

City of New Castle
Ethics Committee Meeting
Town Hall 201 Delaware Street
Thursday, November 9, 2017
7:00 p.m.

Roll Call

Councilperson Michael Quaranta, Chair
Daniel Losco, City Solicitor
Judie Baldini, City Resident
Katie McCormick, City Resident
Dan Bungy, City Resident

Members Absent:

Joe Wisniewski, City Resident
Rev. Aaron Moore, City Resident

Meeting was called to order at 7:00 p.m.

Meeting minutes approved

Incorrect spelling of name noted, on motion from Judie Baldini, and second by Dan Bungy minutes of were passed as amended.

The next meeting date was set for Wednesday, November 29th at 7 p.m.

Mr. Quaranta noted that a member of the committee is moving out of town and will need to be replaced on the committee. Discussion regarding having appointment placed on upcoming City Council agenda. Mr. Losco stated that under FOIA laws agenda items can be added with less than 7 days' notice provided there is an explanation as to why it is necessary. He added that in light of the short-term nature of the task force, it would be advisable to try to replace the person as soon as possible.

Mr. Quaranta asked that Jerry Rousseau's nomination be added to upcoming Special Council Agenda.

Comments from Commission Members:

Mr. Losco reported that he surveyed other Municipalities in Delaware to see who had adopted a Code of Ethics. He also investigated whether adopting a Code of Ethics for the City that is applicable to collective bargaining agreements would contradict those agreements. Mr. Losco summarized a handout he had prepared. Municipalities that have no Code of Ethics include Middletown, Elsmere, Ocean View, Arlington, Millville, and all of Sussex County. Rehoboth Beach has an Ordinance stating that they adopt the State Code. Milford debated whether they would adopt a Code of Ethics, but have adopted the State Code.

There are governments including Kent & Sussex Counties, Newark, Georgetown, Millsboro, Dewey Beach, and Lewes. Most of them are in line with the State Code, focusing on conflict of interest for employees and elected officials and, and accepting gifts as a result of matters that are before City Government.

Mr. Quaranta asked if any of these entities had formed a committee that would have some authority or process for dealing with ethics issues.

Mr. Losco stated that in the towns that have adopted a Code of Ethics, the ordinance will either authorize the committee to formulate their own rules and procedures or the ordinance will codify the rules and procedures. Those would include the authority to issue subpoenas, issue advisory opinions, conduct investigations, make recommendations, and to engage outside counsel; it will also address the procedure involved in a hearing. They would create a procedure so you would have an orderly process with full disclosure.

Mr. Losco stated that some of the ethics boards he reviewed only issue advisory opinions or reprimands and censures, or make recommendations to City Council. If there was a finding of a violation to an ethical rule, the committee would make a recommendation, but Council would make the final decision on the recommendation. Some of the codes provide for civil penalties, and some will say that a found ethical violation can result in a criminal penalty, but only if held by a court of competent jurisdiction.

Discussion of Civil vs. Criminal penalties. Mrs. Baldini asked if an Ethics Committee could make a recommendation to go to an outside court.

Mr. Losco said "yes", but that court has to have jurisdiction conferred on it by State government. The City or a committee could make a recommendation, but without jurisdiction it would be dismissed in court. He added that this is an argument to stay with the State Code; anyone who is accused under the State Code can appeal that finding. The State Code however does not contain anything having to do with conduct.

Mr. Losco said that in cases where a recommendation comes from the Board of Ethics to the City Council, typically elected officials are exempt from that process. He said having an elected official judged by his peers can put other elected officials in an unfair position; the point of having a Board of Ethics is to get it out of Council's hands and into the hands of a neutral non-elected board.

Ms. McCormick noted that Delaware City's Ethics Code had broader categories for conduct. She asked if this was a viable model.

Mr. Losco said he liked the Delaware City Code, but also suggested looking the Newark version. Mr. Losco compared the New Castle County and Kent County codes, one as an example of too much detail, and the other not enough detail. He suggested looking at Delaware City and Newark as the best to review. He stated that most of the other municipalities' are closely patterned on the State Code.

Ms. McCormick noted that the Delaware City Code had a provision to allow the Board to dismiss frivolous complaints under defined standards. She asked if that was common among the other codes.

Mr. Losco said not all codes include that provision, but many do. It is also not uncommon for other State Commissions to have a process to recommend dismissal of a frivolous complaint without hearing.

Mrs. Baldini asked if the Task Force should determine if they are discussing a Code of Ethics or Code of Conduct, or both. She noted that many of the things they want to accomplish are under one or both of these headings. Mrs. Baldini said Code of Conduct covers expectations of how people should act. She said many of the codes she has reviewed have codes that determine how you present yourself as a Councilperson, appointee or employee. She said she would also like to see training and education implemented as part of the code. Should the City require an acknowledgement of the Code of Conduct, and require training. Do we need a statement of purpose, and a glossary of terms, noting that many people use the terms Code of Ethics and Code of Conduct interchangeably?

Mr. Quaranta thanked Mrs. Baldini for reviewing other codes, and noted that we have to look to the State Code for some of our boundaries and definitions. He said he would not be opposed having something implemented like the pledge candidate's sign that they will post no political signs prior to 30 days before a City election. Candidate could sign an acknowledgement of a code of conduct/ethics.

Mr. Losco acknowledged that many of the codes did use the terms Code of Conduct and Code of Ethics interchangeably. Mr. Losco said he interrupts Code of Conduct as how people act toward each other, act civilly, show due respect, to residents, employees, and co-elected officials. He said he has no issue with adding these types of recommendations as an aspirational statement. Mr. Losco said he questions whether this type of behavior is actionable by an Ethics Committee. People have the right to speak freely, and he is concerned about a Code of Conduct that is more than an aspirational statement.

Mr. Losco asked Mrs. Baldini if the Codes she looked had penalties for violations of incivility.

Mrs. Baldini said no, for the most part, these codes were centered on training and ultimately go to censure or reprimand.

Mr. Rousseau stated that the main question has to be the rights of the person, you can tell someone how to act, but to what extent is it enforceable. The ultimate reprimand will be the election and the voters.

Mrs. Baldini added that these rules should be extended to appointees to all commissions and boards of the City, and asked if you are not contributing, or are disruptive to a Board, can you be removed?

Mr. Losco stated that rules of procedure for a Board of Ethics could impose that type of requirement, and could call for the removal of a disruptive member or member of the public.

Ms. McCormick noted that the Delaware City Code of conduct has broad language concerning appropriate decorum, but it does not have much in place for enforcement. It permits sanctions, and encourages reprimands no real enforcement beyond advisory opinions. She said the broader the language the harder it would be to enforce.

Mr. Losco added that the City could require training for appointed, but probably not elected office, but he said removing a commissioner for not attending training would probably come under judicial attack. He added that even having someone sign a pledge, or making it a qualification to run for office would have to be in the City Charter.

Mr. Quaranta stated that you might not need a charter change or to have signing an agreement be a condition of candidacy, if a candidate refused to sign an agreement that in itself might be used by an opponent to shame the candidate, and the public would have to decide if it is an issue.

Mr. Bungy brought up a point from the first meeting. He said Mr. Quaranta had stated that he felt there was a policy gap on ethical conduct, and you would like to see the task force suggest a code of conduct as well as a policy.

Mr. Quaranta stated that the potential gaps are employees who are governed by union contracts; there are codes of behavior, appeals and consequences built into those contracts. We also have appointed members of Boards and Commissions. Members of Boards and Commissions such as the Planning Commission or HAC could be vulnerable to allegations of special treatment. Mr. Quaranta said he felt the gap is that there is nothing in place to deal with this type of issue.

Mr. Bungy asked Mr. Losco if he felt the City should stay away from a Code of Ethics or a Code of Conduct.

Mr. Losco stated that he felt his role on the task force was of advisor, and it should be a decision for the residents to make. He said the State Code may be adequate to address the kinds of conflicts the task force is talking about. Does the City want residents judging other residents who are on commissions? This can be divisive to a community. He said he has no problem with a Code of Conduct, or with an ordinance that mandates training, he emphasized that this would likely be apparitional, and not enforceable beyond removal at time of reelection.

Mr. Quaranta asked the members to review the State Code for the next meeting and asked Mr. Losco to bring back thoughts on where the State Code addresses the issues raised by the Task Force.

Mr. Losco stated that in terms of personal conduct, the State Code does not address these issues at all.

Ms. McCormick asked if there are Codes of Ethics, modeled after the State Code that have an extra level of enforcement at the local level, and Codes of Conduct mechanisms for dealing with issues, and to what extent can you have both.

Mr. Losco stated that some municipalities do go beyond the State Code. Some have penalties. One provides a civil penalty of up to \$1,000. Mr. Losco said a civil penalty might be more appropriate because it can be appealed in JP Court, however this would be costly to the City.

Discussion concerning civil penalties and how they would be enforceable in the case of ethical issues as opposed to conduct issues. Ms. McCormick asked if there is an increase in complaints once a Code of Ethics/Conduct is implemented. Mr. Losco said these Boards are typically formed in response to an event, and these are usually issues of conduct, which the State Code does not deal with, in part because of the difficulty of enforcement.

Mr. Bungy asked if one of the things this committee would do was make a recommendation that Council approve or appoint a standing commission to review.

Mr. Quaranta said that could be one of the discussion topics, and that there will be a number of other topics that may be included, such as mandatorily training, a pre-election agreement, code of conduct or

a code of ethics, and if the City does institute separate commission, what is its authority and policies. He added that these components would all need to mesh into one overall policy.

Mr. Bungy asked if the decisions regarding authority and policies should be made by the standing committee when and if it's formed.

Mr. Quaranta said the Task Force will review the State Code, and that of other municipalities, and make recommendations to the City Council. They will ultimately decide if an Ethics Committee is formed, and what its policies and authority would be.

Ms. McCormick noted that often committees that are formed do have authority to make recommendations for their policies.

Mr. Quaranta

On a motion by Mr. Losco, and second by Ms. McCormick the meeting adjourned at 8:28 p.m.

Respectfully Submitted,

Kim Burgmuller
Council Secretary