

Ashley Borough Code of Ethics



**For Borough Councilmembers,
Mayor, Borough Employees, Independent
Contractors, and Members of All Boards and
Authorities**

2016

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3.14.010 Policy.

(a) Purpose. The Ashley Borough Council has adopted a code of ethics for members of the Borough Council and the Borough's boards and commissions to promote public confidence in the integrity of local government and its fair operation. This code of ethics will provide the basis for education and training for Borough officials, both elected and appointed, to ensure that the highest standards and best practices with regard to ethics will be followed.

(b) Intent. The citizens and businesses of Ashley are entitled to have fair, ethical and accountable local government that has earned the public's full confidence. In keeping with the Borough of Ashley's commitment to excellence, the effective functioning of democratic government therefore requires that:

- (1) Public officials, both elected and appointed, comply with the laws and policies affecting the operations of government;
- (2) Public officials be independent, impartial and fair in their judgment and actions;
- (3) Public office be used for the public good, not for personal gain; and
- (4) Public deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility.

3.14.020 Definitions.

(a) "Official" means a member of the Borough council or a member of council-appointed Borough boards and commissions and other council-appointed task groups or committees, including youth members.

(b) "Relative" means spouse or domestic partner, child, step-child, parent, step-parent, parent-in-law, grandparent, grandchild, sibling, aunt, uncle, niece, nephew, son- or daughter-in-law, brother- or sister-in-law.

3.14.030 Prohibited conduct.

(a) Conflicts of Interest. In order to ensure their independence and impartiality on behalf of the common good, officials shall not participate in government decisions in which any of the following has a financial interest: (1) the official, (2) a relative, (3) an individual with whom the official resides, or (4) an entity that the official serves as an Committee, director, trustee, partner or employee. Officials shall abstain from participating in deliberations and decision-making where conflicts exist. This section shall not apply (1) to decisions regarding taxes or fees, (2) if the financial interest is shared with more than ten percent of the Borough's population, or (3) if the financial interest exists solely because of the official's ownership of less than one percent of the outstanding shares of a publicly traded corporation.

(b) Appearance of Conflict. If it could appear to a reasonable person, having knowledge of the relevant circumstances, that the official's judgment is impaired because of either (1) a personal or business relationship not covered under the foregoing subsection, or (2) a transaction or activity engaged in by the official, the official shall make a public, written disclosure of the facts giving rise to the appearance of a conflict before participating in the matter.

(c) Misuse of Public Position or Resources. Except for infrequent use at little or no cost to the Borough, officials shall not use public resources that are not available to the public in general, such as Borough staff time, equipment, supplies or facilities, for other than a Borough purpose.

(d) Representation of Third Parties. Except in the course of official duties, officials shall not appear on behalf of the financial interests of third parties before the bodies on which the officials serve or in interaction with assigned staff. However, the members of the Borough council shall not appear on behalf of the financial interest of third parties before the council or any board, commission or proceeding of the Borough, or in interaction with staff.

(e) Solicitations of Charitable Contributions. No official may make direct personal solicitations for charitable contributions from Borough employees. This section is not intended to prohibit requests for political donations. Officials shall use discretion when dealing with Borough employees.

(f) Gifts and Favors. Officials shall not take any special advantage of services or opportunities for personal gain, by virtue of their public office, which are not available to the public in general. They may not solicit or

receive any thing of monetary value from any person or entity where the thing of monetary value has been solicited, or received or given or, to a reasonable person, would appear to have been solicited, received or given with intent to give or obtain special consideration or influence as to any action by the official in his or her official capacity; provided, that nothing shall prohibit campaign contributions which are solicited or received and reported in accordance with applicable law.

(g) Confidential Information. Officials shall not disclose or use any confidential information gained by reason of their official position for other than a Borough purpose. "Confidential information" means (1) specific information, rather than generalized knowledge, that is not available to a person who files a public records request, and (2) information made confidential by law.

3.14.040 Financial disclosure statements.

All officials, except members of the Borough council, shall file a borough of Ashley disclosure statement annually in accordance with the Pennsylvania State Ethics Commission, under the Commonwealth's Department of State. Members of boards and commissions shall be advised, as part of the application process, that they will be required to file the applicable Borough of Ashley disclosure statement within ten days of appointment.

3.14.050 Ethical standards.

In addition to Section [3.14.030](#) of the code of ethics, which shall be administered by the ethics committee, officials are also encouraged to comply with the following standards:

(1) Compliance with Other Laws. Officials shall comply with federal, state and Borough laws in the performance of their public duties. These laws include, but are not limited to: the United States and Pennsylvania Constitutions; laws pertaining to conflicts of interest, election campaigns, financial disclosures and open processes of government; and Borough ordinances and policies.

(2) Personal Integrity. The professional and personal conduct of officials must be above reproach and avoid even the appearance of impropriety. Officials shall refrain from abusive conduct, threats of official action, personal accusations or verbal attacks upon the character or motives of other members of council, boards and commissions, the staff or public. Officials shall maintain truthfulness and honesty and not compromise themselves for advancement, honor, or personal gain. Additionally, officials shall not directly or indirectly

induce, encourage or aid anyone to violate the code of ethics and it is incumbent upon officials to make a good faith effort to address apparent violations of this code of ethics.

(3) Working for the Common Good. Recognizing that stewardship of the public interest must be their primary concern, officials will work for the common good of the people of Ashley and not for any private or personal interest, and they will ensure fair and equal treatment of all persons, claims and transactions coming before the Borough council, boards and commissions. Officials need to be mindful that making special requests of staff—even when the response does not benefit the official personally—puts staff in an awkward position.

(4) Respect for Process. Officials shall perform their duties in accordance with the processes and rules of order established by the Borough Council and board and commissions governing the deliberation of public policy issues, meaningful involvement of the public, and implementation of policy decisions of the Borough council by Borough staff.

(5) Commitment to Transparency. Transparency, openness, and accountability are fundamental values of the Borough—and are also required by the laws of the state of Pennsylvania. The public has a right to inspect and copy public records unless exempt by law from disclosure. All materials relating to the conduct of Borough government that are prepared, possessed, used or retained by any official, including email and other electronic records, are subject to requirements for retention, protection, and disclosure. Officials may assume that all copies of materials received from Borough staff have already been archived and do not need to be retained. Officials shall not discard, damage, or destroy the original copy of any public record unless directed by the Ashley Borough Council in conjunction with the Borough Attorney, who has responsibility to ensure that the Borough complies with the record retention schedules established under the regulations of the Pennsylvania Historic and Museum Commission guidelines and other applicable guidelines of the Commonwealth of Pennsylvania. Officials shall promptly provide any records requested by the Ethics Committee in response to a disclosure request under the Pennsylvania Open Records Act and the Freedom of Information Act. It is the responsibility of the Ethics Committee, together with the Borough Attorney, to decide which records meet the definition of “public record” and whether or not they are exempt from disclosure; officials must not take it upon themselves to decide whether a record meets the definition of a public record, that a record is exempt from disclosure, or to otherwise conceal a record.

(6) Conduct of Public Meetings. Officials shall prepare themselves for public issues; listen courteously and attentively to all public discussions before the body; and focus on the business at hand. They shall refrain from interrupting other speakers; making personal comments not germane to the business of the body; or otherwise interfering with the orderly conduct of meetings.

(7) Decisions Based on Merit. Officials shall base their decisions on the merits and substance of the matter at hand, rather than on unrelated considerations.

(8) Ex Parte Communications. In quasi-judicial matters, officials shall publicly disclose substantive information that is relevant to a matter under consideration by the council or boards and commissions, which they may have received from sources outside of the public decision-making process.

NOTE: WE SHOULD DISCUSS THIS.

(10) Advocacy. When acting in an official capacity as a Borough official representing the Borough, officials shall represent the official policies or positions of the Borough council, board or commission to the best of their ability when the Borough council, board or commission has taken a position or given an instruction. When presenting their individual opinions and positions, members shall explicitly state they do not represent their body or the Borough of Ashley, nor will they allow the inference that they do. Officials have the right to endorse candidates for all council seats or other elected offices. It is inappropriate to make or display endorsements during council meetings, board/commission meetings, or other official Borough meetings. However, this does not preclude officials from participating in ceremonial occasions, community events, or other events sponsored by civic groups.

(12) Policy Role of Officials. Officials shall respect and adhere to the structure of Ashley Borough government . In this structure, the Borough Council determines the policies of the borough with the advice, information and analysis provided by the public, boards and commissions, and Borough staff. Except as provided by state law, officials shall not interfere with the administrative functions of the borough or the professional duties of borough staff; nor shall they impair the ability of staff to implement council policy decisions.

3.14.060 Ethics Committee.

(a) The Borough Council creates the position of ethics committee. The ethics committee will elect a committee chairman. The ethics committee will provide for annual review of the code of ethics, and advisory opinions concerning the code of ethics. The ethics Committee shall also be responsible for the prompt and fair enforcement of its provisions when necessary.

(b) The ethics committee, in addition to other duties, may recommend changes or additions to this code of ethics to the borough council.

3.14.070 Advisory opinions.

(a) Upon request of any official, the ethics Committee shall render written advisory opinions concerning the applicability of Sections [3.14.030](#) and [3.14.040](#) of this code to hypothetical circumstances and/or situations solely related to the persons making the request. The ethics committee will not render opinions on matters that are the purview of other government agencies or officials, e.g., the public disclosure commission, the Borough public records Committee, etc.

(b) Upon request of any official, the Ethics Committee may also render written advisory opinions concerning the applicability of the code of ethics to hypothetical circumstances and/or situations related to a matter of borough-wide interest or policy.

(c) The ethics committee will endeavor to respond to requests for advisory opinions within forty-five days of submission of the request, or more rapidly if the requester expresses urgency in the request.

(d) A person's conduct based in reasonable reliance on an advisory opinion rendered by the ethics committee shall not be found to violate this code of ethics, as long as all material facts have been fully, completely, accurately presented in a written request for an advisory opinion, the ethics Committee issues an advisory opinion that the described conduct would not violate the code of ethics, and the person's conduct is consistent with the advisory opinion. The ethics Committee reserves the right to reconsider the questions and issues raised in an advisory opinion and, where the public interest requires, rescind, modify, or terminate the opinion, but a modified or terminated advisory opinion will not form the basis of a retroactive enforcement action against the original requestor. Advisory opinions will contain severability clauses indicating that should portions of the opinion be found to be unenforceable or not within the ethics Committee's authority, the remainder of the opinion shall remain intact.

3.14.080 Complaints, investigations, hearings and enforcement.

The ethics Committee shall resolve inadvertent and minor violations of the code of ethics informally and may resolve inadvertent or minor violations informally, unless the ethics Committee determines that doing so would not serve the public interest. When a violation is neither inadvertent nor minor, the ethics Committee may initiate an action in accordance with this section.

(1) Complaint Process.

(A) Complaint Requirements—Service. Any person may submit a written complaint to the ethics Committee alleging one or more violations of this code of ethics by an official. The complaint must set forth specific facts with enough precision and detail for the ethics Committee to make a determination of sufficiency. It must be

signed under penalty of perjury by the person(s) submitting it. Contact information including address and phone number must be provided by the person submitting the complaint. The Complaint shall be made available to the target of the Complaint for purposes of defending the same. Every effort shall be made to avoid political targeting, and furthering rumors, innuendo, and other inappropriate conduct in accepting Complaints.

(B) Finding of Sufficiency. The ethics Committee shall make a determination of sufficiency within thirty days of receipt of the written complaint. A complaint shall be sufficient if the allegations, if established, would violate Section [3.14.030](#) or [3.14.040](#) of this code. The ethics Committee's determination is not reviewable. If the finding is one of sufficiency of the complaint, then the ethics Committee shall investigate the complaint as set forth below. The doctrine of *res judicata* shall apply to Complaints that are repeats for that which has already been determined not to be a violation of this Code.

(C) Dismissal. The ethics Committee shall dismiss the complaint if the ethics Committee determines that the violation was inadvertent and minor; or a violation occurred, but appropriate actions have been taken to fully address the allegedly unethical conduct.

(D) Notice. Notice of action by the ethics Committee shall be provided as follows:

(i) Notice of a finding of insufficiency or dismissal of a complaint by the ethics Committee shall be sent to the person who made the complaint and the person complained against within seven days of the decision by the Ethics Committee. A finding of insufficiency or dismissal of a complaint by the Ethics Committee is final and binding, and no administrative or other legal appeal is available through the Ethics Committee.

(ii) Within seven days of the ethics Committee rendering a finding of sufficiency, the Ethics Committee shall send notice to the person who made the complaint and the person complained against, of the ethics Committee's determination. If, after investigation, the ethics Committee has reason to believe that a material violation of Section [3.14.030](#) or [3.14.040](#) has occurred, the Ethics Committee shall give notice of a hearing which will be held to determine if a violation has occurred. Notice shall be provided at least thirty days prior to the date set for the hearing. The person complained against shall have the right to file a written answer to the charge and to appear at the hearing with or without legal counsel, submit testimony, be fully heard, and to examine and cross examine witnesses.

(E) Borough Employees. In the event the action taken for a hearing is with regard to a Borough employee, the hearing shall NOT be public, but shall be in accordance with applicable employment law. Further, while the Complainant and the Complaint shall be made known to the employee, the Complainant shall not be permitted

to be in the employment hearing, as the same violates Pennsylvania law and the rights of the employee. Any action by the Ethics Committee regarding an employee shall be referred to the employee's ultimate supervisor, which is either Borough Council or the Mayor. The Ethics Committee is not permitted to disclose recommendations regarding employee violations. Any Committee member who releases recommendations relative to employees or referrals to Council or the Mayor shall be considered to have violated this Act and shall be subject to removal and any other civil legal remedy. Every effort shall be made to protect the rights of Borough employees.

(F) Stipulations. At any time after a complaint has been filed with the ethics Committee, the ethics Committee may seek and make recommendations that the Borough council enter into a stipulation with the person complained against. The recommended stipulation will include the nature of the complaint, relevant facts, the reasons the ethics Committee thinks a stipulation is appropriate, an admission of the violation by the person complained against, a promise by the person complained against not to repeat the violation, and if appropriate, a recommended remedy or penalty. The recommended stipulation shall be sent to the person who made the complaint and the person complained against and forwarded to the borough council for action.

(2) Conduct of Hearings.

(A) All hearings on complaints found to be sufficient by the ethics Committee shall be conducted by the Ethics Committee. The hearing shall be informal, meaning that the hearing examiner shall not be bound by the strict rules of evidence prevailing in courts of law or equity. The Ethics Committee may call witnesses on his or her own motion and compel the production of books, records, papers, or other evidence as needed. To that end, the Ethics Committee shall issue subpoenas and subpoenas *duces tecum*. All testimony shall be under oath administered by the hearing examiner. The hearing examiner may adjourn the hearing from time to time to allow for the orderly presentation of evidence. The hearing examiner shall prepare an official record of the hearing, including all testimony, which shall be recorded by mechanical device, and exhibits; provided, that the hearing examiner shall not be required to transcribe such records unless presented with a request accompanied by payment of the cost of transcription.

(B) Within thirty days after the conclusion of the hearing, the hearing examiner shall, based upon a preponderance of the evidence, make and fully record in his or her permanent records, findings of fact, conclusions of law, and his or her recommended disposition. A copy of the findings, conclusions, and recommended disposition shall be sent to the person who made the complaint and to the person complained against. Additional copies of the findings, conclusions, and recommendations shall be forwarded to the ethics Committee and Borough council.

(3) Borough Council Action. Final Borough council action to decide upon stipulations and recommendations from the ethics Committee and findings, conclusions, and recommendations from the hearing examiner shall be by majority vote in a public meeting. If the proceeding involves a member of the Borough council, deliberations by the council may be in executive session. The member of the council against whom the complaint was made will not participate in any executive session and shall not vote on any matter involving him or herself. However, upon request of the member of the council against whom the complaint was made, a public hearing or public meeting before the council will be held on the issue of penalties.

(4) Disposition. In the event the hearing examiner finds that the person against whom the complaint was made has violated the code of ethics, then the Borough council may take any of the following actions by a majority vote of the council. The action of the Borough council shall be final and not subject to further review or appeal except as may be otherwise provided by law or as provided in subsection (5) of this section.

(A) Dismissal. Dismissal of the complaint without penalties.

(B) Referral. A complaint may be referred to another agency with jurisdiction over the violation, such as the public disclosure commission. Final action on the complaint may be stayed pending resolution of the matter by the agency to which it was referred.

(C) Admonition. An admonition shall be an oral non-public statement made by the mayor, or his/her designee, or if the complaint is against the mayor, the deputy mayor or his/her designee, to the official.

(D) Reprimand. A reprimand shall be administered to the official by a resolution of reprimand by the borough council. The resolution shall be prepared by the borough council and shall be signed by the mayor or, if the complaint is against the mayor, the deputy mayor.

(E) Censure. A resolution of censure shall be a resolution read personally to the person in public. The resolution shall be prepared by the borough council and shall be signed by the mayor, or if the complaint is against the mayor, the deputy mayor. The person shall appear at a Borough council meeting at a time and place directed by the Borough council to receive the resolution of censure. Notice shall be given at least twenty calendar days before the scheduled appearance at which time a copy of the proposed resolution of censure shall be provided to the person. The resolution of censure shall be read publicly, and the person shall not make any statement in support of, or in opposition thereto, or in mitigation thereof. The resolution of censure shall be read at the time it is scheduled whether or not the official appears as required.

(F) Removal—Member of Board or Commission or Other Appointed Task Group or Committee. In the event the individual against whom the complaint was made is currently a member of a Borough board or commission or other task group or committee, appointed by the Borough council, the Borough council may, in addition to other possible penalties set forth in this section, and notwithstanding any other provision of the Ashley Municipal Code, by a majority vote remove the individual from such board or commission effective immediately.

(G) Civil Penalties. The Borough council may assess a civil penalty of up to one thousand dollars or three times the economic value of anything received in violation of this code of ethics or three times the economic value of any loss to the Borough, whichever is greater. Any monetary penalty assessed civilly shall be placed in the Borough's general fund.

(H) Contract Void. As provided by (need to name ordinance), any contract made in violation of (Need Ordinance Number), "Code of ethics for municipal Committees— contract interests," is void.

(I) Other Penalties. The borough council may impose a restriction, loss of a committee assignment, or loss of appointment as a representative of the Borough for any regional or multijurisdictional body or membership on any board or commission which requires an appointment or confirmation of an appointment by the borough council.

(5) Review of Civil Penalties. If the Borough council orders an official to pay a civil penalty, the official may seek a writ of review from the superior court pursuant to (Need legal document reference), within thirty days of the borough council's order.

(6) Protection Against Retaliation. Neither the Borough nor any official may take or threaten to take, directly or indirectly, official or personal action, including but not limited to discharge, discipline, personal attack, harassment, intimidation, or change in job, salary, or responsibilities, against any person because that person files a complaint with the ethics Committee.

(7) Public Records. Records filed with the Ethics Committee become public records that may be subject to inspection and copying by members of the public, unless an exemption in law exists. To the extent required to prevent an unreasonable invasion of personal privacy interests protected by (Need legal Statute)(2), identity information may be redacted when an unsubstantiated complaint is made available in response to a public records request; however, in each case, the justification for the redaction shall be explained fully in writing. A finding by the Ethics Committee determining that a complaint is sufficient shall contain at the beginning the following specific language:

NOTICE: ANY PORTION OF THIS FINDING DETERMINING SUFFICIENCY OF ANY PORTION OF A COMPLAINT DOES NOT DETERMINE THE TRUTH OR FALSITY OF THE ALLEGATIONS CONTAINED IN THE COMPLAINT FILED WITH THE ETHICS COMMITTEE. THE ETHICS COMMITTEE HAS ONLY DETERMINED THAT IF CERTAIN FACTS CONTAINED IN THE COMPLAINT ARE FOUND TO BE TRUE DURING A LATER HEARING TO BE CONDUCTED BY THE HEARING EXAMINER, THEN VIOLATION(S) OF THE CODE OF ETHICS MAY BE FOUND TO HAVE OCCURRED.

The Borough shall release copies of any written reports resulting from an investigation of a sustained complaint, any hearing examiner orders, and any written censures or reprimands issued by the Borough council, in response to public records requests consistent with (Need legal document reference) and any other applicable public disclosure laws.

(8) Liberal Construction—Limitation Period—Effective Date.

(A) This code of ethics shall be liberally construed to effectuate its purpose and policy and to supplement existing laws that relate to the same subject.

(B) Any action taken under this code of ethics must be commenced within two (2) years from the date of violation.

(C) Nothing contained herein shall be or is intended to circumvent the laws of the Commonwealth of Pennsylvania. Any conflict between this Code and a Commonwealth law shall be resolved in favor of the Commonwealth law.

(D) This code of ethics shall take effect April 1, 2016.