

**ORDINANCE NO. 2015-01**

Town of Rising Sun

Cecil County, Maryland

AN ORDINANCE OF THE TOWN OF RISING SUN, ("TOWN") CECIL COUNTY, MARYLAND, AMENDING AND ADDING LANGUAGE TO CHAPTER 2, TITLED ADMINISTRATION & GOVERNMENT OF THE CODE OF ORDINANCES OF THE TOWN OF RISING SUN, FOR THE PURPOSE OF ESTABLISHING PROPER CONDUCT OF ELECTED OFFICIALS AND TO ENSURE THAT GENERALLY ACCEPTED AND RECOGNIZED PRINCIPLES OF EFFECTIVE AND EFFICIENT BUSINESS MANAGEMENT ARE ACHIEVED FOR THE GOOD OF THE COMMUNITY; AND TO REPEAL ANY AND ALL OTHER ORDINANCES AND PARTS OF THE ORDINANCES IN CONFLICT THEREWITH.

**WHEREAS**, the Town, located in Cecil County, Maryland is a municipality organized under and governed by Article 23A of the Annotated Code of Maryland; and

**WHEREAS**, the Town is proclaimed as a perpetual entity with the right to pass laws; and

**WHEREAS**, the Code of Ordinances of the Town, contains Chapter 2, titled ADMINISTRATION & GOVERNMENT, which establishes the general guidelines associated with the proper administration of affairs and business for the Town of Rising Sun, Maryland, in accordance with the Town Charter and other applicable Federal and State Laws; and

**WHEREAS**, this Chapter contains Article 3, titled PERSONNEL, which currently contains five (5) sections that provide details and regulations regarding the Classification of Positions, Designation of a Personnel Officer, Details of General Duties of Commissioners and assigns the authority of creating a Code of Personnel Rules and Regulations to the Board of Commissioners; and

**WHEREAS**, this Article also contains section 2-301 titled CLASSIFICATION OF POSITIONS that is contradictory and inconsistent with the other four (4) sections of this Article, as it exempts among other positions the Mayor and Commissioners from compliance with the remaining four (4) sections, which would appear to render the provisions and narrative of those sections null and void; and

**WHEREAS**, in addition to the Town's efforts to restructure this Article to ensure the intent of the provisions, the Town also desires to amend, modify and add additional language to insure that elected officials have clear understanding of what type of conduct is expected of them while in office and to identify improper conduct or activities that are counterproductive to the efficient management and organization of the Town; and

**NOW, THEREFORE, BE IT ENACTED AND ORDAINED** by the Town Commissioners of the Town of Rising Sun, Cecil County, Maryland, and it is hereby enacted and ordained by its authority that Chapter 2 of the Town Code shall be modified as follows:

## SECTION 1

Chapter 2 of this code contains Article 3 titled Personnel, which contains section 2-301, titled Classification of Positions, which currently reads as follows:

### **Section 2-301. Classification of Positions**

All positions within the Town government shall be subject to the provisions of this article other than the following: (1) The Mayor, (2) The Commissioners, (3) The Town Attorney, (4) Members of Town Boards or Commissions such as the Planning Commission and the Board of Appeals, and (5) part-time, temporary or unpaid positions.

This section shall be modified by changing the title of the Article, deleting section 2-301 in its entirety and re-adopting it to read as follows:

## **ARTICLE 3 ELECTED OFFICIAL CONDUCT, DUTIES, PERSONNEL MANUALS AND POLICIES**

### **Section 2-301. Elected Official Conduct and Protocol Policies**

- A. Purpose. The purpose of this section is to define the role of elected officials in the governance of the Town. For the purposes of this section "Official or Officials" shall mean the Mayor and each individual member of the Board of Commissioners. This code consists of policies and guidelines intended to advance the Town's goals of providing efficient and high-quality services to its residents and providing a safe and productive work environment for its employees.
  
- B. Findings. The Town of Rising Sun is a duly incorporated Maryland municipality and has its executive function shared by the Mayor, Board of Commissioners and the Town Administrator. As detailed in section 2-204 of this Chapter, the Town Administrator is charged with implementing the policies set by the Town Board of Commissioners and is charged with administering the day-to-day affairs of the Town with the assistance of his/her staff. This code establishes rules that contribute to the success of this basic structure and to maintaining positive and effective working relationships between officials and employees.

C. Limitations; other laws and rules.

1. This code addresses selective aspects of the governance of the Town and supplements but does not supplant other laws and rules that prescribe the legal responsibilities of Town elected officials ("officials"). Those include, among others, the State of Maryland Constitution, various provisions of the Code of Maryland Administrative Regulations, federal laws prohibiting discrimination and harassment, and the provisions of the Town's own Town Charter. Elected officials should be familiar with these laws to assure that they exercise their responsibilities properly.
2. It is not possible for a code of this kind to anticipate and provide a rule of conduct for all situations. It is expected that officials will manage their behavior in a manner consistent with the rules that follow, respect the chain of command and behave within the bounds of their authority. It is also expected that officials will treat each other, Town employees, residents and businesspeople with courtesy and respect in a manner that reflects well on the Town.

D. Policies and rules. Policies governing the conduct of officials are listed in this section. Following each policy is a set of rules that give specific application to the policy. In italics following each rule is further explanation of the rule and guidance for interpreting and applying the rule and shall be made a part of such rule.

1. Policy A. Interactions with Personnel and Proper Processing of Personnel Related Issues

Officials shall deal with the administrative service provided to the businesses and residents of the Town solely through the Town Administrator.

Rules:

- (a.1) Officials are encouraged to learn the functions and operations of the various departments, or to understand the operational steps related to a specific task or job, however Officials shall not direct, order or make demands on any Town employee, other than inquiries that can be answered routinely and without research or to notify such employee such as police on patrol of issues that are part of their normal routines. In addition, there are times when the official may be serving as the project or task lead and directing the task of employees in the absence of the employee's supervisor is acceptable. In no case shall the official give direction to an employee that incurs additional expense to the Town without the knowledge of the department head. Any concerns about work assignment or department performance, should be addressed to the Town Administrator.

*“The Town’s staff is organized in a hierarchical structure, and Town employees work under the direction and control of several layers of management culminating with the Town Administrator. Individual officials are not part of that management structure and have no authority to direct employees. When an official attempts to give an employee direction outside the scope of what is detailed above, the employee is put in an awkward position and the management structure is undermined. In some cases such actions have the potential for liability. Officials are not authorized directly to give work assignments to employees, including department heads outside of the scope detailed above. Employees are instructed not to take impromptu directions or work assignments from officials and to report any such attempts to their Supervisor and or Department Head. Any employee who has a question or a concern is expected to address this matter with their department head or Supervisor. Employees will be held accountable for approaching Officials on these matters as a way of circumventing or undermining the role, authority and responsibility of their supervisor. The Official should notify the department head of any impromptu request for assistance or directives within 24 hours.”*

- (a.2) Officials shall not attempt to reorganize priorities of a Department Head or any employees or influence the manner by which Town staff delegates assignments or performs their assigned functions or duties.

*“Town employees are directed in their everyday tasks by their immediate supervisor in accordance with approved work plans. Interference with an employee's work routine, priorities or decision making processes by an official creates confusion and stress and places the employee in the difficult position of either disregarding his or her assigned work or appearing to disrespect the official's wishes. All requests for work, staff assistance or research should be directed to the Town Administrator. From time to time an official may believe that a problem must be looked into immediately and is tempted to direct an employee to drop everything and focus on that problem. Officials must, however, communicate their concern to the Town Administrator or in the absence there of, the Department Head.”*

- (a.3) Officials shall not retaliate or threaten to retaliate against employees as a result of disagreements over policy recommendations.

*“It is critical to the success of the Town that its employees enjoy a workplace free of the fear of retaliation. The Town takes great pride in its creativity and its receptivity to new and different ideas; an*

*open and nonjudgmental atmosphere fosters creativity where candor is not penalized. Town employees are hired to offer their professional judgments and opinions. Officials are certainly free to disagree with those judgments; indeed, those officials ultimately may have the final word. But those disagreements must not extend to threats or generate fear of reprisal. Officials enjoy substantial influence within Town Hall; this authority must not be exercised in a manner that intimidates staff and degrades morale with resulting damage to the fabric of the organization."*

- (a.4) Officials shall not threaten a Town employee with disciplinary action.

*"If an official is concerned about the performance of a Town employee, that concern should be expressed privately to the Town Administrator. Such criticisms can then be addressed in accordance with the Town's personnel rules, in a manner that protects the employee's rights and protects the Town's authority properly to discipline its employees. It is never acceptable for an official directly to threaten disciplinary action of any kind, and rarely, if ever, is it appropriate to publicly criticize an employee. Officials may have high expectations of employees' work performance; but there is no room or tolerance in the Town organization for public humiliation of any person."*

- (a.5) Officials that are approached or engaged by employees regarding work related issues or concerns of employees will direct such employee to follow the chain of command and procedures for addressing concerns as detailed in the Town Codes, Personnel Manual and directives issued on such matters. Furthermore, the Official will notify the Town Administrator if the Official feels that the actions of the employee were the attempt to gain leverage or circumvent the systems and procedures in place. The Official will follow up with the Town Administrator to see if the issue was properly addressed. Any egregious issues involving the Town Administrator will be addressed as spelled out in the Personnel Manual. At no time will the Official take further action on the matter or engage any further with the employee unless all remedies have been exercised as detailed in the Town Codes, Personnel Manual and directives issued on such matters.

*"It is plausible that employees will attempt to gain leverage on a situation, issue or dispute with a fellow employee. It is also plausible for employees to attempt to negatively influence the opinion of an official as a way of gaining a more favorable outcome for the employee. This type of behavior erodes the chain of*

*command and structure of the Town's operations. It also creates inconsistencies in how issues are resolved and creates decisiveness within the employee ranks, while reducing overall organizational morale. Not only is this unhealthy for the organization but any misuse of interaction of employees and officials in this manner should not be tolerated. Furthermore, this section should NOT be taken as a statement that the Town condones or turns a blind eye towards inappropriate behavior, hostile environments or legitimate work place issues of employees. Policies must be followed to address employee concerns to ensure timely and proper resolution."*

- (a.6) Officials shall not discuss any personal issues about employees with any person, persons, entities or agencies; nor shall any official make disparaging or slanderous remarks about employees, offer details or documentation regarding employee's work or personal issues; conduct formal or informal investigations into employees; or discuss or provide any information or documents regarding past, present, proposed or pending disciplinary actions of any employees unless all such above listed acts have been authorized by formal action of the Board of Commissioners.

*"Individual elected officials may feel that they are empowered by their election to individually represent the town in any manner in which they see fit, or to say whatever they want, or discuss any Town business they want with whomever they want. Beyond this conduct hereby declared unacceptable, it is also hereby interpreted to be "An Individual and Personal Act", occurring outside the scope of their official's responsibilities and or beyond their public official authority." As such, the Town's liability coverage is in place to protect elected and appointed persons who act within the scope of their official employment and authority as spelled out in the Town Charter, Town Codes or formally sanctioned acts of the Board of Commissioners. However, this liability coverage does not provide coverage for the conduct or acts of an official that are deemed to be Individual and Personal Acts."*

2. Policy B. Individual Elected Officials to Serve as Part of a Collective Board and Legislative Body

Officials shall act collectively in a properly noticed and constituted meeting; officials have no authority to make decisions or take actions on behalf of the body unless expressly authorized to do so.

Rules:

- (b.1) Officials shall not make representations or promises to any third party regarding the future actions of the Town or of the Board of Commissioners, unless the Board of Commissioners has duly authorized such representation or promise.

*“When officials engage in conversations with residents, business owners, applicants, developers, lobbyists and officials of other governmental agencies, they should be cautious not to make representations or promises that they cannot legally make or keep. Future actions of a legislative body cannot be promised or predicted with certainty. Individual officials do not have authority to make commitments on behalf of the Town unless expressly authorized to do so by the body of which they are a member.”*

- (b.2) When making public utterances, officials shall make it clear whether they are authorized to speak on behalf of the Board of Commissioners or whether they are presenting their own views.

*“Officials occasionally speak before other public bodies, neighborhood groups or to the press. When doing so, they should always make it clear whether they are presenting their own point of view or whether they have been authorized by the Board of Commissioners to present a particular view. They should be clear in all oral and written utterances whether they are using their title for identification purposes or because they are speaking in an official capacity.”*

- (b.3) An Official shall not, either directly or indirectly, be involved in or attempt to influence administrative matters that are under the direction of the Town Administrator or a Department Head, such as staff decision-making, the development of staff recommendations, scheduling of work, executing department priorities, personnel issues, purchasing, etc; or interfere with the manner by which the Town Administrator or a Department Head performs his or her duties. It is recognized that the Department Heads report to the Town Administrator, who in turn reports directly to the Board of Commissioners.

*“This is necessary to protect staff from undue influence and pressure from individual Officials and to allow staff to execute work in the priority set by management. Neither the Town Administrator or Department Heads can function effectively if he or she receives inconsistent direction from individual elected officials or is not given the support and independence necessary to administer their respective duties and assignments. If an elected Official wishes to influence an administrative action, decision, recommendation,*

*workload, work schedule, etc., he/she must bring it to the attention of the Mayor and Board of Commissioners so the Mayor and Board can decide whether to address it as a matter of policy."*

- (b.4) Officials shall not interfere with the implementation by Town staff of approved projects and programs.

*"As detailed in section 2-204 of this Chapter The Town Administrator is the project manager for Town projects, grant programs, infrastructure upgrades, repairs and maintenance; and shall coordinate the work of all related consultants, engineers, contractors and agents thereof; and shall have the power to assign and delegate such duties to other staff as needed. Town officials must avoid interfering with or directing the Administrator's method of carrying out the Board of Commissioners' decisions, even if the project or program was conceived and initiated by an individual member of the Board of Commissioners. Once a project or program receives Board of Commissioners approval, it is an official activity of the Town, not of any individual member of the Board of Commissioners. Officials do not have authority and should refrain from giving directions or instructions to Town contractors or consultants working on Town projects or programs, or attempt to change the scope or any portion thereof, without the Town Administrators knowledge."*

- (b.5) Individual Officials shall be respectful of the need for a managed, professional approach to managing special Town events initiatives and activities. No commitments of funds, resources, equipment or personnel shall be made without prior notification to the Town Administrator.

*"It will not be unusual for the Mayor and Commissioners to receive requests from citizens, vendors, personal contacts, etc. requesting assistance with certain administrative functions of the Town. This is particularly true for the more visible functions, such as event management, marketing and promotion, etc. For example, event management is a staff-driven administrative function – syncing the event calendar with other Town functions, allocating space, equipment and employees, preplanning and coordinating public safety, traffic and pedestrian access and financial management and documentation. Staff's approach to event management combines professional judgment with past experiences in order to create well-rounded quality events for the community."*



3. Policy C. Improper Use of Physical and Intellectual Property, Personnel, and Resources of the Town

Town resources shall be used solely for proper governmental purposes and only with proper authorization.

Rules:

- (c.1) There shall be only one Town letterhead format and no "Individual Elected Official" letter head. Town letterhead may be used by officials for official Town business.

*"Town letterhead must be used with care to avoid misunderstandings. Letterhead may be used to communicate official Town policy or actions. It is also routinely used by officials to respond to inquiries or communicate their individual opinions, in which event the author should be clear about whose view is being presented. Town letterhead may be used by other Town officials (board and commission members) only for transaction of official Town business."*

- (c.2) Town employees shall not be asked or directed to spend time on non-Town business.

*"It is improper to ask or require a Town employee to engage in non-Town-related activities. Non-Town activities include, among other things, election campaign related activities and personal errands. Further, Town employees should not be solicited to engage in political activity on behalf of a Town official."*

- (c.3) Officials shall not use or disclose information obtained through Town service for improper or illegal purposes.

*"Officials often acquire information in performing their duties that is not generally available to the public, including information received in closed sessions. Sometimes this information is confidential or highly sensitive. Information that is not generally available to the public must remain confidential and be used only for the purposes for which it was divulged. In particular, this information can never be used for personal gain."*

4. Policy D. Improper and Harmful Representation of the Town and Frivolous Acts against the Town

When representing the Town, officials shall conduct themselves in a dignified manner and in accordance with all legal requirements.

Rules:

- (d.1) When representing the Town on official business, officials shall not speak negatively of the Town or of any Town Officials or Employees; furthermore said Officials shall behave responsibly and in a manner as to project a positive image for the Town.

*“Whenever an official is representing the Town, in or out of town, the official is "on duty" and should behave in a manner that will reflect well on the Town. When out of town or at social events there is a temptation to behave more informally than one might in Town Hall, which can lead to awkward or embarrassing situations and in extreme cases to improper or illegal behavior. When at government, civic or political functions, officials should avoid drinking alcohol to excess.”*

- (d.2) An Official who unsuccessfully takes legal action against the Town by way of a claim, suit, charge or petition, shall reimburse all court cost, attorney and legal fees incurred by the Town; if such legal action is unsuccessful, and was not related to a claim of discrimination or other like charge.

*“Sometimes legal actions are an option when resolving disputes; however such legal actions brought forth by an official are paid for by the Tax Payers of the Town of Rising Sun. When such actions are not related to criminal charges, or civil liability or recovery of damages on the part of the Official, then the dispute is more than likely borne by failure to accept the democratic process or the procedures legally in place to govern the Town. This does not preclude the official from mounting a legal challenge, but if the courts do not agree that some type of indiscretion or procedural misconduct has taken place then the tax payers are entitled to reimbursement of their money.”*

- (d.3) Officials shall exercise best efforts to avoid the appearance of impropriety in the performance of their official duties.

*“The public's confidence in the integrity and fairness of Town government often hinges on the behavior of the officials. Real or perceived ethical lapses by the officials undermine the effectiveness of the Town and cast a shadow on the decisions of its legislative bodies. Often, ethical considerations extend beyond the legal requirements of conflict of interest law.”*

5. Policy E. Failure to Attend/Participate and Reimbursement to the Town

Elected Officials have a great deal of responsibility and are charged with keeping the Town's best interest at heart and to act in a financially responsible manner. In order to fulfill this responsibility, elected officials are encouraged to participate in various meetings, trainings, seminars and conferences. Elected Officials are free to establish the levels of participation that they are able to make, however Elected Officials are also reminded that some of these meetings, trainings, seminars and conferences, require an advanced payment of funds by the Town to reserve and secure the officials participation in those events and as such, they are expected attend to participate in those events.

Rules:

- (e.1) An elected official that agrees to attend, request to attend, or signs up to attend a meeting, training, seminar, conference or other such related events, but does not participate or attend such event or portions thereof, shall be required to reimburse the Town for any or all portions of any cost paid for by the Town and not recoverable by way of refund or credit issued to the Town, unless extenuating circumstances exist and reimbursement is waived by a majority vote of the neutral members of the Board of Commissioners.

E. Enforcement

1. The Town is committed to maintaining a healthy, fulfilling and humane workplace. To that end, every official is expected to observe the foregoing policies and rules when engaged in Town business.
2. Complaints alleging a violation of this Code of Conduct by an official shall be forwarded to the Chairperson of the Town's Ethics Commission in writing citing the persons involved, date time and events surrounding the complaint. The Ethics Commission shall commence an investigation of the complaint. Upon the completion of the investigation, the Ethics Commission shall forward its findings of fact to the entire Board of Commissioners. The Board of Commissioners will act upon the findings of facts submitted to it by the Ethics Commission by motion and vote and shall prescribe any sanction that it deems applicable to the complaint. Only members who are not subject of a complaint may vote and it shall require a majority vote of the board, to include the Mayor who is also afforded a vote on this matter to pass the Ethics Board recommendation.
3. The goal of enforcement of this Code of Conduct is corrective, rather than penal, and a progressive approach to curing violations shall be employed

when possible, beginning with less severe methods and proceeding to more severe methods as necessary.

- (a) The Mayor and Town Board of Commissioners may in a public meeting impose a fine of between \$50 - \$500 and or a Written Reprimand or Written Censure.
- 5. The accused official(s) shall be given every opportunity to mount a public defense of the accusations against him or her (them). The accused official(s) shall have the right to request a public hearing on the accusation(s) against him or her (them). The official shall be able to defend himself or herself at the public hearing on the accusation before any vote to sanction is taken by the Mayor and Commissioners

## SECTION 2.

Sections 2-302 thru 2-305 shall remain unchanged.

## SECTION 3.

All ordinances or parts thereof inconsistent herewith are repealed, rescinded, canceled and annulled.

## SECTION 4.

Should any provision, section, paragraph or subparagraph of this Ordinance, including any code or text adopted hereby, be declared null and void, illegal, unconstitutional, or otherwise determined to be unenforceable for a court having jurisdiction, the same shall not affect the validity, legality, or enforceability of any other provision, section, paragraph or subparagraph hereof, including any code text adopted hereby. The Town of Rising Sun hereby declares that it would have passed this ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared null and void, illegal, unconstitutional, or otherwise determined to be unenforceable. Each such provision, section, paragraph or subparagraph is expressly declared to be and is deemed severable.

## SECTION 5.

That nothing in this ordinance hereby adopted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed as cited in Section 2 of this ordinance; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this ordinance.

SECTION 6.

That the Rising Sun Town Clerk is hereby ordered and directed to cause this ordinance to be published in a newspaper in general circulation.

SECTION 7.

**NOW THEREFORE BE IT FURTHER RESOLVED** that this ordinance was introduced on this 13<sup>th</sup> day of October, 2015.

SECTION 8.

**NOW THEREFORE BE IT FURTHER RESOLVED** that the Mayor and Commissioners of the Town of Rising Sun passed, approved and adopted this ordinance on this 27<sup>th</sup> day of October, 2015

AYES: Commissioner Authenreath, Commissioner Scully & Commissioner Warnick

\*\*\* Special Note: The Town currently only has 3 sitting commissioners out of 4.

ATTEST:

ON BEHALF OF  
THE MAYOR AND COMMISSIONERS  
OF THE TOWN OF RISING SUN

BY: \_\_\_\_\_  
Marsha Spencer  
Town Clerk

BY: \_\_\_\_\_  
Travis Marion - Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

THIS 26TH DAY OF OCTOBER, 2015

BY: \_\_\_\_\_  
Jack A. Gullo, Jr., - Town Attorney

STATE OF MARYLAND)

COUNTY OF CECIL)

SS:

CERTIFICATE

TOWN OF RISING SUN)

I, Marsha Spencer, Town Clerk for the Town of Rising Sun, Maryland, do hereby certify that the above and foregoing Ordinance is a true, perfect and complete copy of the Ordinance adopted by the Mayor and Commissioners of the Town of Rising Sun, Maryland, and is identical to the original thereof appearing in the official records of the Town of Rising Sun, Maryland and the same has not, since its adoption, been rescinded or amended in any respect.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and have affixed the seal of the Town of Rising Sun as of this 28<sup>th</sup> day of October, 2015.

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Marsha J. Spencer

Town Clerk