
Annual Training for Planning Board and Zoning Board of Appeals Members

Planning board and zoning board of appeals members make decisions of major importance to their communities and to all New Yorkers. These decisions can affect the function and appearance of communities for decades to come while impacting property interests important to individual New Yorkers. Until now, such decisions were mostly made by appointed officials whose only legally required qualifications for office were to be at least 18 years old, United States citizens, and residents of the municipality. While some municipalities have adopted mandatory training requirements and many planning and zoning officials voluntarily receive training, an amendment to state law now requires planning and zoning board of appeals members to obtain four hours of training a year.

Chapter 662 takes effect January 1, 2007. The new statute requires members of planning boards, zoning boards of appeals, and county planning boards to receive a minimum number of hours of training a year. The following information borrows liberally from a fact sheet explaining the new law which has been published by the Legislative Commission on Rural Resources in cooperation with the Department of State, the New York Planning Federation, the Association of Towns, the New York State Conference of Mayors and Municipal Officials, the New York State Builders Association and the New York Farm Bureau. This article will repeat some of the information in that pamphlet, as well as address additional questions being asked about the new law.

What does the new law do? The new law promotes a minimum training standard of four hours of training per year for each planning board and zoning board member throughout the state, while allowing municipalities a wide latitude in defining what training is acceptable.

Who must receive training? Town, village and city zoning board of appeals and planning board members, as well as county planning board members must receive training. People who are appointed as alternates to the board must also receive training. County planning board members in charter counties are also subject to the law if they are appointed by the county governing body. County staff that is acting as the "county planning agency" are not included in this law.

Wasn't training already required for planning and zoning board members? Whether or not to require training of planning board and zoning board of appeals members was the option of each municipality. If a municipality chose not to adopt a local training requirement, no training was required. Under the new statute, training is required whether or not the municipal governing board takes action. Municipalities that have already adopted training laws should modify them to make sure they meet, at a minimum, the requirements of the new state law. Whether or not such laws are modified, the state requirements will apply.

Are there any exceptions built into the new law? Yes, the law exempts a municipality with a population of one million or more. Also, training requirements do not currently apply to members of planning commissions that were formed pursuant to General Municipal Law §234.

Can a municipality "opt out" of the training requirements? The law allows the municipal governing board to waive or modify the training requirement if they feel it is in the best interest of the municipality to do so. The waiver or modification is accomplished by the adoption of a resolution. The resolution could waive training for all board members, and appears that it could be used to waive the requirements for individual board members. For example, a waiver may be appropriate in the case of a member who has extensive experience or professional qualifications. Another member may have a medical emergency that prevents them from attending a training session for which they were preregistered. However, before choosing to opt out, governing boards should consider allowing the requirements to be met by self-study, such as on-line training provided by the New York Municipal Insurance Reciprocal (NYMIR), or allowing planning and zoning board members to "catch up" with deficiencies in a prior year by attending additional classes in the future. Governing board members should also remember that even experienced members can benefit from attending case law sessions or sessions dealing with new zoning techniques.

Must all the training be conducted in classroom setting? Traditional classroom-style training is just one method of training available. Training could also include distance learning, videos, on-site demonstrations, or even self study.

Who determines what kind of training a board member must receive? The governing body of each town, village, city or county determines what courses, training providers, and training formats are acceptable. Acceptable training can even vary for individual board members.

Must training be from a state-certified provider? No. The state has no plans to certify providers or training programs. However, governing boards are encouraged to pass resolutions approving training from trusted providers, such as their municipal attorney; a regional planning council; a county planning office or county planning federation; a state agency; a state association like the Association of Towns, Conference of Mayors, Association of Counties, or New York Planning Federation; and a college or similar entity.

What topics are required? The law leaves the selection of topics up to the governing board. It is hard to anticipate what courses will be available at conferences and in county or regional training events. It is also hard to know what special courses may be timely for the boards to attend. For that reason, governing boards may want to leave the list of topics general at this time and revisit the issue in a few years if it finds that the members are not choosing relevant courses.

What if a person gets excess training in a particular year? Training receive in excess of four hours in any one year may be carried over into succeeding years. However, the statute does not say a year must be a calendar year. While a calendar year makes sense for town planning and zoning board members, members of county, city and village boards may want to have the "training year" correspond with the municipality's "official year."

What if the municipality wants board members to receive more than four hours of training per year? The municipality can adopt a requirement that exceeds the state requirements. The municipality could also require a board member who serves on more than one planning or zoning board to receive more than four hours of training per year. The statute arguably allows the four hours received to count for both positions, though the legislation is not clear on this point.

Who keeps track of the amount of training each members gets? The law is silent on this question. Municipalities may want to require board members to submit to the municipal clerk the attendance slips for each course they attend, or they may require board members to file annual statements of compliance.

Is one hour of training credit equal to 60 minutes of instruction? This type of question is normally addressed in state regulations adopted to implement a law requiring training. However, the statutes did not give any state agency the task of adopting regulations relating to the mandatory

training requirements. In the case of continuing legal education for attorneys, the regulations implementing the training requirement state, "One (1) hour of continuing legal education credit shall consist of at least 50 minutes of instruction, exclusive of introductory remarks, meals, breaks, or other noneducational activities."

What happens if a board member doesn't meet the minimum training requirement? Under the new state law, the board member would not be eligible for reappointment to the board. Municipal governing boards can also adopt a rule that provides for removal of members, prior to the expiration of their terms, for failure to meet local training requirements. While this might be considered a "modification" which can be accomplished by resolution, the removal provisions in the planning and zoning board statutes indicate that such provisions must be established by local law or ordinance. Removal of a member from office should be preceded by a written notification of non-compliance and an offer of a hearing.

Are we in trouble if a dissatisfied applicant or unhappy neighbor wants the board's decision thrown out because a board member didn't get training? No. The new statute states that no decision of a zoning board of appeals or planning board shall be voided or declared invalid because of a failure to comply with training or attendance requirements.

What should local governments do in the next few months to comply with the law? While local governments do not have to take affirmative action, local planning and zoning board of appeals members will be well-served if the governing board decides who the board members may receive training from, what courses (if any) are required, and how the training hours will be tracked.

Where can we get training? Training is available from numerous sources. In addition to being a training provider, the Department of State provides links to many other providers from its website at <http://www.dos.state.ny.us/lgss/training.htm>. DOS provides training on a county, regional or statewide basis. We encourage municipal officials to work with their county planning departments or regional planning councils to arrange for training that can benefit planning and zoning officials from a large number of municipalities. The contact person for land use training at the Department of State is Lori Heithoff, AICP. She can be reached at (518)473-3355 or Lheithof@dos.state.ny.us.