



FINANCIAL DISCLOSURE LAW

by

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A. Introduction

Since 1975 the City has required, currently in section 12-110 of the Administrative Code, that certain of its public servants file reports of their financial assets and liabilities and the financial assets and liabilities of their immediate families. In 1987 the State of New York enacted the Ethics in Government Act, mandating that the City, effective January 1, 1991, have a financial disclosure law “at least as stringent in scope and substance” as the New York State financial disclosure law.¹ To comply with that state mandate the City amended section 12-110 to increase substantially the scope of its financial disclosure form and to require that financial disclosure reports be filed with the Conflicts of Interest Board, instead of with the City Clerk’s office, as had theretofore been the case. Section 12-110, as well as the City Charter, empowers the Board to administer and enforce the financial disclosure law,² the constitutionality of which has been upheld by the federal court.³

In 2003, at the request of the Board, section 12-110 was radically revised and completely reorganized. Among the major changes in that revision (Local Law 43 of 2003) were:

- The elimination of salary, and membership in the Management Pay Plan in titles M1 to M3, as criteria for filing;
- The addition of policymaking authority as a criterion for filing;
- The addition of the District Attorney offices, Special Narcotics Prosecutor Office, and Industrial Development Agency to the list of agencies subject to section 12-110;
- The addition of a requirement that write-in candidates for elective City office and candidates filling vacancies file financial disclosure reports;

- The establishment of a single period for determining whether an employee is required to file a financial disclosure report, except in the case of “contract filers” (“contract filers” are discussed in Section C(7) below);
- The elimination of the requirement that agencies separately notify their “contract filers” by December 31 of their obligation to file;
- The transfer of the final determination as to which employees are “contract filers” from the Department of Investigation to the Board;
- The authorization and mandating of electronic filing;
- The requirement that Category of Amount B and C be tied to the definition of “ownership interest” in Chapter 68;
- A requirement that filers leaving City service meet their financial disclosure obligations before receiving their final paycheck and/or lump sum payments;
- The elimination of the requirement that filers leaving City service before May 1 must file two separate reports (one for the preceding calendar year and one for the current calendar year);
- The addition of safety and security as grounds for withholding from public inspection information in a financial disclosure report;
- An increase in the late filing fine from \$100 to a minimum of \$250 and a maximum of \$10,000;
- A provision making it a misdemeanor to intentionally and willfully disclose confidential information contained in a financial disclosure report.

These changes reduced the number of filers from over 13,000 in 2003 to less than 8,000 in 2004. In addition, Local Law 43 amended the campaign finance law to mandate that candidates file all required financial disclosure statements with the Board and pay any outstanding financial disclosure fines before receiving matching funds from the Campaign Finance Board.

B. Purpose

The purpose of the financial disclosure law is to provide accountability by public servants and to help ensure that no prohibited conflicts exist between the public servant’s official duties and private interests. Thus, it encourages open and honest government and allows City residents to trust the men and women who serve them. Specifically, financial disclosure reports reveal potential conflicts of interest before they arise; focus the attention of the filer, the media, and the public at least once each year on the conflicts of interest law and on potential violations of that law; and provide a means by which to check that the filer recuses himself or herself when a conflict of interest actually arises.

C. Who Must File a Financial Disclosure Report

The financial disclosure law applies to all agencies of the City, including, for these purposes, agencies such as the Health and Hospitals Corporation, New York City Housing

Authority, county administrators, New York City Industrial Development Agency, offices of the District Attorneys and Special Narcotics Prosecutor, and Department of Education.⁴ Generally, high-level officials and certain other employees at a significant risk for conflicts of interest must file financial disclosure reports pursuant to section 12-110(b). These officials and employees include:

1. Elected City officials and candidates for elective City office (Mayor, Comptroller, Public Advocate, Borough Presidents, District Attorneys, and Council Members);⁵
2. Agency Heads, Deputy Agency Heads, and Assistant Agency Heads;⁶
3. Members of boards and commissions who are entitled to compensation (even if they refuse the compensation);⁷
4. City employees (but not officers) who hold a policymaking position;⁸
5. Members of the Management Pay Plan in title M4 or higher;⁹
6. Employees of the City Council, District Attorneys offices, and Special Narcotics Prosecutor's Office whose responsibilities involve the independent exercise of managerial or policymaking functions;¹⁰
7. City employees who during the preceding calendar year negotiated, authorized, or approved contracts, leases, franchises, revocable consents, concessions, or applications for zoning changes, variances, or special permits (the Board refers to such filers as "contract filers").¹¹

Section 12-110 also requires filing by "local political party officials" (essentially defined as county leaders receiving compensation and/or reimbursement of \$30,000 or more).¹²

A City employee is deemed to hold a "policymaking position" for purposes of the financial disclosure law if the employee is charged with substantial policy discretion within the meaning of the Board rule defining that term for purposes of the City Charter provisions restricting such public servants from holding certain political party offices and engaging in certain political fundraising.¹³ The Board has also promulgated a rule defining those employees who are deemed to have duties that involve the negotiation, authorization, or approval of contracts, leases, and so forth, that is, who are "contract filers."¹⁴

In addition, by amendment to New York State law, tax assessors are now required to file financial disclosure reports with the Board, even if the tax assessors do not fall into any other filing category.¹⁵ Also by amendment to New York State law, members (whether compensated or not), officers, and employees of the New York City Housing Development Corporation must file financial disclosure reports with the Board.¹⁶

Mayoral Executive Order 91 of 1986 requires additional financial disclosure by approximately half of the public servants who file with the Board. These additional financial disclosure reports are filed with the City's Department of Investigation. This additional report, no portion of which is available to the public, is wholly separate from the report filed with the Board under Administrative Code § 12-110. The public servants who file a financial disclosure report with the Department of Investigation must append to that report a copy of the financial disclosure report they filed with the Board.

D. Procedures for Filing Financial Disclosure Reports

1. Where the Reports are Filed and How Long They are Kept

By law, financial disclosure reports are filed with the Conflicts of Interest Board.¹⁷ The Financial Disclosure Unit of the Conflicts of Interest Board interprets, administers, and enforces the financial disclosure law. Specifically, the unit is responsible for collecting and maintaining the financial disclosure reports, reviewing them for completeness and compliance, notifying non-filers and late filers of their non-compliance, and, in conjunction with Board's Enforcement Unit, initiating enforcement actions if a required filer fails to file or fails to pay a late filing fine (see Section H below). The Financial Disclosure Unit is also charged with reviewing financial disclosure reports for possible conflicts of interest.¹⁸

Financial disclosure reports are maintained on file by the Board for a period of six years from December 31 of the calendar year to which the report relates; if, however, a report is filed late, it is maintained on file for a least one year after filing. The reports are then destroyed, unless an investigation of the filer or a request for public inspection of the report is pending.¹⁹

2. When the Reports are Filed

In April of each year, each agency submits to the Financial Disclosure Unit a final list of the agency's required filers. Before submitting that list, the head of the agency must determine, subject to Board review, which agency employees hold a policymaking position or are "contract filers." The District Attorneys, Special Narcotics Prosecutor, and Council Speaker similarly must determine, subject to Board review, which employees in their agencies have responsibilities involving the independent exercise of managerial or policymaking functions, as well as those agencies' "contract filers." Except in the case of "contract filers," an employee must file a financial disclosure report if he or she fell within any of the categories for filing from January 1 of the preceding calendar year up until the date of filing. An employee must file as a "contract filer" if the employee had any such responsibilities at any time during the preceding calendar year.²⁰ Thus, for example, a employee who was an Agency Chief Contracting Officer from January 1 to September 15 of the preceding calendar year must file a financial disclosure report as a "contract filer," even though at the time of filing he or she has no contracting responsibilities. So, too, an employee who is promoted to a managerial title M4 on April 15 of

the filing year must file a report, even if he or she fell into none of the filing categories during the preceding calendar year. Employees may file an appeal contesting their agency head's determination that they must file a financial disclosure report.²¹

Except in the case of candidates for elective City office and local political party officials, financial disclosure reports are filed each year on May 1 (with a seven-day grace period). If May 1 falls on a Saturday, Sunday, or public holiday, then the reports are due on the next business day.²² Pursuant to section 12-110(b)(2), candidates for elective City office must file their financial disclosure reports on or before the last date for filing designating petitions pursuant to the Election Law. Local political party officials required to file a financial disclosure report with the Board must do so by May 15.²³ (Currently no local political party officials file with the Board.)

If a person who is required to file a financial disclosure report leaves City service, he or she must also file a report for that part of the last year in which he or she was a public servant. This report is due within 60 days after the employee or official leaves City service or by May 1, whichever comes first.²⁴ If the filer leaves City service before May 1, then he or she files a single report covering the period from January 1 of the preceding calendar year to the last day of his or her City service. For example, an employee who leaves City service on March 15, 2004, will be required to file by May 1, 2004, a single report covering the period from January 1, 2003, to March 15, 2004. A City employee who leaves City service on November 29, 2004, will be required to file a financial disclosure report covering the period from January 1, 2004, to November 29, 2004, within 60 days after the last day the employee worked, that is, by January 28, 2005.

Filing a financial disclosure report more than one week after the due date subjects the late filer to a minimum late fine of \$250 and a maximum late fine of \$10,000; in addition, within two weeks after the filing was due, the Board must inform the filer's agency and the Commissioner of Investigation of the failure to file.²⁵ A public servant required to file a financial disclosure report who leaves City service may not receive his or her final paycheck and/or any lump sum payments until he or she has filed all required financial disclosure reports – including any past due reports – and paid any required financial disclosure fines.²⁶ Similarly, a candidate for elective City office may not receive his or her matching funds from the Campaign Finance Board until the candidate has complied with the financial disclosure law by filing all required financial disclosure reports with the Board, including any past due reports, and paying any required financial disclosure fines.²⁷

3. Extensions

Pursuant to section 12-110(c)(4), an extension of time to file a financial disclosure report may be obtained if the filer can show justifiable cause or undue hardship. Justifiable causes would include serious illness of the public servant, death of a close family member, absence from the office because of military service, or an extension that has been granted to the

individual for filing his or her personal income tax return. Vacations, attendance at conferences or meetings, and scheduled or voluntary absences from work are not grounds for an extension.²⁸

Pursuant to Board Rules § 1-08, a request for an extension of time within which to file a financial disclosure report must be submitted in writing to the Board no later than April 15 of the year in which such a report is to be filed, where the report is due May 1; if the report is due at some other date, then the request for an extension must be submitted at least 15 days before the due date. The Board will not grant an extension of time to file a financial disclosure report due to justifiable cause or undue hardship for a period greater than four months from the original date the report was due.²⁹

4. Amendments

A filer may amend his or her financial disclosure report at any time by submitting the amendment on a form obtained from the Board. Only the person filing the report may amend it.³⁰

5. Electronic Filing of Financial Disclosure Reports

As amended by Local Law 43 of 2003, section 12-110 mandates that financial disclosure reports be filed electronically beginning January 1, 2006.³¹ The Department of Information Technology and Telecommunications is currently developing for the Board an electronic filing system for completing and filing financial disclosure reports online. Volunteer filers will file electronically in a pilot program in 2004 and 2005. Electronic filing will save both filers and City agencies substantial time and will offer more security and confidentiality than the current manual filing system. In particular, beginning with the second year, electronic filers will need only to update their previous year's report rather than complete an entirely new report.

E. What Kinds of Information are Requested

Financial disclosure reports generally include financial information from the *previous* calendar year (*e.g.*, a report filed in 2004 covers information from calendar year 2003; reports filed in 2003 cover information from calendar year 2002). Filers are required to list certain basic information about their assets and liabilities so that the public and the Board may determine where the filer's potential conflicts of interest lie. For example, if an official's husband is a builder, that information must be disclosed on the official's financial disclosure report because the official may have a conflict of interest if the City deals with the husband's firm.

Specifically, filers must disclose: City and non-City income; City and non-City employment and businesses; regulated professions; positions held; deferred income; reimbursement of expenses; gifts received; assignments of income and transfers of interests; agreements with former and future employers; interests in government contracts; interests in trusts and estates and other beneficial interests; investments in businesses; interests in securities

and real estate; and money owed by and to the public servant. Some of that information must also be supplied for the public servant's spouse, or domestic partner, and unemancipated children. Whenever a question requires a value or amount to be reported, the filer lists only a category of value or amount, ranging from Category A (\$1,000 to under \$5,000) to Category G (\$500,000 or more), not the actual value or amount.³² The 2003 amendments to section 12-110 tied Category B (\$5,000 to under \$35,000) and C (\$35,000 to under \$60,000) to the definition of "ownership interest" in Chapter 68, thus permitting the Board to determine whether a filer's outside ownership interest violates the Charter.³³

Since, as noted above, New York State law mandates the scope of the City's financial disclosure form, the scope of that form may not be changed without state authorization. The Board is seeking an amendment to state law, authorizing the Board to reduce the scope of the City's financial disclosure form.³⁴

F. Public Access to Financial Disclosure Reports

The Board is required, pursuant to section 12-110(e), to make certain portions of financial disclosure reports available for public inspection. A copy of the public portions of the report may be obtained for \$5.00. Filers may also request a copy of their own reports (including both public and confidential portions) for a fee of \$9.00. Requests to inspect reports must be made in writing and must include the filer's name and agency, the filing years, and the name and address of the requestor. The requestor may pick up the report at the Board's offices after completing the request form and presenting photo identification. The Board does not fax, mail, or email copies of reports.

The Board is required to notify the filer each time his or her report is requested; the notification must include the name of the requestor. No such notification is required, however, if the request to examine the report is made by the inspector general of the filer's agency or by the Commissioner of Investigation.³⁵ The Board will also produce a full copy of a report (including the confidential portions) to a grand jury or for use in a criminal trial, but only pursuant to a court-ordered subpoena. The Board does not produce the confidential portions of reports for use in civil proceedings but instead moves (thus far always successfully) to quash any subpoena seeking those portions of a financial disclosure report for such purposes. The intentional and willful disclosure of confidential information contained in a financial disclosure report is a misdemeanor.³⁶

G. Confidentiality

1. What Kind of Information is Deemed Confidential

The filer's home address is withheld from public inspection, unless the home is co-owned with a non-relative. The filer's home telephone number, Social Security number, and marital status and the names of the filer's spouse, or domestic partner, and children are also withheld

from public inspection. Financial information pertaining solely to the filer's spouse or domestic partner or unemancipated children is also withheld, except information about assets that are jointly held with the filer or unless the Board determines that the information involves an actual or potential conflict of interest on the part of the person filing.³⁷ As discussed above, the Department of Investigation and other law enforcement agencies are entitled to the entire report.

2. Requests for Privacy

Pursuant to section 12-110(e), at the time the report is filed or at any time thereafter, except when a request to inspect the report is pending, a filer may request, in writing, that the Board withhold certain items in the report from public inspection. The request for privacy must show that public inspection of the item would be an unwarranted invasion of the filer's privacy or a risk to a person's safety or security. The Board will then review the request, in view of the factors set forth in the law. However, it should be noted that the Board rarely grants privacy requests, except where safety or security is at issue. Also, the Board does not rule on a privacy request unless or until a request to inspect the filer's report is made. Pursuant to Article 78 of the New York State Civil Practice Law and Rules, a filer may seek judicial review of the denial or partial denial of any privacy request.

H. Penalties for Failure to File, for Failure to Pay a Late Fine, or for Filing a Report Containing False Statements

Pursuant to section 12-110(g)(2), any intentional violation of the financial disclosure law, including a failure to file, a failure to include assets or liabilities, or a misstatement of assets or liabilities, is a misdemeanor punishable by imprisonment for not more than one year or by a fine of up to \$1,000, or both. An intentional violation is also grounds for disciplinary penalties, including removal from office. In addition, any intentional violation of the law can subject the person required to file the report to assessment by the Conflicts of Interest Board of a civil penalty of up to \$10,000.

If the filer files late, that is, more than one week after the due date, the late filer, as noted above, is subject to a minimum fine of \$250 and a maximum fine of \$10,000. Factors to be considered by the Board in determining the amount of the late fine include, but are not limited to, the person's failure in prior years to file a report in a timely manner and the length of the delay in filing.³⁸ If the filer fails to pay the late fine, that failure is an intentional violation of the financial disclosure law, punishable by a civil fine of up to \$10,000.³⁹

Also, as noted above, a public servant required to file a financial disclosure report who leaves City service may not receive his or her final paycheck and/or any lump sum payments until he or she has filed all required financial disclosure reports – including any past due reports – and paid any required financial disclosure fines.⁴⁰ So, too, a candidate for elective City office may not receive his or her matching funds from the Campaign Finance Board until the candidate has complied with the financial disclosure law by filing all required financial disclosure reports

with the Board, including any past due reports, and paying any required financial disclosure fines.⁴¹ Finally, as noted above, the intentional and willful disclosure of confidential information contained in a financial disclosure report is a misdemeanor.⁴²

¹ 1987 N.Y. Laws ch. 813, § 14, codified at NYS Gen. Mun. Law § 811(1)(a).

² Ad. Code §§ 12-110(a)(3), (b)-(g); NYC Charter § 2603(d).

³ *See Barry v. City of New York*, 712 F.2d 1554 (2d Cir. 1983) (upholding the constitutionality of Local Law 48 of 1979, the predecessor to Ad. Code § 12-110).

⁴ Ad. Code § 12-110(a)(2).

⁵ Ad. Code §§ 12-110(b)(1)(a), (b)(2).

⁶ Ad. Code § 12-110(b)(3)(a)(1).

⁷ Ad. Code § 12-110(b)(3)(a)(1).

⁸ Ad. Code § 12-110(b)(3)(a)(3).

⁹ Ad. Code § 12-110(b)(3)(a)(3).

¹⁰ Ad. Code § 12-110(b)(3)(a)(2).

¹¹ Ad. Code § 12-110 (b)(3)(a)(4).

¹² Ad. Code §§ 12-110(a)(6), (b)(1)(b).

¹³ *See Rules of the Conflicts of Interest Board (“Board Rules”), Vol. 12, Title 53, RULES OF THE CITY OF NEW YORK §§ 1-02 and 1-14; Charter §§ 2604(b)(12) and (b)(15).*

¹⁴ Board Rules § 1-15.

¹⁵ NYS Real Prop. Tax Law §§ 334(3), 336, as added by 2003 N.Y. Laws ch. 548

¹⁶ NYS Priv. Hous. Fin. Law § 653(2)(b), as amended by 2003 N.Y. Laws ch. 494.

¹⁷ Charter § 2603(d)(1); Ad. Code § 12-110(b).

¹⁸ Charter § 2603(d)(2).

¹⁹ Ad. Code § 12-110(f); Board Rules § 1-10(b).

²⁰ Ad. Code §§ 12-110(b)(3)(a), (c)(1)-(c)(3).

²¹ Ad. Code § 12-110(c)(2).

²² Ad. Code §§ 12-110(b)(1)(a), (b)(3)(a). *See also* NYS Gen. Constr. Law § 25-a.

²³ Ad. Code § 12-110(b)(1)(b). *See also* NYS Pub. Off. Law §§ 73(1)(k), 73-a(2)(a).

²⁴ Ad. Code §§ 12-110(b)(3)(b)(1), (b)(3)(b)(3).

²⁵ Ad. Code § 12-110(g)(1).

²⁶ Ad. Code § 12-110(b)(3)(b)(2).

²⁷ Ad. Code § 3-703(1)(m), as added by Local Law 43 of 2003.

²⁸ Board Rules § 1-08(a)(2).

²⁹ Board Rules §§ 1-08(b)(1), (c)(1).

³⁰ Ad. Code § 12-110(c)(5).

³¹ Ad. Code § 12-110(b).

³² Ad. Code § 12-110(d).

³³ Ad. Code § 12-110(d)(16). *See also* Charter § 2601(16), as amended by Board Rules § 1-11; Charter § 2604(a)(1).

³⁴ *See* NYS Gen. Mun. Law § 811(1)(a); NYC Conflicts of Interest Board, 2003 ANNUAL REPORT, at 13, 33-34, 39-44..

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- ³⁵ Ad. Code § 12-110(e)(2). *See also* Report of the Committee on Standards and Ethics on Intro. No. 711-A of 1979, Minutes, at 1870, 1871 (stating that the filer must be provided with the identity of the requester).
- ³⁶ Ad. Code § 12-110(g)(3).
- ³⁷ Ad. Code § 12-110(e)(1)(c).
- ³⁸ Ad. Code § 12-110(g)(1).
- ³⁹ *See* Ad. Code § 12-110(g)(2); *COIB v. Sixty-Two City Employees*, OATH Index Nos. 593/94, et al. (April 8, 1994).
- ⁴⁰ Ad. Code § 12-110(b)(3)(b)(2).
- ⁴¹ Ad. Code § 3-703(1)(m), as added by Local Law 43 of 2003.
- ⁴² Ad. Code § 12-110(g)(3).

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