

Chapter 4: Annual Disclosure

(Chapter added City Record 12/21/2018, eff. 1/20/2019)

§ 4-01 Procedures for Obtaining an Extension of Time to File an Annual Disclosure Report.

(a) For the purposes of Administrative Code § 12-110(c)(4), a request for an extension of time within which to file an annual disclosure report must be made in writing, including by email, and received by the Board no later than 10 calendar days prior to the filing deadline set by the Board.

(b) The request for an extension of time must include:

(1) The name of the filer and the filer's City agency or public entity; and

(2) An explanation of justifiable cause or undue hardship that would warrant an extension, accompanied by any supporting documentation. A justifiable cause or undue hardship shall not be based on periods of annual leave, attendance at conferences or meetings, or other scheduled or voluntary absences from work, unless there are extenuating circumstances detailed in the request.

(c) The Board will review any timely request for an extension and give written notice to the filer of its determination.

(d) If the request for an extension of time is approved, such report must be filed on or prior to the new filing deadline set by the Board in its determination. The new filing deadline will not be greater than four months from the original filing deadline set by the Board.

(e) If the request for an extension of time is denied, such report must be filed by the original filing deadline set by the Board.

(Renumbered from former 53 RCNY § 1-08, City Record 12/21/2018, eff. 1/20/2019; amended City Record 10/7/2020, eff. 11/6/2020)

§ 4-02 Retention of Annual Disclosure Reports.

(a) For the purposes of Administrative Code § 12-110(f), the Board will retain each annual disclosure report filed with the Board for six years after the close of the calendar year to which such report relates.

(b) The Board will retain an annual disclosure report beyond the six-year retention period at the request of the Department of Investigation or any governmental unit, or component thereof, that performs as one of its principal functions any activity pertaining to law enforcement. Such request must be made in writing and received by the Board no later than 10 calendar days prior to the expiration of the six-year retention period. The Board will retain the report only for the additional time necessary or for the law enforcement matter identified in the request to be concluded.

(Renumbered from former 53 RCNY § 1-10, City Record 12/21/2018, eff. 1/20/2019; amended City Record 10/7/2020, eff. 11/6/2020)

§ 4-03 City Employees Holding Policymaking Positions for Purposes of the Annual Disclosure Law.

For purposes of Administrative Code § 12-110(b)(3)(a)(3), a person holds a "policymaking position" if they have been designated as having substantial policy discretion pursuant to 53 RCNY § 1-02.

(Renumbered from former 53 RCNY § 1-14, City Record 12/21/2018, eff. 1/20/2019; amended City Record 10/7/2020, eff. 11/6/2020)

§ 4-04 City Employees Whose Duties Involve the Negotiation, Authorization, or Approval of Contracts and of Certain Other Matters.

(a) For purposes of Administrative Code § 12-110(b)(3)(a)(4), a City employee shall be deemed to have duties that involve the negotiation, authorization, or approval of contracts, leases, franchises, revocable consents, concessions, and applications for zoning changes, variances, and special permits if the employee performs any of the following duties:

(1) Determines the substantive content of a request for proposals or other bid request or change order;

(2) Makes a determination as to the responsiveness of a bid or the responsibility of a vendor or bidder;

(3) Evaluates a bid;

(4) Negotiates or determines the substantive content of a contract, lease, franchise, revocable consent, concession, or application for a zoning change, variance, or special permit or change order;

(5) Recommends or determines whether or to whom a contract, lease, franchise, revocable consent, concession, or application for a zoning change, variance, or special permit or change order should be awarded or granted;

(6) Approves a contract, lease, franchise, revocable consent, or concession or change order on behalf of the City or any agency subject to Administrative Code § 12-110; or

(7) Determines the content of or promulgates City procurement policies, rules, or regulations.

(b) Clerical personnel and other public servants who, in relation to the negotiation, authorization, or approval of contracts, leases, franchises, revocable consents, concessions, and applications for zoning changes, variances, and special permits, perform only ministerial tasks shall not be required to file a financial disclosure report pursuant to Administrative Code § 12-110(b)(3)(a)(4). For example, public servants who are under the supervision of others and are without substantial personal discretion, and who perform only clerical tasks (such as typing, filing, or distributing contracts, leases, franchises, revocable consents, concessions, or zoning changes, variances, or special permits or calendaring meetings or who identify potential bidders or vendors) shall not, on the basis of such tasks alone, be required to file a financial disclosure report. Similarly, public servants who write a request for proposals, bid request, change order, contract, lease, franchise, revocable consent, concession or application for a zoning change, variance, or special permit or procurement policy, rule, or regulation under the direction of a superior but who do not determine the substantive content of the document shall not, on the basis of such tasks alone, be required to file a financial disclosure report.

(Renumbered from former 53 RCNY § 1-15, City Record 12/21/2018, eff. 1/20/2019)

§ 4-05 Filing Deadlines for Candidates Seeking Payment of Public Funds from the New York City Campaign Finance Board.

Pursuant to Administrative Code § 12-110(b)(2)(a), each person who has declared his or her intention to seek a designation or nomination for election to an office and who is seeking payment of public funds for the first time in February, March, or April of the election year must submit an annual disclosure report with the Conflicts of Interest Board by the following deadlines: for the payment date of February 15, the annual disclosure report must be submitted by January 21; for the payment date of March 15, the annual disclosure report must be submitted by February 19; and for the payment date of April 15, the annual disclosure report must be submitted by March 21. If the final date to submit the annual disclosure report falls on a Saturday, Sunday, or public holiday, the deadline will be extended to the following business day.

§ 4-06 Procedures to Appeal a Designation as a Required Filer of a Financial Disclosure Report.

(a) *Applicability.* Any employee designated as a required filer by his or her agency may appeal the determination that he or she is required to file a financial disclosure report with the Conflicts of Interest Board ("the Board") pursuant to New York City Administrative Code § 12-110, first to his or her agency head and then to the Board.

(b) *Appeal to the Agency Head.*

(1) Any employee seeking to appeal the determination that he or she is required to file a financial disclosure report shall complete a "Notice of Appeal to Agency Head," on such form as the Board shall adopt and make available on the Board's website. The completed form shall include the employee's name, employee identification number ("EIN") or agency identifier, agency name, agency code, civil service title, office title, and a brief statement of the grounds for the appeal.

(2) An employee seeking to appeal such agency determination shall file, in the manner designated by the agency, the completed Notice of Appeal form with his or her agency financial disclosure liaison prior to the deadline for filing his or her financial disclosure report but in any event the employee shall have no fewer than twenty-one days within which to file such Notice of Appeal after receiving the notification by the agency that he or she must file a financial disclosure report. Failure to file the Notice of Appeal by the later of twenty-one days after such notification or the deadline for filing, as the case may be, shall constitute a waiver of the right to appeal and the employee will be required to file a financial disclosure report.

(3) Upon receipt of the completed Notice of Appeal, the agency financial disclosure liaison shall:

(i) Time and date stamp the Notice of Appeal form;

(ii) Provide the employee with a copy of such time and date-stamped form as a receipt;

(iii) Transmit the Notice of Appeal form forthwith to the agency head or his or her designee; and

(iv) Within five days of the receipt of the Notice of Appeal, notify the Board by e-mail of the pendency of the appeal and the date that the appeal was received by the agency. Such notice to the Board shall contain the employee's name, agency, EIN (or agency identifier), and the date that the appeal was filed.

(4) No later than fourteen days after filing the Notice of Appeal, the employee shall submit to his or her agency head or such agency head's designee a written statement and any documentation in support thereof setting forth the reasons that such employee believes he or she should not be designated as a required filer of a financial disclosure report. Failure to submit such written statement within such fourteen-day period shall constitute a waiver of the right to appeal.

(5) Within fourteen days of the agency's receipt of the employee's written statement, the agency head or his or her designee shall advise in writing or by email the employee, his or her employee's collective bargaining representative, attorney or other representative, if any, and the Board of the agency's decision as to whether or not the employee is required to file. If the agency head or the agency head's designee fails to meet such fourteen-day deadline, the appeal shall be deemed granted upon default.

(6) A decision of the agency head or his or her designee that denies an appeal shall set forth the reasons for and evidence relied upon in reaching such decision. Such denial shall be predicated on a showing that the employee meets the requirements of at least one of the filing categories set forth in New York City Administrative Code § 12-110(b)(3)(a)(3)-(4) and 53 RCNY §§ 1-02, 1-14, and 1-15. If the agency denies the appeal, the notice to the Board shall state the manner by which the employee was notified and the date of such notification.

(7) The agency head or his or her designee may consult with the Board prior to rendering its decision.

(c) *Procedure Upon Agency's Grant of Appeal.* If the agency grants the employee's appeal, the employee's name shall be removed from the Board's list of required filers and the employee will not be required to file a financial disclosure report for that filing year or in future years until or unless the employee's title, position, duties, or responsibilities change in such a way that he or she would be required to file pursuant to the criteria set forth in New York City Administrative Code § 12-110(b).

(d) *Procedure Upon Agency's Denial of Appeal.*

(1) An employee whose appeal is denied by his or her agency shall, within thirty days after service of the agency's notice of denial, either:

(i) file a completed financial disclosure report with the Board, or

(ii) file with the Board and with the employee's agency head or his or her designee a completed "Notice of Appeal to Board," on such form as the Board shall prescribe and make available on the Board's website. Failure to file either a financial disclosure report or an appeal with the Board within the thirty-day period shall constitute a waiver of the right to a further appeal and shall subject the employee to the imposition of the statutory late filing fine pursuant to Administrative Code § 12-110(g).

(2) Within thirty days after filing of a Notice of Appeal to the Board, the employee shall file with the Board and file with the employee's agency head or his or her designee the following materials:

(i) A copy of the statement and any supporting materials previously submitted to the agency head by the employee on the appeal in accordance with paragraph one of subdivision (a) of this section;

(ii) A copy of the agency head's decision on such appeal; and

(iii) Any supplemental documents the employee elects to provide.

(3) Within thirty days after the employee files the materials set forth in paragraph two of this subdivision, the agency shall file with the Board all materials relied upon by the agency in making its determination that the employee is required to file a financial disclosure report, as well as any additional documents in support of the agency's determination.

(4) Within thirty days after the agency has filed the materials set forth in paragraph three of this subdivision, the employee may file with the Board such additional materials as he or she deems necessary to either rebut evidence produced by the agency or otherwise support his or her position.

(5) The Board's Director of Financial Disclosure shall review the agency's determination and the documents submitted by the employee and the agency and shall make a recommendation to the Board, or to the Executive Director upon delegation by the Board, as to whether the agency's determination should be upheld or reversed. The agency and employee shall each be served with a copy of the recommendation of the Director of Financial Disclosure and, within thirty days of service of the recommendation, may submit written comments to the Board or Executive Director, as the case may be, upon the proposed recommendation.

(6) In the event that the Board, in its sole discretion, determines that issues are presented by the written materials filed on the appeal that require an evidentiary hearing, the Board may order such a hearing before the full Board, or, in the discretion of the Chair, before a member or members of the Board or before the Executive Director, designated for that purpose, at which the employee and agency may call witnesses to testify under oath to

determine any such issue. If the Board requests additional information, both the employee and the agency shall provide to the Board whatever additional information it requests, within fourteen days after service of such a request in writing or by email by the Board. Failure of either party to timely provide any of the requested information may result in a summary finding adverse to that party.

(7) The Board or the Executive Director, as the case may be, shall review the recommendation and any comments submitted in response thereto and issue a decision and order either upholding or reversing the agency's decision.

(8) If the Board grants the appeal, the employee's name shall be removed from the Board's list of required filers and the employee will not be required to file a financial disclosure report for that filing year or in future years until or unless the employee's title, position, duties, or responsibilities change such that he or she would be required to file pursuant to the criteria set forth in New York City Administrative Code § 12-110(b).

(9) If the appeal is denied, the employee shall either:

(i) file a financial disclosure report for that filing year within thirty days after service of the denial of the appeal by the Board, and shall file for future years until or unless the employee's title, position, duties, or responsibilities change such that he or she would not be required to file pursuant to the criteria set forth in Administrative Code § 12-110(b); or

(ii) commence, within the time provided by law, an Article 78 proceeding to review the Board's decision.

(e) *General Provisions.*

(1) At all stages of the financial disclosure appeals process, the employee may be represented by a union representative, an attorney or other representative.

(2) Once an employee files an appeal with the Board, neither the employee nor the agency or their respective representatives may communicate ex parte with any member of the Board staff or Board with respect to the matter, except on consent of the opposing party or in an emergency.

(3) During the pendency of the appeal and any court proceeding timely brought by the employee to review a denial of the appeal by the Board, the employee need not file a financial disclosure report, and no late filing fines will be assessed for that period.

(4) Whenever a deadline in the process set forth in this section is measured from the filing or service of notice and notice is filed or served by United States Postal Service mail, five days shall be added to the deadline.

(5) The Board may, in its discretion and for good cause shown, extend any deadline set forth in this rule. An application for such extension must be made in writing and prior to the expiration of the deadline.

(6) In the case of any appeal that is decided upon default, whether in favor of the employee or the agency, that decision shall apply to that filing year only and shall not be a determination on the merits.

(7) Unless otherwise stated, any reference to a number of days specified as a period within which an act is required to be done means such number of calendar days.

(8) Nothing in this rule shall prevent the Board from determining, pursuant to New York City Administrative Code § 12-110(b)(3)(a)(2)-(3), that any public servant, regardless of an agency's determination, is required to file a financial disclosure report.

(Renumbered from former 53 RCNY § 1-17, City Record 6/22/2020, eff. 7/22/2020)