

TOWN OF BURKE
RESOLUTION ADOPTING REVISED CODE OF ETHICS

1. **Purpose.** The purpose of this Resolution is to create a revised Code of Ethics and to require disclosure of facts tending to show Prohibited Interests. The citizenry of the Town of Burke ("the Town") are entitled to the expectation of exemplary ethical behavior from their officers, employees and appointed officials.
2. **Definitions.**
 - a. **CONTRACT** means any claim, account or demand against or agreement with a municipality, express or implied, and shall include the designation of a depository of public funds and the designation of a newspaper, including but not limited to an official newspaper, for the publication of any notice, resolution, ordinance, or other proceeding where such publication is required or authorized by law. The term includes application to the Town or any of its officials for any permit or permission, except any such permit or permission which is non-discretionary.
 - b. **INTEREST** means a direct or indirect pecuniary or material benefit accruing to a Subject Individual as the result of any Contract or any action or determination by the Town which such Subject Individual serves. For the purposes of this Local Law a Subject Individual shall be deemed to have an Interest in the Contract of or any action or determination concerning (a) his or her spouse, minor children and dependents, except a contract of employment with the municipality which such Subject Individual serves, (b) a firm, partnership or association of which such Subject Individual is a member or employee, (c) a corporation of which such Subject Individual is an officer, director or employee and (d) a corporation any stock of which is owned or controlled directly or indirectly by such Subject Individual.
 - c. **PROHIBITED INTEREST** An Interest of a Subject Individual if the Subject Individual, individually or as a member of any board, has the power to duty to:
 - i. negotiate, prepare, authorize or approve the Contract or the action or determination or authorize or approve payment thereunder;
 - ii. audit bills or claims under the Contract or action or determination; or
 - iii. appoint a person who has any of the powers or duties set forth above.
 - d. **TOWN**-The Town or any department, board, office, commission agency or authority thereof.
 - e. **SUBJECT INDIVIDUAL.** The following persons are Subject Individuals: Town Supervisor, Town Board Members, Town Justice, Town Clerk, Town Highway Superintendent, Town Assessor, members of Zoning Board of Appeals, members of Planning Board, member of the Town Ethics Board, Town Attorney or Attorney for Town, Town Engineer, all other Town officers and all Town employees.
 - f. **RECUSAL.** The abstaining from all consideration, deliberation, determination, voting, review, audit or enforcement of a Contract with the Town or an action or determination by the Town or its officers by any Subject Individual who would otherwise have such authority, either individually or as a member of a board.

3. **Code of Ethics.**

- a. **Conflicts of Interest and Appearances of Conflict.** It is the policy of the Town that all Subject Individuals must avoid Prohibited Interests or the appearance of a conflict of Interest.
- b. **Contracts or Business With Municipality.** No Subject Individual shall take action or participate in any manner whatsoever in his or her official capacity in the discussion, negotiation or awarding of any Prohibited Interest or in any business or professional dealings with the Town or any department thereof in which the Subject Individual has or will have a Prohibited Interest. Any such Subject Individual shall Recuse himself or herself from all matters having to do with such Prohibited Interest unless there is an applicable exception.
- c. **Outside Employment.** No Subject Individual shall engage in, solicit, negotiate for or promise to accept private employment or render services for his or her personal benefit when such employment or service creates a Prohibited Interest or impairs the proper discharge of his or her official duties.
- d. **Gifts.** No Subject Individual shall solicit or receive any gift, whether financial or in any other form from any person who is doing or seeking a Contract or who seeks to do business of any kind with the Town including applications for permits or approvals; or who has had a Contract with the town during the last twelve months; or from a lobbyist representing a person before a Town agency. A Subject Individual may not solicit or receive any gift or payment as a reward for exercise of official duties. Generally, a Subject Individual may not receive or solicit any gift creating the appearance that official duties may be influenced or that the responsibility to make impartial decisions solely in the public interest is compromised.
- e. **Disclosure of Confidential Information.** No Subject Individual shall disclose confidential information acquired in the course of official duties or use such information to further any personal interest.
- f. **Self Interest.** No Subject Individual shall take action on a matter before the Town or any instrumentality thereof when, to his or her knowledge, the performance of that action would provide a pecuniary or material benefit to himself or herself.
- g. **Town Property and Resources.** No Subject Individual may use Town-owned property, assets or any resources for personal purposes or profit or to benefit any person. Use of these resources is restricted to the conduct of official business, for the benefit of all residents and to further an authorized public purpose.
- h. **Nepotism.** During the service of the Subject Individual, spouses and other family members of the Subject Individual may not be appointed or reappointed to positions of employment or to a commission, board or body of which the Subject Individual is a member or over which the Subject Individual has any power (either individually or as a member of a board) of review, appointment, dismissal or audit, or the power to appoint some other person who has such power. This provision does not require such a spouse or family member to resign from such position if the position was acquired prior to the beginning of service of the

This is a point
of dispute.

- Subject Individual or prior to the enactment of this Resolution
- i. **Representation.** A Subject Individual shall not appear on behalf of, or represent a person in any matter before a municipal agency except on his own behalf.
 - j. **Requests For Political Contributions From Subordinates.** No Subject Individual shall solicit political contributions from subordinates or request that they attend political functions or engage in any political activity.
 - k. **Revolving Door.** No Subject Individual who has left municipal service shall appear before or receive compensation in a matter before his or her former agency for a period of 1 year after departure. Such person is permanently barred from appearing or receiving compensation regarding a matter in which he or she was personally involved as a town official.
 - l. **Incompatible Positions.** A Subject Individual is prohibited from:
 - i. Holding more than one position with the town when one is subordinate to the other.
 - ii. Holding more than one position with the town when the duties of the positions conflict
4. **Exceptions to Code of Ethics Requirements.** The foregoing Code of Ethics requirements shall not apply to:
- a. ~~The designation of a bank or trust company as a depository, paying agent, registration agent or for investment of funds of a municipality except when the chief fiscal officer, treasurer, or his deputy or employee, has an interest in such bank or trust company; provided, however, that where designation of a bank or trust company outside the municipality would be required because of the foregoing restriction, a bank or trust company within the municipality may nevertheless be so designated;~~
 - b. An action or determination by a Town official or board or a Contract with a person, firm, corporation or association in which a Subject Individual has a Prohibited Interest which is prohibited solely by reason of employment as an officer or employee thereof, if the remuneration of such employment will not be directly affected as a result of such action or Contract and the duties of such employment do not directly involve the procurement, preparation or performance of any part of such action or Contract;
 - c. The designation of a newspaper, including but not limited to an official newspaper, for the publication of any notice, resolution, ordinance or other proceeding where such publication is required or authorized by law;
 - d. The purchase by the Town of real property or an interest therein, provided the purchase and the consideration therefor is approved by order of the supreme court upon petition of the Town Board;
 - e. The acquisition of real property or an interest therein, through condemnation proceedings according to law;
 - f. A Contract with a not for profit corporation or other voluntary non-profit corporation or association;
 - g. The sale of bonds and notes pursuant to section 60.10 of the local finance law;
 - h. A Contract in which a Subject Individual has a Prohibited Interest if such Contract

Where does this
leave James Otis
vis-a-vis his employer
and the wind developers?

Given that the term "Contract" includes an "application to the town ... for any permit or permission" (see Definitions, above), is this clause "grandfathering" in Mr. Lobdell's contract on file in the courthouse with the wind developer? Is this, in other words, an effort to negate Section 805(c)&(d) of NYS General Municipal Law? On the other hand, (continued on following page)

... continued from p. 3

Are the wind developers actually applying for a permit or permission i. from the Town of Burke?

It seems to me they are not.

Rather, Burke is enacting a wind law on its own initiative, not as a result of a Contract

or permit application from the wind companies. In

this case, Mr. Lobdell's contract and Mr. Vincent's contract on file in the courthouse would be irrelevant to this Codek.

of Ethics and, hence,

both men would not be l. prohibited from voting on the current wind law. m.

was entered into prior to the time he or she was elected or appointed, but this paragraph shall in no event authorize a renewal of any such Contract; Purchases or public work by the Town pursuant to a Contract in which a Subject Individual has a Prohibited Interest, where:

- i. the Subject Individual is elected and serves without salary;
- ii. the purchases, in the aggregate, are less than five thousand dollars in one fiscal year and the governing body or board has followed its duly adopted procurement policies and procedures and the procurement process indicates that the Contract is with the lowest dollar offer; and
- iii. the Contract for the purchases or public work is approved by resolution of the body or board by the affirmative vote of each member of the body or board except the interested member who shall abstain.

An action or determination by the Town or any officer or a Contract with a corporation in which a Subject Individual has a Prohibited Interest by reason of stockholdings when less than five per centum of the outstanding stock of the corporation is owned or controlled directly or indirectly by such Subject Person; A Contract for the furnishing of public utility services when the rates or charges therefor are fixed or regulated by the public service commission;

A Contract for the payment of a reasonable rental of a room or rooms owned or leased by a Subject Individual when the same are used in the performance of his or her official duties and are designated as an office or chamber;

A Contract for the payment of a portion of the compensation of a private employee of a Subject Individual when such employee performs part time service in the official duties of the office held by the Subject Individual;

- n. A Contract in which a Subject Individual has a Prohibited Interest if the total consideration payable thereunder, when added to the aggregate amount of all consideration payable under Contracts in which such person had a Prohibited Interest during the fiscal year, does not exceed the sum of seven hundred fifty dollars.

- o. A Contract or action by the Subject Individual which is required to be made by law and which cannot otherwise be accomplished without action by the Subject Individual. As an example, it is permissible for a Sole Appointed Assessor who is a property owner in the Town to assess his or her own property or that of a spouse or family member.

5. Disclosure of Interest.

- a. Disclosure of Prohibited Interest by Subject Persons Making Decisions. Any Subject Individual who has a Prohibited Interest shall publicly disclose such interest on the official record of the Town and shall Recuse himself or herself.
- b. Disclosure of Interest by Subject Person Giving Advice or Recommendation. Any Subject Individual who has, will have or intends to acquire an Interest in any action or determination of the Town or its officers or a Contract being considered by the Town and who participates in the discussion before or who gives an opinion or gives advice to any board, department or individual considering the same shall publicly disclose on the official record of the Town the nature and the

- extent of such interest.
- c. **Disclosure of Interest by all other Subject Persons.** Any Subject Individual who has knowledge of any matter being considered by any board, department, officer or employee of the Town, in which matter he or she has or will have or intends to acquire any Interest, shall be required immediately to disclose, in writing, his or her Interest to such board, department, officer or employee and the nature and the extent thereof.
6. **Review.** Every Subject Person is required to attest, on an annual basis, that he or she has reviewed the Code of Ethics of the Town, to be made on or before March 31 of each year.
7. **Repeal of Prior Resolutions.** All prior inconsistent resolutions of the Town are hereby revoked.

CERTIFICATION OF TOWN CLERK:

I hereby certify that the foregoing resolution was duly passed at a regular meeting of the Town Board of the Town of Burke held on _____ by a vote of _____.

Dated: _____

Yvonne E. Spinner, Burke Town Clerk