

Date: January 30, 2017

To: Dobbs Ferry Board of Trustees

From: Dobbs Ferry Democratic Committee

Re: Village Nominating Committee

The Village Nominating Committee is established by Chapter 64 of the Dobbs Ferry Code. The Nominating Committee provides an opportunity for anyone interested in an open position on the Village's various boards, committees, commissions, councils, and task forces to apply, which is a good thing. However, there are ways that the Nominating Committee could operate more effectively. This memorandum outlines some key areas for improvement and suggests changes that should be made both to the Village Code and the Nominating Committee process itself.

The Village Code provision creating the Nominating Committee:

NOMINATING COMMITTEE

1 Section 64-1, Duties and responsibilities, provides:

The Village Nominating Committee shall seek out, interview and recommend to the Board of Trustees persons qualified to fill future vacancies on the various boards, commissions and committees annually appointed by the Mayor and Trustees. For each vacancy to be filled, this Committee will recommend persons deemed qualified on the basis of their experience, training and other qualifications for appointment and entirely without regard to their age, sex or political affiliation. In each case, the Board will decide on the final appointment and must, of course, be free to appoint someone not recommended by the Committee.

Section 64-2, Membership, provides:

To ensure the broadest diversity of representation, the Nominating Committee shall consist of the sum of the number of election districts multiplied by the number two, no more than two of whom shall reside in the same election district.

Committee Recommendation:

The Village Code should specify the term of office for Nominating Committee appointees.

VILLAGE WEBSITE: CURRENT OPENING/INFORMATION REGARDING COMMITTEE

The website is inconsistent with the current Village Code:

Example: Members are appointed annually by the Village Board for a one year term. The members vote each year for a chair.

The committee recommends the following:

1. Updating the Village website to publicly post any current openings.
2. Include a description and responsibilities of the position.
3. Recruiting candidates using social media to promote current openings.

4. Listing the districts members represent on the website.
5. The committee recommends that the Village Code provide that the term of office is one year as set forth on the Village web site.

OPEN MEETING LAWS

The Village is required by law to post public notice of meetings of the Nominating Committee as well as prepare and publish minutes of meetings of the committee. The Village does neither.

The Village web site states that the Nominating Committee meets every second Wednesday of the month in the DF Village Court at 7:30 p.m. where interviews of candidates for the various active Village Boards, Commissions and Committees take place. Nominating Committee minutes, if any, are not posted on the Village's web site or made available to the public. It appears that these practices are not in compliance with New York's Open Meetings Law, Public Officers Law, Article 7.

The Nominating Committee is a statutory body of the Village of Dobbs Ferry and as such is subject to the requirements of the Open Meetings Law ("OML"), Public Officers Law, Article 7. See State of New York, Department of State, Committee on Open Government, Open Meetings Law, Advisory Opinion ("OML-AO") 3143 (Apr. 24, 2000) (a town's police advisory council subject to OML); OML-AO-4716 (Jan. 2, 2009) (local advisory councils subject to OML); OML-AO-5409 (June 9, 2014) (nominating committee of community board subject to OML).

As such, the OML requires that meetings of a public body, such as the Nominating Committee, shall be open to the public (Pub. Off. L. § 103(a)), with a public notice of the meeting to be posted at least one week before the meeting. Pub. Off. L. § 104. The Open Meetings Law further requires that public bodies prepare and publish minutes or drafts of minutes of meetings within two weeks from the date of the meeting. Pub. Off. L. § 106; see OML-AO-5077 (Mar. 31, 2011); OML-AO-4146 (Feb. 28, 2006); OML-Ao-3799 (May 19, 2004).

VILLAGE'S CODE OF ETHICS

Pursuant to New York's General Municipal Law Members of the Village Nominating Committee Should Have to Comply with the Village's Code of Ethics.

Currently, the Village's Code of Ethics does not appear to apply to members of the Nominating Committee, but pursuant to New York law it should. Section 40 of the Village Code contains the Village's Code of Ethics. The Code applies to Village Officers and Village Employees. "Village Officer or Employee" is defined in §40-2 as:

Any officer or employee of the Village, whether paid or unpaid, except that no person shall be deemed to be a "Village officer or employee" solely by reason of being a judge, justice, officer or employee of the unified court system, or a volunteer fireman or auxiliary policeman, ***or a member of or counsel to a board, committee or commission other than the Board of Trustees, the Planning Board, the Architectural Review Board and the Zoning Board of Appeals.***

On its face, this definition seems to mean that the Code of Ethics applies to Village employees, other than those expressly excluded under the definition (i.e., judge, volunteer fireman, etc.) and the Board of Trustees, the Planning Board, the Architectural Review Board and the Zoning Board of Appeals. But the Code of Ethics does not apply to any other village boards, committees,

commissions, task forces, etc. Therefore, it appears that the Code of Ethics does not at this time apply to members of the Village Nominating Committee.

Our Village Code, by its terms, must comply with New York's General Municipal Law. Section 800(5) of New York's General Municipal Law defines "Municipal officer or employee" as:

an officer or employee of a municipality, whether paid or unpaid, **including members of any administrative board, commission or other agency thereof** . . . No person shall be deemed to be a municipal officer or employee solely by reason of being a volunteer fireman or civil defense volunteer, except a fire chief or assistant fire chief.

Looking back to the Village Code, §40-2 defines agency as:

Any office, board, body, advisory board, council, commission, agency, department, district, administration, division, bureau or **committee of the Village**.

Committees of the Village are included in the Village's definition of agency and agencies are included in New York law's definition of "Municipal officer or employee." Therefore, the current definition in the village code for "Village Officer or Employee" does not seem to be in line with New York's General Municipal Law and should be expanded to include: "[a]ny office, board, body, advisory board, council, commission, agency, department, district, administration, division, bureau or committee of the Village." §40-2 definition of agency.

OUR CODE OF ETHICS IS AN OUTLIER

Looking at the Code of Ethics in the other Rivertowns: Hastings, Irvington and Ardsley, our Code of Ethics restrictive application is a clear outlier.

Hastings' Ethics Code § 18-2 defines Village Officer or Employee as:

Any officer or employee of the Village, whether paid or unpaid, and includes, without limitation, the Village Attorney and **all members of any office, board, body, advisory board, council, commission, agency, department, district, administration, division, bureau or committee of the Village**. "Village officer or employee" shall not include:
A. A judge, justice, officer or employee of the unified court system; or
B. A volunteer firefighter or civil defense volunteer, except a fire chief or assistant fire chief.

Irvington's Code of Ethics § 27-2 defines Village Officer or Employee as:

Any officer or employee of the Village, whether paid or unpaid, including, without limitation, **all members of or counsel to any board, advisory board, commission or committee of the Village** except that no person shall be deemed to be a Village officer or employee solely by reason of being:
A. A judge, justice, officer or employee of the unified court system; or
B. A volunteer firefighter, auxiliary policeman officer or civil defense volunteer.

Ardsley's Code of Ethics § 18-2 defines Municipal Officer or Employee as:

An officer or employee of the Village of Ardsley, whether paid or unpaid, ***including members of any administrative board, commission or other agency thereof.*** No person shall be deemed to be a "municipal officer" or "employee" solely by reason of being a volunteer fireman or civil defense volunteer, except a Chief Engineer or Assistant Chief Engineer.

Our village code of ethics contains the most restrictive application. Our code should be revised to broaden the definition of "Village Officer or Employee." The revised definition should include not only members of the Village Nominating Committee, but all those entities included in the Village's definition of "agency": "[a]ny office, board, body, advisory board, council, commission, agency, department, district, administration, division, bureau or committee of the Village."

PROCEDURAL CHANGES

The committee recommends the following procedural changes:

1. Adherence to the NYS Open Meetings Law and General Municipal Law regarding Conflict of Interest and Ethics.
2. Include a Conflict of Interest statement in the application process.
3. Submit Minutes.
4. Meetings should only be conducted with a quorum of members present.
5. Revise Village Code to provide for the term of office of committee members.
6. Submit an annual report similar to the chart below.

Position	Date Notified of Opening	Date Position Filled	Number of Candidates	Appointment

Respectfully submitted,

Vikki Jones
 David Koenigsberg
 Tracey Frisch
 Hind Culhane
 Ad Hoc Committee of the Dobbs Ferry Democratic Committee