

Local Ethics Laws: Model Administrative Provisions

By Mark Davies

The past three issues of the *Municipal Lawyer* contained articles on adopting a local ethics law. Those articles also included model provisions for a municipal code of ethics and a model financial disclosure form. This article sets forth model provisions for the administration of the ethics law. For a discussion of these provisions, readers are referred to *Enacting a Local Ethics Law—Part III: Administration* in the Winter 2008 issue of the *Municipal Lawyer*. The next issue of the *Municipal Lawyer* will contain an article by Steven Leventhal, former Chair of the Nassau County Ethics Board, on the nuts and bolts of establishing and running a municipal ethics board.



Ethics law provisions should be dynamic, not static. The author thus welcomes suggestions to correct and improve these model law provisions. Any such suggestions may be sent to him at davies@coib.nyc.gov.

Model Ethics Law Administrative Provisions

§ 201. Ethics boards: establishment; budget; qualification of members; appointment of members; terms of office.

1. There is hereby established a [municipal] ethics board consisting of five members.
2. The appropriations to pay for the expenses of the ethics board during each fiscal year shall be not less than one hundredth of one percent of the net total expense budget of the [municipality].
3. Members of the ethics board shall be chosen for their independence, integrity, civic commitment, and high ethical standards.
4. No ethics board member shall hold office in a political party. No ethics board member shall be employed or act as a lobbyist before the [municipality or any municipality of which the municipality is a part or any other municipalities served by the ethics board]. No ethics board member shall enter into any contract with the [municipality or any other municipality served by the ethics board], except a contract for the receipt of [municipal] services or benefits, or use of [municipal] facilities, on the same terms and conditions as are generally available to residents or a class of residents of the [municipality or any other municipality served by the ethics board]. No ethics board member shall hold elective office in the [municipality or any municipality of which the municipality is a part or any other municipalities served by the ethics board] or be an appointed officer or employee of the [municipality or any municipality of which the municipality is a part or any other municipalities served by the ethics board]. An ethics board member may make campaign contributions but may not participate in any election campaign. [Optional: No more than two members of the ethics board shall be registered in the same political party.]
5. Within sixty days after the effective date of this [chapter], and no later than December thirty-first each year thereafter, the [elective chief executive officer of the municipality, with the advice and consent of the governing body of the municipality, or, if there is no elective chief executive officer, the chair of the governing body, with its advice and consent] shall appoint the members of the ethics board. If the [governing body] fails to act within forty-five days of receipt of the nomination from the [elective chief executive officer or chair of the governing body of the municipality, as the case may be], the nomination shall be deemed to be confirmed.
6. The term of office of ethics board members shall be five years and shall run from January first through December thirty-first, except that of the members first appointed one member shall serve until December thirty-first of the year following the year in which the board is established, two shall serve until the third December thirty-first, and two shall serve until the fifth December thirty-first.
7. An ethics board member shall serve until his or her successor has been appointed. Consecutive service on the ethics board shall not exceed two full terms.
8. Ethics board members shall not receive compensation for their service but shall be reimbursed reasonable expenses incurred in the performance of their official duties.

§ 202. Ethics boards: vacancies.

1. When a vacancy occurs in the membership of the ethics board, the vacancy shall, within sixty days, be filled for the unexpired portion of the term in the same manner as the original appointment. Any person appointed to fill a vacancy on the ethics board shall meet the qualifications set forth in section two hundred one of this [chapter].
2. If the [elective chief executive officer or chair of the governing body of the municipality, as the case may be,] has not submitted to the [governing body] a nomination for appointment of a successor at least sixty days prior to the expiration of the term of the member whose term is expiring, the term of the member in office shall be extended for an additional year and the term of the successor to such member shall be shortened by an equal amount of time. If the [governing body] fails to act within forty-five days of receipt of the nomination from the [elective chief executive officer or chair of the governing body of the municipality, as the case may be], the nomination shall be deemed to be confirmed.

§ 203. Ethics boards: removal of members.

An ethics board member may be removed from office in the same manner in which he or she was appointed, after written notice and opportunity for reply. Grounds for removal shall be failure to meet the qualifications set forth in section two hundred one of this [chapter], substantial neglect of duty, gross misconduct in office, inability to discharge the powers or duties of office, or violation of this [chapter].

§ 204. Ethics boards: meetings.

At its first meeting each year, the ethics board shall elect a chair for that year from among its members. A majority of the board shall be required for the board to take any action. The chair or a majority of the board may call a meeting of the board.

§ 205. Ethics boards: jurisdiction, powers, and duties.

1. The ethics board may act only with respect to officers and employees of the [municipality or municipalities subject to the board's jurisdiction].¹
2. The termination of a [municipal] officer's or employee's term of office or employment with the [municipality] shall not affect the jurisdiction of the ethics board with respect to the requirements imposed by this [chapter] on the former officer or employee for his or her ac-

tions or interests while a [municipal] officer or employee.

3. The ethics board shall have the following powers and duties:
 - (a) To prescribe and promulgate rules and regulations governing its own internal organization and procedures in a manner consistent with this [chapter];
 - (b) To appoint hearing officers, an executive director, if necessary, and such other staff as are necessary to carry out its duties under this [chapter], and to delegate authority to the executive director, if any, to act in the name of the board between meetings of the board, provided that the delegation is in writing and the specific powers to be delegated are enumerated and further provided that the board shall not delegate the power to determine violations, recommend disciplinary action, impose any civil fine, refer any matter to a prosecutor, or render any advisory opinion. An executive director shall meet the qualifications of an ethics board member as specified in section two hundred one of this [chapter];
 - (c) To require the assistance of the [municipal attorney] and the [municipal] clerk in the performance of the ethics board's duties, provided, however, that any communications between the ethics board and such [municipal attorney] or [municipal] clerk shall be confidential and not disclosed to anyone other than the ethics board or its designees, except as otherwise required by state or federal law or by this [chapter];
 - (d) To review, index, and maintain on file, and make available for public inspection and copying, lists of officers and employees, transactional disclosure statements, applicant disclosure statements, and annual disclosure statements filed with the board pursuant to sections [cite sections for transactional and applicant disclosure], two hundred six, two hundred seven, and two hundred eight of this [chapter];
 - (e) To review, index, maintain on file, and dispose of sworn complaints and to make notifications and conduct investigations pursuant to sections two hundred eight and two hundred nine of this [chapter];

- (f) To conduct hearings, recommend disciplinary action, assess penalties, make referrals, and initiate appropriate actions and proceedings pursuant to section two hundred ten of this [chapter];
- (g) To grant waivers pursuant to section two hundred eleven of this [chapter];
- (h) To render, index, and maintain on file advisory opinions pursuant to section two hundred twelve of this [chapter];
- (i) To provide training and education to [municipal] officers and employees pursuant to section two hundred fourteen of this [chapter];
- (j) To prepare an annual report and recommend changes to this [chapter] pursuant to section two hundred fifteen of this [chapter]; and
- (k) To provide for public inspection and copying of certain records pursuant to section two hundred sixteen of this [chapter].

§ 206. Designation of officers and employees required to file annual disclosure statements.

Within ninety days after the effective date of this [chapter], and during the month of March each year thereafter, the [elective chief executive officer or chair of the governing body of the municipality, as the case may be,] shall:

- (a) Cause to be filed with the [municipality's] ethics board a list of the names and offices or positions of all officers and employees of the [municipality] required to file annual disclosure statements pursuant to section [financial disclosure section]; and
- (b) Notify all such officers and employees of their obligation to file an annual disclosure statement.

§ 207. Maintenance and public inspection of disclosure statements.

1. The [municipal] clerk shall transmit promptly to the ethics board each transactional and applicant disclosure statement filed with the clerk pursuant to sections [transactional and applicant disclosure sections].
2. The ethics board shall index, maintain on file for six years, and make available for public inspection and copying all transactional, applicant, and annual disclosure statements filed with the board.

§ 208. Review of lists and disclosure statements.

1. The ethics board shall review:
 - (a) The lists of officers and employees, prepared pursuant to section two hundred six of this [chapter], to determine whether the lists are complete and accurate. The board shall add the name of any other officer or employee whom the board determines should appear on the list and shall remove the name of any officer or employee whom the board determines should not appear on the list.
 - (b) All annual disclosure statements to determine whether any person required to file such a statement has failed to file it, has filed a deficient statement, or has filed a statement that reveals a possible or potential violation of this [chapter].²
 - (c) All transactional disclosure statements.
 - (d) All applicant disclosure statements.
2. If the board determines that an annual disclosure statement, a transactional disclosure statement, or an applicant disclosure statement is deficient or reveals a possible or potential violation of this [chapter],³ the board shall notify the person in writing of the deficiency or possible or potential violation and of the penalties for failure to comply with this [chapter].⁴

§ 209. Investigations.

1. Upon receipt of a sworn complaint by any person alleging a violation of this chapter,⁵ or upon determining on its own initiative that any such violation may exist, the ethics board shall have the power and duty to conduct any investigation necessary to carry out the provisions of this [chapter].⁶ In conducting any such investigation, the ethics 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 and material.
2. The ethics board shall state in writing the disposition of every sworn complaint it receives and of every investigation it conducts and shall set forth the reasons for the disposition. All such statements and all sworn complaints shall be indexed and maintained on file by the board.
3. Any person filing a sworn complaint with the ethics board shall be notified in writing of the disposition of the complaint, to the extent permitted by law.

4. All documents and hearings relating to the investigation and hearing of any alleged violation of this [chapter] shall be confidential and not available for public inspection or open to the public, except as otherwise required by state or federal law or by this [chapter]. All dispositions, including negotiated dispositions, in which the ethics board finds a violation of this [chapter] shall be available for public inspection and copying.
5. 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 this [chapter], or of any other law, the board shall promptly transmit to the [elective chief executive officer, if any, and chair of the governing body of the municipality] a copy of the complaint.

§ 210. Hearings; assessment of penalties.

1. Disciplinary action. In its discretion, after a hearing providing for due process procedural mechanisms and subject to any applicable provisions of law and collective bargaining agreements, the ethics board may recommend appropriate disciplinary action pursuant to section [penalties section] of this [chapter]. The recommendation of the ethics board shall be made to the appointing authority or person or body authorized by law to impose such sanctions. The board shall conduct and complete the hearing with reasonable promptness, unless in its discretion the board refers the matter to the authority or person or body authorized by law to impose disciplinary action or unless the board refers the matter to the appropriate prosecutor. If such a referral is made, the board may adjourn the matter pending determination by the authority, person, body, or prosecutor.
2. Civil fine. In its discretion and after a hearing providing for due process procedural mechanisms, the ethics board, pursuant to section [penalties section] of this [chapter], may assess a civil fine, not to exceed fifteen hundred dollars for each violation, upon any [municipal] officer or employee found by the board to have violated this [chapter]. The board shall conduct and complete the hearing with reasonable promptness. The civil fine shall be payable to the [municipality].
3. Damages. The [municipality] may initiate an action in the Supreme Court of the State of

New York to obtain damages, as provided in section [penalties section] of this [chapter].

4. Civil forfeiture. The [municipality], or the ethics board on behalf of the [municipality], may initiate an action or special proceeding, as appropriate, in the Supreme Court of the State of New York to obtain civil forfeiture, as provided in section [penalties section] of this [chapter].
5. Debarment. The [municipality], or the ethics board on behalf of the [municipality], may initiate an action or special proceeding, as appropriate, in the Supreme Court of the State of New York for an order of debarment, as provided in section [debarment section] of this [chapter].
6. Injunctive relief. The [municipality], or the ethics board on behalf of the [municipality], may initiate an action or special proceeding, as appropriate, in the Supreme Court of the State of New York for injunctive relief to enjoin a violation of this [chapter] or to compel compliance with this [chapter], as provided in section [injunctive relief section] of this [chapter].
7. Prosecutions. The ethics board may refer to the appropriate prosecutor possible criminal violations of this [chapter]. Nothing contained in this [chapter] shall be construed to restrict the authority of any prosecutor or the attorney general to prosecute any violation of this [chapter] or of any other law.
8. Nothing in this section shall be construed to permit the ethics board to take any action with respect to any alleged violation of this [chapter], or of any other law, by the board or by any member or staff member thereof.

§ 211. Waivers.

1. Upon written application by a [municipal] officer or employee and written approval by his or her agency head, the ethics board may grant the applicant, or his or her private employer or business, a waiver of any of the provisions of [the code of ethics, except the inducement of violations provision; section on appearances by the municipal official's private employer or business; sections on transactional, applicant, annual disclosure] of this [chapter], where the ethics board finds that waiving such provision would not be in conflict with the purposes and interest of the [municipality], provided, however, that no such waiver shall permit any conduct or interest otherwise prohibited by Article 18 of the General Municipal Law.
2. Waivers shall be in writing, shall state the grounds upon which they are granted, and shall

be available for public inspection and copying. All applications, decisions, and other records and proceedings relating to waivers shall be indexed and maintained on file by the board.

§ 212. Advisory opinions.

1. Upon the written request of any [municipal] officer or employee or his or her department head, the ethics board shall render a written advisory opinion with respect to the interpretation or application of this [chapter] ⁷to the future or continuing conduct or interests of such [municipal] officer or employee or his or her outside employer or business.
2. Advisory opinions and requests for advisory opinions shall be indexed and maintained on file by the ethics board. The board shall publish such of its advisory opinions as it believes will provide guidance to other [municipal] officers or employees, provided, however, that the publicly available copy of such opinions shall contain such deletions as may be necessary to prevent disclosure of the identity of the involved officers and employees.

§ 213. Judicial review.

1. 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.
2. Any person who has submitted to the ethics board a written request for an advisory opinion may bring an action or special proceeding, as appropriate, for a determination of the question posed in the request, provided that:
 - (a) it shall appear by and as an allegation in the complaint or petition 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
 - (b) the action or special proceeding shall be commenced within ten months after the submission of the request for the advisory opinion.

§ 214. Training and education.

1. The ethics board:
 - (a) Shall make information concerning this [chapter] ⁸available to the officers and employees of the [municipality], to the public, and to persons interested in doing business with the [municipality];

- (b) Shall develop educational materials and an educational program on the provisions of this [chapter] ⁹for the officers and employees of the [municipality], for the public, and for persons interested in doing business with the [municipality].

2. The [elective chief executive officer of the municipality, if any, or the chair of its governing body, as appropriate] shall assist the ethics board in the publication, posting, and distribution of ethics educational materials and in the development and presentation of ethics educational programs.
3. Each [municipal] officer or employee shall receive ethics training, in such form as determined by the ethics board after consultation with the appropriate department head, at least once each year.

§ 215. Annual reports; review of ethics laws.

1. The ethics board shall prepare and submit an annual report to the [municipality's elective chief executive officer, if any, and the governing body] summarizing the activities of the board. The report may also recommend changes to the text or administration of this [chapter].
2. The ethics board shall periodically review this [chapter] and the board's rules, regulations, and administrative procedures to determine whether they promote integrity, public confidence, and participation in [municipal] government and whether they set forth clear and enforceable, common-sense standards of conduct.¹⁰

§ 216. Public inspection of records; public access to meetings.

1. The only records of the ethics board which shall be available for public inspection are those whose disclosure is required by Article 6 of the Public Officers Law or by other state or federal law or by this [chapter].
2. No meeting or proceeding of the ethics board shall be open to the public, except as required by the provisions of Article 7 of the Public Officers Law or by other state or federal law or by this [chapter] or upon the request of the affected officer or employee and with the agreement of the ethics board.

§ 217. Distribution and posting of code of ethics and this [chapter].

1. Within thirty days after the effective date of this [chapter], and thereafter as requested by the ethics board, the [elective chief executive officer of the municipality, if any, or the chair of its gov-

erning body, as appropriate] shall cause a copy of the provisions of section [code of ethics] to be posted conspicuously in every public building under the jurisdiction of the [municipality] and shall cause a copy of the provisions of this [chapter] to be posted on the [municipality's] website.

2. Within thirty days after the effective date of this [chapter], and thereafter during the month of May, the [elective chief executive officer of the municipality or the chair of its governing body, as appropriate] shall cause copies of the provisions of section [the code of ethics] to be distributed to every officer and employee of the [municipality]. The [elective chief executive officer of the municipality or the chair of its governing body, as appropriate] shall also make copies of this [chapter] readily available to all [municipal] officers and employees and to the public. Every [municipal] officer or employee elected or appointed after the effective date of this [chapter] shall be furnished a copy of the provisions of this [chapter] within ten days after entering upon the duties of his or her position.
3. Failure of the [municipality] to comply with the provisions of this section or failure of any [municipal] officer or employee to receive a copy of the provisions of this [chapter] shall have no effect on the duty of compliance with this [chapter] or on the enforcement of its provisions.

§ 218. Miscellaneous provisions.

1. No existing right or remedy shall be lost, impaired, or affected by reason of this [chapter].
2. Nothing in this [chapter] shall be deemed to bar or prevent a present or former [municipal] officer or employee from timely filing any claim, account, demand, or suit against the [municipality] on behalf of himself or herself or any member of his or her family arising out of personal injury or property damage or any lawful benefit authorized or permitted by law.

3. If any provision of this [chapter] is held by a court of competent jurisdiction to be invalid, that decision shall not affect the validity and effectiveness of the remaining provisions of this [chapter].

Endnotes

1. Counties may wish to add at the conclusion of this sentence: "provided, however, that pursuant to section eight hundred eight of the General Municipal Law, the ethics board shall, upon written request, issue advisory opinions to officers and employees of any municipality wholly or partially within the County with respect to the provisions of Article 18 of the General Municipal Law or any code of ethics adopted by such municipality."
2. If, as recommended by the author in Enacting a Local Ethics Law—Part III: Administration, the municipality's ethics law incorporates the relevant provisions of Article 18 of the General Municipal Law, no need exists to reference Article 18 in the administrative provisions of the local ethics law, except in regard to waivers (section 211). If Article 18 is not incorporated into the municipality's ethics law, then this section should reference Article 18 ("[or/and] Article 18 of the General Municipal Law").
3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.*
10. Counties may wish to add at the conclusion of this subdivision: "Pursuant to section eight hundred eight of the General Municipal Law, the ethics board may also make recommendations with respect to the drafting and adoption of a code of ethics or amendments thereto upon request of the governing body of any municipality within the County."

Mark Davies is the Executive Director of the New York City Conflicts of Interest Board, the ethics board for the City of New York, the Chair of the Section's Government Ethics and Professional Responsibility Committee, and a member of the Section's Executive Committee. He is also the former Executive Director of the Temporary State Commission on Local Government Ethics. The views expressed in this article do not necessarily represent those of the Board or of the City of New York.