

## **COMMUNITY BOARDS**

by

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### **A. Introduction**

Community board members are chosen because of their professional and personal involvement with, and commitment to, the communities in which they live and work. They often have associations with individuals, businesses, or organizations with matters before their community boards. To protect the integrity of community boards' decision-making processes and to ensure that community board members do not use their positions as public servants to obtain a private advantage for any individual, business, or organization with whom or with which they are associated, Chapter 68 of the City Charter contains specific provisions relating to the official conduct of community board members. In addition, community board members are subject to many of the same restrictions that the conflicts of interest law imposes on public servants generally.

In Advisory Opinion Number 2004-1, however, the Board determined that, while community board members are subject to the provisions of Chapter 68, the so-called “public members” of community board committees are *not* public servants within the meaning of the Charter and are therefore not subject to the provisions of the City’s conflicts of interest law.

### **B. Participating in Discussions and Voting**

A community board member is specifically permitted to have an interest in a firm that may be affected by an action on a matter before the community board, but the member should disclose the interest to his or her board.<sup>1</sup> A community board member may not, however, vote on any matter before his or her community board that could result in a personal and direct economic gain to the community board member or to any person or firm associated with the community board member.<sup>2</sup> "Associated" is defined in Charter § 2601(5) to include the public servant's 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.

In Advisory Opinion Number 91-3, the Board determined that, while a community board member could not vote on matters before the community board in which he or she had a direct economic interest or that concerned a City agency where he or she was employed, the member could participate in discussions of such matters. Before participating, however, the member is required to disclose to the other members of the community board the nature and extent of his or her private interest in the matter. This Opinion expanded upon the guidelines originally provided in Opinion

Number 305 of the Board of Ethics, the Conflicts of Interest Board's predecessor agency.

In Advisory Opinion Number 93-3, the Board determined that community board members could vote on budget priorities that affected the local development and public benefit corporations that they served as unpaid directors, provided that such votes would not result in a personal and direct economic gain to the community board member or to a person or firm associated with the member.

In a summary judgment based upon stipulated facts, the Board fined a community board member \$4,000 for voting on a matter involving real property in which he and his siblings held an ownership interest. Because a vote expressing the community board's preference for land use "may result" in a personal and direct economic gain to the community board member, the community board member with an interest in the property may not participate in the vote.<sup>3</sup> More recently, the Board fined a community board member \$1,000 for voting in favor of a proposal submitted by a developer that provided 25% of the annual budget of the not-for-profit organization that the member served as its paid president. In his settlement agreement with the Board, the member acknowledged that he was "associated" with the developer within the meaning of Chapter 68 and that his vote therefore violated the conflicts of interest law.<sup>4</sup>

In Advisory Opinion Number 2003-2, the Board advised that a community board member who owned a business in the community district with a liquor license *could* vote on matters concerning liquor license applications of other businesses in the district, but the member could not vote on his or her *own* liquor license application or on those of people with whom he or she is associated.

In Advisory Opinion Number 2005-3, faced with the proposed down-zoning of a large area in a community district, the Board determined that it would not violate Chapter 68 for a community board member who owns a home in that area to vote on the rezoning application, provided that the member discloses his or her interest on the record of the community board and to the Board.

In Advisory Opinion Number 2008-2, the Board considered several scenarios involving matters before a community board either involving an organization, typically a not-for-profit organization, with which a board member has an affiliation or involving some person affiliated with such an organization. In the first scenario, the Board advised that, if the community board member were an employee or board member of an organization that might receive a direct financial benefit from a matter before the community board, the member could not vote on the matter and could not chair any meeting considering the matter. If, however, the vote would merely advance a position advocated by the organization, but would not financially impact the organization, the member could participate in voting. In the second scenario, the Board advised that a community board member who was the executive director of an organization could not vote on a matter that might provide a direct financial benefit to a member of the board of directors of the organization and likewise could not chair a meeting considering that matter. In contrast, the Board advised that a community board member who was a lower-ranking employee of the organization could vote on a matter benefitting a member of the organization's board of directors, provided that the board of directors was not

involved in determining the terms and conditions of the member's employment. In the third scenario, the Board advised that, where the matter before the community board involved an organization that employed a spouse, sibling, or other person "associated" with the community board member, the member could not vote on the matter (or chair a meeting considering the matter) if it appeared reasonably likely that the *associated party* would receive a direct financial benefit from the matter before the community board. The Board noted that the higher ranking the associated party, the smaller the organization, or the greater the nexus between the work of the associated party at the organization and the matter before the community board, the more likely voting will be impermissible. In the fourth scenario, the Board advised that a community board member who was an employee of a not-for-profit organization could not vote on, or chair a meeting concerning, a matter that might provide a direct financial benefit to a donor of such a significant part of the revenues of the not-for-profit that those funds effectively underwrote the salary of the community board member. In contrast, where the community board member was an unpaid member of the board of directors of the organization, the member could vote on matters at the community board that might benefit even major funders of the organization. The Board cautioned, however, that in no case may a community board member who is either an employee or a board member of a not-for-profit organization solicit contributions for that organization from any person or firm with a matter before, or about to be before, the community board. The Board concluded by repeating the holding of Advisory Opinion Number 91-3, namely, that, even where a community board member is barred from voting on a matter, the member is permitted to participate in the community board's discussion of the matter, provided that the member first discloses his or her disqualifying interest.

### **C. Doing Business with the Community Board**

Although Charter § 2604(a)(1)(a) permits a community board member to have an interest in a firm that may be affected by an action on a matter before the community board, a community board member may not have an interest in a firm directly engaged in business dealings with the community board itself.<sup>5</sup> An interest may be either an ownership interest in a firm or a position with a firm.<sup>6</sup> Ownership interests are discussed in more depth in the chapter on Outside Activities. Note that *full-time* community board *employees* are prohibited from having an interest in any firm doing business with *any* City agency, not just the community board for which they work. Orders and waivers are sometimes granted by the Conflicts of Interest Board permitting an otherwise prohibited interest.<sup>7</sup> Waivers are discussed in more depth in the chapter on Outside Activities.

For example, a member of a community board is also the owner of Print Fast, a printing company. The community board needs 1,000 pamphlets printed for an upcoming event and would like to contract with Print Fast to do the work. Print Fast has a reputation in the community for fast service at fair prices. If Print Fast takes on the job, the community board member would have violated Charter § 2604(a)(1)(a) because Print Fast, a company in which he has an ownership interest, would be engaged in business dealings with his community board.

In Advisory Opinion Number 92-31, a community board member who also had a private law

practice requested an opinion as to whether she could be retained by the community board to represent it in connection with public improvement projects planned for an area served by the community board. The attorney had been a member of the community board for 14 years and had provided voluntary legal services to the community board in the past. The Board determined that the proposed engagement would violate Chapter 68 because, among other things, it could give rise to an appearance that the community board was rewarding a long-standing member with a private consulting contract instead of seeking qualified outside counsel to perform the work.

#### **D. Representing Private Clients Before the Community Board**

In addition to being prohibited from doing business with their community boards, community board members are also prohibited from representing private clients for compensation before their community boards or from appearing anywhere, directly or indirectly, in matters involving the community board.<sup>8</sup> "Appear" means to "make any communication, for compensation, other than those involving ministerial matters."<sup>9</sup> This includes attending meetings, making telephone calls, writing letters, and engaging in similar types of activities. A "ministerial matter" means "an administrative act, including the issuance of a license, permit or other permission by the city, that is carried out in a prescribed manner and that does not involve substantial personal discretion."<sup>10</sup> Thus, in 2016 the Board issued a public warning letter to a member of Manhattan Community Board 2 ("CB2") who appeared as an architect on behalf of a paying client before a CB2 committee. In deciding to issue a public warning letter rather than impose a fine, the Board considered, among other things, that prior to appearing before the committee the member was incorrectly advised by the CB2 Chair that she could make that appearance so long as she recused herself from voting on the matter, which she did.<sup>11</sup>

In Advisory Opinion Number 96-4, the Board not only confirmed that community board members may not represent private clients before their community boards but also advised that neither their partners nor the employees of their private firms may represent private clients before their community boards or community board committees. For example, a community board member is a partner in a law firm. One of her clients has applied for a variance on his property and has asked the community board member to represent him before the community board in this matter. The community board member declines, stating that it would violate Chapter 68 to appear before her community board on behalf of a private client. However, the community board member asks one of her partners in her law firm to represent the client before the community board. This also poses a problem under the conflicts of interest law because the community board member is so closely associated with the firm that her firm's appearance before the board would be considered an indirect appearance by the member herself. In this case, neither the community board member nor any member or employee of her private law firm may represent private clients before her community board, absent a waiver from the Conflicts of Interest Board under Charter § 2604(e).

In Advisory Opinion Number 98-9, the Board granted such a waiver, permitting a community board member's private law firm to appear before the community board, provided that

the community board member recused himself from any community board discussions concerning the firm's business before the community board and further recused himself from working on the matter for the firm. In the same Opinion, the Board granted a waiver to a community board member who is also an architect, permitting him to appear before other City agencies and a Borough President's Office in a matter pending before his community board, conditioned on the same recusal requirements. The Conflicts of Interest Board further held that, in applying for waivers, a community board member must certify to the Board that his or her proposed conduct is not in conflict with the purposes and interests of the City and must also supply the Board with a complete set of facts describing the circumstances of his or her representation or his or her firm's representation of the client. The Board makes its determination on a case-by-case basis as to whether a waiver is appropriate, given the particular facts and circumstances of each case.

## **E. Chairing a Community Board or Chairing or Serving on Committees**

### **1. Chairing Community Boards**

In Advisory Opinion Number 96-8, the Board determined that a community board chair may have interests in firms or organizations that regularly have matters before the community board, provided that the chair steps down at meetings involving discussions or votes on matters involving such private interests and that the chair refrains from making any decisions or taking any other official actions on matters involving his or her private interests. The chair may otherwise continue to participate at community board meetings, with proper disclosure, and discuss matters involving his or her private interests to the same extent as other community board members.

### **2. Chairing Committees**

As a result of their private interests or employment, community board members are prohibited from chairing certain committees of their community boards. In Advisory Opinion Number 93-2, a community board member who was also a local school board member requested an opinion as to whether he could chair the Youth Services Committee of his community board, which would vote on matters that would also be voted upon by the school board. The Board cited several prior opinions of its predecessor agency, the Board of Ethics, and agreed with the view expressed in those opinions that it would be "unseemly" and "improper" for a community board member who was also an employee of a City agency to cast a vote that might be in opposition to a position taken by his or her City agency. In addition, the Board stated that "the same concerns which arise when a community board member votes on matters involving his or her other City agency also arise when a community board member chairs a committee which votes on matters which have been or may be considered by him or her in another official capacity on behalf of his or her other City agency."<sup>12</sup> The Board noted that this was true because a committee chair could greatly influence a committee by controlling the agenda, recognizing speakers, and making rulings. Thus, the Board determined that it would be a violation of Chapter 68 for a community board member who was also a member of a local school board to chair the Youth Services Committee of his community board. The community board member could, however, participate in discussions of matters that involved the

school board, provided that, before participating, he disclosed the nature and extent of his interest in the matters as a member of the school board.

In Advisory Opinion Number 2010-1, the Board considered the case of a person serving both on her local community board and on the community education council (“CEC”) of her local school district. In that Opinion, the Board distinguished Advisory Opinion Number 93-2, noting that the powers of CECs are considerably less than those of their predecessor body, the community school board. Since the powers of the two bodies on which she served were largely advisory, the Board determined that a person who concurrently serves on a CEC and on a community board could chair a committee at one entity that would regularly consider matters that had been or might be considered at the other, and likewise could vote on a matter at one entity that had been or might be considered at the other.

In Advisory Opinion Number 95-18, the Board was asked to clarify the circumstances under which a community board member may chair a committee that considers matters related to the community board member's private interests. In this Opinion, the Board explained that the restrictions imposed by Chapter 68 on community board members are intended to "insure that actions taken by a community board are not tainted by questions of self-interest or divided loyalty on the part of any member." Since there is a possibility that a community board member could use or appear to use his or her position as a committee chair for the private advantage of a firm in which the community board member has an interest, to avoid potential conflicts, the Board determined that a community board member may not chair a committee if that committee is likely to have matters before it that concern the community board member's private interests or employment.

In Advisory Opinion Number 2003-2, the Board advised that a community board member with an interest in a licensed liquor facility in the community district could not serve as the chair of the community board committee responsible for considering liquor license applications.

A community board member *may* chair a committee if that committee is unlikely to have matters before it concerning the member's private interests. However, if such matters come before the community board, then, as the Board advised in Advisory Opinion Number 2008-2, discussed above in Section B, the community board member may not serve as chair during any meeting where those matters are discussed.

### **3. Serving on Committees**

The concerns about the ability of a committee chair to greatly influence the agenda of committee meetings are not present where a community board member merely serves as a member of a committee. Thus, a community board member is permitted to serve as a member of committees likely to have matters before them that concern the member's private interests and employment. However, as noted above, if community board members wish to participate in discussions about matters that concern their private interests or employment, they must disclose to the members of the committee the nature and extent of the private interests.

## **F. Fundraising**

Faced with budget restrictions, community boards, like many other City agencies, find it necessary to reach out to private individuals and organizations to gain financial support for their programs and initiatives. Generally, community boards may engage in fundraising, provided that they act in accordance with certain conditions that have been imposed by the Board.

In Advisory Opinion Number 95-27, the Board determined that a community board could solicit and accept donations from individuals and firms. The community board, however, should not solicit or accept donations from individuals, firms, or other organizations that have matters pending before the community board, or that have matters where the community board's involvement is imminent, or where a fundraising solicitation would be likely to be perceived as a promise of special treatment in return for a contribution. In addition, such fundraising efforts must comply with the conditions set forth in Advisory Opinion Number 92-21, which was then the Board's general opinion on the acceptance of donations by City agencies. In light of these rules, donors should be informed that giving donations or gifts will not affect the bidding process or result in special treatment from the community board; solicitation should be done by general appeal; specific entities should not be targeted; and "donation" staff should be separate from those officials who make decisions on agency contracts.

More recently, in Advisory Opinion Number 2003-4, the Board set forth its determination on fundraising for *all* City agencies, including community boards. That Opinion held, consistent with much of Opinion Number 95-27, that, subject to certain safeguards, elected officials, and indeed all public servants, could solicit gifts to the City and to not-for-profit corporations closely affiliated with City agencies and offices, provided that fundraising had been "pre-cleared" by the Board. The safeguards imposed on such "fundraising for the City" are the following: (1) a City official may not engage in a direct, targeted solicitation of any prospective donor who the official knows or should know has a specific matter either currently pending or about to be pending before the City official or his or her agency and where it is within the legal authority or duties of the soliciting official to make, affect, or direct the outcome of the matter; (2) all solicitations must make clear that the donor will receive no special access to City officials or preferential treatment as a result of a donation; and (3) each City agency or office must twice a year file a public report with the Board setting forth certain information concerning the gifts received by the agency during the reporting period, including the identity of the donor and the nature and approximate value of the gift received.

## **G. Political Activities**

Community board members generally may engage in political activities. They must, however, abide by the prohibitions contained in Chapter 68, which are designed to prevent public servants from using their official City positions to promote their private political interests. Community board members thus may not coerce any public servant to engage in political activities or request any subordinate public servant – which, for community board members, would include

the employees of the community board (*see* Advisory Opinion Number 2004-3) – to participate in a political campaign.<sup>13</sup> In addition, community board members may not coerce anyone to make a political contribution or even request a subordinate public servant to make a political contribution.<sup>14</sup> In Advisory Opinion Number 91-12, however, the Board determined that community board chairs and district managers were *not* public servants “charged with substantial policy discretion” and hence were not subject to additional restrictions on political activities applicable to certain high-ranking City officials.<sup>15</sup> Political activities are discussed in more depth in the chapter of that name.

#### **H. Restrictions on Who May be Appointed to Community Boards**

In Advisory Opinion Number 93-21, the Board held that a Member of the City Council could not nominate a close family member to a community board. The Board reasoned that community board positions hold “a certain degree of power and prestige” so that appointment to a community board would confer an “advantage” on the Member’s relative, in violation of Charter § 2604(b)(3). The Board also noted that Charter § 1135 prohibits an employee of a City Council Member or a Borough President from being appointed to a community board to which the Borough President makes appointments or to which the Council Member makes recommendations.

In Advisory Opinion Number 2003-3, the Board advised that a Council Member could nominate the *spouse* of a member of his or her staff for membership on a community board, provided that the Council staff member did not participate in the nomination process. In the same Opinion, however, the Board ruled that it would violate Chapter 68 for a member of a community board to be employed in the office of a Council Member who has appointment power to that community board.

In Advisory Opinion Number 2004-3, in a ruling that affects both community board members and the employees of community boards, the Board determined that community board members are the “superiors” of the employees of the community board for the purposes of Chapter 68 and accordingly that it would violate Chapter 68 for anyone “associated” with a community board member, including the member’s spouse, domestic partner, parents, children, and siblings, to serve as staff to that member’s community board. The Board also determined that it would violate Chapter 68 for any other person with whom a board member has a financial relationship to serve as a staff member to that community board.

#### **I. Complying Generally with Chapter 68**

Community board members and their staffs are subject to the same restrictions that Chapter 68 imposes on all other public servants, except as noted above. Thus, in 2007, the Board fined a member of a community board \$1,000 for accepting a gift of two mattress and box spring sets from a hotel owner doing business with the City.<sup>16</sup>

- <sup>1</sup> Charter § 2604(a)(1)(a).
- <sup>2</sup> Charter § 2604(b)(1)(b).
- <sup>3</sup> *COIB v. Capetanakis*, COIB Case No. 1999-157 (2001).
- <sup>4</sup> *COIB v. Bergman*, COIB Case No. 2003-153a (2007).
- <sup>5</sup> Charter § 2604(a)(1)(a).
- <sup>6</sup> Charter §§ 2601(12), (16), (18).
- <sup>7</sup> Charter §§ 2604(a)(3), (a)(4), (e).
- <sup>8</sup> Charter § 2604(b)(6).
- <sup>9</sup> Charter § 2601(4).
- <sup>10</sup> Charter § 2601(15).
- <sup>11</sup> *COIB v. Brandt*, COIB Case No. 2015-551 (2016).
- <sup>12</sup> Advisory Opinion Number 92-3 at 5.
- <sup>13</sup> Charter § 2604(b)(9).
- <sup>14</sup> Charter § 2604(b)(11).
- <sup>15</sup> Charter §§ 2604(b)(12), (b)(15).
- <sup>16</sup> *COIB v. Russell*, COIB Case No. 2006-423a (2007).