

Revised Ethics Ordinance 10.11.18

Cross-references: See 29 Del. Code chapter 58, subch. I.

§ 9-1. Short title; effective date; applicability; and statement of policy.

- A. This chapter shall be known as "The City of Lewes Code of Ethical Conduct."
- B. This chapter is effective upon approval by the Public Integrity Commission following enactment by Mayor and City Council and supersedes prior provisions of this chapter except that any existing proceedings of the Board of Ethics as of the effective date of this chapter shall proceed under the provisions of this chapter in effect when those proceedings were initiated.
- C. This chapter shall be applicable to all officials (elected and appointed, whether or not compensated) and to all employees (whether full-time or part-time) of The City of Lewes.
- D. It is the purpose of this chapter to establish and provide for adherence to the high standards of ethical conduct for officials and employees of The City of Lewes to ensure public confidence in, and to protect, the integrity of City government. To this end, this chapter applies to all discussions, debates, proposals, initiatives, and actions concerning any "matter," as defined in this chapter.

§ 9-2. Definitions.

- A. Bias: A public statement or action that reasonably shows a pre-disposition not to exercise independent and impartial judgment concerning a matter. Reliance on gender, gender fluidity, sex, race, color, national origin, sexual orientation, or stereotypes based on the foregoing factors, or refusal to fully and fairly consider opposing viewpoints or the record of a matter can be examples of bias. Advocacy for a position or initiative, policy, action, or position reflecting the exercise of independent and impartial judgment based on analysis and consideration of the record of a matter, applicable law and precedent, and the best interests of The City of Lewes, is not bias.
- B. Close relative: An official's or employee's parent, spouse, child (natural or adopted), sibling, grandparent or grandchild, whether whole, half, or step.
- C. Employee: Any person employed by and receiving compensation from The City of Lewes on a full or part time basis. Employee does not include an individual holding an elected or appointed position with The City of Lewes.
- D. Employment interest: An official or employee has an employment interest if he or she, or his or her close relative, is discussing possible employment (whether compensated or not), or a change in the terms and conditions of employment, with a person having a matter pending before the City of Lewes.
- E. Entity: Any corporation, company, partnership, proprietorship, or other organization,

1 including non-profits.  
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- 3 F. Financial interest: An official or employee possesses a financial interest if he or she or a  
4 close relative could be financially affected, directly or indirectly, by a matter. A financial  
5 interest does not include an ownership interest equal to one percent or less in a public  
6 company.  
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- 8 G. Matter: A matter is any issue, initiative, application, ordinance, or similar item, and  
9 anything requiring an action or inaction by a City official or employee in her or his  
10 official capacity, that has been suggested or proposed, formally or informally, and has  
11 not been finally resolved, whether executive, legislative, or adjudicatory in nature.  
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- 13 H. Official: A person who holds an elected or appointed position with The City of Lewes.  
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- 15 I. Person: Any individual or entity.  
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- 17 J. Personal or Private Interest: A personal or private interest in a matter is an interest that  
18 tends to impair the impartiality of an official or employee in the performance of his or  
19 her official duties with respect to that matter. A personal or private interest includes,  
20 but is not limited to, any financial or employment interest that is affected, directly or  
21 indirectly, by a matter.  
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23 § 9-3. Standards of ethical conduct. An official or employee of The City of Lewes shall:  
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- 25 A. Pursue the interests of The City of Lewes in official actions.  
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- 27 B. Avoid official actions or inactions that, from the perspective of a reasonable person, do  
28 or might give the appearance of pursuit of personal or private interests before the  
29 interests of The City of Lewes.  
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- 31 C. Exercise impartial and independent judgment based on analysis and consideration of  
32 the record of a matter, applicable law and precedent, and the best interests of The City  
33 of Lewes.  
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- 35 D. Not exhibit bias as to any matter.  
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- 37 E. Adhere to the disclosure and recusal provisions of this chapter.  
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- 39 F. Cooperate fully and forthrightly with all proceedings of the Board of Ethics.  
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- 41 G. No official or employee shall use his or her position to secure special privileges,  
42 advancement, gain, or exemptions for himself, herself, or others whether for  
43 compensation, gratuity, or without any compensation or gratuity.  
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- 45 H. No official or employee shall solicit, demand, accept, or agree to accept from another  
46 person anything of value for or because of any official action taken or to be taken or  
47 which could be taken or any legal duty, to be performed or which could be performed,  
48 by such official or employee.

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- I. No official or employee shall, beyond the scope of such public position, disclose confidential information gained by reason of such public position nor shall an official or employee otherwise use such information for personal gain or benefit.
  
- J. No officer or employee, in the course of his or her public responsibilities, shall use the granting of sexual favors as a condition, either explicit or implicit, for an individual's favorable treatment by the City.

§ 9-4. Disclosure requirements. All voting members of elected public bodies of the City shall disclose to the City Manager in writing their interests in real estate located in or contiguous to the City and in any entity doing business in the City. Such disclosures shall be made within 20 days following (i) the effective date of this requirement, (ii) election, or (iii) appointment, whichever is earlier, shall be amended within 20 days following any change in the information disclosed, and shall be publicly available.

§ 9-5. Recusal. An official or employee who is biased or who has a personal or private interest in or concerning a matter must recuse himself or herself from discussion, consideration, review, and voting on the matter, and may do so without disclosing the nature of the bias or interest.

§ 9-6. Exceptions. In any case where a person has a statutory responsibility with respect to action or inaction on any matter in which he or she may have a personal or private interest and there is no provision for the delegation of such responsibility to another person, nor is there any provision for the designation of another person to take action or refrain from taking action, the person may exercise responsibility with respect to such matter, provided that he or she promptly, after becoming aware of such personal or private interest, files a written statement with the City Council fully disclosing the personal or private interest and explaining why it is not possible to delegate responsibility for the matter to another person.

§ 9-7. Contracting with the City.

- A. The City shall not make or enter into any contract in excess of \$500 for materials, supplies, work, or labor for the benefit and use of the City with any official or employee of the City or with any entity in which any official or employee has a financial interest unless all the elected members of the City Council, other than the interested official or employee, vote to execute such contract. Any such contracted executed without such unanimous vote and consent shall be absolutely null and void.
  
- B. Any person being awarded a contract with the City in excess of \$5,000 shall execute such documents as may be required by the City and shall represent that no person has been retained to solicit or secure the contract with the City upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting for bona fide employees, bona fide established commercial agencies maintained by the person representing the contracting party for the purpose of securing business.

§ 9-8. Board of Ethics.

- 1 A. There is hereby established a Board of Ethics for The City of Lewes consisting of five  
2 members, residents of the City, appointed by the Mayor and confirmed by a majority  
3 vote of all the [when a vacancy occurs within the last two years of a member's term, the  
4 replacement is appointed] members of the City Council. Neither the Mayor nor any  
5 other member of the City Council nor any employee of the City shall be a member of the  
6 Board of Ethics.  
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- 8 B. Each member of the Board of Ethics shall be appointed for a term of three years;  
9 provided, however, that upon the original appointments, one member shall be  
10 appointed for a term of one year; two members for a term of two years; two members  
11 for a term of three years. Each member shall be eligible for reappointment and may be  
12 removed from office during the term thereof for neglect of duty, gross misconduct in  
13 office or for a violation of this chapter.  
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- 15 C. The Board shall elect from among its own number a Chair and a Secretary, each of  
16 whom shall serve for a period of one year or until their respective successors have been  
17 duly appointed and qualified. Any vacancy among the members of the Board shall be  
18 filled in the same manner as the original appointment and shall be for the remainder of  
19 the unexpired term.  
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- 21 D. The Board shall meet upon the call of its Chair or upon a written request by a majority of  
22 the members of the Board. The Board shall adopt rules for the conduct of its meetings  
23 and for the holding of hearings. A majority of the Board shall constitute a quorum for  
24 the transaction of any business; provided, however, that the affirmative vote of three  
25 members is required for the conduct of any disciplinary hearing or for the imposing of  
26 any sanctions.  
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- 28 E. The Chair shall preside at all meetings. The Secretary shall maintain the books and  
29 records of the Board and shall keep and maintain a complete set of minutes of all  
30 meetings and hearings conducted by the Board.  
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- 32 F. All complaints received by the Board concerning an alleged violation of this chapter and  
33 all proceedings before the Board concerning such allegations shall be confidential, and  
34 confidentiality of all such complaints and proceedings, including the disposition thereof,  
35 shall be maintained unless public disclosure is requested, in writing, by the official or  
36 employee whose conduct is the subject of the complaint or hearing or the Board  
37 determines, after a hearing, that a violation has occurred.  
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- 39 G. It shall be the duty and responsibility of the Board of Ethics to administer and  
40 implement the provisions of this chapter. To that extent, the Board of Ethics may:  
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- 42 1. Recommend to the City Council from time to time such rules of conduct for officials  
43 and employees of the City as it shall deem appropriate, including provisions and  
44 amendments to this chapter.
  - 45 2. Hear and investigate complaints and transmit findings to the City Council or the City  
46 Manager.
  - 47 3. Issue written advisory opinions upon the request of any City official or employee  
48 concerning the applicability of this chapter to any particular factual situation.

- 1           4. Refer to the City Solicitor for investigation any alleged violation of this chapter and,  
2           after notice and hearing, recommend by resolution such disciplinary action as it may  
3           deem appropriate to the City Council. The Board of Ethics may also dismiss, without  
4           reference to the City Solicitor, any complaint which the Board of Ethics determines  
5           is frivolous or fails to state a violation.  
6           5. Maintain a file of its proceedings, waiver decisions and advisory opinions with a  
7           view toward achieving consistency of opinions and recommendations subject to the  
8           confidentiality requirements of this chapter.  
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- 10          H. Any person who, while a member of the Board of Ethics, becomes a candidate for the  
11          office of Mayor or for the office of City Councilperson shall be disqualified from sitting  
12          on any complaint received by the Board of Ethics while such person is a candidate.  
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14 § 9-9. Complaints.  
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- 16          A. Upon a complaint signed under penalty of perjury by any person ("complainant") or  
17          upon its own motion, the Board of Ethics shall, through its counsel, conduct a  
18          preliminary inquiry into any alleged violation of this code. A complaint shall be filed  
19          either by mail addressed to, or by hand delivery to, the Board of Ethics through City Hall.  
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- 21          B. Preliminary inquiry. The Board of Ethics shall keep information, records, and  
22          proceedings relating to a preliminary inquiry confidential. A preliminary inquiry shall be  
23          limited to public available information.  
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- 25                  1. The Board shall, however, have the authority to refer the matter to law  
26                  enforcement officials during a preliminary inquiry or at any time thereafter without  
27                  providing notice to the subject of the inquiry. The Board of Ethics shall endeavor to  
28                  complete its preliminary inquiry within 60 days of its initiation.  
29                  2. If the Board determines after a preliminary inquiry that no reasons exist to proceed  
30                  to an investigation, the Board shall terminate the inquiry and so notify the  
31                  complainant and the person who had been the subject of the inquiry. If the Board  
32                  determines that the complaint is frivolous, it shall so state. For purposes of this  
33                  chapter, a "frivolous" complaint is a complaint which alleges a substantially  
34                  insignificant or trivial violation of the Code of Ethics or a minor violation which  
35                  occurred as the result of inadvertence or innocent error.  
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- 37          C. After a preliminary inquiry, the Board may initiate an investigation, through its counsel,  
38          to determine if there has been a violation of the Code of Conduct. The Board shall keep  
39          information, records, and proceedings relating to an investigation confidential until a  
40          final determination is made, except as otherwise provided in this chapter.  
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- 42                  1. No Board investigation may be commenced until the person who is the subject of  
43                  the investigation has been notified by the Board and provided a general statement  
44                  of the alleged violation. Service of notice is complete upon mailing, which shall be  
45                  by certified or registered mail. [See 9.7.G(4): investigations may be commenced  
46                  other than by the Board.]  
47                  2. If an investigation indicates that no violation has been committed, the Board shall  
48                  immediately terminate the investigation and send written notice of such

1 determination to the complainant and the person who is the subject of the  
2 investigation.

- 3 3. After the receipt of the complaint, the preliminary inquiry and the initiation of the  
4 investigation, the Board secretary shall promptly contact the members of the Board  
5 as well as the complainant and the person who is the subject of the investigation  
6 (hereinafter "respondent"), in order to ascertain a date and time when a hearing  
7 may be convened on such complaint. As soon as a date and time have been agreed  
8 upon for a hearing before the Board, the Board secretary shall send written notice  
9 of such scheduling to complainant and the respondent.
- 10 4. The Board secretary shall also send a copy of these rules of procedure to the  
11 complainant and the respondent. If either the complainant or the respondent  
12 advises the Board secretary that he or she is represented by legal counsel or other  
13 representative, a copy of these rules of procedure shall be provided to that attorney  
14 or representative.
- 15 5. Any party to a hearing before the Board of Ethics has the right to be represented by  
16 an attorney.
- 17 6. The record of hearing before the Board of Ethics shall be preserved on audio  
18 recording equipment. Any party to a hearing shall have the right to arrange for the  
19 services of a certified court reporter to transcribe all or any portion of the  
20 proceedings. Such court reporter services shall be paid for by the party requesting  
21 such services or by both parties if mutually agreed upon prior to the hearing.
- 22 7. Prior to the commencement of the evidentiary portion before the Board of Ethics,  
23 any party may challenge the jurisdiction of the Board over the matter complained  
24 of. The Board of Ethics may raise jurisdictional questions sua sponte. The Board  
25 shall satisfy itself that it has jurisdiction over respondent and the subject matter of  
26 the complaint before proceeding with the remainder of the hearing.
- 27 8. The Board shall have the authority to dismiss any complaint which it deems to be  
28 frivolous.
- 29 9. The Board shall be provided legal assistance during the course of the hearing by the  
30 City Solicitor or designee. The Board may elect to designate its legal counsel to  
31 serve in the capacity as law officer during the conduct of the hearing. At any  
32 appropriate point in the proceedings, the Board shall have the right to adjourn to an  
33 executive session in order to seek the advice of its legal counsel.
- 34 10. At the outset of a hearing, a party, or his or her representative, shall be offered the  
35 opportunity to make an opening statement summarizing the position of that party  
36 as well as what that party believes the evidence will show. The complainant shall  
37 make an opening statement first, followed by that of the respondent.
- 38 11. The complainant shall present his or her case first. Evidence shall be presented in  
39 the form of testimony, documents, or other demonstrative evidence. All witnesses  
40 shall testify under oath. In order to testify at a hearing, a witness shall be called by  
41 one of the parties or by the Board. Members of the public not called to testify by a  
42 party or by the Board shall not be permitted to testify. Any witness called by any  
43 party or the Board shall be subject to cross-examination by any other party.  
44 Members of the Board may question any witness.
- 45 12. The Board of Ethics shall have the power to compel the attendance of witnesses  
46 and/or the production of documentary evidence by the issuance of a subpoena.  
47 Such subpoenas may be issued by the Board sua sponte. A party seeking to compel  
48 the attendance of a witness or the production of documents shall request the

1 issuance of an appropriate subpoena not less than seven days prior to the date of  
2 the relevant hearing. The application shall be granted upon a concise showing by  
3 such person that the proposed testimony or evidence is relevant or is reasonably  
4 calculated to lead to the discovery of relevant evidence and is not otherwise  
5 available. The application shall be denied if not made at a reasonable time or if the  
6 testimony or evidence would be merely cumulative. Such subpoenas shall be issued  
7 by the Chairman of the Board of Ethics on behalf of the Board by hand delivery or by  
8 first class mail, certified return receipt requested.

- 9 13. In any proceeding before the Board of Ethics, upon the request of any person  
10 charged with the violation of this chapter, such person shall be permitted to inspect,  
11 copy or photograph books, papers, documents, photographs or other tangible  
12 evidence which may be used as evidence against that person in a disciplinary  
13 hearing which is material to the preparation of his defense.
- 14 14. In any proceeding before the Board of Ethics, if the City Solicitor or the Board at any  
15 time receives any exculpatory information respecting an alleged violation against  
16 any person, it shall forthwith make such information available to such person.
- 17 15. In order to be admissible, all evidence shall be relevant and material to the issues  
18 before the Board. Evidence will be excluded which is unduly cumulative, repetitive,  
19 or scandalous.
- 20 16. After the evidentiary portion of the hearing has been concluded, each party shall  
21 have an opportunity to make a closing statement to the Board. The complainant  
22 shall give a closing first, followed by the respondent. The complainant may then  
23 make a brief rebuttal closing.
- 24 17. As promptly as possible after the close of the hearing, the Board of Ethics shall  
25 deliberate and come to a decision on the complaint. In arriving at its decision in a  
26 particular case, a majority of the Board shall be satisfied that the complainant has  
27 proved, by a preponderance of the evidence, that a provision of the Code of Ethics  
28 has been violated by respondent.
- 29 18. As soon after a vote as may be practicable, the Board shall issue a written decision  
30 which sets forth its findings of fact, conclusions of law, and decision on the  
31 complainant. Said written decision shall be forwarded to the parties or their  
32 representatives. The written decision on a particular complaint shall constitute the  
33 minutes of the Board of Ethics with respect to the matter.
- 34 19. All decisions of the Board of Ethics shall be maintained by the Board secretary. If  
35 the Board of Ethics has determined that a violation of the Code of Ethics has  
36 occurred, it shall establish the penalty of such violation, including, but not limited  
37 to:
- 38 a. Issue a written reprimand or censure of that person's conduct.
  - 39 b. With respect to any municipal employee or municipal officer, other than an  
40 elected official, remove, suspend, demote or take other appropriate  
41 disciplinary action with respect to that person without regard to any limits  
42 imposed by the City of Lewes Personnel Policy but within the limits of the  
43 Constitution and other laws of this state. The Board of Ethics, with respect  
44 to an honorary official, may recommend that appropriate action be taken to  
45 remove the official from office.
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20. The parties to a hearing may, with the consent of the Board of Ethics, agree to waive or dispense with any of the aforementioned rules of procedure. If the complainant and the respondent agree to any such change, a request to proceed in another fashion shall be submitted to the Board of Ethics not less than seven days prior to the date of the relevant hearing.

21. Hearings conducted pursuant to this chapter shall be closed to the public unless the respondent requests an open hearing.

22. A respondent, upon receipt of the decision of the Board of Ethics, may file a petition for reconsideration before the Board of Ethics within 10 days of the issuance of such decision. Such petition for reconsideration shall stay action by the Mayor and City Council until the Board of Ethics determines the status of such petition for reconsideration.

23. In the event that the Board of Ethics finds that any person has violated any provision of this chapter, said person shall have a right of appeal to the Superior Court of any such finding and of any sanctions imposed with respect thereto by filing a notice of appeal with the Superior Court within 30 days of the final action by the Board of Ethics in a particular case. The appeal shall be on the record without a trial de novo. If the court determines that the record is insufficient for its review, it shall remand the case to the Board of Ethics for further proceedings on the record. The Court's review, in the absence of actual fraud, shall be limited to a determination of whether the Board of Ethics' decision was supported by substantial evidence on the record. The burden of proof in any such appeal shall be on the appellant, all pursuant to 29 Del. C. § 5810A.

D. A member of the Board of Ethics shall not participate as a member of the Board in any proceeding relating to his or her conduct. A member of the Board who has been found by the Board to have violated this chapter shall be ineligible to serve again as a member of the Board.

E. A member of the Board of Ethics may disqualify himself or herself from participating in any investigation of the conduct of any person upon submission in writing and under oath of an affidavit of disqualification stating that he cannot render an impartial and unbiased decision in a case in which he seeks to disqualify himself.

§ 9-10. Violations and penalties. In addition to any other penalty set forth herein, any person violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and, upon conviction thereof in a court of competent jurisdiction, shall be fined not less than \$50 nor more than \$200 or be imprisoned for a term of not more than 20 days, or both, and shall pay the costs of prosecution.