

12-13-2022

Notes on the highlighted version of the proposed changes of the Ethics Code 6-10-2022

Key:

Changes highlighted in blue are an attempt to make the document more readable to non-lawyers, the employees and officials who are required to read the code. For example, lawyers know that the legal definition of "person" includes not just people but also businesses, organizations and other entities. This expanded definition is used instead of just "person".

Changes in green include updating pronouns and changing a typo.

Changes highlighted in yellow are substantive changes and are explained for each page below.

Page	Explanation
1	Explained on page 11 below.
3	The definition of recusal was added to clarify expected behavior
4	"officials" added to be consistent with section 45-5 I on "revolving door"
4	Paragraph A: "or indirect" was removed because of anticipated problems determining indirect benefit.
4	Paragraph E: Deletion takes away the Town Board's power to make exceptions to this rule
4	Paragraph F: exception removed because of anticipated difficulty in determining inference and intent.
5	Added an example
6	Paragraph A(1): See removal of "indirect" above.
6	Paragraph B: the addition covers the deleted text in a more straightforward way.
7	Substituting the word, "positions" would, for example, require all people who inspect buildings to fill out a disclosure form not just the person with the title building inspector.
8	Paragraph D: moves the timing of the annual disclosure form to the beginning of the year when many officials start their service.
8	Paragraph E(2): puts in writing what actually is the established policy: disclosure forms are kept in the locked Ethics Board cabinet after they are opened.
9	Removes original language no longer needed and provides currently applicable language.
9	Section 45-10 paragraph B: changes made to be consistent with paragraph C below.
9	Paragraph C: "signed complaint" added to be consistent with C(7) below. The word, "shall" is replaced with "may seek" to give the Ethics Board the option of not involving the town attorney when there is a complaint against the town to prevent conflict of interest.
10	Section 45-12: The addition requires the Town Board within 30 days to release an Ethics Board investigation with the option of redacting identifying information.
10	Section 45-13 A: restates the policy in a more positive way without changing access.
10	Section 45-13 C: documents are made available on the Town website.
11	Section 45-18 removed to prevent possible conflict of interest
11	Rename section 45-19 to 45-18
11	Section 45-18 paragraph A: Gives the Human Resources Office the responsibility to distribute copies of the code to employees.
11	Section 45-18 paragraph C: Simplifies the language and makes it consistent with paragraph A above.

Proposed Ethics Code Revision 6-10-2022 submitted by the Board of Ethics

Key: [Proposed additions to the current code are in brackets]; [previous changes to the code are in brackets in bold type]; proposed deletions indicated by double strikethrough. [Changes are highlighted]

Chapter 45

ETHICS

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|---------------------------------------------------------|----------------------------------------------------------------------|
| § 45-1. Title and purpose. | § 45-12. Investigations by Board. |
| § 45-2. Enabling authority; conflicting provisions. | § 45-13. Public inspection of records and public access to meetings. |
| § 45-3. Legislative intent. | § 45-14. Training and education. |
| § 45-4. Definitions. | § 45-15. Disciplinary action. |
| § 45-5. Rules of ethical conduct. | § 45-16. Existing rights. |
| § 45-6. Exclusions. | § 45-17. Provisions not to prevent filing of claims. |
| § 45-7. Inducement of violations of the Code of Ethics. | § 45-18. Attorney to be member of Board. |
| § 45-8. Disclosure requirements. | § 45-19 [18] Distribution of copies. |
| § 45-9. Board of Ethics established. | |
| § 45-10. Jurisdiction: powers and duties of Board. | Annual Disclosure Statement |
| § 45-11. Waivers. | |

[History: Adopted by the Town Board of the Town of Yorktown 5-16-2010 by L.L. No. 3-2010.¹ Amendments noted where applicable.]

§ 45-1. Title and purpose.

This chapter shall be known as the "Town of Yorktown Code of Ethics" a chapter adopting a code of ethics setting forth, for the guidance of the Town's officials and employees, the standards of ethical conduct reasonably expected of them.

§ 45-2. Enabling authority; conflicting provisions.

This chapter is enacted pursuant to § 806 of the General Municipal Law of the State of New York and any and all applicable laws, rules and regulations of the State of New York; nothing contained herein shall be deemed to conflict with any such laws, rules or regulations.

1. Editor's Note: This local law also repealed former Ch. 45, Ethics, adopted 2-2-1993 by L.L. No. 3-1993, as amended.

§ 45-3. Legislative intent.

A. The Town Board of the Town of Yorktown declares that it is the public policy of the Town and the purpose of this chapter to establish standards and guidelines for ethical conduct of officials and employees of the Town. These policies are best effectuated by:

- (1) Prescribing high ethical standards in an established Code of Ethics.
- (2) Requiring public disclosure by Town officials and employees, as herein provided.
- (3) Creating a Board of Ethics to render advisory opinions and otherwise assist in the administration of this chapter.
- (4) Prescribing meaningful sanctions and remedies to be imposed upon Town officials and employees who violate the public trust.

B. It is the further intent and purpose of the rules set forth herein to prevent the abuse of approving authority of the various Town boards and agencies who are in the unique position of exercising discretionary authority over the public's rights and privileges.

§ 45-4. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

APPEAR and APPEAR BEFORE — Communicating in any form, including but not limited to personally, through another person, by letter, electronic submission or by telephone.

APPROVAL BOARD MEMBER — Any member of a board having authority over applications for approval, limited to the Planning Board, Town Board and Zoning Board of Appeals.

CONTRACT — Claim, account or demand against or agreement with the Town, expressed or implied.

CUSTOMER or CLIENT — Any person to whom a Town official or employee or his or her outside employer or business has supplied goods or services during the previous 24 months having, in the aggregate, a value greater than \$500, but only if the official or employee knows or has reason to know that the outside employer or business supplied the goods or services.

FAMILY MEMBER — Spouse, child, child's spouse, stepchild, parent, grandparent, sibling, sibling's spouse, and/or domestic partner defined as someone 18 years or older living with the Town employee or official in a financially interdependent and lifetime relationship.

GIFT and FINANCIAL BENEFIT — Includes, without limitation, money, services and entertainment provided in exchange for less than fair market value, licenses, permits, contracts, authorizations, loans, travel, any other gratuity, or any promise thereof. A financial transaction may be a financial benefit but shall not be a gift unless it is on terms not available to the general public. Gifts and financial benefits shall not include authorized election campaign contributions.

INTEREST — A participation, connection or involvement of any sort which may result in a direct or indirect pecuniary or material benefit, [but does not include any benefit arising from the provision or receipt of any services generally available to the residents or taxpayers of the Town or an area of the Town, or a lawful class of such residents or taxpayers.] For the purposes of this chapter, the interests of a Town official or employee shall be deemed to include the interests of:

A. A family member.

B. Any person, [business, organization or entity], other than a bank, trust company or other lending institution, with whom he [or she] has a substantial debtor-creditor or other financial relationship.

C. Any person, [business, organization or entity], by whom he [or she] is employed or of which he [or she] is an officer, director or member.

D. Any person, [business, organization or entity], of which the stock or other legal or beneficial ownership is owned by him [or her]; provided, however, that if the business dealings of such person [or entity] with the Town form an insubstantial part of the total business dealings, then this definition shall only apply to such a person [or entity], if the Town official or employee owns more than 5% of the stock or other legal or beneficial ownership of such person [or entity].

MINISTERIAL ACTS — Any action performed in an official capacity, in a prescribed manner, without the exercise of judgment or discretion as to the propriety of the act.

OFFICIAL ACT OR ACTION — Any legislative, administrative, quasi-judicial, appointive or discretionary act of a Town official or employee or a Town body.

OUTSIDE EMPLOYER OR BUSINESS — Any activity, other than service to the Town, from which the Town official or employee receives compensation; or any entity, other than the Town, of which the Town official or employee is a member, officer or employee and from which he or she receives compensation; or any entity in which the Town official or employee has an ownership interest, except a corporation of which that interest is less than 5% of the total. For the purposes of this definition, compensation shall not include reimbursement for necessary expenses.

PERSON — Any individual or individuals, ~~the~~ [firm], partnership, association, corporation, company, organization or other legal entity of any kind.

[**RECUSAL** — Recusal means that an official or employee may not deliberate, vote or participate in any way in a matter in which there is a conflict of interest. The official or employee should disclose the conflict and leave the room while the matter is being considered.]

TOWN BODY — The Town or any board, commission, district, council or other agency, department or unit of the government thereof.

TOWN OFFICIAL or EMPLOYEE — Any official or employee of the Town, whether paid or unpaid, including, without limitation, all members of any office, board, body, advisory board, council, commission, agency, department, district, administration, division, bureau or committee of the Town and all former [officials and] employees acting as independent consultants. The terms "town official" or "employee" shall not include Town Justice.

§ 45-5. Rules of ethical conduct.

- 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.
- B. No Town official or employee shall engage in any business or profession or accept private employment or render any service for private interests which creates a conflict with his or her official duties.
- C. No Town official or employee shall use or attempt to use his [or her] official position to give or secure privileges or exemptions for himself or herself or a family member.
- D. No Town official or employee shall use any confidential information received by him [or her] in the course of his [or her] duties as a Town official or employee to further the interests of himself [or herself] or others, nor shall any Town official or employee divulge any confidential information so received.
- E. No Town official or employee shall, with or without compensation, represent, directly or indirectly, any person, [business, organization or entity] in connection with any transaction or contract before any Town body or court. ~~This subsection shall not be applicable to those officials serving on Town bodies that the Town Board shall deem exempt. Disclosure pursuant to § 45-8 shall still be required for any exempt Town body, except that no disclosures shall be required where a transaction is mandated by state law.~~
- F. No Town official or employee shall, directly or indirectly, solicit or receive cash or any gift more than once a year having a value of \$75 or more, whether in the form of service, loan, travel, entertainment, hospitality, thing or promise, or in any other form and from any person. ~~under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him in the performance of his official duties or was intended as a reward for any official action on his part.~~ Exclusions pursuant to § 45-6C shall apply. **[Amended 6-7-2011 by L.L. No. 5-2011]**
- G. A Town official or employee shall not request or authorize anyone else to request any subordinate of the Town official or employee to participate in any election campaign or contribute to any political entity.
- H. The chairperson or vice chairperson of a political committee shall not serve as an approval board member.

I. Revolving door. It shall be a presumptive conflict of interest for any former elected Town official, within one year after leaving office, to represent another person or corporation before any Town body. It shall be a presumptive conflict of interest for any former Town official or employee, within one year after leaving service, to represent another person or corporation before any Town body. A former Town official or employee may obtain relief from this presumption by providing evidence that he or she did not work on or influence such application to the degree that such representation before the Town would be a conflict of interest. Nothing in this Subsection I shall be deemed to prohibit former Town officials or employees from appearing before the Town Court.

J. Conflicts of interest and violations regarding applications:

(1) It shall be deemed a conflict of interest requiring recusal for any approval board member to sit in judgment over an application in which he or she has an interest.

(2) Any board member who by his or her official position is acting upon an application in which he or she has no interest but such application involves a family member, a person having previously executed a contract with the board member, or a person having previously transacted business with the board member shall fully disclose this relationship to the public prior to taking any action for an application.

K. No Town official or employee shall use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others, including but not limited to, the misappropriation to himself, herself or to others of the property, services or other resources of the Town for private business or other compensated nongovernmental purposes. **[Added 6-7-2011 by L.L. No. 5-2011]**

§ 45-6. Exclusions.

The provisions of § 45-5 of this Code of Ethics shall not prohibit or require abstention as a result of any of the following events:

A. Authorized actions. An action specifically authorized by statute, rule or regulation of the Town, the State of New York or of the United States of America, **[such as voting on the budget.]**

B. Ministerial acts.

C. Certain gifts. Gifts received by a Town official or employee:

(1) From a family member.

(2) Accepted on behalf of the Town and immediately transferred to the Town.

(3) Having a value of \$100 or less for the solemnization of a marriage by that Town official or employee at a place or hour other than his or her normal place or hours of business.

(4) Participation in social functions, dinners or programs of any public or private organization where the Town official or employee is attending in his or her official capacity as a representative of the Town.

D. Awards presented to the Town official or employee by charitable, civic or educational organizations.

E. Public facilities. Receipt of Town services or benefits or use of Town facilities that are generally available on the same terms and conditions to Town residents.

F. Ministerial employees. Former Town officials or employees appearing or practicing before the Town or receiving compensation for working on a matter before the Town after termination of Town service or employment where they performed only ministerial acts while working for the Town.

§ 45-7. Inducement of violations of the Code of Ethics.

No Town official shall attempt to induce, induce or aid a Town official or employee to violate any of the provisions of the Code of Ethics.

§ 45-8. Disclosure requirements.

A. 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 disclose in writing the nature of the interest.

(2) The disclosure shall be made when the matter requiring disclosure first comes before the Town official or employee.

(3) 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.

B. Applicant-related disclosure. 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. ~~If the request is made in writing, the disclosure shall include the written request and the request shall be filed with the Town Clerk. If the request is oral, disclosure shall be made in writing and filed with the Town Clerk.~~

C. Annual disclosure. An annual disclosure statement shall be submitted by each of the following Town officials or employees: **[Amended 6-7-2011 by L.L. No. 5-2011]**

(1) Elected officials.

(2) Head of any board, department or persons authorized to act on their behalf. In relation to the Police Department, this requirement shall extend only to the Chief of Police, Captains and Lieutenants.

(3) Town officials or employees holding policy-making positions, including members of Town boards.

(4) Notwithstanding the foregoing, the individuals holding the following titles [or positions] (including persons acting in such titles [or positions] by appointment of the Town Board) shall file an annual disclosure statement:

(a) The following elected officials:

[1] Town Supervisor.

[2] Town ~~Councilmen~~ [Councilpersons.]

[3] Town Clerk.

[4] Highway Superintendent.

(b) The individuals holding the following ~~titles~~ [positions]:

[1] Assessor.

[2] Town Attorney.

[3] Building Inspector.

[4] Court Clerk.

[5] Environmental Inspector.

[6] Deputy Town Clerk.

[7] Town Engineer.

[8] Superintendent of Environmental Conservation.

[9] Comptroller.

[10] Deputy Comptroller.

[11] Human Resources Specialist.

[12] Director, Section 8 Housing Program.

[13] Library Director.

[14] Director, Nutrition Center.

- [15] Superintendent of Parks and Recreation.
- [16] Director of Planning.
- [17] Police Chief.
- [18] Police Captain.
- [19] Police Lieutenant.
- [20] Receiver of Taxes.
- [21] Distribution Superintendent (Water Department).
- [22] Deputy Highway Superintendent.

(c) The appointed members of the following boards:

- [1] Planning Board.
- [2] Zoning Board.
- [3] Board of Assessment Review.
- [4] Library Board of Trustees.
- [5] Parks and Recreation Commission.
- [6] Board of Ethics.
- [7] Community Housing Board.

D. Annual disclosure; timing and content. The annual disclosure shall be **[provided to Town officials and employees by January 15 and returned to the Town Clerk] filed no later than May 15 [March 15]** of each year and amended within 30 days of any material change in the information so disclosed. The annual disclosure shall contain the information required in the disclosure form set forth below²: **[Added 6-7-2011 by L.L. No. 5-2011]**

E. Confidentiality of disclosure forms. **[Added 6-7-2011 by L.L. No. 5-2011]**

(1) All forms are to be kept confidential subject to applicable law.

(2) The Town Clerk will hold filed financial disclosure forms in a sealed envelope in a locked cabinet and shall provide forms to the Ethics **Board annually for annual review and otherwise upon request by the Ethics Board. [Once the envelopes are opened, the annual disclosure forms shall remain in the sole and exclusive custody of the Board of Ethics.]**

(3) When a FOIL request is made seeking disclosure of a financial disclosure form, the response to the FOIL request is to be forwarded to the Ethics Board for determination as to what must be redacted.

2. Editor's Note: Said disclosure form is included at the end of this chapter.

(4) The Ethics Board shall redact any information that poses no conflict of interest and has no relationship to official duties of the employee or Town official.

§ 45-9. Board of Ethics established.

There is hereby established a Board of Ethics to consist of five members. Board of Ethics members shall reside in the Town. No more than a majority minus one shall be registered in the same political party. Members shall be appointed by the Town Board and shall serve for a term of three years ~~except that as to the members first appointed, one shall serve until December 31 in the year in which this Board was established, two shall serve until the second December 31 and two shall serve until the third December 31~~ [commencing January 1 until December 31, with the terms staggered such that no more than the terms of two members begin in the same year.] Consecutive service shall not exceed ~~two~~ [three] full terms. When a vacancy occurs, it shall be filled within 60 days for the unexpired portion of the term. However, members shall serve until his or her successor has been appointed. The members shall receive no salary or compensation for their services as members of such Board and shall serve at the pleasure of the Town Board.

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

A. Jurisdiction. The Board shall act only with respect to officials and employees of the Town of Yorktown.

B. Meetings. The Board shall meet at a minimum of once a year to review the annual disclosure forms[,] ~~and additionally when the Town Board refers matters~~ [are referred] to it [and to fulfill its duties].

C. Powers and duties. The Board shall render advisory opinions to the Town Board [under such rules and regulations as the Board may prescribe.] Such advisory opinions shall be rendered pursuant to a written request of the Town Board [or a written signed complaint from any person.] ~~and under such rules and regulations as the Board may prescribe and shall~~ [The Board may seek] the advice of the Town Attorney [or outside counsel.] In addition, 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 ~~shall~~ [may] have the advice of the Town Attorney. [Amended 6-7-2011 by L.L. No. 5-2011]

(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 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.

(6) Notify the Town Board where review of an annual disclosure statement finds a deficiency or a potential violation of this chapter.

(7) Investigate all complaints and referrals concerning possible violations of this chapter.

(8) Elect its own ~~Chairman~~ [Chairperson.]

§ 45-11. Waivers.

The Board of Ethics shall have no power to grant any waiver of any provisions of this chapter.

§ 45-12. Investigations by Board.

The Board of Ethics, ~~with the assistance of the office of the Town Attorney~~ shall lead all investigations necessary to enforce this chapter. [The Board may request the assistance of the Town Attorney and/ or outside counsel. The Board shall render its advisory opinion concerning the investigation to the Town Board. The Town Board shall announce at a public meeting said advisory opinion within 30 days of the receipt of the advisory opinion. At the discretion of the Town Board, the name and identifying information of the subject of the investigation may be redacted.]

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

A. ~~No~~ [M]eeting[s] of the Board of Ethics shall be open to the public unless expressly provided otherwise by applicable law [or when the Board is in closed session].

B. Personal information exempted under the Freedom of Information Law³ shall not be made available to the public.

C. ~~The Board of Ethics~~ [following documents] shall be made available to the public ~~the following documents:~~

(1) All internal rules and regulations prescribed by the Board.

(2) All educational and informational materials.

§ 45-14. Training and education.

The Board of Ethics shall assist the Town in conducting training programs on compliance with this chapter and make informational and educational materials available to the public.

³ Editor's Note: See Public Officers Law Se. 85 et seq.

§ 45-15. Disciplinary action.

A. Where the Board of Ethics finds and determines that an official or employee has violated this chapter, it shall make a recommendation to the Town Board as to the appropriate disciplinary action to be taken. **[Amended 6-7-2011 by L.L. No. 5-2011]**

B. The Town Board shall consider, but need not follow, the recommended disciplinary action as advised by the Board of Ethics. The Town Board shall warn, censure or reprimand any person who violates, disobeys or disregards any provision of this chapter or any rule or regulation adopted pursuant to this chapter. Additionally, the Town Board may take proper and appropriate action to suspend without pay or remove from office or employment any nonelected Town official or employee who violates, disobeys or disregards any provision of this chapter.

§ 45-16. Existing rights.

No existing right or remedy shall be lost, impaired or affected by reason of this chapter.

§ 45-17. Provisions not to prevent filing of claims.

Nothing in this chapter shall be deemed to bar or prevent a present or former Town official or employee from timely filing any claim or suit against the Town on behalf of his or her family arising out of personal injury or property damage or any lawful benefit authorized or permitted by law.

~~**§ 45-18. Attorney to be member of Board.**~~

~~The Town Attorney shall be a nonvoting member ex officio of the Board of Ethics and upon request of the Board shall render advice and help in the administration of the Code.~~

~~**§ 45-19 [18] Distribution of copies.**~~

A. The Town Clerk shall cause copies of this chapter to be distributed to every Town official and employee and make them readily available to the public. **[The Human Resources Office shall cause copies of this chapter to be distributed to every employee.]**

B. Every Town official or employee elected, appointed or hired thereafter shall be delivered a copy of this chapter within 10 days after entering upon the duties of his or her position. Failure to have been delivered 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 elected officials [and employees] members of Town boards, department heads or persons authorized to act on their behalf, including in the Police Department, the Chief of Police, Captains and Lieutenants, and other Town officials or employees holding policy-making positions,** 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.

