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**RESOLUTION NO. 37 OF 2011  
TOWN OF CLAYTON  
A RESOLUTION TO AMEND THE TOWN OF CLAYTON CODE OF ETHICS AND ADOPT THE JEFFERSON  
COUNTY BOARD OF ETHICS AS HAVING JURISDICTION OF REVIEW.  
DATED: APRIL 13, 2011**

**Title:** A resolution to amend the Town of Clayton Code of Ethics and adopt the Jefferson County Board of Ethics as having jurisdiction of review.

At a regular meeting of the Town Board of the Town of Clayton, Jefferson County, New York, held at the Town of Clayton Hall, Clayton, New York, on the 13<sup>th</sup> day of April, 2011 at 5:00 OM, prevailing time,

The regular meeting was called to order by Supervisor Taylor and upon roll being called the following were:

**PRESENT:** Justin A. Taylor, Supervisor  
George E. Kittle, Councilman  
Lance Peterson, Councilman  
Robert W. Cantwell III, Councilman  
Christopher D. Matthews, Councilman

The following resolution was offered by George Kittle, who moved its adoption, seconded by Chris Matthews, to wit:

**WHEREAS**, the Town Board has reviewed a proposed amended version of the Town of Clayton Code Of Ethics, that was originally penned in 1970, and amended in 1989, and

**WHEREAS**, the Town Board feels the original and 1989 amended version of the Town of Clayton Code of Ethics is in need of revision and updates again,

**NOW, THEREFORE, BE IT RESOLVED** by the Town of Board of the Town of Clayton, to authorize the updates to the Town of Clayton Code of Ethics to include these current revisions and also adopt that the Jefferson County Board of Ethics will have jurisdiction of review if so needed.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call, which resulted as follows:

Justin A. Taylor, Supervisor	Yes <u>X</u> No <u>__</u>
George E. Kittle, Councilman	Yes <u>X</u> No <u>__</u>
Lance Peterson, Councilman	Yes <u>X</u> No <u>__</u>
Robert W. Cantwell III, Councilman	Yes <u>X</u> No <u>__</u>
Christopher D. Matthews, Councilman	Yes <u>X</u> No <u>__</u>

Yes 5 No 0 Abstain 0 Absent 0

Dated: April 13, 2011

**Certification**

I, Kathleen E. LaClair, Town Clerk of the Town of Clayton, do hereby certify that the above resolution was adopted at a regular meeting of the Town Board of the Town of Clayton held on April 13, 2011 and it's on file and of record, and that said resolution has not been altered, amended or revoked and is in full force and effect.

(SEAL)

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Kathleen E. LaClair, Town Clerk

**REPLACING THE FORMER CODE OF ETHICS, ORIGINALLY ADOPTED IN 1970 AND AMENDED IN 1991, FOR THE TOWN OF CLAYTON**

**BE IT RESOLVED** by the Town Board of the Town of Clayton as follows:

**Section 1. Title of Code.**

This Code shall be entitled "A Code Replacing the Former Code of Ethics, Adopted in 1970 and Amended in 1989."

**Section 2. Authorization.**

This Code 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 3. Statement of Intent.**

Officers and employees of the Town of Clayton hold their positions to serve and benefit the public, and not for obtaining unwarranted personal or private gain in the exercise and performance of their official powers and duties. The Town Board of the Town of Clayton recognizes that there are state statutory provisions mandating towns to establish rules and standards of ethical conduct for public offices and employees which, if observed, can enhance public confidence in local government. The purpose of this Code is to implement this objective through the establishment of clear and reasonable standards of ethical conduct for officers and employees of the Town, to afford officers and employees of the Town guidance on such standards, to provide for punishment of the violation of such standards, and to provide for the fair and effective administration of this Code.

**Section 4. Repeal of Existing Town Ethics Laws.**

The standards, prohibited acts and procedures established herein are in addition to any prohibited acts, conflicts of interest provisions or procedures prescribed by statute and case law relating to the conduct of town officers and employees. To the extent this Code includes prohibited acts, conflicts of interest provisions or procedures not included in Section 808 of the General Municipal Law, the provisions of this Code shall apply. This Code shall supersede any prior municipal code of ethics and all rules, regulations, policies and procedures of the Town of Clayton.

**Section 5. Definitions.**

As used in this Code, the terms:

(a) "Board" shall mean the governing board of a municipality and any municipal administrative board (e.g. planning board, zoning of board of appeals), commission, or other agency or body comprised of two or more municipal officers or employees.

(b) "Code" shall mean this code of ethics.

(c) "Gift" shall include anything of value, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form. For the purposes of this Code, "gift" shall not include (i) gifts made to the municipality; (ii) gifts from a person with a family or personal relationship with the officer or employee when the circumstances make it clear that the personal relationship, rather than the recipient's status as a municipal officer or employee, is the primary motivating factor for the gift; (iii) gifts given on special occasions, such as marriage, illness, or retirement, which are modest, reasonable and customary; (iv) unsolicited advertising or promotional material of little intrinsic value, such as pens, pencils, note pads, and calendars; (v) awards and plaques having a value of seventy-five dollars or less which are publicly presented in recognition of service as a municipal officer or employee, or other service to the community; (vi) meals and refreshments provided when a municipal officer or employee is a speaker or participant at a job-related professional or educational conference or program and the meals and refreshments are made available to all participants; (vii) meals and refreshments or items of little intrinsic value provided while in attendance at local social events, such as holiday festivities or functions that local officials routinely attend, such as chamber of commerce events or an event or activity fulfilling a public purpose; or (viii) general benefits available to the general public.

(d) "Interest" shall mean a direct or indirect financial or material benefit, but does not include any benefit arising from the provision or receipt of any services generally available to the residents or taxpayers of the municipality or an area of the municipality, or a lawful class of such residents or taxpayers. A municipal officer or employee is deemed to have an interest in any private organization when he or she, his or her spouse, or a member of his or her household, is an owner, partner, member, director, officer, employee, or directly or indirectly owns or controls more than 5% of the organization's outstanding stock.

(e) "Municipality" shall mean the Town of Clayton. The word "municipal" refers to the municipality.

(f) "Municipal officer or employee" shall mean any officer or employee of the Town of Clayton, whether paid or unpaid, including members of any administrative board, commission or other agency thereof, whether serving in a full-time, part-time or advisory capacity. The term "town employee" does not include a person who is a member of a volunteer emergency services organization or a person who serves without compensation on a temporary town committee and who is not otherwise an employee or officer of the town.

(g) "Recusal" shall mean that the official or employee may not deliberate, vote or participate in any way in that matter. The official or employee should disclose his or her

conflict and remove him or herself from the board or committee. He or she should not provide input regarding the matter from the audience in his or her capacity as a member of the public.

(h) "Relative" shall mean a spouse, parent, step-parent, sibling, step-sibling, sibling's spouse, child, step-child, uncle, aunt, nephew, niece, first cousin, or household member of a municipal officer or employee, and individuals having any of these relationships to the spouse of the officer or employee.

(i) "Town" shall mean any board, commission, district, council or other agency, department or unit of government of the Town of Clayton.

(j) "Town Employee" shall mean the same as "Municipal officer or employee".

### **Section 6. Rules With Respect to Conflicts of Interest.**

(a) No municipal officer or employee shall use his or her municipal position or official powers and duties to secure a financial or material benefit for himself or herself, a relative, or any private organization in which he or she is deemed to have an interest.

(b) No town officer or 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.

(c) No town officer or employee shall have an interest in any contract with the municipality of which he is an officer or employee, when such officer or employee, individually or as a member of a board, has the power or duty to (a) negotiate, prepare, authorize or approve the contract or authorize or approve thereunder (b) audit bills or claims under the contract, or (c) appoint an officer or employee who has any of the powers or duties set forth herein.

(d) No chief fiscal officer, treasurer or deputy or employee of the Town shall have an interest in a bank or trust company designated as a depository, paying agent, registration agent or for investment of funds of the municipality of which he is an officer or employee. This subsection does not prohibit ownership of up to five percent of the outstanding shares of such bank or trust company.

(e) No town officer or employee shall accept other employment which will impair his independence of judgment in the exercise of his official duties.

(f) No town officer or 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 officers and employees and former

Town officers and employees shall not disclose any confidential information acquired by them in the course of their official duties or use it to further personal interests.

(g) No town officer or employee shall use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.

(h) No town officer or employee shall engage in any transaction as representative or agent of the town with any business entity in which he has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his official duties.

(i) Each town officer or 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 officer or employee shall 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 officer or employee shall disclose any interest of which he is aware in any matters pending before any board of the Town.

(l) Each town officer or employee shall disclose any and all personal interest in legislation pending before the Town Board and affirmatively abstain from discussion or voting on legislation to which the official or employee has an interest. Each town officer or employee shall refrain from influencing or attempting to influence other public officers or employees with respect to such legislation.

(m) No town officer or employee shall directly or indirectly solicit any gift or accept or receive any gift having a value of Seventy-Five Dollars (\$75.00) or more whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise or in any other form under such circumstances 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.

(n) A Town officer or employee shall promptly recuse himself from acting on a matter before the Town when acting on the matter, or failing to act on the matter, may financially benefit any of the following persons: (i) the town officer or employee; (ii) his outside employer or business; (iii) member of his household; (iv) a customer or client; (v) a relative; or (vi) person from whom the officer or employee has received election campaign contributions of more than \$1000 in the aggregate during the past twelve months.

(o) No municipal officer or employee, either individually or as a member of a board, may participate in any decision specifically to appoint, hire, promote, discipline or discharge a relative for any position at, for or within the municipality or a municipal board.

(p) No municipal officer or employee may supervise a relative in the performance of the relative's official powers and duties.

(q) No Town resources may be used in furtherance of such campaign activities, including, but not limited to, mass mailings, telephones, office supplies, postage, copying machines, computers or support staff.

(r) No Town officer shall knowingly act contrary to a lawful resolution or motion duly adopted by the Town Board.

(s) This code shall not be construed as prohibiting a municipal officer or employee from:

(i) representing himself or herself, or his or her spouse or minor children before the municipality; or

(ii) asserting a claim against the municipality on his or her own behalf, or on behalf of his or her spouse or minor children.

#### **Section 7. Disclosure of Interest.**

Any municipal officer or employee who has, will have, or later acquires an interest in an actual or proposed contract with the municipality or other matter pending before any board or agency thereof, shall publicly disclose the nature and extent of such interest in writing to the governing body thereof as soon as he has knowledge of such actual or prospective interest. Such disclosure shall be completed by all elected Town officials, all full- and part-time Town employees, and each member of all boards of the Town, whether paid or volunteer.

#### **Section 8. Recusal and abstention.**

(a) Any municipal officer or employee who has, will have, or later acquires an interest in or whose spouse has, will have, or later acquires an interest in any actual or proposed contract, purchase agreement, lease agreement or other agreement, including oral agreements, with the municipality of which he or she is an officer or employee, shall publicly disclose the nature and extent of such interest in writing to his or her immediate supervisor and to the governing body thereof as soon as he or she 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) Notwithstanding the provisions of subsection (a) of this section, disclosure shall not be required in the case of an interest in a contract described in General Municipal Law §802(2).

#### **Section 9. Prohibition inapplicable; disclosure, recusal and abstention not required.**

(a) This code's prohibition on use of a municipal position (section 6), disclosure requirements (section 7), and requirements relating to recusal and abstention (section 8), shall not apply with respect to the following matters:

- (i) adoption of the municipality's annual budget;
  - (ii) any matter requiring the exercise of discretion that directly affects any of the following groups of people or a lawful class of such groups:
    - (a) all municipal officers or employees;
    - (b) all residents or taxpayers of the municipality or an area of the municipality; or
    - (c) the general public; or
  - (iii) any matter that does not require the exercise of discretion.
- (b) Recusal and abstention shall not be required with respect to any matter:
- (i) which comes before a board when a majority of the board's total membership would otherwise be prohibited from acting by section 6 of this code;
  - (ii) which comes before a municipal officer when the officer would be prohibited from acting by section 6 of this code and the matter cannot be lawfully delegated to another person.

## **Section 10. Penalties**

(a) Disciplinary action. Any Town officer or employee who engages in any action that violates any provision of this Code may be warned or reprimanded 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, or other authorized sanction may be imposed in addition to any other penalty contained in this Code or in any other provision of law.

(b) Damages. A Town officer or employee who violates any provision of this Code 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 Code, other than a civil forfeiture pursuant to subdivision (c) of this section.

(c) Civil forfeiture. A Town officer or employee who intentionally or knowingly violates any provision of this Code 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 Code, other than a civil fine pursuant to subdivision (c) or damages pursuant to subdivision (b) of this section.

(d) Violation. A Town officer or employee who intentionally or knowingly violates any provision of this Code may be guilty of a Violation and be subject to a maximum fine of \$250 for each such violation or a 15 day term of imprisonment or both.

(e) Enforcement. With the exception of subsection (a) above, the Town Board shall have exclusive jurisdiction to enforce the provisions of Section 6 by commencing an action in a court of competent jurisdiction in furtherance of such enforcement.

**Section 11. Board of Ethics.**

(a) The Town of Clayton hereby deems that the Jefferson County Board of Ethics will be utilized for any ethics-related issues in the Town of Clayton, in place of the creation of an independent Town of Clayton Board of Ethics.

**Section 12. Severability Clause.**

If any clause, sentence, paragraph, section or part of this Code 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 directly involved in the controversy in which such judgment shall have been rendered.

**Section 13. Effective Date.**

This Code shall take effect immediately.