be a nonvoting member ex officio of the Board.

C. Compensation. Members of the Board of Ethics shall serve without compensation, but may be reimbursed for reasonable and necessary expenses approved by the Village Board.

D. Powers and duties of the Board of Ethics.

- 1) To request and receive, from any Village body or any Municipal Official or Employee, such assistance and information as will enable the Board of Ethics properly to carry out its functions and powers.
- 2) To render written advisory opinions with respect to the interpretation and application of this chapter. Such opinions shall be rendered at the written request of the majority vote of the Village Board, the Municipal Official or Employee whose conduct is in question, or on a good faith complaint filed by an individual or entity in accordance with Section 9-19. The Board of Ethics shall notify the Village Board within 30 days whenever any request for an advisory opinion is received and furnish a copy of any advisory opinion in accordance with Section 9-19 which it shall render to the Village Board and the Village Attorney. The Board of Ethics shall keep a record of its proceedings and maintain a confidential indexed file of all advisory opinions on file at Village Hall.
- 3) To prescribe forms for disclosures required under this chapter.

- 4) To receive legal assistance from the Village Attorney, who shall serve as counsel to the Board of Ethics. In the event that the Village Attorney has a conflict of interest on a particular matter, then the Village Board shall provide the Board of Ethics with the services of substitute counsel.
- 5) To process complaints alleging violations of this chapter and/or Article 18 of the General Municipal Law, and to render opinions with respect to such complaints, pursuant to § 9-19 of this Code of Ethics.
- 6) To perform such other functions as may from time to time be requested by the Village Board.

§ 9-19. Processing of Complaints.

- A. The Board of Ethics shall have the authority to investigate complaints, hold hearings and render advisory opinions to the Village Board with respect to alleged acts or omissions by any Municipal Officer or Employee in violation of this Code of Ethics and/or Article 18 of the General Municipal Law. Any individual or entity may initiate a good faith complaint by submitting a concise statement of allegations on the form(s) attached as Attachment 1 to this Code to the Chairperson of the Board of Ethics or any member thereof. Complaints may be submitted on the forms and by the means prescribed by the Board of Ethics. The Board of Ethics shall not consider complaints which are anonymous, incomplete, or are not submitted in good faith. The decision whether a complaint is made in good faith is in the sole discretion of the Board of Ethics. The Board of Ethics shall cause a copy of such complaint to be mailed or otherwise furnished to the Municipal Officer or Employee who is the subject of the complaint.
- B. Within 60 days of receipt of such complaint, the Board of Ethics shall determine whether (a) the complaint was made in good faith and is complete and (b) whether there is reasonable cause to believe that a violation of the Village Code or Article 18 of the General Municipal Law has occurred. Any such findings shall require an affirmative vote of the majority of the Board.
- C. In the event the Board of Ethics determines that a complaint does not sufficiently allege a violation of the Village Code or Article 18 of the General Municipal Law, written notice of such finding shall be mailed or otherwise furnished to the complainant and the Municipal Officer or Employee who is the subject of the complaint.
- D. In the event that the Board of Ethics determines there is reasonable cause to believe a violation has occurred, written notice of such finding shall be promptly mailed or otherwise furnished to the complainant and the Municipal Officer or Employee who is the subject of the complaint. If reasonable cause is established, the Board of Ethics shall conduct an investigation or hearing, as it deems necessary, to develop a fair and complete factual record relating to the subject matter of the complaint. In

the event that the Board of Ethics conducts a hearing, the Municipal Officer or Employee will be provided the opportunity to review documents relevant to the complaint, testimony shall be taken under oath, and a transcript of the proceeding may be made available. The Board of Ethics may redact any information not related to the complainant and of a personal nature. The Village shall furnish a copy of the hearing transcript, if any, to the Municipal Officer or Employee who is the subject of the complaint.

- E. Within 45 days of the completion of any investigation or hearing, the Board of Ethics shall issue a written advisory opinion setting forth its findings. A copy of the advisory opinion, together with copies of any hearing transcript and all documents reviewed by the Ethics Board in connection with its investigation or hearing, shall be provided to the Village Board and the Municipal Officer or Employee who is the subject of the complaint.
- F. The Board of Ethics shall issue an advisory opinion. After receiving such an advisory opinion, the Village Board may take such action as it deems warranted under the circumstances and applicable laws.
- G. Where a criminal investigation or prosecution arises out of the same facts as an alleged ethics violation, the Board of Ethics shall suspend any investigation or hearing concerning the alleged ethics violation until after the criminal investigation or prosecution is concluded.
- H. The Board of Ethics shall have the power from time to time to adopt rules and regulations, not inconsistent with law or this chapter, governing its procedures and transaction of its business. Every such rule and regulation shall be filed in the office of the Village Clerk and shall constitute a public record.

§ 9-20. Posting and Distribution.

- A. The Village Manager must promptly cause a copy of this Code, and a copy of any amendment to this Code, to be posted publicly and conspicuously in each building under the municipality's control. The Code must be posted within ten days following the date on which the Code takes effect. An amendment to the Code must be posted within ten days following the date on which the amendment takes effect.
- B. The Village Manager must promptly cause a copy of this Code, including any amendments to the Code, to be distributed to every person who is or becomes a Municipal Officer and Employee of the Village of Mount Kisco.
- C. Every Municipal Officer or Employee who receives a copy of this Code or an amendment to the Code must acknowledge such receipt in writing. Such acknowledgments must be filed with the Village Manager's office who must maintain such acknowledgments as a public record.

D. The failure to post this Code or an amendment to the code does not affect either the applicability or enforceability of the Code or the amendment. The failure of a Municipal Officer or Employee to receive a copy of this Code or an amendment to the Code, or to acknowledge receipt thereof in writing, does not affect either the applicability or enforceability of the Code or amendment to the Code.

§ 9-21. Enforcement.

Any Municipal Officer or Employee who violates this Code may be censured, fined, suspended or removed from office or employment in the manner provided by law.

§ 9-22. Effective date.

This Code takes effect upon its filing with the Department of State.