CONFLICTS OF INTEREST

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WHAT EVERY COMMUNITY BOARD MEMBER SHOULD KNOW

It is expected that Community Board members will have associations and outside interests that could affect their views on matters to be considered by their Boards. However, as unpaid public servants, all Community Board members (but not the "public members" of community board committees) are governed by the City's Conflicts of Interest Law (City Charter Chapter 68). The law's purpose is to ensure that public servants do not use or appear to use their public positions to benefit their private interests or those of their families or associates. This memorandum, prepared by the Mayor's Community Assistance Unit in cooperation with the Conflicts of Interest Board, is designed to familiarize all Community Board members with the conflicts of interest restrictions concerning when they may discuss and vote on matters in which they may have an interest, or otherwise participate in the review of such matters.

The Charter also establishes the Conflicts of Interest Board (COIB), composed of five public members appointed by the Mayor with the advice and consent of the City Council. The Conflicts of Interest Board is authorized to issue rules to implement and interpret the provisions of Chapter 68, advise public servants about the application of the chapter, issue advisory opinions with respect to any matters covered by that chapter, and provide education to public servants about the Conflicts of Interest Law. The Board can enforce the requirements of Chapter 68, after conducting a hearing and determining that a violation occurred, and impose civil fines or other penalties. A violation of Chapter 68 is also a misdemeanor which can be prosecuted by the District Attorney.

Compiled for your information are:

- A list of regulations concerning the conduct and activities of Community Board members.
- An explanation of the method of tabulating votes if Board members have conflicts of interest.
- Selected excerpts from Charter Chapter 68 and explanatory notes. (Those passages that pertain particularly to Community Board members have been underlined.)
- A summary of COIB advisory opinions concerning Community Boards.

If you have any questions regarding these provisions, opinions and procedures, or need advice about possible conflicts, you can call or write to:

Conflicts of Interest Board
2 Lafayette Street, Suite 1010
New York, NY 10007
(212) 442-1400
http://nyc.gov/ethics

REGULATIONS CONCERNING CONDUCT AND ACTIVITIES OF COMMUNITY BOARD MEMBERS

VOTING

[Note: These regulations apply to votes of Community Boards ***and*** committees.]

1- A Community Board member is not entitled to vote on any matter that may result in a personal and direct economic gain to the member or any person or firm with whom the member is "Associated". (Charter Section 2604(b)(1)(b)). "Associated" is defined as a close relative (spouse, domestic partner, parent, child, or sibling) or any person or entity with whom or which the Community Board member has a financial relationship, such as an employer, debtor, creditor, landlord, roommate, and the like. (Charter Section 2601 (5)) The member is required to disclose his or her interest, and is then permitted to take part in discussions on the matter. (Advisory Opinion No. 91-3)

2- A Community Board member who is a City employee is not entitled to vote on any matters concerning the member's agency, but may take part in discussions on such matters. This pertains to employees of all mayoral agencies and non-mayoral agencies subject to the Conflicts of Interest Law (e.g., School Construction Authority, Health and Hospitals Corporation, NYC Housing Authority, et cetera). (Advisory Opinion No. 91-3)

3- A Community Board member who serves on the board of directors of a not-for-profit organization is not entitled to vote on Board resolutions recommending funding by City agencies for that organization, or other resolutions that could result in a direct economic gain for the not-for-profit in question. (Charter Section 2604(b)(1)(b))

4- A Community Board member who holds an unpaid position with a local development corporation or public benefit corporation may vote on matters affecting that corporation, provided that the vote would not result in a personal and direct economic gain to the member or to a person or firm associated with the member. (Advisory Opinion No. 93-3)

5- A Community Board member is not entitled to vote on any matter that may result in a direct economic gain for a firm or not-for-profit with which the Community Board member is currently seeking employment. (Charter Section 2604 (d)(1)). The member is required to disclose the prospective employment interest, and is then permitted to take part in discussions on the matter.

6- The prohibition on voting on a matter that would provide a direct financial benefit to a person or entity with whom or which a Community Board member is "associated" (and from chairing a meeting where such a matter is being considered) has the following meaning for certain **common situations involving Members affiliated with not-for-profit organizations**:

1) If you are an *employee or board member* of a not-for-profit organization that may receive a direct financial benefit from the matter in question, you may not vote on the matter, but with disclosure of your interest you may participate in the community board's discussion of the matter.
2) If the matter before the Community Board might provide a direct financial benefit *to a member of the board of directors* of a not-for-profit organization, and if you are the executive director or other senior employee of the organization, you likewise may not vote on the matter, but, as above, may discuss the matter, provided you disclose your interest.
3) If *your spouse, domestic partner, parent, sibling, child or other "associated" person is an employee of a not-for-profit organization* that might receive a direct

economic benefit from a matter before the community board, then whether you may vote on the matter will turn on whether it appears reasonably likely that your "associate" would receive such a benefit. The higher ranking that person, the smaller the organization, and the closer that person's work is to the matter before the Community Board, the more likely that person will benefit, and accordingly the less likely your vote will be permissible. You may contact the Conflicts of Interest Board for advice on such questions.

4) If the matter before the Community Board might provide a direct economic benefit *to a person or firm that contributes funding or other support to the not-for-profit where you work*, whether you may vote on that matter will turn on whether the funder provides such a significant level of support to the organization that it effectively underwrites your salary. Again, you may contact the Conflicts of Interest Board for advice. In contrast with a paid employee, an unpaid member of the board of directors of a not-for-profit organization may vote on matters that might benefit even major funders of the organization. In no case, however, may Community Board members who are either employees or board members of not-for-profit organizations solicit contributions for the organization from any person or firm with a matter before, or about to be before, the Community Board.

(Advisory Opinion No. 2008-2)

CHAIRING OR SERVING ON COMMITTEES

1- A Community Board member who is a City employee may serve on a committee that considers matters that have come or may come before the member's agency, but cannot be the chairperson of a committee that regularly considers such matters. **EXAMPLE:** A City Planning employee may not chair a Zoning Committee. (Board of Ethics Opinion 571*).

2- A Community Board member may not chair a committee that is likely to have matters before it that concern the member's private interests or employment. (Advisory Opinion No. 95-18) For example, a member with an interest in a licensed liquor facility within the district may not chair the committee responsible for considering liquor license applications. (Advisory Opinion No. 03-2)

OTHER ACTIVITIES

1- No public servant may use or appear 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. (Section 2604(b)(3))

2- A Board chair may have an interest in a firm or organization that regularly has matters before that Board, provided that he or she refrains from making any decisions or taking any other official Board actions on matters involving that interest, and does not preside at Board meetings when such matters may be considered or voted upon. This means that s/he may not serve as chair for the entire meeting. (Advisory Opinion No. 96-8)

3- A Community Board member who is a professional (e.g. lawyer, architect, engineer) may not personally represent any party presenting a project or proposal for consideration to the Community Board on which he or she serves. (Charter Section 2604(b)(6)). A member's firm or business partners are likewise not permitted to represent private clients before the member's Board unless the Community Board member has received a waiver from the Conflicts on Interest Board to permit his/her firm to do so. (Advisory Opinion No. 96-4)

4- A Community Board member may run for public office while continuing to serve on the Board. However, pursuant to Section 1115 of the City Charter, which prohibits individuals from holding more than one civil office, a Community Board member would need to resign from the board upon assuming elective office. (Board of Ethics Opinion 435*, affirmed by the Conflicts of Interest Board)

5- Certain close relatives and business associates of Community Board members may not serve on the staff of the member's Community Board. More particularly, a member's spouse, domestic partner, parents, children, siblings, or anyone with whom the member has a business or financial relationship may not serve as staff to the Board. (Advisory Opinion No. 2004-3)

6- Former Community Board members may not appear before their former Community Board within one year of leaving Community Board service. An "appearance" is any communication for compensation, other than those involving ministerial activities. This does not bar the former Community Board member from coming to public meetings and participating as a regular private citizen. It does, however, bar him from representing clients before his former Community Board for one year after finishing service as a Community Board member. (Charter Sections 2601(4) and 2604(d)(2))

TABULATING COMMUNITY BOARD VOTES WHEN MEMBERS HAVE CONFLICTS OF INTERESTS

Charter Section 2801: ***a.*** *A majority of the appointed members of any community board shall constitute a quorum of such board.* ***b.*** *Whenever any act is authorized to be done or any determination or decision made by any community board, the act, determination or decision of the majority of the members present entitled to vote during the presence of a quorum, shall be held to be the act, determination or decision of such board.*

In order for a Community Board or committee resolution to be carried in accordance with this section, a majority of members entitled to vote must vote "yes." If a Board member is not entitled to vote on a matter as a result of complying with the restrictions concerning conflicts of interest, then the number of members entitled to vote on that matter is reduced, and the majority required for passage is reduced accordingly. When a vote is taken, **a member not entitled to vote due to conflict of interest is not counted as abstaining.** However, such a member is counted as present for the purpose of maintaining a quorum. It is suggested that such members be marked **"present but not entitled to vote"** rather than "abstaining for cause," to make sure that votes are properly tabulated.

EXAMPLE: A fifty-member Board has a quorum of twenty-six members present, but two members are excluded from voting on a particular matter due to conflicts of interest or City agency employment. The number of members entitled to vote on that matter drops from twenty-six to twenty-four, but the two members not entitled to vote are still present, so the quorum is maintained. The majority needed for passage of that matter changes from fourteen to thirteen.

CITY CHARTER: CHAPTER 68
Conflicts of Interest Excerpts

Community Board staff and Board members employed by the City are subject to additional requirements of the Conflicts of Interest Law that will not be covered here. The passages pertaining particularly to Community Board members are underlined]

Section 2601. Definitions:

2. "Agency" means a city, county, borough or other office... 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...community boards....

5. A person or firm "associated" with a public servant includes a spouse, 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.

19. "Public servant" means all officials, officers and employees of the city, including members of community boards....

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...community boards.

SECTION 2604. Prohibited interests and conduct.

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

1. (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...

NOTE: *Although Section 2604(a)(1)(a) permits Community Board members' "having an interest in a firm which may be affected by an action on a matter before a community or borough board," it* ***prohibits*** *a Community Board member from having an interest in a firm doing business with the Board itself, e.g., by contracting with or otherwise providing services to the Community Board.*

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 affecting that interest, except that

   (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.

3. No public servant may use or appear 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.

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.

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....

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 job-related status or function,

(b) pay or promise to pay any political assessment, subscription or contribution in consideration for 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. (For a Community Board member, any staffer in the member's district office would be defined as a subordinate.)

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. (For a Community Board member, any staffer in the member's district office would be defined as a subordinate.)

SECTION 2604(c). This section shall not prohibit:

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.

SECTION 2604(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.

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.

CONFLICTS OF INTEREST BOARD ADVISORY OPINIONS

OPINION ISSUE

91-3 A Board member who is not permitted to vote on a matter due to economic interest may participate in discussions on that matter. A Board member who is employed by a City agency may not vote, but may participate in discussions, on matters that have been or may be considered by that agency.

91-12 Board members and staff (including chairs and district managers) may hold political party office.

93-2 A Board member who is a community school board member may not chair a committee that considers school board-related issues.

93-9 A district manager may serve on the board of directors of a not-for-profit organization engaged in business dealings with the City, but not one dealing directly with the district manager's Community Board.

93-21 It would be a violation of Chapter 68 for a member of the City Council to nominate a family member for appointment to a community board. Additionally, nominations of employees of other Council Members would be considered on a case-by-case basis.

95-18 A Community Board member may not chair a committee which is likely to have matters before it which concern the member's private interests or employment.

96-4 A Board member's firm or business partners are not permitted to represent private clients before the member's Board.

96-8 A Board chair may have an interest in a firm or organization which regularly has matters before that Board, provided that he or she refrains from making any decisions or taking any other official actions on matters involving his or her private interests, and does not preside at Board meetings when such matters may be considered or voted upon.

2003-2 A Board member with an interest in a licensed liquor facility in the district may not chair the committee responsible for considering liquor applications. A Board member with an interest in a licensed facility in the district may vote on matters involving liquor license applications of others, but may *not* vote on their own license applications or on applications of persons with whom they are associated.

2003-3 A member of the Council may nominate the spouse of a member of his or her staff for a community board seat, provided that the staff member is recused from the appointment process. A member of a community board may not, however, be employed in the office of a member of the Council who has appointment power to that community board.

2004-1 "Public members" of community board committees are not public servants within the meaning of the City's conflicts of interest law and are therefore not subject to the provisions of that law.

2004-3 Certain close relatives and business associates of community board members may not serve on the staff of the member's community board. More particularly, a member's spouse, domestic partner, parents, children, siblings, or anyone with whom the member has a business or financial relationship may not serve as staff to the board.

2005-3 Community Board members will not violate Chapter 68 if they vote at the Community Board concerning the rezoning of a large area in which they own homes, provided that they disclose the interest on the minutes of the community board and to the Conflicts of Interest Board.

2008-2 The prohibition on voting on a matter that would provide a direct financial benefit to a person or entity with whom or which a Community Board member is "associated" (and from chairing a meeting where such a matter is being considered) has the following meaning for certain common situations involving Members affiliated with not-for-profit organizations:

1) If you are an employee or board member of a not-for-profit that may receive a direct financial benefit from the matter in question, you may not vote on the matter, but with disclosure of your interest you may participate in the community board's discussion of the matter
2) If the matter before the Community Board might provide a direct financial benefit to a member of the board of directors of a not-for-profit organization, and if you are the executive director or other senior employee of the organization, you likewise may not vote on the matter, but, as above, may discuss the matter, provided you disclose your interest.
3) If your spouse, domestic partner, parent, sibling, child or other "associated" person is an employee of a not-for-profit organization that might receive a direct economic benefit from a matter before the community board, then whether you may vote on the matter will turn on whether it appears reasonably likely that your "associate" would receive such a benefit. The higher ranking that person, the smaller the organization, and the closer that person's work is to the matter before the Community Board, the more likely that person will benefit, and accordingly the less likely your vote will be permissible. You may contact the Conflicts of Interest Board for advice on such questions.
4) If the matter before the Community Board might provide a direct economic benefit to a person or firm that contributes funding or other support to the not-for-profit where you work, whether you may vote on that matter will turn on whether the funder provides such a significant level of support to the organization that it effectively underwrites your salary. Again, you may contact the Conflicts of Interest Board for advice. In contrast with a paid employee, an unpaid member of the board of directors of a not-for-profit organization may vote on matters that might benefit even major funders of the organization. In no case, however, may Community Board members who are either employees or board members of not-for-profit organizations solicit contributions for the organization from any person or firm with a matter before, or about to be before, the Community Board.

435* A Board member may remain on the Board while running for public office.

571, 657* A Board member employed by a City agency may serve on (but not chair) a committee that considers matters concerning that agency.

* - Board of Ethics opinions re-affirmed by the Conflicts of Interest Board