The Town's Ethics Code is contained in Town Code Chapter 570. Section 570-11C provides that "no amendment initiated by the Town Board shall be adopted by the Town Board without affording the Board of Ethics at least 30 days to consider the Town Board's amendments." Section 570-11C further provides that the "Board of Ethics may make recommendations to the Town Board with respect to the amendment of this Code of Ethics."

On March 28, 2007, the Town Board referred to the Board of Ethics proposed amendments to the Town's Ethics Code. The Board of Ethics received from the Town Board an extension of the time to make its recommendation to May 11, 2007. On April 20 and May 7, 2007, the Board of Ethics held open meetings at which such proposed amendments were considered, discussed and revised. The Board of Ethics is appreciative of the many useful suggestions made by members of the public.

The Board of Ethics hereby offers its recommendations to the Town Board on such proposed amendments and related suggestions developed by the Board of Ethics during the course of its deliberations, including public comments.

Among the more material topics addressed by the comments of the Board of Ethics are:

(i) suggested addition to Section 7 prohibiting political contributions from private parties with contracts with the Town;

(ii) suggested addition to Section 7 prohibiting political contributions from those having applications before the Town within the prior 12 months;

(iii) suggested deletion of new wording in title of Section 4A that would have effect of excepting political contributions from the prohibition of soliciting/accepting gifts from designated classes of persons, and suggested deletion of last sentence in Section 4A(2) that would have effect of limiting application of reasonable inference of influence/reward standard of conduct;

(iv) the potential differentiation protecting appointed officials and employees from pressure to contribute, while permitting agency members and/or elected Town officials to make unsolicited contributions;

(v) suggested deletion of several provisions that appear to restrict public access to information on a basis which is more than restricted than allowed under the Freedom of Information Law;

(vi) suggested addition of prohibition against inducement of ethics violations;

(vii) suggested addition of protection for whistleblowers;

(viii) suggested annual report from the Board of Ethics to the Town Board;

(ix) suggested term limits for Board of Ethics members;
suggested Board of Ethics filling vacancies, on a temporary basis, if Town Board does not fill vacancies.

The comments also address legal and policy issues relevant to the Town's Ethics Code regulating (a) candidates who are not Town officials, employees or agency members and (b) contributions by political parties and political action committees.

Subject to scheduling, the members of the Board of Ethics would be pleased, if requested by the Town Board, to meet with the Town Board at a work session or Town Board meeting to discuss these comments.

* * *

Section 1:

In first two sentences, change "shall" to "should" in recognition of the "goal" orientation of these sentences.

In last sentence, in order to recognize that Chapter 570 contains many administrative provisions that are not technically a code of ethical conduct, rephrase as: "In recognition of these goals, there is hereby established this chapter, which includes a Code of Ethics for Public Officers, Employees and Agency Members of the Town of Greenburgh (hereinafter sometimes referred to as the "Town"), and a Board of Ethics to render opinions, reports and recommendations with respect thereto, to investigate alleged violations thereof and to facilitate compliance therewith."

Section 2:

First Sentence:

"Public Officer, Employee or Agency Member" should be "Public Officers, Employees and Agency Members".

Rephrase "except" clause as: " . . ., except that any previous code of ethics adopted by the Town Board is hereby repealed."

Section 3:

Add Definition of Affiliate: "Affiliate - (i) with respect to any person: household member, spouse, Domestic Partner, child, grandchild, dependent, parent, grandparent, brother and sister; (ii) with respect to any Public Corporation: any person is an owner of more than five percent (5%) of the outstanding equities securities of any class of the Public Corporation; and (iii) with respect to any Legal Entity other than a Public Corporation: any person who is an owner of more than two percent (2%) of the equity of such legal entity."

Definition of Agency Member:

The Board of Ethics inquires whether it is the intention of the Town Board to include, or exclude, ad hoc committees (such as (i) the five residents of unincorporated Greenburgh appointed by the Town Board to advise on budget matters or (ii) the committee appointed by the Town Board to advise on revisions to the zoning code).
The Board of Ethics suggests the addition of the following sentence: "When an ad hoc committee or an individual position, such as deputy town supervisor, is appointed, the appointment shall state whether the appointee(s) are subject to the Ethics Code and, if so, whether the financial disclosure provisions of Section 8 are to be applicable to such appointee(s)."

Add Definition of Agency: "Agency - [to be supplied]." (The underlying words in Agency Member is different from the words used in various substantive sections, such as Section 4H. The Board of Ethics suggests a definition be developed which encompasses all that the Town Board wishes to be covered, and then, for readability, the defined term be used in the substantive sections of the law.)

Definition of Applicant: The phrase "Agency Member" should be replaced with the underlying boards, since the board (not an member of the board) is the approving authority. Also, add clause: "... or any person or Legal Entity seeking employment or other material financial benefit from the Town."

Definition of Candidate: Rephrase first clause as "an individual who announces that she/he seeks endorsement, designation, nomination or election for political office . . . . ."

Definition of Compensation: In several places the word "compensation" should be capitalized to pick-up the terms Compensation as defined.

Add Definition of Contract: "Contract - any contract as defined in Section 800 of the General Municipal Law."

Definition of Employee: At end, add: "... , but shall not include Public Officers."

Definition of Interest: Rephrase as: "The financial interest of a Public Officer, Employee or Agency Member and also any of her/his Affiliates". We believe this reflects the intent of the drafting, but as presently phrased it is ambiguous as to whether "Interest" is more than a "financial interest". This also simplifies the drafting, by the use of the suggested new defined term Affiliate.

The Board of Ethics also notes that in many places in the proposed amendments the word "interest" should be capitalized to pick-up the term Interest as defined.

Add Definition of Legal Entity: "Legal Entity - corporation, limited liability company, partnership, limited partnership, union, not-for-profit corporation, and any other entity recognized by the State of New York, but does not include a political party or a political action committee."

Definition of Town: The Board of Ethics notes that in many places in the proposed amendments the word "town" should be capitalized to pick-up the term Town as defined.

[Generally:  
- Check needs to be done to assure that all defined terms are capitalized in the text when it is the intent to pick-up the defined meaning.]
- Because "herein" may in some instances [e.g., Section 4A(2)] mean the particular section involved and in some instances [e.g., the original wording of Section 7C] means the whole Ethics Code, review the use of "herein" so that the Town Board's intent is clearly reflected in each case of the use of "herein".

- Make the statute "gender neutral" by throughout using the phraseology "she/he" and her/his].

Section 4A(1):

Section 4A(1) deals with gifts, contributions and donations. The Board of Ethics notes that the March 28-proposed amendments added to the title of Section 4A(1) the words "other than political contributions", when compared to the title of the present Section 4A(1). Since there is no recognized litmus test or practical way of which we are aware to differentiate gifts/contributions/donations which are, and are not, political contributions, because money is the ultimate fungible commodity, the Board of Ethics suggests that these added words be deleted from the title.

If the Town Board wished to protect appointed officials and employees from potential pressures to contribute to elected officials who by the nature of their elected status have influence over their appointment/employment status, but retain the right of agency members and elected officials, who are not subject to such potential pressures arising from appointment/employment, to make unsolicited contributions, Section 4A(1) could be rephrased as:

"No Public Officer, Employee or Agency Member shall, directly or indirectly, solicit or accept any gift or item of personal or real property or any contribution or donation (i) from any Appointed Officer or Employee or (ii) from any person or Legal Entity on Town property. No Public Officer, Employee or Agency Member shall, directly or indirectly, solicit any gift or item of personal or real property or any contribution or donation from an Agency Member or an Elected Officer."

Section 4A(2):

Last sentence:

We note that the import of the last sentence is that all political contributions would be allowed under the Ethics Code, as long as the contributions (i) are not from a person disqualified as a contributor under Section 4A(1) -- i.e., appointed officers and employees (and, possibly, agency members and elected officers), (ii) are not solicited or accepted on Town property (in violation of Section 4A(1)) or (iii) are not from a person/legal entity disqualified under Section 7 -- i.e., applicant and, possibly, a person or legal entity having a contract with the Town). Because this would obviate the important "reasonable inference of influence/reward" provisions of the first sentence of 4A(2), the Board of Ethics suggests that the last sentence of Section 4A(2) be deleted in toto.

Also, the Board of Ethics believes the addition of the $ 75 clause in Section 4A(2) raises ambiguities, such as whether the $ 75 is a "safe harbor" separate from analysis of reasonable inference of influence/reward and whether there could be multiple gifts from associated persons of $ 74.99. The Board of Ethics suggests that the Town Board either:

- delete the $ 75 clause, or
- specifically define what is acceptable de minimis gifts of hospitality not believed to be
capable of influence/reward, such as: "hospitality from any person or Legal Entity and their respective Affiliates in the form of meals and refreshments not exceeding $ 75 in the aggregate in any one calendar year "

Section 4A(3):

To make it clear that "camaraderie" gifts are not prohibited as long as they do not involve a senior soliciting from a junior, we suggest a new Subsection 4A(3):

"Nothing in Subsection 4A shall prohibit soliciting or accepting gifts for special occasions, such as weddings, birthdays, birth of a child, sickness, retirement, and holidays; provided that a Public Officer can not solicit any such gift from an Employee and provided further that no individual shall gift more than $ [25] [35] [75] for any one such special occasion."

Section 4A(4):

Add a new Subsection (4): "Nothing in Section 4A shall prohibit any Public Officer or Employee permitted to perform marriage ceremonies pursuant to the Domestic Relations Law from accepting a gift or benefit having a value of $ 75 or less for the solemnization of a marriage by such Public Officer or Employee anyplace within the territorial boundaries of the Town."

Section 4B:

The Board of Ethics notes that, according to the NYS Committee on Open Government: 

Moreover, we note that, under Section 808 of NYS General Municipal Law, a town ethics board "shall act only with respect to officers and employees of the [town] and of its agencies."

Thus, there appear to be issues of legal validity with respect to (i) a local enactment requiring confidentiality and (ii) a local enactment placing non-officers, non-employees and non-agency members under the jurisdiction of an ethics board.

In trying to reflect what would appear to be the Town Board's quite justifiable intent in the draft Section 4B, and trying coordinate that with apparent legal issues, we would suggest a revision to Section 4B along the following lines:

"Abuse of Information. No Public Officer, Employee or Agency Member shall (i) use any information acquired by her/him in the course of her/his official duties for the purpose of furthering her/his Interests either during or after her/his term of office or period or service, (ii) publicly disclose any information relating to negotiations by or on behalf of the Town regarding any potential acquisition or lease of property or services, disposition of property, Contract or lawsuit, except as may be authorized by the Town Board, or (iii) publicly disclose any information to which the public may be denied access pursuant to Section 87(2) of the Freedom of Information Law, except as may be authorized by the Town Board. Nothing in this Section 4B shall apply to information which has become public through another source."
[The Town Board could also consider a separate law or resolution, outside of the Ethics Code, that would prohibit parties negotiating to sell or lease to, buy or lease from or contract with the Town from publicly disclosing information regarding such negotiations and disqualify such parties from selling or leasing to, buying or leasing from, or having a contract with, the Town if they breach such prohibition.]

Section 4D:

The first sentence requires disclosure of an interest, presumably "Interest" (defined as "financial interest"), in legislation, contracts or official action. It is not clear how the second sentence (relating to disclosure of political contributions of applicants) relates to the first sentence, since the contribution is not an Interest.

(If the last two sentences are retained, add Affiliate concept.)

Section 4E: In second sentence, capitalize Agency Member.

Section 4H: Delete words "on her/his own behalf", as that is not "future employment" which is the target of the Subsection. To go further and prohibit a former agency member from acting on her/his own behalf, would penalize a resident from appearing on her/his behalf with respect to her/his own property even where the agency member had recused her/himself while an active member.

Section 4J:

Delete the words (used twice) "or Employees of an agency". These are picked-up by the definition of Employee.

At the end of the first sentence, so as not to penalize a resident from acting on her/his own behalf, add "except that she/he may represent her/himself in any matter in which the Town is an adverse party or complainant."

Section 4K: Replace "firm or corporation" with "Legal Entity".

Section 4L:

Rephrase title as "Additional Standards for Public Officers and Agency Members".

Conform order in which Planning Board and Zoning Board of Appeals is listed.

In Subsection (1), change the second "or" to "and", so that it reads " . . . in which she/he serves as a member and in which she/he does or may . . . ." Towards end of Subsection (1), rephrase as " . . . and for a five-year period prior to appointment to such Board."

In Subsection (2), towards end, rephrase as " . . . including participation as a member of such Board in any public hearing, informational meeting or any discussions at any executive session relating to such matter."
In Subsection (3), add at end ", except as provided in Section 4P with respect to any property she/he has a direct or indirect Interest."

Section 4 N/O:

Use correct technical names for "Building Department", "Zoning Department", "Planning Department".

Section 4P: Delete, as this is substantively duplicative of Item 1 in the Annual Financial Disclosure Statement required by Section 8. Although this Subsection would require such disclosure to be made quicker, the Board of Ethics did not believe such was necessary.

New Section 4P: "If a Public Officer, Employee or Agency Member has a direct or indirect Interest in a matter pending before a Town agency, she/he shall recuse her/himself from participation and voting as a member of the agency with respect to that matter, but may participate in the proceedings in the same manner as other members of the public."

Section 7A:

Rephrase as: "No Public Officer, Employee or Agency Member shall, directly or indirectly, solicit or accept any contribution or money, services or thing of value for any political party, campaign committee or any Candidate from any Appointed Officer or Employee or from any Applicant or from an Applicant's Affiliates or from an Applicant's legal representatives or professional consultants or their respective Affiliates, or use her/his authority or official influence to compel or induce any other Public Officer, Employee or Agency Member or Applicant or any Affiliate thereof or an Applicant's legal representatives or professional consultants or their respective Affiliates to pay, promise to pay, or make any political assessment, subscription or contribution of money, services or thing of value."

Add a sentence at end of Subsection (1): "The provisions of this subsection also shall apply to any Applicant who had, within the prior 12 months from the time in question, an application pending covered by the previous sentence, the Applicant's Affiliates, and the Applicant's legal representatives or professional consultants and their respective Affiliates." This picks-up and makes applicable to the prohibition of soliciting/accepting contributions from Applicants the 12-month bar contained in Section 4D.

Add a Subsection (3): "No Public Officer, Employee or Agency Member shall, directly or indirectly, solicit or accept any contribution or money, services or thing of value for any political party, campaign committee or any Candidate for public office from any person or Legal Entity having a Contract with the Town or any Affiliate thereof."

The Board of Ethics notes that there has been public discussion of prohibiting Town officials and candidates from accepting contributions from political parties and political action committees which have received contributions from applicants and parties with Town contracts and their respective affiliates and professional advisors.

The Board of Ethics notes here, as it has elsewhere, that under the provisions of the governing NYS law (Article 18 of the General Municipal Law) a local ethics board does not have jurisdiction over those who are not town (or town agency) officials or employees (except with
respect to annual statements of financial disclosure of "local political party officials" and "candidates" as defined in GML Sections 810 and 812 respectively). Thus, activities of candidates who are not Town officials are exclusively the providence of election laws, not ethics laws (except with respect to annual statements of financial disclosure).

The NY Elections Law provides, in Section 1-102, that the Elections Law does not preempt other law "unless a provision of [the Election Law] specifies that [it] shall apply notwithstanding any other provision of law." While a local ethics law could thus theoretically have jurisdiction over receipt by a candidate, who is also a Town official, of contributions from a political party or political action committee, the Board of Ethics believes that activities of political parties and political action committees are more in the realm of activities governed by election laws, as the activities of political parties and political action committees raise broad issues of election law policy within in a democracy.

Thus, in sum, the Board of Ethics believes: (i) the Town Board cannot legally include non-Town officials who are candidates for public office within the jurisdiction of the Town's Ethics Code and (ii) there are cogent policy grounds for the Town Board's decision not to cover determinations by political parties and political action committees as to contributions they may make to Town officials who are candidates for public office.

Section 7B:

Delete words "of Greenburgh".

Section 7C:

Last sentence of Section 7C (retaining the right of an agency member to make an unsolicited contribution to a candidate of her/his choice) is inconsistent with the March 28-proposed new Section 4A(1) (prohibiting a officer from accepting a contribution from an agency member). The unsolicited contribution of an agency member permitted by Section 7C could not be accepted under proposed new Section 4A(1).

The Board of Ethics is not sure whether the intent of the Town Board is to permit agency members to make unsolicited contributions:

- If agency members are to retain the right they have under present law to make unsolicited contributions, then Section 4A(1) should be redrafted as indicated above under Section 4A and the last sentence of Section 7C would be retained.

- On the other hand, if the intent of the Town Board is to prohibit agency members from making unsolicited contributions, then the last sentence of 7C be rephrased to be cut-back: "Nothing in this chapter shall prohibit any Public Officer, Employee or Agency Member from holding or expressing a political opinion or from affiliating with any political party or organization of her/his choice."

Section 8:

The Board of Ethics notes that, under the definition of employee, all employees covered by collective bargaining agreements and all part-time and seasonal summer employees are included. Thus, as presently drafted, each of these non-decision-making employees
(numbering in the hundreds) would be required to receive and file Annual Statements of Financial Disclosure under Section 8 (which is not, in practice, as of now followed by the Town). The Board of Ethics inquires whether this is the intent of the Town Board. If not, the parenthetical phrase "(other than employees covered by collective bargaining agreements and part-time and seasonal employees)" could be added after the word "Employee" in the first sentence.

In first sentence, add "as defined in General Municipal Law Section 810" after "local political party official".

Designate the existing text as Subsection A. Within that text, change date for filing to "May 15" and filing period to the "preceding calendar year" (which are the filing date and filing period in the existing Ethics Code). These are also the filing date and filing period referred to in Section 812 of the General Municipal Law.

Add new Subsection: "B. The Town Board shall determine the list of persons who are subject to the disclosure requirements of this Section. The distribution and receipt of the disclosure statements required by this Section shall be administered by the [Human Resources Division of the Town's Comptrollers Department] [Town Attorney's Office]. Received disclosure statements shall be reviewed by the Town Attorney's Office, except that the Board of Ethics shall review the statements filed by Elected Officers, local political party officials and candidates. The Board of Ethics shall report to the Town Clerk if any Elected Officer, local political party official or candidate does not file her/his disclosure statement within 30 days of the due date therefor, and the Town Clerk shall post such information on the Town's website until such filing is made."

Section 9:

Add a subsection: "The Board of Ethics may, if it finds in an opinion or report, that this Code of Ethics or Article 18 of the General Municipal Law has been violated, make recommendations to the Town Board. These recommendations may include return of improperly solicited or received political contributions or gifts, together with interest thereon; enforcement of any of the penalties specified in A - D of this Section 9; referral to other governmental authorities; and any other procedural, referral or remedial action which the Board of Ethics deems appropriate under the circumstances."

Section 10

Change title to "Promulgation of Code of Ethics".

Delete First Sentence. Revise Second Sentence: "The Town Supervisor shall cause the [Human Resources Division of the Comptrollers Department] [Town Attorney's Office] to distribute a copy of the Ethics Code to each Appointed Officer and Employee within 30 days of employment and at least once every three years thereafter while employed by the Town. The Town Supervisor shall cause the Town Clerk to distribute a copy of the Ethics Code to each Elected Officer and Agency Member within 30 days of taking office and at least once every three (3) years thereafter while in such office. In addition, when there are substantial amendments to the Ethics Code, the Town Board shall instruct that the revised Ethics Code shall be distributed in addition to the foregoing periods."

Add new Sentence: The [Human Resources Division of the Town Comptrollers Department] [Town Attorney's Office] shall develop training materials and/or programs with respect to the Ethics Code. Such materials shall be submitted to the Board of Ethics for review. Each person who is required to file financial disclosure statements under Section 8 (other than
local political party officials and candidates) shall be required to attend a Ethics Code training program conducted by the [Human Resources Division] [Town Attorney's Office] at least once every two (2) years."

Add new Sentence: "Each person or legal entity having a contract with the Town providing for payments in excess of $100,000 shall be given a copy of the Ethics Code by the Town Attorney's Office and be required to acknowledge receipt thereof in writing."

**Section 11A:**

Second Sentence. Delete. The scope of the activities of the Board of Ethics encompasses both investigatory and adjudicatory functions. Under the first sentence of Section 11C, the Board is required to make "findings" (which was implied in the existing statute, but is now explicitly required in the March 28-proposed amendments). Section 5 of the Board of Ethics' Internal Rules and Regulations, adopted April 13, 2007, addresses the engagement of counsel in connection with the investigatory function of the Board. Generally, unless a member of the Town Board is involved, the Board of Ethics would expect that the investigation would be conducted with the legal assistance of the Town's Legal Department. However, if a Legal Dept appointee is an ex-officio member of the Board of Ethics, then that individual would meet with the Board even though she/he is "without power to vote". The members of the Board of Ethics are not comfortable with an ex-officio member, who has acted as counsel in connection with the investigatory role of the Board, meeting with the Board in its adjudicatory role; thus, any individual in the Legal Dept who is an ex-officio member would not be available to act as counsel to the Board. The Board of Ethics believes that the scarce resources of the Legal Dept could be more usefully available to the Board in acting as counsel, without having one of its members disqualified from acting as counsel because he/she is an ex-officio member.

Add sentences: "No person shall be appointed for a term, or part of a term, which would extend that person's total service on the Board of Ethics to a period of more than nine (9) years. Notwithstanding anything else in this chapter to the contrary, the term of a member shall, subject to an earlier resignation, automatically continue under the earlier of (i) appointment of her/his replacement by the Town Board pursuant to the provisions of this chapter or (ii) three months after the expiration of her/his term. When a vacancy occurs in the membership of the Board of Ethics, the Town Board shall fill such vacancy within three months after the vacancy occurs. Such appointment shall be for a full term or for an unexpired term depending upon the circumstances. If a Board of Ethics vacancy is not filled within one hundred twenty (120) days after the vacancy occurs, the Board of Ethics may, by a majority vote of its membership, appoint an individual to serve as an acting member of the Board of Ethics. Such individual shall hold term of office until the earlier of the resignation of such individual or the Town Board acts by making an appointment."

Add a Sentence: "Any member of the Board of Ethics who is a Appointed Officer or Employee is excused from other work duties during the duration of the time required to attend meetings of the Board of Ethics which are held during the normal work hours of such Appointed Officer or Employee, and shall not be required to perform compensatory work for such time."

**Section 11B:**

Change "proceeding" to "proceedings".

Delete phrase "with copies forwarded to the Town Clerk within five (5) business days." Add new sentences: "The Town Clerk shall maintain the records of the Board of Ethics, as forwarded to her/him by or at the direction of the Chair or Secretary. All rules and regulations
of the Board of Ethics and all final opinions and reports issued under Section 11C or Section 11E by the Board of Ethics shall be forwarded to the Town Clerk within five (5) business days after adoption.

Section 11C:

First Sentence:

Revise first sentence to read: "The Board of Ethics shall render findings, conclusions, opinions, advisory opinions and recommendations, as appropriate, (i) upon the written request of the Town Board or (ii) the written request of an actual or prospective Public Officer, Employee or Agency Member or (iii) upon receipt of a verified complaint by any resident of, or property owner or lessee of property in, the Town, with respect to Article 18 of the General Municipal Law and this Code of Ethics."

Second Sentence: Add "shall be filed with the Town Clerk and" before "shall set forth".

Add new sentence: "Except as otherwise provided in this chapter, the Board of Ethics shall consider such requests in accordance with such rules and regulations as it from time to time adopts; provided, however, that the Board of Ethics must consider all written requests of the Town Board."

Fourth Sentence: Add at the beginning, "With respect to Public Officers and Employees covered by civil service laws, . . . " Since the confidentiality provision of this sentence is to be determined "in accordance with" civil service law, the scope of the sentence would be limited to those covered by civil service laws.

Section 11D:

Add new sentence: "By March 15 of each year, the Board of Ethics shall prepare and submit an annual report to the Town Board. Such report shall include a general summary of the activities of the Board of Ethics during the previous year. It may also include recommended changes to the Ethics Code or other comments that the Board of Ethics may consider appropriate."

Section 11F:

First Sentence:

Rephrase as: "The Board of Ethics, with the assistance of counsel and in accordance with its internal rules and regulations, shall conduct an initial investigation as it deems appropriate in the circumstances with respect to any verified complaint submitted pursuant to Section 11C by a resident of, or property owner or lessee in, the Town." The rephrasing limits the "initial investigation" procedure to resident verified complaints.

Also, under Open Meetings Law Section 105(f), a private session is permissive (but not mandatory) and such permissive private, executive session can only be conducted pursuant to majority vote of the Board of Ethics taken at an open meeting. Under the Open Meetings Law Section 110(1), private sessions cannot be mandated by local law in a manner inconsistent with state law.
Last Sentence: Rephrase as: "The subject or subjects have the right to be represented by counsel, to submit a written response and documents, and appear during this investigation. To the extent the investigation is held as part of an open meeting, there shall be a written transcript thereof."

Section 11G:

First Sentence: Rephrase as: "With respect to requests of the Town Board and requests of actual or prospective Public Officers, Employees and Agency Members and with respect to verified complaints in respect of which pursuant to its internal rules and regulations the Board of Ethics has determined after an initial investigation that good cause exists to proceed, the Board, with the advice of counsel and in accordance with its internal rules and regulations, shall conduct such investigations and hearings as it deems appropriate."

This rephrasing makes the procedure applicable to all of the three types of inputs to the Board of Ethics, but relates the determination by the Board of Ethics as to whether to proceed only to resident/property owner/lessee-generated complaints. Thus, the Board of Ethics would be required (and without making any initial determination by itself) proceed with respect to requests of the Town Board and requests of officers/employees/agency members.

The rephrasing keys off of "good cause", rather than substantial evidence, with respect to resident/property owner/lessee-generated complaints because there may be substantial evidence but no legal basis under the Ethics Code or NYS General Municipal Law Article 18.

Also, while local law can, under Open Meeting Law Section 111(2), take away the right of a public board to go into "executive session", given the multiplicity of circumstance that the Board of Ethics may face, we request that the Board of Ethics be allowed to retain the normal OML Section 105 right to go into executive session upon certain circumstances upon a majority vote.

Third Sentence: Add "and members of the public" after "complaining party".

Add sentence: "The subject or subjects shall have the right to be represented by counsel. To the extent the investigation is held as a part of an open meeting, there shall be a written transcript thereof."

Section 11H:

First Sentence: Change the phrase "this Code of Ethics and any other law" to "Article 18 of the General Municipal Law and this Code of Ethics." That way, the wording/scope of Section H would conform precisely to the wording/scope of Section 11C, which is the scope of the powers of the Board of Ethics, and thus safeguards against the Board of Ethics conducting an investigation of one of its own members. Any further scope of Section 11H beyond the scope of Section 11C would deprive Board of Ethics members of significant procedural and substantive legal rights unrelated to safeguarding against the investigation by the Board of Ethics of one of its own members.

Section 12

First Sentence: After "necessary", add "or appropriate"
Add sentence: "The Board of Ethics may also request from third parties such data, information and statements as may in the opinion of the Board by necessary or appropriate for the proper exercise of its functions, powers and duties."

The Board notes that, pursuant to Attorney General Office Informal Opinion 91-68 (Oct. 25, 1991), a municipality "by local law may grant to its board of ethics the authority to conduct investigations, subpoena power and enforcement power." The March 28-proposed amendments grant the authority to conduct investigations (Sections 11 and 12) and the power to make recommendations as to consequences of violations of the Ethics Code and/or NYS General Municipal Law Article 18 (Sections 9 and 11).

**Section 13:**

Add new Section:

"13. Inducement of Violation. No Public Officer or Employee shall induce any other person to violate, attempt to induce any other person to violate, or aid any other person in violating, any provision of this chapter. Any person who violates this Section has committed a violation of this chapter."

**Section 14:**

Add new Section:


A. No Public Officer or Employee shall retaliate against any Public Officer or Employee or other person for submitting a complaint to the Board of Ethics, for providing information to the Board of Ethics, or for acting or refusing to act as required by this chapter and Article 18 of the General Municipal Law.

B. Any Public Officer or Employee who violates this Section has committed a violation of this chapter.

C. In resolving a complaint that a Public Officer or Employee has violated this Section, the Board of Ethics may recommend that a retaliatory personnel or regulatory action be reversed."

**Section 15:**

Add new Section:

"15. Severability. If any provision(s) of this chapter shall be declared unenforceable in a final and non-appealable order of a court of competent jurisdiction, that shall not affect the validity of the remaining provisions of this chapter and the remaining provisions of this chapter shall remain in full force and effect."
Respectfully Submitted,

Mike Sigal, Chair
James Robinson, Secretary
John McLaughlin, Rules and Procedures Subcommittee

Chair

cc: Greenburgh Town Clerk