

Town Of Gaines, NY

Town Board Minutes

Organizational Meeting – January 2, 2018

The organizational meeting (required by sections 62 and 123 of the NYS Town Law) of the Town of Gaines, County of Orleans, State of New York was called to order by Supervisor Joseph Grube at 7:00 PM on the 2nd of January, 2018.

The following town officials were present:

Joseph Grube	Supervisor
James Kirby	Councilperson
Mary Neilans	Councilperson
Tyler Allport	Councilperson
Susan Heard	Town Clerk
Bruce Schmidt	Town Justice

Excused: Richard DeCarlo, Councilperson

Others present included: Tom Rivers, Orleans Hub and Adrienne Kirby. Ten (10) Town of Gaines residents

The Supervisor opened the meeting with the Pledge to the Flag, followed by a moment of silent reflection.

RESOLUTION NO. 1 - 0118

PROFESSIONAL SERVICES APPOINTMENTS FOR 2018

Moved by Councilperson Kirby and seconded by Councilperson Allport to appoint Douglas Heath, Esq., of Heath and Martin, as Attorney for the Town.

Ayes 4; Nays 0; 1 Absent, DeCarlo

Moved by Councilperson Neilans and seconded by Councilperson Kirby to designate Chatfield Engineers as provider of engineering services for the town.

Ayes 4; Nays 0; 1 Absent, DeCarlo

Discussion: As of January 2, 2018, only one quote for auditing services has been received. Councilperson Neilans suggested the language of the resolution be changed to say the Town will conduct an audit in 2018 for the year ending 2017, upon receipt of three quotes. Resolution as follows:

Moved by Councilperson Neilans and seconded by Councilperson Kirby to authorize the Supervisor to table the selection of an auditing firm until the next regular meeting. The purpose for the audits is to comply with the requirement that a review of finances of the town be conducted, as outlined by section

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123 of the Town Law, including the Town Clerk and Justice Court, for the period of January 1, 2017 to December 31, 2017.

Ayes 4; Nays 0; 1 Absent, DeCarlo

RESOLUTION NO. 2 - 0118

APPROVAL OF UPDATED CODE OF ETHICS

Moved by Councilperson Allport and seconded by Councilperson Kirby the following resolution relating to the Code of Ethics for the Town of Gaines

WHEREAS, article 18 of the General Municipal Law prohibits the officers and employees of a municipality from having certain conflicts of interest, and;

WHEREAS section 806 of the General Municipal Law requires the governing body of each county, city (other than the City of New York), town, village, school district and fire district to adopt a code of ethics that sets forth for the guidance of its officers and employees standards of conduct reasonably expected of them, and

WHEREAS section 806 of the General Municipal Law also authorizes the governing body of any other municipality to adopt such a code of ethics, and;

WHEREAS a code of ethics adopted by the governing body of a municipality must set forth standards of conduct for the guidance of the officers and employees of the municipality with respect to disclosure of interests in legislation before the local governing body, holding of investments in conflict with official duties, private employment in conflict with official duties, future employment, and such other standards as may be deemed advisable;

WHEREAS it is important to periodically review adopted codes and policies to ensure their continued accuracy and adherence to accepted models, and the current code of ethics had not been reviewed since 2013;

NOW, THEREFORE, be it resolved that the Town Board of the Town of Gaines hereby adopts a revised code of ethics, which will be included in its entirety in the minutes and will posted and distributed in accordance with the provisions outlined in said Code of Ethics.

Ayes 4; Nays 0; 1 Absent, DeCarlo

Discussion: Supervisor Grube said the language of the Code of Ethics is taken verbatim from the New York State Comptroller's State model on the Code of Ethics. The only other change was to remove names of officials.

Code of Ethics reads as follows:

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Code of Ethics of the Town of Gaines

Section 1. Purpose.

Officers and employees of the Town of Gaines 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 recognizes that, in furtherance of this fundamental principle, there is a need for clear and reasonable standards of ethical conduct. This code of ethics establishes those standards.

Section 2. Definitions.

(a) “Board” means 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” means this code of ethics.

(c) “Interest” means 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.

(d) “Municipality” means the Town of Gaines. The word “municipal” refers to the municipality.

(e) “Municipal officer or employee” means a paid or unpaid officer or employee of the Town of Gaines including, but not limited to, the members of any municipal board.

(f) “Relative” means 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.

Section 3. Applicability.

This code of ethics applies to the officers and employees of the Town of Gaines and shall supersede any prior municipal code of ethics. The provisions of this code of ethics shall apply in addition to all applicable State and local laws relating to conflicts of interest and ethics including, but not limited to, article 18 of the General Municipal Law and all rules, regulations, policies, and procedures of the Town of Gaines.

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Section 4. Prohibition on use of municipal position for personal or private gain.

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.

Section 5. Disclosure of interest in legislation and other matters.

(a) Whenever a matter requiring the exercise of discretion comes before a municipal officer or employee, either individually or as a member of a board, and disposition of the matter could result in a direct or indirect financial or material benefit to himself or herself, a relative, or any private organization in which he or she is deemed to have an interest, the municipal officer or employee shall disclose in writing the nature of the interest.

(b) The disclosure shall be made when the matter requiring disclosure first comes before the municipal officer or employee, or when the municipal officer or employee first acquires knowledge of the interest requiring disclosure, whichever is earlier.

(c) In the case of a person serving in an elective office, the disclosure shall be filed with the governing board of the municipality. In all other cases, the disclosure shall be filed with the person's supervisor or, if the person does not have a supervisor, the disclosure shall be filed with the municipal officer, employee or board having the power to appoint to the person's position. In addition, in the case of a person serving on a municipal board, a copy of the disclosure shall be filed with the board. Any disclosure made to a board shall be made publicly at a meeting of the board and must be included in the minutes of the meeting.

Section 6. Recusal and abstention.

(a) No municipal officer or employee may participate in any decision or take any official action with respect to any matter requiring the exercise of discretion, including discussing the matter and voting on it, when he or she knows or has reason to know that the action could confer a direct or indirect financial or material benefit on himself or herself, a relative, or any private organization in which he or she is deemed to have an interest.

(b) In the event that this section prohibits a municipal officer or employee from exercising or performing a power or duty:

(1) if the power or duty is vested in a municipal officer as a member of a board, then the power or duty shall be exercised or performed by the other members of the board; or

(2) if the power or duty that is vested in a municipal officer individually, then the power or duty shall be exercised or performed by his or her deputy or, if the officer does not have a deputy, the power or duty shall be performed by another person to whom the officer may lawfully delegate the function.

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(3) if the power or duty is vested in a municipal employee, he or she must refer the matter to his or her immediate supervisor, and the immediate supervisor shall designate another person to exercise or perform the power or duty.

Section 7. Prohibition inapplicable; disclosure, recusal and abstention not required.

(a) This code's prohibition on use of a municipal position (section 4), disclosure requirements (section 5), and requirements relating to recusal and abstention (section 6), shall not apply with respect to the following matters:

(1) adoption of the municipality's annual budget;

(2) any matter requiring the exercise of discretion that directly affects any of the following groups of people or a lawful class of such groups:

(i) all municipal officers or employees;

(ii) all residents or taxpayers of the municipality or an area of the municipality; or

(iii) the general public; or

(3) any matter that does not require the exercise of discretion.

(b) Recusal and abstention shall not be required with respect to any matter:

(1) 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;

(2) 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 8. Investments in conflict with official duties.

(a) No municipal officer or employee may acquire the following investments:

(1) investments that can be reasonably expected to require more than sporadic recusal and abstention under section 6 of this code; or

(2) investments that would otherwise impair the person's independence of judgment in the exercise or performance of his or her official powers and duties.

(b) This section does not prohibit a municipal officer or employee from acquiring any other investments or the following assets:

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- (1) real property located within the municipality and used as his or her personal residence;
- (2) less than five percent of the stock of a publicly traded corporation; or
- (3) bonds or notes issued by the municipality and acquired more than one year after the date on which the bonds or notes were originally issued.

Section 9. Private employment in conflict with official duties.

No municipal officer or employee, during his or her tenure as a municipal officer or employee, may engage in any private employment, including the rendition of any business, commercial, professional, or other types of services, when the employment:

- (a) can be reasonably expected to require more than sporadic recusal and abstention pursuant to section 6 of this code;
- (b) can be reasonably expected to require disclosure or use of confidential information gained by reason of serving as a municipal officer or employee;
- (c) violates section 805-a(1)(c) or (d) of the General Municipal Law; or
- (d) requires representation of a person or organization other than the municipality in connection with litigation, negotiations or any other matter to which the municipality is a party.

Section 10. Future employment.

- (a) No municipal officer or employee may ask for, pursue, or accept a private post-government employment opportunity with any person or organization that has a matter requiring the exercise of discretion pending before the municipal officer or employee, either individually or as a member of a board, while the matter is pending or within the 30 days following final disposition of the matter.
- (b) No municipal officer or employee, for the two-year period after serving as a municipal officer or employee, may represent or render services to a private person or organization in connection with any matter involving the exercise of discretion before the municipal office, board, department or comparable organizational unit for which he or she serves.
- (c) No municipal officer or employee, at any time after serving as a municipal officer or employee, may represent or render services to a private person or organization in connection with any particular transaction in which he or she personally and substantially participated while serving as a municipal officer or employee.

Section 11. Personal representations and claims permitted.

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

- (a) representing himself or herself, or his or her spouse or minor children before the municipality; or
- (b) asserting a claim against the municipality on his or her own behalf, or on behalf of his or her spouse or minor children.

Section 12. Use of municipal resources

- (a) Municipal resources shall be used for lawful municipal purposes. Municipal resources include, but are not limited to, municipal personnel, and the municipality's money, vehicles, equipment, materials, supplies or other property.
- (b) No municipal officer or employee may use or permit the use of municipal resources for personal or private purposes, but this provision shall not be construed as prohibiting:
 - (1) any use of municipal resources authorized by law or municipal policy;
 - (2) the use of municipal resources for personal or private purposes when provided to a municipal officer or employee as part of his or her compensation; or
 - (3) the occasional and incidental use during the business day of municipal telephones and computers for necessary personal matters such as family care and changes in work schedule.
- (c) No municipal officer or employee shall cause the municipality to spend more than is reasonably necessary for transportation, meals or lodging in connection with official travel.

Section 13. Interests in Contracts.

- (a) No municipal officer or employee may have an interest in a contract that is prohibited by section 801 of the General Municipal Law.
- (b) Every municipal officer and employee shall disclose interests in contracts with the municipality at the time and in the manner required by section 803 of the General Municipal Law.

Section 14. Nepotism.

Except as otherwise required by law:

- (a) 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.
- (b) No municipal officer or employee may supervise a relative in the performance of the

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relative's official powers or duties.

Section 15. Political Solicitations

(a) No municipal officer or employee shall directly or indirectly to compel or induce a subordinate municipal officer or employee to make, or promise to make, any political contribution, whether by gift of money, service, or other thing of value.

(b) No municipal officer or employee may act or decline to act in relation to appointing, hiring, or promoting, discharging, disciplining, or in any manner changing the official rank, status or compensation of any municipal officer or employee, or an applicant for a position as a municipal officer or employee, on the basis of the giving or withholding or neglecting to make any contribution of money or service or any other valuable thing for any political purpose.

Section 16. Confidential Information.

No municipal officer or employee who acquires confidential information in the course of exercising or performing his or her official powers or duties may disclose or use such information unless the disclosure or use is required by law or in the course of exercising or performing his or her official powers and duties.

Section 17. Gifts.

(a) No municipal officer or employee shall solicit, accept, or receive a gift in violation of section 805-a(1)(a) of the General Municipal Law as interpreted in this section.

(b) No municipal officer or employee may directly or indirectly solicit any gift.

(c) No municipal officer or employee may accept or receive any gift, or multiple gifts from the same donor, having an annual aggregate value of seventy-five dollars or more when:

(1) the gift reasonably appears to be intended to influence the officer or employee in the exercise or performance of his or her official powers or duties;

(2) the gift could reasonably be expected to influence the officer or employee in the exercise or performance of his or her official powers or duties; or

(3) the gift is intended as a reward for any official action on the part of the officer or employee.

(d) For purposes of this section, a "gift" includes anything of value, whether in the form of money, service, loan, travel, entertainment, hospitality, thing, or promise, or in any other form. The value of a gift is the gift's fair market value, determined by the retail cost of the item or a comparable item. The fair market value of a ticket entitling the holder to food, refreshments, entertainment, or any other benefit is the face value of the ticket, or the actual cost to the donor, whichever is greater.

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Determination of whether multiple gifts from a single donor exceed seventy-five dollars must be made by adding together the value of all gifts received from the donor by an officer or employee during the twelve-month period preceding the receipt of the most recent gift.

(e) (1) A gift to a municipal officer or employee is presumed to be intended to influence the exercise or performance of his or her official powers or duties when the gift is from a private person or organization that seeks municipal action involving the exercise of discretion by or with the participation of the officer or employee.

(2) A gift to a municipal officer or employee is presumed to be intended as a reward for official action when the gift is from a private person or organization that has obtained municipal action involving the exercise of discretion by or with the participation of the officer or employee during the preceding twelve months.

(f) This section does not prohibit any other gift, including:

(1) gifts made to the municipality;

(2) 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;

(3) gifts given on special occasions, such as marriage, illness, or retirement, which are modest, reasonable, and customary;

(4) unsolicited advertising or promotional material of little intrinsic value, such as pens, pencils, note pads, and calendars;

(5) 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; or

(6) 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.

Section 18. Board of Ethics.

(a) There is an Orleans County Board of Ethic established to be utilized by the townships if they prefer. The board of ethics consists of five members, who are not officers or employees of the municipality, but at least one of whom must be a municipal officer or employee.

(b) The board of ethics shall render advisory opinions to the officers and employees of the Town of Gaines with respect to article 18 of the General Municipal Law and this code. Such advisory opinions

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must be rendered pursuant to the written request of any such officer or employee under such rules and regulations as the board of ethics may prescribe. The board of ethics shall have the advice of legal counsel employed by the board, or if none, the municipality's legal counsel. In addition, the board of ethics may make recommendations with respect to the drafting and adoption of a code of ethics, or amendments thereto, upon the request of the Town of Gaines.

Section 19. Posting and distribution.

(a) The Town Supervisor must promptly cause a copy of this code, and a copy of any amendment to this code, to be posted publicly and conspicuously in each building under the municipality's control. The code must be posted within ten days following the date on which the code takes effect. An amendment to the code must be posted within ten days following the date on which the amendment takes effect.

(b) The Town Supervisor must promptly cause a copy of this code, including any amendments to the code, to be distributed to every person who is or becomes an officer and employee of the Town of Gaines.

(c) Every municipal officer or employee who receives a copy of this code or an amendment to the code must acknowledge such receipt in writing. Such acknowledgments must be filed with the Town Clerk who must maintain such acknowledgments as a public record.

(d) The failure to post this code or an amendment to the code does not affect either the applicability or enforceability of the code or the amendment. The failure of a municipal officer or employee to receive a copy of this code of ethics or an amendment to the code, or to acknowledge receipt thereof in writing, does not affect either the applicability or enforceability of the code or amendment to the code.

Section 20. Enforcement.

Any municipal officer or employee who violates this code may be censured, fined, suspended or removed from office or employment in the manner provided by law.

Section 21. Effective date.

This code takes effect on January 2, 2018

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RESOLUTION NO. 3 - 0118

APPROVAL OF PAYMENTS IN ADVANCE OF AUDIT

Moved by Councilperson Kirby and seconded by Councilperson Neilans to approve the payment of claims in advance of audit for items in accordance with section 118(2) of the Town Law.

Ayes 4; Nays 0; 1 Absent, DeCarlo

Discussion: Approval of payments in advance of audit include utility bills, real property tax bills, State or Federal payments; or any charge that would incur interest or a penalty if not paid in a timely manner.

RESOLUTION NO. 4 - 0118

SETTING HOLIDAYS FOR THE TOWN HALL

Moved by Councilperson Kirby and seconded by Councilperson Allport to set the holidays for the town hall for the year 2018 to match published Federal holidays, plus Election Day, the Day After Thanksgiving, and Christmas Eve. (<https://www.opm.gov/policy-data-oversight/snow-dismissal-procedures/federal-holidays/#url=2018>)

Ayes 4; Nays 0; 1 Absent, DeCarlo

RESOLUTION NO. 5 - 0118

APPOINTMENTS BY THE TOWN SUPERVISOR

Deputy Supervisor James Kirby
Budget Officer – N/A (Note: Section 103(2) of the Town Law requires the supervisor shall be budget officer unless the supervisor appoints another individual to fulfill the role)

Historian Adrienne E. Kirby
Bookkeeper Timothy Hungerford

COMMITTEE APPOINTMENTS

Highway – Mr. DeCarlo, Mr. Kirby

Water – Mr. DeCarlo, Mr. Kirby

Finance and Budget – Dr. Neilans, Mr. Allport

Zoning – Mr. Allport, Mr. Kirby

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Audit – Entire Board with a minimum of three (3) board members approving all abstracts.

Appointments by the Supervisor do not require Board Approval, but are required to be made part of the minutes.

RESOLUTION NO. 6 -0118

BOARD APPOINTMENTS

Moved by Councilperson Kirby and seconded by Councilperson Allport to fill the following positions as indicated:

Fair Housing Officer	Susan Heard
Registrar of Vital Statistics	Susan Heard
Water Billing Clerk	Pending Interviews
Zoning Board of Appeals Secretary	Pending Interviews
Court Clerk	Maureen Kline
Water Superintendent	Ronald Mannella
Deputy Highway Superintendent	Mark Radzinski
Co-Deputy Highway Superintendent	David Rustay
Deputy Water Superintendent	Mark Radzinski
Co-Deputy Water Superintendent	David Rustay

Ayes 4; Nays 0; 1 Absent, DeCarlo

RESOLUTION NO. 7 - 0118

SETTING SALARIES, WAGE RATES, AND ALLOWANCES FOR VARIOUS POSITIONS

Moved by Councilperson Allport and seconded by Councilperson Kirby to set the salaries and wages for appointed positions as follows:

Registrar of Vital Statistics	\$951
Deputy Town Clerk(s)	\$13.01/hour
Water Billing Clerk	\$13.01/hour
Zoning Board of Appeals Secretary	\$13.01/hour
Court Clerk	\$15.36/hour
Water Superintendent	\$19,042
Seasonal Employees	\$18.00/hour
Election Inspectors	\$11.75

Ayes 4; Nays 0; 1 Absent, DeCarlo

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Discussion: Highway Superintendent Mannella made a request that the board review the hourly rate for seasonal motor equipment operators (MEOs) that work for the Town of Gaines Highway Department. Neighboring towns have set the hourly rate between \$18.00 and just under \$20.00 per hours. Superintendent Mannella reminded the board that full-time MEOs have a starting hourly rate of over \$22.00 per hour. Councilperson Kirby brought up the fact that seasonal MEOs have no other benefits, so even a rate even with a starting full time MEO is saving the town money. After discussion, the board included a rate of \$18.00 per hour as indicated for seasonal MEOs.

RESOLUTION NO. 8 - 0118

SETTING NON-WAGE REIMBURSEMENTS AND ALLOWANCES

Moved by Councilperson Kirby and seconded by Councilperson Neilans to set the non-wage allowances and rates as follows

Clothing allowance - \$500 for Highway Superintendent
Cell phone allowance - \$500 for Highway Superintendent and Town Justice
Mileage for Town Business – Tied to the IRS mileage rate, which is \$0.545 per mile for 2018

Ayes 4; Nays 0; 1 Absent, DeCarlo

RESOLUTION NO. 9 - 0118

DESIGNATING THE OFFICIAL NEWSPAPER AND FINANCIAL INSTITUTIONS

Moved by Councilperson Kirby and seconded by Councilperson Neilans to designate official institutions as follows:

Official Newspaper	Batavia Daily News
Official Depository	Five-Star Bank
Official Investment Depositories	Five-Star Bank, M&T Bank, Key Bank

Ayes 3; Nays 0; 1 Recusal, Allport; 1 Absent, DeCarlo

Discussion: This resolution allows the Supervisor to seek rates from other banking institutions for investment purposes to maximize interest earnings.

RESOLUTION NO. 10 - 0118

SETTING THE TIMES AND LOCATIONS OF MEETINGS FOR THE TOWN BOARD

Moved by Councilperson Kirby and seconded by Councilperson Neilans to set the monthly meeting of the Gaines Town Board to the second Monday of each month at 7:00 PM at the Gaines Town Hall, with the exception of the October and November meetings, which will be held on Thursday, October 4th, and Thursday, November 8th, 2018, respectively. A second meeting will be held in December on December

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27th, 2018 @ 7:00 PM. (Note: October and November meetings are moved for a combination of state law required budget meetings and regular meetings falling on an official holiday)

Ayes 4; Nays 0; 1 Absent, DeCarlo

RESOLUTION NO. 11 - 0118

AUTHORIZING THE CREATION OF A PETTY CASH ACCOUNT FOR TAX COLLECTION

Moved by Councilperson Kirby and seconded by Councilperson Neilans to authorize the Town Clerk to establish a petty cash account in the amount of two hundred dollars (\$200) for use during the collection of taxes.

Ayes 4; Nays 0; 1 Absent, DeCarlo

OTHER NEW BUSINESS FROM THE TOWN BOARD

Reminder that that next regular meeting of the Gaines Town Board will be held on Monday, January 8th at 7:00 PM at the Town Hall.

ADJOURNMENT

Moved by Councilperson Neilans and seconded by Councilperson Kirby to adjourn the meeting at 7:35 PM.

Ayes 4; Nays 0; 1 Absent, DeCarlo