

PUBLIC HEARING

May 11, 2016

At 9:12 p.m. Supervisor Schiliro stated that the Public Hearing, which was adjourned on January 27, 2016, 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

Correspondence received since the Public Hearing on January 27, 2016:

Email from Susan Shimer, dated May 11, 2016, with proposed amendments to the Code of Ethics.

A revised draft of the Local Law for consideration

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, by Subsection, of the major points discussed by the Town Board, Town Attorney Roland Baroni, Ethics Task Force members, and residents; and the revisions to the proposed Local Law.

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

In response to a query from Councilman Berra, Mr. Diaconis confirmed that the disclosure form, which is required to be completed by Officers and Employees, other than seasonal employees, upon election or appointment and thereafter on an annual basis, does not involve financial disclosure.

Section 19.15. Nepotism – Subsection C.

Ed Lobermann, North White Plains, reiterated his objections which he expressed at the January 27, 2016 meeting regarding this Subsection which prohibits a Municipal Officer or Employee from supervising a Relative in the performance of the Relative's official powers or duties. Following discussion, it was agreed to modify this subsection to exclude those Municipal Officers or Employees "in place at the time this Code takes effect." It was also agreed to add language that "Incidental supervision as may be required by exigent circumstances shall not be construed as a violation of this subsection C."

Section 19.19. Board of Ethics – Subsection F.

Following discussion, it was agreed, as stated in the proposed local law, that removal of a member from the Board of Ethics requires approval by at least four affirmative votes by members of the Town Board. It was also agreed to revise language that grounds for removal include, "but are not limited to:" neglect of duty, misconduct in office, inability to discharge the powers or duties of office, violation of this Code, or conviction of a crime, thereby removing "substantial" immediately preceding "neglect of duty" and "gross" immediately preceding "misconduct in office". Councilman Berra did not agree with the removal of the language as noted.

Section 19.19. Board of Ethics – Subsection G.

In response to a query from Supervisor Schiliro, Mr. Diaconis said that there is a provision in this Subsection regarding the ability of the Board of Ethics to render advisory opinions.

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It was agreed to add the clause “unless applicable law requires that such records be produced” to this Subsection. Councilman D’Angelo noted that this clause was also added to Section 19-20, Subsections B., C. and D. (Subsections C., D. and E. in revised Code)

Section 19.19. Board of Ethics – Subsection I.

Councilman DiGiacinto said she thought it was very important, as provided in the current Code of Ethics, that the Town Attorney serve as counsel and the Town Board appoint a substitute in the event the Town Attorney has excused himself in a particular matter. It was agreed to revise this Subsection as follows: “The Board of Ethics may solicit the advice of the Town Attorney. In the event that the Town Attorney has excused himself/herself from said matter, the Town Board shall provide the Board of Ethics with the services of substitute 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.”

Section 19.19. Board of Ethics – Subsection J.

Discussion ensued regarding additional revisions being considered, which were not incorporated into the current draft of the local law being considered at the May 11, 2016 hearing, with regard to the power and authority of the Board of Ethics to investigate allegations of unethical practices and to render reports of such investigations and recommendations to the Town Board for action.

Item J.1.

Councilman DiGiacinto said that the current Code of Ethics states that a referral to the Board of Ethics requires the written requests of two members of the Town Board, a resolution of a majority of the Town Board, or the written request of any officer, employee, appointee or citizen of the Town with the approval of the majority of the Town Board. Ms. DiGiacinto said she would prefer that the new Code require a complaint against a Town Board member be filed by two members of the Town Board because a referral to the Ethics Board is a very serious consideration. She said the requirement for a referral from two Town Board members would provide for a check and balance. Supervisor Schiliro and Councilmen D’Angelo, Reiter and Berra were in agreement that a complaint could be filed by any member of the Town Board as stated in the revised language which was amended as follows:

1. upon complaint against a member of the Town Board being filed by any member of the Town Board;

Item J.2.

All Town Board members were in agreement with the addition of the following item to the Subsection and the language as follows:

2. upon complaint against any other Municipal Officer or Employee being filed by two members of the Town Board;

Item J.3.

All Town Board members were in agreement with the existing language as follows:

3. by an individual who shall submit the necessary documentation to the Board of Ethics as described in Subsection K but only regarding elected officials

Item J.4.

Regarding the Board of Ethics’ power and authority to investigate allegations of unethical practices on its own initiative, Neal Baumann, Armonk, said that a referral to an Ethics Board could mean that someone loses a job and gets a permanent mark on their professional record, and could severely damage a reputation especially if it is uncalled for. Mr. Baumann said that he does not believe the Board of Ethics should have the ability to self-refer and that this ability should remain with the Town Board or with individuals of the community. He said that there have been inappropriate referrals over the past ten years. He said it is conceivable over the long term the Board of Ethics could become stacked despite having staggered terms. Mr. Baumann said that if the Board of Ethics can self-refer it will be subject to intense lobbying.

Mr. Diaconis said that the draft Code was revised to include “based on majority vote” for the Board of Ethics to investigate allegations on its own initiative which is a legitimate check. He said that not permitting a referral from a member of the Board of Ethics would result in any one of its members having less power than a member of the community. Ms. Shimer noted that the provision for self-referral is in the model code.

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Councilman D'Angelo expressed strong disagreement with the above statements and said that the Board of Ethics should not have the power and authority to investigate allegations of unethical practices based on its own initiative.

Councilman DiGiacinto reiterated her concerns which she expressed at the January 27, 2016 meeting that the Board of Ethics would lose its objectivity if it has the authority to self-refer. Ms. DiGiacinto said she would like the Board of Ethics to have nothing to do with the referral process. She further expressed concerns about Town employees who would have to go through the entire process of being accused of a violation and said that knowing the final decision was up to the Town Board would be of little comfort. She said that while union employees may be provided with legal representation, if a Department Head felt a need for legal representation it would be at their own expense.

Councilman Berra said there may be a situation where the Town Board members are all of a certain mindset which may result in a failure to file a complaint. Mr. Berra said the mechanisms set in place by the Ethics Task Force will afford a high threshold of protection.

Rick Alimonti said there are checks and balances throughout the process, including the appointment of members of the Board of Ethics; staggering of their terms; requirement of a majority vote if there is a reasonable cause to believe that a violation of the Code has occurred; and ending with a recommendation to the Town Board, all of which make the Town Code of Ethics far more protective than the model code and other codes.

Councilman Reiter said he thought the members of the Ethics Task Force have put in place good fail safes including the requirement for a majority vote by the Board of Ethics, recusal of the member who makes a referral, and the fact that the Town Board ultimately has the final decision if there is a finding of a violation.

Supervisor Schiliro cited his personal experience of being referred to the Board of Ethics which was found to be baseless, and said he does have concerns regarding abuse of the Code and unwarranted complaints against Town employees, volunteers and officials. The Supervisor expressed support of the recommendations of the Ethics Task Force. Mr. Schiliro said he has faith in the electorate, the recommendations of the Task Force, and the people whom the Town Board has and will appoint to the Board of Ethics. He noted that the Code does not prevent anyone from asking the Town Board to refer a person to the Board of Ethics. He said he was in favor of the requirement for an individual submitting a complaint to do so under oath. The Supervisor said if there is abuse of the Code, a public hearing can be held to amend it.

In a response to a query from Supervisor Schiliro with regard to the recourse allowed against a person who continuously files false affidavits, Mr. Diaconis said that if the Board of Ethics finds the complaints to be frivolous, it could recommend to the Town Board that it issue a sanction.

Councilmen D'Angelo and DiGiacinto noted their dissent regarding the power and authority of the Board of Ethics to investigate allegations of unethical practices on its own initiative.

The majority of the Town Board was in agreement with the existing language as follows:

4. on its own initiative based on a majority vote.

Section 19.19. Board of Ethics – Subsection L in revised Code.

Mr. Simonds said that a new Subsection is proposed to be added to specifically state that if a Board of Ethics member refers a complaint, then that member has to recuse him/herself from all further proceedings with respect to that alleged violation. Ms. Shimer noted that the model code does not include the provision for recusal which is proposed in the Town's Code. It was agreed to add the new Subsection as follows: "The member of the Board of Ethics who calls a potential violation to the attention of the Board of Ethics shall recuse him/herself from all further proceedings with respect to that alleged violation."

Section 19.20. Proceedings

With regard to the confidentiality of Board of Ethics' proceedings, Mr. Baumann suggested that additional language be added to the Code of Ethics regarding the confidentiality which would be required of members of the Board of Ethics. Councilman D'Angelo said that he thought the issue

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of confidentiality has been addressed in the language of the revised Code. Supervisor Schiliro stated that any matter before the Board the Ethics is absolutely confidential.

Ms. Shimer said that she thought the process developed by the Ethics Task Force ensures the confidentiality of an investigation until there is a determination of a violation of the Code. In a response to a query from Mr. Baumann regarding whether a referral to the Board of Ethics would be subject to FOIL, Ms. Shimer said that to her knowledge it would not be.

Section 19.20. Proceedings – addition of new Subsection (Subsection B in revised Code)

Councilman DiGiacinto said the draft Code did not include a provision to notify the Town Board at the time a referral is made to the Board of Ethics. Ms. DiGiacinto noted that neither the complainant nor the subject of the complaint is required to keep the matter confidential. Following discussion, it was agreed to add a new Subsection with the following language: “In the event a proceeding is commenced by complaint by an individual, on its own initiative, or a member of the Town Board, the Board of Ethics shall inform the Town Attorney. The Town Attorney shall inform the Town Board.”

Section 19.20. Proceedings – Subsection D. (Subsection E. in revised Code)

It was agreed that the Board of Ethics will provide written notice of reasonable cause to the subject of the complaint; to the complainant, if any; and to the Town Board, thereby removing the clause “in the case of any elected official”.

Section 19.20. Proceedings – Subsection E. (Subsection F. in revised Code)

Following comments from Ed Lobermann, it was agreed to add “four votes” in parenthesis immediately following super majority to clearly define the number of votes needed by the Board of Ethics to determine that a violation has occurred.

Section 19.20. Proceedings – Subsection F. (Subsection G. in revised Code)

In response to a query from Mr. Baumann regarding whether the Board of Ethics had the power to subpoena and require records and how this would be enforced, Ms. Shimer said the enforcement would be handled through court proceedings. Supervisor Schiliro said the power to subpoena is necessary.

Section 19.20. Proceedings – Subsection H. (Subsection I in revised Code)

It was agreed to revise this Subsection as follows:

“Nothing in Section 19-20 shall modify or replace any written collective agreement between a public employer or employee organization”, thereby removing the phrase “in effect at the time of the enactment of this Code”.

Section 19.21. Penalties

Councilman DiGiacinto said she was not comfortable with the Town Board imposing a fine for a violation of the Code. Town Attorney Baroni said it was unusual for a Town Board to have this power. Following discussion, the Town Board agreed that the ability to fine was not necessary and to remove the word “fined” from this Subsection.

Mr. Simonds said he would provide a revised local law to include the changes agreed to at tonight’s public hearing for the Town Board to consider for adoption at a subsequent Town Board meeting.

After all persons were heard who desired to be heard, Councilman D’Angelo moved, seconded by Councilman Berra, that the Public Hearing be closed at 11:05 p.m.

The roll call vote was as follows:

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

Noes: None

Alison Simon, Town Clerk

Dated: June 7, 2016