

## **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 outside activities as well as those 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.<sup>1</sup> 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,<sup>2</sup> the constitutionality of which has been upheld by the federal court.<sup>3</sup>

### **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 promotes public confidence in public servants. 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 ensure 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.<sup>4</sup> 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);<sup>5</sup>
2. Agency Heads, Deputy Agency Heads, and Assistant Agency Heads;<sup>6</sup>
3. Members of boards and commissions who are entitled to compensation (even if they refuse the compensation);<sup>7</sup>
4. City employees who hold a policymaking position;<sup>8</sup>
5. City employees who are paid in accordance with the Mayor's Management Pay Plan at level M4 or higher;<sup>9</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>10</sup>
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>11</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>12</sup>

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 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>13</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>14</sup>

In addition, by amendment to New York State law, tax assessors are required to file financial disclosure reports with the Board, even if they do not fall into any other filing category.<sup>15</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 financial disclosure reports with the Board.<sup>16</sup> 2006 local law amendments included a catch-all provision that requires persons to file with the Board who are mandated to do so by state law.<sup>17</sup> New York State law, specifically the Public Authorities Accountability Act, also 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>18</sup>

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

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 generated by and filed with the City's Department of Investigation ("DOI"). No portion of the DOI report is available to the public, or even to the Board. Prior to 2007, the DOI report was an entirely separate document from the report filed with the Board under Administrative Code § 12-110. The public servants who filed a financial disclosure report with DOI, therefore, had to append to that report a copy of the financial disclosure report they filed with the Board. As discussed below, in 2007 the two reports were combined in one electronic application, with the DOI report remaining available only to DOI, and not to either the public or the Board.

## **E. 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.<sup>19</sup> 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 initiating enforcement actions if a required filer fails to file or fails to pay a late filing fine (see Section I below). The Financial Disclosure Unit is also charged with reviewing financial disclosure reports for possible conflicts of interest.<sup>20</sup>

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.<sup>21</sup>

### **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.<sup>22</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 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 position where he or she is paid in accordance with the Mayor’s Management Pay Plan at level M4 or higher on April 30 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.<sup>23</sup>

Except in the case of candidates for elective City office and local political party officials, financial disclosure reports are due during the annual filing period (with a seven-day grace period after the filing deadline). If the filing deadline falls on a Saturday, Sunday, or public holiday, then the reports are due on the next business day.<sup>24</sup> 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.<sup>25</sup>

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.<sup>26</sup> 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, 2009, would be required to file by May 1, 2009, a single report covering the period from January 1, 2008, to March 15, 2009. A City employee who leaves City service on November 29, 2009, will be required to file a financial disclosure report covering the period from January 1, 2009, to November 29, 2009, within 60 days after the last day the employee worked, that is, by January 28, 2010.

Filing a financial 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>27</sup> In addition, within two weeks after the filing due date, the Board must inform the filer’s agency and the Commissioner of Investigation of the failure to file.<sup>28</sup> 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.<sup>29</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 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.<sup>30</sup>

### **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 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>31</sup>

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 15 days before the filing 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.<sup>32</sup>

### **4. Amendments**

A filer may amend his or her financial disclosure report at any time electronically. Only the person filing the report may amend it.<sup>33</sup>

### **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.<sup>34</sup> Working with the City's Department of Information Technology & Telecommunications ("DoITT"), the Board has instituted electronic filing for nearly all required filers.<sup>35</sup> The filers can choose to access the program either at work or remotely, for example, from their home computer, and can complete the filing at a place and time of their choosing. The majority of the feedback received from filers, about electronic filing, has been very positive. Most participants appreciate the fact that the process has been streamlined so that they only have to make entries to the questions that pertain to them, and do not have to manually submit their reports to an agency liaison but rather can submit them electronically and directly immediately upon completing the form. Beginning in 2007, the Board required filers to give to their liaison for transmittal to the Board a one-page hard copy signature, which ensures that the filer has in fact signed and submitted the report and which provides the filer a hard copy receipt of filing. The signature page contains no confidential information.

Electronic filing saves both filers and City agencies substantial employee time, offers more security and confidentiality than the previous manual filing system, and substantially decreases the amount of paper utilized by the City. Another advantage is that in the second year of participating in electronic filing, a filer need only update his or her previous year's report rather than complete an entirely new document.

Since 2007, those filers who also have to submit reports to the City's Department of Investigation pursuant to EO91 are able to do so electronically and file one integrated report using COIB's electronic application, rather than filing a hard copy of the COIB report with the City's Department of Investigation.

**F. What Kinds of Information are Requested**

Financial disclosure reports generally include financial information from the *previous* calendar year (e.g., a report filed in 2009 covers information from calendar year 2008; reports filed in 2008 cover information from calendar year 2007). 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; payments 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.<sup>36</sup> The 2003 amendments to section 12-110 tied Category B (\$5,000 to under \$40,000) and C (\$40,000 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.<sup>37</sup>

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.<sup>38</sup> The Board recently obtained an amendment to state law, authorizing the City to reduce the scope of its financial disclosure form.<sup>39</sup> The law will permit different forms for various categories of filers.<sup>40</sup> The City's financial disclosure law will need to be amended to reflect the changes in the state law.<sup>41</sup>

**G. 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 a minimal fee. Filers may also request a copy of their own reports (including both public and confidential portions) for a minimal fee. 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 requester. The requester 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 viewed; the notification must include the name of the requester. No such notification is required, however, if the request to examine the report is made by a law enforcement agency.<sup>42</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. 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.<sup>43</sup>

## **H. 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, marital status, and the names of the filer's spouse, or domestic partner, and children are also withheld from public inspection. (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.) 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>44</sup> As discussed above, law enforcement agencies, such as the Department of Investigation, a police department, or a district attorney's office, are given access 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. It should be noted, however, 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 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. Pursuant to the 2006 amendments, the Board may, sua sponte,

redact information in any requested report where public inspection of the item would be an invasion of personal privacy or a risk to the safety or security of any person.

**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 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. The intentional and willful disclosure of confidential information contained in a financial disclosure report is also a misdemeanor.<sup>45</sup> An intentional violation is also grounds for disciplinary penalties, including removal from office. In addition, any intentional violation of the financial 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>46</sup>

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

<sup>2</sup> Ad. Code §§ 12-110(a)(3), (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> Ad. Code § 12-110(a)(2).

<sup>5</sup> Ad. Code §§ 12-110(b)(1)(a), (b)(2).

<sup>6</sup> Ad. Code § 12-110(b)(3)(a)(1).

<sup>7</sup> Ad. Code § 12-110(b)(3)(a)(1).

<sup>8</sup> Ad. Code § 12-110(b)(3)(a)(3).

<sup>9</sup> Ad. Code § 12-110(b)(3)(a)(3).

<sup>10</sup> Ad. Code § 12-110(b)(3)(a)(2).

<sup>11</sup> Ad. Code § 12-110 (b)(3)(a)(4).

<sup>12</sup> Ad. Code §§ 12-110(a)(6), (b)(1)(b).

<sup>13</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>14</sup> Board Rules § 1-15.

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

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

<sup>17</sup> Ad. Code § 12-110(b)(3)(a)(6), as added by Local Law 14 of 2006.

<sup>18</sup> Public Authorities Law § 2825(3), as amended by the Public Authorities Accountability Act of 2005, 2005 N.Y. Laws ch. 766, § 19.

<sup>19</sup> Charter § 2603(d)(1); Ad. Code § 12-110(b).

<sup>20</sup> Charter § 2603(d)(2).

<sup>21</sup> Ad. Code § 12-110(f); Board Rules § 1-10(b).

<sup>22</sup> Ad. Code §§ 12-110(b)(3)(a), (c)(1)-(c)(3).

<sup>23</sup> Ad. Code § 12-110(c)(2).

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- <sup>24</sup> Ad. Code §§ 12-110(b)(1)(a), (b)(3)(a). *See also* NYS Gen. Constr. Law § 25-a.
- <sup>25</sup> Ad. Code § 12-110(b)(1)(b). *See also* NYS Pub. Off. Law §§ 73(1)(k), 73-a(2)(a).
- <sup>26</sup> Ad. Code §§ 12-110(b)(3)(b)(1), (b)(3)(b)(3).
- <sup>27</sup> Ad. Code § 12-110(g)(1).
- <sup>28</sup> Ad. Code § 12-110(g)(1).
- <sup>29</sup> Ad. Code § 12-110(b)(3)(b)(2).
- <sup>30</sup> Ad. Code § 3-703(1)(m), as added by Local Law 43 of 2003.
- <sup>31</sup> Board Rules § 1-08(a)(2).
- <sup>32</sup> Board Rules §§ 1-08(b)(1), (c)(1).
- <sup>33</sup> Ad. Code § 12-110(c)(5).
- <sup>34</sup> Ad. Code § 12-110(b).
- <sup>35</sup> Tax assessors and candidates for public office file paper reports.
- <sup>36</sup> Ad. Code § 12-110(d).
- <sup>37</sup> Ad. Code § 12-110(d)(16). *See also* Charter § 2601(16), as amended by Board Rules § 1-11; Charter § 2604(a)(1).
- <sup>38</sup> *See* NYS Gen. Mun. Law § 811(1)(a).
- <sup>39</sup> 2008 N.Y. Laws ch. 41, effective April 7, 2008.
- <sup>40</sup> Gen. Mun. Law § 811(1)(a-1), as added by 2008 N.Y. Laws ch. 41.
- <sup>41</sup> *See* New York City Council Intro. 0782-2008, the Board's proposed amendments to Section 12-110 so that it complies with 2008 N.Y. Laws ch. 41.
- <sup>42</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>43</sup> Ad. Code § 12-110(g)(3).
- <sup>44</sup> Ad. Code § 12-110(e)(1)(c).
- <sup>45</sup> Ad. Code § 12-110(g)(3).
- <sup>46</sup> *See* Ad. Code § 12-110(g)(2); *COIB v. Sixty-Two City Employees*, OATH Index Nos. 593/94, et al. (April 8, 1994).