

## Chapter 48, ETHICS

[HISTORY: Adopted by the Council of the City of Schenectady 1-25-1971 by L.L. No. 2-1971; amended in its entirety 12-21-1992 by L.L. No. 5-1992 and Ord. No. 92-57. Subsequent amendments noted where applicable.]

### GENERAL REFERENCES

Personnel -- See Ch. 87.

#### § 48-1. Purpose.

The purpose of this chapter is to:

- A. Promulgate a form of annual statement of financial disclosure which is designated to assure disclosure by certain municipal officers and employees and to assure disclosure by elected officials of such financial information as is determined by this City Council.
- B. Continue the use of an authorized form of annual statement of financial disclosure in use on the date such chapter is adopted.
- C. Designate the Board of Ethics of the City of Schenectady as the Board to receive and review such filing.

#### § 48-1.1. Additional scope and purpose.

Pursuant to the provisions of § 806 of the General Municipal Law, the Council of the City of Schenectady recognizes that there are rules of ethical conduct for public officials and employees which must be observed if a high degree of moral conduct is to be obtained in our unit of local government. It is the purpose of this chapter to promulgate these rules of ethical conduct for the officials and employees of the City of Schenectady. The rules of ethical conduct of this chapter, as adopted, shall not conflict with but shall be in addition to any prohibition of Article 18 of the General Municipal Law or any other general or special law relating to ethical conduct and interest in contracts of municipal officials and employees.

#### § 48-2. Enactment.

This chapter is being enacted pursuant to § 811, Subdivision 1, and § 812, Subdivision 3, of the General Municipal Law and any other applicable section of the General Municipal Law of the State of New York and is enacted pursuant to the authority granted therein by the State of New York to the City of Schenectady.

#### § 48-3. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

LOCAL ELECTED OFFICIAL -- An elected official of the city, except Judges or Justices of the Unified Court System.

LOCAL OFFICER OR EMPLOYEE -- The heads (other than local elected officials) of any agency, department, division, council, board, commission or bureau of the City of Schenectady and their deputies and assistants and the officers and employees of the city, departments, divisions, boards, bureaus, commissions or councils who hold policymaking positions, as annually determined by the City of Schenectady and set forth in a written instrument which shall be filed with the Board of Ethics during the month of February; except that the term "local officer or employee" shall not mean a Judge, Justice, officer or employee of the Unified Court System.

RELATIVE -- Such individual's spouse, child, stepchild, stepparent or any person who is a direct descendant of the grandparents of the reporting individual or of the reporting individual's spouse.

SPOUSE -- The husband or wife of the reporting individual unless living separate and apart from the reporting individual with the intention of terminating the marriage or providing for permanent separation or unless separated pursuant to a judicial order, decree or judgment or a legally binding separation agreement.

UNEMANCIPATED CHILD -- Any son, daughter, stepson or stepdaughter who is under the age of 18, unmarried or living in the household of the reporting individual.

#### § 48-3.1. Additional definitions.

As used in this chapter, the following terms shall have the meanings indicated:

INTEREST -- A pecuniary or material benefit accruing to a municipal official or employee; his spouse, minor child or dependent; a firm, partnership or association of which he is a member or employee; a corporation of which he is an officer, director or employee; or a corporation, any stock of which is accrued or controlled directly by him.

MUNICIPAL AGENCY -- The departments within the city and any organization to which functions have been delegated by the city or which performs functions on behalf of the city or which was created as a result of powers vested in the city.

MUNICIPAL OFFICIAL OR EMPLOYEE -- Any officer or employee of the City of Schenectady, whether paid or unpaid, including members of any administrative board, commission or other agency of the city. No person shall be deemed to be a "municipal official or employee" solely by reason of being a civil defense volunteer.

#### § 48-4. Board of Ethics.

- A. A Board of Ethics is established and shall be known as the "City of Schenectady Board of Ethics."
- B. The Board of Ethics shall consist of five members who shall serve five-year terms of office, one such term expiring each year. Members shall be appointed by the Mayor, subject to confirmation by the

City Council. If the Mayor shall fail to appoint the members within 30 days after the establishment of the Board of Ethics or within 30 days after a vacancy occurs on the Board of Ethics, the City Council shall appoint such member or members, as the case may be. Only one member of the Board shall be an officer or employee of the City of Schenectady. In the event that a vacancy occurs prior to the expiration of the five-year term, such vacancy shall be filled for the balance of such term in the same manner as members are appointed to full terms. All members shall reside within the City of Schenectady. All members shall serve without compensation, except that any member who is a City of Schenectady officer or employee shall be entitled to his usual compensation when attending upon the business of the Board during normal working hours.

C. No more than two members of the Board may be affiliated with the same political party. No member of the Board of Ethics may hold an officer's position in any political party, except that such person may be a member of a county committee of a political party. For purposes of this section, "political party" shall mean any political party which appears on the ballot in the last biennial town election. The members shall elect a Chairperson from among themselves and such other officers as may be deemed necessary from time to time.

D. A Board of Ethics member may be removed by the Mayor with the approving consent of not less than five members of the City Council after a finding of substantial neglect of duty, gross misconduct in office, inability to discharge the powers or duties of the office or violation of this chapter after written notice of the charges and an opportunity for reply.

E. The City Clerk shall be the Clerk of the Board of Ethics, and all documents filed with the City Clerk shall be deemed, for the purposes of this chapter, to be filings with the Board of Ethics.

F. The Board of Ethics shall have all the powers and duties as prescribed by Article 18 of the General Municipal Law. The Board of Ethics may adopt and amend such rules or procedures as are appropriate.

#### § 48-5. Disclosure of financial status.

A. Pursuant to Article 18 of the New York State General Municipal Law, the City of Schenectady hereby adopts the following financial disclosure policy: [Amended 3-1-1993 by Ord. No. 93-06]

(1) **Applicability.** The Mayor of the City of Schenectady shall file with the City Clerk, on or before January 1 of each year, a list of the names or the office, title or job classification of those officers and employees who shall be required to file the annual financial disclosure statement pursuant to this chapter. Notwithstanding the foregoing, the officers and employees who will be required to file financial disclosure statements include the Mayor, Deputy Mayor, all department heads, their deputies and assistants, members of all commissions and boards of the City of Schenectady and those employees whose duties are included in General Municipal Law § 813, Subdivision 9(k)(i) through (iv).

(2) **Time of filing.** All financial statements shall be filed on or before April 30 of every year following enactment of this subsection during the term of the city official's office. The time for filing such

statement may be extended pursuant to the Board of Ethics, for justifiable cause and for undue hardship upon application to the Board of Ethics pursuant to the rules and regulation set forth in this chapter and, if applicable, §§ 811, 812 and 813 of the General Municipal Law of the State of New York.

(3) Place and manner of filing. Financial disclosure statements are to be filed with the Schenectady City Clerk. Said statements shall be confidential and shall be made accessible to the general public and to other members of the city officers and employees and City Council, by formal Freedom of Information Law request through the City Clerk's office.EN

(4) Official financial disclosure form. A true copy of the City of Schenectady financial disclosure form shall be on file with the office of the City Clerk and shall contain a statement of financial holdings, assets, liabilities and net worth.

B. In addition to the officers and employees listed in Subsection A above, any local officer or employee who is determined by the City Council to be a policymaker or to perform any of the duties listed in § 48-6A(9)(a) to (d) of this chapter shall be required to file a financial disclosure statement.

C. The designated officers and employees and elected officials shall file with the Board of Ethics a disclosure statement answering each and every question. The statement shall be in the form set forth in Appendix A attached hereto.EN

#### § 48-5.1. Standards of conduct.

Every official or employee of the City of Schenectady shall be subject to and abide by the following standards of conduct:

A. Gifts and favors. No municipal official or employee shall, directly or indirectly, solicit, accept or receive any gift having a value of \$25 or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended or could reasonably be expected to influence him in the performance of his duties or to reward him for any action.

B. Disclosure of confidential information. No municipal official or employee shall disclose confidential information acquired by him in the course of his official duties or use such information to further his personal interests.

C. Compensation for services. No municipal official or employee shall be a party to any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any municipal agency:

(1) Of which he is an officer, member or employee or of any municipal agency over which he has jurisdiction or to which he has the power to appoint any member, officer or employee; or

(2) Whereby compensation is to be dependent or contingent upon any action by such agency with respect to such matters, provided that this subsection shall not prohibit the fixing at any time of fees based upon the reasonable value of services rendered.

D. Disclosure of interests. A municipal official or employee who participates in discussions or gives official opinions on any matters before the City Council, an official board, agency, officer or employee shall publicly disclose in the official record the nature and extent of any direct or indirect financial or other interest he or any member of his family has in such matters, unless he refrains from voting upon or otherwise participating in the matter.

E. Incompatible employment. No municipal official or employee shall engage in, solicit, negotiate for or promise to accept private employment or render services for private interests when such employment or service creates a conflict with or impairs the proper discharge of his official duties. A conflict between public and private employment exists when the private interests being served are subject to regulation by license or permit by the municipality or where the municipal officer or employee is using the powers of his official duties to obtain outside employment.

F. Future employment. No municipal official or employee shall, after the termination of service or employment with such municipality, appear before any board or agency of the City of Schenectady in relation to any case, proceeding or application in which he personally participated during the period of his service or employment or which was under his active consideration.

G. Representing private interests before city agencies. No municipal official or employee shall appear in behalf of private interests before any agency of the city or in any actions or proceedings against the interests of the city or in any litigation to which the city is a party.

H. Seeking special privileges or exemptions. No municipal official or employee shall grant any special consideration, treatment or advantage to any citizen beyond that which is available to every other citizen.

I. Filing a claim against the city. Nothing herein shall be deemed to bar or prevent the timely filing of any claim, account, demand or suit against the City of Schenectady or any agency thereof on behalf of himself or any member of his family arising out of any personal injury or property damage or for any lawful benefit authorized or permitted by law.

#### § 48-5.2. Applicability.

This code shall be operative in all instances covered by its provisions except when superseded by an applicable mandatory, statutory or Charter provision or when the application of such provision is discretionary but deemed more appropriate or desirable.

#### § 48-6. Powers of Board of Ethics.

A. The Board of Ethics shall have the power to:

- (1) Adopt, amend and rescind rules and regulations to govern procedures of the Board of Ethics, which shall include, but not be limited to, the procedure whereby a person who is required to file an annual financial disclosure statement with the Board of Ethics may request an additional period of time within which to file such statement due to justifiable cause or undue hardship; such rules and regulations shall provide for a date beyond which in all cases of justifiable cause or undue hardship no further extension of time will be granted. The Board of Ethics may utilize or modify such rules and regulations or adopt separate rules and regulations for the purposes of Subdivision 1(d) of § 811 of the General Municipal Law.
- (2) Promulgate guidelines to assist the City Board in determining which persons hold policymaking positions for purposes of § 811 and § 812, Subdivision 3, of the General Municipal Law and this chapter.
- (3) Make available forms for annual statements of financial disclosure required to be filed pursuant to this chapter.
- (4) Review completed financial disclosure statements in accordance with the provisions of this chapter, the rules and regulations of the Board of Ethics and any local law, ordinance or Code of Ethics established by the City of Schenectady.
- (5) Receive complaints alleging a violation of this chapter or a violation of the criteria for reporting requirements established by this chapter, any Code of Ethics of the City of Schenectady, local law, ordinance or resolution regarding the filing of completed statements with the Board of Ethics.
- (6) Permit any person required to file a financial disclosure statement to request the Board of Ethics to delete from the copy thereof made available for public inspection one or more items of information which may be deleted by the Board of Ethics upon a finding that the information which would otherwise be required to be disclosed will have no material bearing on the discharge of the reporting person's official duties. If such request for deletion is denied, the Board of Ethics, in its notification of denial, shall inform the person of his or her right to appeal the Board's determination pursuant to the rules governing adjudicatory proceedings and appeals adopted pursuant to this chapter and any applicable section of the General Municipal Law. The Board of Ethics shall promulgate rules and regulations governing the issuance of written decisions in connection with appeals.
- (7) Permit any person required to file a financial disclosure statement to request an exemption from any requirement to report one or more items of information which pertain to such person's spouse or unemancipated children, which item or items may be exempted by the Board of Ethics upon a finding by the majority of the total members of the Board of Ethics without vacancy that the reporting individual's spouse, on his or her own behalf or on behalf of an unemancipated child, objects to providing the information necessary to make such disclosure and that the information which would otherwise be required to be reported will have no material bearing on the discharge of the reporting person's official duties.

(8) Advise and assist any local official in establishing rules and regulations relating to possible conflicts between private interests and official duties of present or former elected officials, local party officials and local officers and employees.

(9) Permit any person who has not been determined by the City Council to hold a policymaking position but who is otherwise required to file a financial disclosure statement to request an exemption from such requirement in accordance with the rules and regulations governing such exemptions. Such rules and regulations shall provide for exemptions to be granted either on the application of the individual or on behalf of persons who share the same job title or employment classification which the Board of Ethics deems to be comparable for purposes of this section. Such rules and regulations may permit the granting of an exemption where, in the discretion of the Board of Ethics, the public interest does not require disclosure and the applicant's duties do not involve the negotiation, authorization or approval of:

(a) Contracts, leases, franchises, revocable consents, concessions, variances, special permits or licenses as defined in § 73 of the Public Officers Law;

(b) The purchase, sale, rental or lease of real property, goods or services or a contract therefor;

(c) The obtaining of grants of money or loans; or

(d) The adoption or repeal of any rule or regulation having the force and effect of law.

(10) Prepare an annual report to the Mayor and the City Council summarizing the activities of the Board of Ethics and recommending changes in the laws governing the conduct of the local elected officials and officers and employees of the city covered by this chapter.

(11) Act as a repository for completed financial disclosure forms filed pursuant to this chapter.

B. Upon certification of a question by the City Council to the Ethics Board, the Board may determine a question common to a class or defined category of persons or items of information required to be disclosed, where determination of the question will prevent undue repetition of requests for exemption or deletion or prevent undue complication in complying with the requirements of this chapter.

C. The Board of Ethics shall inspect all financial disclosure statements filed with the Board of Ethics to ascertain whether any person subject to the reporting requirements of this chapter, a Code of Ethics, local law, ordinance or resolution has failed to file such a statement, has filed a deficient statement or has filed a statement which reveals a possible violation of this chapter, a Code of Ethics, law, ordinance or resolution of the City of Schenectady.

D. The Board of Ethics shall have all necessary authority to enforce the filing requirements of this chapter, including the authority to promulgate such rules and regulations as the Board of Ethics determines are necessary to implement this chapter. The Board of Ethics shall be authorized to review

requests for exceptions with respect to complying with timely filing of such disclosure statements due to justifiable cause or undue hardship.

E. The Board of Ethics shall have the power to retain or hire legal counsel to advise it on any matter arising under this chapter.

§ 48-7. Failure to file report or filing incomplete reports. [Amended 8-15-1994 by L.L. No. 7-1994]

If a person required to file a financial disclosure statement with the Board of Ethics has failed to file a disclosure statement or has filed a deficient statement, the Board of Ethics shall notify the reporting person in writing, state the failure to file or detail the deficiency, provide the person with a fifteen-day period to cure the deficiency and advise the person of the penalties for failure to comply with the reporting requirements. If the person fails to make such filing or fails to cure the deficiency within the specified time period, the Board of Ethics shall send a notice of delinquency to the reporting person and to the appointing authority for such person.

§ 48-8. Violations or conflicts of interest.

A. If a reporting person has filed a statement which reveals a possible violation of a duly adopted Code of Ethics of the City of Schenectady, local law, ordinance or resolution or if the Board of Ethics receives a sworn complaint alleging such a violation or if the Board of Ethics determines on its own initiative to investigate a possible violation, the Board of Ethics shall notify the reporting person in writing, describe the possible or alleged violation of such Code of Ethics, local law, ordinance or resolution or of this chapter and provide the person with a fifteen-day period in which to submit a written response setting forth information relating to the activities cited as a possible or alleged violation of law. If the Board of Ethics thereafter makes a determination that further inquiry is justified, it shall give the reporting person an opportunity to be heard. The Board shall also inform the reporting individual of its rules regarding the conduct of adjudicatory proceedings and appeals and the due process procedural mechanisms available to such individual. If the Board determines at any stage of the proceeding that there is no violation or that any potential conflict of interest violation has been rectified, it shall so advise the reporting person and the complainant, if any. All of the foregoing proceedings shall be confidential.

B. If the Board determines that there is reasonable cause to believe that a violation has occurred, it shall send a notice of reasonable cause to the reporting person, to the complainant, if any, and to the City Council of the City of Schenectady.

§ 48-9. Penalties for offenses.

A reporting individual who knowingly and willfully fails to file an annual statement of financial disclosure or who knowingly and willfully with intent to deceive makes a false statement or gives information which such individual knows to be false on such statement of financial disclosure filed pursuant to this chapter shall be assessed a civil penalty in an amount not to exceed \$10,000. Assessment of a civil penalty hereunder shall be made by the Board of Ethics with respect to the persons subject to its



jurisdiction. For a violation of this chapter other than for conduct which constitutes a violation of Subdivision 12 of § 73 of the Public Officers Law, the Board of Ethics may, in lieu of a civil penalty, refer a violation to the appropriate prosecutor; and upon such conviction, but only after such referral, such violation shall be punishable as a Class A misdemeanor. A civil penalty for false filing may not be imposed hereunder in the event that a category of value or amount reported hereunder is incorrect unless such reported information is falsely understated. Notwithstanding any other provision of law to the contrary, no other penalty, civil or criminal, may be imposed for a failure to file or for a false filing of such statement, except that the City Council of the City of Schenectady may impose disciplinary action as otherwise provided by law. The Board of Ethics shall be deemed to be an agency within the meaning of Article 3 of the State Administrative Procedure Act and shall adopt rules governing the conduct of adjudicatory proceedings and appeals relating to the assessment of civil penalties herein authorized. Such rules, which shall not be subject to the approval requirements of the State Administrative Procedure Act, shall provide for due process procedural mechanisms substantially similar to those set forth in such Article 3, but such mechanisms need not be identical in terms of scope. Assessment of a civil penalty shall be final unless modified, suspended or vacated within 30 days of imposition with respect to the assessment of such penalty and, upon becoming final, shall be subject to review at the instance of the affected reporting individuals in a proceeding commenced against the Board of Ethics pursuant to Article 78 of the Civil Practice Law and Rules.

#### § 48-9.1. Additional penalties for offenses.

In addition to any penalties contained in any other provisions of law, any person who shall knowingly and intentionally violate any of the provisions of the Code of Ethics may be fined, suspended or removed from office or employment, as the case may be, in the manner provided by law.

#### § 48-10. Copy of notice.

A copy of any notice of delinquency or notice of reasonable cause sent pursuant to this chapter shall be included in the reporting person's file and be available for public inspection.

#### § 48-11. Advisory opinions.

Upon written request from any person who is subject to the jurisdiction of the Board of Ethics, the Board of Ethics shall render advisory opinions on the requirements of said provisions. An opinion rendered by the Board of Ethics, until and unless amended or revoked, shall be binding on the Board of Ethics in any subsequent proceeding concerning the person who requested the opinion and who acted in good faith unless material facts were omitted or misstated by the person in the request for an opinion. Such opinion may also be relied upon by such person and may be introduced and shall be a defense in any criminal or civil action. Such requests shall be confidential, but the Board of Ethics may publish such opinions, provided that the name of the requesting person and other identifying details shall not be included in the publication.

#### § 48-11.1. Additional procedures for request of opinion.

A. The person making the request of the Board of Ethics for an opinion must be an officer or employee of the City of Schenectady. An officer or employee may not make such a request on behalf of any person or persons not officers or employees of the City of Schenectady.

B. The request should be submitted to the Board in writing and most appropriately would request the Board's opinion regarding the writer's own actions; the request may come to the Board from the superior of a city employee about the employee's actions, with the written permission of the employee.

C. The request for an opinion of the Board should itself include all information necessary as a basis for the Board's opinion. The Board may invite the person making the request or others to submit additional information if it deems it necessary.

#### § 48-12. Additional powers and duties of Board of Ethics.

In addition to any other powers and duties specified by this chapter, the Board of Ethics shall have the power and duty to:

A. Administer and enforce all provisions of this chapter.

B. Conduct any investigation necessary to carry out the provisions of this chapter. Pursuant to this power and duty, the Board may administer oaths or affirmations, subpoena witnesses, compel their attendance and require the production of any books or records which it may deem relevant or material.

#### § 48-13. Public information.

A. Notwithstanding the provisions of Article 6 of the Public Officers Law, the only records of the Board of Ethics which shall be available for public inspection are:

(1) The information set forth in an annual statement of financial disclosure filed pursuant to this chapter except the categories of value or amount which shall remain confidential and any other item of information deleted pursuant to § 48-6F and G of this chapter.

(2) Notices of delinquency sent under § 48-7 of this chapter.

(3) Notices of reasonable cause sent under § 48-8B of this chapter.

B. Notwithstanding the provisions of Article 7 of the Public Officers Law, no meeting or proceeding of the Board of Ethics shall be open to the public except if expressly provided otherwise by the Board of Ethics.

#### § 48-14. Expenses of Board of Ethics.

Members of the Board of Ethics shall not receive compensation but shall be reimbursed for reasonable expenses incurred in the performance of their official duties.

#### § 48-15. Board of Ethics staff.

The Board of Ethics shall be empowered to request support staff and assistance from the City Council or Mayor in furtherance of its duties and responsibilities.

§ 48-16. Copies to be distributed.

Upon the adoption of this chapter, the Mayor shall cause a copy thereof to be distributed to every city employee of this city. Failure to distribute such copy or failure of any city employee to receive such copy shall have no effect on the duty of compliance with this Code nor the enforcement of the provisions hereof. The Mayor shall further cause a copy of this chapter to be kept posted conspicuously in each public building under the jurisdiction of the city. Failure to post this chapter shall have no effect on the duty of compliance herewith nor the enforcement provisions hereof.

§ 48-17. Filing.

Within 30 days of the adoption of this chapter, the City Clerk shall file a copy thereof in the Comptroller's Office of the State of New York addressed to Michael E. Kupferman, Office of the State Comptroller, Legal Services, 6th Floor, Alfred E. Smith State Office Building, Albany, New York 12236.

§ 48-18. Appropriation of funds.

The City Council may appropriate moneys from the general city funds for the maintenance of and for personal services to the Board of Ethics established hereunder, but such Board of Ethics may not commit expenditures of city moneys except within the appropriations provided herein.

§ 48-19. Severability.

If any clause, sentence, paragraph, section or part of this chapter shall be adjudicated by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 48-20. Effective date.

This chapter shall become effective January 1, 1993.