

Ownership Interests: Relevant Sections of Chapter 68 and Board Rules

§2601. Definitions. As used in this chapter,

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.

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.

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.

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.

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.

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.

§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.

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.

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.

[see also "Topics: Political Activities" for a discussion on restrictions on political activity by public servants.]

c. This section shall not prohibit:

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;

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 participate 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.

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.

RULES OF THE CITY OF NEW YORK
TITLE 53

§1-04 Definition of a Firm Whose Shares are Publicly Traded.

For purposes of Charter §2604(a)(1)(b), "a firm whose shares are publicly traded" means a firm which offers or sells its shares to the public and is listed and registered with the Securities and Exchange Commission for public trading on national securities exchanges or over-the-counter markets.

§1-05 Definition of Blind Trust.

(a) For purposes of Charter §2601(6), the term "blind trust" means a trust in which a public servant, or the public servant's spouse, domestic partner, as defined in New York City Administrative Code §1-112(21), 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, as defined in New York City Administrative Code §1-112(21), and unemancipated child have no knowledge, and which meets the following requirements:

(1) The trust is under the management and control of a trustee who is a bank or trust company authorized to exercise fiduciary powers, a licensed attorney, a certified public accountant, a broker or an investment advisor who is:

(i) independent of any interested party;

(ii) is not or has not been an employee of any interested party or any firm in which any interested party has a substantial investment, and is not a partner of, or involved in any joint venture or other investment with any interested party; and

(iii) is not a relative of any party.

(2) The trust instrument provides that:

(i) the trustee in the exercise of his or her authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;

(ii) the trust tax return shall be prepared by the trustee or his or her designee and such return and any information relating thereto (except as such information may be needed by an interested party in order to

complete a personal tax return) shall not be disclosed to any interested party;

(iii) no interested party shall receive any report on the holdings and sources of income of the trust, except periodic reports with respect to the total cash value of the trust or the net income or loss of the trust;

(iv) there shall be no communications, direct or indirect, between the trustee and an interested party with respect to the trust unless such communication is in writing. Except as provided elsewhere in this subdivision, such written communications shall be limited to the general financial interest and needs of the interested party, including requests for distribution of cash or other unspecified assets of the trust;

(v) the interested parties shall make no effort to obtain, and shall take appropriate action to avoid, receiving information with respect to the holdings and the sources of income of the trust including obtaining a copy of any trust tax return filed or any information relating thereto except as such information may be needed by an interested party in order to complete a personal tax return.

(3) For purposes of this subdivision, the term "interested party" means a public servant, or the public servant's spouse, domestic partner, as defined in New York City Administrative Code §1-112(21), or unemancipated child.

(b) *Existing trusts.*

(1) Any trust existing as of the effective date of these regulations shall be deemed a blind trust for purposes of these regulations if the trust instrument is amended to comply with the requirements of paragraph 2 of subdivision (a) of this section and the trustee of the trust meets the requirements of paragraph 1 of subdivision (a) of such section, or, in the case of a trust instrument which does not by its terms permit amendment, if the trustee and the trust beneficiary (or, if the trust beneficiary is a dependent child, any other interested party) agree in writing that the trust shall be administered in accordance with the requirements of paragraph 2 of subdivision (a) of this section and the trustee of the trust meets the requirement of paragraph 1 of subdivision (a) of this section.

(c) *Establishment and dissolution of blind trust.*

(1) The preparer of a blind trust instrument, or agreement entered into pursuant to subdivision (a) of this section shall, within thirty days of the

establishment of such trust or agreement, file an affidavit with the Conflicts of Interest Board stating that the blind trust instrument or trust as agreed to be administered pursuant to agreement, as the case may be, conforms to the requirements set forth in paragraph 2 of subdivision (a) of this section and that the trustee meets the requirements of paragraph 1 of subdivision (a) of such section.

(2) Within thirty days of the dissolution of blind trust, the beneficiary of such trust or other interested party shall file an affidavit with the Conflicts of Interest Board stating that such blind trust has been dissolved and identifying the date of such dissolution.

§1-06 Definition of Primary Employment with the City.

(a) For purposes of Charter §2601(20), "primary employment with the City" means the employment of those public servants who receive compensation from the City and are employed on a full-time basis or the equivalent or who are regularly scheduled to work the equivalent of 20 or more hours per week.

(b) "Primary employment with the City" shall not mean employment of:

(i) members of the City Planning Commission, except for the Chair;

(ii) interns employed in connection with a program at an educational institution or full-time students;

(iii) persons employed for a period not to exceed six consecutive months; or

(iv) persons employed on special projects, investigations or programs, in excess of six months but of limited duration, as the Board shall determine.

(c) For purposes of Charter §2601(20), the term "compensation" shall not mean reimbursement for expenses or per diem payments to members of commissions and boards.

§1-11 Adjustment of Dollar Amount in Definition of "Ownership Interest."

Effective as of January 1, 2006, the dollar amount in the definition of "Ownership Interest" in subdivision (16) of § 2601 of the New York City

Charter shall be adjusted from \$35,000 to \$40,000.

§1-13 Conduct Prohibited by City Charter §2604 (b)(2).

(a) Except as provided in subdivision (c) of this section, it shall be a violation of City Charter §2604(b)(2) for any public servant to pursue personal and private activities during times when the public servant is required to perform services for the City.

(b) Except as provided in subdivision (c) of this section, it shall be a violation of City Charter §2604(b)(2) for any public servant to use City letterhead, personnel, equipment, resources, or supplies for any non-City purpose.

(c) (1) A public servant may pursue a personal and private activity during normal business hours and may use City equipment, resources, personnel, and supplies, but not City letterhead, if

(i) the type of activity has been previously approved for employees of the public servant's agency by the Conflicts of Interest Board, upon application by the agency head and upon a determination by the Board that the activity furthers the purposes and interests of the City; and

(ii) the public servant shall have received approval to pursue such activity from the head of his or her agency.

(2) In any instance where a particular activity may potentially directly affect another City agency, the employee must obtain approval from his or her agency head to participate in such particular activity. The agency head shall provide written notice to the head of the potentially affected agency at least 10 days prior to approving such activity.

(d) It shall be a violation of City Charter §2604(b)(2) for any public servant to intentionally or knowingly:

(1) solicit, request, command, importune, aid, induce or cause another public servant to engage in conduct that violates any provision of City Charter §2604; or

(2) agree with one or more persons to engage in or cause the performance of conduct that violates any provision of City Charter §2604.

(e) Nothing contained in this section shall preclude the Conflicts of Interest Board from finding that conduct other than that proscribed by

subdivisions (a) through (d) of this section violates City Charter §2604(b)(2), although the Board may impose a fine for a violation of City Charter §2604(b)(2) only if the conduct violates subdivision (a), (b), (c), or (d) of this section. The Board may not impose a fine for violation of subdivision (d) where the public servant induced or caused another public servant to engage in conduct that violates City Charter §2604(b)(2), unless such other public servant violated subdivision (a), (b), or (c) of this section.