

CHAPTER 53 - CITY OF BREWER CODE OF ETHICS ORDINANCE

1. Declaration of Policy

The proper operation of the City of Brewer requires that all City 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 City officials be maintained to promote public confidence in the integrity of the City's government; and that public office not be used for personal or financial gain or advantage. In recognition of these goals, a Code of Ethics is hereby established for City Officials ("Code" or "Ordinance").

2. Definitions

BUSINESS - any corporation, partnership, individual, sole proprietorship, joint venture, or any other legal recognized entity organized for the purposes of making a profit.

CITY OFFICIAL - any individual who is an elected official or an appointed member of an executive board as defined herein.

CENSURE - a judgment or resolution condemning a person for misconduct.

EXECUTIVE BOARDS - City Council, Board of Assessment Review, Planning Board, and 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.

IMMEDIATE FAMILY – spouse, and children, parents, brothers and sisters.

PERSONAL INTEREST – any interest of a City Official acting in their private capacity as a resident, landowner, taxpayer, citizen, or member of the general public.

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 action or failure to act on the part of the City and which interest is not shared by the general public.

3. Purpose

The purpose of this Code is to establish ethical standards of conduct expected of all City Officials by setting forth those acts or actions deemed to be in conflict or incompatible, or that create the appearance of impropriety, with the best interests of the City of Brewer.

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 Ordinance. 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 of Ethics, and shall apply to all City Officials of the City of Brewer whenever applicable as if more fully set forth therein, to wit:

17 MRSA § 3104	Conflicts of Interest; Purchases by the State
17-A MRSA § 456	Tampering with Public Records of Information
17-A MRSA § 602	Bribery in Official and Political Matters
17-A MRSA § 603	Improper Influence
17-A MRSA § 604	Improper Compensation for Past Action
17-A MRSA § 605	Improper Gifts to Public Servants
17-A MRSA § 606	Improper Compensation for Services
17-A MRSA § 607	Purchase of Public Office
17-A MRSA § 608	Official Oppression
17-A MRSA § 609	Misuse of Information
17-A MRSA § 903	Misuse of Entrusted Property
21 MRSA § 533	Persons Ineligible to Serve as Election Officials
30-A MRSA § 2605	Conflicts of Interest
30-A MRSA § 5122	Interest of Public Officials, Trustees or Employees

5. Disclosure of Confidential Information

No City official shall, without authorization, disclose confidential information concerning the property, government or affairs of the City; nor shall they use such information to advance their financial, personal, or special interest of themselves 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 is available to, such City Official only because of their position with the City and is not a matter of public record. Without limiting the generality of the foregoing, information received and discussed during an executive session of the Brewer City Council called pursuant to 1 M.R.S. § 405 shall be considered within the constraints of this section and shall not be disclosed to any third party unless permitted by an affirmative vote of such body.

6. Contracts, Purchases and Employment

- A. No City Official shall participate directly by means of solicitation, deliberation, approval or disapproval, or recommendation, in the purchase of goods and services for the City, or in the award of any contracts with the City, where to their knowledge there is a financial, personal, or special interest other than that possessed by the public generally in such purchase or award, or held by:
 - i. that City Official or a member of their immediate family;
 - ii. a business in which that City Official or a member of their immediate family serves as an officer, director, trustee, partner or employee in a supervisory or management position; or
 - iii. any other person or business with whom or with which that City Official or a member of their immediate family does business, is negotiating to do business, or has an arrangement concerning future employment.

- B. No City Official shall participate, by means of deliberation, approval, 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 City employment or City employee, or vote for appointed positions, where said applicant, employee, or potential appointee is:
 - i. a member of their immediate family; or
 - ii. a person with whom either they or a member of their immediate family are in business.

7. Gifts and Favors

No City Official, shall accept any valuable gift, whether in the form of service, loan, thing or promise, from any person and/or business which to their knowledge is interested directly or indirectly in any manner whatsoever in business dealings with the City; nor shall any City Official: accept any gift, favor or thing of value that tends to influence or could reasonably be expected to influence them in the performance of official duties or was intended as a reward for any official action. This does not prohibit:

- A. gifts or social courtesies related to a family relationship or friendship between the elected or appointed official and the donor, which are not designed to influence the proper judgment or action of the officer or employee in a matter within his authority;
- B. public, government-sponsored or informational events, generally accepted as a condition of office, 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 their authority;
- C. political contributions received in compliance with law;
- D. loans obtained according to commercial practice at the prevailing rate of interest;
- E. customary performance, merit awards or honorariums, consistent with municipal practices.

8. Use of City Property and Facilities

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

- A. for City business;
- C. for purposes and on terms generally available to other persons that is properly authorized by the City;

9. Representing Third Party Interests Before City Agencies

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

10. Conflicts of Interest

No City Official shall, in such capacity, participate in the deliberation or vote, or otherwise take part in the decision-making process, on any agenda item before their collective body in which they or a member of their immediate family has a financial, personal, or special interest of a pecuniary nature, other than an interest held by the public generally.

11. Disclosure of Conflict

Any City Official who believes that they or a member of their immediate family has a financial, personal, or special interest of a pecuniary nature, other than an interest held by the public generally, in any agenda item before their collective body, shall disclose the nature and possible extent of such interest. The collective body will vote to determine if there is a conflict.

Any City Official who believes that any fellow City Official, or a member of their immediate family has a financial, personal, or special interest of a pecuniary nature, other than an interest held by the public generally, in any item before their collective body, shall disclose the possibility of such interest, and the City Clerk or their designee shall make a record of such disclosure, with a copy forwarded to the Chair of the appropriate Executive Board.

Once the issue of conflict has been initiated relative to an individual City Official, and disclosure has been made as provided in Section 11(B), the Executive Board shall vote on whether or not such individual shall be excused from participating in the deliberation or vote. The member that is the subject of the disclosure shall not participate in the deliberation or voting on whether a conflict exists.

12. Avoidance of Appearance of Conflict

To avoid the appearance of a violation of this section, once any individual City Official is determined to have a conflict of interest in respect to any agenda item, said individual shall immediately remove themselves from the meeting room or to the area of the room occupied by the general public. They shall not return to their regular seat as a member of the body until deliberation and action on the item is completed. Nothing herein shall require an individual City Official to remove themselves for any item contained on a "Consent Agenda" on which there is no deliberation, the individual's conflict has been determined by the other members, and the right to abstain from voting on the item has been granted.

14. Personal Interest

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

15. Disclosure Statement by City Elected and Appointed Municipal Official

Within fifteen (15) days after each annual municipal election, every elected official shall file a completed disclosure form with the City Clerk with a copy forwarded to the Chair of the appropriate Executive Board and to the chair of the City Council. Within thirty (30) days after his/her appointment, every appointed official shall file a completed disclosure form with the City Clerk, with a copy forwarded to the Chair of the appropriate Executive Board. Each executive body is responsible for ensuring that 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 body.

Each executive body will review the financial reports of its members. Should a conflict be discovered, a majority vote of the executive body can refer the matter to the Ethics Board for an opinion. Such disclosure forms shall be under oath and shall contain the following information to the best of the disclosing party's knowledge and belief:

- A. the name of each person or entity, whether incorporated or not, doing business with the City in an amount in excess of \$1,000 during the preceding calendar year from which such disclosing party 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;
- B. the name of each entity, whether incorporated or not, doing business with the City in an amount in excess of \$1,000 for preceding calendar year in which such disclosing party or member of his/her immediate family has a financial interest in an amount in excess of \$1,000, including, but not limited to, the ownership of shares of stock;

- C. 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:
- i. a brief description of the purpose of each board and/or office;
 - ii. a short summary of such disclosing party's or family member's duties relative to any such board and/or office;
 - iii. the term of service on each such board and/or office;
 - iv. 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 \$100 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.

- D. Every City official shall amend his/her disclosure statement as may be required to ensure the continued accuracy thereof. Each such amendment shall be made within thirty (30) days following the occurrence which requires the amendment.
- E. For purposes of this Code, a list prepared by the Finance Director of those persons or entities doing business with the City in an amount in excess of \$1,000 for the preceding year shall be determinative for purposes of reporting under this section. 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 and the ownership of less than 5% of the outstanding shares of stock in a publicly held corporation shall not be considered to be a financial interest within the meaning of this section.

16. Political Standards of Conduct

No City Official shall participate in any political activity which would be in conflict or incompatible with the performance of their official functions and duties for the City. No City 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 they solicit funds or contributions or accept or receive funds or contributions from City employees for political purposes. No City Official may distribute pamphlets/handbills while he or she is performing their official functions and duties with the City. Notwithstanding the foregoing, nothing herein shall be construed to prohibit any City Official from participating in the political process in their capacity as private citizens.

17. Incompatible Office

No City Official shall occupy any other office, elected or appointed, in any other governmental entity, where the duties of such office are incompatible with the proper discharge of their official duties with the City. For purposes of this Code, the occupancy of any office, elected or appointed, with any other governmental entity by any municipal official is hereby prohibited in any one of the following circumstances:

- A. where the duties of the other office make it a physical impossibility to discharge the duties of the City position; or
- B. where one office is subordinate of the other; or
- C. where one office carries the power of removal of the other; or
- D. where the occupancy of both offices is otherwise prohibited by law.

18. Board of Ethics

- A. **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 City Council.
- B. **TERMS** - All members shall be appointed for terms of three (3) years each. Each member shall serve until December 31st of the final year of their appointed term, subject to continuance in office for a period not to exceed six (6) months until a successor is appointed. All members must be residents of the City of Brewer. No member shall serve more than two (2) complete consecutive terms.
- C. **OTHER OFFICES PROHIBITED** - No member of the Board shall hold any other City office or position or be the member of any City Council appointed committees.
- D. **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 City Clerk appropriate records of its opinions and proceedings subject to Maine's Freedom of Access Law. 1 M.R.S. § 400 et seq.
- E. **DUTIES** - The Board shall render advisory opinions to any of the Executive Boards regarding any provisions of this Code to any particular situation. In the performance of its duties, the Board shall limit its review and fact finding only to those issues referred to it by the respective Executive Board. The Board shall also perform such other duties as may be prescribed from time to time by the City Council.
- F. **PROCEDURE** - Any City Official seeking advice as to whether a particular situation constitutes a violation of this Code shall first submit a written statement describing the nature of the matter to the chairperson of the appropriate Executive Board. If a majority of the Executive Board votes that an advisory opinion is necessary, they may so vote and refer the matter in a written statement to the Ethics Board. If the Ethics Board finds any matter referred is based upon allegations it determines to be frivolous, unfounded or with malice, they shall so advise the appropriate Executive Board. It is the purpose and intent of this Code to provide a mechanism by which all such matters shall be investigated by the Ethics Board and reported to the appropriate executive body as a whole within sixty (60) days if its findings warrant further action. Upon written request to the appropriate Executive Board an extension can be obtained.

- G. **ORIENTATION OF EXECUTIVE BOARD MEMBERS AND MUNICIPAL OFFICIALS** – All Executive Board members are requested to attend an annual orientation meeting to be scheduled during the month of January of each calendar year or as can be reasonably scheduled. All City Officials are encouraged to attend an annual presentation given by the Board or its designee.
- H. **DUTIES OF THE BOARD OF ETHICS** - The Board shall meet as needed and, upon request, shall prepare and submit to the City Council an annual report outlining its actions during the preceding 12-month period.
- I. **PUBLIC RELEASE OF FINDINGS OF NO WRONGDOING** - In cases where the respective Executive Board finds the person accused has not committed any violations, they will be publicly cleared at the next regular meeting of the Executive Board.
- J. **PENALTIES** - In addition to any other penalties or remedies as may be provided by law, violation of this Code shall constitute cause for censure, after notice and hearing conducted by the applicable Executive Board.

19. SEPARABILITY

If any section, subsection, sentence, clause or phrase of this Ordinance 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 Ordinance.

END OF CHAPTER NOTATIONS

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