

CHAPTER 107
CODE OF ETHICS

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107.01 DEFINITION.

(a) "Municipal Officer or Employee" means a councilman or any other officer or employee of the City of Niagara Falls, whether paid or unpaid, including members of any administrative board, commission or other agency thereof. No person shall be deemed to be a municipal officer or employee solely by reason of being a volunteer fireman or civil defense volunteer, except a chief engineer or assistant chief engineer.

(b) "Interest" means a pecuniary or material benefit accruing to a municipal officer or employee unless the context otherwise requires.

107.02 STANDARDS OF CONDUCT.

Every councilman, officer or employee of the City of Niagara Falls shall be subject to and abide by the following standards of conduct:

(a) "Gifts". He or she shall not directly or indirectly, solicit any gift; or accept or receive any gift having a value of greater than the amount set forth in Section 805-a of the General Municipal Law, whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise, or any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him or her, or could reasonably be expected to influence him or her, in the performance of his or her official duties or was intended as a reward for any official action on his part. (Amended 11/30/90)

(b) "Confidential Information". He or she shall not disclose confidential information acquired by him or her in the course of his or her official duties or use such information to further his or her personal interest.

(c) Representation Before One's Own Agency. He or she shall not receive or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any municipal agency of which he or she is an officer, member or employee or of any municipal agency over which he or she has jurisdiction or to which he or she has the power to appoint any member, officer or employee.

(d) Representation Before Any Agency For A Contingent Fee. He or she shall not receive, or enter into any agreement, express or implied for compensation for services to be rendered in relation to any matter before any agency of his municipality, whereby his or her compensation is to be dependent or contingent upon any action by such agency with respect to such matter, provided that this paragraph shall not prohibit the fixing at any time of fees based upon the reasonable value of the services rendered.

(e) Disclosure of Interest In Legislation. To the extent that he or she knows thereof, a member of the City Council or any municipal board or municipal agency of the City of Niagara Falls, and any officer or employee of the City of Niagara Falls, whether paid or unpaid, who participates in the discussion or gives official opinion to the City Council or municipal

board or municipal agency on any legislation before the City Council or municipal board or municipal agency shall publicly disclose on the official record the nature and extent of any direct or indirect financial or other private interest he or she has in such legislation.

(f) Investments In Conflict With Official Duties. He or she shall not invest or hold any investment, directly or indirectly in any financial, business, commercial or other private transaction, which creates a conflict with his or her official duties.

(g) Private Employment. He or she shall not 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 or her official duties.

(h) Future Employment. He or she shall not, after the termination of service or employment with such municipality, appear before any board or agency of the City of Niagara Falls in relation to any case, proceeding or application in which he or she personally participated during the period of his or her service or employment or which was under his or her active consideration.

107.03 Nothing herein shall be deemed to bar or prevent the timely filing by a present or former councilman, municipal officer or employee of any claim, account, demand or suit against the City of Niagara Falls, or any agency thereof on behalf of himself or any member of his or her family arising out of any personal injury or property damage or for any lawful benefit authorized or permitted by law.

107.04 DISTRIBUTION OF CODE OF ETHICS.

The City Administrator of the City of Niagara Falls shall cause a copy of this code of ethics to be distributed to every councilman, officer and employee of the City of Niagara Falls within thirty (30) days after the effective date of this local law. Each officer and employee elected or appointed thereafter shall be furnished a copy before entering upon the duties of his or her office or employment.

107.05 BOARD OF ETHICS.

(a) There is hereby established a board of ethics consisting of the Corporation Counsel, the Director of Personnel and 3 public members to be appointed by the City Administrator and who shall serve without compensation and at the pleasure of the City Administrator.

(b) The board of ethics shall have the powers and duties prescribed by Article Eighteen of the General Municipal Law and shall render advisory opinions to the councilmen, officers and employees of the City of Niagara Falls with respect to Article Eighteen of the General Municipal Law and any code of ethics adopted pursuant to such article, under such rules and regulations as the board may prescribe. In addition, the board may make recommendations with respect to the code of ethics or amendments thereto upon request of the City Council.

107.06 PENALTIES.

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

107.07 EFFECTIVE DATE.

This ordinance shall take effect five (5) days after it is filed as provided in Section 806 of the General Municipal Law. (Adopted by City Council July 20, 1970. Filed in Office of State Comptroller July 25, 1970. Effective date August 1, 1970)

107.10 FINANCIAL DISCLOSURE.**(a) Purpose:**

The purpose of this ordinance is: (i) to 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; (ii) to continue the use of an authorized form of annual statement of financial disclosure in use on the date this ordinance is adopted; and (iii) to designate the Board of Ethics of the City of Niagara Falls as the Board to receive and review such filing.

(b) Enactment:

This ordinance is being enacted pursuant to Section 811 subdivision 1 and Section 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 Niagara Falls.

(c) Definitions:

(1) The term "local elected official" shall mean an elected official of the City except judges or justices of the unified court system.

(2) The term "local officer or employees" shall mean the heads (other than local elected officials) of any agency, department, division, council, board, commission, or bureau of the City of Niagara Falls and their deputies and assistants, and the officers and employees of the City, departments, divisions, boards, bureaus, commissions or councils who hold policy-making positions, as annually determined by the City of Niagara Falls 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.

(3) The term "spouse" shall mean 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.

(4) The term "relative" shall mean 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.

(5) The term "unemancipated child" shall mean any son, daughter, stepson or stepdaughter who is under the age of eighteen, unmarried and living in the household of the reporting individual.

(d) Board of Ethics:

(1) The Board of Ethics shall have all the powers and duties as prescribed by Article 18 of the General Municipal Law with respect to financial disclosure required thereunder. The Board of Ethics may adopt and amend such rules or procedures as are appropriate.

(e) Disclosure of Financial Status:

The City of Niagara Falls recognizes that matters of finance do exist which are so personal in nature and are so unrelated to the performance of public employees duties that no useful purpose can be served by such disclosure. Nonetheless, certain financial information may be relevant to a public official or employee's duties and impact the integrity of the City Government. To that extent:

(1) The City Officers and Elected Officials listed on Schedule A hereto shall file with the Board of Ethics of the City of Niagara Falls annually, on or before May 15th of every year following the enactment of this law during the term of their office, a statement of their financial holdings, assets, liabilities and net worth. The time for filing such statement may be extended, pursuant to the rules of the Board of Ethics, for justifiable cause and for undue hardship upon application to the Board of Ethics pursuant to the rules and regulations set forth in this ordinance and, if applicable, to Sections 811, 812 and 813 of the General Municipal Law of the State of New York set forth by name of office or by job title or classification the municipal officials required to file disclosure statements.

(2) In addition to the officers and employees listed in subparagraph A above, all elected officials of the City of Niagara Falls and any local officer or employee who is determined by the Mayor to be a policy maker or to perform any of the duties listed in subsection (f) paragraph (9)(i-iv) of this ordinance shall be required to file a financial disclosure statement.

(3) 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 Section 812(5) of the General Municipal Law.

(f) Powers of the Board of Ethics:

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 paragraph (d) of subdivision one of Section 811 of the General Municipal Law.

(2) Promulgate guidelines to assist the Mayor in determining which persons hold policy-making positions for purposes of Sections 811 and 812 (3) of the General Municipal Law and this law.

(3) Make available forms for annual statements of financial disclosure required to be filed pursuant to this ordinance.

(4) Review completed financial disclosure statements in accordance with the provisions of this law, the rules and regulations of the Board of Ethics and any Local Law, Ordinance, Code of Ethics established by the City Council of Niagara Falls.

(5) Receive complaints alleging a violation of this ordinance or a violation of the criteria for reporting requirements established by this law, any Code of Ethics of the City of Niagara Falls, 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 right or her right to appeal the Board's determination pursuant to the rules governing adjudicatory proceedings and appeals adopted pursuant to this law 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 spouse, on his or her own behalf or on 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 Mayor to hold a policy-making 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:

(i) contracts, leases, franchises, revocable consents, concessions, variances, special permits, or licenses as defined in section seventy-three of the public officers law;

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

(iii) the obtaining of grants of money or loans; or

(iv) 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 local elected officials and officers and employees of the City covered by this act.

(11) Upon certification of a question by the Mayor or 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 ordinance.

(12) 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 law, 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 ordinance, Code of Ethics, law or resolution of the City of Niagara Falls.

(13) The Board of Ethics shall have all necessary authority to enforce the filing requirements of this ordinance, including the authority to promulgate such rules and regulations as the Board of Ethics determines are necessary to implement this law. 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.

(g) Failure to File Report or Filing Incomplete Reports:

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. Such notice shall be confidential. 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.

(h) Violations or Conflicts of Interest:

(1) If a reporting person has filed a statement which reveals a possible violation of duly adopted code of ethics of the City of Niagara Falls, local law, ordinance or resolution, or 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 this ordinance, 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.

(2) If the Board determines that there is reasonable cause to believe that a violation has occurred, it shall send a notice of reasonable cause: (i) to the reporting person; (ii) to the complainant if any; and (iii) to the Mayor, if the reporting person is appointed by the Mayor or Administrator; or to the City Council, if the reporting person is appointed by the Council.

(i) Penalties:

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 ordinance 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 subdivision, other than for conduct which constitutes a violation of subdivision twelve of section seventy-three of 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 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 Niagara Falls 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 three 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 mechanism substantially similar to those set forth in such article three but such mechanisms need not be identical in terms or scope. Assessment of a civil penalty shall be final unless modified, suspended or vacated within

thirty 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.

(j) Copy of Notice:

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

(k) 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 he 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 request 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.

(l) Additional Powers and Duties:

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

- (1) Administer and enforce all the provisions of this law;
- (2) Conduct any investigation necessary to carry out the provisions of this law. 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.

(m) Public Information:

(1) Notwithstanding the provisions of article six of the public officers law, the only records of the Board of Ethics which shall be available for public inspection are:

(A) the information set forth in an annual statement of financial disclosure filed pursuant to this ordinance except the categories of value or amount which shall remain confidential and any other item of information deleted pursuant to Subsection (f)(6) and (7) of this ordinance.

(B) notices of delinquency sent under Subsection (g) of this ordinance.

(C) notices of reasonable cause sent under subsection (h)(2) of this ordinance.

(2) Notwithstanding the provisions of article seven 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.

(n) Expenses:

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.

(o) Staff:

The Board of Ethics shall be empowered to request support staff and assistance from the Mayor in furtherance of the Board's duties and responsibilities.

(p) Copies to be Distributed:

Upon the adoption of this ordinance, 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 ordinance to be kept posted conspicuously in each public building under the jurisdiction of the City. Failure to so post this ordinance shall have no effect on the duty of compliance herewith, nor enforcement provisions hereof.

(q) Filing:

Within thirty days of adoption of this ordinance, the City Clerk shall file a copy thereof with the Comptroller of the State of New York.

(r) Appropriation of Funds:

The City Council may appropriate monies from the General 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 monies except within the appropriations provided herein.

(s) Severability:

If any clause, sentence, paragraph, section or part of this ordinance 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 hereof directly involved in the controversy in which such judgment shall have been rendered.

(t) Effective Date:

This ordinance shall become effective immediately.

(Section 107.10 adopted 03/01/93; approved and effective 03/02/93.)

