

## **ANNUAL DISCLOSURE LAW**

by

**Julia Davis**  
**Director of Annual Disclosure & Special Counsel**  
**NYC Conflicts of Interest Board**

### **A. Introduction**

Since 1975 the City has required, currently in section 12-110 of the Administrative Code,<sup>1</sup> that certain of its public servants file reports of their financial assets and liabilities and outside activities as well as those of their immediate families. Section 12-110, as well as Chapter 68 of the City Charter, empowers the Board to administer and enforce the annual disclosure law,<sup>2</sup> the constitutionality of which has been upheld by the federal court.<sup>3</sup> In 2016, the City Council enacted legislation<sup>4</sup> that amended the City's annual disclosure law in a significant respect; this change is discussed herein.

### **B. Purpose**

The purpose of the annual 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 promotes public confidence in public servants. Specifically, annual 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 ensure that the filer recuses himself or herself when a conflict of interest actually arises.

### **C. Who Must File an Annual Disclosure Report**

The annual disclosure law applies to all agencies of the City, including, for these purposes, agencies such as the Health and Hospitals Corporation, the New York City Housing Authority, Public Administrators, New York City Industrial Development Agency, offices of the District Attorneys and Special Narcotics Prosecutor, and Department of Education.<sup>5</sup> Generally, high-level officials and certain other employees at a significant risk for conflicts of interest must file annual 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);<sup>6</sup>
2. Agency Heads, Deputy Agency Heads, and Assistant Agency Heads;<sup>7</sup>
3. Members of City policymaking boards and commissions, whether compensated or not;<sup>8</sup>
4. City employees who hold a policymaking position;<sup>9</sup>
5. City employees who are paid in accordance with the Mayor's Management Pay Plan at level M4 or higher;<sup>10</sup>
6. Employees of the City Council, the Mayor's Office, District Attorneys' offices, and Special Narcotics Prosecutor's Office, or of any agency that does not use M-Level Mayor's Management Pay Plan indicators, whose responsibilities involve the independent exercise of managerial or policymaking functions;<sup>11</sup> and
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").<sup>12</sup>

Section 12-110 also requires filing by "local political party officials" (essentially defined as county leaders receiving annual compensation and/or reimbursement of \$30,000 or more).<sup>13</sup>

A City employee is deemed to hold a "policymaking position" for purposes of the annual disclosure law if the employee is charged with substantial policy discretion within the Board's definition of 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.<sup>14</sup> 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."<sup>15</sup>

In addition, by amendment to New York State law, tax assessors are required to file annual disclosure reports with the Board, even if they do not fall into any other filing category.<sup>16</sup> 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 annual disclosure reports with the Board.<sup>17</sup> The City's annual disclosure law requires all persons to file with the Board who are mandated to do so by state law.<sup>18</sup> New York State law, specifically the Public Authorities Accountability Act ("PAAA"), requires filing by board members, officers, and employees of local public authorities, such as City-affiliated not-for-profit corporations,

industrial development agencies, and public benefit corporations.<sup>19</sup> A 2012 amendment to section 12-110 permits the filing of a new, and shorter, report by PAAA filers.<sup>20</sup>

#### **D. Department of Investigation Filers**

Mayoral Executive Order 91 of 1986 (“EO91”) requires additional disclosure by approximately half of the public servants who file with the Board. These reports are filed with the City’s Department of Investigation, and, since 2007, they are accessed by filers through the COIB electronic filing application. COIB cannot view a filer’s EO91 report.

#### **E. Procedures for Filing Annual Disclosure Reports**

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

By law, annual disclosure reports are filed with the Conflicts of Interest Board.<sup>21</sup> The Annual Disclosure Unit of the Conflicts of Interest Board interprets, administers, and enforces the annual disclosure law. Specifically, the Unit is responsible for collecting and maintaining the annual disclosure reports, reviewing them for completeness and compliance, notifying non-filers and late filers of their non-compliance, and initiating enforcement actions if a required filer fails to file or fails to pay a late filing fine. (*See* Section I below.) The Annual Disclosure Unit is also charged with reviewing annual disclosure reports for possible conflicts of interest.<sup>22</sup>

Also by law, annual 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 at 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.<sup>23</sup>

##### **2. When the Reports are Filed**

Each City agency annually submits to the Annual 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, Mayor’s Office, 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” and policymakers, an employee must file an annual 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.<sup>24</sup> An employee must file as a “contract filer” if the employee had any such responsibilities at any time during the preceding calendar year.<sup>25</sup> Thus, for example, an employee who was an

Agency Chief Contracting Officer from January 1 to September 15 of the preceding calendar year must file an annual 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 position where he or she is a policymaker or is paid in accordance with the Mayor’s Management Pay Plan at level M4 or higher on the date designated for filing must file a report, even if he or she fell into none of the filing categories during the preceding calendar year.

Except in the case of candidates for elective City office, local political party officials, and tax assessors, annual disclosure reports are due during the annual filing period (with a seven-day grace period after the filing deadline). Pursuant to section 12-110(b)(2), candidates for elective City office must file their annual disclosure reports on or before the last date for filing designating petitions pursuant to the Election Law. Local political party officials required to file an annual disclosure report with the Board must do so by May 15.<sup>26</sup> Tax assessors are also required to file by May 15.<sup>27</sup>

If a person who is required to file an annual 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 the date designated for filing, whichever comes first.<sup>28</sup> If the filer leaves City service before the date designated for filing, 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, 2016, would be required to file, by the date designated for filing in 2016, a single report covering the period from January 1, 2015, to March 15, 2016. A City employee who leaves City service on November 29, 2016, will be required to file an annual disclosure report covering the period from January 1, 2016, to November 29, 2016, within 60 days after the last day the employee worked, that is, by January 28, 2017.

Filing an annual disclosure report more than one week after the due date subjects the late filer to a late fine ranging from a minimum of \$250 to a maximum 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.<sup>29</sup> In addition, within two months after the filing due date, the Board must inform the filer’s agency and the Commissioner of Investigation of the failure to file.<sup>30</sup> A public servant required to file an annual 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 annual disclosure reports – including any past due reports – and paid any required annual disclosure fines.<sup>31</sup> 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 annual disclosure law by filing all required annual disclosure reports with the Board, including any past due reports, and paying any required annual disclosure fines.<sup>32</sup>

### **3. Extensions**

Pursuant to section 12-110(c)(4), an extension of time to file an annual disclosure report may be obtained if the filer can show justifiable cause or undue hardship. Justifiable cause 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.<sup>33</sup>

Pursuant to Board Rules § 1-08, a request for an extension of time within which to file an annual disclosure report must be submitted in writing to the Board no later than 15 days before the filing due date.<sup>34</sup> The Board will not grant an extension of time to file an annual disclosure report due to justifiable cause or undue hardship for a period greater than four months from the original date the report was due.<sup>35</sup>

### **4. Appeals**

Employees may file an appeal contesting their agency head's determination that they must file an annual disclosure report.<sup>36</sup> Pursuant to an agreement among the City, the Board, and DC 37,<sup>37</sup> an employee whom an agency has designated as a required filer of an annual disclosure report may contest that designation by appealing first to the agency and, if that appeal results in an unfavorable decision, then to the Board. If granted on default for the agency's failure to abide by the required procedures, the employee does not file for that calendar year and the agency may place the employee on the list of required filers for the following calendar year. If the appeal is granted on the merits, the employee is excused from the filing requirements "until or unless the employee's title, position duties, or responsibilities change such that he or she should be a required filer."<sup>38</sup> If the Board denies the appeal, the employee is required to file an annual disclosure report.<sup>39</sup> An employee's failure to abide by the required procedures waives the right to appeal absent a showing of good cause for the failure.<sup>40</sup>

### **5. Amendments**

A filer may electronically amend his or her annual disclosure report at any time. Only the person filing the report may amend it.<sup>41</sup>

### **6. Electronic Filing of Annual Disclosure Reports**

Section 12-110(b) of the New York City Administrative Code mandates that annual disclosure reports be filed electronically,<sup>42</sup> which nearly all required filers do.<sup>43</sup> The filers can choose to access the program from any computer with internet access and can complete the filing at a place and time of their choosing. Most filers appreciate the fact that the process has been streamlined so that they only have to answer questions that pertain to them, merely update

information from the previous year's report, and electronically submit the reports directly to the Board.

## **F. What Information is Requested**

Annual disclosure reports generally include financial information from the *previous* calendar year (e.g., a report filed in 2016 covers information from calendar year 2015; reports filed in 2015 cover information from calendar year 2014). 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 annual 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; payments of expenses; gifts received (both gifts between \$50 and \$1,000 from donors with business dealings with the City and gifts of \$1,000 or more regardless whether the donor had City business dealings); 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.

For these filers, whenever a question requires a value or amount to be reported, the filer lists only a category of value or amount (e.g., ranging from \$1,000 to under \$5,000), not the actual value or amount.<sup>44</sup>

PAAA filers and uncompensated members of City policymaking boards and commissions<sup>45</sup> file a shorter paper form consisting of only five questions requiring the following information:

- (1) Any paid or unpaid positions with any City agency;
- (2) Outside employers and businesses, *but only if* the employer or business does business with the filer's entity or City agency, if any;
- (3) Investments of 5% or \$10,000, *but only if* the company does business with the filer's entity or City agency, if any;
- (4) Gifts, *but only if* the donor does business with the filer's entity or City agency, if any; and

(5) Real property the filer owns or rents in the City, *excluding* property where the filer or a relative lives.<sup>46</sup>

## **G. Public Access to Annual Disclosure Reports**

The Board is required, pursuant to section 12-110(e), to make certain portions of annual disclosure reports available for public inspection. Inspection is free, while a copy of the public portions of the report may be obtained for a minimal fee. Requests to inspect reports must be made in writing and must include the filer's name, the filing years, and the name and address of the requester; procedures for requesting reports and the request form are posted on the Annual Disclosure page of the Board's website at <http://on.nyc.gov/1jKsuba> and at <http://on.nyc.gov/1mIJYoi>. The requester must pick up the report at the Board's offices after completing the request form and presenting photo identification. Lists of the public questions on an annual disclosure report are posted on the Board's website at: <http://on.nyc.gov/1shkTVC> (reports filed before 2014) and <http://on.nyc.gov/1IFRZgi> (reports filed in or after 2014).

The Board is required to notify the filer of the name of the requester each time his or her report is viewed. In early 2016, the City Council enacted legislation that eliminates this notice requirement for elected officials and requires the Board, commencing in 2017 with the filing of 2016 annual disclosure reports, to post the reports of elected officials on its website.<sup>47</sup>

Notification of the identity of the requester of an annual disclosure report is not required if the request to examine the report is made by a law enforcement agency.<sup>48</sup> The Board will produce a full copy of a report (including the confidential portions) to a criminal law enforcement agency for use in connection with a law enforcement function upon receipt of a court-ordered subpoena.<sup>49</sup> 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 an annual disclosure report for such purposes. The intentional and willful unlawful disclosure of confidential information contained in an annual disclosure report is a misdemeanor.<sup>50</sup>

## **H. Confidentiality**

### **1. What Information is Deemed Confidential**

The filer's home address is always withheld from public inspection. The filer's home telephone number, marital status, and the names of the filer's spouse, or domestic partner, and children are also withheld from public inspection.<sup>51</sup> However, responses to the new question concerning relatives in City service will be public. 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.<sup>52</sup> As discussed above, law enforcement agencies, such as a police department or a district attorney's office, are given access to the entire report upon presentation of a court-ordered subpoena.

## **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.<sup>53</sup> The request for privacy must show that public inspection of the item would result in an unwarranted invasion of the filer's privacy or a risk to a person's safety or security.<sup>54</sup> The Board will then review the request, in view of the factors set forth in the law. It should be noted, however, that the Board rarely grants privacy requests.<sup>55</sup> Also, the Board does not rule on a privacy request until a request to inspect the filer's report is made. A filer may seek judicial review of the denial or partial denial of any privacy request pursuant to Article 78 of the New York State Civil Practice Law and Rules. The Board may also, *sua sponte*, redact information in any requested report where public inspection of the item would be an unwarranted invasion of personal privacy or a risk to the safety or security of any person, such as a filer's inadvertent reporting of a home address in response to a question contained in the public portion of the report.<sup>56</sup>

### **I. 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 annual 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. The intentional and willful unlawful disclosure of confidential information contained in an annual disclosure report is also a misdemeanor.<sup>57</sup> An intentional violation is also grounds for disciplinary penalties, including removal from office. In addition, any intentional violation of the annual disclosure law, including a failure to pay a late fine, 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.<sup>58</sup>

---

<sup>1</sup> The text of the City's Annual Disclosure Law, contained in section 12-110 of the City's Administrative Code, appears on the Board's website at: <http://on.nyc.gov/236LzK8>. The legislative history of Ad. Code § 12-110 appears on the Board's website at: <http://on.nyc.gov/1dYcd2h>.

<sup>2</sup> Ad. Code §§ 12-110(a)(5), (b)-(g); NYC Charter § 2603(d).

<sup>3</sup> 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).



- 
- <sup>4</sup> Local Law 21 of 2016.
- <sup>5</sup> Ad. Code § 12-110(a)(2).
- <sup>6</sup> Ad. Code §§ 12-110(b)(1)(a), (b)(2).
- <sup>7</sup> Ad. Code § 12-110(b)(3)(a)(1).
- <sup>8</sup> Ad. Code § 12-110(b)(3)(a)(1), as amended by Local Law 58 of 2012 to include uncompensated members of City policymaking boards and commissions to comply with state law mandates.
- <sup>9</sup> Ad. Code § 12-110(b)(3)(a)(3).
- <sup>10</sup> Ad. Code § 12-110(b)(3)(a)(3).
- <sup>11</sup> Ad. Code § 12-110(b)(3)(a)(2).
- <sup>12</sup> Ad. Code § 12-110 (b)(3)(a)(4).
- <sup>13</sup> Ad. Code §§ 12-110(a)(11), (b)(1)(b).
- <sup>14</sup> *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).
- <sup>15</sup> Board Rules § 1-15.
- <sup>16</sup> NYS Real Prop. Tax Law §§ 334(3), 336, as added by 2003 N.Y. Laws ch. 548
- <sup>17</sup> NYS Priv. Hous. Fin. Law § 653(2)(b), as amended by 2003 N.Y. Laws ch. 494.
- <sup>18</sup> Ad. Code § 12-110(b)(3)(a)(7), as added by Local Law 14 of 2006 and amended by Local Law 58 of 2012.
- <sup>19</sup> Public Authorities Law § 2825(3), as amended by the Public Authorities Accountability Act of 2005, 2005 N.Y. Laws ch. 766, § 19. *See also* Ad. Code § 12-110(b)(3)(a)(6).
- <sup>20</sup> Ad. Code § 12-110(d)(3). This is the same form uncompensated members of City policymaking boards and commissions now file.
- <sup>21</sup> Charter § 2603(d)(1); Ad. Code § 12-110(b).
- <sup>22</sup> Charter § 2603(d)(2).
- <sup>23</sup> Ad. Code § 12-110(f); Board Rules § 1-10(b).
- <sup>24</sup> Ad. Code § 12-110(b)(3)(a). Public servants who are policymakers “on the date designated by the board for filing” are required to file an annual disclosure report. Ad. Code § 12-110(b)(3)(a)(1). Public servants who had contracting duties “at any time during the preceding calendar year” must also file. Ad. Code § 12-110(b)(3)(a)(1).
- <sup>25</sup> Ad. Code §§ 12-110(b)(3)(a), (c)(1)-(c)(3).
- <sup>26</sup> Ad. Code § 12-110(b)(1)(b). *See also* NYS Pub. Off. Law §§ 73(1)(k), 73-a(2)(a).
- <sup>27</sup> Real Prop. Tax Law §§ 336(3), as added by 2003 N.Y. Laws ch. 548.
- <sup>28</sup> Ad. Code §§ 12-110(b)(3)(b)(1), (b)(3)(b)(3).
- <sup>29</sup> Ad. Code § 12-110(g)(1).
- <sup>30</sup> Ad. Code § 12-110(g)(1).
- <sup>31</sup> Ad. Code § 12-110(b)(3)(b)(2).
- <sup>32</sup> Ad. Code § 3-703(1)(m), as added by Local Law 43 of 2003.
- <sup>33</sup> Board Rules § 1-08(a)(2).
- <sup>34</sup> Board Rules § 1-08(b)(1).
- <sup>35</sup> Board Rules § 1-08(c)(1).
- <sup>36</sup> Ad. Code § 12-110(c)(2).

- 
- <sup>37</sup> See Financial Disclosure Appeals Process.
- <sup>38</sup> Id. at §§ D14; 8A. See also Id. at § E4.
- <sup>39</sup> Id. at § D15.
- <sup>40</sup> Id. at §§ B4, B6.
- <sup>41</sup> Ad. Code § 12-110(c)(5).
- <sup>42</sup> Ad. Code § 12-110(b).
- <sup>43</sup> Tax assessors and candidates for public office file paper reports.
- <sup>44</sup> Ad. Code § 12-110(d). To enable the Board to determine whether a filer's ownership interest violates the Charter, the 2003 amendments to section 12-110 tied the current categories of \$5,000 to under \$40,000 and \$40,000 to under \$60,000 to the definition of "ownership interest" in Chapter 68; those categories are thus automatically changed to reflect changes in that definition. Ad. Code § 12-110(d)(16). See also Charter § 2601(16), as amended by Board Rules § 1-11; Charter § 2604(a)(1).
- <sup>45</sup> Members of City policymaking boards and commissions who are entitled to compensation but refuse it are still required to file the longer electronic annual disclosure report.
- <sup>46</sup> Ad. Code §§ 12-110(d)(2), (3).
- <sup>47</sup> Local Law 21 of 2016.
- <sup>48</sup> 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).
- <sup>49</sup> As the Board's statutory investigator, the Department of Investigation is provided with the full confidential report without a subpoena. See Charter §2603(f).
- <sup>50</sup> Ad. Code § 12-110(g)(3).
- <sup>51</sup> Social security numbers have now been replaced, on both electronic and paper forms, with the filer's employee identification number ("EIN") or other similar identifier.
- <sup>52</sup> Ad. Code § 12-110(e)(1)(d).
- <sup>53</sup> The request must be in writing and set forth the reasons why the information should not be disclosed. Ad. Code § 12-110(e)(1)(a).
- <sup>54</sup> Ad. Code § 12-110(e)(1)(a).
- <sup>55</sup> Ad. Code § 12-110(e)(1)(b).
- <sup>56</sup> Ad. Code § 12-110(e)(1)(e).
- <sup>57</sup> Ad. Code § 12-110(g)(3).
- <sup>58</sup> See Ad. Code § 12-110(g)(2); *COIB v. Sixty-Two City Employees*, OATH Index Nos. 593/94, et al. (April 8, 1994).