

BOROUGH OF TOTOWA

ORDINANCE NO. 10-91

AN ORDINANCE OF THE BOROUGH OF TOTOWA
AMENDING THE CODE OF THE BOROUGH OF TOTOWA, NEW JERSEY,
TO ADD A CHAPTER TO ESTABLISH STANDARDS OF
ETHICAL CONDUCT FOR OFFICERS AND EMPLOYEES OF THE
BOROUGH OF TOTOWA AND ESTABLISHING THE
ETHICAL STANDARDS BOARD

BE IT ORDAINED by the Borough Council of the Borough of Totowa as follows:

SECTION I: To implement a Chapter in the general legislation of the Code of the Borough of Totowa to add the appropriate section to read as follows:

Code of Ethics.

1. TITLE. This Section shall be known and may be cited as the "Borough of Totowa Code of Ethics".

2. FINDINGS. The Borough Council finds and declares that:

- a. Public Office and employment are a public trust:
- b. The vitality and stability of representative democracy depend upon the public's confidence in the integrity of its elected and appointed representatives;
- c. Whenever the public perceives a conflict between the private interests and the public duties of a government officer or employee, that confidence is imperiled;;
- d. Governments have the duty both to provide their citizens with standards by which they may determine whether public duties are being faithfully performed, and to apprise their officers and employees of the behavior which is expected of them while conducting their public duties.

3. PURPOSE AND AUTHORITY.

a. It is the purpose of this Section to provide a method of assuring that standards of ethical conduct and financial disclosure requirements for officers and employees of the Borough of Totowa shall be clear, consistent, uniform in their application, enforceable and to provide those officers or employees with advice and information concerning possible conflicts of interest which might arise in the conduct of their public duties.

b. It is the further purpose of this Section to implement the provisions of the Local Government Ethics Law, P.L. 1991, c.29, N.J.S.A. 40A:9-22, et seq.

c. This Section is enacted under the authority of the Local Government Ethics Law, P.L. 1991, c.29, N.J.S.A. 40A:9-22, et seq., and under the further authority granted to the Borough of Totowa under the provisions of Titles 40 and 40A of the New Jersey Statutes.

4. DEFINITIONS.

a. "Agency" means any agency, board, governing body, including the chief executive officer, office commission, or other instrumentality within the Borough of Totowa and any independent local authority created by or appointed under the authority of the Borough of Totowa which performs functions other than of a purely advisory nature;

b. "Business organization" means any corporation, partnership, firm, enterprise, franchise, association, trust sole proprietorship, union or other legal entity;

c. "Employee" means any person, whether compensated or not, whether part-time or full-time, employed by or serving on an agency who is not a local government officer;

d. "Interest" means the ownership or control of more than 10% of the profits, assets or stock of a business organization but shall not include the control of assets in a non-union profit entity or labor union;

e. "Member of immediate family" means the spouse or dependent child of an officer or employee residing in the same household.

f. "Officer" means any person whether compensated or not, whether part-time or full time who is one of the following:

1. Mayor
2. Member of the Borough Council
3. Borough Clerk
4. Deputy Borough Clerk
5. Construction Code Official, Building Inspector and/or Zoning Officer
6. Superintendent of Public Works
7. Superintendent of Sewers
8. Water Registrar
9. Director, Department of Recreation
10. Chief of Police
11. Captain, Police Department
12. Fire Chief
13. Tax Assessor
14. Tax Collector
15. Treasurer, Chief Financial Officer
16. Borough Attorney
17. Borough Engineer
18. Borough Planning Consultant
19. Borough Auditor
20. Municipal Judge
21. Borough Prosecutor
22. Borough Public Defender
23. Planning Board Member
24. Planning Board Attorney
25. Zoning Board of Adjustment Member
26. Zoning Board of Adjustment Attorney
27. Local Assistance Board Member
28. Director of Public Assistance
29. Pool Commission Member
30. Member, Totowa Board of Health
31. Totowa Board of Health Attorney
32. Board of Fire Commissioners Member
33. Board of Fire Commissioners Attorney
34. Library Board of Trustees Member
35. Director, Borough of Totowa Library
36. Any other person who is a managerial executive or confidential employee, as defined in Section 3 of the "New Jersey Employer-Employee Relations Act," N.J.S.A. 34:13A-3, of the Borough of Totowa or of an agency created under the authority of or appointed by the Borough of Totowa.

g. "Officer or employee" means an officer or employee of the Borough of Totowa or of an agency under the authority or appointed by the Borough of Totowa.

5. ETHICAL STANDARDS. Officers and employees of the Borough of Totowa shall comply with the following provisions:

a. No officer or employee of the Borough of Totowa or member of his or her immediate family shall have an interest in a

business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his or her duties in the public interest;

b. No officer or employee shall use or attempt to use his or her official position to secure unwarranted privileges or advantages for himself or others;

c. No officer or employee shall act in his or her official capacity in any matter where he, a member of his or her immediate family, or any business organization in which he or she has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his or her objectivity or independence or judgment;

d. No officer or employee shall undertake any employment or service, whether compensated or not which might reasonably be expected to prejudice his or her independence of judgment in the exercise of his or her official duties;

e. No officer or employee, member of his or her immediate family, or any business organization in which he or she has an interest, shall solicit or accept any gift, favor, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise or other thing of value was given or offered for the purpose of influencing him, directly, or indirectly, in the discharge of his or her official duties. This provision shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, if the officer has no knowledge or reason to believe that the campaign contribution, if accepted, was given with the intent to influence the officer in the discharge of his or her official duties;

f. No officer or employee shall use, or allow to be used, his or her public office or employment, or any information, not generally available to the members of the public, which he or she receives or acquires in the course of and by reason of his or her office or employment, for the purpose of securing financial gain for himself, any members of his or her immediate family, or any business organization with which he or she is associated;

g. No officer or employee or any business organization in which he or she has an interest shall represent any person or party other than the Borough in connection with any cause, proceeding application or other matter pending before any agency of the Borough of Totowa. This provision shall not be deemed to prohibit an employee from representing another employee where the representation is within the context of official labor union or similar representational responsibilities; nor shall this

provision be applicable to the Borough Public Defendant with respect to representation of defendants in the Municipal Court;

h. No officer shall be deemed in conflict with these provisions if, by reason of his or her participation in the enactment of any Ordinance, Resolution or other matter required to be voted upon or which is subject to executive approval or veto, no material or monetary gain accrues to him or her as a member of any business, profession, occupation or group, to any greater extent than any gain could reasonably be expected to accrue to any other member of such business, profession, occupation or group;

i. No elected officer shall be prohibited from making an inquiry for information on behalf of a constituent, if no fee, reward or other thing of value is promised to, given to or accepted by the officer or a member of his or her immediate family, whether directly or indirectly, in return therefor; and

j. Nothing shall prohibit any officer or employee of the Borough of Totowa, or members of his or her immediate family, from representing himself, herself, or themselves, in negotiations or proceedings concerning his, her or their own interests.

k. No officer or employee elected or appointed in the Borough shall, without receiving formal written authorization from the appropriate person or body, disclose any confidential information concerning any other officer or employee or any other person or any property or governmental affairs of the Borough.

l. Approve or disapprove in any way recommended the payment of any bill, or indebtedness owed or allegedly owed by the Borough in which he has a direct or indirect personal, pecuniary or private interest.

m. No officer or employee elected or appointed in the Borough shall request, use or permit the use of any public property, vehicle, equipment, labor or services for personal convenience or the private advantage of himself or any other person. This prohibition shall not be deemed to prohibit an official or employee from requesting, using or permitting the use of such public property, vehicle, equipment, material, labor or service which it is the general practice to make available to the public at large or which are provided as a matter of stated public policy for the use of officials and employees in the conduct of official business.

6. FINANCIAL DISCLOSURE STATEMENTS.

a. Officers of the Borough shall annually file a financial disclosure statement. All financial disclosure statements shall include the following information which shall specify where applicable, the name and address of each source and the officer's job title:

1. Each source of income, earned or unearned, exceeding \$2,000 received by the officer or a member of his or her immediate family during the preceding calendar year. Individual client fees, customer receipts or commissions on transactions received through a business organization need not be separately reported as sources of income. If a publicly traded security is the source of income, the security need not be reported unless the local government officer or member of his or her immediate family has an interest in the business organization;
2. Each source fees and honorariums having an aggregate exceeding \$250 from any single source for personal appearances, speeches or writings received by the local government officer or a member of his or her immediate family during the preceding calendar year;
3. Each source of gifts, reimbursements or prepaid expenses having an aggregate value exceeding \$400 from any single source, excluding relatives, received by the local government officer or a member of his or her immediate family during the preceding calendar year;
4. The names and address of all business organizations in which the local government officer or a member of his or her immediate family had an interest during the preceding calendar year; and
5. The address and brief description of all real property in the State in which the local government officer or a member of his or her immediate family held an interest during the preceding calendar year.

b. The Borough of Totowa Ethical Standards Board shall prescribe a financial disclosure statement form for filing purposes. If a financial disclosure statement form has been promulgated by the New Jersey Local Finance Board, in accordance with the New Jersey Local Government Ethics Law, then that form shall be used. The Borough Clerk shall make the forms available to the officers and employees required to file a financial disclosure statement.

c. The original statement shall be filed with the Borough Clerk within 90 days after the effective date of the New Jersey Local Government Ethics Law. All subsequent statements shall be filed on or before April 30th of each year. A copy of the statement shall be filed with the Borough of Totowa Ethical Standards Board.

d. All financial disclosure statements filed shall be public records.

7. BOROUGH OF TOTOWA ETHICAL STANDARDS BOARD.

a. There is hereby established the Borough of Totowa Ethical Standards Board consisting of 6 members who are residents of the Borough, at least two of whom shall be public members. The members of the Board shall be appointed by the Borough Council. The members shall be chosen by virtue of their known and consistent reputation for integrity and their knowledge of local government affairs. No more than three members of the Board shall be of the same political party.

b. The members of the Borough of Totowa Ethical Standards Board shall annually elect a chairperson from among the membership.

c. The members shall serve for a term of five years; except that of the members initially appointed, two of the public members shall be appointed to serve for a term of five years, one member shall be appointed to serve for a term of four years. Each member shall serve until his or her successor has been appointed and qualified. Any vacancy occurring in the membership of the Board shall be filled in the same manner as the original appointment for the unexpired term.

d. Members of the Board shall serve without compensation but shall be reimbursed for necessary expenses incurred in the performance of their duties under this Section.

e. All hearings required pursuant to this Section shall be conducted in conformity with the rules and procedures, insofar as they may be applicable, provided for hearings by a State agency in contested cases under the "Administrative Procedure Chapter", N.J.S.A. 52-14B-1, et seq.

f. In the event a hearing is to be held, the officer or employee charges with violation of this section shall be accorded due process of law, including, but not limited to the following:

1. Right to counsel
2. Right to prehearing discovery

3. Right to take sworn oral and written testimony from any person
4. Reasonable notice of hearing
5. Right to subpoena persons and documents
6. Right to make stenographic record of the hearing
7. Right of examination and cross-examination

8. FACILITIES AND STAFF.

a. The Borough Clerk will provide the Borough of Totowa Ethical Standards Board with the facilities needed for the conduct of its business and that preservation of its records, and shall supply equipment and supplies as may be necessary and as may be provided for in the annual municipal budget.

b. All necessary expenses incurred by the Borough of Totowa Ethical Standards Board and its members shall be paid, upon certification of the chairperson of the Board, by the Borough Treasurer within the limits of funds appropriated in the annual budget or by emergency appropriations for those purposes.

c. The Borough of Totowa Ethical Standards Board may request and receive assistance from the Borough officers and employees, including the Borough Clerk and the Borough Attorney and may appoint employees, including independent counsel, and clerical staff as are necessary to carry out the provisions of this Chapter within the limits of funds appropriated by the Borough Council for those purposes in the annual budget.

9. ADOPTION OF A CODE OF ETHICS.

a. Within 90 days after the appointment of the Borough of Totowa Ethical Standards Board, the Board shall promulgate by resolution a code of ethics for all officers and employees serving the Borough. Officers and employees serving a Borough independent authority shall be deemed to be serving the Borough for purposes of this Section. Until such time as the Borough of Totowa shall have adopted a code of ethics, the provisions set forth in Section 2:20-5 shall serve as the code of ethics.

b. The code of ethics promulgated by the Board shall be either identical to the provisions set forth in Section 2:20-5 or more restrictive, but shall not be less restrictive.

c. Within 15 days following the promulgation thereof, the code of ethics, and a notice of the date of the public hearing to be held on the code of ethics, shall be published in the newspaper designated for the publication of official notices for the Borough and shall be distributed to the Borough Clerk for circulation among the officers and employees serving the Borough.

d. The Borough of Totowa Ethical Standards Board shall hold a public hearing on the code of ethics not less than 30 days following its promulgation at which any officer or employee of the Borough and any other person wishing to be heard shall be permitted to testify.

e. As a result of the hearing, the Board may amend or supplement the code of ethics as it deems necessary.

f. If the code of ethics is not identical to the provisions set forth in Section 2:20-5, the Borough of Totowa Ethical Standards Board shall, as required by law, submit the code of ethics to the New Jersey Local Finance Board for approval.

g. If the commission fails to act within 60 days of the submission, the code of ethics shall be deemed approved.

h. A code of ethics requiring approval by the New Jersey Local Finance Board shall take effect 60 days after approval by the commission.

i. A code of ethics identical to the provisions set forth in Section 2:20-5 shall take effect 10 days after public hearing.

j. The Board shall forward a copy of the code of ethics to the Borough Clerk and shall make copies available to officers and employees serving the Borough.

10. POWERS OF THE ETHICAL STANDARDS BOARD.

The Borough of Totowa Ethical Standards Board shall have the following powers:

a. To initiate, receive, hear and review complaints and hold hearings with regard to possible violations of the municipal code of ethics or financial disclosure requirements by local government officers or employees serving the Borough.

b. To issue subpoenas for the production of documents and the attendance of witnesses with respect to its investigation of any complaint or to the holding of a hearing.

c. To forward to the county prosecutor or the Attorney General or other governmental body any information concerning violations of the code of ethics or financial disclosure requirements by officers or employees serving the Borough which may warrant the institution of other legal proceedings by the Attorney General.

d. To render advisory opinions to local officers or employees serving the Borough as to whether a given set of facts and circumstances would constitute a violation of any provision of the code of ethics or financial disclosure requirements.

e. To enforce the provisions of the code of ethics and financial disclosure requirements with regard to officers or employees serving the Borough and to impose penalties for the violation thereof as are authorized by this Section; and

f. To adopt rules and regulations and to other things as are necessary to implement the purposes of this Section.

11. ADVISORY OPINIONS.

a. An officer or employee of the Borough of Totowa may request and obtain from the Borough of Totowa Ethical Standards Board an advisory opinion as to whether any proposed activity or conduct would in its opinion constitute a violation of the code of ethics or any financial disclosure requirement.

b. Advisory opinions shall not be made public, except when the Board by vote of two-thirds of all its members directs that the opinion be made public.

c. Public advisory opinions shall not disclose the name of the officer or employee unless the Board in directing that the opinion be made public so denies.

12. COMPLAINTS.

a. The Borough of Totowa Ethical Standards Board, upon receipt of a signed written complaint by any person alleging that the conduct of any officer or employee of the Borough of Totowa serving the Borough is in conflict with the code of ethics or financial disclosure requirements, shall acknowledge receipt of the complaint within 30 days of receipt and initiate an investigation concerning the facts and circumstances set forth in the complaint.

b. The Board shall make a determination as to whether the complaint is within its jurisdiction or frivolous or without any reasonable factual basis.

c. If the Board shall conclude that the complaint is outside its jurisdiction, frivolous or without factual basis, it shall reduce that conclusion to writing and shall transmit a copy thereof to the complainant and to the officer or employee of the Borough of Totowa against whom the complaint was filed.

d. If the Board shall conclude that the complaint is within its jurisdiction and has at least a minimal factual basis, the Board shall notify the officer or employee of the Borough of Totowa against whom the complaint was filed of the nature of the complaint and the facts and circumstances set forth therein.

e. The officer or employee shall have the opportunity to present the Board with any statement or information concerning the complaint which he or she wishes.

f. If the Board determines that a reasonable doubt exists as to whether the officer or employee of the Borough of Totowa is in conflict with the municipal code of ethics or financial disclosure requirements, the Board shall conduct a hearing concerning the possible violation and any other facts and circumstances which may have come to the attention of the Board with respect to the conduct of the officer or employee.

g. The Board shall render a decision as to whether the conduct of the officer or employee is in conflict with the code of ethics or any financial disclosure requirements. This decision shall be made by no less than two-thirds of all members of the Board.

h. If the Board determines that the officer or employee is in conflict with the code or any financial disclosure requirements, it may impose any penalties which it believes appropriate within the limits of this Chapter.

13. ENFORCEMENT AND PENALTIES.

a. An appointed officer or employee of the Borough of Totowa found guilty by the Borough of Totowa Ethical Standards Board of the violation of any provision of this Section or of any code of ethics in effect pursuant to this Section, shall be fined not less than \$100.00 nor more than \$500.00, which penalty may be collected in a summary proceeding pursuant to the "penalty enforcement law", N.J.S.A. 2A:58-1. The Borough of Totowa Ethical Standards Board shall report its findings to the office or agency having the power or removal or discipline of the appointed officer or employee and may recommend that further disciplinary action be taken.

b. An elected officer or employee of the Borough of Totowa Ethical Standards Board of the violation of any provision of this Section or of any code of ethics in effect pursuant to this Section, shall be fined not less than \$100.00 nor more than \$500.00, which penalty may be collected in a summary proceeding pursuant to the "penalty enforcement law" (N.J.S.A.:58-1).

c. The finding by the Borough of Totowa Ethical Standards Board that an appointed officer or employee of the Borough of Totowa is guilty of the violation of the provisions of this Section, or of any code of ethics in effect pursuant to this Section, shall be sufficient cause for his or her removal, suspension, demotion or other disciplinary action by the officer or agency having the power of removal or discipline. When a person who is in the career service is found to have violated the provisions of this Section, the procedure leading to removal, suspension, demotion or other disciplinary action shall be governed by any applicable procedures of Title 11A of the New Jersey Statutes and the rules promulgated pursuant thereto.

14. RECORDS OF THE ETHICAL STANDARDS BOARD.

All statements, complaints, requests or other written materials filed pursuant to this Section, and any rulings, opinions, judgments, transcripts or other official papers prepared pursuant to this Section shall be preserved for a period of five years from the date of filing or preparation, as the case may be.

SECTION II: This Ordinance shall take effect upon final adoption and publication of notice of adoption as required by law, except that the requirements providing for the filing of financial disclosure reports shall take effect on the 21st day of May, 1991, with the first reports to be filed not later than August 19, 1991.



SALVATORE DEL VECCHIO
MUNICIPAL CLERK



JACK W. MASKLEE, MAYOR

INTRODUCED: July 16, 1991

ADOPTED: August 13, 1991

BOROUGH OF TOTOWA

ORDINANCE NO. 06-2016

AN ORDINANCE TO AMEND THE CODE OF THE BOROUGH OF TOTOWA
CHAPTER 38 ENTITLED "ETHICS, CODE OF"

BE IT ORDAINED by the Mayor and Council of the Borough of Totowa, County of Passaic and State of New Jersey that Chapter 38 of the Code of the Borough of Totowa entitled "Ethics, Code of", as amended, revised and supplemented is hereby repealed, revoked and abolished in its entirety.

SECTION I: That Chapter 38 entitled "Ethics, Code of" as amended, revised and supplemented is hereby amended, revised and supplemented as follows:

These Sections are hereby repeal, revoke and abolished in their entirety:

- A. Section 38-7. Ethical Standards Board.
- B. Section 38-8. Facilities and staff.
- C. Section 38-9. Adoption of standards; amendment.
- D. Section 38-10. Powers of Board.
- E. Section 38-11. Advisory Opinions.
- F. Section 38-12. Complaints.
- G. Section 38-13. Enforcement.
- H. Section 38-14. Records to be preserved.

SECTION II: That Chapter 38 entitled "Ethics, Code of", Section 4, "Definitions" as amended, revised and supplemented is hereby amended, revised and supplemented to create a new Section 4 as follows:

- A. Section 38-4. Adoption of Standards by Reference.

The Local Government Ethics Law, N.J.S.A.40A:9-22.1, et seq., as amended and supplemented, is hereby adopted by reference and incorporated herein, as though the entire provisions of said law were set forth verbatim and at length herein.

SECTION III. That Chapter 38 entitled "Ethics, Code of" as amended, revised and supplemented is hereby amended, revised and supplemented to renumber each Section accordingly.

SECTION IV: That Chapter 38 entitled "Ethics, Code of" as amended, revised and supplemented is hereby amended, revised and supplemented to create a new Section 38-8 as follows:

- A. Section 38-7. Local Finance Board to Have Jurisdiction.

The Local Finance Board in the Division of Local Government Services in the New Jersey Department of Community affairs shall have jurisdiction to govern

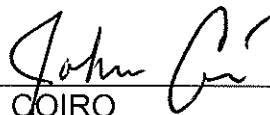
and guide the conduct of local government officers and employees regarding violations of this Chapter.

SECTION V: All other provisions of this Chapter shall remain unchanged and in full force and effect.

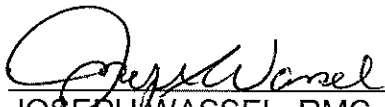
SECTION VI: All Ordinances or parts of Ordinances that are inconsistent with the provisions of the within Ordinance are hereby repealed to the extent of such inconsistency only.

SECTION VII: If any article, section, subsection, sentence, clause or phrase of this Ordinance is for any reason deemed to be unconstitutional or invalid by any court of competent jurisdiction, such decision shall not affect the remaining portions of this Ordinance.

SECTION VIII: This Ordinance shall take effect immediately upon final passage and publication as required by law.



JOHN COIRO
MAYOR



JOSEPH WASSEL, RMC
MUNICIPAL CLERK

INTRODUCED: April 12, 2016
ADOPTED: April 26, 2016