

PUBLIC HEARING

October 21, 2015

At 8:02 p.m. Supervisor Schiliro stated that a Public Hearing would be held 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 19 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

The Public Notice was marked Exhibit "A" for the record.

The Affidavit of Posting calling the Public Hearing was marked Exhibit "B" for the record.

The Affidavit of Publication from The Journal News calling the Public Hearing was marked Exhibit "C" for the record.

Proposed Local Law for Town Board consideration.

David Simonds and John Diaconis, Co-Chairs of the Ethics Task Force, and Susan Shimer, member 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 proposal law, discussed by the Town Board, Town Attorney Roland Baroni, and the Ethics Task Force members in attendance.

Section 19-1. Purpose.

The Code of Ethics would be applicable to officers, employee whether elected or appointed, paid or unpaid, including members of any administrative boards and committees.

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

In response to a query by Councilman DiGiacinto, it was confirmed that, upon filing, *Disclosure - Conflict of Interest* forms would be forwarded to the Town Clerk for recording.

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

Following discussion, it was confirmed that Municipal Officers and Employees, other than seasonal employees, shall complete Town *Employees/Officials Disclosure Statement* forms upon election or appointment and thereafter on an annual basis; and the forms would be forwarded to the Town Clerk.

Section 19-19. Board of Ethics – Subsections B. and E.

Mr. Simonds addressed the proposed change to have up to three members of the same political party (versus two as currently permitted) on the Board of Ethics. Mr. Simonds said the Task Force had spent a great deal of time on this provision. Mr. Diaconis said the model ethics code does not have any limitations on members of political parties and many other towns which addressed this have no more than three members of a political party. The Task Force members unanimously supported allowing up to three members of the same political party as this change would provide a broader selection of qualified applicants. Mr. Simonds said that if the Town Board had reservations with this provision, the Task Force could offer a revision to Subsection E. to include that any determination of a violation to the Code require a super majority vote and then the requirement for a super majority vote would address any suggestion of political influence. In response to a query from Councilman Reiter, Mr. Diaconis said newer ethics codes do not require the appointment of a clergy

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member, business community member or others to their boards, adding that the model ordinance does not address this. Supervisor Schiliro said while his inclination was to limit the composition to two members of one party, based on the strong recommendation of the Task Force and the modification to the law for a super majority vote, he was comfortable with up to three members of the same political party. He expressed agreement with the Task Force recommendations to appoint five members using staggered rotations, and two alternate members. In response to a query from Councilman Reiter regarding the timeframe for an appointment following a resignation, Mr. Simonds said the Town Board would determine the timing. An alternate member could serve on the Ethics Board in the interim.

Section 19-19. Board of Ethics. – Subsections J.1.

With regard to the power and authority of the Board of Ethics to investigate allegations, Councilman DiGiacinto said the current Code requires a request of two Town Board members for an investigation which acts as a filter. She said she believes this should be maintained, and not be changed to one Town Board member as proposed. Mr. Baroni noted that the current Code requires written request of two members or a resolution by the majority of the Town Board. Supervisor Schiliro and Councilmen D'Angelo, Reiter and Mezzancello expressed support of requests by one Town Board member.

Section 19-19. Board of Ethics. – Subsections J.2. and K.

Town Attorney Baroni expressed concerns regarding the potential for frivolous requests by individuals whose allegations, if made public by the complainant, could cause embarrassment and damage the reputation of employees and volunteers, and said they may require some protection. Supervisor Schiliro said the Town wanted residents to volunteer to serve on boards and committees and wanted employees to be treated fairly, adding that a filter should be considered. Councilman D'Angelo also expressed concerns and supported the use of a sworn affidavit by anyone submitting a complaint form. Councilman DiGiacinto added that perception becomes reality with regard to requests for Ethics Board investigations. Ms. Shimer said the most neutral filter would be the Ethics Board. Mr. Simonds said the Ethics Board could dismiss frivolous allegations, and it was more important for citizens to have the ability to file a complaint. Following discussion, it was agreed to revise Subsection J.2 to permit an individual to request investigations only regarding elected officials, and to revise Subsection K to require that complaint forms submitted by individuals be verified under oath to be based on personal knowledge, and not based upon information and belief.

Section 19-19. Board of Ethics. – Subsection J.3.

Councilman DiGiacinto said she was not comfortable with the Board of Ethics investigating allegations on its own motion and thought a filter should be in place. Following discussion, it was agreed that the Board of Ethics could investigate allegations on its own initiative based on a majority vote.

Section 19-20. Proceedings. – Subsection B.

Supervisor Schiliro said in cases where the Board of Ethics determines that a complaint does not allege a violation of the Code and dismisses the complaint, it was necessary to close the loop for the public with regard to the decision. Following discussion, it was determined that the Town Board would be added as a recipient of the notice of the dismissal which would be mailed to the complainant and the subject of the complaint.

Section 19-20. Proceedings. – Subsection E.

In addition to this Section being revised to state that any determination by the Board of Ethics of a violation shall require a super majority vote, it was determined that the decision of the Board of Ethics, is a matter of public record, and the decision shall be kept on a docket maintained by the Board of Ethics.

Section 19-20. Proceedings. – Subsection F.

Councilman DiGiacinto requested that this subsection which would permit the Board of Ethics to administer oaths or affirmations, subpoena witnesses and compel their attendance be reviewed by labor counsel.

Section 19-21. Enforcement. (*Note: title changed to Penalties*)

With regard to the proposed provision to fine up to \$2,500 any Municipal Officer or Employee who violates the Code, Town Attorney Baroni recommended that, prior to adoption of the new Code, the

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provision be forwarded to labor counsel to advise if a municipal town board could impose a fine on a civil service employee. In response to a query from Mr. Simonds, Mr. Baroni said it should be determined if this provision violates any other law at this time, rather than at the time of a future violation of the Code. Mr. Baroni said that the present Code allows for employment suspensions only and the proposed Code provides for the power of removal, adding that fines would not be necessary. The Town Attorney questioned what could be more severe than removal from office or employment.

Councilman DiGiacinto said she was uncomfortable with the Town Board imposing fines. Ms. DiGiacinto said you cannot put a price on public humiliation and losing your employment. She said the provision should also be forwarded to the Town's labor unions as recommended to her by John Mancini, NYS Conference of Mayors and Municipal Officials. She noted that in her conversation with Mr. Mancini, he questioned how the enforcement of the fine provision would be handled.

Supervisor Schiliro said he did not see the benefit of imposing fines. Mr. Schiliro said he could consider review of the fine provision by labor counsel, but did not see the benefit of review by the labor unions which would take time and the Town would not be renegotiating contracts.

Councilman D'Angelo expressed support of removal of the fine provision.

Councilman Reiter said he did not have an issue the fine provision which he said could be a useful tool.

Councilman Mezzancello said he did not have an issue with the way provision is currently written, and said that some people might prefer to be fined rather than censured.

Mr. Simonds, Mr. Diaconis and Ms. Shimer expressed their support of the fine provision remaining in the Code and noted that fines are included in other codes as well as in the model ordinance, both with and without specific dollar amounts. They said it provides an option which the Town Board can determine whether or not to utilize, and sends a message that violations of the Code will not be tolerated.

It was agreed that any reference to a dollar amount for a fine would be removed. Based on the recommendation of Supervisor Schiliro, it was agreed that the title of Section 19-21 would be revised from Enforcement to Penalties.

It was further agreed that prior to the reconvening of the public hearing, Mr. Baroni would forward Subsection F of Section 19-20 entitled Proceedings and Section 19-21 entitled Penalties to the Town's labor counsel for an opinion.

After all persons were heard who desired to be heard, Councilman Reiter moved, seconded by Councilman D'Angelo, that the Public Hearing be adjourned at 10:38 p.m.

The roll call vote was as follows:

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

Noes: None

Anne Curran, Town Clerk

Dated: November 2, 2015