



CITY OF NEW YORK  
CONFLICTS OF INTEREST BOARD

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August 3, 2009

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Burton Lehman  
*Board Member*

Hon. Christine C. Quinn  
Speaker of the Council  
of the City of New York  
City Hall  
New York, NY 10007

RE: Proposed Charter Amendments

Mark Davies  
*Executive Director*

Dear Speaker Quinn:

Wayne G. Hawley  
*Deputy Executive Director  
& General Counsel*

Carolyn Lisa Miller  
*Director of Enforcement*

Julia Davis  
*Special Counsel &  
Director of Financial  
Disclosure*

Alex Kipp  
*Director of Training &  
Education*

Ute O'Malley  
*Director of  
Administration*

Derick Yu  
*Director of Information  
Technology*

Pursuant to Section 2603(j) of the New York City Charter, which requires that the Board periodically recommend to the Council amendments to the City's Conflicts of Interest Law, set forth in Chapter 68 of the Charter, I am transmitting herewith proposed amendments to Chapter 68, as recommended by the Board at its June 30, 2009, meeting.

These amendments can generally be divided into four types:

***(1) Substantive changes that have previously been recommended by the Board, in particular***

- **Budget protection for the Board (§ 2602(i))**

As you are aware, as a result of the Board's small size and tight budget, budget cuts fall particularly heavy on the perennially underfunded Board. In addition, the Board is virtually the only City agency that regulates the conduct of the very

persons who set its budget, often at the very time they are setting its budget.

- **Investigative authority (§ 2603(e), (f))**

New York City appears to be the only large municipality in the country in which the agency that has the power to enforce the ethics code and impose fines lacks the power to investigate violations. Granting the Board investigative authority would enable it to make quick, surgical investigations, particularly in smaller cases requiring expedition.

- **Mandatory Chapter 68 training and education (§ 2603(b))**

Although the Board is mandated to train every public servant about Chapter 68, neither public servants nor their agencies are mandated to receive such training. As a result, many public servants, and even some entire agencies, receive no training, compromising the Board's primary mission of *preventing* conflicts of interest.

- **An increase in the maximum fine and provision for disgorgement of ill-gotten gains (§ 2606(b))**

The maximum fine has not increased since current Chapter 68 was adopted 20 years ago and requires upward adjustment merely to keep pace with inflation. But even a \$25,000 fine may be a small price to pay when the respondent's Chapter 68 violation produces a benefit worth many times that amount, necessitating disgorgement of such unlawful gains as an additional available sanction.

*(2) New substantive changes, in particular*

- **Accountability of private persons and entities that induce a public servant to violate Chapter 68 (§ 2605(b))**

Currently, absent outright bribery, a private person or entity that induces a public servant to violate Chapter 68 (e.g., by giving a prohibited gift) may suffer no consequences, except in certain narrow circumstances such as violations of the lobbyist gift rule. The Board thus recommends a new provision making such persons subject to enforcement actions and penalties.

- **Expansion of the definition of "associated persons" (§ 2601(5))**

Charter § 2604(b)(3), perhaps the key provision in Chapter 68, prohibits a public servant from taking an action to benefit himself

or herself or an “associated person,” a phrase that, in contrast to most other government ethics codes, does not, but should, include grandchildren, grandparents, and the immediate family members of one’s spouse or domestic partner, as well as major campaign contributors (defined as those who contribute in excess of the Campaign Finance Law limits).

- **A prohibition on receipt of valuable gifts by high-level public servants even where the giver does not do business with the City (§ 2604(b)(5))**

When a high-level public servant, including an elected official, receives a gift from someone with whom the official has no personal connection, the clear appearance exists that the gift is given as a result of the official’s City position; such gifts should be prohibited, subject to the usual exceptions.

- **A prohibition on public servants requesting political campaign work or political contributions from any person with a matter before them (§§ 2604(b)(9)(c), 2604(b)(11)(d))**

Such requests are inherently coercive and should be prohibited.

*(3) Changes to make Chapter 68 internally consistent, such as*

- **The addition of District Attorneys to the definition of “elected officials” (§ 2601(11))**

The District Attorneys are currently subject to Chapter 68 but are exempt from certain restrictions on other elected officials, resulting in anomalous results under some provisions.

- **The elimination of “determinations of probable cause” from the list of public Board documents (§ 2603(h)(5))**

Section 2603(h)(4) makes all enforcement documents and proceedings confidential except the final finding of violation, while § 2603(h)(5) inexplicably (and presumably inadvertently) makes “determinations of probable cause” (a pre-petition/pre-hearing document) public. Such documents, which often contain unsustained allegations, should remain confidential.

*(4) Changes to make the language of Chapter 68 consistent with Board precedent interpreting existing language, such as*

- **The limitation of the safe harbor for Councilmembers acting on matters affecting themselves or associated persons to voting on such matters (§ 2604(b)(3)(a))**

The Board has interpreted this provision (current § 2604(b)(1)(a)) to permit Councilmembers to act on a matter that may benefit themselves or an associated person as applying only to voting, not to sponsoring or lobbying.

- **Amendment of the “waiver” provision to explicitly include “actions” as well as “positions” otherwise prohibited by § 2604 (§ 2604(e))**

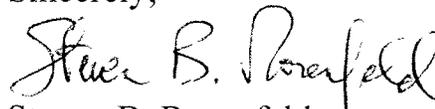
Consistent with its reading of the original intent of the waiver provision, the Board has long granted waivers under § 2604(e) to cover actions as well as positions.

Enclosed is a chart summarizing the Board’s proposed amendments.

In the Board’s view, these amendments, many of which the Board has been proposing for years, would substantially strengthen Chapter 68 and, in the case of budget protection and investigative authority, would plug two major holes in an otherwise excellent conflicts of interest law. The Board would also urge the Council not to permit any issues that might be raised in regard to some of the proposed substantive amendments to block the enactment of the remaining uncontroversial substantive changes and the many much-needed technical changes.

The Board would welcome the opportunity to meet with you or your senior staff to discuss these proposals and to work with you in bringing them to fruition.

Sincerely,



Steven B. Rosenfeld

Chair of the Board

Monica Blum  
Angela Mariana Freyre  
Andrew Irving  
Burton Lehman

Cc: Mayor Michael R. Bloomberg