First Meeting
of the
New Town Board

Suggestions for Procedure

An Association of Towns Training Publication
“We have enjoyed a great relationship with NYMIR over the past many years. Their concern, interest and courtesy are greatly appreciated and we remain thankful for the coverage provided to us and hundreds of other municipalities.”
ROBERT BLAIS, MAYOR OF LAKE GEORGE

“During the 2006 floods that ravaged the Southern Tier, NYMIR covered our claims and provided a level of service that we expect from a municipally-owned insurance program, and that’s why we are a Subscriber.”
DALE WESTON, CHAIR OF TIoga COUNTY LEGISLATURE

“Our town’s highway barn was totaled. NYMIR representatives visited the town and we made our case. NYMIR listened and coverage was provided. They returned within the month with a check in hand. I had my doubts but NYMIR came through for us.”
BOB BRIGGS, AFTON TOWN SUPERVISOR

“NYMIR has always come through for us. They are there for us every step of the way and I would never consider any other program to address our town’s insurance needs.”
SANDY LEONARD, MONROE TOWN SUPERVISOR
**First Meeting**

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**First Meeting of the Year**

*What follows is a preliminary checklist of items to be kept in mind for the annual Organizational Meeting, required to be held by each New York State town board.*

*This is recommended reading for newly elected town board members. Keep in mind that only necessary actions are listed here – the basic actions required for a town government to be organized and legally function. Other actions may need to be considered or taken at the Organizational Meeting or sometime after. Please note that some of these appointments, designations, contracts and policies may already be in place.*

*Though some of the items and processes discussed here may be “old shoe” to veteran town officers, this book could serve as a helpful reminder to incumbents of the need to take the oath of office for the new term, file an official undertaking or change the official undertaking for some new or incumbent officers.*

**The First Meeting of the Year**

**Scheduling the Organizational Meeting**

It is important for each town board to start each calendar year with an organizational meeting, which should be held during the first few days of January.

The town board may schedule the meeting by resolution, or pursuant to Town Law, §62, it may be scheduled by the supervisor. It is important to note that a supervisor-elect has no authority to act prior to taking office January 1 and so may not schedule a special meeting until he or she begins the term of office.

**Notice of the Organizational Meeting**

The first meeting of the town board is a meeting as defined by the Open Meetings Law (Public Officers Law, Article 7), so notice of time and place of the meeting must be given to the news media and conspicuously posted in one or more designated public locations, such as the town clerk’s bulletin board and the town’s website* (Public Officers Law, §104[5]).

* Towns are not required to have a town website.

If a meeting is scheduled more than a week in advance, the notice to the news media and posting must be made at least 72 hours before the meeting. In case of other meetings, the notice and posting should be done, to the extent practicable, at a reasonable time prior to the meeting.

Notice to the news media does not require publication in the official town newspaper, but may consist of a telephone call, a letter or delivery in person of a notice of time and place of the meeting. It is advisable that someone be assigned to keep a log with entries (who gave notice to whom, the method of notification [i.e. telephone] and the date and time
If the organizational meeting is called by the supervisor rather than the town board, the supervisor must also provide written notice of the special meeting to each member of the town board at least two days prior to the meeting. This notice must be personally delivered to each town board member (1969, Op. Atty. Gen. (Inf.) 146), along with the town clerk (Op. State Comp. 64-258).

**Rules of Procedure**

Town Law, §63 authorizes the town board to determine the rules of its procedure. New town board members should familiarize themselves with the existing rules of procedure for town board meetings, which can be obtained at the town clerk’s office. At the first meeting, it may be appropriate to either adopt new or amend existing rules. Sample rules of procedure are available from the Association of Towns upon request. Please note that the town board is not required to follow Robert’s Rules of Order, but it may incorporate elements of Robert’s Rules of Order as part of its rules of procedure (Op. State Comp. No. 80-734).

**OFFICERS AND EMPLOYEES**

*Eligibility and Qualifications of Town Officers*

Section 23 of the Town Law provides, with certain exceptions, that every officer of the town at the time of his or her election or appointment, and throughout his or her term of office, shall be an elector of the town. An “elector” is a person who is eligible to register to vote in the town in accordance with Election Law, §5-102 (Op. Atty. Gen. No. 89-51). Exceptions exist in towns having no resident attorney and in towns having no resident engineer; the town attorney and such counsel who may be employed do not need to be electors, and the town engineer and such consultant engineers who may be employed do not need to be electors.

*Oaths and Undertakings*

Two matters should be attended to first and foremost: namely, oaths of office have been taken and filed appropriately, and official undertakings or faithful performance bonds have been executed and filed. Both the oaths and the official undertakings are required for each new term of office, but not necessarily every year.

*Oaths of Office*

Section 25 of the Town Law provides for taking oaths of office prior to taking office.

> Before he enters on the duties of the office, and within 30 days after the commencement of the term of office for which he is chosen, every town officer shall take and subscribe before an officer authorized by law to administer oaths in his county, the constitutional oath of office and such other oaths as may be required by law, which shall be administered and certified by the officer taking the same without compensation and such oath shall be filed in the office of the town clerk. [Emphasis added.]

Public Officers Law, §10 similarly provides for filing the oath of office with the town clerk.

Neither the Town Law nor the Public Officers Law contains a listing or definition of which positions are subject to the oath requirements discussed above. In the absence of such a definitive listing, the courts have defined public office to include those where “… the functions and duties directly affect the citizens of the [town] and involve the exercise of the powers of the political subdivisions.” Thus, any office where the duties involve some
exercise of the sovereign power is a public office. Members of planning and zoning boards, boards of assessment review and all deputies would clearly fall within the scope of the oath-taking requirements.

Oaths can be administered by any officer authorized to do so who shall have already taken an oath of office in the county (Town Law, §25, Public Officers Law, §10 and Real Property Law, §298). This includes:

(1) The town clerk in whose office the oath is required to be filed, or by his or her duly designated assistant (i.e., deputy);
(2) any notary public;
(3) any judge or justice of the Uniform Court System;
(4) town supervisor, but only to other members of the town board;
(5) town councilmen and councilwomen

Oaths of officers appointed or elected to fixed terms are valid for their entire term. A new oath must be taken and filed when reappointed or again elected for a subsequent term. (Certain town officers such as town justices and court clerks must also file their oaths [and bonds] with the county clerk and court system administrator.) (See UJCA, §104.)

NOTE: Like the requirements described above for elected and appointed town officers, all public employees (except those who hold a position in the labor class of the classified service) are also required to take an oath of office and file it with the town clerk before discharging his or her duties.

An employee’s failure to file the oath of office will not terminate his or her employment. A willful refusal to take the oath of office, however, will terminate the employment. The employee’s oath has to be taken only once during a continuous course of employment and extends to all positions and titles held by the employee thereafter.

**Official Undertaking**

Section 25 of the Town Law further provides that each supervisor, town clerk, collector, receiver of taxes, town justice, constable, superintendent of highways and other such officers and employees as the town board may require, shall execute and file an official undertaking in the town clerk’s office, in a form and amount, with such sureties as directed and approved, and so indicated by the town board on the undertaking.

Public Officers Law, §11(2) provides that in lieu of any individual undertaking as required, the town board may approve the procurement of a blanket undertaking from any duly authorized corporate surety covering the officers, clerks and employees of the town. A blanket undertaking must be approved as to form, manner of execution and sufficiency of surety by the town board and filed in the same manner as individual undertakings. The section further provides that any such blanket undertaking must indemnify against losses caused by the failure of the officers or employees to faithfully perform their duties or by their fraudulent or dishonest acts.

**Vacancies**

Another important matter to be addressed is the filling of vacancies that exist in any town office at the time of the Organizational Meeting. In such instances, the board appoints a qualified person to fill the vacancy.

The town board should fill such vacancies pursuant to §64(5) of the Town Law, which reads: **Vacancies.** Whenever a vacancy shall occur or exist in any town office, the town board or a majority of the members thereof, may appoint a qualified person to fill
the vacancy. If the appointment is being made to fill a vacancy in an appointive office, the person so appointed shall hold office for the remainder of the unexpired term. If the appointment is being made to fill a vacancy in an elective office, the person so appointed shall hold office until the commencement of the calendar year next succeeding the first annual election at which the vacancy may be filled. A person, otherwise qualified, who is a member of the town board at the time the vacancy occurs, may be appointed to fill the vacancy provided that he shall have resigned prior to such appointment.

The term of office would be for the balance of the unexpired term in case of filling a vacancy in an appointive office. In the case of an elective office, the term of office is until the start of the calendar year after the first annual election in which the vacancy can be filled.

Vacancies may be the result of the expiration of an existing term of office or may occur during a term of office (e.g. midterm resignation). If the vacancy is the result of the expiration of a term of office for an appointed position, an appointment is made for a full term. If the vacancy occurs during an existing term of office for an appointed office, the appointee will serve for the balance of the unexpired term.

If the appointment is to fill a vacancy in an elective office, the length of the appointment is contingent upon the timing of the vacancy and the amount of time left in the unexpired term. If an elected town officer resigns or vacates office after September 20, the vacancy is filled by town board appointment, and unless the term will expire in the year in which the vacancy occurred, the appointee will serve until the end of the following year. But if an elected town officer resigns prior to September 20, the vacancy is filled by appointment for the balance of the year, and a successor is elected at the general election in November (1976, Op. Atty. Gen. (Inf.) 158; Public Officers Law, §42 (1)).

**Appointments and Designations**

All appointed officers and employees serve for either a prescribed term of office or at the pleasure of the town board or other appointing authority. Upon the expiration of the term of office, or upon a vacancy in the office, the town board or other appointing authority should fill that office by appointment.

Not all of the following appointments will have to be made at this organizational meeting – only offices left vacant due to an expiration of term or that otherwise need to be filled. Local civil service rules may also apply to these appointments. It is always a good idea to consult with your local civil service commission or personnel officer and review any applicable collective bargaining agreements and local employment policies.

Below is a list of common offices for which appointments may be made during the first meeting.

The town board will **most likely** have to make the following appointments:

**Highway Superintendent; Town Clerk; Tax Collector or Receiver of Taxes:** Any officers that are normally elective but have been made appointive must be appointed if the term of office has expired. Unless otherwise provided by local law, the appointed town clerk, appointed highway superintendent and/or appointed receiver of taxes and assessments, each has a **two-year term** that expires December 31 immediately following a biennial town election (Town Law, §24).

**Town attorney or town engineer:** Town Law, §20 (a) authorizes the town board to create the office of town attorney and/or town engineer for a **two-year term** that expires December 31 immediately following a biennial town election (Town Law, §24). In towns where the office of town attorney and/or town engineer have not been established, the town board may need to review service contracts with attorneys, law firms, engineers or
engineering firms at the organizational meeting.

**Planning and Zoning Board Members:** In a town that has established a planning board and/or a zoning board of appeals, the town board appoints at least one member to each board annually. Members of these boards typically have terms of office equal to the number of members on the board, with one term expiring each year. The town board shall also designate the respective chairman of each board (Town Law, §§267, 271).

**Chairman of the Board of Elected Assessors:** In towns having elective assessors, a chairman of the board of assessors shall be designated to a one-year term that expires every December 31 (Town Law, §22-b).

**Town Comptroller:** Where the office has been established by the town board, the town board may appoint a town comptroller. The town comptroller serves a two-year term that expires every December 31 following a biennial election (Town Law, §20(3)(b)).

**Director of Purchasing:** In towns that have established the office of director of purchasing (Town Law, §20(3)(e)), the director of purchasing serves a two-year term that expires every December 31 following a biennial election (General Municipal Law, §104-b (2)(f)).

**Recreation Commissioner:** In towns that have established a recreation commission, one member is appointed annually for a term of office equal to the number of members on the commission.

**Handicapped Parking Permit Issuing Agent:** The town board is required to appoint an agent to issue handicapped parking permits (Vehicle and Traffic Law, §1203-a (1)).

The town board will possibly have to make the following appointments:

**Court Clerk:** Upon the advice and consent of the town justice, the town board may appoint a court clerk. Note that the court clerk may be employed and discharged from service only upon advice and consent of the town justice(s), (Town Law, §20(1)(a),(b)).

**Building Inspector or Code Enforcement Officer:** In towns where the position has been established, a building inspector or code enforcement officer and a deputy. These officers serve at the pleasure of the town board, (Town Law, §138). Please note that in some counties, these officers may be dismissed only in accordance with Civil Service Law, §75.

**Registrar of Vital Statistics:** In a town that is a primary registration district, a registrar of vital statistics for a four-year term of office. Alternatively, the town board may designate the town clerk to serve as registrar. In that case, the term of office is coterminous with that of town clerk (Public Health Law, §§ 4121, 4123).

**Local Health Officer:** A local health officer, only where local health is not administered as part of a county health district. The term of office for a local health officer is four years (Public Health Law, §§320-322).

**Dog Control Officer:** In lieu of appointing an individual to fill this office, the town board may contract with another municipality or with a humane society for the services of a dog control officer. The dog control officer serves at the pleasure of the town board or as otherwise provided by the contract (Agriculture & Markets Law, §114). Please note that in some counties, these officers may be dismissed only in accordance with Civil Service Law, §75.

**Ethics Board Member:** The board of ethics consists of at least three members, a majority of whom are not otherwise officers or employees of the town. They serve at the pleasure of the town board unless otherwise provided by local law (General Municipal Law, §808).*

*A copy of the town code of ethics must be distributed to each town officer and employee (General Municipal Law, §806 (2)).
Deputy Town Attorney/Engineer: Deputy town attorneys (in towns of the first class and towns of the second class with populations of more than 75,000) and deputy town engineers (in towns of the first class), as provided by resolution of the town board. For all other towns, as provided by local law. These officers serve at the pleasure of the town board for an indefinite term (Town Law, §20(2)(a)). Please note that in some counties, these officers may be dismissed only in accordance with Civil Service Law, §75.

On occasion, the town board may have to make the following appointments:

Acting Assessor: In the event that the assessor is unable to perform the duties of the office, an acting assessor, who serves at the pleasure of the town board (Real Property Tax Law, §314).

Constables (towns of the second class only), who serve at the pleasure of the town board (Town Law, §20). Please note that in some counties, these officers may be dismissed only in accordance with Civil Service Law, §75.

Chapter 491 of the Laws of 2010 requires the head of each agency, local government or commission to file a list of peace (in addition to police) officers on a form prescribed by the Division of Criminal Justice Services. This form needs to be filed with DCJS by January 15th; such a list is also required for new appointees during the year.

Civil Officers: Four or fewer civil officers, who serve at the pleasure of the town board, in towns in which there is a town police department or is part of a county police district (Town Law, §20). Please note that in some counties, these officers may be dismissed only in accordance with Civil Service Law, §75.

Special town policemen, when authorized, who serve at the pleasure of the town board (Town Law, §158). Please note that in some counties, these officers may be dismissed only in accordance with Civil Service Law, §75.

Conservation Advisory Council Member: Members of a conservation advisory council may serve a term not to exceed two years, but may be removed for cause after a public hearing (General Municipal Law, §239-x).

Narcotic Guidance Council Members: Members of a narcotic guidance council may serve terms of office that are not to exceed three years, but may be removed for cause after a public hearing (General Municipal Law, §239-u).

Landlord-Tenant Relations Council Members: Members appointed to a landlord-tenant relations council may serve for a term not to exceed two years, but may be removed for cause after a public hearing (General Municipal Law, §239-z).

Marriage Officers: One or more marriage officers, who shall have the authority to solemnize a marriage within the territory of the town. The marriage officer serves at the pleasure of the board, for a term of office as determined by the town board but not to exceed four years (Domestic Relations Law, §11-c).

Department Heads: In towns of the suburban class, department heads and deputy department heads (Town Law, §§53; 53-a).

Town NYS Grant Gateway Administrator: The town must be registered with New York State’s Grants Gateway to receive any state-administered grant money. The town board must designate a contact person, who is responsible for managing users of the Grant Gateway website. In the event of personnel changes, the town board will need to update
the administrator information at https://grantsgateway.ny.gov.

Minority Women Business Enterprise (Diversity) Officer: Towns that apply for state or federal grants should consider appointing a diversity officer.

Appointments Made By Other Town Officers

The town board is not the only appointing authority in the town; other town officers are given the power to make certain appointments. Although these appointments do not have to be made at a town board meeting, if the office has not been previously established, the first meeting of the town board may provide an appropriate time to do so. These appointments include:

**Deputy Supervisor:** The supervisor may appoint any person (including other town officers) to be the deputy supervisor where the position has been established by the town board. If the office of deputy supervisor is vacant for more than five days, the town board may appoint the deputy. Either way, the deputy supervisor serves at the pleasure of the supervisor (Town Law, §42).

**Confidential Secretary or Bookkeeper:** The supervisor may appoint a confidential secretary or bookkeeper or both (in towns of the first class) or where these positions have been established by the town board (towns of the second class). These officers are entitled to reasonable compensation and serve at the pleasure of the supervisor (Town Law, §29(15)).

**Budget Officer:** The supervisor may appoint any person, including a town officer or employee other than a town board member, as budget officer. Otherwise, the supervisor serves as budget officer. The budget officer serves at the pleasure of the supervisor (Town Law, §103(2)). Please note that in some counties, these officers may be dismissed only in accordance with Civil Service Law, §75.

**Finance Director:** In a town of the suburban class, the supervisor may appoint a finance director to serve at his or her pleasure (Town Law, §52 (1)). Please note that in some counties, these officers may be dismissed only in accordance with Civil Service Law, §75.

**Local Historian:** The supervisor is required to appoint a local historian (Arts and Cultural Affairs Law, §57.07), who serves at the pleasure of the supervisor. Please note that in some counties, these officers may be dismissed only in accordance with Civil Service Law, §75.

**Deputy Superintendent of Highways:** The superintendent of highways may appoint a deputy superintendent of highways where the position has been established by the town board. If the office of deputy superintendent of highways is vacant for more than five days, the town board may appoint the deputy. Either way, the deputy highway superintendent serves at the pleasure of the highway superintendent (Town Law, §32(2)). Please note that in some counties, these officers may be dismissed only in accordance with Civil Service Law, §75.

**Highway Department Laborers:** The superintendent of highways has the authority to fill vacancies in the positions involving the repair and maintenance of highways (Highway Law, §140 (4)).

**Deputy Town Clerk:** The town clerk may appoint a first deputy town clerk to perform duties and responsibilities as assigned by the town clerk. The town clerk may appoint two additional deputy town clerks whose duties and responsibilities may be established by the town board. Unless otherwise provided for by the town board, deputy town clerks serve without compensation and at the pleasure of the town clerk (Town Law, §30(10)). Please note that in some counties, these officers may be dismissed only in accordance with Civil Service Law, §75.
Deputy Tax Collector or Receiver of Taxes: The receiver of taxes and assessments or tax collector may appoint a deputy who serves at the pleasure of the respective appointing officer. A deputy tax collector does not receive compensation unless otherwise provided for by the town board (Town Law, §§ 35, 37). Please note that in some counties, these officers may be dismissed only in accordance with Civil Service Law, §75.

Uniform Notice of Claims Agent: The town board should designate an agent for purposes of receiving notices of claims filed with the New York State Secretary of State (General Municipal Law, §53). This designation must be filed with the New York Secretary of State. Aside from these particular appointments, the town board has the authority to appoint other such employees as it deems necessary for the proper conduct of the affairs of the town, including appointments to any locally or regionally created board, committee, council or commission. Rules governing the membership of these public bodies should be contained in the local law, agreement, resolution or other document creating it (Town Law, §20).

Whenever making any personnel decisions, make sure to consult applicable collective bargaining agreements, town personnel policies, state and federal employment laws and rules, as well as county civil service rules.

Not all of these positions listed above will exist in your town. Naturally, if the office does not exist, an appointment does not have to be made. Town boards interested in establishing any of these offices should direct questions to the town attorney or the Association of Towns.

Civil Service Considerations: As noted above, the local personnel officer or Civil Service Commission – typically found at the county level – should have a record of all positions within the town and will likely have rules that apply to the creation of, appointment to and/or discipline or removal from these offices. It is imperative, therefore, to consult your local personnel officer or Civil Service Commission when creating or making appointments to these offices.

Post-Appointment Responsibilities of the Town Clerk: On or before January 10, the town clerk shall file certificates with the Office of the State Comptroller specifying the names and addresses of all elected and appointed town officers and the Office of Real Property Services specifying the names of all assessors, with their post office addresses, date of appointment or election and expiration of term of office (Town Law, §30(3)). The town clerk must also certify to the county clerk, within 20 days of appointment, the names and addresses of all appointive town officers, with certain other information (Town Law, §30(3)). The town clerk is also required to notify the county clerk immediately of the existence of any vacancy and, within five days of filling the vacancy, must file a certificate thereof with the county clerk, the Office of the State Comptroller and, in the case of an assessor vacancy, the Office of Real Property Services. In the case of an appointment to fill a town justice vacancy, a duplicate certificate of such appointment must be filed with the chief administrator of the courts. In addition, the town clerk is required to immediately notify the state Board of Elections of receipt of resignation of an elective officer and the effective date thereof (Town Law, §30(4); Public Officers Law, §31(5)).

Salaries
At the Organizational Meeting, the town board should adopt a resolution fixing the salaries of all elective and appointive officers (and the rates of wages of hourly employees, including overtime and regular pay rates) and determine whether salaries shall be paid annually, semi-annually, quarterly, monthly, semi-monthly or weekly. In fixing such salaries, the town board is subject to certain limitations. The Town Law prohibits the town board from fixing the salaries of the members of the town board, elected town clerk and elected
town superintendent of highways at amounts in excess of the amounts respectively specified in the notice of hearing upon the preliminary budget, unless the town board adopts a local law (subject to permissive referendum(s)) increasing the salary for one year only (Town Law, §27). The town board also cannot fix the salary of any elective or appointive town officer or employee at an amount larger than the appropriation made (Town Law, §§27, 117). In addition, the town board cannot decrease the salary of a sitting elected town officer in the middle of his or her term of office except by the adoption of a local law subject to a mandatory referendum (Sacco v. Maruca, 175 AD2d 578, 573 NYS2d 787 app den 78 NY2d 862, 578 NYS2d 877 (1991); Op. State Comp., 2006 No. 2006-5). The town board may not decrease the salary of an elected town justice in the middle of his or her term of office (Catansie v. Town of Fayette, 148 AD2d 210, 543 NYS2d 825 (1989); Op. State Comp., 2006 No. 2006-5). However, if additional funds become available, the appropriation may be increased during the year. Please see the Town Law Manual, published by the Association of Towns, for further instructions regarding salaries. If you are missing a copy of the Town Law Manual in your office, please see the publication order form included in this booklet.

The town board also must decide whether the registrar of vital statistics’ compensation will be based upon the statutory fee schedule or a fixed salary; if salary, the town board should fix such salary (Public Health Law, §4124).

Mileage

If any town officers are to be compensated for the use of their automobiles, the town board should adopt a resolution establishing a reasonable amount to be allowed for specified town officers and employees for the use of their own automobiles in the performance of their official duties (Town Law, §116).

Vacations, Sick Leaves, Holidays, etc.

The town board may establish a plan for granting paid vacations, sick leaves, leaves of absence of officers and employees and adopt rules and regulations in relation thereto, if not previously adopted (General Municipal Law, §§90, 92). Please note: regarding leave policies, there are many statutory, regulatory and common law rules and regulations with which you must comply. Therefore, it is important to consult with your town attorney or the Association of Towns’ legal staff with any questions regarding leave policies.

Health Insurance

The town board may establish a plan for coverage of its town officers and employees for medical, surgical and hospital services or insurance pursuant to the provisions of §92-a of the General Municipal Law, if not previously adopted. The town board may open the town’s medical plan to volunteer firefighters and ambulance workers. Towns with 50 or more full-time employees, or the equivalent of 50 or more full-time employees, may have additional health insurance obligations regarding the Federal Patient Protection and Affordable Care Act (124 STAT. 119). For more information on the FPPACA, please visit:

- USDOL Web site http://www.dol.gov/ebsa/healthreform

Town Board Meetings and Procedures

**Rules of Procedure:** The town board may adopt its rules of procedure, and the supervisor may appoint town board committees (Town Law, §63). As all meetings of the town board are open to be photographed, broadcast, webcast, recorded and transmitted by video or audio, the town board may include in its rules of procedure reasonable rules governing the location of such equipment and personnel operating it. Any such rules must be conspicuously posted during meetings and written copies made available to the public.
Meeting Schedule: The town board should adopt a resolution determining when regular meetings of the town board shall be held (Town Law, §§62, 63).

Since town boards of towns of the first class, by law, must meet at least once a month, and since town boards of towns of the second class, as a practical matter, must meet periodically to accomplish certain housekeeping chores like auditing claims, etc., every town board should establish by resolution a fixed day or days each month for the regular town board meeting. The resolution should specifically state the hour, the day or days of the month and the place the meetings are to be held.

With rare exceptions as to specific matters and in the case of a couple of specific towns, all town board meetings must be held within the town boundaries (Town Law, §62). Town boards are required to locate their meetings and public hearings in an “appropriate facility” that accommodates members of the public who wish to attend and provides barrier-free physical access for people with disabilities (Public Officers Law, §103). This resolution should state that regular town board meetings will, throughout the year 20____, be held at _____ o’clock a.m. or p.m. on the (first Wednesday, the second and fourth Thursdays or otherwise) in the __________________ of the Town of ________________.

There are several legal and practical advantages of adopting such a resolution. First, when this is done, there is no requirement to give specific notice of such meeting to the town board members or to the town clerk. Second, the posting and notice of all regular meetings to the news media can be accomplished at one time, in compliance with the Open Meetings Law, §104. If a town has a town Web site, it is directed to conspicuously post notice of the time and place of its meetings on its Web site (Public Officers Law, §104[5]). In this fashion, the public and the press get to know and rely on the fact that this is when the town board meets regularly. This makes for good government and good public relations. Please note that the town board will still need to make available prior to each meeting any documents that are scheduled for discussion in accordance with the requirements set forth in Open Meetings Law, §103(e).

Official Newspaper: The town board may adopt a resolution designating the official newspaper of the town (Town Law, §64(11)).

Delegation to the Supervisor: The town board may adopt a resolution delegating to the supervisor powers and duties of administration and supervision of town or special or improvement district functions to be performed on behalf of such board (Town Law, §29(16)).

Pursuant to Town Law, §29(16), Resolved that the Town Board of the Town of ______________ hereby authorizes and delegates to the Town Supervisor powers and duties of day-to-day administration and supervision of all town and special district facilities and employees consistent with and in furtherance of any and all state and federal laws applicable thereto and with any and all local laws, resolutions and policies heretofore or hereafter adopted by the Town Board.

New York State and Local Government Retirement System

Standard Workday and Reporting Resolution

The town board of a participating employer in the State and Local Government Retirement System shall establish, by resolution, a standard workday for each elective or appointive office or position. Such resolution shall indicate: (i) the number of hours prescribed as a standard workday for each such elective or appointed office or position; (ii) the expiration of the term for each such office or position; (iii) that the employer maintains an actual
daily record of time worked for the elected or appointed official or that the official holding
the office has recorded and submitted to the clerk his or her work activities for a period
of three consecutive months; and (iv) for each elected and appointed official who has
submitted a record of work activities pursuant to paragraph (i) of subdivision (a) of this
section, the total number of days per month to be reported based upon such record of
work activities. For the purpose of determining days worked, no fewer than six hours or
more than eight hours shall be established as a full-time, standard workday (2 NYCRR
315.4).

Filing and Posting Requirements

The resolution must be posted on your public Web site for at least 30 days or, if a Web site
isn’t available to the public, on the official signboard or at the main entrance to the clerk’s
office. An affidavit of the posting and a copy of the resolution must be filed with the Office
of the State Comptroller within 45 days of adoption.

Record of Work Activities

In the event an employer does not maintain an actual record of time worked on a daily
basis for an elective or appointive office, the official holding the office shall record his or
her work activities for a period of three consecutive months. In preparing the record, the
official may consider factors that require his or her attention outside the normal working
hours for the purpose of actually attending to official duties, including responding to an
emergency, attending an employer-sponsored event or meeting with or responding to
members of the public on matters of official business. Such record of activities shall be
completed within 150 days of taking the office. The record of activities shall be submitted
by the official to the secretary or clerk of the governing board at the first regular meeting
held within 180 days of taking office, along with a certification, in a form prescribed by
the comptroller and signed by such official, that the official has filed the required record
of activities with the secretary or clerk. The secretary or clerk shall promptly file the
certification with the comptroller. Each such record of activities shall be retained by the
employer for a period of 10 years, and full and complete copies shall be provided to the
comptroller upon his or her request. A record of activities need not be prepared by an
elected or appointed official who is not a member of the NYS Retirement System. The
failure of the official to maintain and timely file the record of activities shall result in the
suspension of service-crediting and retirement system membership benefits for the elected
or appointed official until such time as the record is maintained and a certification is filed
with the comptroller.

For more information, sample logs and resolutions, you may contact the Association of
Towns at (518)465-7933 between 8:30 a.m. and 5 p.m., Monday through Friday or the New
York State and Local Retirement System Member & Employer Services Bureau by mail at
110 State Street, 5th Floor, Albany, NY 12244-0001 or via e-mail at RTEmpSer@osc.state.
ny.us.

Fiscal

Designation of Depositories

This is one of the most important steps to be taken at the first meeting of the town board
each year. A resolution should be adopted designating the banks or trust companies in
which all town officers shall deposit all money coming into their hands by virtue of their
offices, as well as the security, if any, to be given by the depository for the protection
of town funds (Town Law, §64(1)). Amounts deposited beyond the FDIC-insured limit
($250,000) must be secured by a pledge of eligible securities.

**Payroll Services**

The town board may, by resolution, authorize contracts with commercial banks and trust companies for the performance of payroll services; provide for deposit of payroll funds with such bank or trust company and then distribution by the bank to the employees pursuant to town direction; permit the contract to include withholding for retirement and insurance as well as, on direction of respective employees, disbursing or crediting to a savings or checking account or loan or mortgage account with contracting bank or another bank as designated by the employee (Banking Law, §96-b; General Municipal Law, §93-d; Town Law, §29(3)).

**Petty Cash Funds**

A petty cash fund may be established by a town board for a receiver of taxes and assessments in any amount up to $1,000 and for any other town officer up to $500 (Town Law, §64 (1-a)).

**Highway Equipment Purchases**

The town board may authorize the town superintendent of highways to purchase equipment, tools and implements during the year without prior approval of the town board for an amount to be fixed by the board (Highway Law, §142(1a)).

**Building Fees**

The town board of a town of the first class may direct that fees for licenses and permits issued by a building inspector or deputy shall be payable to and collected by such inspector instead of the receiver of taxes and assessments (Town Law, §138).

**Acceptance of Payment by Credit Card**

The town board may by local law, ordinance or resolution, enter into agreements with one or more financing agencies or card issuers in order to accept payment by credit cards for fines, civil penalties, rent, rates, taxes, fees, charges, revenue, financial obligations or other amounts, including penalties, special assessments and interest owed to the local government. The town board must designate the town officers who may accept payment by credit card (General Municipal Law, §5).

**Actions that Need Not Necessarily be Taken at the First Meeting**

**Annual Financial Report**

Except as provided below, the supervisor shall file with the town clerk no later than January 30 the annual financial report, and a certified copy of the report must be published in the official newspaper and in such other newspapers as the town board may require. The town board may adopt a resolution requiring the supervisor to submit to the other members of the town board, at the time of the filing of such report, financial and accounting records required to substantiate the accuracy and completeness of such report (Town Law, §29(10)).

In lieu of the financial report required above, the town board may determine by resolution that the supervisor shall, within 60 days after the close of the fiscal year, submit to the town clerk a copy of the report to the state comptroller and require the town clerk, who shall ensure that a summary and copy of such report is on file, available for inspection and copying and published within 10 days in the official newspaper of the town (Town Law, §29(10-a)). For towns with populations between 5,000 and 19,999, this report must be filed within 90 days; and towns with populations of 20,000 or more, within 120 days. If the time for filing the annual report is extended by the state comptroller, the supervisor’s time...
for filing a copy of the report with the town clerk is likewise extended.

**Fire District Financial Statement**

Within 60 days after the close of the fiscal year, the treasurer of each fire district shall file in the offices of the town clerk and state comptroller a financial statement setting forth in detail the receipts and expenditures of the fire district for the previous fiscal year (Town Law, §181(6)).

**Improvement District Commissioner’s Financial Report**

On or before January 15, the board of commissioners of each improvement district shall file with the town clerk a financial report for the preceding fiscal year (Town Law, §215(9)).

**Annual Accounting**

On or before January 20, each town board must meet for the purpose of an annual accounting by each officer or employee who has received or disbursed any funds, except in towns having a town comptroller or that have engaged the services of a certified public accountant or public accountant to make an annual audit to be completed within 60 days after the close of the town’s fiscal year (Town Law, §§62(1), 123).

**Examine Justice Court Dockets**

On or before January 20, each town board must meet for the purpose of examining the civil and criminal dockets of each town justice and ensure that the fines and fees that have been collected by each justice have been turned over to the proper officials as required by law (Town Law, §123).

**Monthly Report Form**

The town board may adopt a resolution prescribing the form of the monthly report that the supervisor is required to submit (Town Law, §125; Op. State Comp. No. 80-309).

**Highway Law §284 Agreement**

The town board and the highway superintendent shall enter into an agreement relative to the expenditure of highway monies for repair and improvement of town highways. The agreement must be prepared in duplicate, signed by a majority of the town board members and the highway superintendent and filed with the town clerk’s office and the county superintendent (Highway Law, §284).

**Checks Countersigned**

The town board may adopt a resolution requiring all checks to be countersigned by the town comptroller or town clerk (Town Law, §§29(3); 30(9); 34(1)).

**Returned Check Charge**

The town board may adopt a resolution imposing a charge of up to $20 on each check tendered as payment and returned for insufficient funds or other reasons (General Municipal Law, §85).

**Transfer Accounting Duties to Town Comptroller**

The town board may adopt a resolution determining that the town comptroller shall be the accounting officer of the town, in which event, all the accounting duties of the town supervisor are transferred to the comptroller (Town Law, §124).

The town board may by ordinance or local law confer on the town comptroller powers exercised by the supervisor in connection with keeping appropriation accounts and preventing accounts from being overdrawn and/or drawing upon funds or appropriations
Checks Signed by Facsimile Signature

The town board may adopt a resolution authorizing checks to be signed with the facsimile signature of the supervisor or other town officers whose signatures are required, as reproduced by a check signer (Town Law, §29(3)).

Bid Openings

The town board may adopt a resolution authorizing any specific town officer or employee to open competitive bids on public works and purchase contracts required to be advertised (General Municipal Law, §103(2)).

Property and Casualty Insurance

The town board should secure full and adequate insurance to protect the property of the town against fire and theft and to protect the town for the many exposures to liability for tort damages and other claims that exist today (Town Law, §64(3)(4); General Municipal Law, §52). Please see page 2 of this booklet for information about NYMIR, the Association of Towns-sponsored property and casualty insurance program.

Workers’ Compensation Insurance

The town board should secure insurance for its exposure to workers’ compensation and employer liability claims. Towns may self-insure individually, as part of a group or obtain coverage through an insurance carrier. Please see page 19 for information about the New York State Municipal Workers’ Compensation Alliance, the Association of Towns-sponsored workers’ compensation program.

Temporary Investments

The town board may adopt a resolution authorizing the collecting officer to deposit tax collections in interest-bearing accounts as a temporary investment measure (General Municipal Law, §11; Op. State Comp. 80-242).

Review Contracts

The town clerk should advise the town board as to existing contracts for lighting, garbage collection, dumping facilities, fire protection, hydrant rental or water supply, ambulance service*, hospitalization and leases of any property rented by the town and specify the date of expiration of such contracts (Town Law, §§64(2, 19, 20-a), 183, 184, 184-a, 193(3,6,7,8,9,11); General Municipal Law, §§92-a, 119-m, n, o, 120-w, 122-b).

* The town board should confirm that the ambulance service provider is properly certified with the State of New York and/or that the town itself is properly certified with the State of New York to provide ambulance services (Public Health Law, article 30).

Schedule Review of Town Policies

The Organizational Meeting presents a prime opportunity for the town board to schedule a review of town policies that guide day-to-day operations. Some policies are required by law, and others are recommended. Please note that this is not a complete list of policies, but rather a representative list that should be expanded upon as needed.

Among the policies the town board should have in place are:

- Ethics Code (General Municipal Law, §806)
- Title VI Anti-Discrimination Plan (Title VI of the Civil Rights Act of 1964/ Civil Rights
Restoration Act of 1987)

- Fair Housing – Recipients of Federal HUD Funds ????? Need more information
- CBDG/ HOME/ Emergency Shelter Five Year Plans for Federal Funding
- Broadband Plan (Federal )
- Investment Policy (General Municipal Law, §§11, 39)
- Defense and Indemnification (Public Officers Law, §18)
- Capital Asset Policy (Governmental Accounting Standards Board’s (GASB) Statement No. 34)
- Procurement Policy (General Municipal Law, §104-b)
- Local Comprehensive Emergency Management Plans (Executive Law, §23)
- Employment Policies:
  - Harassment and Discrimination (Title VII of the Civil Rights Act of 1964, New York State Human Rights Law)
  - Workplace Violence (12 NYCRR §800.6 (e) (1))
  - Sick, Vacation and Personal Leave (General Municipal Law, §92; Federal Family Medical Leave Act)
  - Overtime (General Municipal Law, §90; Federal Fair Labor Standards Act)
- Expense Reimbursement: mileage rates, travel, food and lodging (Town Law, §116; General Municipal Law, §77-b)
- Use of Municipal Equipment: town-owned vehicles; computer use; municipally issued cell phones/smart phones/tablets/computers; social media (Town Law, §64)
- Information Breach Notification Policy (Technology Law, §208)
- Information Technology Policies Recommended by the State Comptroller
  - Use of and Access to Personal, Private and Sensitive Information
  - Wireless Security Policy
  - Password Security Policy
  - Internet, E-mail and Personal Computer Use
  - Mobile Computing and Storage Device Policy
  - Online Banking
  - For more information, please see the State Comptroller-issued Local Government Management Guide titled “Information Technology Governance.”

Town Officers

For the Association of Towns to provide you the best possible service, it needs the correct names and mailing addresses of all town officers. If this hasn’t been done already, the town clerk should supply this information to the Association of Towns, 150 State Street, Albany, New York 12207-1671. Please also advise of changes as they occur throughout the year. An update form has been included for your convenience on page 21 of this booklet. You may fill it out and e-mail, fax or mail the form to the Association of Towns.

Association Publications

The supervisor should advise the members of the town board that the town clerk, tax
collector or receiver, town justices, councilmen, highway superintendent, assessors, town attorney, budget officer, director of finance and comptroller will receive regular mailings of Association publications on subjects of interest and importance to the respective officers.

Additionally, the supervisor should advise the town board that procedural manuals for the town board, town clerk, tax collector or receiver and highway superintendent should be in their respective offices. Also, *Forms and Outlines of Criminal Procedures for Town Justices & Police* should be in the court. If you do not have these publications, please contact the Association of Towns at (518)465-7933 between the hours of 8:30 a.m. and 5 p.m., Monday through Friday. Also, a publication order form is included on page 22 for your convenience.

**Training and Conference Attendance Policy**

The town board may adopt a resolution authorizing town officers and employees to attend training schools and conferences at town expense (General Municipal Law, §77-b).

**Designation of the Town’s Delegate to the Annual Meeting**

For many towns, the organizational meeting will be the last town board meeting before the Association of Towns’ Training School and Annual Meeting, which is held during Presidents Week every February. Therefore, a resolution should be adopted naming the town’s delegate and alternate to this meeting and authorizing specified town officers to attend and the payment of their actual and necessary expenses in doing so, all of which are specifically authorized by state law as legitimate and proper town charges. All of the above several actions should be taken by formal resolution of the town board, duly introduced by a specified member and duly seconded by another. They should be put to long roll call with the vote “Aye” or “No” duly recorded.

Each such resolution with the vote on it should be in writing and fully set forth in the town clerk’s minutes of the meeting.

**Appendix A**

**Compatibility of Office**

A person may hold more than one public office or position of employment simultaneously unless the positions are incompatible either due to a prohibition in a state statute or a violation of the common law doctrine of compatibility.

**Common Statutory Prohibitions:**

a) A person may not hold two elected town offices simultaneously (Town Law, §20 (4)).

b) A person may not hold an elected county office and an elected town office simultaneously (County Law, §411).

c) A town board member may not serve on the town planning board (Town Law, §271 (3)) or the town zoning board of appeals (Town Law, §267 (3)).

d) No county treasurer, district superintendent of schools or trustee of a school district shall be eligible to hold the office of supervisor (Education Law, §2112(3); Town Law, §23(1)).

e) Neither the assessor nor any member of his or her staff may be appointed to the board of assessment review. A majority of such board shall consist of members who are not officers or employees of the town (Real Property Tax Law, §523 (1)(b)).
Common Law Compatibility of Office Doctrine

In addition to various statutory prohibitions, a person may be prohibited from serving in more than one town position due to a common law compatibility prohibition.

In the absence of a constitutional or statutory prohibition against dual-office holding, one person may hold two offices simultaneously unless they are incompatible. The leading case on compatibility of office is *People ex rel. Ryan v. Green*, 58 NY 295 (1874). In that case, the court held that two offices are incompatible if one is subordinate to the other or if there is an inherent inconsistency between the two offices. The former can be characterized as “you cannot be your own boss,” a status normally easy to see. The latter is not easily characterized, for one must analyze the duties of the two offices to ascertain whether there is an inconsistency. An obvious example is the inconsistency of holding both the office of auditor and the office of director of finance (1986 Op. Atty. Gen. (Inf.) 140).

There are two subsidiary aspects of compatibility. One is that, although the common law rule of the Ryan case is limited to public offices, the principle equally covers an office and a position of employment or two positions of employment. The other is that, although the positions are compatible, a situation may arise where one has a conflict of interest created by the simultaneous holding of the two positions. In such a situation, the conflict is avoided by declining to participate in the disposition of the matter. If such situations are inevitable as opposed to being possibilities, there is an inherent inconsistency in the positions (1986 Op. Atty. Gen. (Inf.) 140).

Common Law Whitehall Doctrine

The Whitehall doctrine, as a matter of public policy, provides that a board may not appoint one of its members to a position (*Wood v. Town of Whitehall*, 120 Misc 124 (Sup Ct Wash Co), affd, 206 App Div 786 (3d Dept 1923); *See also*, *Macrum v. Hawkins*, 261 NY 193 (1933) and *Matter of Brenner v. Vines*, 35 AD2d 536 (2d Dept 1970)). In *Wood*, the court decided that it would be contrary to public policy and the general welfare to uphold such an appointment. The recusal of the member of the board to be appointed does not remedy the conflict of interests (1995 Op. Atty. Gen. (Inf.) 1074).

When public officers, such as the members of a town board, are vested by the Legislature with power of appointment to office, a genuine responsibility is imposed. It must be exercised impartially, with freedom from suspicion of taint or bias that may be against the public interest. An appointing board cannot absolve itself from the charge of ulterior motives when it appoints one of its own members to an office. It does not make any difference whether the individual's vote was necessary to the appointment; the opportunity to improperly influence the other members of the board is there, and no one can say in a given case whether the opportunity is or is not exercised. What influenced the other members to vote as they did, no one knows except themselves. Were their motives proper, based solely on the fitness of the appointee? They may have been. Were they improper, based on the promise or expectation of reciprocal favors (*Wood v. Town of Whitehall*, 120 Misc 124 (Sup Ct Wash Co), affd, 206 App Div 786 (3d Dept 1923))? This doctrine has been applied to offices and positions of employment (1987 Op Atty. Gen (Inf.) 167).

Therefore, in the absence of a state law, local law or session law to the contrary, the town board is bound by the common law doctrine of compatibility and the common law Whitehall doctrine.

Appendix B

Sample Rules of Order

State of New York

Resolution Adopting Rules of Order of the Town Board of the Town of _________________

Whereas, Town Law, §63 provides that the Town Board may determine the rules of its procedure; Now, Therefore Be It Resolved that the following Rules of Order be and the same are hereby adopted pursuant to Town Law, §63:

Rules of Order of the Town Board of the Town of _________________

1. The Supervisor shall preside at all meetings of the Board and shall preserve order and decorum in debate.
2. The Supervisor, immediately following the opening of every regular meeting of the Board, shall proceed to the regular order of Town business as follows: reception of petitions and other communications addressed to the Town Board, reports of committees, reports of officers and departments and introduction of resolutions and motions.

3. **Public Hearings:** It shall be the duty of the Supervisor to preside at all general or special business hearings to instruct all persons addressing the Board to state their names and addresses and to request those in favor of the proposal before the Board to speak first and those in opposition to speak last. At such hearings the Board may by special rules prescribe the time to be allotted to each speaker and the number of times each speaker may speak.

4. At the **close of the public hearing** as provided for in paragraph “3” above, the Supervisor may grant any member of the general public in attendance at such meeting a reasonable opportunity to be heard on any question or subject in which the Town or its government is concerned.

5. Every resolution or **motion must be seconded** before being put to a vote by the Supervisor, and all resolutions or motions shall be recorded in their entirety in the official minutes of the Town Board.

6. The Supervisor may offer or second a resolution or a motion and need not relinquish the chair for such purpose.

7. **No motion or resolution may be brought to a vote except by the majority consent of those present,** unless printed or typewritten copies thereof are presented to each member of the Board 48 hours prior to the opening of the meeting at which such motion or resolution is offered.

8. **No member shall speak more than once** on any questions until every member choosing to speak shall have spoken, nor more than twice in any case without leave of the Board.

9. When a question is **under debate,** no motion shall be entertained unless (a) for an adjournment or recess, (b) for the previous question to lay on the table, (c) to postpone to refer to a committee, or (d) to amend. These latter motions are neither amendable nor debatable.

10. No motion shall be made to offer any amendment to an amendment already before the Board on any proposition.

11. A majority vote of all the members of the Board shall be required to **suspend these rules of order.** A majority of the Board shall constitute a quorum.

12. If the above stated rules are, or become at any time, in conflict with the statutory law, the statutory law shall take precedence.

13. No member of the public shall engage in any demonstration, booing, hand clapping or otherwise disrupt the formality of a town board meeting.

14. Any persons speaking to the Board with the consent of the Supervisor shall address their remarks to the Board, not to other members of the audience in the form of a debate.
**Talk of the Towns & Topics**

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First Meeting • 22
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