



TOWN AND COUNTY OF NANTUCKET

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TO: Boards, Committees and Commissions (“Committee Members”) of the Town

FROM: Town Manager

DATE: April 19, 2019

RE: Recusing and Abstaining at Meetings

Recently, during an HDC Appeal before the Select Board, an issue was raised that caused concern with Town Counsel, Town Administration and the Select Board. The issue had to do with Committee Members and how recusals and abstentions are handled. The reason for this concern is that participation in a matter in violation of the Conflict of Interest Law can result in harsh consequences, in terms of the credibility of the significant work performed by the Town’s Committees and, in some circumstances Town applications or votes can be compromised, exposing the Town to potential liability.

Please be advised as to the difference between “recusing” yourself from a particular matter as compared to “abstaining” from a vote, as follows:

Recusals: Pursuant to Robert’s Rules of Order and the state Conflict of Interest Law, Committee Members who recuse themselves from a particular agenda item, must not participate in that matter in their official capacity in any manner whatsoever. One option is to simply not attend the meeting until the portion where they have the conflict is addressed, or to leave the meeting before that portion is addressed. Chairs can assist with planning agendas for these purposes if they know in advance about potential conflicts. A second option is for a Committee Member to attend a meeting, but announce their recusal (and, if they wish, the reason for it) prior to action on the matter in which they have a conflict and leave the table during that portion of the discussion.

The Ethics Commission recommends further that an individual who has recused themselves from a particular matter actually leave the room. This is not legally required. However, be further aware that if an individual who has recused themselves stays in the room during the discussion, their presence at and their right to comment on the work of the Committee is “the same” as any other member of the public attending the meeting. A recused Committee Member cannot be treated in a “special” manner by the other members of the Committee, may not seek special

treatment because they are a Committee Member, and may not use their position to otherwise participate in the matter if members of the public are not similarly allowed to so participate.

In short, a Committee Member who is required to recuse themselves because of a financial interest in a particular matter MAY NOT participate as a Committee Member at the meeting and continue to comment about the matter from which they recused. It will still constitute a violation of the Conflict of Interest Law if they participate by sitting at the table or “weighing in” as a Committee Member but ultimately choose not to vote, or if they sit at the table and do not talk at all. A Committee Member must recuse themselves from items in which they have a financial interest as that term is defined for purposes of the Conflict of Interest Law, and leave the table.

Abstentions: The process of abstaining involves ONLY a decision not to cast a vote, and can be exercised for any reason whatsoever. In such circumstances, following discussion about an agenda item, a Committee Member may simply choose not to vote on the matter. Deciding to “abstain” from a vote still constitutes participation for purposes of the Conflict of Interest Law. As noted above, a person with a financial interest in a matter who participates in the discussion but then abstains from the vote at the end of a discussion, will have violated G.L. c.268A, §19. In contrast, a Committee Member who does not have a financial interest in a matter may wish to participate in the discussion of an item and then, for whatever reason, decide that they do not wish to cast a vote for or against that issue, thereby taking no formal position on the issue.

Annually, in July, Open Meeting Law and Conflict of Interest informational sessions are held – these issues are covered during these sessions. Committee Members are highly encouraged to attend these. The schedule for these sessions will be available in the next few weeks.

Please feel free to contact Town Administration with any questions about these matters.