

PUBLIC HEARING

January 27, 2016

At 9:32 p.m. Supervisor Schiliro stated that the Public Hearing, which was adjourned on October 21, 2015, would reconvene in accordance with the Public Notice that follows:

NOTICE IS HEREBY GIVEN THAT the North Castle Town Board will hold a Public Hearing on October 21, 2015, at 7:30 PM, or as soon thereafter, at Town Hall, 15 Bedford Road, Armonk, NY, 10504, for the purpose of considering a local law to amend Chapter 27 entitled Code of Ethics of the Code of the Town of North Castle, including the repeal of the current Code of Ethics and the adoption of a new Code of Ethics.

The local law is available in the Town Clerk's office during regular business hours and on the Town website www.northcastleny.com. ALL PERSONS HAVING AN INTEREST IN THE MATTER ARE INVITED TO ATTEND AND BE HEARD.

By Order of the Town Board
Anne Curran, Town Clerk

Dated: October 10, 2015
Armonk, NY

A revised draft of Local Law for consideration was received since October 21, 2015.

David Simonds and John Diaconis, Co-Chairs of the Ethics Task Force, Susan Shimer, Jeffrey Glat, and Rick Alimonti members of the Ethics Task Force, appeared before the Town Board to review the proposed local law to adopt a new Code of Ethics.

The following is a summary of points, by Section of the proposed law, discussed by the Town Board, Town Attorney Roland Baroni, and the Ethics Task Force members in attendance.

Section 19-6. Disclosure of interest in legislation and other matters – Subsection E.

It was confirmed by the Ethics Task Force that seasonal workers are excluded from the requirement to complete Town Disclosure Forms.

Section 19-10. Private Employment in Conflict with Official Duties – Subsection A and B.

Councilman Berra suggested Subsection A should be removed as it is confusing and is covered by subsection B. The Ethics Board will review these concerns.

Section 19.15. Nepotism - Subsection C.

Ed Lobermann, North White Plains, expressed concern that barring a municipal officer or employee from supervising a relative will prevent community members from taking on new positions and accepting promotions. Town Board members suggested ways to include an intermediary supervisor in instances where relatives work in the same department. Town Administrator Goldberg said that would be difficult, especially in departments with floating shifts as in the Police and Highway Departments.

Section 19.19. Board of Ethics - Subsection B.

Councilman DiGiacinto noted that this section prohibits a paid employee or municipal officer of the Town of North Castle from becoming a member of the Board of Ethics and believes inclusion will ensure representation by a large cross section of the population. The New York State Model Code recommends and the existing Town Code of Ethics provides that these employees and officers are allowed to serve. Mr. Diaconis said this could impose a conflict of interest and research shows a trend to exclude paid employees and municipal officers for bias. Ms. Shimer said that prevention of these members sets up a neutral authority with no inside bias. Mr. Alimonti said this is a matter of the appearance of impropriety on the Board. Supervisor Schiliro and Councilman Berra agreed that paid employees and municipal officers should not be allowed to serve to ensure neutrality and the perception of neutrality. Councilman DiGiacinto wants to include in writing a list of the types of professionals that should apply to be on the Board to ensure a broad representation. Mr. Simonds stated, and Supervisor Schiliro agreed, that this language is limiting.

Section 19.19. Board of Ethics - Subsection F.

Supervisor Schiliro and Councilmen Berra and Reiter agreed to require a supermajority or approval of at least four Ethics Board members for removal of a member from the Board of Ethics. Supermajority will be defined as “1 more vote than required for a bare majority” or “4 Board

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Members". Mr. Diaconis said a supermajority ensures greater protection since the Ethics Board holds a quasi-judicial position. Ms. Shimer believes it allows Ethics Board Members to act without fear and Mr. Alimonti added a supermajority removes any appearance of impropriety. Mr. Baroni said the Ethics Code requires removal for cause so there is no need for a stronger vote. Councilman D'Angelo said all other Boards require majority to vote, this should too. Following significant discussion on the purpose of a super majority, Supervisor Schiliro, Councilmen Berra, Reiter and D'Angelo agreed with the Ethics Task Force's recommendation to have a supermajority.

The Board and Task Force members discussed what constitutes a crime for purposes of this section and preventing a person from becoming a member of the Board of Ethics. Ms. Shimer defined "crime" as a misdemeanor or "one year in jail".

Section 19.19. Board of Ethics - Subsection J.

Councilman DiGiacinto requested that the Town Attorney or a labor attorney review this section to safeguard the process. Mr. Simonds asked if the request was to substitute the Board of Ethics with an attorney. Mr. Baroni said he could not do this as he represents the Town Board and a labor attorney would be inappropriate for this position as well. Task Force members said there is no precedent in other Towns giving Board of Ethics responsibilities to a paid attorney. Board of Ethics members are credible.

Mr. Alimonti believes hiring a gatekeeper would give one person ultimate prosecutorial discretion and would be a big mistake. He said the Ethics Board was specifically constituted to determine if complaints violate the Code.

Councilman D'Angelo expressed concerns that a flurry of frivolous Ethics claims will arise as a result of this. Task Force members believe the Ethics Board will be well guarded against this and expressed that the Ethics Code has been in existence and updating should not result in a multitude of new cases. Supervisor Schiliro does not think it is fair to base an estimate of the future volume of Ethics Board complaints on the number of past complaints. He said based on his experience, and the increased volume of complaints he receives on a daily basis, he believes the volume of complaints will increase dramatically in the future.

Councilman D'Angelo pointed out that the Ethics Code covers a very narrow list of violations and suggested adding a checklist of each of the violations and the section of the Ethics Code complaints pertain to. Mr. Diaconis offered that the Ethics Board will create a pamphlet to outline what is considered an Ethics Code violation and outline the process of filing a complaint, including sample complaint forms. Supervisor Schiliro said such a pamphlet may leave it up to residents to determine if a complaint falls within the scope of the Ethics Code as opposed to keeping the determination in the hands of the Ethics Board, and he would prefer to have the Ethics Board decide.

Section 19.19. Board of Ethics - Subsection J1.

Councilman DiGiacinto said the current Ethics Code requires a request of two Town Board members to bring allegations to the Ethics Board and she believes this should be maintained. Mr. Simonds countered that allowing one Town Board member to initiate a claim offers protection in case of a divided Board. Supervisor Schiliro originally thought allowing one Town Board member to bring a complaint would be problematic, but now sees Simonds' point that it is a safeguard in the case of a divided Board.

Section 19.19. Board of Ethics - Subsection J3.

Councilman DiGiacinto is uncomfortable with the Board of Ethics being able to initiate an Ethics violation charge and believes this will cause the Board of Ethics to lose objectivity. Mr. Diaconis said changes were made based on the last public hearing which require a majority of Ethics Board members to initiate a complaint. He added that the Ethics Board is most qualified to initiate these complaints.

Ms. Shimer said there are two steps in an Ethics Code violation case; first a majority is required to determine if a case has merit and should be investigated; and second, a supermajority is required to determine if the Code has in fact been violated. Ms. Shimer said there is a lower burden of proof to initiate a case than there is to judge a case. Allowing the Ethics Board to initiate a case maintains privacy.

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Ms. Shimer said it is vital that a case be started in one of the following three ways and addressed by a board fully constituted: 1) by one citizen with a sworn statement with respect to elected officials; 2) by one Town Board Member; or 3) by the Ethics Board itself.

Allowing the Ethics Board to initiate a complaint does combine prosecutorial and judging function, but the Ethics Board should be neutral. Mr. Diaconis said the Town Board will be appointing Ethics Board members and will be doing so based on their credibility.

Ed Lobermann said he is uncomfortable allowing the Ethics Board to be prosecutor and judge. He suggested eliminating J3 and reverting J2 to remove the restriction that town residents may only initiate complaints against elected officials. Councilman DiGiacinto held that the Ethics Board will lose neutrality if it can bring a case and judge it.

Ms. Shimer warned that if Subsection 3 were to be eliminated, then only a Town Board member would be able to initiate a claim against anyone besides an elected official which is unacceptable. Supervisor Schiliro countered that, in the past, cases were brought to the Town Board's attention and then brought to the Ethics Board. Mr. Alimonti added that the requirement of a majority of Board of Ethics members to initiate a claim is a check against an abuse of authority.

Armonk resident, Linda Fernberg, stated that it does not make sense to take the people appointed to determine ethics cases out of the equation of initiating such cases.

Section 19.20. Proceedings.

With respect to section 75 of the Civil Service Law, in response to Mr. Baroni's concerns, the Ethics Task Force determined this Code of Ethics does not contravene the Collective Bargaining Agreement covering union employees.

Subsection H was revised, with the approval of Mr. Baroni, to ensure compliance with Civil Service Law.

Section 19.21. Amount of Fines.

Based on discussions at the Public Hearing on October 21, 2015, the Ethics Task Force removed a maximum dollar amount for fines associated with Ethics Code violations. Councilman Berra said a maximum dollar amount should be required to set parameters. Ms. Shimer added that this section may be in violation of due process and may be unenforceable if a maximum dollar amount is omitted.

Section 19.22. Eligibility for appointment to Boards - Subsections A and B.

Councilmen Berra requested the addition of the Housing Board to these Subsections.

Ed Lobermann expressed concern that politics should not be part of the Ethics Board and cited sections 19.19 B and E, and 19.22 as indicators of political involvement.

After all persons were heard who desired to be heard, Councilman Berra moved, seconded by Councilman D'Angelo, that the Public Hearing be adjourned at 11:39 p.m.

The roll call vote was as follows:

Ayes: Councilmen Berra, D'Angelo, Reiter, DiGiacinto, Supervisor Schiliro

Noes: None

Alison Simon, Town Clerk

Dated: March 3, 2016