

Chapter 54: Ethics, Code of

[HISTORY: Adopted by the Council of the City of Easton 5-14-2008 by Ord. No. 5085. Amendments noted where applicable.]

GENERAL REFERENCES

Conflicts of interest; Board of Ethics — See Home Rule Charter, Art. VII.

Conflicts of interest. Ethics, Code of

§ 54-1 Conflicts of interest.

§ 54-2 Disclosure.

§ 54-3 Use of public property.

§ 54-4 Political activity.

§ 54-5 Violations and penalties.

§ 54-6 Board of Ethics.

§ 54-1 Conflicts of interest.

No officer, Council person, elected official, member or employee of Easton City government or any municipal authority or agency to whom this Code of Ethics applies shall:

A.

Engage in or have financial or other personal interest in any business or transaction, direct or indirect, which is incompatible with the proper discharge of his or her official duties.

B.

Engage in or accept private employment or render services for private interests when such employment of service is incompatible with the proper discharge of his or her official duties.

C.

Utilize information concerning the property, government or affairs of the municipal government or municipal authority or agency to advance the financial or other private interest of him or her or others.

D.

Accept gifts or other things of value in return for a favorable decision or vote. In all but de minimis cases, gifts received must be publicly recorded and submitted to the City Clerk, specifying the date received, the names and addresses of the donor, and the value of the gift. Under no circumstances shall officials or employees of the City or its authorities and agencies solicit gifts of any kind. A gift having a value in excess of \$25 may not be considered de minimis. The term "gift" for the purposes of this chapter means any gratuity, benefit, or any other thing of value which is accepted by, paid for, or given to a City employee, elected official, or appointed official or by another on their behalf, either directly or indirectly, without consideration of equal or greater value.

E.

Represent private interest in any action or proceeding against the Easton municipal government, municipal authority or agency.

F.

Vote on or participate in the negotiation or the making of any contract in which he or she has a financial interest, direct or indirect.

G.

Violate any additional prohibitions set forth in §§ C-7.02 and C-2.05 of the City of Easton Home Rule Charter.

§ 54-2 Disclosure.

Any officer, Council person, elected official, member or employee to whom this Code of Ethics applies who shall have any private financial interest, direct or indirect, in any business or transaction pending before the Easton municipal government or any municipal authority or agency shall disclose such private interest to the City Clerk and to the board of the authority or agency, and it shall be made a matter of permanent record. The said officer, member, or employee shall disqualify himself or herself from participating in any decision or vote relating to such business or transaction.

§ 54-3 Use of public property.

No officer, Council person, elected official, member, or employee of the Easton municipal government, municipal authority or agency to whom this Code of Ethics applies shall use any public property for personal benefit or profit. No personnel, equipment, facilities, vehicles or any other property of the City may be used by employees or officials for private use.

§ 54-4 Political activity.

No officer, Council person, elected official, member, or employee of the City of Easton government, municipal authority or agency shall violate the provisions as set forth in § C-7.02A of the City of Easton Home Rule Charter.

§ 54-5 Violations and penalties.

The violation of any section of this Code of Ethics shall be punishable as follows:

A.

By admonition; public censure; recommendation of a suspension or a termination in compliance with existing personnel practices and collective bargaining agreements; referral to the appropriate authorities for criminal prosecution in cases where a violation of this chapter is also a violation of federal or state law; ineligibility for holding any office or position within the City for a period of up to five years, as set forth in § C-7.02B of the City of Easton Home Rule Charter; imposition of a fine not to exceed \$1,000 per violation; imposition of an administrative fine of not more than \$1,000 to defray the actual cost and expense of investigating any violation.

B.

Any person who realizes financial gain by way of a violation of any provision of this chapter, in addition to any other penalty provided by law or this chapter, shall pay into the treasury of the City a sum of money up to the financial gain resulting from the violation. The Board of Ethics shall determine the amount of financial gain realized.

C.

Any public official, public employee, person, corporation, company or other entity found to have participated in or benefited from a violation of this Code of Ethics may be barred from participating in business dealings with the City for a period of time not to exceed five years, said period of time to be determined by the Board of Ethics, in addition to being subject to any other penalty prescribed by this chapter.

D.

Any contract between the Easton municipal government, municipal authority or agency to which this Code of Ethics applies and another party shall be voidable or rescindable at the option of City Council at any time within a period of 90 days from the date of execution of such contract if any officer, Council person, elected official, member or employee of the Easton City government or any municipal authority or agency thereof has any financial or personal interest in such contract and does not disclose such interest in accordance with § 54-2 of this article.

§ 54-6 Board of Ethics.

A.

Composition and structure of the Board.

(1)

Composition. The Board established by the City of Easton Home Rule Charter and this chapter shall be composed of five residents of the City of Easton who shall be appointed pursuant to Article III, § C-3.01C of said Home Rule Charter.

(2)

Terms of service. Members of the Board shall serve for terms of three years, except that members shall continue to serve until their successors are appointed and qualified. The terms of the initial members shall be staggered, with one member serving a term of one year, two members serving for two years, and two members serving for three years.

(3)

Vacancy. An individual appointed to fill a vacancy occurring other than by the expiration of a term of office shall be appointed for the unexpired term of the member he/she succeeds and is eligible for appointment thereafter according to the terms herein.

(4)

Election of Chairperson and Vice Chairperson. The Board shall elect a Chairperson and a Vice Chairperson annually at a meeting held in July. The Vice Chairperson shall act as Chairperson in the absence of the Chairperson or in the event of a vacancy in that position.

(5)

Quorum. A majority of the members of the Board shall constitute a quorum; however, the votes of a majority of the members are required for any action or recommendation of the Board.

(6)

Meetings. The Board shall meet at the call of the Chairperson or at the call of a majority of its members.

(7)

Investigative officer. The Board shall appoint an investigating officer. The Board shall determine an amount to be paid as reasonable compensation to the investigating officer as payment for such services. The investigating officer shall be a member of good standing of the Northampton County Bar and shall have been so for at least five years. The investigative officer need not be a resident of the City of Easton and shall not be a Board member. The investigating officer is authorized to retain the services of investigators and may only delegate nondiscretionary functions.

B.

Powers and duties. The powers and duties of the Board of Ethics may be summarized as follows:

(1)

Upon the written request of any public official or City employee, or without such request should the majority of the Board deem it in the public interest, the Board may render advisory opinions concerning matters of governmental ethics; shall consider questions as to ethical conduct, conflicts of interest and the application of ethical standards set forth in this chapter; and shall issue advisory opinions in writing as to any such question. The Board may in its discretion publish its advisory opinions with any redactions necessary to prevent disclosure of the identity of the person who is the subject of the opinion. An advisory opinion may be used as a defense in any subsequent investigation or prosecution, provided that the official or employee who sought the opinion did so in good faith and only to the extent material facts were not misrepresented in the request for the opinion.

(2)

Receive and dispose of complaints of violations of the ethics provisions of the Charter and this Code of Ethics and exercise discretion in declining to pursue an investigation if such a course would be in the best interest of the citizens of Easton or where the activity complained of amounts to no more than a de minimis violation.

(3)

Appoint an investigating officer to conduct investigations and to issue findings reports where appropriate.

(4)

Hold hearings, issue subpoenas and compel the attendance of witnesses, administer oaths, take testimony, require evidence on any matter under investigation before the Board, and issue orders, including but not limited to those related to adjudications and penalties set forth in § 54-5 of this chapter.

(5)

When necessary, hire independent counsel.

C.

Complaint procedure.

(1)

Who may file. Any person may file a complaint about alleged violation of the Easton Code of Ethics or the City Charter. In addition, the Board may initiate proceedings. A person signing a complaint shall:

(a)

Reasonably believe in the existence of facts upon which the claim is based; and

(b)

Reasonably believe that the complaint may be valid under the ethics provisions of the Code of Ethics and the City of Easton Home Rule Charter.

(2)

How to file. Complaints must be submitted on forms provided by the Board. The Board shall make this form available upon request. The complaint shall state the name, job or office held by the alleged violator and a description of the facts that are alleged to constitute a violation. The form must contain a notarized signature subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities. Complaints are to be sent in a sealed envelope to the Investigating Officer of the Board of Ethics, c/o the City Clerk.

D.

Jurisdiction; preliminary investigation.

(1)

Each complaint filed with the Board shall be immediately directed to and preliminarily reviewed by an investigating officer appointed by the Board (the "Officer") to determine whether the complaint falls within the jurisdiction of the Board. The aforesaid determinations shall be made within 30 days of the filing of the complaint. If the Officer determines that the Board does not have jurisdiction over the matter underlying the complaint, the complainant will be notified and no further action will be taken. If, however, the Officer determines that the complaint falls within the jurisdiction of the Board, the Officer shall authorize a preliminary investigation.

(2)

The preliminary investigation shall be initiated and accomplished at the sole direction of the Officer. If the Officer, in his/her sole discretion, finds that the violation(s) as alleged in the complaint would, if proved, constitute a de minimis infraction, he/she may decline to initiate a preliminary investigation and dismiss the complaint if to do so would be in the best interest of the citizens of Easton.

(3)

At the onset of the preliminary investigation, the Officer shall notify both the complainant and the subject of the investigation of the filing of the complaint, the nature of the same, and the initiation of a preliminary investigation.

(4)

The preliminary investigation shall be completed within 60 days of the Officer's finding of jurisdiction.

(5)

If at any time during the preliminary investigation, an extension is necessary and justified, the Officer shall have additional time in thirty-day segments. The Officer shall timely notify both the complainant and the subject of the investigation of each such extension.

(6)

At the conclusion of the preliminary investigation, the Officer shall determine whether there may exist facts to support the complaint. If the inquiry fails to establish such facts, the Officer shall dismiss the complaint and notify both the complainant and the subject of the complaint of the dismissal of the complaint. If, however, at the conclusion of the preliminary investigation the Officer determines that there may exist facts to support the complaint, the Officer shall authorize a full investigation.

E.

Full investigation. If a preliminary investigation uncovers facts to support the complaint, the Officer shall authorize a full investigation. The complainant and the subject of the investigation shall be notified within three days of the initiation of a full investigation, and the subject shall be notified of the identity of the complainant. Until the investigation is concluded or terminated, the Officer will notify both the complainant and the subject of the investigation of the status of the investigation at least every 90 days. Within 180 days of the initiation of the full investigation, the Officer must either terminate the investigation or issue a findings report on the subject.

F.

Findings report. The findings report shall set forth the pertinent findings of fact as determined by the Officer. The Officer shall deliver the findings of fact to the complainant and the subject of the investigation. If no violation of the Code of Ethics was found, the Officer shall dismiss the complaint. If the subject of the investigation was found to be in violation of the Code of Ethics, the subject may, within 30 days of the report, request an evidentiary hearing, unless an extension is obtained from the Officer. When such a request is received by the Officer, the Officer shall immediately notify the Board of the request for a hearing and the names of the parties involved. The Board shall, upon receipt of such notice, engage two attorneys: one to represent the facts in support of the complaint and one to advise the Board in matters related to the evidentiary hearing. No City Solicitor or any other attorney appointed to serve the City in any capacity may be engaged for this purpose. If no request for an evidentiary hearing is received, the Officer will forward the findings report to the Board for its decision and final order.

G.

Evidentiary hearing.

(1)

Timing. An evidentiary hearing must be held within 45 days of the filing of a request for same.

(2)

Evidence. The subject of the investigation shall have reasonable access to any evidence intended to be used at a hearing. The subject of the investigation shall have the opportunity to be represented by counsel and to subpoena witnesses, present evidence, cross-examine witnesses against him/her, submit argument and shall be entitled to exercise all rights of confrontation and the like afforded him/her by the United States Constitution and the Pennsylvania Constitution.

(3)

Closed hearing. The hearing shall be closed to the public unless the subject requests an open hearing, in writing, to the Board at least five days before the hearing.

H.

Decision by the Board; final order. At the conclusion of the evidentiary hearing or upon receipt of the findings report, the Board will determine by majority vote whether the evidence supports a finding that the subject of the complaint violated provision(s) of either the City of Easton Home Rule Charter or the Code of Ethics. Upon reaching a determination on the complaint, the Board shall issue a final order. A copy of said final order shall be immediately delivered to both the complainant and the subject of the complaint.

I.

Petition for reconsideration. A subject, having been found to have violated a provision of the Charter or Code, may file a petition for reconsideration of the Board's decision. Such petition shall be filed with the Board within 10 days after the Board issues its final order.

J.

Protection of complainant. No person may be penalized, nor any employee of the City be discharged, suffer change in his/her official rank, grade or compensation, be denied a promotion or threatened, for a good faith filing of a complaint with the Board or for providing information or testifying in any Board proceeding.

K.

Confidentiality of Board information. All Board proceedings and records relating to an investigation shall be confidential until a final determination is made by the Board, except as may be required to effect due process. The final order shall become a public record once the subject has exhausted all appeal rights or has failed to timely exercise such rights. All other file material shall remain confidential.

L.

Wrongful use of the Board of Ethics. The purpose of the Board of Ethics is to endeavor to maintain a high standard of ethical behavior by City employees and officials. This will be most effective when City employees, officials, and citizens work together to set and maintain high ethical standards. Complaints directed to the Board must be based on fact. Those filing complaints must have the intent to improve the ethical climate of the City. Wrongful use of the code is prohibited, and those individuals engaged in such conduct may be subject to penalties as set forth in § 54-5. Wrongful use of the Code of Ethics is defined as:

(1)

Filing an unfounded, frivolous, or false complaint. A complaint is unfounded, frivolous or false if it is filed in a grossly negligent manner without a basis in law or fact and was made for a purpose other than reporting a violation of this chapter. A person has not filed a frivolous complaint if he/she reasonably believes that facts exist to support the claim and either reasonably believes that under those facts the complaint is valid under this chapter or acts upon the advice of counsel sought in good faith and given after full disclosure of all relevant facts within his/her knowledge and information.

(2)

Publicly disclosing or causing to be disclosed information regarding the status of proceedings before the Board and facts underlying a complaint before the Board, including the identity of persons involved and that a complaint has been filed.