

12th Day  
Wednesday, August 26, 2020  
9:00 a.m.

The Board of Supervisors met pursuant to adjournment in the Supervisors' Chambers of the Court House, Chairman Miller presiding. The Pledge of Allegiance was led by Supervisor Spickerman.

Upon roll call, all Supervisors were present.

County Administrator Richard House and County Attorney Daniel Connors were also present for this special morning session.

**PUBLIC HEARINGS:**

Prior to the opening of the two scheduled public hearings for this morning, Chairman Miller took this opportunity to read the rules and procedures that are followed for conducting such hearings for this Board.

The Clerk read the following introduction of the Notice of Public Hearing regarding A Local Law regarding the Residency Requirement for Position of Assistant District Attorney in the County of Wayne:

**COUNTY OF WAYNE  
NOTICE OF PUBLIC HEARING ON PROPOSED LOCAL LAW**

NOTICE IS HEREBY GIVEN that the Wayne County Board of Supervisors will hold a public hearing on **Wednesday, August 26, 2020 at 9:00 a.m.** in the Supervisors' Chambers in the County Court House, 26 Church Street, Lyons, New York, on the following proposed local law:

**COUNTY OF WAYNE - STATE OF NEW YORK  
INTRO NO 3/LOCAL LAW NO. \_\_\_ FOR THE YEAR 2020**

A Local Law Superseding the Residency Requirement of the Public Officers Law for the Position of Assistant District Attorney in the County of Wayne.

**BE IT ENACTED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF WAYNE,** as follows:

**SECTION 1: LEGISLATIVE INTENT**

The intent of this local law is to define the residency requirement as it pertains to the following public officers: Assistant District Attorneys. It is intent of this local law to supersede the provisions of the New York State Public Officers Law Section 3(1) with respect to said public officers.

**SECTION 2: RESIDENCY REQUIREMENT: ASSISTANT DISTRICT ATTORNEY**

The provisions of Section 3(1) of the New York State Public Officers Law requiring a person to be a resident of the political subdivision or municipal corporation of the state for which he or she shall be chosen, or within which his or her official functions are required to be exercised, shall not prevent a person from holding the office of Assistant District Attorney of the County of Wayne, provided that such person resides in Wayne County or a geographically adjoining county within the State of New York.

The provisions of this local law shall not apply to any person holding the office of First Assistant District Attorney, the holder of which office would assume the duties of the District Attorney upon the District Attorney's absence from the county or upon the District Attorney's inability to perform his or her duties.

This local law shall only apply to Assistant District Attorneys.

**SECTION 3: SEPARABILITY**

If any clause, sentence, paragraph or section of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not impair or invalidate the remainder hereof, but shall be confined in its operation to the clause, sentence, paragraph or section directly involved in the controversy in which judgment shall have been rendered.

**SECTION 4: EFFECTIVE DATE**

This local law shall take effect immediately upon filing with the Secretary of State in accordance with Article 3, §27 of the Municipal Home Rule Law.

At 9:05 a.m., Chairman Miller opened the floor for the public, stating that people interested in making comment should come forward to the podium to address the Board. Further, he requested that they state their name and address for the record.

There was no public comment at this time.

After additional requests for comment were made, Chairman Miller asked for a motion to close the hearing.

Mr. Kolczynski moved, seconded by Mr. Johnson, that the hearing be closed at 9:06 a.m. Upon roll call, carried.

Chairman Miller requested that the second Public Hearing be read, as scheduled.

The Clerk read the title and introduction of the second Notice of Public Hearing, scheduled today, regarding a Local Law amending the Wayne County Ethics Policy.

**COUNTY OF WAYNE  
NOTICE OF PUBLIC HEARING ON PROPOSED LOCAL LAW**

NOTICE IS HEREBY GIVEN that the Wayne County Board of Supervisors will hold a public hearing on **Wednesday, August 26, 2020 at 9:05 a.m.** in the Supervisors' Chambers in the County Court House, 26 Church Street, Lyons, New York, on the following proposed local law:

**COUNTY OF WAYNE - STATE OF NEW YORK  
INTRO NO 4/LOCAL LAW NO. \_\_\_ FOR THE YEAR 2020**

A local law amending Local Law No. 3-2018, as established by Local Law No. 2-2012 entitled, 'Amending the Wayne County Ethics Policy'.

**BE IT ENACTED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF WAYNE,** as follows:

**SECTION 1. PURPOSE**

Officers and employees of the County of Wayne hold their positions to serve and benefit the public, and not for obtaining unwarranted personal or private gain in the exercise and performance of their official powers and duties. The Wayne County Board of Supervisors recognizes that, in furtherance of this fundamental principle, there is a need for clear and reasonable standards of ethical conduct. This code of ethics establishes those standards.

The Wayne County Board of Ethics will decline to comment on, offer an opinion on or otherwise interfere with the decision(s) of any other municipality or government (including school districts) made by other Boards of Ethics within Wayne County.

The Wayne County Board of Ethics will, if asked by the governing body of any Wayne

County municipality or government (including school districts), act as their Boards of Ethics but only in those instances where they do not have their own Board of Ethics.

## **SECTION 2. DEFINITIONS**

- (a) "Board" means the governing board of a municipality and any municipal administrative board (e.g. planning board, zoning of board of appeals), commission, or other agency or body comprised of two or more municipal officers or employees.
- (b) "Code" means this code of ethics.
- (c) "Interest" means a direct or indirect financial 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 municipality or an area of the municipality, or a lawful class of such residents or taxpayers. A municipal officer or employee is deemed to have an interest in any private organization when he or she, his or her spouse, or a member of his or her household, is an owner, partner, member, director, officer, employee, or directly or indirectly owns or controls more than 5% of the organization's outstanding stock.
- (d) "Municipality" means the County of Wayne. The word "municipal" refers to the municipality.
- (e) "Municipal officer or employee" means a paid or unpaid officer or employee of the County of Wayne, including, but not limited to, the members of any municipal board.
- (f) "Relative" means a spouse, child, step-child, parent, step-parent, brother, sister, step-sibling, sibling's spouse, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law, daughter-in-law, uncle, aunt, nephew, niece, first cousin, domestic partner or other household member of a municipal officer or employee, and individuals having any of these relationships to the spouse of the officer or employee.

## **SECTION 3. APPLICABILITY**

This code of ethics applies to the officers and employees of the County of Wayne, and shall supersede any prior municipal code of ethics. The provisions of this code of ethics shall apply in addition to all applicable State and local laws relating to conflicts of interest and ethics including, but not limited to, article 18 of the General Municipal Law and all rules, regulations, policies and procedures of the County of Wayne.

## **SECTION 4. PROHIBITION ON USE OF MUNICIPAL POSITION FOR PERSONAL OR PRIVATE GAIN**

No municipal officer or employee shall use his or her municipal position or official powers and duties to secure a financial or material benefit for himself or herself, a relative, or any private organization in which he or she is deemed to have an interest.

## **SECTION 5. DISCLOSURE OF INTEREST IN LEGISLATION AND OTHER MATTERS**

- (a) Whenever a matter requiring the exercise of discretion comes before a municipal officer or employee, either individually or as a member of a board, and disposition of the matter could result in a direct or indirect financial or material benefit to himself or herself, a relative, or any private organization in which he or she is deemed to have an interest, the municipal officer or employee shall disclose in writing the nature of the interest.
- (b) The disclosure shall be made when the matter requiring disclosure first comes before the municipal officer or employee, or when the municipal officer or employee first acquires knowledge of the interest requiring disclosure, whichever is earlier.
- (c) In the case of a person serving in an elective office, the disclosure shall be filed with the governing board of the municipality. In all other cases, the disclosure shall be filed with the person's supervisor or, if the person does not have a supervisor, the disclosure shall be filed with the municipal officer, employee or board having the power to appoint to the person's position. In addition, in the case of a person serving on a

municipal board, a copy of the disclosure shall be filed with the board. Any disclosure made to a board shall be made publicly at a meeting of the board and must be included in the minutes of the meeting.

**SECTION 6. RECUSAL AND ABSTENTION**

- (a) No municipal officer 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 relative, or any private organization in which he or she is deemed to have an interest.
- (b) In the event that this section prohibits a municipal officer or employee from exercising or performing a power or duty:
  - (1) if the power or duty is vested in a municipal officer as a member of a board, then the power or duty shall be exercised or performed by the other members of the board; or
  - (2) if the power or duty that is vested in a municipal officer individually, then the power or duty shall be exercised or performed by his or her deputy or, if the officer does not have a deputy, the power or duty shall be performed by another person to whom the officer may lawfully delegate the function.
  - (3) if the power or duty is vested in a municipal employee, he or she must refer the matter to his or her immediate supervisor, and the immediate supervisor shall designate another person to exercise or perform the power or duty.

**SECTION 7. PROHIBITION INAPPLICABLE; DISCLOSURE, RECUSAL AND ABSTENTION NOT REQUIRED**

- (a) This code's prohibition on use of a municipal position (section 4), disclosure requirements (section 5), and requirements relating to recusal and abstention (section 6), shall not apply with respect to the following matters:
  - (1) adoption of the municipality's annual budget;
  - (2) any matter requiring the exercise of discretion that directly affects any of the following groups of people or a lawful class of such groups:
    - (i) all municipal officers or employees;
    - (ii) all residents or taxpayers of the municipality or an area of the municipality; or
    - (iii) the general public; or
  - (3) any matter that does not require the exercise of discretion.
- (b) Recusal and abstention shall not be required with respect to any matter:
  - (1) which comes before a board when a majority of the board's total membership would otherwise be prohibited from acting by section 6 of this code;
  - (2) which comes before a municipal officer when the officer would be prohibited from acting by section 6 of this code and the matter cannot be lawfully delegated to another person.

**SECTION 8. INVESTMENTS IN CONFLICT WITH OFFICIAL DUTIES**

- (a) No municipal officer or employee may acquire the following investments:
  - (1) investments that can be reasonably expected to require more than sporadic recusal and abstention under section 6 of this code; or
  - (2) investments that would otherwise impair the person's independence of judgment in the exercise or performance of his or her official powers and duties.
- (b) This section does not prohibit a municipal officer or employee from acquiring any other investments or the following assets:
  - (1) real property located within the municipality and used as his or her personal residence;

- (2) less than five percent of the stock of a publicly traded corporation; or
- (3) bonds or notes issued by the municipality and acquired more than one year after the date on which the bonds or notes were originally issued.

**SECTION 9. PRIVATE EMPLOYMENT IN CONFLICT WITH OFFICIAL DUTIES**

No municipal officer or employee, during his or her tenure as a municipal officer or employee, may engage in any private employment, including the rendition of any business, commercial, professional or other types of services, when the employment:

- (a) can be reasonably expected to require more than sporadic recusal and abstention pursuant to section 6 of this code;
- (b) can be reasonably expected to require disclosure or use of confidential information gained by reason of serving as a municipal officer or employee;
- (c) violates section 805-a (1)(c) or (d) of the General Municipal Law; or
- (d) requires representation of a person or organization other than the municipality in connection with litigation, negotiations or any other matter to which the municipality is a party.

**SECTION 10. FUTURE EMPLOYMENT**

- (a) No municipal officer or employee may ask for, pursue or accept a private post-government employment opportunity with any person or organization that has a matter requiring the exercise of discretion pending before the municipal officer or employee, either individually or as a member of a board, while the matter is pending or within the 30 days following final disposition of the matter.
- (b) No municipal officer or employee, for the one-year period after serving as a municipal officer or employee, may represent or render services to a private person or organization in connection with any matter involving the exercise of discretion before the municipal office, board, department or comparable organizational unit for which he or she serves.
- (c) No municipal officer or employee, at any time after serving as a municipal officer or employee, may represent or render services to a private person or organization in connection with any particular transaction in which he or she personally and substantially participated while serving as a municipal officer or employee.

**SECTION 11. PERSONAL REPRESENTATIONS AND CLAIMS PERMITTED**

This code shall not be construed as prohibiting a municipal officer or employee from:

- (a) representing himself or herself, or his or her spouse or minor children before the municipality; or
- (b) asserting a claim against the municipality on his or her own behalf, or on behalf of his or her spouse or minor children.

**SECTION 12. USE OF MUNICIPAL RESOURCES**

- (a) Municipal resources shall be used for lawful municipal purposes. Municipal resources include, but are not limited to, municipal personnel, and the municipality's money, vehicles, equipment, materials, supplies or other property.
- (b) No municipal officer or employee may use or permit the use of municipal resources for personal or private purposes, but this provision shall not be construed as prohibiting:
  - (1) any use of municipal resources authorized by law or municipal policy;
  - (2) the use of municipal resources for personal or private purposes when provided to a municipal officer or employee as part of his or her compensation; or
  - (3) the incidental use during the business day of municipal telephones and computers for necessary personal matters such as family care and changes in work schedule.
- (c) No municipal officer or employee shall cause the municipality to spend more than is reasonably necessary for transportation, meals or lodging in connection with official travel.

**SECTION 13. INTERESTS IN CONTRACTS**

- (a) No municipal officer or employee may have an interest in a contract that is prohibited by section 801 of the General Municipal Law.
- (b) Every municipal officer and employee shall disclose interests in contracts with the municipality at the time and in the manner required by section 803 of the General Municipal Law.

**SECTION 14. NEPOTISM**

Except as otherwise required by law:

- (a) No municipal officer or employee, either individually or as a member of a board, may participate in any decision specifically to appoint, hire, promote, discipline or discharge a relative for any position at, for or within the municipality or a municipal board.
- (b) No municipal officer or employee may directly supervise a relative in the performance of their official powers or duties.

**SECTION 15. POLITICAL SOLICITATIONS**

- (a) No municipal officer or employee shall directly or indirectly compel or induce a subordinate municipal officer or employee to make, or promise to make, any political contribution, whether by gift of money, service or other thing of value, including endorsing a specific candidate or party, or signing a petition.
- (b) No municipal officer or employee may act or decline to act in relation to appointing, hiring or promoting, discharging, disciplining, or in any manner changing the official rank, status or compensation of any municipal officer or employee, or an applicant for a position as a municipal officer or employee, on the basis of giving or withholding or neglecting to make any contribution of money or service or any other valuable thing for any political purpose.

**SECTION 16. NON-DISCRIMINATION**

No municipal officer or employee will engage in any acts of bias, prejudice or discrimination defined as any disparaging or demeaning treatment, language or acts against persons of a specific race, color, national origin, ethnicity, gender, age, sexual orientation, disability or religion. Municipal officers and employees will adhere to and uphold laws that protect people from discrimination and strive to foster an environment that embraces diversity.

**SECTION 17. GIFTS**

Definition:

For purposes of this section, a "gift" includes anything of value, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form. The value of a gift is the gift's fair market value, determined by the retail cost of the item or a comparable item. The fair market value of a ticket entitling the holder to food, refreshments, entertainment, or any other benefit is the face value of the ticket, or the actual cost to the donor, whichever is greater. Determination of whether multiple gifts from a single donor exceed seventy-five dollars (\$75.00) must be made by adding together the value of all gifts received from the donor by an officer or employee during the twelve-month period preceding the receipt of the most recent gift.

Solicitation/Acceptance/Receipt of Gifts:

- (a) No municipal officer or employee shall solicit, accept or receive a gift in violation of section 805-a (1)(a) of the General Municipal Law as interpreted in this section.
- (b) No municipal officer or employee may directly or indirectly solicit any gift for personal use or gain.
- (c) No municipal officer or employee, for personal use or gain, may accept or receive any gift (including cash, checks, gift cards/certificates, or any other item of value), or multiple gifts from the same donor, when:
  - (1) the gift reasonably appears to be intended to influence the officer or employee in

- (2) the exercise or performance of his or her official powers or duties;
- (2) the gift could reasonably be expected to influence the officer or employee in the exercise or performance of his or her official powers or duties; or
- (3) the gift is intended as a reward for any official action on the part of the officer or employee.

**Perceived Intent:**

- (1) A gift to a municipal officer or employee is presumed to be intended to influence the exercise or performance of his or her official powers or duties when the gift is from a private person or organization that seeks municipal action involving the exercise of discretion by or with the participation of the officer or employee.
- (2) A gift to a municipal officer or employee is presumed to be intended as a reward for official action when the gift is from a private person or organization that has obtained municipal action involving the exercise of discretion by or with the participation of the officer or employee during the preceding twelve months.

**Allowable Gifts:**

This section does not prohibit any other gift, including:

- (1) gifts made to the municipality;
- (2) gifts from a person with a family or personal relationship with the officer or employee when the circumstances make it clear that the personal relationship, rather than the recipient's status as a municipal officer or employee, is the primary motivating factor for the gift;
- (3) gifts given on special occasions, such as marriage, illness, or retirement, which are modest, reasonable and customary;
- (4) unsolicited advertising or promotional material of little intrinsic value, such as pens, pencils, note pads, and calendars;
- (5) awards and plaques having a value of seventy-five dollars (\$75.00) or less which are publicly presented in recognition of service as a municipal officer or employee, or other service to the community; or
- (6) meals and refreshments provided when a municipal officer or employee is a speaker or participant at a job-related professional or educational conference or program and the meals and refreshments are made available to all participants.

**SECTION 18. BOARD OF ETHICS**

- (a) There is hereby established a board of ethics for the municipality. The board of ethics shall consist of five members, a majority of whom shall not be officers or employees of the municipality, but at least one of whom must be a municipal officer or employee. The members of such board of ethics shall be appointed by the Wayne County Board of Supervisors, serve five (5) year terms, and receive no salary or compensation for their services as members of the board of ethics.
- (b) The initial terms of this appointment shall be as follows:  
 Appointment #1 – County Employee – term expires 12/31/2019  
 Appointment #2 – term expires 12/31/2020  
 Appointment #3 – term expires 12/31/2021  
 Appointment #4 – term expires 12/31/2022  
 Appointment #5 – term expires 12/31/2023

Subsequent terms of each appointment will expire five (5) years from the expiration dates listed above. Members of the Board of Ethics may be appointed to one (1) additional five year term.

- (c) The board of ethics shall meet annually with the County Attorney to review the responsibilities of the appointment.
- (d) The board of ethics shall render advisory opinions to the officers and employees of the County of Wayne with respect to article 18 of the General Municipal Law and this

code. Such advisory opinions must be rendered pursuant to the written request of any such officer or employee under such rules and regulations as the board of ethics may prescribe. The board of ethics shall have the advice of legal counsel employed by the board, or if none, the municipality's legal counsel. In addition, the board of ethics may make recommendations with respect to the drafting and adoption of a code of ethics, or amendments thereto, upon the request of the Wayne County Board of Supervisors.

- (e) Opinions reached by the BOE are to be given to the person requesting the opinion only. If further investigation or any legal action is to be taken, the matter will be referred to the County Attorney and or the County District Attorney. A copy of the BOE decision is to be kept under seal by the County Attorney.

#### **SECTION 19. POSTING AND DISTRIBUTION**

- (a) The Chairman of the Board for the County of Wayne must promptly cause a copy of this code, and a copy of any amendment to this code, to be posted publicly and conspicuously in each building under the municipality's control. The code must be posted within ten days following the date on which the code takes effect. An amendment to the code must be posted within ten days following the date on which the amendment takes effect.
- (b) The Chairman of the Board for the County of Wayne must promptly cause a copy of this code, including any amendments to the code, to be distributed to every person who is or becomes an officer and employee of the County of Wayne.
- (c) Every municipal officer or employee who receives a copy of this code or an amendment to the code must acknowledge such receipt in writing. Such acknowledgments must be filed with the Clerk of the Wayne County Board of Supervisors, who must maintain such acknowledgments as a public record.
- (d) The failure to post this code or an amendment to the code does not affect either the applicability or enforceability of the code or the amendment. The failure of a municipal officer or employee to receive a copy of this code of ethics or an amendment to the code, or to acknowledge receipt thereof in writing, does not affect either the applicability or enforceability of the code or amendment to the code.

#### **SECTION 20. ENFORCEMENT**

Any municipal officer or employee who violates this code may be censured, fined, suspended or removed from office or employment in the manner provided by law.

#### **SECTION 21. EFFECTIVE DATE**

This local law takes effect immediately.

#### **SECTION 22. INDIVIDUAL DEPARTMENTAL CODE OF ETHICS/STANDARDS OF CONDUCT**

Individual county departments may have additional Code of Ethics or Standards of Conduct policies that are specific to their department's mission. Department Heads may form their own Code of Ethics Committee to address ethics issues pertinent to their charge.

Chairman Miller opened the floor at 9:07 a.m. and asked for citizens to come forth for public comment for this hearing.

An additional request for public comment was made by the Chairman. Being none, he asked for a motion to close the hearing at 9:08 a.m.

Mr. Lasher moved, seconded by Mr. Verkey, that the hearing be closed. Upon roll call, carried.

**OTHER BUSINESS**

Mr. Johnson moved, seconded by Mr. Verkey that two (2) resolutions be allowed on the floor under Other Business. Upon roll call, all Supervisors voted aye. Motion Carried.

**RESOLUTION NO. 368-20: ADOPTION OF LOCAL LAW SUPERSEDING THE RESIDENCY REQUIREMENT OF THE PUBLIC OFFICERS LAW FOR THE POSITION OF ASSISTANT DISTRICT ATTORNEY IN THE COUNTY OF WAYNE**

Mr. Emmel presented the following:

WHEREAS, a proposed local law superseding the residency requirement of the Public Officers Law for the position of Assistant District Attorney in the County of Wayne was presented to the Board of Supervisors on August 10, 2020; and

WHEREAS, a public hearing on the proposed local law was held on Wednesday, August 26, 2020 at 9:00 a.m. in the Supervisor’s Chambers in the County Court House, 26 Church Street, Lyons, New York, in accordance with the notice of hearing duly posted and published in the manner prescribed by law; now, therefore, be it

RESOLVED, that said local law is hereby adopted to read as follows:

**COUNTY OF WAYNE - STATE OF NEW YORK  
LOCAL LAW NO. 3 FOR THE YEAR 2020**

A Local Law Superseding the Residency Requirement of the Public Officers Law for the Position of Assistant District Attorney in the County of Wayne.

**BE IT ENACTED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF WAYNE,** as follows:

**SECTION 1: LEGISLATIVE INTENT**

The intent of this local law is to define the residency requirement as it pertains to the following public officers: Assistant District Attorneys. It is intent of this local law to supersede the provisions of the New York State Public Officers Law Section 3(1) with respect to said public officers.

**SECTION 2: RESIDENCY REQUIREMENT: ASSISTANT DISTRICT ATTORNEY**

The provisions of Section 3(1) of the New York State Public Officers Law requiring a person to be a resident of the political subdivision or municipal corporation of the state for which he or she shall be chosen, or within which his or her official functions are required to be exercised, shall not prevent a person from holding the office of Assistant District Attorney of the County of Wayne, provided that such person resides in Wayne County or a geographically adjoining county within the State of New York.

The provisions of this local law shall not apply to any person holding the office of First Assistant District Attorney, the holder of which office would assume the duties of the District Attorney upon the District Attorney’s absence from the county or upon the District Attorney’s inability to perform his or her duties.

This local law shall only apply to Assistant District Attorneys.

**SECTION 3: SEPARABILITY**

If any clause, sentence, paragraph or section of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not impair or invalidate the remainder hereof, but shall be confined in its operation to the clause, sentence, paragraph or section directly involved in the controversy in which judgment shall have been rendered.

**SECTION 4: EFFECTIVE DATE**

This local law shall take effect immediately upon filing with the Secretary of State in accordance with Article 3, §27 of the Municipal Home Rule Law.

and be it further

RESOLVED, that the Clerk of the Board of Supervisors is hereby directed to number the local law in conformance with the filing requirements of the Secretary of State and to file the local law with the Secretary of State in accordance with the provisions of the Municipal Home Rule Law of the State of New York.

Mr. Johnson moved the adoption of the resolution. Seconded by Mr. Kolczynski.

Mr. Robusto moved, seconded by Mrs. Leonard, that the Board amend this local law by adding a sunset provision, or sunset clause to this local law that will expire automatically in one year.

There were several discussions including County Attorney Connors response that an amendment with a sunset clause could prove problematic for the County, particularly after this local law is fully implemented, positions have been filled and court cases scheduled.

Mr. Robusto added that this sunset clause will force this Board to deal with this issue, which is truly the motivation for this amendment.

Mrs. Jacobs questioned why we were doing this local law now; and stated that she would not support putting a local law in place that will be incorrect from this day forward.

Mr. Groat stated that although he understands the reasoning behind this request for the proposed amendment; we need to move forward now and support this. We could soon be faced with decreased funding from the state. We need to take action now.

Chairman Miller agreed with Mr. Groat and indicated the expenses being incurred, the urgency of this matter; and the need to keep things rolling forward. He recommended that a committee be initiated to look into addressing these concerns.

District Attorney Calarco commented that their office is faced with the statute of limitations on several cases; and currently down 1.5 positions. It is a terrible waste of time when full-time assistant district attorneys are pressed to do justice work. He further emphasized that due to the demanding case load and time-sensitivity issues, it is extremely important to get this done now.

Upon roll call on the proposed amendment, all Supervisors voted Nay, except Supervisors Leonard, Robusto and Jacobs who voted Aye. The Chairman declared the motion defeated.

Upon roll call on the original resolution for this Local Law, all Supervisors voted Aye except Supervisors Leonard and Jacobs who voted Nay. The Chairman declared the resolution adopted.

**RESOLUTION NO. 369-20: ADOPTION OF LOCAL LAW AMENDING LOCAL LAW NO. 3-2018, AS ESTABLISHED BY LOCAL LAW NO. 2-2012 - AMENDING THE WAYNE COUNTY ETHICS POLICY**

Mr. Emmel presented the following:

WHEREAS, a proposed local law amending Local Law No. 3-2018, as established by Local Law No. 2-2012 to amend the Wayne County Ethics Policy was presented to the Board of Supervisors on August 10, 2020; and

WHEREAS, a public hearing on the proposed local law was held on Wednesday, August 26, 2020 at 9:05 a.m. in the Supervisor's Chambers in the County Court House, 26 Church Street, Lyons, New York, in accordance with the notice of hearing duly posted and published in the manner prescribed by law; now, therefore, be it

RESOLVED, that said local law is hereby adopted to read as follows:

**COUNTY OF WAYNE - STATE OF NEW YORK  
LOCAL LAW NO. 4 FOR THE YEAR 2020**

A local law amending Local Law No. 3-2018, as established by Local Law No. 2-2012

entitled, "Amending the Wayne County Ethics Policy".

BE IT ENACTED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF WAYNE, as follows:

### **SECTION 1. PURPOSE**

Officers and employees of the County of Wayne hold their positions to serve and benefit the public, and not for obtaining unwarranted personal or private gain in the exercise and performance of their official powers and duties. The Wayne County Board of Supervisors recognizes that, in furtherance of this fundamental principle, there is a need for clear and reasonable standards of ethical conduct. This code of ethics establishes those standards.

The Wayne County Board of Ethics will decline to comment on, offer an opinion on or otherwise interfere with the decision(s) of any other municipality or government (including school districts) made by other Boards of Ethics within Wayne County.

The Wayne County Board of Ethics will, if asked by the governing body of any Wayne County municipality or government (including school districts), act as their Boards of Ethics but only in those instances where they do not have their own Board of Ethics.

### **SECTION 2. DEFINITIONS**

- (a) "Board" means the governing board of a municipality and any municipal administrative board (e.g. planning board, zoning of board of appeals), commission, or other agency or body comprised of two or more municipal officers or employees.
- (b) "Code" means this code of ethics.
- (c) "Interest" means a direct or indirect financial 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 municipality or an area of the municipality, or a lawful class of such residents or taxpayers. A municipal officer or employee is deemed to have an interest in any private organization when he or she, his or her spouse, or a member of his or her household, is an owner, partner, member, director, officer, employee, or directly or indirectly owns or controls more than 5% of the organization's outstanding stock.
- (d) "Municipality" means the County of Wayne. The word "municipal" refers to the municipality.
- (e) "Municipal officer or employee" means a paid or unpaid officer or employee of the County of Wayne, including, but not limited to, the members of any municipal board.
- (f) "Relative" means a spouse, child, step-child, parent, step-parent, brother, sister, step-sibling, sibling's spouse, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law, daughter-in-law, uncle, aunt, nephew, niece, first cousin, domestic partner or other household member of a municipal officer or employee, and individuals having any of these relationships to the spouse of the officer or employee.

### **SECTION 3. APPLICABILITY**

This code of ethics applies to the officers and employees of the County of Wayne, and shall supersede any prior municipal code of ethics. The provisions of this code of ethics shall apply in addition to all applicable State and local laws relating to conflicts of interest and ethics including, but not limited to, article 18 of the General Municipal Law and all rules, regulations, policies and procedures of the County of Wayne.

### **SECTION 4. PROHIBITION ON USE OF MUNICIPAL POSITION FOR PERSONAL OR PRIVATE GAIN**

No municipal officer or employee shall use his or her municipal position or official powers and duties to secure a financial or material benefit for himself or herself, a relative, or any

private organization in which he or she is deemed to have an interest.

**SECTION 5. DISCLOSURE OF INTEREST IN LEGISLATION AND OTHER MATTERS**

- (b) Whenever a matter requiring the exercise of discretion comes before a municipal officer or employee, either individually or as a member of a board, and disposition of the matter could result in a direct or indirect financial or material benefit to himself or herself, a relative, or any private organization in which he or she is deemed to have an interest, the municipal officer or employee shall disclose in writing the nature of the interest.
- (b) The disclosure shall be made when the matter requiring disclosure first comes before the municipal officer or employee, or when the municipal officer or employee first acquires knowledge of the interest requiring disclosure, whichever is earlier.
- (c) In the case of a person serving in an elective office, the disclosure shall be filed with the governing board of the municipality. In all other cases, the disclosure shall be filed with the person's supervisor or, if the person does not have a supervisor, the disclosure shall be filed with the municipal officer, employee or board having the power to appoint to the person's position. In addition, in the case of a person serving on a municipal board, a copy of the disclosure shall be filed with the board. Any disclosure made to a board shall be made publicly at a meeting of the board and must be included in the minutes of the meeting.

**SECTION 6. RECUSAL AND ABSTENTION**

- (a) No municipal officer 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 relative, or any private organization in which he or she is deemed to have an interest.
- (b) In the event that this section prohibits a municipal officer or employee from exercising or performing a power or duty:
  - (1) if the power or duty is vested in a municipal officer as a member of a board, then the power or duty shall be exercised or performed by the other members of the board; or
  - (2) if the power or duty that is vested in a municipal officer individually, then the power or duty shall be exercised or performed by his or her deputy or, if the officer does not have a deputy, the power or duty shall be performed by another person to whom the officer may lawfully delegate the function.
  - (3) if the power or duty is vested in a municipal employee, he or she must refer the matter to his or her immediate supervisor, and the immediate supervisor shall designate another person to exercise or perform the power or duty.

**SECTION 7. PROHIBITION INAPPLICABLE; DISCLOSURE, RECUSAL AND ABSTENTION NOT REQUIRED**

- (a) This code's prohibition on use of a municipal position (section 4), disclosure requirements (section 5), and requirements relating to recusal and abstention (section 6), shall not apply with respect to the following matters:
  - (1) adoption of the municipality's annual budget;
  - (2) any matter requiring the exercise of discretion that directly affects any of the following groups of people or a lawful class of such groups:
    - (i) all municipal officers or employees;
    - (ii) all residents or taxpayers of the municipality or an area of the municipality; or
    - (iii) the general public; or
  - (3) any matter that does not require the exercise of discretion.

- (b) Recusal and abstention shall not be required with respect to any matter:
  - (1) which comes before a board when a majority of the board's total membership would otherwise be prohibited from acting by section 6 of this code;
  - (2) which comes before a municipal officer when the officer would be prohibited from acting by section 6 of this code and the matter cannot be lawfully delegated to another person.

**SECTION 8. INVESTMENTS IN CONFLICT WITH OFFICIAL DUTIES**

- (a) No municipal officer or employee may acquire the following investments:
  - (1) investments that can be reasonably expected to require more than sporadic recusal and abstention under section 6 of this code; or
  - (2) investments that would otherwise impair the person's independence of judgment in the exercise or performance of his or her official powers and duties.
- (b) This section does not prohibit a municipal officer or employee from acquiring any other investments or the following assets:
  - (1) real property located within the municipality and used as his or her personal residence;
  - (2) less than five percent of the stock of a publicly traded corporation; or
  - (3) bonds or notes issued by the municipality and acquired more than one year after the date on which the bonds or notes were originally issued.

**SECTION 9. PRIVATE EMPLOYMENT IN CONFLICT WITH OFFICIAL DUTIES**

No municipal officer or employee, during his or her tenure as a municipal officer or employee, may engage in any private employment, including the rendition of any business, commercial, professional or other types of services, when the employment:

- (a) can be reasonably expected to require more than sporadic recusal and abstention pursuant to section 6 of this code;
- (b) can be reasonably expected to require disclosure or use of confidential information gained by reason of serving as a municipal officer or employee;
- (c) violates section 805-a (1)(c) or (d) of the General Municipal Law; or
- (d) requires representation of a person or organization other than the municipality in connection with litigation, negotiations or any other matter to which the municipality is a party.

**SECTION 10. FUTURE EMPLOYMENT**

- (a) No municipal officer or employee may ask for, pursue or accept a private post-government employment opportunity with any person or organization that has a matter requiring the exercise of discretion pending before the municipal officer or employee, either individually or as a member of a board, while the matter is pending or within the 30 days following final disposition of the matter.
- (b) No municipal officer or employee, for the one-year period after serving as a municipal officer or employee, may represent or render services to a private person or organization in connection with any matter involving the exercise of discretion before the municipal office, board, department or comparable organizational unit for which he or she serves.
- (c) No municipal officer or employee, at any time after serving as a municipal officer or employee, may represent or render services to a private person or organization in connection with any particular transaction in which he or she personally and substantially participated while serving as a municipal officer or employee.

**SECTION 11. PERSONAL REPRESENTATIONS AND CLAIMS PERMITTED**

This code shall not be construed as prohibiting a municipal officer or employee from:

- (a) representing himself or herself, or his or her spouse or minor children before the municipality; or
- (b) asserting a claim against the municipality on his or her own behalf, or on behalf of his or

her spouse or minor children.

**SECTION 12. USE OF MUNICIPAL RESOURCES**

- (a) Municipal resources shall be used for lawful municipal purposes. Municipal resources include, but are not limited to, municipal personnel, and the municipality's money, vehicles, equipment, materials, supplies or other property.
- (b) No municipal officer or employee may use or permit the use of municipal resources for personal or private purposes, but this provision shall not be construed as prohibiting:
  - (1) any use of municipal resources authorized by law or municipal policy;
  - (2) the use of municipal resources for personal or private purposes when provided to a municipal officer or employee as part of his or her compensation; or
  - (3) the incidental use during the business day of municipal telephones and computers for necessary personal matters such as family care and changes in work schedule.
- (c) No municipal officer or employee shall cause the municipality to spend more than is reasonably necessary for transportation, meals or lodging in connection with official travel.

**SECTION 13. INTERESTS IN CONTRACTS**

- (a) No municipal officer or employee may have an interest in a contract that is prohibited by section 801 of the General Municipal Law.
- (b) Every municipal officer and employee shall disclose interests in contracts with the municipality at the time and in the manner required by section 803 of the General Municipal Law.

**SECTION 14. NEPOTISM**

Except as otherwise required by law:

- (a) No municipal officer or employee, either individually or as a member of a board, may participate in any decision specifically to appoint, hire, promote, discipline or discharge a relative for any position at, for or within the municipality or a municipal board.
- (b) No municipal officer or employee may directly supervise a relative in the performance of their official powers or duties.

**SECTION 15. POLITICAL SOLICITATIONS**

- (a) No municipal officer or employee shall directly or indirectly compel or induce a subordinate municipal officer or employee to make, or promise to make, any political contribution, whether by gift of money, service or other thing of value, including endorsing a specific candidate or party, or signing a petition.
- (b) No municipal officer or employee may act or decline to act in relation to appointing, hiring or promoting, discharging, disciplining, or in any manner changing the official rank, status or compensation of any municipal officer or employee, or an applicant for a position as a municipal officer or employee, on the basis of giving or withholding or neglecting to make any contribution of money or service or any other valuable thing for any political purpose.

**SECTION 16. NON-DISCRIMINATION**

No municipal officer or employee will engage in any acts of bias, prejudice or discrimination defined as any disparaging or demeaning treatment, language or acts against persons of a specific race, color, national origin, ethnicity, gender, age, sexual orientation, disability or religion. Municipal officers and employees will adhere to and uphold laws that protect people from discrimination and strive to foster an environment that embraces diversity.

**SECTION 17. GIFTS**

Definition:

For purposes of this section, a "gift" includes anything of value, whether in the form of

money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form. The value of a gift is the gift's fair market value, determined by the retail cost of the item or a comparable item. The fair market value of a ticket entitling the holder to food, refreshments, entertainment, or any other benefit is the face value of the ticket, or the actual cost to the donor, whichever is greater. Determination of whether multiple gifts from a single donor exceed seventy-five dollars (\$75.00) must be made by adding together the value of all gifts received from the donor by an officer or employee during the twelve-month period preceding the receipt of the most recent gift.

Solicitation/Acceptance/Receipt of Gifts:

- (a) No municipal officer or employee shall solicit, accept or receive a gift in violation of section 805-a (1)(a) of the General Municipal Law as interpreted in this section.
- (b) No municipal officer or employee may directly or indirectly solicit any gift for personal use or gain.
- (c) No municipal officer or employee, for personal use or gain, may accept or receive any gift (including cash, checks, gift cards/certificates, or any other item of value), or multiple gifts from the same donor, when:
  - (1) the gift reasonably appears to be intended to influence the officer or employee in the exercise or performance of his or her official powers or duties;
  - (2) the gift could reasonably be expected to influence the officer or employee in the exercise or performance of his or her official powers or duties; or
  - (3) the gift is intended as a reward for any official action on the part of the officer or employee.

Perceived Intent:

- (1) A gift to a municipal officer or employee is presumed to be intended to influence the exercise or performance of his or her official powers or duties when the gift is from a private person or organization that seeks municipal action involving the exercise of discretion by or with the participation of the officer or employee.
- (2) A gift to a municipal officer or employee is presumed to be intended as a reward for official action when the gift is from a private person or organization that has obtained municipal action involving the exercise of discretion by or with the participation of the officer or employee during the preceding twelve months.

Allowable Gifts:

This section does not prohibit any other gift, including:

- (1) gifts made to the municipality;
- (2) gifts from a person with a family or personal relationship with the officer or employee when the circumstances make it clear that the personal relationship, rather than the recipient's status as a municipal officer or employee, is the primary motivating factor for the gift;
- (3) gifts given on special occasions, such as marriage, illness, or retirement, which are modest, reasonable and customary;
- (4) unsolicited advertising or promotional material of little intrinsic value, such as pens, pencils, note pads, and calendars;
- (5) awards and plaques having a value of seventy-five dollars (\$75.00) or less which are publicly presented in recognition of service as a municipal officer or employee, or other service to the community; or
- (6) meals and refreshments provided when a municipal officer or employee is a speaker or participant at a job-related professional or educational conference or program and the meals and refreshments are made available to all participants.

**SECTION 18. BOARD OF ETHICS**

- (a) There is hereby established a board of ethics for the municipality. The board of ethics shall consist of five members, a majority of whom shall not be officers or employees

of the municipality, but at least one of whom must be a municipal officer or employee. The members of such board of ethics shall be appointed by the Wayne County Board of Supervisors, serve five (5) year terms, and receive no salary or compensation for their services as members of the board of ethics.

- (b) The initial terms of this appointment shall be as follows:
    - Appointment #1 – County Employee – term expires 12/31/2019
    - Appointment #2 – term expires 12/31/2020
    - Appointment #3 – term expires 12/31/2021
    - Appointment #4 – term expires 12/31/2022
    - Appointment #5 – term expires 12/31/2023
- Subsequent terms of each appointment will expire five (5) years from the expiration dates listed above. Members of the Board of Ethics may be appointed to one (1) additional five year term.
- (c) The board of ethics shall meet annually with the County Attorney to review the responsibilities of the appointment.
  - (d) The board of ethics shall render advisory opinions to the officers and employees of the County of Wayne with respect to article 18 of the General Municipal Law and this code. Such advisory opinions must be rendered pursuant to the written request of any such officer or employee under such rules and regulations as the board of ethics may prescribe. The board of ethics shall have the advice of legal counsel employed by the board, or if none, the municipality's legal counsel. In addition, the board of ethics may make recommendations with respect to the drafting and adoption of a code of ethics, or amendments thereto, upon the request of the Wayne County Board of Supervisors.
  - (e) Opinions reached by the BOE are to be given to the person requesting the opinion only. If further investigation or any legal action is to be taken, the matter will be referred to the County Attorney and or the County District Attorney. A copy of the BOE decision is to be kept under seal by the County Attorney.

#### **SECTION 19. POSTING AND DISTRIBUTION**

- (a) The Chairman of the Board for the County of Wayne must promptly cause a copy of this code, and a copy of any amendment to this code, to be posted publicly and conspicuously in each building under the municipality's control. The code must be posted within ten days following the date on which the code takes effect. An amendment to the code must be posted within ten days following the date on which the amendment takes effect.
- (b) The Chairman of the Board for the County of Wayne must promptly cause a copy of this code, including any amendments to the code, to be distributed to every person who is or becomes an officer and employee of the County of Wayne.
- (c) Every municipal officer or employee who receives a copy of this code or an amendment to the code must acknowledge such receipt in writing. Such acknowledgments must be filed with the Clerk of the Wayne County Board of Supervisors, who must maintain such acknowledgments as a public record.
- (d) The failure to post this code or an amendment to the code does not affect either the applicability or enforceability of the code or the amendment. The failure of a municipal officer or employee to receive a copy of this code of ethics or an amendment to the code, or to acknowledge receipt thereof in writing, does not affect either the applicability or enforceability of the code or amendment to the code.

#### **SECTION 20. ENFORCEMENT**

Any municipal officer or employee who violates this code may be censured, fined, suspended or removed from office or employment in the manner provided by law.

**SECTION 21. EFFECTIVE DATE**

This local law takes effect immediately.

**SECTION 22. INDIVIDUAL DEPARTMENTAL CODE OF ETHICS/STANDARDS OF CONDUCT**

Individual county departments may have additional Code of Ethics or Standards of Conduct policies that are specific to their department's mission. Department Heads may form their own Code of Ethics Committee to address ethics issues pertinent to their charge.

Mr. Chatfield moved the adoption of the resolution. Seconded by Mr. Kolczynski.

Mr. Robusto addressed the Board to say that he will not support any changes to the County's Ethics Policy without seeing these revisions. Generally, changes are outlined and compared with the original; further questioning if these are the only changes made?

County Administrator House explained that amendments have been made exclusively to Section 16, the Non-Discrimination clause. The Non-Discrimination clause was not clearly addressed in the previous local law and it needed to be updated. He confirmed that this is the only proposed change made to the County's Ethics policy.

Upon roll call, all Supervisors voted Aye. The Chairman declared the resolution adopted.

**ADJOURNMENT:**

The next scheduled meeting of the Board is **Tuesday, September 15, 2020 at 9:00 a.m.**

Mr. Verkey moved, seconded by Mr. Johnson, that the board adjourn at 9:26 a.m. Carried.

Sandra J. Sloane, Clerk, Wayne County Board of Supervisors  
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