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MUNICIPAL ETHICS ACT

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Section 1. Short Title

This act shall be known and may be cited as the "Municipal Ethics Act" of the Town of Friendship.

Section 2. Legislative Purpose

The purpose of this act is to establish minimum standards of ethical conduct for municipal officers and employees to help ensure that the business of government is free from improper influence that may result from opportunities for private gain. At the same time, it is recognized that public service cannot require a complete divesting of all proprietary interests, nor impose overly burdensome disclosure requirements, if local governments are to attract and hold competent administrators. Although the assurance of ethical conduct will continue to rest primarily on the personal integrity of the officers and employees themselves, on the commitment of elected and appointed officials, and on the vigilance of their communities, the establishment of the standards and guidelines set forth in this act is an additional step toward providing the highest caliber of public administration for local governments and increased confidence in public officials. By requiring public disclosure of interests that may influence or be perceived to influence the actions of public officials, this act is intended to facilitate consideration of potential problems before they arise, to minimize unwarranted suspicion, and to enhance the accountability of government to the people.

Section 3. Definitions

When used in this act and unless otherwise expressly stated:

1. "Agency" means (a) any office, board, body, advisory board, council, commission, agency, department, district, administration, division, bureau, or committee of the municipality; and (b) shall include, but not be limited to, a consolidated health district, county vocational education and extension board, public library, board of cooperative educational services, urban renewal or community development agency, industrial development agency, joint water works system established pursuant to chapter six hundred fifty-four of the laws of nineteen hundred twenty-seven, or a town or county improvement district, district corporation, or other district, or a joint service established for the purpose of carrying on, performing or financing one or more improvements or services intended to benefit the health, welfare, safety or convenience of the inhabitants of a municipality or municipalities, or to benefit the real property within a municipality or municipalities.

2. "Appear" and "appear before" mean communicating in whatever form, whether personally or through another person.

3. "Business dealing" means (a) having or providing

any contract, service, or work with a municipality; (b) buying, selling, renting, leasing, or otherwise acquiring from or dispensing to a municipality any goods, services, or property; or (c) applying for, petitioning, requesting, or obtaining any approval, grant, loan, license, permit, or other privilege from the municipality.

4. "Discretionary act" means any action involving the exercise of judgment or discretion by a municipal officer or employee, either individually or as a member of any agency, and includes, but is not limited to, negotiation, approval, advice, recommendation, authorization or audit.

5. "Family member" means a spouse, child, step-child, brother, sister, parent, or dependent of a municipal officer or employee.

6. "Governing body" means the legislative body of a county, city, town or village, or the school board in the case of a school district.

7. "Ministerial act" means an action performed in a prescribed manner without the exercise of judgment or discretion as to the propriety of the act.

8. "Municipality" means a county, city, other than a city having a population of one million or more, town,

village, or school district and includes (a) all agencies thereof, and (b) officers and employees of the county, city, town, village, school district or agency acting on its behalf.

9. "Municipal clerk" means the clerk of a county, city, town, village, or school district.

10. "Municipal officer or employee" means any officer or employee of a municipality, whether paid or unpaid, including public officials and all other members of any agency of a municipality, but does not include a judge, justice, officer, or employee of the unified court system. No person shall 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.

11. "Paid municipal officer or employee" and "paid public official" means any municipal officer or employee or public official who receives a salary from the municipality or who is compensated by the municipality on a per diem or hourly basis, but does not include a municipal officer or employee or public official who is solely reimbursed by the municipality for expenses incurred in the course of his or her duties.

12. "Particular matter" means any business dealing

with the municipality, or any application therefore, or any case, proceeding, determination, investigation, charge, accusation or arrest or any other matter involving a discretionary act of a municipal officer or employee, but does not include the proposal, consideration or enactment of local laws, ordinances or regulations of general application.

13. "Person" means an individual, corporation, partnership, unincorporated association, and all other entities.

14. "Public official" means any official who has the authority, either alone or as a member of an agency, to perform discretionary acts on behalf of a municipality with respect to any business dealing, and shall include but not be limited to: a county executive, county manager, mayor, city manager, town supervisor, village manager, village administrator, school superintendent, or other officer possessing similar powers and duties; a town superintendent of highways; a county, city, town, village, or school district clerk; the treasurer, comptroller, or chief fiscal officer of a municipality; a receiver, collector, or assessor of taxes; a coroner; a district attorney; a county, town, or village attorney or corporation counsel; a chief of police; a sheriff, and any official designated by a municipality as the head of

an agency. Public official shall not include: (a) a judge, justice, officer, or employee of the unified court system, or (b) any municipal employee who performs only ministerial acts.

15. "Spouse" means a husband or wife from whom the the municipal officer or employee is not legally separated.

Section 4. Conflicts of Interest of Municipal Officers and Employees

1. No municipal officer or employee shall:
 - a. act as attorney, agent, broker, employee, consultant, or representative for any person in connection with any business dealing that person has with the municipality.
 - b. directly or indirectly solicit, accept, or agree to accept any gift or financial benefit from any person, other than a family member, who the municipal officer or employee knows is considering, has, or within the previous twelve months has had, any business dealing with the municipality that involves any discretionary act by the municipal officer or employee. A municipal officer or employee may accept from such person a gift or gifts which are customary on

family, social, holiday or civic occasions, provided they do not total more than seventy-five dollars from any person within any twelve month period, and further provided that they were not received under circumstances in which it reasonably might be inferred that such gift or gifts were intended to influence the municipal officer or employee in the performance of his or her official duties or reward him or her for any official action.

A gift or financial benefit shall include money, services, loan, travel, entertainment, hospitality, thing, or promise thereof, or any other gratuity or promise thereof, including any financial transaction on terms not available to the general public, but shall not include a campaign contribution.

c. take or refrain from taking any action, or agree to take or refrain from taking any action, or induce or attempt to induce any other municipal officer or employee to take or refrain from taking any action, on any matter before the municipality in order to obtain a pecuniary or material benefit for: (1) himself or herself; (2) a family member; (3) any partnership or unincorporated

association of which the municipal officer or employee is a member or employee or in which he or she has a proprietary interest; (4) any corporation of which the municipal officer or employee is an officer or director or of which he or she legally or beneficially owns or controls more than five percent of the outstanding stock; (5) any person with whom the municipal officer or employee or his or her family member has an employment, professional, business or financial relationship; or (6) any person from whom the municipal officer or employee, or his or her spouse, has received within any twelve month period during the previous twenty-four months, a pecuniary or material benefit having an aggregate value greater than two thousand dollars.

d. appear before the agency served by or which employs such municipal officer or employee except on behalf of the municipality or on his or her own behalf.

e. appear before the municipality except on behalf of the municipality or on his or her own behalf. This paragraph shall only apply

to officers and employees who are elected or who are paid by the municipality.

f. appear as attorney or counsel against the interests of the municipality in any matter in which the municipality is a party or a complainant.

g. solicit any non-elected officer or employee of the municipality to participate in an election campaign. This paragraph shall not prohibit an elected officer from soliciting such participation from officers and employees who are appointed by, and directly subordinate to, such elected officer and who serve in positions which are in the exempt classification or the unclassified service under the civil service law.

h. directly or through a person, campaign committee, or other organization authorized to act on his or her behalf, solicit any non-elected officer or employee of the municipality to pay or promise to pay any assessment, subscription, or contribution to a political party, political party organization or election campaign. This paragraph shall not prohibit a general solicitation of a class

of persons, other than those expressly prohibited, of which such solicited officer or employee happens to be a member.

i. directly or through a person, or campaign committee, or other organization authorized to act on his or her behalf, solicit participation in an election campaign or payment or promise of payment of any assessment, subscription, or contribution to a political party, political party organization, or election campaign from any person who, to the knowledge of the municipal officer or employee has, or within the previous twelve months has had, any business dealing with the municipality. This paragraph shall not prohibit a general solicitation of a class of persons, other than those expressly prohibited, of which such solicited person happens to be a member.

j. except where such disclosure is authorized by law, disclose any confidential information acquired in the course of his or her official duties, or use any such information to advance the financial or other private interest of himself or herself or any

other person.

k. after termination of his or her term of office or employment with the municipality, appear before the municipality, or receive compensation for any services rendered on behalf of any person other than the municipality, in relation to any particular matter upon which he or she took any discretionary act during his or her term of office or employment with the municipality.

1. During his or her term of office or employment with the municipality, solicit, negotiate for, or accept any employment from which he or she would be disqualified under paragraph (k) of this subdivision.

2. No partnership or unincorporated association of which a public official is a member or employee or in which he or she has a proprietary interest, nor any corporation of which he or she is an officer or director or legally or beneficially owns or controls more than five percent of the outstanding stock, shall appear before the agency served by or which employs such public official on behalf of any person other than the municipality or itself.

3. No partnership or unincorporated association of which

a public official who is elected or paid by the municipality is a member or employee or in which he or she has a proprietary interest, nor any corporation of which he or she is an officer or director or of which he or she legally or beneficially owns or controls more than five percent of the outstanding stock, shall appear before the municipality on behalf of any person other than the municipality or itself.

4. Nothing in this section shall be construed to prohibit a municipal officer or employee or any other person from receiving a municipal service or benefit, or using a municipal facility, which is generally available to residents or a class of residents in the municipality.

5. Nothing in this section shall be construed to prohibit any municipal officer or employee listed in section eleven of the domestic relations law from accepting any gift or benefit having a value of one hundred dollars or less for the solemnization of a marriage by that municipal officer or employee at a place other than the municipal officer's or employee's normal place of business or at a time other than the officer's or employee's normal hours of business.

6. Nothing in this section shall be construed to prohibit a municipal officer or employee from performing any ministerial act.

7. Any contract entered into by or with a municipality

which results in or from a violation of any provision of this section shall be null and void and unenforceable, unless the municipality has obtained a waiver of that provision pursuant to section twenty-five of this act.

8. A person who knowingly violates any provision of this section shall be guilty of a class A misdemeanor.

Section 5. Transactional Disclosure and Recusal

1. Whenever a municipal officer or employee is requested or required to take any action on a matter before the municipality and, to his or her knowledge, either the performance or nonperformance of that action would provide a pecuniary or material benefit to himself or herself or to any related person different from that which would be derived from the action by reason of its general application to a broad class of persons deriving such benefit, the municipal officer or employee shall not participate in that matter. The municipal officer or employee also shall file promptly with his or her immediate superior, if any, and with the municipal clerk, a signed statement disclosing the nature and extent of that interest.

2. For purposes of this section, "related person" means:

- a. a family member;
- b. any corporation of which the municipal officer or employee is an officer or director or of which he or

she legally or beneficially owns or controls more than five percent of the outstanding stock;

c. any person with whom the municipal officer or employee or his or her family member has an employment, professional, business or financial relationship; and

d. any person from whom the municipal officer or employee, or his or her spouse, has received within any twelve month period during the previous twenty-four months, a pecuniary or material benefit having an aggregate value greater than two thousand dollars.

3. Whenever a vote is required from which a municipal officer or employee must recuse himself or herself under paragraph one of this section, such recusal shall not be counted for the purpose of determining whether a majority or other ratio required by statute to pass a measure has been reached, provided, however, that no action may be taken by a body unless a majority of all of the members appointed or elected to such body, or if the board has weighted votes, a majority of the total voting strength, votes on the matter. If the body is reduced below such majority by reason of a recusal required pursuant to this section, any member of such body may apply to the municipal or regional ethics board, or if the municipality has not established its own board and is not participating in a regional board, to the state ethics commission, for a waiver of the recusal requirements of this section. If the body is a municipal or regional ethics board, any member of such

board may apply to the state ethics commission for a waiver of the recusal requirements of this section.

Section 6. Disclosure by Applicants

1. For purposes of this section:

a. "submission" means any written application, petition, bid, proposal or other request concerning a business dealing with a municipality, but shall not include an application to be considered for eligibility to apply for or bid on any business dealing; and

b. "applicant" means any person making a submission.

2. For purposes of this section, a campaign contribution shall be considered to have been made to a municipal officer or employee if such contribution is made to any committee soliciting or receiving funds for the purpose of supporting the candidate, except that a contribution to a statewide political party shall not be considered a contribution to a candidate unless it is earmarked for use for a specific candidate. Where contributions are made to committees which support more than one candidate, the contribution shall be considered to have been spent equally on all the candidates and only the amount attributable to a particular candidate shall be considered for disclosure purposes under this section, unless the contribution to the committee was

earmarked for use for a particular candidate or candidates, in which case the entire contribution shall be attributable to that candidate or equally to those candidates, or as specified by the contributor. For purpose of this section, a loan to a candidate or campaign committee shall be considered a campaign contribution.

3. Any person who makes a submission to a municipality shall disclose in writing, as part of the submission: (a) the name of any municipal officer or employee to whom the applicant has made one or more campaign contributions totalling two hundred fifty dollars or more within any twelve month period during the previous sixty months; and (b) the name of any municipal officer or employee who, to the applicant's knowledge: (i) has an interest in the submission or in the applicant, and (ii) is required to take any discretionary act on the submission. The applicant also shall identify in the submission the nature of the interest.

4. For purposes of this section, a municipal officer or employee shall be deemed to have an interest in the submission or in the applicant when the municipal officer or employee or his or her spouse:

- a. is the applicant;
- b. is a family member of the applicant;
- c. is an officer or director of, or legally or beneficially owns or controls more than five percent of

the outstanding stock of the applicant;

d. has, or to the applicant's knowledge, intends to enter into, an employment, professional, business or financial relationship with the applicant, or any principal of the applicant;

e. has received from the applicant, within any twelve month period during the previous twenty-four months, a pecuniary or material benefit having an aggregate value greater than two thousand dollars; or

f. will receive, pursuant to an agreement between the applicant and any person, a pecuniary or material benefit if the municipality's disposition of the submission is favorable to the applicant.

5. A person who knowingly violates any provision of this section shall be guilty of a class A misdemeanor.

Section 7. Inducement of Violations

Any person, whether or not a municipal officer or employee, who intentionally induces any municipal officer or employee to take any action or to refrain from taking any action, which action or inaction violates any provision of this act, and who knows or should have known that such action or inaction violates this act, shall be guilty of a class A misdemeanor.

Section 8. Debarment

1. Any person convicted of a misdemeanor under this act shall be prohibited, for a period of three years after the date of the conviction, from entering into any contract, other than an employment contract, with the municipality.

2. For purposes of this section, "state entity or local entity" means the State of New York and any municipality thereof, and any department, board, body, bureau, agency, division, district, commission, committee, public authority, public corporation, council, office, or other governmental entity performing a governmental or proprietary function for the state or for any one or more municipalities thereof, including a city having a population of one million or more, and including the judiciary and the state legislature.

3. Nothing in this section shall be construed to prohibit any person from receiving a service or benefit, or from using a facility, which is generally available to the public.

4. A person who knowingly violates any provision of this section shall be guilty of a class A misdemeanor.

Section 9. Civil and Administrative Penalties

1. Any municipal officer or employee convicted of a misdemeanor under this act shall forfeit his or her municipal office or employment in the manner provided by law.

2. Any municipal officer or employee who engages in any action that violates any provision of this act, although not convicted of a misdemeanor under this act, may be warned or reprimanded or suspended or removed from office or employment or be subject to any other sanction authorized by law or collective bargaining agreement, by the appointing authority or person or body authorized by law to impose such sanctions. A warning, reprimand, suspension, removal or other authorized sanction may be imposed in addition to any other penalty contained in this act or in any other provision of law.

3. Any municipal officer or employee who violates any provision of this act may be subject to a civil fine of up to one thousand five hundred dollars for each violation, as may be determined by the appropriate municipal or regional ethics board or by the state ethics commission. A civil fine may be imposed in addition to any other penalty contained in any other provision of law or in this act, other than a civil forfeiture pursuant to subdivision five of this section .

4. Any municipal officer or employee who violates any provision of this act shall be liable in damages to the municipality for any losses or increased costs incurred by the municipality as a result of the violation. Such damages may be imposed in addition to any other penalty contained in any other provision of law or in this act, other than a civil forfeiture pursuant to subdivision five of this section.

5. Any municipal officer or employee who has knowingly and intentionally violated any provision of this act may be subject to a civil forfeiture to the municipality of a sum equal to three times the value of any financial benefit he or she received as a result of the conduct that constituted the violation. A civil forfeiture may be imposed in addition to any other penalty contained in any other provision of law or in this act, other than a civil fine pursuant to subdivision three or damages pursuant to subdivision four of this section.

Section 10. Local Ethics Acts

A copy of any local ethics act, and any amendments thereto, shall be filed with the state ethics commission.

Section 11. Applicability; Other Remedies; Severability

1. The provisions of this act shall apply notwithstanding any inconsistent provision of any general, special, or local law.

2. No existing right or remedy shall be lost, impaired, or affected by reason of this act.

3. Nothing in this act shall be deemed to bar or prevent the timely filing by a present or former municipal officer or employee of any claim, account, demand, or suit against the municipality on behalf of himself or herself or any member of his or her family arising out of personal injury or property damage or for any lawful benefit authorized or permitted by law.

4. If any provision of this act is held by a court of competent jurisdiction to be invalid, that decision shall not affect the validity and effectiveness of the remaining provisions of the act.

Section 12. Distribution and Posting

1. Within sixty days after the effective date of this act, the chief executive officer, or, if none, the chair of the governing body, of every county, city, town, village, and school district within the state shall cause a copy of this act to be distributed to every municipal officer and employee, shall make it readily available to the public, and shall post notice of this act conspicuously in each public building under the jurisdiction of the municipality. Every municipal officer and employee elected or appointed thereafter shall be furnished a copy of this act within ten days after entering upon the duties of his or her position.

2. Every municipal officer or employee shall file with the municipal clerk a signed receipt acknowledging that he or she has received and read the act. Such receipts shall be maintained by the municipal clerk.

3. Failure to distribute a copy, failure of any municipal officer or employee to receive a copy, failure to file a signed receipt, or failure to keep posted a copy of the act shall have no effect on the duty of compliance with this act nor the enforcement provisions hereof.

Section 13. Effective Date

This act shall take effect on
April 25, 1991.