

**TOWN OF PAWLING
LOCAL LAW NO. 3 OF 2009**

**A LOCAL LAW TO AMEND THE CODE OF
THE TOWN OF PAWLING BY ADDING A NEW
CHAPTER 28, TO BE ENTITLED
BOARD OF ETHICS, TO PROVIDE FOR THE ESTABLISHMENT
AND ORGANIZATION OF THE TOWN OF PAWLING
BOARD OF ETHICS**

BE IT ENACTED BY THE Town Board of the Town of Pawling, State of New York as follows:

Section 1. The Code of the Town of Pawling is hereby amended by adding thereto a new chapter to be Chapter 28, Board of Ethics, to read as follows:

§28-1 Establishment of Board of Ethics; organization; membership.

- A. The Board of Ethics is established pursuant to §808 of Article 18 of the General Municipal Law and shall be known as the "Town of Pawling Board of Ethics".
- B. The Board of Ethics shall consist of five members to be nominated by a nominating committee and appointed by the Town Board. All such members of the Board of Ethics shall be Electors of the Town of Pawling and shall serve without compensation. All members of the Board of Ethics shall be initially appointed for terms of from one to five years as determined by the Town Board. No member of the Board of Ethics shall serve an initial term the duration of which is the same as that of any other member of the Board of Ethics. The term of any Ethics Board member after the initial convening of the board shall be three years.
- C. The Board of Ethics shall designate one of its members as chairperson and another as its vice chairperson at its first meeting each year.
- D. Vacancies on the Board of Ethics shall be filled from nominations of the nominating committee by the Town Board which shall make the appointment for the balance of the unexpired term, or reappoint or make appointment upon completion of a board member's term.
- E. No members of the Board of Ethics shall be persons who are officers or employees of the Town. No Ethics Board member shall hold office concurrently in a political party or be employed or act as a lobbyist or hold elective office in any local, state or federal government. No more than two members of the Ethics Board may be registered in any one political party.
- F. An Ethics Board member may make campaign contributions and may participate in any election campaign.
- G. Members are authorized to incur any and all expenses necessary to effectuate the purposes of the Ethics Board within amounts which are appropriated by the Town Board annually.

- H. One person, may be selected from the nominating committee to serve on the Ethics Board.
- I. A Board of Ethics member may be removed by the Town Board after a finding of substantial neglect of duty, gross misconduct in office, inability to discharge the powers or duties of the office or violation of this act after written notice of the charges and an opportunity for reply.
- J. The Town Clerk shall be the Clerk of the Board of Ethics and all documents filed with the Town Clerk shall be deemed for the purposes of this chapter to be filings with the Board of Ethics.
- K. The Board of Ethics, in addition to the powers and duties prescribed herein, shall have all the powers and duties as prescribed by Article 18 of the General Municipal Law.
- L. No Ethics Board member may serve more than eight consecutive years.

§28-2 Establishment of nominating committee; organization; membership.

- A. The Nominating committee is established and shall be known as the “Town of Pawling Board of Ethics Nominating Committee”.
- B. The Nominating Committee will be selected by the Town Board and will consist of five citizens at large. No more than two of the members of the nominating committee may be registered in any one political party. Members of the nominating committee will serve only until all current openings in the Ethics Board have been filled and then will be disbanded until it needs to be reconstituted.

§28-3 Meeting.

The chairman or a majority of its members may call a meeting of the Ethics Board. The Ethics Board shall hold at least one meeting annually in March of each year regardless of whether there are any matters pending before the Ethics Board. Three members of the Board shall constitute a quorum, and a majority vote of the entire Board shall be required to take any action.

§28-4 Recommendations.

The Board of Ethics may at any time recommend to the Town Board amendments to this Chapter and Chapter 27 of the Pawling Town Code. Upon its formation it will immediately undertake the responsibility to propose revisions to the Pawling Code of Ethics. (Chapter 27)

§28-5 Rules and Regulations.

- A. The Board of Ethics upon its formation shall promulgate its own rules and regulations as to procedures subject to Town Board approval, and shall maintain appropriate records of its opinions and proceedings.

- B. The Board of Ethics may adopt and amend such rules or procedures as are appropriate.

§28-6 Ethics Board: jurisdiction, powers, and duties.

- A. The Ethics Board may only act with respect to Officers and Employees of the Town.
- B. The termination of the term of office or employment of a Town Officer or Employee with the Town shall not affect the jurisdiction of the Ethics Board with respect to the requirements imposed on him or her by the Town of Pawling Code of Ethics.
- C. The Ethics Board shall have the following powers and duties:
 - (1) To prescribe, promulgate, amend and rescind rules and regulations governing its own internal organization and procedures in a manner consistent with this Chapter as so authorized by the Town Board;
 - (2) Receive complaints alleging a violation of Chapter 27 or any Code of Ethics of the Town of Pawling, local law, or ordinance or resolution.
 - (3) To review, index, maintain on file, and dispose of sworn complaints alleging a violation of the Town of Pawling Code of Ethics.
 - (4) Advise and assist any local official in establishing rules and regulations relating to possible conflicts between private interests and official duties of present or former elected officials, local party officials, and local officers and employees.
 - (5) The Board of Ethics shall have the power to retain or hire legal counsel to advise it on any matter arising under this chapter within amounts which are appropriated by the Town Board.
 - (6) Prepare an annual report to the Supervisor and the Town Board recommending changes in the laws governing the conduct of local elected officials and officers and employees of the town covered by the Town of Pawling Code of Ethics.
 - (7) Nothing in this section shall be construed to permit the Ethics Board to conduct an investigation of itself or of any of its members or staff. If the Ethics Board receives a complaint alleging that the Ethics Board or any of its members or staff has violated any provision of The Town of Pawling Code of Ethics, or any other law, the Ethics Board shall promptly transmit to the Town Board a copy of the complaint. The Ethics Board may request the Dutchess County Ethics Committee to conduct an investigation of itself or of any of its members or staff.
 - (8) To conduct hearings, recommend disciplinary action, make referrals, and initiate appropriate actions and proceedings pursuant to §26-11;

- (9) To render, index, and maintain on file advisory opinions pursuant to §26-8;
- (10) To prepare reports and recommend changes to this chapter pursuant to §26-12;
- (11) To otherwise enforce and administer all of the provisions of this Chapter and Chapter 27.
- (12) Conduct any investigation necessary to carry out the provisions of this Chapter. Pursuant to this power and duty, the Board may administer oaths or affirmations, subpoena witnesses, compel their attendance and require the production of any books or records which it may deem relevant or material.

§28-7 Staff.

The Board of Ethics shall be empowered to request support staff, and assistance from the Town Board or Supervisor in furtherance of its duties and responsibilities.

§28-8 Advisory opinions.

Upon written request, the Board of Ethics established hereunder shall render advisory opinions to officers and employees of the Town of Pawling. Such written requests may be made to any member of the Board of Ethics. Such advisory opinions shall be rendered pursuant to the written request of any officer or employee under such rules and regulations as the Board may prescribe.

- A. Upon the written request of any Town Officer or Employee, the Ethics Board shall render a written advisory opinion with respect to the interpretation or application of Chapter 27 or of Article 18 of the General Municipal Law of the State of New York.
- B. In rendering advisory opinions, the Ethics Board may request the advice and counsel of the attorney employed by the Ethics Board or, if none, the Town Attorney.
- C. An advisory opinion rendered by the Ethics Board, until and unless amended or revoked, shall be binding on the Ethics Board in any subsequent proceeding concerning the person who requested the opinion and who acted in good faith, unless material facts were omitted or misstated by the person in the request for an opinion. Such requests shall be confidential, but the Ethics Board may publish such opinions, provided that the name of the requesting person and other identifying details shall not be included in the publication.
- D. Advisory opinions and requests for advisory opinions shall be indexed and maintained on file by the Ethics Board.
- E. Any person aggrieved by an advisory opinion of the Ethics Board may seek judicial review and relief pursuant to Article 78 of the Civil Practice Law and Rules of the State of New York.

- F. Any person who has submitted to the Ethics Board a written request for an advisory opinion may bring a special proceeding pursuant to Article 78 of the Civil Practice Law and Rules for an order compelling the Ethics Board to issue the advisory opinion. In addition to, or in lieu of, such injunctive relief, the person may seek a judgment in accordance with Section 3001 of the Civil Practice Law and Rules determining the question posed in the request for the advisory opinion. No action or special proceeding shall be prosecuted or maintained pursuant to this subsection unless:
- (1) It shall appear by, and as an allegation in, the petition or complaint that at least six months have elapsed since the filing of the request and that the Ethics Board has failed to file any determination in the matter; and
 - (2) The action or special proceeding shall be commenced within 10 months after the submission of the request for the advisory opinion.

§28-9 Judicial review.

Any person aggrieved by a decision of the Ethics Board may seek judicial review and relief pursuant to Article 78 of the Civil Practice Law and rules of the State of New York.

§28-10 Confidentiality of opinions.

The advisory opinions of the Board of Ethics shall not be made public or disclosed unless required by the Freedom of Information Law (Public Officers Law Article 6) or required for use in a disciplinary proceeding. Whenever a request for access to an advisory opinion herein is received, the officer, employee or appointed official who requested the opinion shall be notified of the request within 48 hours of the receipt of the request.

§28-11 Complaints.

The procedure for receipt and investigation of complaints shall be as follows:

- (1) The written complaint must be signed, must include the individual complainant's address, and set forth reasonable detail and documentation, if any, of the facts alleged to constitute the violation(s).
- (2) The written complaint shall be filed with the Board of Ethics. Upon receipt of said complaint, the Board of Ethics shall acknowledge receipt to the complainant and forward the complaint simultaneously to the Officer or Employee who is the subject of the complaint and the Town Attorney or other attorney employed by the Board of Ethics.
- (3) The Board of Ethics shall then conduct a preliminary analysis of the complaint and determine in writing whether there is probable cause for the complaint. In the event that the Board of Ethics should find no probable

- cause for the complaint, the complaint shall be dismissed by the Board of Ethics sua sponte. The board of Ethics shall then notify the complainant, the Officer or the Employee who is the subject of the complaint and the Town Board of the disposition of the complaint.
- (4) In the event that the Board of Ethics should find probable cause for the complaint, the Board of Ethics shall forward to the Town Board a copy of its probable cause decision together with any information and documentation acquired by the Board of Ethics regarding the complaint.
 - (5) The Board of Ethics shall then conduct an investigation and hearing on said complaint.
 - (6) Upon the request of a majority vote of the total voting membership of the Board of Ethics, the Board may issue subpoenas to compel the attendance of necessary witnesses and the production of documents and other materials pertinent to the investigation. The Town Attorney or other attorney employed by the Board of Ethics will assist the Board in the preparation and issuance of subpoena(s).
 - (7) The Officer or Employee who is the subject of the complaint shall have the right to be represented by counsel at any required appearance before the Board of Ethics.
 - (8) A copy of the transcript of the testimony of the Officer or Employee who is the subject of the complaint shall be provided at no cost to the Officer or Employee.
 - (9) The Board of Ethics may require a written sworn response from the Officer or Employee who is the subject of the complaint in lieu of an appearance before the Board of Ethics.
 - (10) After the complaint has been filed and prior to any investigation undertaken of a complaint before the Board of Ethics, no member of the Board of Ethics or any of the Board's authorized agents may communicate directly or indirectly with any party or other persons about any issue of fact or law regarding the complaint, except that:
 - (a) The members of the Board of Ethics may obtain legal advice from the Town Attorney or special counsel as the case may be; and
 - (b) The members of the Board of Ethics may discuss the complaint among themselves;
 - (c) If any person attempts to influence a Board of Ethics member regarding the pending complaint, the Board member shall report the substance of the communication to the Board of Ethics at the next regular meeting of the Board of Ethics.
 - (11) At the conclusion of its investigation and hearing on said complaint, the Board of Ethics shall then advise the complainant, the Officer or the Employee who is the subject of the complaint and the Town Board of the disposition of the complaint and its recommendation for action made to the Town Board. The Town Board shall take official action by public vote on such recommendation received from the Board of Ethics in regard to a complaint within thirty (30) days of receipt and shall, immediately following

the taking of such action, make it, including the recommendation of the Board of Ethics, public.

§28-12 Annual reports; review of Code of Ethics.

- A. The Ethics Board shall prepare and submit an annual report to the Town Board, summarizing the activities of the Ethics Board by April 15, for the previous calendar year.
- B. The Ethics Board shall periodically review this Chapter and the Ethics Board's rules, regulations, and administrative procedures and Chapter 27 to determine whether they promote integrity, public confidence, and participation in Town government and whether they set forth clear and enforceable, common sense standards of conduct. At any time, the Ethics Board may recommend changes to the text or administration of this Chapter and Chapter 27 to the Town Board.

§28-13 Distribution and posting.

- A. Within 30 days after the effective date of this chapter, and thereafter as appropriate, the Ethics Board shall transmit to the Town Board and Town Clerk, in a form suitable for posting a copy of this Chapter. Within 10 days after receipt of the copy, the Town Clerk shall cause the copy to be posted conspicuously in a place designated for the posting of public notices.
- B. Within 30 days after the effective date of this section, and thereafter as appropriate, the Ethics Board shall transmit to the Town Board, in a form suitable for distribution, copies of this Chapter and Chapter 27 for distribution to Town Officers and Employees. Within 10 days after receipt of those copies, the Supervisor, or his or her designee, shall cause the copies to be distributed to every Town Officer and Employee and made readily available to the public. Every Town Officer or Employee elected or appointed thereafter shall be furnished a copy of those provisions prior to entering upon the duties of his or her position.
- C. Failure of the Town to comply with the provisions of this section or failure of any Town Officer or Employee to receive a copy of the provisions of this Chapter and Chapter 27 shall have no effect on the duty of compliance with this Chapter and Chapter 27 or on the enforcement of their provisions.

§28-14 Penalties for offenses.

- A. Disciplinary action. Any Town officer or employee who engages in any action that violates any provision of Chapter 27 may be warned, reprimanded, suspended or removed from office or employment, or be subject to any other sanction authorized by law or collective bargaining

agreement, by the person or body authorized by law to impose such sanctions. A warning, reprimand, suspension, removal, or other authorized sanction may be imposed in addition to any other penalty contained in this Chapter or in any other provision of law.

- B. Civil fine. Any Town officer or employee who violates any provision of Chapter 27 may be subject to a civil fine of up to \$1,500 for each violation. A civil fine may be imposed in addition to any other penalty contained in any other provision of law or in this chapter.
- C. Damages. Any person, whether or not a Town officer or employee, who violates any provision of Chapter 27 shall be liable in damages to the Town for any losses or increased costs incurred by the Town as a result of the violation. Such damages may be imposed in addition to any other penalty contained in any other provision of law or in this chapter.

§28-15 Severability.

The provisions of this Local Law are declared to be severable, and if any section, subsection, sentence, clause or part thereof is, for any reason, held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of any remaining sections, subsections, sentences, clauses or part of this ordinance.

§28-16 Effective Date.

This Local Law shall take effect immediately upon filing in the Office of the Secretary of State.