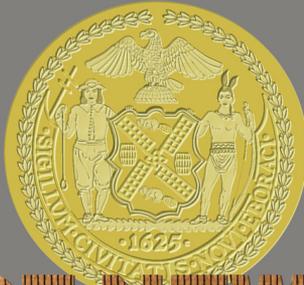


DEPT OF HEALTH  
& MENTAL HYGIENE

STANDARDS  
OF CONDUCT



CITY OF NEW YORK

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**New York City  
Department of Health  
and Mental Hygiene**

# **Standards of Conduct for Departmental Employees**

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Commissioner of Health & Mental Hygiene

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Inspector General



**Revised January 2003  
Bureau of Human Resources**

## Preface

By virtue of the authority conferred upon the Commissioner of Health and Mental Hygiene by Mayoral Executive Order No. 16 (July 1978), these *Standards of Conduct* are hereby promulgated.

All employees are required to comply with each provision of the *Standards of Conduct*. No order shall be issued which in any way conflicts with or alters the purpose or intent of any provision of the Standards of Conduct, except by authority of the Commissioner of Health and Mental Hygiene.

A copy of the *Standards of Conduct* shall be issued to each employee of the Department, for which the employee shall be held strictly accountable. Amendments or additions, as promulgated from time to time by Executive and/or Service Orders, will be incorporated into and made a part of the *Standards of Conduct*.

By Order of



Thomas R. Frieden, MD., MPH.

Commissioner of Health and Mental Hygiene

July 2002

# General Conduct

Employees shall be courteous and considerate in their contact with the public and with other employees.

Employees shall perform their duties and assignments in an orderly and efficient manner and in accordance with prescribed procedures.

If, for any reason an employee is unable to carry out an assignment, he/she shall promptly notify his/her immediate supervisor.

Employees shall perform their duties in accordance with all applicable laws, rules and regulations. Each employee is hereby advised that all orders issued by supervisory personnel must be complied with immediately despite advice offered by labor representatives, except where such orders would be illegal or would subject the employee to physical danger. If the employee believes a particular order is inconsistent with the terms and conditions of employment, he/she must comply with the order, and thereafter may file a complaint through the proper channels.

Employees shall state their name, title, and unit upon request by a supervisor or member of the public, in person or on the telephone.

Employees shall maintain a neat personal appearance while on duty.

Employees shall become aware of these regulations and will conduct themselves in accordance therewith.

# Proscribed Conduct

*Which can provide a basis for disciplinary action*

## **RULE 1—CRIMINAL/IMPROPER CONDUCT**

- 1.1 Striking or attempting to strike a supervisor, City employee or private citizen.
- 1.2 Disorderly or disruptive conduct.
- 1.3 Making a false statement under oath.
- 1.4 Making false reports or false entries in or on any Departmental record or any other official record in connection with any Departmental operation or activity.
- 1.5 Making, attempting to submit or submitting any false report, document or instrument, including but not limited to time cards or medical or jury absence documentation, knowing or having reason to know that such report, document or instrument is false or contains false information.
- 1.6 **Official Misconduct**—A public servant is guilty of official misconduct when, with intent to obtain a benefit or to injure or deprive another person of a benefit:
  - a. He/She commits an act relating to his/her office but constituting an unauthorized exercise of his/her official functions, knowing that such act is unauthorized, *or*
  - b. He/She knowingly refrains from performing a duty which is imposed upon him/her by law or is clearly inherent in the nature of his/her office.
- 1.7 Receiving reward for official misconduct—A public servant is guilty of receiving reward for official misconduct when he/she solicits, accepts or agrees to accept any benefit from another person for having violated his/her duty as a public servant.
- 1.8 **Bribery**—A public servant is guilty of bribe receiving when he/she solicits, accepts or agrees to accept any benefit from another person upon agreement or understanding that his/her vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.
- 1.9 **Gratuities**—A public servant is guilty of receiving unlawful gratuities when he/she solicits, accepts or agrees to accept any benefit for having engaged in official conduct which he/she is required or authorized to perform and for which he/she was not entitled to any special or additional compensation.

- 1.10 Stealing or permitting any property or thing of value to be stolen from any City premises.
- 1.11 Conviction for a felony or misdemeanor.
- 1.12 Discriminating against any employee, applicant for employment or member of the public because of race, creed, color, national origin, ancestry, age, sexual orientation or affectional preference.
- 1.13 Performing any act, whether by speech, writing, or dissemination of printed or recorded materials or by any other means, which may tend to arouse hatred or ill will against any individual or group, on the basis of sex, race, creed, color, national origin, sexual orientation or affectional preference.
- 1.14 Any conduct which is proscribed by City, State or Federal Law.
- 1.15 Engaging in any activity which constitutes a Conflict of Interest, as defined in Chapter 68 of the New York City Charter (See Chapter 68).
- 1.16 Failure to report any arrest or criminal conviction to the Director of the Employment Law Unit and to the Inspector General, within three working days of such arrest or conviction.
- 1.17 Failure to report the suspension or revocation of your professional license or driver's license.

## **RULE 2—ALCOHOLIC BEVERAGES OR CONTROLLED SUBSTANCES**

- 2.1 Indulging in or being under the influence of alcoholic beverages, drugs or compounds while on duty, unless drugs or compounds are prescribed by a physician for use by the employee.
- 2.2 Bringing open containers or intoxicating liquors or beverages or controlled substances onto City premises or property, or possessing it thereon while on duty.

 **NOTE:** This regulation shall not apply to alcoholic beverages for the purpose of social functions authorized by the Commissioner or his/her representative.

## **RULE 3—UNBECOMING CONDUCT**

- 3.1 Disclosing to any unauthorized person any information contained within or relating to the Department's records, operations or activities.
- 3.2 Removal of official records from custodial area without authorization.
- 3.3 Addition to or modification of official records without authorization.
- 3.4 Permitting any unauthorized person to remain in or on Department premises or property.

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- 3.5 Permitting City property or premises to be used by unauthorized persons or for unauthorized purposes.
- 3.6 Being uncivil or discourteous in dealings with the public, or with other municipal employees.
- 3.7 Directing obscene or abusive language towards a superior, City employee or private citizen.
- 3.8 Threatening or intimidating a superior, fellow employee, or private citizen.
- 3.9 Causing or allowing avoidable or unnecessary noises on premises or property, or in the conduct of official duties.
- 3.10 Refusing to obey a direct order,
- 3.11 Sleeping while on duty.
- 3.12 Unauthorized absence from assigned work location.
- 3.13 Excessive use of Department telephone for personal calls.
- 3.14 Gambling while on duty or while on City property.
- 3.15 Smoking in prohibited areas.
- 3.16 Selling or offering to sell any item on City property on or off duty.
- 3.17 Damaging, losing or improperly using City property or allowing or permitting such property to be damaged, lost, or improperly used.
- 3.18 Incompetence.
- 3.19 Inefficient, negligent, or careless performance of duties.
- 3.20 Rendering improper or unauthorized service.
- 3.21 Soliciting contributions or payments while on City time or premises. This regulation shall not apply to payment of regular dues or assessments of employee organizations or money collected for other purposes authorized by the Commissioner.
- 3.22 Organizing or attempting to organize, during working hours, any group of employees on City property.
- 3.23 Failure to wear identification on Department premises, where such identification is required.
- 3.24 Receiving personal mail at work location.
- 3.25 Conduct prejudicial to good order and discipline.
- 3.26 Conduct tending to bring the City or the Department into disrepute.

## **RULE 4—REGARDING CITY EQUIPMENT**

An employee of the Department is responsible for the good care, proper maintenance, and serviceable condition of City property issued for his/her use. When, in the course of duty, any equipment or supplies are properly passed from one employee to another, the last person to receive same shall be responsible for them. Charges may be preferred against an employee who engages in the following proscribed conduct;

- 4.1 Unauthorized use or operation of City equipment including but not limited to misusing, tampering, defacing or vandalizing said equipment.
- 4.2 Permitting any unauthorized person to operate or use any City equipment.
- 4.3 Improperly interfering with the operation or use City equipment.
- 4.4 Failing to report any damages to or loss of City equipment as soon as employee becomes aware, or should reasonably have become aware, of such damage or loss.
- 4.4 Failing to keep and/or maintain office equipment and/or other property assigned to the employee in good condition.
- 4.5 Failing to maintain the place of work in neat and orderly condition.

## **RULE 5—REGARDING MOTOR VEHICLES**

An employee of the Department is responsible for the good care, maintenance and serviceable condition of motor vehicles issued for his/her use. When, in the course of duty, any vehicle is properly passed from one employee to another, the last person to receive same shall be responsible for it. Charges may be preferred against an employee who engages in the following proscribed conduct with respect to City-owned motor vehicles:

- 5.1 Operating a motor vehicle in a negligent or careless manner.
- 5.2 Operating a motor vehicle while under the influence of alcohol or a controlled substance, on or off duty.
- 5.3 Operating or riding in a motor vehicle without proper authorization.
- 5.4 Permitting any person to operate or ride in or on a motor vehicle without proper authorization.
- 5.5 Failing to have appropriate license on person while operating a motor vehicle.
- 5.6 Causing or permitting damage to be caused to a motor vehicle.
- 5.7 Failing to promptly report any damage to, or defects in motor vehicle.
- 5.8 Failing to report any accident, however slight.
- 5.9 Failing to keep motor vehicle clean at all times.

## **RULE 6—REGARDING SUPERVISORY PERSONNEL**

In addition to proscribed conduct set forth elsewhere in these Standards of Conduct, charges may be preferred against supervisory personnel for the following;

- 6.1 Failing to properly supervise subordinates.
- 6.2 Borrowing money or anything of value from subordinates.
- 6.3 Soliciting contributions or payments from subordinates at any time, on or off City premises. (This regulation shall not apply to payment of regular dues or assessments of employee organizations or money collected for other purposes authorized by the Commissioner).
- 6.4 Failing to document all violations of Department rules and procedures.
- 6.5 Failing to forward documentation of all violations of Department rules and procedures to the Office of the
- 6.6 Failing to enforce Department rules, orders, directives or procedures.
- 6.7 Failing to maintain discipline over subordinates.
- 6.8 Permitting any criminal or other unauthorized activity on City property.

## **RULE 7—REGARDING TIME AND LEAVE RULES**

Employees are expected to follow; all Time and Leave Rules; all procedures and regulations of the City Personnel Department; all Executive Orders of the Mayor and of the Commissioner of Health and Mental Hygiene; all established Health Department policies and Service Orders; and all labor contract provisions. All employees are required to complete a weekly timecard, which documents the employee's actual time worked, annual leave, sick leave and any other leave with or without pay. Failure to comply with any component of Rule 7 may result in a reprimand, fine, suspension, demotion, or dismissal.

- 7.1 **Annual Leave**—Earned annual leave shall be taken at times convenient to the Department. Annual leave requests must be submitted in advance, in writing, on the appropriate Department form, and approved in advance in writing on the same form by the appropriate supervisor. Employees who are absent and have not followed this procedure will be deemed absent without authorization.
- 7.2 **Lateness**—Employees who are not at their work locations, ready to work at the scheduled time are late. Employees are expected to take the necessary measures to insure arrival at their work stations at or before the required starting time.

A grace period of 5 minutes is allowed at the start of the workday and is allowed for employees on compressed time, traditional work schedules and staggered hours only. Employees who are working on a flextime schedule are not entitled to the 5 minute grace period.

Employees are expected to anticipate and allow for minor travel delays. Only lateness caused by a verified major failure of public transportation, or other instance of similar severity, will be excused.

- 7.3 **Sick Leave**—Sick leave applies only to illness suffered by the employee; however, two sick days per year may be utilized to attend illness of a family member.

One's supervisor must be notified by telephone no later than 15 minutes after the employee's regularly scheduled starting time on each day the employee seeks to charge to his/her sick leave balance.

Sick leave documentation must be provided by the employee whenever; the absence exceeds three consecutive work days; *or* five undocumented "sick days" already have been taken in any six-month sick leave period (said periods defined as January 1 through June 30 and July 1 through December 31); *or* undocumented sick leave is taken immediately proceeding or following a holiday or scheduled day off (i.e. weekend or annual leave) and such practice occurs more than four times in any six-month sick leave period (January 1 through June 30 and July 1 through December 31).

An employee who anticipates a series of three or more medical appointments, which will require a repeated use of sick leave in units of one day or less, shall submit medical documentation indicating the nature of the condition and the anticipated schedule of treatment.

- 7.4 **Jury Duty**—Employees serving jury duty must remit to the City the amount paid to him/her for jury service rendered, less any amount received as reimbursement for travel expenses. Proof of service as a juror must be submitted.

# Sexual Harassment Policy

## COMMISSIONER OF HEALTH AND MENTAL HYGIENE JULY 1, 2002

It is the policy of the Department of Health and Mental Hygiene to provide a work environment free of unlawful discrimination which includes freedom from sexual harassment. The Department of Health and Mental Hygiene will not tolerate sexually harassing behavior. This policy applies to all applicants for employment all employees and patients served by Department of Health and Mental Hygiene.

Sexual Harassment has been defined by government regulations as “unwelcome sexual advances requests for sexual favors and other verbal or physical conduct of a sexual nature” when:

- submission to the conduct is either an explicit or implicit condition of Employment; *or*
- submission or rejection of such conduct is used as the basis for employment decisions such as compensation promotions or assignments affecting the individual; *or*
- such conduct has the purpose or effect of unreasonably interfering with an individuals work performance or creating an intimidating hostile or offensive work environment.

The key word is unwanted. This is not intended to regulate social interactions at the workplace. When a person makes it known that a sexual overture or conduct is *unwelcome* then it *must stop immediately*.

It is the responsibility of each manager and supervisor to prevent sexual harassment in the work place and assure that no employee is subjected to such conduct. This includes making it clear that unwelcome behaviors such as offensive flirtation sexual comments or jokes, graphic descriptions of an individual’s body, sexually degrading words used to describe an individual and the display in the work place of sexually aggressive objects or pictures are not allowed.

If any employee of the New York City Department of Health and Mental Hygiene believes that he or she has experienced sexual harassment, the situation should be discussed immediately with a supervisor. If such a discussion is not feasible, the situation should be reported immediately to your Bureau EEO Liaison, or the agency EEO Officer (see attached). All complaints will be handled in a confidential manner to the extent permitted by law.

No retaliation will be permitted against any employee alleging sexual harassment or participating in an investigation or complaint.

The substantiation of a charge of sexual harassment may result in disciplinary action as necessary, up to and including, termination of employment.

Department of Health and Mental Hygiene will take appropriate steps to enforce this policy. Any employee who alleges to have been discriminated against may file a complaint within a year of the alleged incident with the EEO Officer at 93 Worth Street, Room 1114b, New York, NY 10013 or call 212-219-5250.

## **Derogatory Remarks Policy**

### **COMMISSIONER OF HEALTH AND MENTAL HYGIENE JULY 1, 2002**

All employees, patients and the public served by the New York City Department of Health and Mental Hygiene have the right to an environment free of derogatory racial, sexual, ethnic, disabled or religious remarks. Such derogatory remarks may be contrary to federal and state civil rights laws and can impose a legal liability on the Corporation as well as tarnish the Agency's public image and damage overall morale.

All persons on DHMH premises have a responsibility to desist from behavior that might offend the dignity and violate the personal and legal rights of others. Agency officials are obliged to promptly investigate incidents and complaints of derogatory remarks, faxes, or e-mails and, if warranted, take appropriate disciplinary action.

It is the responsibility of each manager and supervisor to disseminate and implement this policy; and to assure that no employee, patient or the public served by this Agency are subjected to such derogatory remarks.

Any employee or patient of the New York City Department of Health and Mental Hygiene who alleges to have been discriminated against may file a complaint with the EEO Officer at 93 Worth Street, Room 1114b (CN-29A, New York, NY 10013, 212-219-5250) within a reasonable time following the alleged incident.

# Commissioner of Investigation, Inspectors General and Standards of Public Service

## MAYORAL EXECUTIVE ORDER NO. 16 JULY 26, 1978

(As Amended by Executive Order No. 72, April 23, 1984; Executive Order No. 78, October 5, 1984; and Executive Order No. 16, December 26, 1986)

### § 1. Responsibilities of Commissioner.

The Commissioner of Investigation (hereinafter called the Commissioner) shall have general responsibility for the investigation and elimination of corrupt or other criminal activity, conflicts of interest, unethical conduct, misconduct and incompetence (i) by City agencies, (ii) by City officers and employees and (iii) by persons regulated by, doing business with or receiving funds directly or indirectly from the City (hereinafter called persons dealing with the City), with respect to their dealings with the City. For these purposes the Commissioner shall: (a) assist agency heads in establishing and maintaining standards of conduct together with fair and efficient disciplinary systems; (b) conduct background investigations of employees to be appointed to or holding positions of responsibility; (c) receive complaints and information from the public with respect to City agencies, officers, and employees, as well as persons dealing with the City, and to take appropriate action with respect to such complaints; (d) undertake any investigation or study of the affairs, functions, accounts, methods, personnel or efficiency of any agency; and (e) act as liaison with federal, state and local law enforcement and regulatory agencies concerning all matters within the scope of this Order.

[As amended by Executive Order No. 16, December 26, 1986]

### § 2. Responsibilities of Agency Heads.

All agency heads shall be responsible for establishing, subject to review for completeness and inter-agency consistency by the Commissioner, written standards of conduct for the officials and employees of their respective agencies and fair and efficient disciplinary systems to maintain those standards of conduct.

### § 3. Responsibilities of Inspectors General.

(a) (i) The Inspector General system shall be a single aggregate of personnel and resources within the Department of Investigation under the direction of the Commissioner. There shall be an Inspector General for each agency who shall report

directly to the Commissioner and shall be responsible for the investigation and elimination of corrupt or other criminal activity and conflicts of interest within the agency to which he or she is designated. The Commissioner shall allocate the personnel and resources of the Inspector General system to the Inspector General offices as needed to develop strategies and programs for the investigation and elimination of corruption and other criminal activity affecting the City of New York. Such investigations and programs shall proceed in accordance with the Commissioner's direction..

[As amended by Executive Order No. 16, December 26, 1986]

(a) (ii) The Commissioner shall be responsible for developing policy and strategy for the Inspector General system, for the preparation and allocation of a system-wide budget, and for the assignment, direction, and evaluation of all Inspector General personnel in the various agencies and departments. This responsibility shall be carried out, however, in a strict, regular, ongoing, meaningful and comprehensive consultation and collaboration with each agency head.

[As amended by Executive Order No. 16, December 26, 1986]

(b) Agency heads shall remain principally responsible for maintaining corruption-free agencies through this formal collaborative arrangement by developing procedures and systems to protect against corrupt and other criminal activity affecting their agency, by hiring employees of integrity and competence, by careful managerial oversight and high-quality supervision of agency employees, and by adequate review and monitoring of fiscal commitments and processes within their respective agency. In order to accomplish these objectives in coordination with the Department of Investigation, each agency head, the Commissioner and the Inspector General designated for each agency shall, in consultation, in January of each year beginning in 1988 formulate a comprehensive anti-corruption program for each agency to identify, evaluate, and eliminate corruption hazards and to identify significant areas warranting investigation. Thereafter, on December 31 of each year the Commissioner, after consultation with each agency head, shall provide the Mayor with an assessment of the progress made in the annual anti-corruption program for each agency. Should other issues, conditions, or problems arise during the year which, in the judgment of an agency head, require investigative action or attention, the agency head may direct the Inspector General to modify the annual objectives to the extent necessary to address the new problems and the Inspector General shall take such action unless the Commissioner, for good cause, objects to such action. For 1987, an interim anti-corruption program shall be developed by July 1, 1987 and the Commissioner after consultation with each agency head, shall report to the Mayor by December 31, 1987 as to the progress made toward achieving the objectives of that program..

[As amended by Executive Order No. 16, December 26, 1986]

(c) Agency heads shall, on a regular basis, be informed by the Inspector General of the progress of the anti-corruption program on all pending corruption studies and investigations except those investigations which the Commissioner determines should not be disclosed. Such a determination of non-disclosure may only be made by the Commissioner when there is a factual basis indicating that investigative interests might be contravened by sharing knowledge of a particular investigation with an agency head.

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The Commissioner shall give notice to the Mayor of any determination to apply this exceptional procedure, shall document the reasons for the determination and shall, upon the closing of the investigation, file a determination of the extent to which the investigative findings support or contravene the initial determination of non-disclosure. These provisions relating to non-disclosure do not apply when the Commissioner is constrained by Grand Jury secrecy requirements from disclosing information.

[As amended by Executive Order No. 16, December 26, 1986]

(d) The Inspector General for each agency shall be notified of all complaints received within an agency involving corrupt or other criminal activity, conflicts of interest, unethical conduct, misconduct and incompetence by (i) City agencies, (ii) by City officers and employees, and (iii) by persons dealing with the City and has jurisdiction to investigate any such complaint.

[As amended by Executive Order No. 16, December 26, 1986]

(e) In furtherance of these objectives, the Inspectors General shall be informed of and have unrestricted access to all regular meetings of agency executives and managerial staff, and to all records and documents maintained by each agency. Each agency shall provide and maintain at its central office sufficient office space for the Inspector General and his or her staff in a condition equivalent to the average condition of professional offices throughout the agency.

[As amended by Executive Order No. 16, December 26, 1986]

(f) Except to the extent otherwise provided by law, the employment and continued employment of all Inspectors General shall be by the Commissioner after consultation with the respective agency head. An equitable, system-wide salary structure will be established. The Department shall develop cross-agency career paths by which the most capable members of the Inspector General system shall be retained and rewarded and their knowledge and experience shared throughout the Inspector General system. Inspectors General and Deputy Inspectors General shall henceforth be prohibited from promotion into managerial and executive positions within the agency to which they are assigned. This prohibition shall remain in effect for three years from the date of termination of their employment as Inspector General or Deputy Inspector General. However, prior to July 1, 1987 any Inspector General or Deputy Inspector General may be transferred to a unit of an agency which will after July 1 be responsible for handling disciplinary matters. Effective July 1, 1987, the Inspectors General and their staffs shall be employees of the Department of Investigation. The tasks and standards used to evaluate the performance of the Inspectors General and Deputy Inspectors General shall be determined jointly by the commissioner and the respective agency heads. Agency heads shall submit their own annual performance evaluation of the resident Inspector General and Deputy Inspector General, based on the agreed upon tasks and standards, to the Commissioner, which evaluations shall be considered in determining the Commissioner's final evaluation of such persons

[As amended by Executive Order No. 16, December 26, 1986]

(g) Prior to submitting executive budget requests for the Offices of the Inspectors General for fiscal year 1987 and thereafter, the Commissioner shall consult with the respective agency head.

[As amended by Executive Order No. 16, December 26, 1986]

#### § 4. Investigations.

(a) Within the scope of the general responsibility of the Commissioner set forth in Section 1 of this Order, the Commissioner shall have authority to examine, documents which may not be so disclosed according to law. Inspectors General shall have the same authority in their respective agencies.

(b) The Commissioner and, with the approval of the Commissioner, the Inspectors General and any person under the supervision of the Commissioner or the Inspectors General, may require any officer or employee of the City to answer questions concerning any matter related to the performance of his or her official duties or any person dealing with the City, concerning such dealings with the City, after first being advised that neither their statements nor any information or evidence derived therefrom will be used against them in a subsequent criminal prosecution other than for perjury or questions on the condition described in this paragraph shall constitute cause for removal from office or employment or other appropriate penalty. Beginning September 1, 1978 all contracts, leases, licenses or other agreements entered into or issued by the City shall contain a provision approved as to form by the Corporation Counsel permitting the City to terminate such agreement or to take other appropriate action upon the refusal of a person dealing with the City to answer questions in relation to such agreements on the condition of testimonial or use immunity described in this paragraph.

(c) Every officer or employee of the City shall cooperate fully with the Commissioner and the Inspectors General. Interference with or obstruction of an investigation conducted by the Commissioner or an Inspector General shall constitute cause for removal from office or employment or other appropriate penalty.

(d) Every officer and employee of the City shall have the affirmative obligation to report, directly and without undue delay, to the Commissioner or an Inspector General any and all information concerning conduct which they know or should reasonably know to involve corrupt or other criminal activity or conflict of interest, (i) by another City officer or employee, which concerns his or her office or employment, or (ii) by persons dealing with the City, which concerns their dealings with the City. The knowing failure of any officer or employee to report as required above shall constitute cause for removal from office or employment or other appropriate penalty.

(e) Upon receipt of any information concerning corrupt or other criminal activity, [or] conflict of interest, gross mismanagement, or abuse of authority related to his or her agency, the Inspector General of such agency shall report directly and without undue delay such information to the Department of Investigation, and shall proceed in accordance with the Commissioner's directions.

[As amended by Executive Order No. 78, October 5, 1984]

(f) No officer or employee other than the Commissioner, and Inspector General, or an officer or employee under their supervision, shall conduct any investigation concerning corrupt or other criminal activity, [or] conflicts of interest, gross mismanagement or abuse of authority without the prior approval of the Commissioner or an Inspector General.

[As amended by Executive Order No. 78, October 5, 1984]

(g) No officer or employee of the City shall take an adverse personnel action as defined in Local Law No. 10 of 1984 with respect to another officer or employee in retaliation for his or her making a report of information concerning corrupt or other criminal activity, conflict of interest, gross mismanagement, or abuse of authority to the Commissioner or an Inspector General.

[As amended by Executive Order No. 78, October 5, 1984]

### **§ 5. Formal Disciplinary Proceedings.**

(a) Effective July 1, 1987, each agency shall be responsible for the preparation and prosecution of all formal administrative proceedings, including removal and other disciplinary proceedings for misconduct or incompetency. Each agency head shall establish a system for such formal disciplinary proceedings in consultation with the Commissioner. An Inspector General may request an agency to hold disciplinary or other administrative action in abeyance pending the completion of a criminal investigation if such disciplinary or administrative action would interfere with the criminal investigation. The Inspector General shall be notified before the initiation of formal disciplinary proceedings against an employee and shall be notified of the disposition of all formal disciplinary proceedings.

(b) Officers or employees of the City convicted of a crime relating to their office or employment, involving moral turpitude or which bears upon their fitness or ability to perform their duties or responsibilities, shall be removed from such office or employment, absent compelling mitigating circumstances set forth in writing by the head of the employing agency. Proof of said conviction, as a basis for removal or other disciplinary action, must be established in accordance with applicable law

[As amended by Executive Order No. 16, December 26, 1986]

(c) The Commissioner, after consultation with an agency head, shall have the right to assume the responsibility for a particular disciplinary investigation, except that the disposition of the charges and the penalty to be imposed in connection with such proceeding shall remain the responsibility of the agency head.

[As amended by Executive Order No. 16, December 26, 1986]

### **§ 6. Informal Disciplinary Proceedings.**

(a) Each agency head may with the advice of the Commissioner establish appropriate reporting requirements, disposition standards and other administrative procedures for informal disciplinary proceedings in addition to those already provided by law or collective bargaining agreements to permit the fair and expeditious resolution of minor violations of the standards of conduct established by such agency head under this Order, without prejudice to any rights provided to officers or employees of the City by law or by collective bargaining agreement. [As amended by Executive Order No. 78, October 5, 1984]

(b) Informal disciplinary proceedings may be undertaken on the following conditions: (i) the employee or official who is the subject of such proceedings shall consent to accept a predetermined penalty upon a finding of cause in lieu of the filing of a formal dis-

ciplinary charge; and (ii) the record and result of the informal disciplinary proceedings described in (a) above shall be expunged from all permanent personnel or employment files of the subject official or employee after one year in which such person has not been penalized as a result of any subsequent formal or informal disciplinary proceedings.

[As amended by Executive Order No. 78, October 5, 1984]

(c) The expungement of records and results of informal disciplinary proceedings described in (b) above applies only to those informal disciplinary proceedings promulgated pursuant to this Executive Order and is not applicable to any of the records, results or procedures provided by law or by collective bargaining agreement.

[As amended by Executive Order No. 78, October 5, 1984]

(d) The Inspector General of each agency shall be notified of the disposition of all disciplinary proceedings.

[As amended by Executive Order No. 78, October 5, 1984]

## **§ 7. Background Investigations.**

(a) The Department of Investigation shall conduct background investigations of all persons to be appointed to or employed in positions with salary rates equal to or greater than the minimum rate of the Management Pay Plan or any successor plan, whether or not the person is to become a member of such plan. The Commissioner shall have the discretion to waive this requirement when he determines that the investigation is not necessary.

[As amended by Executive Order No. 72, April 23, 1984]

(b) Background investigations need not be made under this Order with respect to the appointment or employment of persons for positions with salary rates equal to or greater than the minimum rate of the Management Pay Plan or any successor plan where such person is to be appointed to a permanent civil service position in the competitive class.

(c) The Mayor or an agency head may in the public interest direct that the appointment, employment or assignment of any person be subject to a background investigation by the Department of Investigation.

(d) The appointment or employment of any person requiring background investigations under this Order shall be made subject to the completion of such investigation and a determination by the appointing authority that the appointee has the appropriate qualifications, is free from actual or potential conflicts of interest and is one in whom the public trust may be placed.

(e) All prospective appointees and employees subject to background investigation under this Order shall comply with all procedures established by the Commissioner for such purpose, including the completion of a background questionnaire and full disclosure of financial holdings and relationships.

(f) Background investigations conducted under this Order shall include the collection of all available criminal history information relating to the prospective appointee, which shall be considered in accordance with applicable law.

(g) The making by a person of an intentional false or misleading statement in connection with a background investigation required under this Order, or otherwise failing to comply with the background investigation procedures established by the Commissioner, may constitute cause for removal from office or employment or other appropriate penalty.

**§ 8. Dissemination of Information.**

(a) All agency heads shall distribute to each officer and employee of their respective agencies within 90 days of the effective date of this Order and to each officer and employee appointed thereafter, a statement prepared by the Commissioner, Inspectors General, agency heads and all City officers and employees under this Order.

(b) Knowledge of the responsibilities of the Commissioner of Investigation and the Inspectors General and of relevant provisions of Articles 195 and 200 of the Penal Law, the City Charter, the Code of Ethics and this Order shall constitute an employment responsibility which every officer and employee is expected to know and to implement as part of their job duties and is to be tested in promotional examinations beginning January 1, 1979.

**§ 9. Regulations and Procedures.**

The Commissioner may establish such regulations, procedures and reporting requirements with respect to Inspectors General or as may be otherwise necessary or proper to fulfill the Commissioner's responsibilities under this Order and other applicable law.

[As amended by Executive Order No. 16, December 26, 1986]

**§ 10. Waiver of Provisions.**

Any agency head may for good cause apply to the Commissioner for the modification or waiver of any provision within the jurisdiction of the Commissioner under this Order.

**§ 11. Construction with Other Laws.**

Nothing in this Order shall be deemed to limit the powers and duties of the Commissioner, the Department of Investigation, the Department of Personnel, the Office of Municipal Labor Relations or any other agency under the City Charter or as may be otherwise provided by law.

**§ 12. Preservation of Rights.**

Nothing in this Order shall be deemed to limit the rights of any person under law or contract.

## Chapter 49

### NEW YORK CITY CHARTER

#### **§ 1116 Fraud; neglect of duty; willful violation of law relative to office.**

a. Any council member or other officer or employee of the city who shall wilfully violate or evade any provision of law relating to such officer's office or employment, or commit any fraud upon the city, or convert any of the public property to such officer's own use, or knowingly permit any other person so to convert it or by gross or culpable neglect of duty allow the same to be lost to the city, shall be deemed guilty of a misdemeanor and in addition to the penalties imposed by law and on conviction shall forfeit such office or employment, and be excluded forever after from receiving or holding any office or employment under the city government.

b. Any officer or employee of the city or of any city agency who shall knowingly make a false or deceptive report or statement in the course of duty shall be guilty of a misdemeanor and, upon conviction, forfeit such office or employment.

#### **§ 1118 Officers and employees not to be ordered to work outside public employment.**

No officer or employee of the city or of any of the counties within its limits shall detail or cause any officer or employee of the city or of any of such counties to do or perform any service or work outside of the public office, work or employment of such officer or employee; and any violation of this section shall constitute a misdemeanor.

# Chapter 68

## NEW YORK CITY CHARTER

### §2600. Preamble.

Public service is a public trust. These prohibitions on the conduct of public servants are enacted to preserve the trust placed in the public servants of the city, to promote public confidence in government, to protect the integrity of government decision-making and to enhance government efficiency.

### §2601. Definitions. As used in this chapter,

1. **“Advisory committee”** means a committee, council, board or similar entity constituted to provide advice or recommendations to the city and having no authority to take a final action on behalf of the city or take any action which would have the effect of conditioning, limiting or requiring any final action by any other agency, or to take any action which is authorized by law.

2. **“Agency”** means a city, county, borough or other office, position, administration, department, division, bureau, board, commission, authority, corporation, advisory committee or other agency of government, the expenses of which are paid in whole or in part from the city treasury, and shall include but not be limited to, the council, the offices of each elected official, the board of education, community school boards, community boards, the financial services corporation, the health and hospitals corporation, the public development corporation, and the New York city housing authority, but shall not include any court or any corporation or institution maintaining or operating a public library, museum, botanical garden, arboretum, tomb, memorial building, aquarium, zoological garden or similar facility.

3. **“Agency served by a public servant”** means (a) in the case of a paid public servant, the agency employing such public servant or (b) in the case of an unpaid public servant, the agency employing the official who has appointed such unpaid public servant unless the body to which the unpaid public servant has been appointed does not report to, or is not under the control of, the official or the agency of the official that has appointed the unpaid public servant, in which case the agency served by the unpaid public servant is the body to which the unpaid public servant has been appointed.

4. **“Appear”** means to make any communication, for compensation, other than those involving ministerial matters.

5. A person or firm **“associated”** with a public servant includes a spouse, domestic partner, child, parent or sibling; a person with whom the public servant has a business or other financial relationship; and each firm in which the public servant has a present or potential interest.

6. **“Blind trust”** means a trust in which a public servant, or the public servant’s spouse, domestic partner, or unemancipated child, has a beneficial interest, the holdings and sources of income of which the public servant, the public servant’s spouse, domestic partner, and unemancipated child have no knowledge, and which meets requirements established by rules of the board, which shall include provisions regarding the independent authority and discretion of the trustee, and the trustee’s confidential treatment of information regarding the holdings and sources of income of the trust.

7. **“Board”** means the conflicts of interest board established by this chapter.

8. **“Business dealings with the city”** means any transaction with the city involving the sale, purchase, rental, disposition or exchange of any goods, services, or property, any license, permit, grant or benefit, and any performance of or litigation with respect to any of the foregoing, but shall not include any transaction involving a public servant’s residence or any ministerial matter.

9. **“City”** means the city of New York and includes an agency of the city.

10. **“Elected official”** means a person holding office as mayor, comptroller, public advocate, borough president or member of the council.

11. **“Firm”** means sole proprietorship, joint venture, partnership, corporation and any other form of enterprise, but shall not include a public benefit corporation, local development corporation or other similar entity as defined by rule of the board.

12. **“Interest”** means an ownership interest in a firm or a position with a firm.

13. **“Law”** means state and local law, this charter, and rules issued pursuant thereto.

14. **“Member”** means a member of the board.

15. **“Ministerial matter”** means an administrative act, including the issuance of a license, permit or other permission by the city, which is carried out in a prescribed manner and which does not involve substantial personal discretion.

16. **“Ownership interest”** means an interest in a firm held by a public servant, or the public servant’s spouse, domestic partner, or unemancipated child, which exceeds five percent of the firm or an investment of twenty-five thousand dollars in cash or other form of commitment, whichever is less, or five percent or twenty-five thousand dollars of the firm’s indebtedness, whichever is less, and any lesser interest in a firm when the public servant, or the public servant’s spouse, domestic partner, or unemancipated child exercises managerial control or responsibility regarding any such firm, but shall not include interests held in any pension plan, deferred compensation plan or mutual fund,

the investments of which are not controlled by the public servant, the public servant's spouse, domestic partner, or unemancipated child, or in any blind trust which holds or acquires an ownership interest. The amount of twenty-five thousand dollars specified herein shall be modified by the board pursuant to subdivision a of section twenty-six hundred three.

17. **"Particular matter"** means any case, proceeding, application, request for a ruling or benefit, determination, contract limited to the duration of the contract as specified therein, investigation, charge, accusation, arrest, or other similar action which involves a specific party or parties, including actions leading up to the particular matter; provided that a particular matter shall not be construed to include the proposal, consideration, or enactment of local laws or resolutions by the council, or any action on the budget or text of the zoning resolution.

18. **"Position"** means a position in a firm, such as an officer, director, trustee, employee, or any management position, or as an attorney, agent, broker, or consultant to the firm, which does not constitute an ownership interest in the firm.

19. **"Public servant"** means all officials, officers and employees of the city, including members of community boards and members of advisory committees, except unpaid members of advisory committees shall not be public servants.

20. **"Regular employee"** means all elected officials and public servants whose primary employment, as defined by rule of the board, is with the city, but shall not include members of advisory committees or community boards.

21. (a). **"Spouse"** means a husband or wife of a public servant who is not legally separated from such public servant; (b) **"Domestic partner"** means persons who have a registered domestic partnership pursuant to section 3-240 of the administrative code, a domestic partnership registered in accordance with executive order number 123, dated August 7, 1989, or a domestic partnership registered in accordance with executive order number 48, dated January 7, 1993.

22. **"Supervisory official"** means any person having the authority to control or direct the work of a public servant.

23. **"Unemancipated child"** means any son, daughter, step-son or step-daughter who is under the age of eighteen, unmarried and living in the household of the public servant.

## **§2602. Conflicts of interest board.**

a. There shall be a conflicts of interest board consisting of five members, appointed by the mayor with the advice and consent of the council. The mayor shall designate a chair.

b. Members shall be chosen for their independence, integrity, civic commitment and high ethical standards. No person while a member shall hold any public office, seek election to any public office, be a public employee in any jurisdiction, hold any political party office, or appear as a lobbyist before the city.

c. Each member shall serve for a term of six years; provided, however, that of the three members first appointed, one shall be appointed for a term to expire on March thirty-first, nineteen hundred ninety, one shall be appointed for a term to expire on March thirty-first, nineteen hundred ninety-two and one shall be appointed for a term to expire on March thirty-first, nineteen hundred ninety-four, and of the remaining members, one shall be appointed for a term to expire on March thirty-first, nineteen hundred ninety-two and one shall be appointed for a term to expire on March thirty-first, nineteen hundred ninety-four. If the mayor has not submitted to the council a nomination for appointment of a successor at least sixty days prior to the expiration of the term of the member whose term is expiring, the term of the member in office shall be extended for an additional year and the term of the successor to such member shall be shortened by an equal amount of time. If the council fails to act within forty-five days of receipt of such nomination from the mayor, the nomination shall be deemed to be confirmed. No member shall serve for more than two consecutive six-year terms. The three initial nominations by the mayor shall be made by the first day of February, nineteen hundred eighty-nine and both later nominations by the mayor shall be made by the first day of March, nineteen hundred ninety.

d. Members shall receive a per diem compensation, no less than the highest amount paid to an official appointed to a board or commission with the advice and consent of the council and compensated on a per diem basis, for each calendar day when performing the work of the board.

e. Members of the board shall serve until their successors have been confirmed. Any vacancy occurring other than by expiration of a term shall be filled by nomination by the mayor made to the council within sixty days of the creation of the vacancy, for the unexpired portion of the term of the member succeeded. If the council fails to act within forty-five days of receipt of such nomination from the mayor, the nomination shall be deemed to be confirmed.

f. Members may be removed by the mayor for substantial neglect of duty, gross misconduct in office, inability to discharge the powers or duties of office or violation of this section, after written notice and opportunity for a reply.

g. The board shall appoint a counsel to serve at its pleasure and shall employ or retain such other officers, employees and consultants as are necessary to exercise its powers and fulfill its obligations. The authority of the counsel shall be defined in writing, provided that neither the counsel, nor any other officer, employee or consultant of the board shall be authorized to issue advisory opinions, promulgate rules, issue subpoenas, issue final determinations of violations of this chapter, or make final recommendations of or impose penalties. The board may delegate its authority to issue advisory opinions to the chair.

h. The board shall meet at least once a month and at such other times as the chair may deem necessary. Two members of the board shall constitute a quorum and all acts of the board shall be by the affirmative vote of at least two members of the board.

**§2603. Powers and obligations.**

**a. Rules.** The board shall promulgate rules as are necessary to implement and interpret the provisions of this chapter, consistent with the goal of providing clear guidance regarding prohibited conduct. The board, by rule, shall once every four years adjust the dollar amount established in subdivision sixteen of section twenty-six hundred one of this chapter to reflect changes in the consumer price index for the metropolitan New York-New Jersey region published by the United States bureau of labor statistics.

**b. Training and education.** (1) The board shall have the responsibility of informing public servants and assisting their understanding of the conflicts of interest provisions of this chapter. In fulfilling this responsibility, the board shall develop educational materials regarding the conflicts of interest provisions and related interpretive rules and shall develop and administer an on-going program for the education of public servants regarding the provisions of this chapter.

(2) The board shall provide training to all individuals who become public servants to inform them of the provisions of this chapter, shall assist agencies in conducting ongoing training programs, and shall make information concerning this chapter available and known to all public servants. On or before the tenth day after an individual becomes a public servant, such public servant must file a written statement with the board that such public servant has read and shall conform with the provisions of this chapter.

**c. Advisory opinions.** (1) The board shall render advisory opinions with respect to all matters covered by this chapter. An advisory opinion shall be rendered on the request of a public servant or a supervisory official of a public servant and shall apply only to such public servant. The request shall be in such form as the board may require and shall be signed by the person making the request. The opinion of the board shall be based on such facts as are presented in the request or subsequently submitted in a written, signed document.

(2) Advisory opinions shall be issued only with respect to proposed future conduct or action by a public servant. A public servant whose conduct or action is the subject of an advisory opinion shall 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 request for an opinion. The board may amend a previously issued advisory opinion after giving reasonable notice to the public servant that it is reconsidering its opinion; provided that such amended advisory opinion shall apply only to future conduct or action of the public servant.

(3) The board shall make public its advisory opinions with such deletions as may be necessary to prevent disclosure of the identity of any public servant or other involved party. The advisory opinions of the board shall be indexed by subject matter and cross-indexed by charter section and rule number and such index shall be maintained on an annual and cumulative basis.

(4) Not later than the first day of September, nineteen hundred ninety the board shall initiate a rulemaking to adopt, as interpretive of the provisions of this chapter, any advisory opinions of the board of ethics constituted pursuant to chapter sixty-eight of the

charter heretofore in effect, which the board determines to be consistent with and to have interpretive value in construing the provisions of this chapter.

(5) For the purposes of this subdivision, public servant includes a prospective and former public servant, and a supervisory official includes a supervisory official who shall supervise a prospective public servant and a supervisory official who supervised a former public servant.

**d. Financial disclosure.** (1) All financial disclosure statements required to be completed and filed by public servants pursuant to state or local law shall be filed by such public servants with the board.

(2) The board shall cause each statement filed with it to be examined to determine if there has been compliance with the applicable law concerning financial disclosure and to determine if there has been compliance with or violations of the provisions of this chapter.

(3) The board shall issue rules concerning the filing of financial disclosure statements for the purpose of ensuring compliance by the city and all public servants with the applicable provisions of financial disclosure law.

**e. Complaints.** (1) The board shall receive complaints alleging violations of this chapter.

(2) Whenever a written complaint is received by the board, it shall: (a) dismiss the complaint if it determines that no further action is required by the board; or (b) refer the complaint to the Commissioner of Investigation if further investigation is required for the board to determine what action is appropriate; or (c) make an initial determination that there is probable cause to believe that a public servant has violated a provision of this chapter; or (d) refer an alleged violation of this chapter to the head of the agency served by the public servant, if the board deems the violation to be minor or if related disciplinary charges are pending against the public servant.

(3) For the purposes of this subdivision, a public servant includes a former public servant.

**f. Investigations.** (1) The board shall have the power to direct the Department of Investigation to conduct an investigation of any matter related to the board's responsibilities under this chapter. The Commissioner of Investigation shall, within a reasonable time, investigate any such matter and submit a confidential written report of factual findings to the board.

(2) The Commissioner of Investigation shall make a confidential report to the board concerning the results of all investigations which involve or may involve violations of the provisions of this chapter, whether or not such investigations were made at the request of the board.

**g. Referral of matters within the board's jurisdiction.** (1) A public servant or supervisory official of such public servant may request the board to review and make a determination regarding a past or ongoing action of such public servant. Such request shall be reviewed and acted upon by the board in the same manner as a complaint received by the board under subdivision e of this section.

(2) Whenever an agency receives a complaint alleging a violation of this chapter or determines that a violation of this chapter may have occurred, it shall refer such matter to the board. Such referral shall be reviewed and acted upon by the board in the same manner as a complaint received by the board under subdivision e of this section.

(3) For the purposes of this subdivision, public servant includes a former public servant, and a supervisory official includes a supervisory official who supervised a former public servant.

**h. Hearings.** (1) If the board makes an initial determination, based on a complaint, investigation or other information available to the board, that there is probable cause to believe that the public servant has violated a provision of this chapter, the board shall notify the public servant of its determination in writing. The notice shall contain a statement of the facts upon which the board relied for its determination of probable cause and a statement of the provisions of law allegedly violated. The board shall also inform the public servant of the board's procedural rules. Such public servant shall have a reasonable time to respond, either orally or in writing, and shall have the right to be represented by counsel or any other person.

(2) If, after receipt of the public servant's response, the board determines that there is no probable cause to believe that a violation has occurred, the board shall dismiss the matter and inform the public servant in writing of its decision. If, after the consideration of the response by the public servant, the board determines there remains probable cause to believe that a violation of the provisions of this chapter has occurred, the board shall hold or direct a hearing to be held on the record to determine whether such violation has occurred, or shall refer the matter to the appropriate agency if the public servant is subject to the jurisdiction of any state law or collective bargaining agreement which provides for the conduct of disciplinary proceedings, provided that when such a matter is referred to an agency, the agency shall consult with the board before issuing a final decision.

(3) If the board determines, after a hearing or the opportunity for a hearing, that a public servant has violated provisions of this chapter, it shall, after consultation with the head of the agency served or formerly served by the public servant, or in the case of an agency head, with the mayor, issue an order either imposing such penalties provided for by this chapter as it deems appropriate, or recommending such penalties to the head of the agency served or formerly served by the public servant, or in the case of an agency head, to the mayor; provided, however, that the board shall not impose penalties against members of the council, or public servants employed by the council or by members of the council, but may recommend to the council such penalties as it deems appropriate. The order shall include findings of fact and conclusions of law. When a penalty is recommended, the head of the agency or the council shall report to the board what action was taken.

(4) Hearings of the board shall not be public unless requested by the public servant. The order and the board's findings and conclusions shall be made public.

(5) The board shall maintain an index of all persons found to be in violation of this chapter, by name, office and date of order. The index and the determinations of probable cause and orders in such cases shall be made available for public inspection and copying.

(6) Nothing contained in this section shall prohibit the appointing officer of a public servant from terminating or otherwise disciplining such public servant, where such appointing officer is otherwise authorized to do so; provided, however, that such action by the appointing officer shall not preclude the board from exercising its powers and duties under this chapter with respect to the actions of any such public servant.

(7) For the purposes of this subdivision, the term public servant shall include a former public servant.

**i. Annual report.** The board shall submit an annual report to the mayor and the council in accordance with section eleven hundred and six of this charter. The report shall include a summary of the proceedings and activities of the board, a description of the education and training conducted pursuant to the requirements of this chapter, a statistical summary and evaluation of complaints and referrals received and their disposition, such legislative and administrative recommendations as the board deems appropriate, the rules of the board, and the index of opinions and orders of that year. The report, which shall be made available to the public, shall not contain information, which, if disclosed, would constitute an unwarranted invasion of the public servant.

**j. Revision.** The board shall review the provisions of this chapter and shall recommend to the council from time to time such changes or additions as it may consider appropriate or desirable. Such review and recommendation shall be made at least once every five years.

**k. Public scrutiny.** Except as otherwise provided in this chapter, the records, reports, memoranda and files of the board shall be confidential and shall not be subject to public scrutiny.

#### **§2604. Prohibited interests and conduct.**

**a. Prohibited interests in firms engaged in business dealings with the city.**

(1) Except as provided in paragraph three below, (a) no public servant shall have an interest in a firm which such public servant knows is engaged in business dealings with the agency served by such public servant; provided, however, that, subject to paragraph one of subdivision b of this section, an appointed member of a community board shall not be prohibited from having an interest in a firm which may be affected by an action on a matter before the community or borough board, and (b) no regular employee shall have an interest in a firm which such regular employee knows is engaged in business dealings with the city, except if such interest is in a firm whose shares are publicly traded, as defined by rule of the board.

(2) Prior to acquiring or accepting an interest in a firm whose shares are publicly traded, a public servant may submit a written request to the head of the agency served by the public servant for a determination of whether such firm is engaged in business dealings with such agency. Such determination shall be in writing, shall be rendered expeditiously and shall be binding on the city and the public servant with respect to the prohibition of subparagraph a of paragraph one of this subdivision.

(3) An individual who, prior to becoming a public servant, has an ownership interest which would be prohibited by paragraph one above; or a public servant who has an ownership interest and did not know of a business dealing which would cause the interest to be one prohibited by paragraph one above, but has subsequently gained knowledge of such business dealing; or a public servant who holds an ownership interest which, subsequent to the public servant's acquisition of the interest, enters into a business dealing which would cause the ownership interest to be one prohibited by paragraph one above; or a public servant who, by operation of law, obtains an ownership interest which would be prohibited by paragraph one above shall, prior to becoming a public servant or, if already a public servant, within ten days of knowing of the business dealing, either: (a) divest the ownership interest; or (b) disclose to the board such ownership interest and comply with its order.

(4) When an individual or public servant discloses an interest to the board pursuant to paragraph three of this subdivision, the board shall issue an order setting forth its determination as to whether or not such interest, if maintained, would be in conflict with the proper discharge of the public servant's official duties. In making such determination, the board shall take into account the nature of the public servant's official duties, the manner in which the interest may be affected by any action of the city, and the appearance of conflict to the public. If the board determines a conflict exists, the board's order shall require divestiture or such other action as it deems appropriate which may mitigate such a conflict, taking into account the financial burden of any decision on the public servant.

(5) For the purposes of this subdivision, the agency served by (a) an elected official, other than a member of the council, shall be the executive branch of the city government, (b) a public servant who is a deputy mayor, the director to the office of management and budget, Commissioner of Citywide Administrative Services, Corporation Counsel, Commissioner of Finance, Commissioner of Investigation or chair of the city planning commission, or who serves in the executive branch of city government and is charged with substantial policy discretion involving city-wide policy as determined by the board, shall be the executive branch of the city government, (c) a public servant designated by a member of the board of estimate to act in the place of such member as a member of the board of estimate, shall include the board of estimate, and (d) a member of the council shall be the legislative branch of the city government.

(6) For the purposes of subdivisions a and b of section twenty-six hundred six, a public servant shall be deemed to know of a business dealing with the city if such public servant should have known of such business dealing with the city.

**b. Prohibited conduct.** (1) A public servant who has an interest in a firm which is not prohibited by subdivision a of this section, shall not take any action as a public servant particularly affecting that interest, except that (a) in the case of an elected official, such action shall not be prohibited, but the elected official shall disclose the interest to the conflicts of interest board, and on the official records of the council or the board of estimate in the case of matters before those bodies, (b) in the case of an appointed community board member, such action shall not be prohibited, but no member may vote on

any matter before the community or borough board which may result in a personal and direct economic gain to the member or any person with whom the member is associated, and (c) in the case of all other public servants, if the interest is less than ten thousand dollars, such action shall not be prohibited, but the public servant shall disclose the interest to the board.

(2) No public servant shall engage in any business, transaction or private employment, or have any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties.

(3) No public servant shall use or attempt to use his or her position as a public servant to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant.

(4) No public servant shall disclose any confidential information concerning the property, affairs or government of the city which is obtained as a result of the official duties of such public servant and which is not otherwise available to the public, or use any such information to advance any direct or indirect financial or other private interest of the public servant or of any other person or firm associated with the public servant; provided, however, that this shall not prohibit any public servant from disclosing any information concerning conduct which the public servant knows or reasonably believes to involve waste, inefficiency, corruption, criminal activity or conflict of interest.

(5) No public servant shall accept any valuable gift, as defined by rule of the board, from any person or firm which such public servant knows is or intends to become engaged in business dealings with the city, except that nothing contained herein shall prohibit a public servant from accepting a gift which is customary on family and social occasions.

(6) No public servant shall, for compensation, represent private interests before any city agency or appear directly or indirectly on behalf of private interests in matters involving the city. For a public servant who is not a regular employee, this prohibition shall apply only to the agency served by the public servant.

(7) No public servant shall appear as attorney or counsel against the interests of the city in any litigation to which the city is a party, or in any action or proceeding in which the city, or any public servant of the city, acting in the course of official duties, is a complainant, provided that this paragraph shall not apply to a public servant employed by an elected official who appears as attorney or counsel for that elected official in any litigation, action or proceeding in which the elected official has standing and authority to participate by virtue of his or her capacity as an elected official, including any part of a litigation, action or proceeding prior to or at which standing or authority to participate is determined. This paragraph shall not in any way be construed to expand or limit the standing or authority of any elected official to participate in any litigation, action or proceeding, nor shall it in any way affect the powers and duties of the Corporation Counsel. For a public servant who is not a regular employee, this prohibition shall apply only to the agency served by the public servant.

(8) No public servant shall give opinion evidence as a paid expert against the interests of the city in any civil litigation brought by or against the city. For a public servant

who is not a regular employee, this prohibition shall apply only to the agency served by the public servant.

(9) No public servant shall, (a) coerce or attempt to coerce, by intimidation, threats or otherwise, any public servant to engage in political activities, or (b) request any subordinate public servant to participate in a political campaign. For purposes of this subparagraph, participation in a political campaign shall include managing or aiding in the management of a campaign, soliciting votes or canvassing voters for a particular candidate or performing any similar acts which are unrelated to the public servant's duties or responsibilities. Nothing contained herein shall prohibit a public servant from requesting a subordinate public servant to speak on behalf of a candidate, or provide information or perform other similar acts, if such acts are related to matters within the public servant's duties or responsibilities.

(10) No public servant shall give or promise to give any portion of the public servant's compensation, or any money, or valuable thing to any person in consideration of having been or being nominated, appointed, elected or employed as a public servant.

(11) No public servant shall, directly or indirectly, (a) compel, induce or request any person to pay any political assessment, subscription or contribution, under threat of prejudice to or promise of or to secure advantage in rank, compensation or other job-related status or function. (b) pay or promise to pay any political assessment, subscription or contribution in consideration of having been or being nominated, elected or employed as such public servant or to secure advantage in rank, compensation or other job-related status or function, or (c) compel, induce or request any subordinate public servant to pay any political assessment, subscription or contribution.

(12) No public servant, other than an elected official, who is a deputy mayor, or head of an agency or who is charged with substantial policy discretion as defined by rule of the board, shall directly or indirectly request any person to make or pay any political assessment, subscription or contribution for any candidate for an elective office of the city or for any elected official who is a candidate for any elective office; provided that nothing contained in this paragraph shall be construed to prohibit such public servant from speaking on behalf of any such candidate or elected official at an occasion where a request for a political assessment, subscription or contribution may be made by others.

(13) No public servant shall receive compensation except from the city for performing any official duty or accept or receive any gratuity from any person whose interests may be affected by the public servant's official action.

(14) No public servant shall enter into any business or financial relationship with another public servant who is a superior or subordinate of such public servant.

(15) No elected official, deputy mayor, deputy to a citywide or boroughwide elected official, head of an agency, or other public servant who is charged with substantial policy discretion as defined by rule of the board may be a member of the national or state committee of a political party, serve as an assembly district leader of a political party or serve as the chair or as an officer of the county committee or county executive committee of a political party, except that a member of the council may serve as an assembly district leader or hold any lesser political office as defined by rule of the board.

**c. This section shall not prohibit:** (1) an elected official from appearing without compensation before any city agency on behalf of constituents or in the performance of public official or civic obligations;

(2) a public servant from accepting or receiving any benefit or facility which is provided for or made available to citizens or residents, or classes of citizens or residents, under housing or other general welfare legislation or in the exercise of the police power;

(3) a public servant from obtaining a loan from any financial institution upon terms and conditions available to members of the public;

(4) any physician, dentist, optometrist, podiatrist, pharmacist, chiropractor or other person who is eligible to provide services or supplies under title eleven of article five of the social services law and is receiving any salary or other compensation from the city treasury, from providing professional services and supplies to persons who are entitled to benefits under such title, provided that, in the case of services or supplies provided by those who perform audit, review or other administrative functions pursuant to the provisions of such title, the New York State Department of Health reviews and approves payment for such services or supplies and provided further that there is no conflict with their official duties; nothing in this paragraph shall be construed to authorize payment to such persons under such title for services or supplies furnished in the course of their employment by the city;

(5) any member of the uniformed force of the police department from being employed in the private security field, provided that such member has received approval from the police commissioner therefore and has complied with all rules and regulations promulgated by the police commissioner relating to such employment;

(6) a public servant from acting as attorney, agent, broker, employee, officer, director or consultant for any not-for-profit corporation, or association, or other such entity which operates on a not-for-profit basis, interested in business dealings with the city, provided that: (a) such public servant takes no direct or indirect part in such business dealings; (b) such not-for-profit entity has no direct or indirect interest in any business dealings with the city agency in which the public servant is employed and is not subject to supervision, control or regulation by such agency, except where it is determined by the head of an agency, or by the mayor where the public servant is an agency head, that such activity is in furtherance of the purposes and interests of the city; (c) all such activities by such public servant shall be performed at times during which the public servant is not required to perform services for the city; and (d) such public servant receives no salary or other compensation in connection with such activities;

(7) a public servant, other than elected officials, employees in the office of property management of the department of housing preservation and development, employees in the department of Citywide Administrative Services who are designated by the Commissioner of such department pursuant to this paragraph, and the commissioners, deputy commissioners, assistant commissioners and others of equivalent ranks in such departments, or the successors to such departments, from bidding on and purchasing any city-owned real property at public auction or sealed bid sale, or from purchasing any city-owned residential building containing six or less dwelling units through negotiated sale, provided that such public servant, in the course of city employment, did not partic-

ipate in decisions or matters affecting the disposition of the city property to be purchased and has no such matters under active consideration. The Commissioner of Citywide Administrative Services shall designate all employees of the department of Citywide Administrative Services whose functions relate to citywide real property matters to be subject to this paragraph; or (8) a public servant from participating in collective bargaining or from paying union or shop fees or dues or, if such public servant is a union member, from requesting a subordinate public servant who is a member of such union to contribute to union political action committees or other similar entities.

**d. Post-employment restrictions.** (1) No public servant shall solicit, negotiate for or accept any position (i) from which, after leaving city service, the public servant would be disqualified under this subdivision, or (ii) with any person or firm who or which is involved in a particular matter with the city, while such public servant is actively considering, or is directly concerned or personally participating in such particular matter on behalf of the city.

(2) No former public servant shall, within a period of one year after termination of such person's service with the city, appear before the city agency served by such public servant; provided, however, that nothing contained herein shall be deemed to prohibit a former public servant from making communications with the agency served by the public servant which are incidental to an otherwise permitted appearance in an adjudicative proceeding before another agency or body, or a court, unless the proceeding was pending in the agency served during the period of the public servant's service with that agency. For the purposes of this paragraph, the agency served by a public servant designated by a member of the board of estimate to act in the place of such member as a member of the board of estimate, shall include the board of estimate.

(3) No elected official, nor the holder of the position of deputy mayor, director of the office of management and budget, Commissioner of Citywide Administrative Services, corporation counsel, Commissioner of Finance, Commissioner of Investigation or chair of the city planning commission shall, within a period of one year after termination of such person's employment with the city, appear before any agency in the branch of city government served by such person. For the purposes of this paragraph, the legislative branch of the city consists of the council and the offices of the council, and the executive branch of the city consists of all other agencies of the city, including the office of the public advocate.

(4) No person who has served as a public servant shall appear, whether paid or unpaid, before the city, or receive compensation for any services rendered, in relation to any particular matter involving the same party or parties with respect to which particular matter such person had participated personally and substantially as a public servant through decision, approval, recommendation, investigation or other similar activities.

(5) No public servant shall, after leaving city service, disclose or use for private advantage any confidential information gained from public service which is not otherwise made available to the public; provided, however, that this shall not prohibit any public servant from disclosing any information concerning conduct which the public servant knows or reasonably believes to involve waste, inefficiency, corruption, criminal activity or conflict of interest.

(6) The prohibitions on negotiating for and having certain positions after leaving city service, shall not apply to positions with or representation on behalf of any local, state or federal agency.

(7) Nothing contained in this subdivision shall prohibit a former public servant from being associated with or having a position in a firm which appears before a city agency or from acting in a ministerial matter regarding business dealings with the city.

**e. Allowed positions.** A public servant or former public servant may hold or negotiate for a position otherwise prohibited by this section, where the holding of the position would not be in conflict with the purposes and interests of the city, if, after written approval by the head of the agency or agencies involved, the board determines that the position involves no such conflict. Such findings shall be in writing and made public by the board.

### **§2605. Reporting.**

No public servant shall attempt to influence the course of any proposed legislation in the legislative body of the city without publicly disclosing on the official records of the legislative body the nature and extent of any direct or indirect financial or other private interest the public servant may have in such legislation.

### **§2606. Penalties.**

**a.** Upon a determination by the board that a violation of section twenty-six hundred four or twenty-six hundred five of this chapter, involving a contract work, business, sale or transaction, has occurred, the board shall have the power, after consultation with the head of the agency involved, or in the case of an agency head, with the mayor, to render forfeit and void the transaction in question.

**b.** Upon a determination by the board that a violation of section twenty-six hundred four or twenty-six hundred five of this chapter has occurred, the board, after consultation with the head of the agency involved, or in the case of an agency head, with the mayor, to impose fines of up to ten thousand dollars, and to recommend to the appointing authority, or person or body charged by law with responsibility for imposing such penalties, suspension or removal from office or employment.

**c.** Any person who violates section twenty-six hundred four or twenty-six hundred five of this chapter shall be guilty of a misdemeanor and, on conviction thereof, shall forfeit his or her public office or employment. Any person who violates paragraph ten of subdivision b of section twenty-six hundred four, on conviction thereof, shall additionally be forever disqualified from being elected, appointed or employed in the service of the city. A public servant must be found to have had actual knowledge of a business dealing with the city in order to be found guilty under this subdivision, of a violation of subdivision a of section twenty-six hundred four of this chapter.

**d.** Notwithstanding the provisions of subdivisions a, b and c of this section, no penalties shall be imposed for a violation of paragraph two of subdivision b of section twenty-six hundred four unless such violation involved conduct identified by rule of the board as prohibited by such paragraph.

# Guidelines for City Officials on the acceptance of gifts, favors, entertainment, meals and travel

## CONFLICTS OF INTEREST BOARD

Rules of the Board, Chapter 1: Conflicts of Interest, Valuable Gifts  
(Rules of the City of New York, Title 53)

### §1 01 Valuable Gifts.

a. For the purposes of Charter §2604(b)(5), a “valuable gift” means any gift to a public servant which has a value of \$50.00 or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form. Two or more gifts to a public servant shall be deemed to be a single gift for purposes of this subdivision and Charter §2604(b)(5) if they are given to the public servant within a twelve-month period under one or more of the following circumstances (1) they are given by the same person; and/or (2) they are given by persons who the public servant knows or should know are (i) relatives or domestic partners of one another; or (ii) are directors, trustees, or employees of the same firm or affiliated firms.

b. As used in subdivision (a) of this section (1) “relative” shall mean a spouse, child, grandchild, parent, sibling, and grandparent; a parent, domestic partner, child, or sibling of a spouse or domestic partner; and a spouse or domestic partner of a parent, child, or sibling;

(2) firms are “affiliated” if one is a subsidiary of the other or if they have a parent firm in common or if they have a stockholder in common who owns at least 25 percent of the shares of each firm;

(3) “firm,” “spouse,” and “ownership interest” shall have the meaning ascribed to those terms in section 2601 of the Charter; (4) “domestic partner” means a domestic partner as defined in New York City Administrative Code § 1 112(21).

c. For the purposes of Charter §2604(b)(5), a public servant may accept gifts that are customary on family or social occasions from a family member or close personal friend who the public servant knows is or intends to become engaged in business dealings with the City, when (1) it can be shown under all relevant circumstances that it is the family or personal relationship rather than the business dealings that is the controlling factor; and (2) the public servant’s receipt of the gift would not result in or create the appearance of (i) using his or her office for private gain; (ii) giving preferential treatment to any person or entity, (iii) losing independence or impartiality; or (iv) accepting gifts or favors for performing official duties.

d. For the purposes of Charter §2604(b)(5), a public servant may accept awards and plaques valued at less than \$150.00 which are publicly presented in recognition of public service.

e. For the purposes of Charter §2604(b)(5), a public servant may accept free meals or refreshments in the course of and for the purpose of conducting City business under the following circumstances (1) when offered during a meeting which the public servant is attending for official reasons;

(2) when offered at a company cafeteria, club or other setting where there is no public price structure and individual payment is impractical;

(3) when a meeting the public servant is attending for official reasons begins in a business setting but continues through normal meal hours in a restaurant, and a refusal to participate and/or individual payment would be impractical;

(4) when the free meals or refreshments are provided by the host entity at a meeting held at an out-of-the-way location, alternative facilities are not available and individual payment would be impractical;

(5) when it is customary business practice to hold a meeting over meals or refreshments and customary business practice for one party to make payment for the other and payment by the public servant would be inappropriate, provided (i) that the selection of the restaurant and the selection of the meal also conform to customary business practice; and (ii) the public servant, except in the case of an elected official, reports acceptance of such meals or refreshments to his or her agency head on a monthly basis or to a deputy mayor if the public servant is an agency head; and

(6) when the public servant would not have otherwise purchased food and refreshments had he or she not been placed in such a situation while representing the interests of the City.

f. For the purposes of Charter §2604(b)(5), a public servant may: (1) accept meals or refreshments when participating as a panelist or speaker in a professional or educational program and the meals or refreshments are provided to all panelists;

(2) be present at a professional or educational program as a guest of the sponsoring organization;

(3) be a guest at ceremonies or functions sponsored or encouraged by the City as a matter of City policy, such as, for example, those involving housing, education, legislation or government administration;

(4) attend an annual public affair of an organization composed of representatives of business, labor, professions, news media or organizations of a civic, charitable or community nature, when invited by the sponsoring organization, provided that this exception does not apply when the invitation is from a civic, charitable or community organization which has business dealings, as defined in Charter Section 2601(8), with, or a matter before, the public servant's agency;

(5) be a guest at any function or occasion where the attendance of the public servant has been approved in writing as in the interests of the City, in advance where practicable or within a reasonable time thereafter, by the employee's agency head or by a deputy mayor if the public servant is an agency head.

**g.** For the purposes of Charter §2604(b)(5), a public servant who is an elected official or a member of the elected official's staff authorized by the elected official may attend a function given by an organization composed of representatives of business, labor, professions, news media or organizations of a civic, charitable or community nature, when invited by the sponsoring organization. For the purpose of this subdivision, the authorizing elected official for the central staff of the council is the speaker of the council.

**h.** (1) For the purposes of Charter §2604(b)(C), a public servant's acceptance of travel related expenses from a private entity can be considered a gift to the City rather than to the public servant, when (i) the trip is for a City purpose and therefore could properly be paid for with City funds; (ii) the travel arrangements are appropriate to that purpose; and (iii) the trip is no longer than reasonably necessary to accomplish the business which is its purpose.

(2) To avoid an appearance of impropriety, it is recommended that for public servants who are not elected officials, each such trip and the acceptance of payment therefore be approved in advance and in writing by the head of the appropriate agency, or if the public servant is an agency head, by a deputy mayor. (i) A public servant should not accept a "valuable gift," as defined herein, from any person or entity engaged in business dealings with the City. If the public servant receives such valuable gift, he or she should return the gift to the donor. If that is not practical, the public servant should report the receipt of a valuable gift to the inspector general of the public servant's agency, who shall determine the appropriate disposition of the gift. Nothing in this section shall be deemed to authorize a public servant to act in violation of any applicable laws, including the criminal law, City agency rules, or Mayoral Executive Orders (including, but not limited to, Executive Order No. 16 of 1978 (as amended)), which may impose additional requirements to report gifts and offers of gifts to the agency's inspector general, whether or not a gift is accepted or returned.

**j.** City agencies are encouraged to establish rules concerning gifts for their own employees which may not be less restrictive than as set forth in Charter §2604(b)(5) as interpreted by this section.

**k.** (1) Nothing in this section shall be deemed to authorize a public servant to accept a gift of any value in violation of any other applicable federal, state or local law, rule or regulation, including but not limited to the New York State Penal Law.

(2) The provisions of this section shall be read in conjunction with the provisions of Charter §2604(b)(2) and §1-13 of the Rules of the Board (prohibiting certain conduct that conflicts with the proper discharge of a public servant's official duties); §2604(b)(3) of the Charter (prohibiting the use or attempted use of one's City position for private gain); and §2604(b)(13) of the Charter (prohibiting receipt by public servants of compensation except from the City for performing any official duty and prohibiting receipt of gratuities).

# New York State Penal Law

## *Relevant portions*

### **§155.40 PL Grand Larceny in the Second Degree**

A person is guilty of grand larceny in the second degree when he steals property and when: (1) The value of the property exceeds fifty thousand dollars; *or*

(2) The property, regardless of its nature and value, is obtained by extortion committed by instilling in the victim a fear that the actor or another person will (a) cause physical injury to some person in the future, or (b) cause damage to property, or (c) use or abuse his position as a public servant by engaging in conduct within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely.

Grand larceny in the second degree is a class C felony.

### **§200.00 PL Bribery in the Third Degree**

A person is guilty of bribery in the third degree when he confers, or offers or agrees to confer, any benefit upon a public servant, upon an agreement or understanding that such public servant's vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.

Bribery in the third degree is a class D felony.

### **§ 200.10 Bribery in the Third Degree**

A public servant is guilty of bribe receiving in the third degree when he solicits, accepts or agrees to accept any benefit from, another person upon an agreement or understanding that his vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.

Bribery receiving in the third degree is a class D felony.

### **§200.20 PL Rewarding Official Misconduct in the Second Degree**

A person is guilty of rewarding official misconduct in the second degree when he knowingly confers, or offers or agrees to confer, any benefit upon a public servant for having violated his duty as a public servant.

Rewarding official misconduct in the second degree is a class E felony.

**§200.25 PL Receiving Reward for Official Misconduct in the Second Degree**

A public servant is guilty of receiving reward for official misconduct in the second degree when he solicits, accepts or agrees to accept any benefit from another person for having violated his duty as a public servant.

Receiving reward for official misconduct in the second degree is a class E felony.

**§200.30 PL Giving Unlawful Gratuities**

A person is guilty of giving unlawful gratuities when he knowingly confers, or offers or agrees to confer, any benefit upon a public servant for having engaged in official conduct which he was required or authorized to perform, and for which he was not entitled to any special or additional compensation.

Giving unlawful gratuities is a class A misdemeanor.

**§ 200.35 Receiving Unlawful Gratuities**

A public servant is guilty of receiving unlawful gratuities when he solicits, accepts, or agrees or accept any benefit for having engaged in official conduct which he was required or authorized to perform, and for which he was not entitled to any special or additional compensation.

Receiving unlawful gratuities is class A misdemeanor.

**§ 200.40 PL Bribery Giving and Bribe Receiving for Public Office: Definition of Term**

As used in section 200.45 and 200.50, "party officer" means a person who holds any position or office in a political party, whether by election, appointment or otherwise.

**§ 200.45 PL Bribe Giving for Public Office**

A person is guilty of bribe giving for public office when he confers, or offers or agrees to confer, any money or other property upon a public servant or a party officer upon agreement or understanding that some person will or may be appointed to a public office or designated or nominated as a candidate for public office.

Bribe giving for public office is class D felony.

**§ 200.50 PL Bribe Receiving for Public Office**

A public servant or a party officer is guilty of bribe receiving for public office when he solicits, accepts or agrees to accept any money or other property from another person upon an agreement or understanding that some person will or may be appointed to a public office or designated or nominated as a candidate for public office.

Bribe receiving for public office is a class D felony.

**§ 195.00 PL Official Misconduct**

A public servant is guilty of official misconduct when, with intent to obtain a bene-

fit or to injure or deprive another person of a benefit: (1) He commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized; *or*

(2) He knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office.

Official misconduct is a class A misdemeanor.

**§ 195.05 PL Obstructing governmental administration in the second degree**

A person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force or interference, or by means of any independently unlawful act, or by means of interfering, whether or not physical force is involved, with radio, telephone, television or other telecommunication systems owned or operated by the state, or a county, city, town, village, fire district or emergency medical service or by means of releasing a dangerous animal under circumstances evincing the actor's intent that the animal obstruct governmental administration.

Obstructing governmental administration is a class A misdemeanor.

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