

# Final

2/4/09 Ionic Labs-Site visit for building permit

Total 6 Miles

Dale Warner 1 Hour  
Lynn Lestage, Clerk 1 Hour  
2 Hours

lcl

**SEWER DISTRICTS:** Council Member Carlson reported there was just general maintenance at both Sewer Districts; Sewer District 2 is having problems keeping the tanks from freezing. There are a couple of issues to be discussed at the Sewer Commissioner's Meeting on April 23, 2009 at 7:00pm at the Town Hall.

Supervisor Merrihew- there were 498 miles of sewer inspection in February.

## **BUSINESS MEETING**

**Resolution 91-09-**Council Member White motioned, seconded by Council Member Carlson to adopt the Local Law #1 of 2009, Code of Ethics Law. **Motion carried 4 ayes.** Council Members White, Carlson, Frisbee and Supervisor Merrihew

## TOWN OF DUANESBURG

Local Law No. 1 of the Year 2009

### A LOCAL LAW ENACTING A CODE OF ETHICS AND ESTABLISHING A BOARD OF ETHICS FOR THE TOWN OF DUANESBURG.

BE IT ENACTED by the Town Board of the Town of Duanesburg as follows:

#### SECTION 1. AUTHORITY

This Local Law is enacted pursuant to section 806 of the General Municipal Law and section 10 of the Municipal Home Rule Law and is not intended to authorize any conduct prohibited by Article 18 of the General Municipal Law.

#### SECTION 2. PURPOSE

The Town Board of the Town of Duanesburg recognizes that there are state statutory provisions mandating towns to establish rules and standards of ethical conduct for public officers and employees which, if observed, can enhance public confidence in local government. The purpose of this Local Law is to implement this

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objective through the establishment of high standards of ethical conduct for board members, officers and employees of the Town of Duanesburg, to afford board members, officers and employees of the Town of Duanesburg guidance on such standards, to provide for punishment of the violation of such standards, to create a board of ethics to render advisory opinions to the Town's board members, officers and employees as provided for herein, and to provide for the fair and effective administration of this Local Law.

## SECTION 3.            APPLICABILITY OF OTHER LAWS

The standards, prohibited acts and procedures established herein are in addition to any prohibited acts, conflicts of interest provisions or procedures prescribed by and case law relating to the conduct of Town board members, officers and employees. To the extent this Local Law is inconsistent with the provisions of section 808 of the General Municipal Law, this Local Law shall supersede those provisions.

## SECTION 4.            DEFINITIONS

As used in this Local Law, the following terms shall have the meanings indicated:

### IMMEDIATE FAMILY MEMBER:

A spouse, child, parent or sibling of a Town Board Member, Town Officer or Town Employee, and any other dependent, relative, or domestic partner residing in the household of a Town Board Member, Town Officer or Town Employee.

### INTEREST:

Any claim, account or demand against or in agreement with the Town, express or implied, including designation of a depository of public funds and the designation of an official newspaper, and any direct or indirect pecuniary or material benefit accruing to a Town Board Member, a Town Officer or a Town Employee as a result of a business or professional transaction with the Town. For the purposes of this Local Law, a Town Board Member, Town Officer or Town Employee shall be deemed to have a direct interest in the affairs of:

A. His Immediate Family Members.

B. A business concern, limited partnership, limited liability company, corporation, partnership or association (collectively, "Business Entity"), of which such Town Board Member, Town Officer or Town Employee, or any Immediate Family Member, is a member, partner, owner, shareholder, officer, director, manager or employee.

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C. A Business Entity which is owned or controlled, in whole or in part, directly or indirectly, by such Town Board Member, Town Officer or Town Employee, or any Immediate Family Member.

### **TOWN:**

The Town of Duanesburg or any of its boards, committees, commissions or agencies, whether operated or funded solely by the Town of Duanesburg or jointly with one or more other municipalities.

### **TOWN AGENCY:**

Any Town administrative advisory board, committee, commission, planning board, zoning board of appeals, or other agency thereof.

### **TOWN BOARD MEMBER, TOWN OFFICER OR TOWN EMPLOYEE:**

Any elected or appointed officer and any employee of the Town, whether paid or not, including members of any Town Agency. For the purpose of this chapter, no person shall be deemed a Town Board Member, Town Officer or Town Employee solely by reason of being a volunteer fireman or civil defense volunteer or being employed by the Town as a result of a contractual agreement.

### **TOWN CONSULTANT:**

Any individual, group or firm which renders services on behalf of the Town to any Town Board Member, Town Officer or Town Employee.

## **SECTION 5.          STANDARDS OF CONDUCT**

(a) No Town Board Member, Town Officer or Town Employee shall have any Interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.

(b) No Town Board Member, Town Officer or Town Employee shall have an Interest in any contract with the Town, when such board member, officer or employee, individually or as a member of a board, has the power or duty to (i) negotiate, prepare, authorize or approve such contract or payments thereunder; (ii) audit bills or claims under such contract; or (iii) appoint a board member, officer or employee who has any of the powers or duties set forth herein.

(c) No Town Board Member, Town Officer, Town Employee, chief fiscal officer, treasurer or deputy shall have an Interest in a bank, trust company or financial institution designated as a depository of funds of the municipality. This subsection

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does not prohibit ownership of up to five (5) percent of the outstanding ownership interests of such bank, trust company or financial institution.

(d) No Town Board Member, Town Officer or Town Employee shall accept other employment which will impair his independence of judgment in the exercise of his official duties.

(e) No Town Board Member, Town Officer or Town Employee shall accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority. Town Board Members, Town Officers and Town Employees and former Town Board Members, Town Officers and Town Employees shall not disclose any confidential information acquired by him in the course of his official duties or use it to further personal interests.

(f) No Town Board Member, Town Officer or Town Employee shall use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.

(g) No Town Board Member, Town Officer or Town Employee shall engage in any transaction as Town Consultant, or as a representative or agent of the Town, with any business entity in which he has a direct or indirect interest, financial or otherwise, that might reasonably tend to conflict with the proper discharge of his official duties.

(h) No Town Board Member, Town Officer or Town Employee shall conduct himself in a manner which presents a reasonable basis for the impression that another party can improperly influence him or unduly enjoy his favor in the performance of his official duties.

(i) Each Town Board Member, Town Officer and Town Employee shall refrain from making personal investments in enterprises which he has reason to believe may be directly involved in decisions to be made by him or which will otherwise create substantial conflict between his duty in the public interest and his private interest.

(j) Each Town Board Member, Town Officer and Town Employee shall endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaging in acts that are in violation of his trust.

(k) Each Town Board Member, Town Officer and Town Employee shall disclose any interest of which he is aware in any matters pending before the Town.

(l) No Town Board Member, Town Officer or Town Employee shall directly or indirectly solicit any gift or accept or receive any gift having a value of Seventy-Five (\$75.00) Dollars or more whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise or in any other form, under circumstances

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in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him in the performance of his official duties or was intended as a reward for any official action on his part.

(m) Each Town Board Member, Town Officer and Town Employee shall promptly recuse himself from acting on a matter before the Town if acting on the matter, or failing to act on the matter, may financially benefit any of the following persons: (i) the Town Board Member, Town Officer or Town Employee; (ii) his outside employer or business; (iii) any Immediate Family Member; (iv) a customer or client; (v) a relative; or (vi) a person or Business Entity from whom the Town Board Member, Town Officer or Town Employee has received election campaign contributions of more than One Thousand (\$1000) Dollars in the aggregate during the past twelve months.

(n) No Town Board Member, Town Officer or Town Employee may use his official title, position or authority in any campaign activities unrelated to his own election, including untargeted mass mailings, or fundraising efforts. No Town resources may be used in furtherance of related or unrelated campaign activities, including, but not limited to, telephones, office supplies, postage, copying machines, computers or support staff.

(o) No Town Board Member, Town Officer or Town Employee shall knowingly request or authorize anyone else to request or authorize any subordinate of the Town Board Member, Town Officer or Town Employee to participate in an election campaign or contribute to a political committee.

(p) No Town Board Member, Town Officer or Town Employee shall induce or aid another Town Board Member, Town Officer or Town Employee to violate any of the provisions of this Local Law or Article 18 of the General Municipal Law.

(q) No Town Board Member, Town Officer or Town Employee shall knowingly act contrary to a lawful resolution or motion duly adopted by the Town.

(r) No Town Board Member, Town Officer or Town Employee shall receive, or enter into any agreement, express or implied, as a Town Consultant or otherwise, for compensation for services to be rendered in relation to any matter before any Town Agency of which he is a member, an officer, or employee or of any Town Agency over which he has jurisdiction or to which he has the power to appoint any Town Board Member, Town Officer or Town Employee.

(s) No Town Board Member, Town Officer or Town Employee shall receive, or enter into any agreement, express or implied, as a Town Consultant or otherwise for compensation for services to be rendered in relation to any matter before any Town Agency, whereby his compensation is to be dependent or contingent upon any action by such agency with respect to such matter, provided that this paragraph shall not

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prohibit the fixing at any time of fees based upon the reasonable value of the services rendered.

(t) Nothing in this Local Law shall be construed to prohibit any Town public officer listed in § 11 of the Domestic Relations Law of the State of New York from accepting any gift or benefit having a value of One Hundred (\$100.00) Dollars or less for the solemnization of a marriage by that Town public officer at a place other than the Town officer's normal place of business or at a time other than the Town officer's normal hours or business.

(u) Any contract willfully entered into by or with the Town in which there is an interest prohibited by this Local Law or Article 18 the General Municipal Law shall be null, void and wholly unenforceable.

### **SECTION 6. DISCLOSURE OF INTEREST**

(a) Contracts or Agreements. Any Town Board Member, Town Officer or Town Employee who has, will have, or later acquires an Interest in an actual or proposed contract or agreement with the Town or other matter pending before any board or agency thereof, shall publicly disclose the nature and extent of such Interest in writing to his immediate supervisor and to the governing body thereof as soon as he has knowledge of such actual or prospective Interest. Such written disclosure shall be made part of and set forth in the official record of the proceedings of such body.

(b) Certain Applications. Every application, petition or request submitted for a variance, approval, amendment, change of zoning, approval of a plat, exemption from a plat or official map, license or permit, pursuant to the provisions of any ordinance, local law, rule or regulation constituting the zoning and planning regulations of the Town shall state the name, residence and the nature and extent of the Interest of any Town Board Member, Town Officer or Town Employee, in the person or Business Entity making such application, petition or request to the extent known to such applicant.

### **SECTION 7. PENALTIES**

(a) Disciplinary action. Any Town Board Member, Town Officer or Town Employee who engages in any action that violates any provision of this Local Law 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 Local Law or in any other provision of law.

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(b) Damages. A Town Board Member, Town Officer or Town Employee who violates any provision of this Local Law shall be liable in damages to the Town for any losses or increased costs incurred by the Town 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 Local Law, other than a civil forfeiture pursuant to subdivision (c) of this section.

(c) Civil forfeiture. A Town Board Member, Town Officer or Town Employee who intentionally or knowingly violates any provision of this Local Law may be subject to a civil forfeiture to the Town of a sum equal to three times the value of any financial benefit he 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 Local Law, other than damages pursuant to subdivision (b) of this section.

(d) Violation. A Town Board Member, Town Officer or Town Employee who intentionally or knowingly violates any provision of this Local Law or Article 18 of the General Municipal Law shall be guilty of a class A misdemeanor for which a fine not exceeding One Thousand (\$1,000.00) Dollars and/or a sentence to a term of imprisonment in excess of fifteen (15) days and up to one year may be imposed by a court.

(e) Enforcement. With the exception of subsection (d) above, the Town Board shall have exclusive jurisdiction to enforce the provisions of this Local Law and may commence an action in a court of competent jurisdiction in furtherance of such enforcement.

### **SECTION 8. BOARD OF ETHICS**

(a) Establishment. There is hereby established a Board of Ethics consisting of at least three (3) members but not more than seven (7) members to be appointed by the Town Board, all of whom reside in the Town of Duanesburg and who shall serve without compensation at the pleasure of the Town Board. A majority of such members shall be persons other than Town Board Members, Town Officers or Town Employees but shall include at least one member who is an elected or appointed officer or employee of the Town of Duanesburg. Of the total membership of the Board of Ethics, no more than a majority of the members shall be registered in the same political party.

(b) Advisory Board. Upon the written request of any Town Board Member, Town Officer or Town Employee, the Board of Ethics may render a written advisory opinion with respect to the interpretation or application of this Local Law or of Article 18 of the General Municipal Law. Any other person may similarly request an advisory opinion but only with respect to whether his own action might violate a provision of this Local Law or Article 18 of the General Municipal Law. The

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opinions of the Board of Ethics shall be advisory and confidential and in no event shall the identity of the Town Board Member, Town Officer or Town Employee be disclosed except to authorized persons and agencies. Such opinions shall be on the advice of the Town Attorney, the attorney for the Town or other attorney duly licensed to practice law in the State of New York and engaged by the Town Board for such purpose. The Town Board shall have the sole authority to determine which attorney shall be engaged for this purpose, on a case by case basis.

i. Advisory opinions and requests for advisory opinions shall be indexed and maintained on file by the Board of Ethics.

ii. Any person who has submitted to the Board of Ethics a written request for an advisory opinion may bring a special proceeding pursuant to Article 78 of the Civil Practice Law and Rules for an order compelling the Board of Ethics to issue the advisory opinion. In addition to, or in lieu of, such injunctive relief, the person may seek a judgment in accordance with section 3001 of the Civil Practice Law and Rules determining the question posed in the request for the advisory opinion. No action or special proceeding shall be prosecuted or maintained pursuant to this subdivision unless it shall appear by and as an allegation in the petition or complaint that at least six months have elapsed since the filing of the request and that the Board of Ethics has failed to file any determination in the matter.

### **SECTION 9. BOARD OF ETHICS JURISDICTION, POWERS AND DUTIES**

(a) The Board of Ethics may only act with respect to Town Board Members, Town Officers and Town Employees.

(b) The termination of a Town Board Member's, Town Officer's or Town Employee's term of office or employment with the Town shall not affect the jurisdiction of the Board of Ethics with respect to the requirements imposed on the Town Board Member, Town Officer or Town Employee by this Local Law.

(c) The Board of Ethics shall have the following powers and duties:

i. To prescribe and promulgate rules and regulations governing its own internal organization and procedures in a manner consistent with this Local Law and Article 18 of the General Municipal Law;

ii. To review, index, maintain on file, and dispose of written complaints and to make notifications and conduct investigations pursuant to Section 10 of this Local Law;

iii. To render, index, and maintain on file advisory opinions and/or other necessary records pursuant to Section 8 of this Local Law;

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iv. To provide training and education to Town Board Members, Town Officers and Town Employees pursuant to Section 12 of this Local Law;

v. To prepare an annual report and recommend changes to this Local Law pursuant to Section 13 of this Local Law; and

vi. To provide for public inspection of certain records pursuant to Section 14 of this Local Law.

### **SECTION 10. BOARD OF ETHICS INVESTIGATIONS**

(a) Upon receipt of a written complaint by any person alleging a violation of this Local Law or Article 18 of the General Municipal Law, or upon determining on its own initiative that a violation of this Local Law may exist, the Board of Ethics shall have the power and duty to conduct any investigation necessary to carry out the provisions of this Local Law and Article 18 of the General Municipal Law.

(b) The Board of Ethics shall state in writing the disposition of every written complaint it receives and of every investigation it conducts and shall set forth the reasons for the disposition. All such statements and all written complaints shall be indexed and maintained on file by the Board. The Town Board Member, Town Officer or Town Employee who was under investigation shall be notified of the outcome of the investigation in writing within thirty (30) days of the Board's decision.

(c) Any person filing a written complaint with the Board of Ethics shall be notified in writing of the disposition of the written complaint. The Board of Ethics may, in its sole discretion, provide a copy of any written determination to such person filing the written complaint or may, in its sole discretion, simply notify such person of its determination in a manner deemed appropriate by the Board of Ethics.

(d) Nothing in this section shall be construed to permit the Board of Ethics to conduct an investigation of itself or of any of its members or staff. If the Board of Ethics receives a written complaint alleging that the Board or any of its members or staff has violated any provision of this Local Law, or any other law, the Board shall promptly transmit to the Town Board a copy of the written complaint. In such instance, the Town Board shall have all of the powers and duties of the Board of Ethics as set forth in this Local Law.

### **SECTION 11. BOARD OF ETHICS HEARINGS, ASSESSMENT OF PENALTIES AND DISCIPLINARY ACTION**

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(a) In its discretion, after a hearing providing for due process procedural mechanisms and subject to any applicable provisions of law and collective bargaining agreements, the Board of Ethics may recommend appropriate disciplinary action pursuant to Section 7 of this Local Law. The recommendation of the Board of Ethics shall be made to the Town Board. The Board of Ethics shall conduct and complete the hearing with reasonable promptness, unless in its discretion the Board of Ethics refers the matter to the Town. If such a referral is made, the Board of Ethics may adjourn the matter pending determination by the Town Board.

(b) Any person aggrieved by a decision of the Board of Ethics or the Town Board if the matter has been referred to it, may seek judicial review and relief pursuant to Article 78 of the Civil Practice Law and Rules of the State of New York.

### **SECTION 12. TRAINING AND EDUCATION**

Educating Town Board Members, Town Officers, Town Employees and the public on Article 18 of the General Municipal Law and the local ethics laws are among the most important functions of a Board of Ethics. Therefore, the Board of Ethics shall:

(a) Make information concerning this Local Law and Article 18 of the General Municipal Law available to the Town Board Members, Town Officers and Town Employees, to the public, and to persons interested in doing business with the Town; and

(b) Develop educational materials and an educational program for the Town Board Members, Town Officers and Town Employees on the provisions of this Local Law and on Article 18 of the General Municipal Law.

### **SECTION 13. ANNUAL REPORTS; REVIEW OF ETHICS LAWS**

(a) The Board of Ethics shall prepare and submit an annual report to the Town Board of the Town of Duanesburg, summarizing the activities of the Board of Ethics. The report may recommend changes to the text or administration of this Local Law.

(b) The Board of Ethics shall periodically review this Local Law and the Board of Ethics's rules, regulations, and administrative procedures to determine whether they promote integrity, public confidence, and participation in Town government and whether they set forth clear and enforceable, common sense standards of conduct.

### **SECTION 14. PUBLIC INSPECTION OF RECORDS; PUBLIC ACCESS TO MEETINGS**

(a) The only records of the Board of Ethics which shall be available for public inspection are those whose disclosure are required by Article 6 of the Public Officers Law of the State of New York or by some other State or Federal law or regulation.

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(b) No meeting or proceeding of the Board of Ethics concerning misconduct, nonfeasance, or neglect in office by a Town Board Member, Town Officer or Town Employee shall be open to the public, except upon the request of the Town Board Member, Town Officer or Town Employee or as required by the provisions of Article 7 of the Public Officers Law or by State or Federal law.

### SECTION 15. ADMINISTRATION

(a) Upon the adoption of this Local Law, the Town Supervisor shall cause a copy thereof to be distributed to every Town Board Member, Town Officer and Town Employee. Failure to distribute any such copy or failure of any Town Board Member, Town Officer or Town Employee to receive such copy shall have no effect on the duty of compliance with this code, nor the enforcement of provisions hereof. The Town Supervisor shall further cause a copy of this Local Law to be kept posted conspicuously in each public building under the jurisdiction of the Town. Failure to so post this Local Law shall have no effect on the duty of compliance herewith, nor the enforcement provisions hereof.

(b) The Town Board may appropriate monies from the general town funds for the maintenance of the Board of Ethics, and for the payment of any expenses, including attorneys fees.

### SECTION 16. SEVERABILITY CLAUSE

If any clause, sentence, paragraph, section or part of this Local Law shall be adjudicated by any Court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof involved in the controversy in which such judgment shall have been rendered.

### SECTION 17. PRONOUNS AND PLURALS

Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural, and vice versa.

### SECTION 18. EFFECTIVE DATE

This Local Law shall take effect immediately upon its filing with the Secretary of State.