

City of Middletown, NY
Tuesday, April 24, 2012

Chapter 48. ETHICS, CODE OF

[HISTORY: Adopted by the Common Council of the City of Middletown 9-27-1999 by L.L. No. 1-1999 (Ch. 30 of the 1971 Code). Amendments noted where applicable.]

§ 48-1. Purpose.

Pursuant to the provisions of § 806 of the General Municipal Law, the Common Council of the City of Middletown recognizes that there are rules of ethical conduct for public officers and employees which must be observed if a high degree of moral conduct is to be obtained and if public confidence is to be maintained in our unit of local government. It is the purpose of this chapter to promulgate these rules of ethical conduct for officers and employees of the City of Middletown. These rules shall serve as a guide for official conduct of the officers and employees of the City of Middletown. The rules of ethical conduct of this chapter, as adopted, shall not conflict with, but shall be in addition to, any prohibition of Chapter 24, Article 18 of the General Municipal Law or any other general or special law relating to ethical conduct and interest in contracts of municipal officers and employees.

§ 48-2. Definitions and word usage.

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

INTEREST

A pecuniary or material benefit accruing to a municipal officer or employee, or a pecuniary or material benefit accruing to:

- (1) The municipal officer's or employee's spouse, minor children and dependents;
- (2) A firm, partnership or association of which such officer or employee is a member, owner or employee;
- (3) A corporation or limited liability company of which such officer or employee is an officer, director, member or employee; and
- (4) A corporation or limited liability company any stock or ownership interest of which is accrued or controlled directly or indirectly by such officer or employee.

MUNICIPAL OFFICER OR EMPLOYEE

An officer or employee of the City of Middletown, 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 fire chief or assistant fire chief.

[Amended 4-23-2007 by L.L. No. 1-2007]

B. The use of the masculine shall be deemed to mean the feminine, and the use of the singular shall be deemed to mean the plural, as the individual case may require or as the same may be appropriate.

§ 48-3. Standards of conduct.

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

- A. Gifts. He shall not directly or indirectly solicit any gift, or accept or receive any gift having a value of \$75 or more, 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 could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part.
- B. Confidential information. He shall not disclose confidential information acquired by him in the course of his official duties or use such information to further his personal interest.
- C. Representation before one's own board or agency. He 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 board or agency of which he is an officer, member or employee or of any municipal board or agency over which he has jurisdiction or to which he has the power to appoint any member, officer or employee.
- D. Representation before any board or agency for a contingent fee. He 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 board or agency of his municipality whereby his compensation is to be dependent or contingent upon any action by such board or agency with respect to such matter, provided that this subsection 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 knows thereof, a member of the Common Council and any officer or employee of the City of Middletown, whether paid or unpaid, who participates in the discussion or gives official opinion to the Common Council on any legislation before the Common Council shall publicly disclose on the official record the nature and extent of any direct or indirect financial or other private interest he has in such legislation.
- F. Investments in conflict with official duties. He 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 official duties.
- G. Private employment. He 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 official duties.
- H. Future employment. He shall not, after the termination of service or employment with such municipality, appear before any board or agency of the City of Middletown 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.

§ 48-4. Exemption for certain rights.

Nothing herein shall be deemed to bar or prevent the timely filing by a present or former municipal officer or employee of any claim, account, demand or suit against the City of Middletown, or any board or 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 right or benefit authorized or permitted by law.

§ 48-5. Distribution of Code of Ethics.

[Amended 4-23-2007 by L.L. No. 1-2007; 1-7-2008] The Mayor of the City of Middletown shall cause a copy of this Code of Ethics to be distributed to every officer and employee of the City of Middletown within 30 days after the effective date of this chapter. Each officer and employee elected or appointed thereafter shall be furnished a copy before entering upon the duties of his office or employment. Each recipient shall sign a certificate acknowledging his receipt of said Code of Ethics, which certificate shall be filed with the City Clerk. Failure to distribute any such copy or failure of

any officer or employee to receive such copy shall have no effect on the duty of compliance with such code, nor the enforcement of provisions thereof.

§ 48-6. Board of Ethics.

- A. Establishment of Board of Ethics. There is hereby established a Board of Ethics consisting of five members to be appointed by the Mayor and approved by the Common Council; all of the members of the Board of Ethics shall reside in the City of Middletown. A majority of such members shall be persons other than officers or employees of the City of Middletown, but there shall be at least one member who is an elected or appointed officer or employee of the City. The City's Corporation Counsel, or a City Attorney designated by him, shall be a member ex officio of such Board, but without the power to vote, and shall be the legal adviser to such Board. The members of such Board shall receive no salary or compensation for their services as members of such Board and shall serve a term of three years each, with the initial appointments being one member for a term of one year, two members for a term of two years, and two members for terms of three years. After the initial terms have expired, all members shall be appointed for three-year terms. Such Board shall be constituted so that no more than two members shall belong to the same political party. The Board of Ethics each year shall elect from its membership its Chairman and Secretary, and upon its formation it shall promulgate its own rules and regulations as to its forms and procedures (other than as may be specified in this chapter) and maintain proper records of its opinions and proceedings, for which expenses it shall be reimbursed by the City for actual and necessary expenses incurred in the performance of its duties.
- B. Powers of the Board of Ethics. The Board of Ethics shall have the powers and duties prescribed in this chapter and in Article 18 of the General Municipal Law and shall render advisory opinions to officers and employees of the City of Middletown with respect to Article 18 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 drafting and adoption of amendments to this chapter, or the drafting and adoption of a new Code of Ethics, upon request of the Common Council of the City. Any such advisory opinions or other proceedings of the Board of Ethics shall not be made public or disclosed unless required by the New York Freedom of Information Law (Article 6 of the Public Officers Law) or required for use in a disciplinary proceeding involving an officer or employee of the City of Middletown who requested the advisory opinion.
- C. Cooperation with Board of Ethics. All agencies and boards of the City of Middletown and all officers, employees and agency or board members shall furnish to the Board of Ethics such data, information and statements as may in the opinion of the Board be necessary for the proper exercise of its functions, powers and duties as set forth in the General Municipal Law or in this chapter.

§ 48-7. Disclosure statements.

- A. Applicability. The following classes of officers or employees of the City of Middletown shall file disclosure statements as provided under this section:
- (1) All elected officials;
 - (2) All commissioners and deputy commissioners;
 - (3) All department heads and assistant department heads; and
 - (4) All members of the Zoning Board of Appeals, Planning Board, Board of Ethics and Board of Assessment Review, as well as members of all licensing boards in the City of Middletown.
 - (5) All members of the Police Commission and the Recreation Commission.

[Added 6-9-2008 by L.L. No. 2-2008]

B. General disclosure. The disclosure statement to be filed by all officers or employees to whom this section is applicable shall contain the following information:

[Added 6-9-2008 by L.L. No. 3-2008]

- (1) A statement describing blood and marriage relationships with officials and board members required to file disclosure statements.
- (2) A statement describing corporate, partnership, landlord-tenant or other business relationship with officials and board members required to file disclosure statements or with the City itself.
- (3) A statement indicating whether the declarant, or his/her spouse or minor children, purchased or sold any goods or services, in an amount exceeding \$5,000, from or to any official or board member required to file disclosure statements or from or to the City itself.
- (4) A statement indicating whether the declarant, or his/her spouse or minor children, purchased or sold any goods or services, in an amount exceeding \$5,000, except for a consumer transaction or consumer credit transaction, from or to any person or entity providing goods and services to the City of Middletown in an amount of \$5,000 or greater in the past calendar year.
- (5) A statement indicating whether the declarant, or his/her spouse or minor children, participated in any loan or credit transaction, except a consumer credit transaction, the outstanding balance of which, during the past year, is in excess of \$5,000, with any person or entity providing goods and services to the City of Middletown in an amount of \$5,000 or greater in the past calendar year.
- (6) A statement indicating whether the declarant, or his/her spouse or minor children, is an employee, officer, owner, director, member, trustee, partner of or consultant to any entity providing goods and services to the City of Middletown in an amount of \$5,000 or greater in the past calendar year.
- (7) A statement indicating whether the declarant, or his/her spouse or minor children, owns or has a contractual interest in any real property located within the City of Middletown, other than personal residence.
- (8) A statement indicating whether the declarant, or his/her spouse or minor children, made any application, petition or request for a site plan, special use permit, variance, amendment, change of zoning, approval of a subdivision plat, exemption for a plat or Official Map, or any license or permit pursuant to the provisions of, in or in connection with any ordinance, local law, rule or regulation of the City of Middletown or any of its agencies or boards.
- (9) A statement describing blood and marriage relationships with members of any negotiating team for the City of Middletown's collective bargaining agreements.

[Added 4-13-2009 by L.L. No. 2-2009]

C. Filing date. The disclosure statement shall be made annually by those to whom this section applies and shall be filed with the Board of Ethics on or before January 31 each year with respect to the preceding calendar year. Said statement shall be prepared under oath on a form containing the information contained in Subsection D below or on such other form as may be approved by the Common Council of the City of Middletown. The Board of Ethics shall, subject to the provisions of Subsection E below, transmit the same to the City Clerk within 30

days after its receipt thereof. Any changes involving any of the matters set forth in Subsection B above shall be reported in the same manner within 30 days of such change.

[Amended 1-7-2008; 4-13-2009 by L.L. No. 4-2009]

- D. Form of disclosure statement. The annual disclosure statement to be filed in accordance with Subsection C above shall be in the following form, unless changed by the Common Council of the City of Middletown. *Editor's Note: The disclosure statement form is included at the end of this chapter.*
- E. Privacy claims. At the time of the filing of any disclosure statement, the employee or officer filing the same may simultaneously file with the Board of Ethics a written claim of privacy specifying with particularity those portions of said statement which the employee or officer requests be deleted therefrom in the record thereof to be maintained by the City Clerk. The Board of Ethics, prior to transmission of such statement to the City Clerk, shall delete any such item upon a finding that the same is of a highly personal nature, does not in any way relate to the duties of the position held by such person and does not create an actual or potential conflict of interest. The employee or officer shall have an opportunity to appear before the Board of Ethics in accordance with written procedures to be established by the Board of Ethics and filed with the Common Council and the City Clerk.

[Amended 1-7-2008]

§ 48-8. Penalties for offenses.

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