

MEMO

TO: Town Board
FROM: Susan Siegel
RE: Comments on proposed amendments to Ethics Law for March 19, 2024 public hearing
DATE: March 15, 2024

The following comments are designed to strengthen several key or missing sections of the existing Ethics Law and also to add greater transparency.

The comments address some sections of the current law that should be changed as well as comments on some of the proposed amendments that are subject to the March 19th public hearing.

For your convenience, the comments below include both what the problem is with the current law or the proposed amendments — and — where appropriate, suggested new text that is indented and highlighted. When the text of the current law or a proposed amendment is acceptable, there are no comments. Where appropriate, the reason for the suggested change is noted.

§ 45-4 Definitions

As the proposed amendments use the term “confidential information” in many sections, the term needs to be defined. Suggested definition

CONFIDENTIAL INFORMATION

Information in any format that is either: (i) prohibited by federal or state law from disclosure to the public; or (ii) prohibited from disclosure by local law, ordinance, or resolution of the municipality, and exempt from mandatory disclosure under the New York State Freedom of Information Law (“FOIL”) and the New York State Open Meetings Law.

We agree that the term “recusal” should be defined. However, the town’s definition reads more like a recusal process than a simple definition. See a suggested new definition. The recusal “process” is addressed in a later section.

RECUSAL

Abstention from deliberating, deciding, or participating in an official matter in which the Town official or employee may have a conflict of interest.

§ 45-5 Rules of ethical conduct.

The proposed amendment deletes the word “indirect” — despite the fact that the definition of “interest” in the definition section includes the word: “A participation, connection or involvement of any sort which may result in a direct or indirect pecuniary or material benefit...”

As indirect benefits may also constitute a conflict of interest, the word should be retained.

A. No Town official or employee may participate in any decision or take any official action with respect to any matter requiring the exercise of discretion, including discussing the matter and voting on it, when he or she knows or has reason to know that the action could confer a **direct or indirect financial or material benefit** on himself or herself, a family member, or any private organization in which he or she is deemed to have an interest.

§ 45-8 Disclosure requirements

Several suggestions are offered for greater clarity, including the use of the term “recusal” in lieu of “Transactional disclosure” and “public requests for disclosure” in lieu of “applicant related disclosure.” Other additions were made, e.g., leaving the room.

A. Recusal of Town official or employee (In lieu of “transactional disclosure”)

- 1) Whenever a matter requiring the exercise of discretion comes before a Town official or employee, either individually or as a member of an approval board, and disposition of the matter could result in a direct or indirect financial or material benefit to himself or herself, a family member, or any private organization in which he or she is deemed to have an interest, the Town official or employee shall publically disclose the nature of the interest as soon as he or she becomes aware of a potential conflict of interest and announce his or her intention to recuse themselves from any further deliberations involving the matter.
- 2) In the case of an elected Town official, the disclosure shall be filed with the Town Board. In all other cases, the disclosure shall be filed with the Town Clerk. In addition, in the case of an approval board member, a copy of the disclosure shall be filed with the appropriate board and any disclosure made to the board shall be made publicly at a meeting of the board and shall be included in the minutes of the meeting.
- 3) The recused person shall leave the room, area or meeting while the matter is being considered.

B. Public requests for disclosure (In lieu of “applicant related disclosure”)

- 1) Where any person requests the Town or any Town official or employee to take or refrain from taking any action, other than a ministerial act, that may result in a financial benefit both to the requester and to any Town official or employee, the requestor shall disclose, in writing to the Town Clerk, the name of any such person and the extent of such benefit, to the extent known to the requester at the time of the request.
- 2) The Town Clerk shall forward a copy of the request to the appropriate Town official or advisory board.

C. The list of Town officials and employees required to submit an annual disclosure form should be revised to include **ALL building inspectors**. The reason for this is self-evident.

D. Annual disclosure; timing and content.

The timing change is acceptable. But to put “teeth” into the requirement, the following text needs to be added.

- 1) Persons elected to office, hired or appointed to positions in mid-year shall file the annual disclosure statement within 15 days of their assuming their positions.
- 2) The Ethics Board shall report to the Town Board no later than April 15 of each year the names of any Town official or employee listed below who has not submitted the annual disclosure form or whose form is deficient. Said report shall be made public 30 days from its receipt by the Town Board. If the Town officials or employees named in the report have not submitted their form or amended their form within those 30 days, the Town Board shall make public their names and their failure to act shall constitute a violation of the Ethics Law and be subject to the disciplinary action in § 45-15.

E. Confidentiality of disclosure forms.

The proposed amendment that requires the Ethics Board to make all of the disclosure forms available to the town attorney should be eliminated; there has been no demonstrated need for the amendment. The sentence, “All forms are to be kept confidential subject to applicable law” should also be deleted and covered in the following suggested substitute text.

When a FOIL request is made seeking disclosure of a financial disclosure form, the request shall be forwarded to the Ethics Board for determination as to what can be redacted pursuant to the Freedom of Information Law.

§ 45-10 Jurisdiction: powers and duties of Board.

B. Meetings.

The following broader language is suggested which better reflects what the Ethics Board does:

The Board shall meet at a minimum of once a year to review the annual disclosure forms, when matters are referred to it, and to fulfill its duties as outlined in this Chapter.

C. Powers and duties.

This entire section should be revised in order to distinguish between “advisory opinions” requested by Town officials or employees and the Ethics Board’s responsibility to investigate complaints. (Even though reports of investigations are “advisory,” they are fundamentally different from requested “advisory opinions” as noted above.)

The section dealing with the disclosure forms needs to be strengthened.

The suggested investigation section below replaces § 45-12, Investigations, and modifies what needs to happen after the Town Board receives a report from the Ethics Board, including how soon after receiving an Ethics Board report the Town Board must make the report public and disclose the name of the Town official or employee who violated the law (see comments in § 45-15 below). The suggested text also more fully sets forth the Board’s role and process when investigating complaints, including adding time limits for conducting investigations and communications with the complainant.

The new text also deletes two additions in the town’s amendments: 1) unnecessarily limiting the scope of an investigation and 2) weakening the independence of the Ethics Board by requiring the town attorney to participate in the investigation. The text below includes the suggestion made by the Ethics Board in 2022 to give the Board the opportunity to hire an independent outside counsel if it needs assistance with an investigation.

Proposed new Powers and Duties

The Board shall have the following powers and duties

(1)

Make recommendations to the Town Board with respect to the drafting and adoption of amendments to the Code of Ethics.

(2)

Render advisory opinions to the Town Board, Town officials and employees. Such advisory opinions shall be rendered pursuant to the written request of any Town official or employee under such rules and regulations as the Board of Ethics may prescribe and may have the advice of the Town Attorney.

(3)

Subject to approval of the Town Board, prescribe rules and regulations governing its own internal organization and procedures in a manner consistent with this chapter.

(4)

Periodically review the laws governing the conduct of Town officials and employees and recommend changes to those laws.

(5)

Review annual disclosure statements to determine whether any person required to file such a statement by March 15 has failed to do so, has filed a deficient statement or has filed a statement that reveals a possible or potential violation of this Chapter and submit a written report of its finding to the Town Board no later than April 15 of each year, or 60 days after a person becomes a Town official or employee in mid-year.

(6) Investigate written signed complaints concerning an alleged violation of the Ethics Law from any person.

- a) Within 30 days of receiving a complaint, the Board shall notify the complainant that the Board will or will not investigate the complaint, and if it will not investigate the complaint, the reason/s why not.
- b) When investigating a complaint, the Board may only review the matters raised in said complaint—it may not review matters outside the four corners of the complaint. However, when the Board finds a violation of the Ethics Law and has reason to suspect that it may be indicative of a general pattern of behavior, it shall investigate to determine if there are other instances of the same type of violation.
- c) The complainant shall be offered the opportunity to be interviewed by the Ethics Board.
- d) The Board shall complete its investigation within four months from the date it decides to investigate the complaint. If the Board determines it needs more time, it shall notify, in writing, the complainant and provide an estimated date when the investigation will be completed.
- e) Within 15 days of the completion of its investigation, the Board shall submit a written report of its findings to the Town Board. It may also make a recommendation to the Town Board as to the appropriate disciplinary action to be taken if the individual was found to have violated the Ethics Law. Additionally, at the same time, the Board shall notify the complainant that a report of its findings has been submitted to the Town Board.
- f) The Town Board shall announce the receipt of said report at a public meeting within 30 days of the receipt of the report. When the Ethics Board finds, either unanimously or by a majority vote, that a Town official or employee has violated the Ethics Law, the Board shall disclose the name of the individual and the recommended disciplinary action/s but shall keep confidential all documents acquired by the Ethics Board during its investigation. In cases where the majority of the Ethics Board determines that no violation of the Ethics Law took place, the Town Board shall make public the nature of the investigation and the reasons why it was dismissed but shall redact the name of the involved individual.
- g) The Board may seek the assistance of the Town Attorney or request the services of an independent outside attorney when investigating a complaint.

§ 45-13 Public inspection of records and public access to meetings.

A. Meetings. Suggested clearer text that follows the Open Meetings Law.

Meetings of the Board of Ethics shall be open to the public unless expressly provided otherwise herein or by applicable law. Board of Ethics discussions and proceedings about specific complaints concerning potential violations and recommended disciplinary action, annual

disclosure statements and discussions regarding requested advisory opinions shall be conducted in executive session pursuant to the Open Meetings Law.

B. Inspection of records

Suggested simpler text based on the assumption that all information IS available except what Freedom of Information Law exempts. Therefore, not need to specify what is available.

Information exempted under the Freedom of Information Law shall not be made available to the public.

§ 45-14 Training and education.

Suggested revised language would make training mandatory.

- 1) The Board of Ethics shall assist the Town in conducting a mandatory training program on compliance with this Chapter for all Town officials and employees.
- 2) All new Town Officials employees shall, upon election, hire or appointment, participate in the Town's mandatory ethics training program.

§ 45-15 Disciplinary action.

While the existing law and proposed amendments retain the Town Board's authority to discipline a Town official or employee who was found to have violated the Ethics Law, the amendments allow the Board to keep the name of the person secret. Keeping the name secret weakens the law and effectively makes it meaningless, as making the violation public serves as a critical disincentive to future would be violators.

Releasing the name would not be a violation of the Freedom of Information Law or an unwarranted invasion of personal privacy. In a February 25, 2013 advisory opinion, the NYS Committee on Open Government (FOIL-AO-19018) held:

“Numerous judicial decisions rendered over the course of years indicate, first, that public employees have less privacy than others, for they are required to be more accountable than others; and second, it has been held in a variety of contexts that those items that pertain to a public employee's duties are accessible to the public, for disclosure in those instances would result in a permissible, not an unwarranted invasion of privacy.”

In cases where the Town Board makes public an Ethics Board finding that a Town official or employee DID NOT violate the Ethics Law, the name of the person would not be disclosed.

A. Eliminated as already covered in § 45-8 (Disclosure form) and § 45-10 (investigations)

B. No change

C. Add a new Section

In the case of appointed members of advisory boards, the Town Board may remove the member subject to provisions of applicable laws.

§ 45-18 Attorney to be member of Board.

This entire section should be eliminated in order to assure the total independence of the Ethics Board. Other provisions in the law allow the Ethics Board to seek the advice of the town attorney when needed.

§ 45-19 Distribution of copies.

The town's revised text is acceptable – except for combining parts of sections A & B to reflect newly elected, hired or appointed Town officials and employees.

- A. The Town Clerk shall cause copies of this chapter to be distributed to every Town official and make them readily available to the public. The Human Resources Office shall cause copies of this chapter to be distributed to every employee. In the case of a newly elected, appointed or hired Town official or employee, the copies shall be delivered within 10 days after entering upon the duties of his or her position.
- B. Failure to have received a copy of this chapter shall have no effect in the duty of compliance or the enforcement of the provisions of this chapter.
- C. Within 10 days of receiving a copy of this chapter, all Town officials and employees shall sign a form indicating that they have received and read this chapter and shall return said form to the Town's Human Resources office for inclusion in their personnel file or, in the event they do not have a personnel file, to the Town Clerk.

§ 45-20 “Confidentiality.”

This proposed new section should be totally eliminated. See the added definition of “confidential information.” Any prohibition beyond that would be a violation of the First Amendment Freedom of Speech.