

Village of Mamaroneck — Ad Hoc Ethics Code Review Committee

Agenda for Meeting

December 2, 2021 at 6:00 PM

1. Approval of the minutes of the meeting of June 28, 2021
2. Discussion of amended code sections
3. Discussion on delivering the annotated revised Code of Ethics and the final report of the Ad Hoc Committee to the Board of Trustees
4. Additional business
5. Adjournment

Village of Mamaroneck Ad Hoc Ethics Code Review Committee June 29, 2021 Meeting Minutes

[~~Prior m~~Meetings of this committee are recorded on Zoom and may be viewed as public record on Mamaroneck's YouTube page]

Executive Order 202.1 issued by Governor Andrew Cuomo, which mandated that all in-person public access to the Village of Mamaroneck Ad Hoc Ethics Code Review Committee be suspended was revoked. As a result, the committee met in person, and the meetings are no longer recorded on Zoom, at the Village Conference Room located at 123 Mamaroneck Avenue Mamaroneck, New York 10543 on June 29, 2021 at 6:30 PM. There were no members of the public in attendance at the meeting.

Present: Chairperson Dan Karson, Jocelyn Donat (by telephone), Ellen Hauptman, John Hofstetter, Brian Kerr, Mike Kopy

From the Village: Trustee Nora Lucas

Chairperson Karson called the meeting to order at 6:33 PM. Mr. Kopy made a motion to open the meeting. Ms. Hauptman seconded the motion. Mr. Karson welcomed everyone to the meeting as this is the first in-person meeting of the Ad Hoc Committee since the committee was created.

With no other edits than Mr. Karson's edits to the minutes of the meeting on May 27, 2021, Ms. Hauptman made a motion to approve the minutes of the May 27, 2021 meeting. Mr. Kopy seconded the motion. All voted in favor of the motion. The minutes were adopted as amended.

Addressing the Definitions section of the proposed revised Code of Ethics, Ms. Hauptman stated that Section 21-1 does not require the word "Village" in "Village consultants and ~~said~~ ~~that~~ questioned if "Village" can be removed from "Village consultants throughout the document. She also questioned "Village" where it exists for "Village employees." All agreed that "Village" can be removed.

Mr. Karson stated that Cynthia Goldstein's Article 78 proceeding brought against the Village, seeking a declaratory judgment that sections of the Code of Ethics were unconstitutionally vague, was dismissed by the New York State Supreme Court, noting that ~~and said that~~ the decision was relevant to the Ad Hoc Committee's work.

Ms. Donat stated that naming terms in the code ~~things~~ presented the most challenge for her and Ms. Hauptman. Ms. Hauptman stated that Ms. Donat added "committee member" in certain places. Mr. Kopy asked whether there should be catch-all provisions in the Code of Ethics, such as a notice of where these rules are not clearly interpreted, it should be left to the discretion of the ~~Board of Ethics~~ Board, past precedent~~see~~, and any other authority, and said that he does not want to do anything to weaken the Code of Ethics. He asked if ~~whether~~ when a provision is not established in the Code of Ethics, it can be interpreted. Mr. Karson stated that he believes that the ~~Board of Ethics~~ Board interprets the Code of Ethics. Mr. Kopy asked what happens when a provision is not included.

Ms. Hauptman stated that when a person has a query regarding the Code of Ethics, the person makes ~~the~~ inquiry with the ~~Board of Ethics~~ Board, ~~and that we should rely on their judgement~~. She stated that she considered codes of ethics from other municipalities, and Mr. Karson reviewed the New York State model code. He and Ms. Hauptman ~~said that to the extent they~~

found provisions in other codes which they believed should be added to the Mamaroneck code, they were added. ~~all found omissions were added to the document.~~

Mr. Hofstetter stated that the Ad Hoc Committee has tried to be comprehensive in its recommendations and said that the Ad Hoc Committee cannot predict every possible situation. Mr. Karson stated that the Code of Ethics is clear on what is and what is not prohibited. Ms. Hauptman stated that the Ad Hoc Committee has notes for the Board of Trustees and the provision recommended by Mr. Kopy should be added. Mr. Hofstetter stated that there is a preamble to almost any law and that in the preamble, if a subject thing is not considered in the Code of Ethics, it should be considered by the Board of Ethics. He said that if an action is criminal, the matter should be forwarded to the prosecuting authorities.

Mr. Kopy stated that the Ad Hoc Committee does not have any catch-all provision in the Code of Ethics and asked that the Board of Ethics should be able to interpret provisions or strictly interpret the Code of Ethics. Ms. Hauptman stated that the Ad Hoc Committee trusts the Ethics Board of Ethics to have good judgment in interpreting the Code of Ethics. Mr. Karson stated that under Section 21-16 B of there is a provision the proposed code stating that publicly issued opinions of the Ethics Board are limited in authority to the specific cases for which they were issued. may not be taken into consideration as each situation has specific facts. Trustee Lucas stated that certain facts may be similar. Mr. Hofstetter stated that similarly situated cases on people shes should be treated similarly.

Mr. Karson stated that he did not want to add language to the code that could be considered vague. He cited the example of was discussing Section 21-4(G)¹ on misuse of authority. He believed the section to be too vague to interpret legally, but would not delete the section since its deletion could result in an unwanted negative inference. and said that the section should be kept in the Code of Ethics. He added that there is a section in the Model Ethics Law² code providing that certain "benefits" obtained by persons covered by a code of ethics were not intended to fall under disclosure requirements, but he thought that in the absence of public or other comment on its need, adding the provision was not necessary.

tated that a potential hypothetical could include an application for a fishing license being expedited from other applications. Trustee Lucas stated that the members of the Board of Trustees receive a parking permit to park at Harbor Island Park.

The committee then discussed sections of the code that to which Mr. Karson had suggested edits in his most recent review of the draft code.

stated that Section 21-3 in the definition of "Interest," should be reviewed. Trustee Lucas stated that the definition could include committee, commission and council members as there are certain committees and asked whether the Ad Hoc Committee received a list of positions required to file annual disclosure statements. Ms. Hauptman stated that Deputy Village Clerk

¹ 21-4 G. Misuse of authority. No Village officer, board member, Village employee or Village consultant shall use or attempt to use his official position to secure unwarranted privileges or exemptions for himself/herself or others.

² Model Ethics Law Section 103-5 "Exclusions from the code of ethics:[subsection]5...The provisions of sections 101 and 102 [Transactional disclosure and recusal] shall not prohibit, or require recusal as a result of Receipt of [municipal] services or benefits, or use of [municipal] facilities, that are generally available on the same terms and conditions to residents or a class of residents in the [municipality]. Mark Davies, "How to Adopt a Municipal Conflict of Interest Law: Process", Appendix A "Model Ethics Law", *Municipal Ethics in New York*, (New York: New York State Bar Association, 2016).

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Sally Roberts emailed the list to the Ad Hoc Committee early on in the process. Mr. Hofstetter asked whether the people included are elected or appointed. Trustee Lucas stated that there are commissions, boards, or councils. Ms. Hauptman stated that there are also committees and the current version of the Code of Ethics does not mention commission or council members. Mr. Kopy stated that the Ad Hoc Committee has discussed the topic extensively. Ms. Hauptman stated that the Budget Committee never involves itself in the purchasing of things for the Village government and does not have any decision-making authority. Mr. Hofstetter stated that the definition of interest is broad and that a person should recuse themselves if the person has an interest in the matter even if the committee or board does not have specific decision making authority. Mr. Kopy stated that the Budget Committee does have broad authority. Ms. Hauptman stated that the Budget Committee is not advising the Board of Trustees on which capital projects should be delegated funds nor is the Budget Committee involved in granting contracts, and said that the Budget Committee reviews priorities of the Board of Trustees for capital projects as well as providing guidance and principles for the operating budget.

Mr. Hofstetter stated that many boards and committees try to influence decisions and said that at the specific point of decisions, a person's interests must be disclosed. Trustee Lucas stated that there is a definition in the state or local Code of Ethics, that a person must notarize their oath of office in order to assume their positions. Mr. Kerr stated that in Section 21-3 in the definition of officer, board member, employee, or Village consultant, a volunteer firefighter is not considered an officer or employee of the Village government.

Mr. Karson stated that the Ad Hoc Committee could add a section stating that the Code of Ethics applies to specific persons or positions. Mr. Hofstetter stated that ~~that~~ people covered by ~~included in~~ the Code of Ethics are is separate from the people required to file annual Disclosure Statements. Mr. Karson ~~suggested~~ ~~tated~~ that he draft will write an applicability section to be included in the Code of Ethics, in order to make clear that the provisions of the code apply to all categories of offices and positions identified in the code, so that there is no confusion as to the applicability of various titles and memberships. To the extent the code is not intended to cover a specific office or membership, an exemption can be cited.

Mr. Kopy stated that anyone who must take an oath should be included. Mr. Karson stated that he has received helpful information from John Mancini of the New York Conference of Mayors to the effect that about how an elected official cannot be suspended from office by provision of the code. for not signing an acknowledgement.

Trustee Lucas asked the Ad Hoc Committee when it wants to have a work session with the Board of Trustees. ~~Mr. Hofstetter stated that~~ Mr. Kopy stated that considering the Ad Hoc Committee was created by the Board of Trustees in July 2020, one year is a major commitment for the ~~Ad Hoc C~~committee's work and warrants a meeting with a appearance before the Board of Trustees.

Mr. Hofstetter made a motion to have Mr. Karson write to the Board of Trustees asking them to place on the agenda the Ad Hoc Committee's interim report and ~~made request~~ make comments ~~back~~ regarding the interim report. Ms. Hauptman seconded the motion. All voted in favor of the motion.

Trustee Lucas asked whether the Ad Hoc Committee wants comments from the public directly. Mr. Karson stated that the Ad Hoc Committee invites any comments from the public regarding

the Code of Ethics and the interim report. Mr. Kopy stated that it is better if the Ad Hoc Committee meets with the Board of Trustees. Trustee Lucas asked whether the Ad Hoc Committee wants to meet with the Board of Trustees after comments from the Board of Trustees. Mr. Kopy said that the idea was okay in his opinion. Mr. Hofstetter asked whether the Ad Hoc Committee has a Village email ~~account-Mr.~~ Mr. Karson stated that the Ad Hoc Committee has a Village ~~accountemail~~. Trustee Lucas stated that emails received are forwarded to the personal emails of the members. Ms. Hauptman stated that it was frustrating that the Board of Trustees created the Ad Hoc Committee but is not responsive to the committee's work.

Mr. Karson ~~continued discussion on stated that there are comments to each the~~ edited ~~sections~~ part of the Code of Ethics, ~~in which he made edits and said he made comments to each specific edit to the Code of Ethics.~~

Trustee Lucas stated that political contributions must be disclosed if they are greater than \$100 and said that the legal requirement to disclose is not triggered if the contribution is \$99 or less. Mr. Karson stated that the current law should be ~~retained in~~ incorporated into the Code of Ethics.

Regarding section 21-4 R, which appears to be advisory in its phrasing, rather than obligatory, Mr. Karson stated that he considered deleting the section, since it is not framed in standard statutory language, but determined it advisable to just cite it for attention by the Board of Trustees.

Regarding section 21-5 B [1] Mr. Karson suggested deleting the "Editor's Note" stating that a copy of the Disclosure Statement form was included at the end of the chapter, be deleted, since the form could change over time, and reference to the form included might mislead a filer to one that was outdated. A discussion then followed as to whether the form was automatically updated, and whether the form itself constituted a section of the law. Trustee Lucas stated that the ~~Disclosure Statement form~~ is an attachment to the Code of Ethics. Mr. Karson suggested that the question as to whether the form tated that the matter itself is part of the law and whether the Editor's Note should be retained as is be referred ~~forwarded~~ to the Board of Trustees.

Ms. Hauptman stated that in her opinion, a transactional disclosure is between annual and initial disclosure statements when new information is obtained. Mr. Karson stated that he will review the section. Mr. Hofstetter stated that a person working as an engineer for the Village is required to file a transactional disclosure statement.

Ms. Hauptman stated that the most effort ~~in editing the current draft -will have to be~~ in the "who" of the Code of Ethics. Mr. Karson stated that he will review the sections in which there could be exceptions.

Mr. Kerr asked whether Mr. Karson received any further communications regarding the Ad Hoc Committee's work. Mr. Karson stated that Deborah Chapin ~~has stated that she suggested~~ suggested that the Board of Trustees should be required to include in their oaths of office a provision swearing to defend the Code of Ethics. Mr. Hofstetter stated that the Ad Hoc Committee cannot legislate the discretion of the Board of Trustees. Mr. Karson stated that he intends ~~has~~ to discuss the ~~suggestionmatter~~ further with Ms. Chapin. Mr. Karson thanked everyone for attending the meeting.

Mr. Kopy made a motion to adjourn the meeting. Ms. Hauptman seconded the motion. All voted in favor of the motion. The meeting was adjourned at 8:14 PM.

Respectfully Submitted,
Brian Kerr