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RESOLUTION #__ of 2019

APPROVAL / LOCAL LAW TO AMEND AND REVISE THE PUTNAM COUNTY CODE ENTITLED ETHICS, CODE OF, AND FINANCIAL DISCLOSURE TO PROHIBIT THE DISCLOSURE OF CONFIDENTIAL MATERIAL

WHEREAS, by Resolution # 154 of 2019, Putnam County enacted Local Law 8 of 2019 amending Chapter 55 (Ethics, Code of, and Financial Disclosure) of the Putnam County Code by adding the definitions of “Confidential Material” and “Records” to Section 55-2; by adding a new subsection 55-3(J) prohibiting unauthorized disclosure of Confidential Material; and by adding a new subsection 55-4(G) providing exceptions to the rule against unauthorized disclosure; and

WHEREAS, the Putnam County Legislature and the Putnam County Executive received public comments expressing the perception of some that, as drafted, Local Law 8-2019 could allow the County to withhold from public disclosure more information than previously allowed by law, despite the intention of the Legislature and express terms of the law to the contrary; and

WHEREAS, in her signing statement of July 30, 2019, the County Executive stated her belief that a reconsideration of the language in subsection 1 of Section 55-2 (A) by the Legislature would be advisable to address the perceived issue of statutory construction present in the language of that subsection, since the balance of Section 55-2 (A) seems to cover all of the materials which require safeguarding, and noting that this language alone could perhaps be sufficient to accomplish the intent of the law in conjunction with administrative measures; and

WHEREAS, the County Executive’s signing statement further indicated her belief that, should the Local Law be so amended, the Administration and the Legislature could work together in implementing administrative procedures for the appropriate education of County employees and officials on the terms of the state Freedom of Information Law and the attorney-client privilege; and

WHEREAS, having duly considered the comments of the public and the County Executive as set forth above, the Putnam County Legislature believes that with the implementation of such administrative procedures, Local Law 8-2019 could accomplish the same goals as presently enacted by revising Section 55-2, and also by adding explicit exemptions for County employee “whistleblowers” and persons seeking to obtain confidential data on themselves; now therefore

Be it enacted by the Legislature of the County of Putnam as follows:

Chapter 55 (Ethics, Code of, and Financial Disclosure) of the Putnam County Code is hereby amended, as follows:

Section 1.

Section 55-2 of the Putnam County Code is hereby amended by deleting the definition "CONFIDENTIAL MATERIAL" in its entirety and adding the following new definition:

CONFIDENTIAL MATERIAL

A. Confidential Material shall include:

- (1) Any record exempt from disclosure under New York State Public Officers Law § 87(2); and
- (2) Any information contained in the records described in paragraph (1).

B. Any record created by, or any communication to or from, the Putnam County Law Department, Legislative Counsel, or outside counsel or consultant retained by Putnam County, shall be presumed to be Confidential Material even if not explicitly designated "Confidential." Such presumption of confidentiality shall have no determinative effect on the availability of the record to the public under the Public Officers Law.

Section 2.

Section 55-4(G) to the Putnam County Code is hereby amended to read as follows [EXPLANATION: Matter underscored is new; matter in brackets is old law to be omitted]:

G. Disclosure of Confidential Material under the following circumstances:

- (1) Pursuant to FOIL requests approved by the County Attorney, the Putnam County FOIL appeals officer, or by court order after exhaustion or waiver of any court appeals;
- (2) For Legislative records protected by the attorney-client privilege, the deliberative process privilege, and/or

constituting attorney work product, when such privilege is explicitly waived by a unanimous vote of the entire Legislature;

- (3) Sharing of records within and between Putnam County officials and government agencies, including the Legislature, provided that such records must be conspicuously marked "CONFIDENTIAL" prior to sharing; [and]
- (4) Sharing of records with local, state or federal government agencies, or with private consultants, vendors or contractors, for official purposes related to the business of Putnam County, provided that such sharing is approved by the County Attorney and further provided that such records are conspicuously marked "CONFIDENTIAL" prior to sharing[.];
- (5) In conformance with New York State Public Officers Law Article 6-A ("Personal Privacy Protection Law"), in response to a written request from a data subject for a record reasonably described pertaining to that data subject; and
- (6) Pursuant to any circumstance under which protections would be afforded to Putnam County employees by New York State Labor Law Article 20-C ("Retaliatory Action By Employers").

Section 3.

These amendments to the Putnam County Code shall take effect immediately upon their filing with the NYS Secretary of State.

BY POLL VOTE: