City of Cohoes, NY
Tuesday, January 17, 2012

Chapter 36. ETHICS, CODE OF

[HISTORY: Adopted by the Common Council of the City of Cohoes 2-22-1970 by Ord. No. 118-1970; amended in its entirety 9-28-2010 by L.L. No. 4-2010. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Officers and employees — See Ch. 52.

§ 36-1. Purpose.

Officers and employees of the City of Cohoes hold their positions to serve and benefit the public and not for obtaining unwarranted personal or private gain in the exercise and performance of their official powers and duties. The City of Cohoes recognizes that, in furtherance of this fundamental principle, there is a need for clear and reasonable standards of ethical conduct. This Code of Ethics establishes those standards.

§ 36-2. Definitions.

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

BOARD
The Common Council and any municipal administrative board (e.g., Planning Board, Zoning Board of Appeals), commission or other agency or body comprised of two or more municipal officers or employees.

CODE
This Code of Ethics.

INTEREST
A direct or indirect financial or material benefit, but does not include any benefit arising from the provision or receipt of any services generally available to the residents or taxpayers of the municipality or an area of the municipality, or a lawful class of such residents or taxpayers. A municipal officer or employee is deemed to have an interest in any private organization when he or she, his or her spouse or a member of his or her household is an owner, partner, member, director, officer or employee or directly or indirectly owns or controls more than 5% of the organization, outstanding stock.

MUNICIPALITY
The City of Cohoes. The word "municipal" refers to the municipality.

MUNICIPAL OFFICER OR EMPLOYEE
A paid or unpaid officer or employee of the City of Cohoes, including, but not limited to, the members of any municipal board.

RELATIVE
A spouse, domestic partner, parent, step-parent, sibling, step-sibling, step-sibling's spouse, child, step-child, uncle, aunt, nephew, niece, first cousin or household member of municipal officer or employee and individuals having any of these relationships to the spouse of the officer or employee.

§ 36-3. Applicability.

This Code of Ethics applies to the officers and employees of the City of Cohoes and shall supersede any prior municipal Code of Ethics. The provisions of this Code of Ethics shall apply in addition to all applicable state and local laws relating to conflicts of interest and ethics, including, but not limited to, Article 18 of the General Municipal Law and all rules, regulations, policies and procedures of the City of Cohoes.

§ 36-4. Prohibition on use of municipal position for personal or private gain.

No municipal officer or employee shall use his or her municipal position or official powers and to secure a financial or material benefit for himself or herself, a relative or any private organization in which he or she is deemed to have an interest.

§ 36-5. Disclosure of interest in legislation and other matters.

A. Whenever a matter requiring the exercise of discretion comes before a municipal officer or employee, either individually or as a member of a board, and disposition of the matter could result in a direct or indirect financial or material benefit to himself or herself, a relative or any private organization in which he or she is deemed to have an interest, the municipal officer or employee shall disclose, in writing, the nature of the interest.

B. The disclosure shall be made when the matter requiring disclosure first comes before the municipal officer or employee or when the municipal officer or employee first acquires knowledge of the interest requiring disclosure, whichever is earlier.

C. In the case of a person serving in an elective office, the disclosure shall be filed with the Common Council of the municipality. In all other cases, the disclosure shall be filed with the person's supervisor, or, if the person does not have a supervisor, the disclosure shall be filed with the municipal officer, employee or board having the power to appoint to the person's position. In addition, in the case of a person serving on a municipal board, a copy of the disclosure shall be filed with the board. Any disclosure made to a board shall be made publicly at a meeting of the board and must be included in the minutes of the meeting.

§ 36-6. Treatment of public.

An officer or employee of the City of Cohoes shall treat all members of the public, whether a person, firm or corporation or other organization, with respect and in a professional manner, with equal consideration and without special advantage in carrying out his or her official duties.

§ 36-7. Recusal and abstention.

A. No municipal officer or employee may participate in any decision or take any official action with respect to any matter requiring the exercise of discretion including discussing the matter and voting on it, when he or she knows or has reason to know that the action could confer a direct or indirect financial or material benefit on himself or herself, a relative or any private organization in which he or she is deemed to have an interest.

B. In the event that this section prohibits a municipal officer or employee from exercising or performing a power or duty:

(1) If power or duty is vested in a municipal officer as a member of a board, then the power or duty shall be exercised or performed by the other members of the board; or

(2) If the power or duty is vested in a municipal officer individually, then the power or duty shall be exercised or performed by his or her deputy, or if the officer does not have a deputy, the power or duty shall be performed by another person to whom the officer may lawfully delegate the function; or

(3) If the power or duty is vested in a municipal employee, he or she must refer the matter to his or her immediate supervisor, and the immediate supervisor shall designate another person to exercise or perform the power or duty.

§ 36-8. Exceptions.

A. This code's prohibition on use of a municipal position (§ 36-4), disclosure requirements (§ 36-5) and requirements relating to recusal and abstention (§ 36-7) shall not apply with respect to the following matters:

(1) Adoption of the municipality's annual budget.

(2) Any matter requiring the exercise of discretion that directly affects any of the following groups of people or a lawful class of such groups:

(a) All municipal officers or employees;

(b) All residents or taxpayers of the municipality or an area of the municipality; or

(c) The general public.

(3) Any matter that does not require the exercise of discretion.

B. Recusal and abstention shall not be required with respect to any matter:

(1) Which comes before a board when a majority of the board's total membership would otherwise be prohibited from acting by § 36-7 of this code.

(2) Which comes before a municipal officer when the officer would be prohibited from acting by § 36-7 of this code and the matter cannot be lawfully delegated to another person.

§ 36-9. Investments in conflict with official duties.

A. No municipal officer or employee may acquire the following investments:

(1) Investments that can be reasonably expected to require more than sporadic recusal and abstention under § 36-7 of this code; or

(2) Investments that would otherwise impair the person's independence of judgment in the exercise or performance of his or her official powers and duties; or

(3) Investments from any City of Cohoes auction if the employee or officer is in the position to negotiate, prepare, authorize or approve the contract for the sale upon which he or she is bidding.

B. This section does not prohibit a municipal officer or employee from acquiring any other investments or the following assets:

(1) Real property located within the municipality and used as his or her personal residence; or

(2) Less than 5% of the stock of a publicly traded corporation; or

(3) Bonds or notes issued by the municipality and acquired more than one year after the date on which the bonds or notes were originally issued.

§ 36-10. Private employment in conflict with official duties.

No municipal officer or employee, during his or her tenure as a municipal officer or employee, may engage in any private employment, including the rendition of any business, commercial, professional or other types of services, when the employment:

A. Can be reasonably expected to require more than sporadic recusal and abstention pursuant to § 36-7 of this code; or

B. Can be reasonably expected to require disclosure or use of confidential information gained by reason of serving as a municipal officer or employee; or

C. Violates § 805-a(1)(c) or (d) of the General Municipal Law; or

D. Requires representation of a person or organization other than the municipality in connection with litigation, negotiations or any other matters to which the municipality is a party.

§ 36-11. Future employment.

A. No municipal officer or employee may ask for, pursue or accept a private post-government employment opportunity with any person or organization that has a matter requiring the exercise of discretion pending before the municipal officer or employee, either individually or as a member of a board, while the matter is pending or within the 90 days following final disposition of the matter.

B. No municipal officer or employee, for the one-year period after serving as a municipal officer or employee, may represent or render services to a private person or organization in connection with any matter involving the exercise of discretion before the municipal office, board, department or comparable organizational unit for which he or she serves.

C. No municipal officer or employee at any time after serving as a municipal officer or employee, may represent or render services to a private person or organization in connection with any particular transaction in which he or she personally and substantially participated while serving as a municipal officer or employee.

§ 36-12. Personal representations and claims permitted.

This code shall not be construed as prohibiting a municipal officer or employee from:

A. Representing himself or herself, or his or her spouse or minor children, before the municipality; or

B. Asserting a claim against the municipality on his or her own behalf, or on behalf of his or her spouse or minor children.

§ 36-13. Use of municipal resources.

A. Municipal resources shall be used for lawful municipal purposes. Municipal resources include, but are not limited to, municipal personnel and the municipality's money, vehicles, equipment, materials, supplies or other property.

B. No municipal officer or employee may use or permit the use of municipal resources for personal or private purposes, but this provision shall not be construed as prohibiting:

(1) Any use of municipal resources authorized by law or municipal policy; or

(2) The use of municipal resources for personal or private purposes when provided to a municipal officer or employee as part of his or her compensation; or

(3) The occasional and incidental use during the business day of municipal telephones and computers for necessary personal matters such as family care and changes in work schedule.

C. No municipal officer or employee shall cause the municipality to spend more than is reasonably necessary for transportation, meals or lodging in connection with official travel.

§ 36-14. Interests in contracts.

A. No municipal officer or employee may have an interest in a contract that is prohibited by § 801 of the General Municipal Law.

B. Every municipal officer and employee shall disclose interests in contracts with the municipality at the time and in the manner required by § 803 of the General Municipal Law.

§ 36-15. Nepotism.

Except as otherwise required by law:

A. No municipal officer or employee, either individually or as a member of a board, may participate in any decision specifically to appoint, hire, promote, discipline or discharge a relative for any position at, for or within the municipality or a municipal board.

B. No municipal officer or employee may supervise a relative in the performance of the relative's official powers or duties.

§ 36-16. Political solicitations and campaign activities.

A. No municipal officer or employee shall directly or indirectly compel or induce a subordinate municipal officer or employee to make, or promise to make, any political contribution, whether by gift of money, service or other thing of value.

B. No municipal officer or employee may act or decline to act in relation to appointing, hiring, promoting, discharging or disciplining, or in any manner changing the official rank, status or compensation of, any municipal officer or employee, or an applicant for a position as a municipal officer or employee, on the basis of the giving or withholding or neglecting to make any contribution of money or service or any other valuable thing for any political purpose.

C. No employee shall engage in political campaign activities during his or her official City of Cohoes workday.

§ 36-17. Confidential information.

No municipal officer or employee who acquires confidential information in the course of exercising or performing his or her official powers or duties may disclose or use such information unless the disclosure or use is required by law or in the course of exercising or performing his or her official powers and duties.

§ 36-18. Gifts.

A. No municipal officer or employee shall solicit, accept or receive a gift in violation of § 805-a (1)(a) of the General Municipal Law as interpreted in this section.

B. No municipal officer or employee may directly or indirectly solicit any gift.

C. No municipal officer or employee may accept or receive any gift, or multiple gifts, from the same donor, having an annual aggregate value of $75 or more when:

(1) The gift reasonably appears to be intended to influence the officer or employee in the exercise or performance of his or her official powers or duties; or

(2) The gift could reasonably be expected to influence the officer or employee in the exercise or performance of his or her official powers or duties; or

(3) The gift is intended as a reward for any official action on the part of the officer or employee.

D. For purposes of this section, a gift includes anything of value, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form. The value of a gift is the gift's fair market value, determined by the retail cost of the item or a comparable item. The fair market value of a ticket entitling the holder to food, refreshments, entertainment or any other benefit is the face value of the ticket, or the actual cost to the donor, whichever is greater. Determination of whether multiple gifts from a single donor exceed $75 must be made by adding together the value of all gifts received from the donor by an officer or employee during the twelve-month period preceding the receipt of the most recent gift.

E. Gifts intended to influence or reward.

(1) A gift to a municipal officer or employee is presumed to be intended to influence the exercise or performance of his or her official powers or duties when the gift is from a private person or organization that seeks municipal action involving the exercise of discretion by or with the participation of the officer or employee.

(2) A gift to a municipal officer or employee is presumed to be intended as a reward for official action when the gift is from a private person or organization that has obtained municipal action involving the exercise of discretion by or with the participation of the officer or employee during the preceding 12 months.

F. This section does not prohibit any other gift, including:

(1) Gifts made to the municipality;

(2) Gifts from a person with a family or personal relationship with the officer or employee when the circumstances make it clear that the personal relationship, rather than the recipient's status as a municipal officer or employee, is the primary motivating factor for the gift;

(3) Gifts given on special occasions, such as marriage, illness or retirement, which are modest, reasonable and customary;

(4) Unsolicited advertising or promotional material of little intrinsic value, such as pens, pencils, note pads and calendars;

(5) Awards and plaques having a value of $75 or less which are publicly presented in recognition of service as a municipal officer or employee or other service to the community; or

(6) Meals and refreshments provided when a municipal officer or employee is a speaker or participant at a job-related professional or educational conference or program and the meals and refreshments are made available to all participants.

§ 36-19. Board of Ethics.

A. Membership.

(1) The Board of Ethics shall consist of three members appointed by a super majority of the Common Council. One alternate may be appointed by a super majority of the Common Council to serve in the absence of another member.

(2) There shall be three members of the Ethics Board initially serving one three-year term, one two-year term and one one-year term. The alternate member shall serve for one three-year term. Subsequently, each member shall be appointed for a three-year term or until such time as a successor is appointed.

(3) Vacancy in office. If a vacancy shall occur otherwise than by expiration of term, the Common Council shall appoint the new member for the unexpired term.

(4) Removal of members. The Common Council shall have the power to remove, after public hearing, any member of the Board for cause.

B. Qualification of Board Members.

(1) All members of the Board of Ethics must be residents of the municipality.

(2) The members of the Board of Ethics should be qualified by temperament and experience to carry out the duties and responsibilities of the Board.

(3) No member of the Board of Ethics may hold office in a partisan political party or hold elective office in the City of Cohoes. A Board member may make campaign contributions and vote, but not otherwise participate in any City of Cohoes election campaign.

(4) Not more than two members of the Board of Ethics may be members of the same political party.

(5) No current officer or employee of the City of Cohoes is eligible to serve on the Board of Ethics.

C. Compensation. Members of the Board of Ethics shall serve without compensation but may be reimbursed for reasonable and necessary expenses, as approved by the Common Council.

D. Powers and duties of the Board of Ethics.

(1) The Board of Ethics shall select its own Chairperson from within the Board for a one-year term and appoint such staff as necessary to carry out its duties under this chapter and to delegate authority to the Chairperson, if any, to act in the name of Board between meetings of the Board, provided that the delegation is in writing and the specific powers to be delegated are enumerated, and further provided that the Board may not delegate the power to conduct hearings, determine violations, recommend disciplinary action, impose civil fines, refer any matter to a prosecutor or render advisory opinions, except as stated in § 36-19D(9).

(2) To prescribe and promulgate rules and regulations governing its own internal organization and procedures in a manner not inconsistent with this chapter or state or federal law.

(3) To conduct investigations pursuant to § 36-20.

(4) To conduct hearings, recommend disciplinary action and initiate appropriate actions and proceedings pursuant to §§ 36-18 and 36-19.

(5) To issue advisory opinions pursuant to § 36-22.

(6) To provide ethics training and education to City officers and employees on the provisions of the City Ethics Law and Article 18 of the General Municipal Law.

(7) The Ethics Board of the City of Cohoes may act only with respect to officers and employees of the municipality and persons having business dealing with the municipality. The termination of a City officer's or employee's term of office or employment with the City shall not affect the jurisdiction of the City Ethics Board with respect to requirements imposed by this chapter on former City officers or employees to the extent permitted by law.

(8) The City Ethics Board may refer any matter within its jurisdiction to the County Ethics Board in its discretion.

(9) A member of the Board of Ethics may be removed from office by a majority vote of the Common Council for failure to fulfill the duties of the office or for violation of this chapter. The Common Council must give the Board member written notice and an opportunity to reply.

(10) The Ethics Board must prepare an annual report to the Common Council on its activities and recommend changes to the City Ethics Law.

§ 36-20. Complaints and investigations.

A. Upon receipt of a form duly sworn by the person requesting an investigation of an alleged violation of this chapter or upon the Board determining on its own initiative that a violation of this chapter may exist, the Ethics Board shall have the power and duty to conduct any investigation necessary to carry out the provisions of this chapter. In conducting any such investigation, the Board may administer oaths or affirmations, subpoena witnesses and compel their attendance and require the production of any books or records which it may or deem relevant or material. The form to be utilized in requesting an investigation of an alleged violation of this chapter shall be the form available in the office of the City Clerk and on the City website.

B. The City Ethics Board investigation shall be confidential until such time that a final determination of the City Ethics Board has been made. Thereafter, the City Ethics Board shall state, in writing, its disposition of every sworn complaint it receives and of every investigation it conducts and shall set forth the reasons for the disposition to the Common Council. Any findings of violations of this chapter or other applicable law shall be served upon the subject of the investigation within seven days of such service of any findings of violations of this chapter, and violations shall be made a public record and shall be indexed and maintained on file by the City Clerk.

§ 36-21. Enforcement.

A. In its discretion and after a hearing in accordance with Article 3 of the State Administrative Procedure Act (SAPA), and subject to § 75 of the Civil Service Law and any collective bargaining agreements, to the extent practicable, the City Ethics Board may recommend for action appropriate disciplinary action which may include a written warning, or reprimand forfeiture of accrued leave with pay, required attendance at ethics training seminars, suspension or termination of employment to the authority or person or body authorized by law to impose such sanctions.

B. The City Ethics Board shall conduct and complete the hearing with reasonable promptness and shall not act without notice and opportunity to be heard and shall observe appropriate due process.

§ 36-22. Confidential ethics advisory opinions.

A. The Board of Ethics shall render confidential advisory opinions only to officers and employees of the City of Cohoes with respect to Article 18 of the General Municipal Law and this Code of Ethics. Officers and employees of the municipality are encouraged to seek advisory opinions whenever they are uncertain whether their conduct may violate the Code of Ethics.

B. The Board of Ethics will prepare an advisory opinion based on a thorough review of the facts and applicable law. The Board's opinion is to be based solely on the facts presented in the request or subsequently submitted in a written, signed document. The opinion will be rendered, in writing, to the requester as expeditiously as is practicable, with special attention to the time requirements of a given case.

C. An officer or employee of the municipality whose conduct or action is the subject of an advisory opinion will not be subject to penalties or sanctions by virtue of acting, or failing to act, due to a reasonable reliance on the opinion, unless material facts were omitted or misstated in the material submitted by the requester.

D. The Board of Ethics will maintain a confidential, indexed file of all advisory opinions issued by the Board.

§ 36-23. Posting and distribution of code.

A. The Mayor must promptly cause a copy of this code, and a copy of any amendment to this code, to be posted publicly and conspicuously in each building under the municipality's control. The code must be posted within 10 days following the date on which the code takes effect. An amendment to the code must be posted within 10 days following the date on which the amendment takes effect.

B. The Mayor must promptly cause a copy of this code, including any amendments to the code, to be distributed to every person who is or becomes an officer or employee of the City of Cohoes.

C. Every municipal officer or employee who receives a copy of this code, or an amendment to the code, must acknowledge such receipt in writing. Such acknowledgment must be filed with the City Clerk who must maintain such acknowledgment as a public record.

D. The failure to post this code, or an amendment to the code, does not affect either the applicability or enforceability of the code or the amendment. The failure of a municipal officer or employee to receive a copy of this Code of Ethics, or an amendment to the code, or to acknowledge receipt thereof in writing, does not affect either the applicability or enforceability of the code or amendment to the code.

§ 36-24. Penalties for offenses.

Any municipal officer or employee who violates this code may be censured, fined, suspended or removed from office or employment in the manner provided by law.