

**ETHICS LAW
TOWN OF DENNING, NEW YORK**

Effective Date: November 11, 2000
As Amended By Local Law No. 3 of 2001

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**LOCAL LAW No. 3 of the Year 2001
of the TOWN OF DENNING, NEW YORK**

BE IT ENACTED by the Town Board of the Town of Denning as follows:

**ARTICLE I
GENERAL PROVISIONS**

§ 1.1 TITLE

This Local Law shall be known as the "Ethics and Disclosure Law of the Town of Denning."

§ 1.2 PURPOSE

The purposes of this Local Law are:

- A. To establish standards of ethical conduct for officers, employees and consultants of the Town;
- B. To provide officers and employees of the Town, whether elected or appointed, paid or volunteer, with clear guidance on such standards;
- C. To promote public confidence and integrity in the agencies, administrative offices of our local government;
- D. To facilitate the consideration of potential ethical problems before they arise, to minimize unwarranted suspicion, and to enhance the accountability of government to the people by requiring public disclosure of financial interests that may influence or be perceived to influence the actions of Town officers and employees;
- E. To provide for the fair and effective administration of this Local Law.

§ 1.3 CONSTRUUAL OF PROVISIONS

This Local Law is enacted pursuant to section 806 of the General Municipal Law of the State of New York and section 10 of the Municipal Home Rule Law and is not intended to authorize any conduct prohibited by Article 18 of the General Municipal Law.

The standards, prohibited acts and procedures established within this law are in addition to any prohibited acts, conflicts of interest, provisions or procedures prescribed by statutes of the state of New York and also in addition to common law rules and judicial decisions relating to the conduct of town officers to the extent that the same are more severe in their application than this law.

ARTICLE II CODE OF ETHICS

§ 2.1 STANDARD OF CONDUCT

2.1.1 General prohibition.

A Town officer or employee shall not use his/her official position or office, or take or fail to take any action in a matter which he/she knows or has reason to know may provide a personal financial benefit or secure unwarranted privileges or exemptions for any of the following persons:

1. a Town officer or employee;
2. his/her outside employer, employee or business;
3. a relative or immediate family member;
4. a customer or client.

2.1.2 Recusal.

1. A Town officer or employee shall promptly recuse himself/herself from acting on a matter before the Town, when acting on the matter, or failing to act on the matter, may benefit the persons listed above, financially or otherwise or give the reasonable appearance of a conflict of interest or impropriety.
2. Whenever a Town officer or employee is required to recuse himself/herself, he/she must refrain from further participation in the matter.
3. The Town of Denning purposely goes further than Article 18 of the General Municipal Law of the State of New York, in the exclusion of participation and prohibition of voting, of Town officers or employees who are directors, trustees, employees, consultants, or third party contractors of any corporation, volunteer or membership organization, partnership or sole propriety business, where such participation or vote involves a resolution, ordinance, local law, or amendment to such legislation, grant application, special use permit or subdivision application that results in any form of financial impact, developmental benefit or usage restriction for any such corporation, volunteer or membership organization, partnership or sole propriety business.

2.1.3 Gifts.

A Town officer or employee shall not accept or solicit any gift valued over \$75.00, nor shall he/she accept or solicit under circumstances in which it could reasonably be inferred that the gift was intended to influence such Town officer or employee in the performance of his/her official duties or was intended to be an award for any official action on his/her part.

2.1.4 Representation.

A Town officer or employee shall not represent any private interest before any Town agency or in any litigation in which the Town of Denning is a party or complainant.

2.1.5 Appearances.

A Town officer or employee shall not appear before any agency of the Town, except on his/her own behalf or on behalf of the Town.

2.1.6 Confidential Information.

A Town officer or employee shall not accept employment or engage in business or professional activity which will require him/her to disclose confidential information gained by reason of official position or authority.

2.1.7 Political solicitation.

A Town officer or employee shall not request or authorize anyone else to request any subordinate of the officer or employee to participate in an election campaign or contribute to a political committee.

2.1.8 Future Employment.

For a period of one year after termination of his/her term of office or employment with the Town, other than acting on behalf of himself/herself, no former Town official or employee may appear before the Town, including boards and commissions on which the former official or employee has represented the Town, in relation to any matter upon which he/she has had discretionary power during his/her term of office or employment with the Town, unless requested to provide information by the Town Board.

2.1.9 Avoidance of conflicts.

Town officers and employees shall not knowingly acquire, solicit, negotiate or, or accept any interest, employment, or anything of value which would put them in violation of this Local Law.

2.1.10 Inducement of others.

A Town officer or employee shall not induce or aid another officer or employee of the Town to violate any of the provisions in this Local Law.

2.1.11 Investments.

A Town officer or employee shall not invest or hold any investment directly or indirectly in any business, financial, commercial or other private transaction, which would create a conflict with his or her official duties.

2.1.12 Nepotism.

1. Every public officer, and every municipal employee related closer in degree, by blood or marriage, including significant other, than first cousin to any persons seeking employment within any department, section or function of the Town shall disclose such relationship as provided for pursuant to the further provisions of this section;
2. Any member or any municipal board, commission, or other municipal body related closer in degree by blood or marriage than first cousin or related by shared living circumstances to any person(s) seeking employment or making application before such body shall disclose such relationship as provided for in this section.

2.1.13 Use of public property.

No officer or employee shall request or permit the use of Town owned vehicles, equipment, materials or property for personal convenience or profit except when such services are available to the public generally or are provided as municipal policy for the use of such officer or employee in the conduct of official duties.

2.1.14 Waiver.

A Town officer or employee may apply for a Waiver Request Form from any of these standards upon a showing of compelling need. A Waiver Request Form will be available from the Town Clerk or the Ethics Board, and may be modified from time to time as deemed necessary.

§ 2.2 INTEREST IN CONTRACTS WITH THE TOWN

2.2.1 Prohibited interests.

No Town officer or employee shall have an interest in a contract with the Town, or an interest in a bank or trust company, that is prohibited by section 801 of the General Municipal Law of the State of New York. Any contract willfully entered into by or with the Town in which there is an interest prohibited by that section shall be null, void, and wholly unenforceable, to the extent provided by section 804 of the General Municipal Law.

2.2.2 Disclosure of interests.

Any Town officer or employee who has, will have, or later acquires an interest in any actual or proposed contract with the Town shall publicly disclose the nature and extent of that interest in accordance with section 803 of the General Municipal Law. The Town Clerk shall immediately file such disclosure with the Ethics Board.

2.2.3 Violations.

Any Town officer or employee who violates the provisions of this section shall be guilty of a misdemeanor, to the extent provided by section 805 of the General Municipal Law.

§ 2.3 DEFINITIONS

Unless otherwise stated or unless the context otherwise requires, the following terms shall, for the purpose of this Local Law, have the meaning herein indicated:

"Appear" and "appear before" mean communicating in any form, including, without limitation, personally, through another person, by letter, electronic device, or by telephone.

"Contractual goods/services" means any work performed or goods delivered by the Town officer to another person under mutual agreement of the two parties and provided the transaction has been finalized, without dispute, by two parties. Retail sales shall be excluded from this provision.

"Customer or client" means any person for whom a Town officer or employee has directly supplied contractual goods/services during the previous 24 months. Retail sales shall be excluded from this provision.

"Ethics Board" means the Ethics Board of the Town of Denning established pursuant to Article III of this Local Law.

"Gift" and "financial benefit" shall include any money, service, license, permit, contract, authorization, loan, travel, entertainment, hospitality, or any promise thereof, or any other gratuity or promise there of or anything of value. A financial transaction may be a financial benefit but shall not be a gift unless it is on terms not available to the general public. "Gift" and "financial benefit" do not include campaign contributions authorized by law.

"Ministerial act" means an action performed in a prescribed manner without the exercise of judgment or discretion as to the propriety of the act.

"Outside employer or business" means:

1. any activity, other than service to the Town, from which the Town officer or employee receives compensation for services rendered or goods sold or produced;
2. any entity, other than the Town, of which the Town officer or employee is a member, officer, director, or employee and from which he/she receives compensation for services rendered or goods sold or produced; or
3. any entity in which the Town officer or employee has an ownership interest, except a corporation of which the Town officer or employee owns less than five percent (5%) of the outstanding stock. For purposes of this definition, "compensation" shall not include reimbursement for necessary expenses, including travel expenses.

"Person" means both individual and entities.

"Relative/immediate family member" means a spouse, significant other, child, or a person claimed as a dependent on the Town officer's or employee's latest individual state income tax return.

"Significant other" means an individuals of the opposite or same sex living in shared quarters for the purpose of constituting a family unit.

"Subordinate" of a Town officer or employee means another Town officer or employee over whose activities he/she has direction, supervision, or control, except those who serve in positions that are in the exempt classification under section 41 of the Civil Service Law of the State of New York or in the unclassified service under subdivisions (a) through (f) of section 35 of that law.

"Town" means the Town of Denning but shall not include the Town justice court.

"Town officer or employee" means any officer or employee of the Town, whether paid or unpaid, and includes, without limitation, all members of any office, board, body, advisory board, council, commission, agency, department, district, administration, division, bureau, or committee of the Town.

"Town officer or employee" shall not include:

1. a judge, justice, officer, or employee of the court system,
2. a volunteer firefighter or civil defense volunteer, or
3. a member of an advisory board of the Town if, but only if, the advisory board has no authority to implement its recommendations or to act on behalf of the Town or to restrict the authority of the Town to act. No entity established pursuant to the General Municipal Law of the State of New York shall be deemed an advisory board for purposes of this paragraph.

§ 2.4 APPLICANT DISCLOSURE: LAND USE APPLICATIONS

2.4.1 Disclosure.

Every application, petition, or request submitted for a variance, amendment, change of zoning, approval of plat, exemption from a plat or official map, license, or permit, pursuant to the provisions of any ordinance, Local Law, rule, or regulation constituting the zoning and planning regulations of the Town shall state the information required, to the extent required, by section 809 of the General Municipal Law of the State of New York.

2.4.2 Violations.

Any person who willfully and knowingly violates the provisions of this section shall be guilty of a misdemeanor, to the extent provided by section 809 of the General Municipal Law.

ARTICLE III BOARD OF ETHICS

§ 3.1 ESTABLISHMENT

3.1.1 Legal and advisory services.

The Ethics Board shall consist of three (3) members appointed by the Town Board.

3.1.2 Terms of office.

The Term of office shall be three (3) years, running on a calendar year basis. One (1) member shall serve until December 31 of the year in which the Board is established, one (1) shall serve until the second December 31, and one (1) shall serve until the third December 31.

3.1.3 Maintenance and operation.

There shall be funds appropriated annually by the Town Board toward the Ethics Board's maintenance and operation. Additional funds may be allocated as determined by the Town Board.

3.1.4 Legal and advisory services.

The Town Attorney or Attorney for the Town shall provide legal and advisory services to the Ethics Board as it may require in the performance of its duties. If the Town Attorney or Attorney for the Town has a potential conflict of interest the Town shall make funds available for outside counsel.

3.1.5 Compensations.

Members shall serve without compensation and will be reimbursed for all reasonable and necessary expenses, provided they receive prior approval from the Town Board.

3.1.6 Board Chair.

The Ethics Board shall elect a Chair from among its members. The Chair or a majority of the Board may call a meeting of the Board. The Ethics Board shall meet a minimum of two (2) times a year.

3.1.7 Vacancies.

A person appointed to fill a vacancy shall serve the unexpired term of the member he/she replaces.

3.1.8 Quorum.

Two (2) members of the Board are required for the purpose of conducting a meeting. A concurring vote of two (2) members shall be required for the Board to take action.

3.1.9 Failure of duties or violations.

An Ethics Board member may be removed from office by a majority vote of the Town Board for failure to fulfill the duties of the office or for violation of this Local Law. The Ethics Board member shall be given written notice and an opportunity for reply.

§ 3.2 QUALIFICATIONS

3.2.1 Residency.

All members of the Ethics Board shall reside in the Town of Denning.

3.2.2 Political affiliations.

No more than two (2) members of the Ethics Board may be enrolled in the same political party. No member shall hold office in a political party.

3.2.3 Campaign participation.

A member may make campaign contributions but not otherwise participate in any Town of Denning election campaign.

3.2.4 Town affiliations.

One (1) member may be an appointed officer or employee of the Town. A minimum of two (2) members shall not hold appointive office of the Town of Denning, or be an employee of the Town of Denning. No members may hold elective office in the Town of Denning.

§ 3.3 POWERS AND DUTIES

3.3. Authority.

To administer and enforce all the provisions of this Local Law.

3.3.2 Organization.

To prescribe and promulgate rules and regulations governing its own organization and procedures.

3.3.3 Complaints.

To review, index, maintain on file, and hear all signed complaints which the Ethics Board determines to have merit alleging violation(s) of this Local Law upon the written request of any individual. Any such complaint shall be signed by the individual complainant, and must include his/her address.

3.3.4 Advisory opinions.

To render, index, and maintain on file advisory opinions on the requirements of the Local Law. Upon the written request of any Town officer or employee, the Ethics Board may render a written advisory opinion with respect of the interpretation or application of this Local Law or Article 18 of General Municipal Law of the State of New York.

3.3.5 Findings.

Disclosure Statement or pursuant to its review of a request for an advisory opinion or pursuant to receipt of a complaint alleging a violation of this Local Law. If the Ethics Board preliminarily finds on its own review of an Annual law upon the written request of any individual member, or pursuant to an investigation initiated by the Ethics Board in carrying out the provisions of this Local Law, that a possible violation of this Local Law exists, the Ethics Board may, but shall not be required to, provide the person(s) affected with a reasonable opportunity to cure such violation. Such a preliminary finding shall be confidential and not subject to public disclosure. If under any other circumstances, such as through the filing and investigation of a complaint, the Ethics Board determines that there is reasonable cause to believe that a violation of this Local Law has occurred, or after any grace period granted by the Ethics Board has expired and such violation remains uncured, it shall send a notice of reasonable cause to: (a) the reported/applicable person; (b) to the complainant, if any; and (c) to the Town Supervisor and the Town Board. Before any such "reasonable cause" finding shall be made the Ethics Board shall (a) notify in writing the reporting/affected person as to the possible or alleged violation of this Local Law, (b) afford the reporting/affected person an opportunity to submit a written response setting forth such information as said reporting affected person deems relevant to the activities cited by the Board as a possible or alleged violation of this Local Law, and (c) shall, upon written request, afford the affected person a hearing wherein said affected person may provide either a written or oral response setting forth such information as the affected person deems necessary or appropriate in response to the actions by the Ethics Board;

3.3.6 Annual report.

To prepare and submit an annual report to the Town Board summarizing the activities of the Ethics Board, listing any recommended changes to the text or administration of this Local Law.

3.3.7 Public inspections.

To provide for public inspection of certain records.

- (a) 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 of the State of New York or by some other State or Federal law or regulation.
- (b) No meeting or proceeding of the Ethics Board concerning misconduct, non-feasance, or neglect in office by a Town officer or employee shall be open to the public, except upon the request of the officer or employee or as required by the provisions of Article 7 of the Public Officers Law or by some other State or Federal law or regulation.

3.3.8 Recommendation of action taken.

To make recommendations to the Town Board as to the appropriate sanction, discipline or other action to be taken or imposed with respect to any finding or determination of reasonable cause to believe that a violation of this Local Law has occurred.

3.3.9 Monitoring.

To monitor employee and Town officer compliance with decisions and recommendations made by the Ethics Board.

3.3.10 Designation of powers and duties.

The Ethics Board shall not carry out the powers and duties as defined in this section if it is determined that two (2) members of such board have a conflict of interest. In this event, the duties of the Ethics Board shall be administered by the Ethics Board of Ulster County.

§ 3.4 HEARING AND 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 disciplinary actions to any Town officer or employee who engages in any action that violates any provisions of this Local Law. This action may be a warning, reprimand or suspension or removal from office or employment or subject the Town officer or employee to any other sanctions. The Ethics Board shall conduct and complete the hearing with reasonable promptness, unless in its discretion the Ethics Board refers the matter to the Town Board.

§ 3.5 HEARING PROCEDURE AND REPRESENTATION

All hearing required to be conducted pursuant of this Local Law shall be conducted to the maximum extent practicable in accordance with the provisions of Article 3 of the State of New York Administrative Procedure Act (Chapter 82 of the Consolidated Laws of the State of New York) (see Appendix B). Any person compelled to appear in person or who voluntarily appears before the Ethics Board shall be accorded the right to be accompanied, represented by, and/or advised by counsel.

ARTICLE IV ADMINISTRATION

§ 4.1 DISTRIBUTION AND POSTING

- 4.1.1 Within ninety (90) days after the effective date of this section, and thereafter as appropriate, the Ethics Board shall transmit to the Town Board of the Town of Denning, in a form suitable for posting, copies of those provisions of this law which the Ethics Board deems necessary for posting in the Town. Within ten (10) days after receipt of those copies, the Town Board shall cause the copies to be posted conspicuously where public notices are generally posted.
- 4.1.2 Within ninety (90) days after the effective date of this section, and thereafter as appropriate, the Ethics Board shall transmit to the Town Board of the Town of Denning, in a form suitable for distribution, copies of those provisions of this law which the ethics board deems necessary for distribution to the officers and employees of the Town. Within ten (10) days after receipt of those copies, the Town Board shall cause the copies to be distributed to every office and employee of the Town, and make readily available to the public. Every Town officer or employee elected or appointed thereafter shall be furnished a copy of those provisions within ten days after entering upon the duties of his or her position.
- 4.1.3 Failure of the Town to comply with the provisions of this section or failure of any Town officer or employee to receive a copy of the provisions of this law shall have no effect on the duty of compliance with this law or on the enforcement of its provisions.

§ 4.2 JUDICIAL REVIEW

Any person aggrieved by an advisory opinion of the Ethics Board may seek a plenary hearing in the Justice Court of the Town of Denning. Any person aggrieved by a ruling resulting from a plenary hearing may seek judicial review and relief pursuant to Article 78 of the Civil Practice Law and Rules of the State of New York

§ 4.3 SUPERSESION OF GENERAL MUNICIPAL LAW SECTION 808

Wherever the requirements of this Local Law are inconsistent with the provisions of SECTION 808 of the General Municipal Law, the more restrictive provision, or those imposing higher standards shall govern.

§ 4.4 MISCELLANEOUS PROVISIONS

- 4.4.1 No existing right or remedy shall be lost, impaired, or affected by reason of this law.
- 4.4.2 Nothing in this law shall be deemed to bar or prevent a present or former Town officer or employee from timely filing any claim, account, demand, or suit against the Town 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.
- 4.4.3 If any provision of this law 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 law.

§ 4.5 PENALTIES FOR OFFENSES

In addition to any penalty contained in any other provision of this law, any person who shall knowingly and intentionally violate any of the provisions of this law may be fined, suspended or removed from office or employment.

§ 4.6 EFFECTIVE DATE

This Local Law shall take effect immediately upon filing in the office of the Secretary of State in compliance with all applicable provisions of law.

Appendix A

WAIVER REQUEST FORM

Date: _____

Name: _____

Job Title: _____

I HEREBY REQUEST A WAIVER FROM COMPLIANCE TO A STANDARD OF CONDUCT AS SPECIFIED
IN THE ETHICS AND DISCLOSURE LAW OF THE TOWN OF DENNING.

Please write a short description of the nature of the need for the waiver.

Signature _____

Date _____

Appendix B

New York Consolidated Laws State Administrative Procedure Act Article 3 - Adjudicatory Proceedings

§ 301. Hearings.

1. In an adjudicatory proceeding, all parties shall be afforded an opportunity for hearing within reasonable time.
2. All parties shall be given reasonable notice of such hearing, which notice shall include (a) a statement of the time, place, and nature of the hearing; (b) a statement of the legal authority and jurisdiction under which the hearing is to be held; (c) a reference to the particular sections of the statutes and rules involved, where possible; (d) a short and plain statement of matters asserted; and (e) a statement that interpreter services shall be made available to deaf persons, at no charge, pursuant to this section. Upon application of any party, a more definite and detailed statement shall be furnished whenever the agency finds that the statement is not sufficiently definite or not sufficiently detailed. The finding of the agency as to the sufficiency of definiteness or detail of the statement or its failure or refusal to furnish a more definite or detailed statement shall not be subject to judicial review. Any statement furnished shall be deemed, in all respects, to be a part of the notice of hearing.
3. Agencies shall adopt rules governing the procedures on adjudicatory proceedings and appeals, in accordance with provisions of article two of this chapter, and shall prepare a summary of such procedures in plain language. Agencies shall make such summaries available to the public upon request, and a copy of such summary shall be provided to any party cited by the agency for violation of the laws, rules or orders enforced by the agency.
4. All parties shall be afforded an opportunity to present written argument on issues of law and an opportunity to present evidence and such argument on issues of fact, provided however that nothing contained herein shall be construed to prohibit an agency from allowing parties to present oral argument within a reasonable time. In fixing the time and place for hearings and oral argument, due regard shall be had for the convenience of the parties.
5. Unless precluded by statute, disposition may be made of any adjudicatory proceeding by stipulation, agreed settlement, consent order, default, or other informal method.
6. Whenever any deaf person is a party to an adjudicatory proceeding before an agency, or a witness therein, such agency in all instances shall appoint a qualified interpreter who is certified by a recognized national or New York state credentialing authority to interpret the proceedings to, and the testimony of, such deaf person. The agency conducting the adjudicatory proceeding shall determine a reasonable fee for all such interpreting services which shall be a charge upon the agency.

§ 302. Record.

1. The record in an adjudicatory proceeding shall include: (a) all notices, pleadings, motions, intermediate rulings; (b) evidence presented; (c) a statement of matters officially noticed except matters so obvious that a statement of them would serve no useful purpose; (d) questions and offers of proof, objections thereto, and rulings thereon; (e) proposed findings and exceptions, if any; (f) any findings of fact, conclusions of law or other recommendations made by a presiding officer; and (g) any decision, determination, opinion, order or report rendered.

2. The agency shall make a complete record of all adjudicatory proceedings conducted before it. For this purpose, unless otherwise required by statute, the agency may use whatever means it deems appropriate, including but not limited to the use of stenographic transcriptions or electronic recording devices. Upon request made by any party upon the agency within a reasonable time, but prior to the time for commencement of judicial review, of its giving notice of its decision, determination, opinion or order, the agency shall prepare the record together with any transcript of proceedings within a reasonable time and shall furnish a copy of the record and transcript or any part thereof to a party as he may request. Except when any statute provides otherwise, the agency is authorized to charge not more than its cost for the preparation and furnishing of such record or transcript or any part thereof, or the rate specified in the contract between the agency and a contractor if prepared by a private contractor.
3. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

§ 303. Presiding officers.

Except as otherwise provided by statute, the agency, one or more members of the agency, or one or more hearing officers designated and empowered by the agency to conduct hearings shall be presiding officers. Hearings shall be conducted in an impartial manner. Upon the filing in good faith by a party of a timely and sufficient affidavit of personal bias or disqualification of a presiding officer, the agency shall determine the matter as part of the record in the case, and its determination shall be a matter subject to judicial review at the conclusion of the adjudicatory proceeding. Whenever a presiding officer is disqualified or it becomes impractical for him to continue the hearing, another presiding officer may be assigned to continue with the case unless it is shown that substantial prejudice to the party will result therefrom.

§ 304. Powers of presiding officers.

Except as otherwise provided by statute, presiding officers are authorized to:

1. Administer oaths and affirmations.
2. Sign and issue subpoenas in the name of the agency, at the request of any party, requiring attendance and giving of testimony by witnesses and the production of books, papers, documents and other evidence and said subpoenas shall be regulated by the civil practice law and rules. Nothing herein contained shall affect the authority of an attorney for a party to issue such subpoenas under the provisions of the civil practice law and rules.
3. Provide for the taking of testimony by deposition.
4. Regulate the course of the hearings, set the time and place for continued hearings, and fix the time for filing of briefs and other documents.
5. Direct the parties to appear and confer to consider the simplification of the issues by consent of the parties.
6. Recommend to the agency that a stay be granted in accordance with section three hundred four, three hundred six or three hundred seven of the military law.

§ 305. Disclosure.

Each agency having power to conduct adjudicatory proceedings may adopt rules providing for discovery and depositions to the extent and in the manner appropriate to its proceedings.

§ 306. Evidence.

1. Irrelevant or unduly repetitious evidence or cross-examination may be excluded. Except as otherwise provided by statute, the burden of proof shall be on the party who initiated the proceeding. No decision, determination or order shall be made except upon consideration of the record as a whole or such portion thereof as may be cited by any party to the proceeding and as supported by and in

accordance with substantial evidence. Unless otherwise provided by any statute, agencies need not observe the rules of evidence observed by courts, but shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, an agency may, for the purpose of expediting hearings, and when the interests of parties will not be substantially prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

2. All evidence, including records and documents in the possession of the agency of which it desires to avail itself, shall be offered and made a part of the record, and all such documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. In case of incorporation by reference, the materials so incorporated shall be available for examination by the parties before being received in evidence.
3. A party shall have the right of cross-examination.
4. Official notice may be taken of all facts of which judicial notice could be taken and of other facts within the specialized knowledge of the agency. When official notice is taken of a material fact not appearing in the evidence in the record and of which judicial notice could not be taken, every party shall be given notice thereof and shall on timely request be afforded an opportunity prior to decision to dispute the fact or its materiality.

§ 307. Decisions, determinations and orders.

1. A final decision, determination or order adverse to a party in an adjudicatory proceeding shall be in writing or stated in the record and shall include findings of fact and conclusions of law or reasons for the decision, determination or order. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision, determination or order shall include a ruling upon each proposed finding. A copy of the decision, determination or order shall be delivered or mailed forthwith to each party and to his attorney of record.
2. Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in an adjudicatory proceeding shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate. Any such agency member (a) may communicate with other members of the agency, and (b) may have the aid and advice of agency staff other than staff which has been or is engaged in the investigative or prosecuting functions in connection with the case under consideration or factually related case. This subdivision does not apply (a) in determining applications for initial licenses for public utilities or carriers; or (b) to proceedings involving the validity or application of rates, facilities, or practices of public utilities or carriers.
3. (a) Each agency shall maintain an index by name and subject of all written final decisions, determinations and orders rendered by the agency in adjudicatory proceedings. For purposes of this subdivision, such index shall also include by name and subject all written final decisions, determinations and orders rendered by the agency pursuant to a statute providing any party an opportunity to be heard, other than a rule making. Such index and the text of any such written final decision, determination or order shall be available for public inspection and copying. Each decision, determination and order shall be indexed within sixty days after having been rendered.
(b) An agency may delete from any such index, decision, determination or order any information that, if disclosed, would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-nine of the public officers law and may also delete at the request of any person all references to trade secrets that, if disclosed, would cause substantial injury to the competitive position of such person. Information which would reveal confidential material protected by federal or state statute, shall be deleted from any such index, decision, determination or order.

Appendix C

New York Consolidated Laws State Civil Practice Law Article 78 – Proceeding Against Body or Officer

§ 7801. Nature of Proceeding.

Relief previously obtained by writs of certiorari to review, mandamus or prohibition shall be obtained in a proceeding under this article. Wherever in any statute reference is made to a writ or order of certiorari, mandamus or prohibition, such reference shall, so far as applicable, be deemed to refer to the proceeding authorized by this article. Except where otherwise provided by law, a proceeding under this article shall not be used to challenge a determination:

1. which is not final or can be adequately reviewed by appeal to a court or to some other body or officer or where the body or officer making the determination is expressly authorized by statute to rehear the matter upon the petitioner's application unless the determination to be reviewed was made upon a rehearing, or a rehearing has been denied, or the time within which the petitioner can procure a rehearing has elapsed; or
2. which was made in a civil action or criminal matter unless it is an order summarily punishing a contempt committed in the presence of the court.

§ 7802. Parties.

- (a) Definition of "body or officer". The expression "body or officer" includes every court, tribunal, board, corporation, officer, or other person, or aggregation of persons, whose action may be affected by a proceeding under this article
- (b) Persons whose terms of office have expired; successors. Whenever necessary to accomplish substantial justice, a proceeding under this article may be maintained against an officer exercising judicial or quasi-judicial functions, or member of a body whose term of office has expired. Any party may join the successor of such officer or member of a body or other person having custody of the record of proceedings under review.
- (c) Prohibition in favor of another. Where the proceeding is brought to restrain a body or officer from proceeding without or in excess of jurisdiction in favor of another, the latter shall be joined as a party.
- (d) Other interested persons. The court may direct that notice of the proceeding be given to any person. It may allow other interested persons to intervene.

§ 7803. Questions raised.

The only questions that may be raised in a proceeding under this article are:

1. whether the body or officer failed to perform a duty enjoined upon it by law; or
2. whether the body or officer proceeded, is proceeding or is about to proceed without or in excess of jurisdiction; or
3. whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed; or
4. whether a determination made as a result of a hearing held, and at which evidence was taken, pursuant to direction by law is, on the entire record, supported by substantial evidence.

§ 7804. Procedure.

- (a) Special proceeding. A proceeding under this article is a special proceeding.
- (b) Where proceeding brought. A proceeding under this article shall be brought in the supreme court in the county specified in subdivision (b) of section 506 except as that subdivision otherwise provides.

- (c) Time for service of notice of petition and answer. Unless the court grants an order to show cause to be served in lieu of a notice of petition at a time and in a manner specified therein, a notice of petition, together with the petition and affidavits specified in the notice, shall be served on any adverse party at least twenty days before the time at which the petition is noticed to be heard. An answer and supporting affidavits, if any, shall be served at least five days before such time. A reply, together with supporting affidavits, if any, shall be served at least one day before such time. In the case of a proceeding pursuant to this article against a state body or officers, or against members of a state body or officers whose terms have expired as authorized by subdivision (b) of section 7802 of this chapter, commenced either by order to show cause or notice of petition, in addition to the service thereof provided in this section, the order to show cause or notice of petition must be served upon the attorney general by delivery of such order or notice to an assistant attorney general at an office of the attorney general in the county in which venue of the proceeding is designated, or if there is no office of the attorney general within such county, at the office of the attorney general nearest such county. In the case of a proceeding pursuant to this article against members of bodies of governmental subdivisions whose terms have expired as authorized by subdivision (b) of section 7802 of this chapter, the order to show cause or notice of petition must be served upon such governmental subdivision in accordance with section 311 of this chapter.
- (d) Pleadings. There shall be a verified petition, which may be accompanied by affidavits or other written proof. Where there is an adverse party there shall be a verified answer, which must state pertinent and material facts showing the grounds of the respondent's action complained of. There shall be a reply to a counterclaim denominated as such and there shall be a reply to new matter in the answer or where the accuracy of proceedings annexed to the answer is disputed. The court may permit such other pleadings as are authorized in an action upon such terms as it may specify.
- (e) Answering affidavits; record to be filed; default. The body or officer shall file with the answer a certified transcript of the record of the proceedings under consideration, unless such a transcript has already been filed with the clerk of the court. The respondent shall also serve and submit with the answer affidavits or other written proof showing such evidentiary facts as shall entitle him to a trial of any issue of fact. The court may order the body or officer to supply any defect or omission in the answer, transcript or an answering affidavit. Statements made in the answer, transcript or an answering affidavit are not conclusive upon the petitioner. Should the body or officer fail either to file and serve an answer or to move to dismiss, the court may either issue a judgment in favor of the petitioner or order that an answer be submitted.
- (f) Objections in point of law. The respondent may raise an objection in point of law by setting it forth in his answer or by a motion to dismiss the petition, made upon notice within the time allowed for answer. If the motion is denied, the court shall permit the respondent to answer, upon such terms as may be just; and unless the order specifies otherwise, such answer shall be served and filed within five days after service of the order with notice of entry; and the petitioner may re-notice the matter for hearing upon two days' notice, or the respondent may re-notice the matter for hearing upon service of the answer upon seven days' notice. The petitioner may raise an objection in point of law to new matter contained in the answer by setting it forth in his reply or by moving to strike such matter on the day the petition is noticed or re-noticed to be heard.
- (g) Hearing and determination; transfer to appellate division. Where the substantial evidence issue specified in question four of section 7803 is not raised, the court in which the proceeding is commenced shall itself dispose of the issues in the proceeding. Where such an issue is raised, the court shall first dispose of such other objections as could terminate the proceeding, including but not limited to lack of jurisdiction, statute of limitations and res judicata, without reaching the substantial evidence issue. If the determination of the other objections does not terminate the proceeding, the court shall make an order directing that it be transferred for disposition to a term of the appellate division held within the judicial department embracing the county in which the proceeding was commenced. When the proceeding comes before it, whether by appeal or transfer, the appellate

division shall dispose of all issues in the proceeding, or, if the papers are insufficient, it may remit the proceeding.

- (h) Trial. If a triable issue of fact is raised in a proceeding under this article, it shall be tried forthwith. Where the proceeding was transferred to the appellate division, the issue of fact shall be tried by a referee or by a justice of the supreme court and the verdict, report or decision rendered after the trial shall be returned to, and the order thereon made by, the appellate division.
- (i) Appearance by judicial officer. Notwithstanding any other provision of law, where a proceeding is brought under this article against a justice, judge, referee or judicial hearing officer appointed by a court and (1) it is brought by a party to a pending action or proceeding, and (2) it is based upon an act or acts performed by the respondent in that pending action or proceeding either granting or denying relief sought by a party thereto, and (3) the respondent is not a named party to the pending action or proceeding, in addition to service on the respondent, the petitioner shall serve a copy of the petition together with copies of all moving papers upon all other parties to the pending action or proceeding. All such parties shall be designated as respondents. Unless ordered by the court upon application of a party the respondent justice, judge, referee or judicial hearing officer need not appear in the proceeding in which case the allegations of the petition shall not be deemed admitted or denied by him. Upon election of the justice, judge, referee or judicial hearing officer not to appear, any ruling, order or judgment of the court in such proceeding shall bind said respondent. If such respondent does appear he shall respond to the petition and shall be entitled to be represented by the attorney general. If such respondent does not elect to appear all other parties shall be given notice thereof.

§ 7805. Stay.

On the motion of any party or on its own initiative, the court may stay further proceedings, or the enforcement of any determination under review, upon terms including notice, security and payment of costs, except that the enforcement of an order or judgment granted by the appellate division in a proceeding under this article may be stayed only by order of the appellate division or the court of appeals. Unless otherwise ordered, security given on a stay is effective in favor of a person subsequently joined as a party under section 7802.

§7806. Judgment.

The judgment may grant the petitioner the relief to which he is entitled, or may dismiss the proceeding either on the merits or with leave to renew. If the proceeding was brought to review a determination, the judgment may annul or confirm the determination in whole or in part, or modify it, and may direct or prohibit specified action by the respondent. Any restitution or damages granted to the petitioner must be incidental to the primary relief sought by the petitioner, and must be such as he might otherwise recover on the same set of facts in a separate action or proceeding suable in the supreme court against the same body or officer in its or his official capacity.

Appendix D

New York Consolidated Laws Public Officers Law Article 6 – Freedom of Information Law

§ 84. Legislative declaration.

The legislature hereby finds that a free society is maintained when government is responsive and responsible to the public, and when the public is aware of governmental actions. The more open a government is with its citizenry, the greater the understanding and participation of the public in government.

As state and local government services increase and public problems become more sophisticated and complex and therefore harder to solve, and with the resultant increase in revenues and expenditures, it is incumbent upon the state and its localities to extend public accountability wherever and whenever feasible.

The people's right to know the process of governmental decision-making and to review the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality.

The legislature therefore declares that government is the public's business and that the public, individually and collectively and represented by a free press, should have access to the records of government in accordance with the provisions of this article.

§ 85. Short title.

This article shall be known and may be cited as the "Freedom of Information Law."

§ 86. Definitions.

As used in this article, unless the context requires otherwise:

1. "Judiciary" means the courts of the state, including any municipal or district court, whether or not of record.

2. "State legislature" means the legislature of the state of New York, including any committee, subcommittee, joint committee, select committee, or commission thereof.

3. "Agency" means any state or municipal department, board, bureau, division, commission, committee, public authority, public corporation, council, office or other governmental entity performing a governmental or proprietary function for the state or any one or more municipalities thereof, except the judiciary or the state legislature.

4. "Record" means any information kept, held, filed, produced or reproduced by, with or for an agency or the state legislature, in any physical form whatsoever including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, rules, regulations or codes.

§ 87. Access to agency records.

1. (a) Within sixty days after the effective date of this article, the governing body of each public corporation shall promulgate uniform rules and regulations for all agencies in such public corporation pursuant to such general rules and regulations as may be promulgated by the committee on open government in conformity with the provisions of this article, pertaining to the administration of this article.

(b) Each agency shall promulgate rules and regulations, in conformity with this article and applicable rules and regulations promulgated pursuant to the provisions of paragraph (a) of this subdivision, and pursuant to such general rules and regulations as may be promulgated by the committee on open government in conformity with the provisions of this article, pertaining to the availability of records and procedures to be followed, including, but not limited to:

- i. the times and places such records are available;
- ii. the persons from whom such records may be obtained, and
- iii. the fees for copies of records which shall not exceed twenty-five cents per photocopy not in excess of nine inches by fourteen inches, or the actual cost of reproducing any other record, except when a different fee is otherwise prescribed by statute.

2. Each agency shall, in accordance with its published rules, make available for public inspection and copying all records, except that such agency may deny access to records or portions thereof that:

- (a) are specifically exempted from disclosure by state or federal statute;
- (b) if disclosed would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-nine of this article;
- (c) if disclosed would impair present or imminent contract awards or collective bargaining negotiations;
- (d) are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise;
- (e) are compiled for law enforcement purposes and which, if disclosed, would:
 - i. interfere with law enforcement investigations or judicial proceedings;
 - ii. deprive a person of a right to a fair trial or impartial adjudication;
 - iii. identify a confidential source or disclose confidential information relating to a criminal investigation;
 - iv. reveal criminal investigative techniques or procedures, except routine techniques and procedures;
- (f) if disclosed would endanger the life or safety of any person;
- (g) are inter-agency or intra-agency materials which are not:
 - i. statistical or factual tabulations or data;
 - ii. instructions to staff that affect the public;
 - iii. final agency policy or determinations;
 - iv. external audits, including but not limited to audits performed by the comptroller and the federal government; or
- (h) are examination questions or answers which are requested prior to the final administration of such questions.
- (i) are computer access codes.
- * (j) are photographs, microphotographs, videotape or other recorded images prepared under authority of section eleven hundred eleven-a of the vehicle and traffic law.

* NB Repealed December 1, 2004

3. Each agency shall maintain:

- (a) a record of the final vote of each member in every agency proceeding in which the member votes;
- (b) a record setting forth the name, public office address, title and salary of every officer or employee of the agency; and
- (c) a reasonably detailed current list by subject matter, of all records in the possession of the agency, whether or not available under this article.

4. (a) Each state agency which maintains records containing trade secrets, to which access may be denied pursuant to paragraph (d) of subdivision two of this section, shall promulgate regulations in conformity with the provisions of subdivision five of section eighty-nine of this article pertaining to such records, including, but not limited to the following:

- (1) the manner of identifying the records or parts;
- (2) the manner of identifying persons within the agency to whose custody the records or parts will be charged and for whose inspection and study the records will be made available;
- (3) the manner of safeguarding against any unauthorized access to the records.

(b) As used in this subdivision the term "agency" or "state agency" means only a state department, board, bureau, division, council or office and any public corporation the majority of whose members are appointed by the governor.

§ 88. Access to state legislative records.

1. The temporary president of the senate and the speaker of the assembly shall promulgate rules and regulations for their respective houses in conformity with the provisions of this article, pertaining to the availability, location and nature of records, including, but not limited to:

- (a) the times and places such records are available;
- (b) the persons from whom such records may be obtained;
- (c) the fees for copies of such records, which shall not exceed twenty-five cents per photocopy not in excess of nine inches by fourteen inches, or the actual cost of reproducing any other record, except when a different fee is otherwise prescribed by law.

2. The state legislature shall, in accordance with its published rules, make available for public inspection and copying:

- (a) bills and amendments thereto, fiscal notes, introducers' bill memoranda, resolutions and amendments thereto, and index records;
- (b) messages received from the governor or the other house of the legislature, and home rule messages;
- (c) legislative notification of the proposed adoption of rules by an agency;
- (d) transcripts or minutes, if prepared, and journal records of public sessions including meetings of committees and subcommittees and public hearings, with the records of attendance of members thereat and records of any votes taken;
- (e) internal or external audits and statistical or factual tabulations of, or with respect to, material otherwise available for public inspection and copying pursuant to this section or any other applicable provision of law;
- (f) administrative staff manuals and instructions to staff that affect members of the public;
- (g) final reports and formal opinions submitted to the legislature;
- (h) final reports or recommendations and minority or dissenting reports and opinions of members of committees, subcommittees, or commissions of the legislature;
- (i) any other files, records, papers or documents required by law to be made available for public inspection and copying.
- (j) external audits conducted pursuant to section ninety-two of the legislative law and schedules issued pursuant to subdivision two of section ninety of the legislative law.

3. Each house shall maintain and make available for public inspection and copying: (a) a record of votes of each member in every session and every committee and subcommittee meeting in which the member votes; (b) a record setting forth the name, public office address, title, and salary of every officer or employee; and (c) a current list, reasonably detailed, by subject matter of any records required to be made available for public inspection and copying pursuant to this section.

§ 89. General provisions relating to access to records; certain cases.

The provisions of this section apply to access to all records, except as hereinafter specified:

1. (a) The committee on open government is continued and shall consist of the lieutenant governor or the delegate of such officer, the secretary of state or the delegate of such officer, whose office shall act as secretariat for the committee, the commissioner of the office of general services or the delegate of such officer, the director of the budget or the delegate of such officer, and seven other persons, none of whom shall hold any other state or local public office except the representative of local governments as set forth herein, to be appointed as follows: five by the governor, at least two of whom are or have been representatives of the news media, one of whom shall be a representative of local government who, at the time of appointment, is serving as a duly elected officer of a local government, one by the temporary president of the senate, and one by the speaker of the assembly. The persons appointed by the temporary president of the senate and the speaker of the assembly shall be appointed to serve, respectively, until the expiration of the terms of office of the temporary president and the speaker to which the temporary president and speaker were elected. The four persons presently serving by appointment of the governor for

fixed terms shall continue to serve until the expiration of their respective terms. Thereafter, their respective successors shall be appointed for terms of four years. The member representing local government shall be appointed for a term of four years, so long as such member shall remain a duly elected officer of a local government. The committee shall hold no less than two meetings annually, but may meet at any time. The members of the committee shall be entitled to reimbursement for actual expenses incurred in the discharge of their duties.

(b) The committee shall:

- i. furnish to any agency advisory guidelines, opinions or other appropriate information regarding this article;
- ii. furnish to any person advisory opinions or other appropriate information regarding this article;
- iii. promulgate rules and regulations with respect to the implementation of subdivision one and paragraph (c) of subdivision three of section eighty-seven of this article;
- iv. request from any agency such assistance, services and information as will enable the committee to effectively carry out its powers and duties; and
- v. report on its activities and findings regarding articles six and seven of this chapter, including recommendations for changes in the law, to the governor and the legislature annually, on or before December fifteenth.

2. (a) The committee on public access to records may promulgate guidelines regarding deletion of identifying details or withholding of records otherwise available under this article to prevent unwarranted invasions of personal privacy. In the absence of such guidelines, an agency may delete identifying details when it makes records available.

(b) An unwarranted invasion of personal privacy includes, but shall not be limited to:

- i. disclosure of employment, medical or credit histories or personal references of applicants for employment;
- ii. disclosure of items involving the medical or personal records of a client or patient in a medical facility;
- iii. sale or release of lists of names and addresses if such lists would be used for commercial or fund-raising purposes;
- iv. disclosure of information of a personal nature when disclosure would result in economic or personal hardship to the subject party and such information is not relevant to the work of the agency requesting or maintaining it; or
- v. disclosure of information of a personal nature reported in confidence to an agency and not relevant to the ordinary work of such agency; or
- vi. information of a personal nature contained in a workers compensation record, except as provided by section one hundred ten-a of the workers compensation law.

(c) Unless otherwise provided by this article, disclosure shall not be construed to constitute an unwarranted invasion of personal privacy pursuant to paragraphs (a) and (b) of this subdivision:

- i. when identifying details are deleted;
- ii. when the person to whom a record pertains consents in writing to disclosure;
- iii. when upon presenting reasonable proof of identity, a person seeks access to records pertaining to him.

2-a. Nothing in this article shall permit disclosure which constitutes an unwarranted invasion of personal privacy as defined in subdivision two of this section if such disclosure is prohibited under section ninety-six of this chapter.

3. Each entity subject to the provisions of this article, within five business days of the receipt of a written request for a record reasonably described, shall make such record available to the person requesting it, deny such request in writing or furnish a written acknowledgement of the receipt of such request and a statement of the approximate date when such request will be granted or denied, including, where appropriate, a statement that access to the record will be determined in accordance with subdivision five of this section. Upon payment of, or offer to pay, the fee prescribed therefor, the entity shall provide a copy of such record and certify to the correctness of such copy if so requested, or as the case may be, shall certify that it does not have possession of such record or that such record cannot be found after diligent search. Nothing in this article shall be construed to require any entity to prepare any record not

possessed or maintained by such entity except the records specified in subdivision three of section eighty-seven and subdivision three of section eighty-eight.

4. (a) Except as provided in subdivision five of this section, any person denied access to a record may within thirty days appeal in writing such denial to the head, chief executive or governing body of the entity, or the person therefor designated by such head, chief executive, or governing body, who shall within ten business days of the receipt of such appeal fully explain in writing to the person requesting the record the reasons for further denial, or provide access to the record sought.

In addition, each agency shall immediately forward to the committee on open government a copy of such appeal when received by the agency and the ensuing determination thereon.

(b) Except as provided in subdivision five of this section, a person denied access to a record in an appeal determination under the provisions of paragraph (a) of this subdivision may bring a proceeding for review of such denial pursuant to article seventy-eight of the civil practice law and rules. In the event that access to any record is denied pursuant to the provisions of subdivision two of section eighty-seven of this article, the agency involved shall have the burden of proving that such record falls within the provisions of such subdivision two.

(c) The court in such a proceeding may assess, against such agency involved, reasonable attorney's fees and other litigation costs reasonably incurred by such person in any case under the provisions of this section in which such person has substantially prevailed, provided, that such attorney's fees and litigation costs may be recovered only where the court finds that:

- i. the record involved was, in fact, of clearly significant interest to the general public; and
- ii. the agency lacked a reasonable basis in law for withholding the record.

5. (a) (1) A person acting pursuant to law or regulation who, subsequent to the effective date of this subdivision, submits any information to any state agency may, at the time of submission, request that the agency except such information from disclosure under paragraph (d) of subdivision two of section eighty-seven of this article. Where the request itself contains information which if disclosed would defeat the purpose for which the exception is sought, such information shall also be excepted from disclosure.

(2) The request for an exception shall be in writing and state the reasons why the information should be excepted from disclosure.

(3) Information submitted as provided in subparagraph one of this paragraph shall be excepted from disclosure and be maintained apart by the agency from all other records until fifteen days after the entitlement to such exception has been finally determined or such further time as ordered by a court of competent jurisdiction.

(b) On the initiative of the agency at any time, or upon the request of any person for a record excepted from disclosure pursuant to this subdivision, the agency shall:

(1) inform the person who requested the exception of the agency's intention to determine whether such exception should be granted or continued;

(2) permit the person who requested the exception, within ten business days of receipt of notification from the agency, to submit a written statement of the necessity for the granting or continuation of such exception;

(3) within seven business days of receipt of such written statement, or within seven business days of the expiration of the period prescribed for submission of such statement, issue a written determination granting, continuing or terminating such exception and stating the reasons therefor; copies of such determination shall be served upon the person, if any, requesting the record, the person who requested the exception, and the committee on public access to records.

(c) A denial of an exception from disclosure under paragraph (b) of this subdivision may be appealed by the person submitting the information and a denial of access to the record may be appealed by the person requesting the record in accordance with this subdivision:

(1) Within seven business days of receipt of written notice denying the request, the person may file a written appeal from the determination of the agency with the head of the agency, the chief executive officer or governing body or their designated representatives.

(2) The appeal shall be determined within ten business days of the receipt of the appeal. Written notice of the determination shall be served upon the person, if any, requesting the record, the person who requested the exception and the committee on public access to records. The notice shall contain a statement of the reasons for the determination.

(d) A proceeding to review an adverse determination pursuant to paragraph (c) of this subdivision may be commenced pursuant to article seventy-eight of the civil practice law and rules. Such proceeding must be commenced within fifteen days of the service of the written notice containing the adverse determination provided for in subparagraph two of paragraph (c) of this subdivision.

(e) The person requesting an exception from disclosure pursuant to this subdivision shall in all proceedings have the burden of proving entitlement to the exception.

(f) Where the agency denies access to a record pursuant to paragraph (d) of subdivision two of section eighty-seven of this article, the agency shall have the burden of proving that the record falls within the provisions of such exception.

(g) Nothing in this subdivision shall be construed to deny any person access, pursuant to the remaining provisions of this article, to any record or part excepted from disclosure upon the express written consent of the person who had requested the exception.

(h) As used in this subdivision the term "agency" or "state agency" means only a state department, board, bureau, division, council or office and any public corporation the majority of whose members are appointed by the governor.

6. Nothing in this article shall be construed to limit or abridge any otherwise available right of access at law or in equity of any party to records.

7. Nothing in this article shall require the disclosure of the home address of an officer or employee, former officer or employee, or of a retiree of a public employees' retirement system; nor shall anything in this article require the disclosure of the name or home address of a beneficiary of a public employees' retirement system or of an applicant for appointment to public employment; provided however, that nothing in this subdivision shall limit or abridge the right of an employee organization, certified or recognized for any collective negotiating unit of an employer pursuant to article fourteen of the civil service law, to obtain the name or home address of any officer, employee or retiree of such employer, if such name or home address is otherwise available under this article.

8. Any person who, with intent to prevent the public inspection of a record pursuant to this article, willfully conceals or destroys any such record shall be guilty of a violation.

§ 90. Severability.

If any provision of this article or the application thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of the article or the application thereof to other persons and circumstances.

Appendix E

New York Consolidated Laws Public Officers Law Article 7 – Open Meetings Law

§ 100. Legislative declaration.

It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy. The people must be able to remain informed if they are to retain control over those who are their public servants. It is the only climate under which the commonwealth will prosper and enable the governmental process to operate for the benefit of those who created it.

§ 101. Short title.

This article shall be known and may be cited as "Open Meetings Law".

§ 102. Definitions.

As used in this article:

1. "Meeting" means the official convening of a public body for the purpose of conducting public business, including the use of videoconferencing for attendance and participation by the members of the public body.

2. "Public body" means any entity, for which a quorum is required in order to conduct public business and which consists of two or more members, performing a governmental function for the state or for an agency or department thereof, or for a public corporation as defined in section sixty-six of the general construction law, or committee or subcommittee or other similar body of such public body.

3. "Executive session" means that portion of a meeting not open to the general public.

§ 103. Open meetings and executive sessions.

(a) Every meeting of a public body shall be open to the general public, except that an executive session of such body may be called and business transacted thereat in accordance with section ninety-five of this article.

(b) Public bodies shall make or cause to be made all reasonable efforts to ensure that meetings are held in facilities that permit barrier-free physical access to the physically handicapped, as defined in subdivision five of section fifty of the public buildings law.

(c) A public body that uses videoconferencing to conduct its meetings shall provide an opportunity for the public to attend, listen and observe at any site at which a member participates.

§ 104. Public notice.

1. Public notice of the time and place of a meeting scheduled at least one week prior thereto shall be given to the news media and shall be conspicuously posted in one or more designated public locations at least seventy-two hours before such meeting.

2. Public notice of the time and place of every other meeting shall be given, to the extent practicable, to the news media and shall be conspicuously posted in one or more designated public locations at a reasonable time prior thereto.

3. The public notice provided for by this section shall not be construed to require publication as a legal notice.

4. If videoconferencing is used to conduct a meeting, the public notice for the meeting shall inform the public that videoconferencing will be used, identify the locations for the meeting, and state that the public has the right to attend the meeting at any of the locations.

§ 105. Conduct of executive sessions.

1. Upon a majority vote of its total membership, taken in an open meeting pursuant to a motion identifying the general area or areas of the subject or subjects to be considered, a public body may conduct an executive session for the below enumerated purposes only, provided, however, that no action by formal vote shall be taken to appropriate public moneys:

- a. matters which will imperil the public safety if disclosed;
- b. any matter which may disclose the identity of a law enforcement agent or informer;
- c. information relating to current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed;
- d. discussions regarding proposed, pending or current litigation;
- e. collective negotiations pursuant to article fourteen of the civil service law;
- f. the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation;
- g. the preparation, grading or administration of examinations; and
- h. the proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof.

2. Attendance at an executive session shall be permitted to any member of the public body and any other persons authorized by the public body.

§ 106. Minutes.

1. Minutes shall be taken at all open meetings of a public body which shall consist of a record or summary of all motions, proposals, resolutions and any other matter formally voted upon and the vote thereon.

2. Minutes shall be taken at executive sessions of any action that is taken by formal vote which shall consist of a record or summary of the final determination of such action, and the date and vote thereon; provided, however, that such summary need not include any matter which is not required to be made public by the freedom of information law as added by article six of this chapter.

3. Minutes of meetings of all public bodies shall be available to the public in accordance with the provisions of the freedom of information law within two weeks from the date of such meeting except that minutes taken pursuant to subdivision two hereof shall be available to the public within one week from the date of the executive session.

§ 107. Enforcement.

1. Any aggrieved person shall have standing to enforce the provisions of this article against a public body by the commencement of a proceeding pursuant to article seventy-eight of the civil practice law and rules, and/or an action for declaratory judgment and injunctive relief. In any such action or proceeding, the court shall have the power, in its discretion, upon good cause shown, to declare any action or part thereof taken in violation of this article void in whole or in part. An unintentional failure to fully comply with the notice provisions required by this article shall not alone be grounds for invalidating any action taken at a meeting of a public body. The provisions of this article shall not affect the validity of the authorization, acquisition, execution or disposition of a bond issue or notes.

2. In any proceeding brought pursuant to this section, costs and reasonable attorney fees may be awarded by the court, in its discretion, to the successful party.

3. The statute of limitations in an article seventy-eight proceeding with respect to an action taken at executive session shall commence to run from the date the minutes of such executive session have been made available to the public.

§ 108. Exemptions.

Nothing contained in this article shall be construed as extending the provisions hereof to:

1. judicial or quasi-judicial proceedings, except proceedings of the public service commission and zoning boards of appeals;
2. a. deliberations of political committees, conferences and caucuses.
b. for purposes of this section, the deliberations of political committees, conferences and caucuses means a private meeting of members of the senate or assembly of the state of New York, or of the legislative body of a county, city, town or village, who are members or adherents of the same political party, without regard to (i) the subject matter under discussion, including discussions of public business, (ii) the majority or minority status of such political committees, conferences and caucuses or (iii) whether such political committees, conferences and caucuses invite staff or guests to participate in their deliberations; and
3. any matter made confidential by federal or state law.

§ 109. Committee on open government.

The committee on open government, created by paragraph (a) of subdivision one of section eighty-nine of this chapter, shall issue advisory opinions from time to time as, in its discretion, may be required to inform public bodies and persons of the interpretations of the provisions of the open meetings law.

§ 110. Construction with other laws.

1. Any provision of a charter, administrative code, local law, ordinance, or rule or regulation affecting a public body which is more restrictive with respect to public access than this article shall be deemed superseded hereby to the extent that such provision is more restrictive than this article.
2. Any provision of general, special or local law or charter, administrative code, ordinance, or rule or regulation less restrictive with respect to public access than this article shall not be deemed superseded hereby.
3. Notwithstanding any provision of this article to the contrary, a public body may adopt provisions less restrictive with respect to public access than this article.

§ 111. Severability.

If any provision of this article or the application thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of the article or the application thereof to other persons and circumstances.