

## **Chapter 33. ETHICS**

[HISTORY: Adopted by the City Council of the City of Auburn 3-28-1991 by L.L. No. 2-1991 as Ch. 4, Arts. I, II and III of the 1991 Code. Amendments noted where applicable.]

### **Article I. Code of Ethics**

#### **§ 33-1. Purpose.**

Pursuant to the provisions of § 806 of the General Municipal Law, the Council of the City of Auburn 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 article to promulgate these rules of ethical conduct for the officers and employees of the City of Auburn. These rules shall serve as a guide for official conduct of the officers and employees of the City of Auburn. The rules of ethical conduct of this article 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 officers and employees.

#### **§ 33-2. Definitions.**

For the purposes of this article, unless the context or subject matter otherwise requires, the following terms shall have the following meanings:

##### **CHIEF FISCAL OFFICER**

The Comptroller of the City of Auburn, New York.

##### **CONTRACT**

Any claim, account or demand against or agreement with a municipality, express or implied, and shall include the designation of a depository of public funds and the designation of a newspaper, including but not limited to an official newspaper, for the publication of any notice, resolution, ordinance, or other proceeding where such publication is required or authorized by law.

##### **INTEREST**

A direct or indirect pecuniary or material benefit accruing to a municipal officer or employee as the result of a contract with the municipality which such officer or employee serves. For the purposes of this article a municipal officer or employee shall be deemed to have an interest in the contract of his spouse, minor children and dependents, except a contract of employment with the municipality which such officer or employee serves; a firm, partnership or association of which such officer or employee is a member or employee; a corporation of which such officer or employee is an officer, director or employee; and a corporation any stock of which is owned or controlled directly or indirectly by such officer or employee.

##### **MUNICIPALITY**

The City of Auburn, New York, and any of its subordinate units or agencies.

##### **MUNICIPAL OFFICER OR EMPLOYEE**

An officer or employee of the City of Auburn, 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 or assistant chief.

##### **TREASURER**

The City Treasurer of the City of Auburn, New York.

**§ 33-3. Conflicts of interest prohibited.**

Except as provided in § 33-4 of this article, no municipal officer or employee shall have an interest in any contract with the municipality of which he is an officer or employee, when such officer or employee, individually or as a member of a board, has the power or duty to negotiate, prepare, authorize or approve the contract or authorize or approve payment thereunder, audit bills or claims under the contract, or appoint an officer or employee who has any of the powers or duties set forth above, and no chief fiscal officer, Treasurer, or his deputy or employee shall have an interest in a bank or trust company designated as a depository, paying agent, registration agent or for investment of funds of the municipality of which he is an officer or employee. The provisions of this section shall in no event be construed to preclude the payment of lawful compensation and necessary expenses of any municipal officer or employee in one or more positions of public employment, the holding of which is not prohibited by law.

**§ 33-4. Exceptions.**

The provisions of § 33-3 of this article shall not apply to:

- A.** The designation of a bank or trust company as a depository, paying agent, registration agent or for investment of funds of a municipality, except when the chief fiscal officer, Treasurer, or his deputy or employee has an interest in such bank or trust company; provided, however, that where designation of a bank or trust company outside the municipality would be required because of the foregoing restriction, a bank or trust company within the municipality may nevertheless be so designated.
- B.** A contract with a person, firm, corporation or association in which a municipal officer or employee has an interest which is prohibited solely by reason of employment as an officer or employee thereof, if the remuneration of such employment will not be directly affected as a result of such contract and the duties of such employment do not directly involve the procurement, preparation or performance of any part of such contract.
- C.** The designation of a newspaper, including but not limited to an official newspaper, for the publication of any notice, resolution, ordinance or other proceeding where such publication is required or authorized by law.
- D.** The purchase by a municipality of real property or an interest therein, provided the purchase and the consideration therefor are approved by order of the Supreme Court upon petition of the governing board.
- E.** The acquisition of real property or an interest therein through condemnation proceedings according to law.
- F.** A contract with a membership corporation or other voluntary nonprofit corporation or association.
- G.** The sale of bonds and notes pursuant to § 60.10 of the Local Finance Law.

- H.** A contract in which a municipal officer or employee has an interest if such contract was entered into prior to the time he was elected or appointed as such officer or employee, but this subsection shall in no event authorize a renewal of any such contract.
- I.** A contract with a corporation in which a municipal officer or employee has an interest by reason of stock holdings when less than 5% of the outstanding stock of the corporation is owned or controlled directly or indirectly by such officer or employee.
- J.** A contract for the furnishing of public utility services when the rates or charges therefor are fixed or regulated by the Public Service Commission.
- K.** A contract for payment of a reasonable rental of a room or rooms owned or leased by an officer or employee when the same are used in the performance of his official duties and are so designated as an office or chamber.
- L.** A contract for the payment of a portion of the compensation of a private employee of an officer when such employee performs part-time service in the official duties of the office.
- M.** A contract in which a municipal officer or employee has an interest if the total consideration payable thereunder, when added to the aggregate amount of all consideration payable under contracts in which such person had an interest during the fiscal year, does not exceed the sum of \$100.
- N.** A contract with a member of a private industry council established in accordance with the Federal Job Training Partnership Act or any firm, corporation or association in which such member holds an interest, provided the member discloses such interest to the Council and the member does not vote on the contract.

**§ 33-5. Disclosure of interest.**

- A.** Any municipal officer or employee who has, will have, or later acquires an interest in any actual or proposed contract with the municipality of which he is an officer or employee shall publicly disclose the nature and extent of such interest in writing to the governing body thereof as soon as he has knowledge of such actual or prospective interest. Such written disclosure shall be made part of and set forth in the official record of the proceedings of such body. Once disclosure has been made by an officer or employee with respect to an interest in a contract with a particular person, firm, corporation or association, no further disclosures need be made by such officer or employee with respect to additional contracts with the same party during the remainder of the fiscal year.
- B.** Notwithstanding the provisions of Subsection A of this section, disclosure shall not be required in the case of an interest in a contract described in Subsections I through N of § 33-4 hereof.

**§ 33-6. Contracts void.**

Any contract willfully entered into by or with a municipality in which there is an interest prohibited by this article shall be null, void and wholly unenforceable.

**§ 33-7. Certain acts prohibited.**

**A.** No municipal officer or employee shall:

- (1)** 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, 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 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;
- (2)** Disclose confidential information acquired by him in the course of his official duties or use such information to further his personal interests;
- (3)** 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 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
- (4)** 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 compensation is to be dependent or contingent upon any action by such 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.

**B.** Elected officials.

- (1)** No elected official of the City of Auburn shall use his or her elective office for the purpose of soliciting, securing, obtaining, inducing or otherwise realizing any private or pecuniary benefit to himself or herself, as it pertains to a contract or interest as defined under § 800, Subdivisions 2 and 3 of Article 18 of the state conflicts of interest statute. *Editor's Note: See Article 18 of the General Municipal Law.* This restriction shall pertain to the elected official, any business entity owned to any extent or controlled by said elected official, or to members of the immediate family of the elected official, as defined under the state statute.
- (2)** No elected official shall hold any other municipal office or position for compensation during the elected official's term of office.

**[Amended 12-5-1991]**

- (3)** No elected official shall hold any City municipal office or position for compensation within two years of leaving elective office, with the exception of a civil service competitive position.

**[Added 12-5-1991]**

- (4)** No elected official shall, within a one-year period of leaving office, appear and practice before the municipality or receive compensation for any services rendered by such elected official on behalf of any person, firm, or association in relation to any case, proceeding, or application or other matters before the municipality.

**[Added 12-5-1991]**

- (5)** No elected official shall, within one year of leaving office, enter into any contract or agreement to provide goods and/or services to the municipality except pursuant to a contract awarded in accordance with the competitive bidding requirements of the General Municipal Law, Article 5-A. *Editor's Note: Original § 4.7(2)(f), which immediately followed this subsection and dealt with political party chairpersons, as added 12-5-1991 and amended 2-16-1995 by Ord. No. 6-1995, was deleted 10-26-2000 by Ord. No. 16-2000.*

**[Added 12-5-1991]**

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

**§ 33-8. Solemnization of marriages.**

Notwithstanding any statute, law or rule to the contrary, no public officer listed in § 11 of the Domestic Relations Law shall be prohibited from accepting any gift or benefit having a value of \$50 or less, whether in the form of money, property, services or entertainment, for the solemnization of a marriage by such public officer at a time and place other than the public officer's normal public place of business, during normal hours of business.

**§ 33-9. Posting of article.**

The City Manager shall cause a copy of this article to be kept posted in each public building under the jurisdiction of the City of Auburn in a place conspicuous to its officers and employees. Failure to post any such copy shall have no effect on the duty of compliance with this article, nor with the enforcement of the provisions thereof.

**Article II. Board of Ethics**

**§ 33-10. Establishment.**

Pursuant to the provisions of § 808 of Article 18 of the General Municipal Law of the State of New York, a Board of Ethics is hereby established in and for the City.

**§ 33-11. Appointment; terms of office.**

- A.** The Board of Ethics shall consist of three members, of which one member shall be an officer or employee of the City of Auburn and two members shall be persons who are residents of the City of Auburn, not an officer, employee or in any other capacity a member of City government, who shall also not be members of the same political party. The members of such Board shall be appointed by the Mayor. The terms of the initial appointees shall be for one, two or three years, and thereafter for three years each. Appointment upon the retirement of the initial term shall be for three years each.

**B.** Appointment to fill vacancies. Appointments to fill vacancies shall be for the unexpired term of the member or members whose term or terms become vacant. Such appointment to fill such vacancies shall be made in the same manner as the original appointment.

**§ 33-12. General grant of power.**

The Board of Ethics shall perform all of the duties and shall have all of the powers prescribed by the laws of the State of New York, as dictated under Article 18 of the General Municipal Law, and such other and further powers as may be conferred upon the Board by this article or by such amendments to this article as may from time to time be enacted by the City Council.

**§ 33-13. Rules of procedure; quorum.**

**A.** The Board of Ethics shall adopt rules in accordance with the provisions of this article and any other provisions of this Municipal Code not inconsistent herewith or with the laws of the State of New York.

**B.** Determinations of the Board of Ethics shall be by majority vote, and all three members shall constitute a quorum.

**§ 33-14. Powers and duties; compensation.**

**A.** The Board of Ethics shall be responsible for the interpretation of the Code of Ethics of the City of Auburn, New York, and shall adopt and make available to the public rules for the exercise of its function. The duties and powers of the Board shall be to investigate such matters dealing with the Code of Ethics as may be presented to the Board by the City Council, by any officers or employees of the City of Auburn or by members of the public.

**B.** The Board shall have the authority, upon request to the City Council and upon approval of the City Council, to obtain such funds or to retain such personnel, including outside legal counsel, as the Board may determine necessary for the proper and efficient exercise of its functions.

**C.** The Board shall report periodically its determinations to the City Manager and to the City Council. The determinations of the Board of Ethics shall be made public when consistent with the requirements of the Freedom of Information Law of the State of New York *Editor's Note: See Article 6 of the Public Officers Law.* and in all other cases except where the disclosure of information concerning employees or officers of the City is precluded or exempted by law.

**D.** The Board shall have the authority to conduct confidential investigations in pursuance of its function and shall disclose in writing the need and purposes for such confidentiality for pending investigations.

**E.** The Board shall perform such other duties as may be provided or necessary by this article or as may hereafter be required by amendments to this article or any appropriate state legislation.

**F.** The Board shall also render advisory opinions to officers and employees of the City with respect to this article and any Code of Ethics adopted pursuant hereto. Such advisory opinions shall be rendered pursuant to the written request of any such officer or employee under such rules and regulations as the Board may prescribe. In addition, it may make recommendations with respect to the drafting and

adoption of amendments to the Code of Ethics on its own initiative or upon the request of the City Council.

- G.** The members of the Board of Ethics shall receive no salary or compensation for their services as members of this Board and shall serve at the pleasure of the appointing authority.

### **Article III. Financial Disclosure**

#### **§ 33-15. Annual statement required.**

Effective for the calendar year beginning January 1, 1988, an annual statement of financial disclosure in a form to be administered by the City Manager, upon approval of the City Council, shall be filed in the office of the City Clerk by the following persons:

- A.** All local officers or employees as defined now or hereafter under § 810, Subdivision 3 of the General Municipal Law of the State of New York.
- B.** All local elected officials as defined now or hereafter under § 810, Subdivision 2 of the General Municipal Law of the State of New York.
- C.** All municipal officers or employees, as defined now or hereafter under § 800, Subdivision 5 of the General Municipal Law of the State of New York.
- D.** All candidates for elective office of an office within the City of Auburn, with the exception of Judges of the Auburn City Court, within the time periods designated under § 812, Subdivision (1)(a)(iii), (iv) and (v) of the General Municipal Law.

#### **§ 33-16. City Manager to provide form.**

The City Manager shall promulgate and distribute to those persons required to file the annual financial disclosure statement a financial disclosure statement form.

#### **§ 33-17. Filing date.**

Each year all covered persons shall be required to file an annual financial disclosure statement no later than May 15 of such year with the City Clerk.

#### **§ 33-18. New officers and employees.**

Any persons who are newly elected, appointed, hired or otherwise become persons subject to this article shall file, within 15 days of their appointment, the annual statement of financial disclosure.

#### **§ 33-19. Disciplinary procedures.**

- A.** Any covered person who fails to file the annual financial disclosure statement as required by this article shall be subject to discipline, suspension or removal from office after a hearing upon 15 days' notice before the Board of Ethics or pursuant to disciplinary proceedings as are required for those persons

eligible under the collective bargaining agreement between the City of Auburn and its bargaining units.

**B.** Any person who willfully files a false financial disclosure statement shall be subject to penalty, discipline, suspension or removal after a hearing upon 15 days' notice by the Board of Ethics or pursuant to disciplinary proceedings as are required for those persons eligible under the collective bargaining agreement between the City of Auburn and its bargaining units.

**§ 33-20. Rules and procedures for hearings.**

The Board of Ethics of the City of Auburn is hereby empowered to establish rules and procedures for hearings in regard to the requirements of this article.