


January 9, 2020, Agenda – Open Meeting Matter
December 12, 2019, Agenda – Open Meeting Matter

To: The Board
From: Chad H. Gholizadeh 
Date: December 20, 2019
Re: Revision to Proposed Amendments to Board Rules § 1-01(h): Gifts of Travel

In response to the discussion at the December 2019 Board meeting, Staff has made the requested changes to the Draft Notice of Public Hearing and Opportunity to Comment and presents revised rules to the Board for its review. These changes include: (a) an accounting of the Advisory Opinions (“A.O.s”) incorporated into the proposed rule; (b) additional language from A.O. No. 2016-1 to clarify the allocation of costs for mixed-purpose travel; (c) a new definition of “agency head approval;” and (d) other minor changes to the text as recorded in the minutes of the December 2019 Board Meeting. Upon Board approval of the proposed rules, Staff will formally submit them to the Law Department and Mayor’s Office of Operations, as required by the City Administrative Procedure Act. See Charter § 1043(d).

Attached are the following:

- 1) Minutes of the December 12, 2019, Open Meeting (**Exhibit 1**);
- 2) Draft Board Rules and Commentary, with changes tracked to the version circulated on December 10, 2019, (**Exhibit 2**); and
- 3) Draft Board Rules and Commentary (**Exhibit 3**).

Minutes of the Open Meeting of the New York City Conflicts of Interest Board

Date: December 12, 2019

Location: Conflicts of Interest Board, 2 Lafayette Street, Suite 1010, New York, New York

Present:

Board Members: Chair Richard Briffault and Members Fernando A. Bohorquez, Jr., Anthony Crowell, Jeffrey D. Friedlander, and Erika Thomas.

Board Staff: Ethan Carrier, Chad Gholizadeh, Ana Gross, Christopher Hammer, Gavin Kendall, Julia Lee, Caitlyn Louie, Carolyn Miller, Katherine Miller, Ari Mulgay, Yasong Niu, Jeffrey Tremblay, Clare Wiseman, and Juliya Ziskina.

Guests: None

The meeting was called to order by the Chair at approximately 10:02 a.m. The Chair stated that the meeting was being conducted pursuant to the New York State Open Meetings Law and designated the undersigned as the Recording Secretary for purposes of the meeting.

The Chair stated that the meeting was called to discuss proposed amendments to Board Rules § 1-01(h). After a brief introduction, the Chair asked for any comments by the Board or Staff.

The following comments constitute the changes as agreed upon by the Board:

In the Statement of Basis and Purpose:

- page 2, line 15: insert additional sentence that the proposed rule codifies 11 advisory opinions and add elsewhere (in text or footnote) a list of the 11 advisory opinions
- page 5, line 10: insert the word “informal” so that it reads “longstanding informal advice”
- page 5, first paragraph: add language from page 6 of AO 2016-01 to explain breakdown of payments from a third party in § 1-01(h)(2)

In the text of Board Rules § 1-01(h) as revised in the version attached to the December 10, 2019 memorandum:

- page 7, lines 4 and 5: revise to state “travel before or after a trip taken for a City purpose provided that:”
- page 7, lines 22 and 23: remove commas
- page 6, line 12: remove “who is not an elected official” and amend “receives” to “received”
- add section (h)(7) to define “agency head approval” for agency heads and elected officials similar to § 1-13(e)(3)

Upon motion duly made and seconded, the Board unanimously voted to continue discussions at the next open meeting.

The open meeting was adjourned at approximately 10:22 a.m.

Respectfully submitted,

Julia H. Lee
Recording Secretary

1 New York City Conflicts of Interest Board

2
3 **Notice of Public Hearing and Opportunity to Comment on Proposed Rules Regarding Gifts**

4
5 **What are we proposing?** The Conflicts of Interest Board is proposing to amend its rules governing the
6 acceptance of gifts by public servants.

7
8 **When and where is the Hearing?** The Conflicts of Interest Board will hold a public hearing on the
9 proposed rule. The public hearing will take place at [time] on [date]. The hearing will be at [location].

10
11 This location has the following accessibility option(s) available: []

12
13 **How do I comment on the proposed rules?** Anyone can comment on the proposed rules by:

- 14
15 • **Website.** You can submit comments to the Conflicts of Interest Board through the NYC rules
16 website at <http://rules.cityofnewyork.us>.
17
18 • **Email.** You can email comments to Chad H. Gholizadeh at Rules@COIB.nyc.gov
19
20 • **Mail.** You can mail comments to Chad H. Gholizadeh, Assistant Counsel, Conflicts of Interest
21 Board, 2 Lafayette Street, Suite #1010, New York, New York 10007.
22
23 • **Fax.** You can fax comments to the Conflicts of Interest Board at (212) 437-0705.
24
25 • **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the public
26 hearing must sign up to speak. You can sign up before the hearing by calling (212) 437-xxxx. You
27 can also sign up in the hearing room before the hearing begins on [date]. You can speak for up to
28 three minutes.

29
30 **Is there a deadline to submit comments?** Yes, you must submit written comments by [date].

31
32 **Do you need assistance to participate in the hearing?** You must tell the Conflicts of Interest Board if
33 you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign
34 language interpreter. You can tell us by mail at the address given above. You may also tell us by
35 telephone at (212) 437-0723. You must tell us by [date].

36
37 **Can I review the comments made on the proposed rules?** You can review the comments made
38 online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after
39 the hearing, copies of all comments submitted online, copies of all written comments, and a summary of
40 oral comments concerning the proposed rule will be available to the public at the Conflicts of Interest
41 Board, 2 Lafayette Street, Suite #1010, New York, New York 10007.

42
43 **What authorizes the Conflicts of Interest Board to make this rule?** Sections 1043, 2603(a),
44 2603(c)(4), and 2604(b)(5) of the City Charter authorize the Conflicts of Interest Board to make this
45 proposed rule. This proposed rule was not included in the Conflicts of Interest Board's regulatory

1 agenda for this Fiscal Year because it was not contemplated when the Conflicts of Interest Board
2 published the agenda.

3
4 **Where can I find the Conflicts of Interest Board's rules?** The Conflicts of Interest Board's rules are
5 in Title 53 of the Rules of the City of New York.

6
7 **What rules govern the rulemaking process?** The Conflicts of Interest Board must meet the
8 requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made
9 according to the requirements of Section 1043 of the City Charter.

10

11 **STATEMENT OF BASIS AND PURPOSE**

12 In accordance with the mandate of City Charter § 2603(c)(4) for the Board to review all
13 its advisory opinions and initiate rulemaking to adopt those with “interpretative value in
14 construing provisions” of Chapter 68, the Board has been reviewing the 29 advisory opinions it
15 has issued concerning public servants’ acceptance of gifts. In connection with this
16 comprehensive review, the Board proposes to amend Board Rules § 1-01(h), the exception to the
17 “Valuable Gifts Rule” that permits a public servant to accept a gift of travel-related expenses for
18 official City travel. Of the Board’s 29 Advisory Opinions regarding gifts nine relate, at least in
19 part, to the acceptance of gifts of travel-related expenses for official City travel. These nine
20 opinions are the subject of this rulemaking: Advisory Opinion (“A.O”) Nos. 1990-3; 1992-10;
21 1992-19; 1992-23; 1999-4; 2006-5; 2011-2; 2016-1; 2018-1.

22 City Charter § 2604(b)(5) and Board Rules § 1-01 provide that public servants are
23 prohibited from accepting gifts of \$50.00 from any firm that the public servant knows is or
24 intends to become engaged in business dealings with the City. Additionally, City Charter §
25 2604(b)(3) prohibits public servants from using their City position to obtain any financial gain or
26 other private or personal advantage. The Board has consistently advised public servants that
27 gifts given because of the public servant’s City position constitute a private or personal
28 advantage and that their acceptance of such gifts would violate City Charter § 2604(b)(3). See

1 ~~Advisory Opinion ("A.O.") Nos. No.~~ 1990-3 (advising that receipt of a gift of travel to an elected
2 official from a firm with no current City business, absent a clear City purpose, may give rise to
3 an appearance that the gift was made to lobby or solicit the goodwill of the elected official); A.O.
4 No. 1991-4 (advising that an elected official could not accept an honorarium for giving a speech,
5 offered by a firm which at the time of the speech had not had City business dealings but
6 subsequently acquired extensive City business, to avoid creating the appearance that the
7 honorarium had been offered as a quid pro quo in return for the firm's getting City business);
8 A.O. No. 1992-10 (advising that, in the absence of a government purpose for accepting a trip to a
9 resort, an elected official's acceptance of the trip could create the appearance that he has received
10 a valuable gift solely because of his official position and was therefore prohibited); A.O. No.
11 1992-23 (advising that an elected official could not accept two free tickets from a common
12 carrier for travel to a destination outside of the State of New York because the official's
13 acceptance of the tickets would create the appearance that he received a gift because of his
14 official position); A.O. No. 1994-12 (advising that a public servant could not accept a ceremonial
15 sword presented to him as a personal gift from a restaurant and entertainment center located
16 outside of the City after he participated in a ribbon cutting ceremony as a representative of the
17 City because it would create the appearance that the public servant used his official position for
18 private gain); A.O. No. 2000-4 (advising that it would violate Section 2604(b)(3) for members of
19 an elected official's staff to solicit access to purchase or receive tickets that are limited or to
20 which they are provided special access because of their public office).

21 Existing Board Rules § 1-01(h)—unchanged since it was promulgated in 1990—provides
22 that gifts of travel-related expenses may be accepted as gifts to the City if (1) the trip is for a City
23 purpose and therefore could properly be paid for with City funds; (2) the travel arrangements are

1 appropriate to that purpose; and (3) the trip is no longer than reasonably necessary to accomplish
2 the business that is its purpose. This exception allows public servants to attend meetings and
3 conferences that, if the City were required to use its own funds, they might be unable to attend.
4 The proposed amendments to Board Rules § 1-01(h) would refine the standard for a public
5 servant's acceptance of travel-related expenses from a third party by adding additional factors
6 and codifying advice provided to public servants in its series of relevant advisory opinions.

7 In proposed Board Rules § 1-01(h)(1), the Board would retain the three requirements of
8 existing Board Rules § 1-01(h) and would add two additional requirements. First, the public
9 servant must receive prior written approval from his or her agency head upon the presentation of
10 a detailed itinerary. While existing Board Rules § 1-01(h) merely recommends that the public
11 servant obtain written agency head approval in advance to avoid an appearance of impropriety,
12 the Board has consistently advised public servants to seek such approval to provide much needed
13 oversight. See A.O. No. 2011-2 (advising that in order to review a request to accept the gift of
14 travel expenses the Board expects to receive a detailed itinerary of the trip); A.O. No. 1992-19
15 (advising the Acting Director of the Mayor's Office of Film, Theater and Broadcasting that she
16 could accept the gift of travel-expenses to the Cannes International Film Festival because the trip
17 had a City purpose of promoting film production in the City and had been approved in writing by
18 the Deputy Mayor). Second, any solicitation of travel-related expenses must be made in
19 compliance with the rules governing official fundraising, codified at Board Rules § 1-14. This
20 means that a public servant may solicit an entity to pay for travel undertaken by that agency's
21 employees or him or herself, even if that entity has business dealings with that City agency,
22 provided that: (1) the entity receiving the solicitation does not have a particular matter pending
23 before the soliciting public servant; and (2) donations from that entity to the City agency,

1 including payment of travel-related expenses, cumulatively amounting to \$5,000 or more in any
2 calendar year are reported in the manner required by Board Rules § 1-14.

3 In proposed Board Rules § 1-01(h)(2), the Board would codify the advice provided to an
4 elected official in A.O. No. 2016-1 that the official could not accept a gift of travel-related
5 expenses for the portion of time spent during the trip on political activity. Just as an elected
6 official could not spend City funds to travel to attend a political event, so too would an elected
7 official be prohibited from using funds accepted as a gift to the City to fund his or her political
8 activities. As it did in the Advisory Opinion Costs for mixed-purpose travel must be allocated
9 between its governmental and political purposes, and the official may accept payment only for
10 the cost allocated to the governmental purposes. See A.O. No. 2016-1 at 6. For example, if an
11 elected official spends eight hours on governmental activity on a particular trip, with two other
12 hours devoted to political activity, the official could accept payment from a third party for only
13 80% of the cost of the total travel expenses associated with the trip. Id. As it did in A.O. No.
14 2016-1, the Board would continue to limit this provision to elected officials, recognizing elected
15 officials' broader responsibilities, distinct from those of non-elected public servants, and that
16 those responsibilities are rarely limited by the traditional City workday.

17 Proposed Board Rules § 1-01(h)(3) would codify the Board's longstanding informal
18 advice that a public servant who accepts a gift of travel-related expenses for governmental
19 business may use his or her accrued leave and personal funds for personal travel before or after
20 the City trip. Proposed Board Rules § 1-01(h)(4) and 1-01(h)(5) would codify advice provided
21 in A.O. No. 2018-1 that a public servant was permitted to accept vouchers offered by an airline
22 for food, accommodations, and ground transportation in connection with delayed City travel but
23 not additional compensation. Here, the Board would expand its prior advice to encompass all

1 forms of travel, not just airline. In proposed Board Rules § 1-01(h)(6), the Board would codify
2 advice provided in A.O. No. 2006-5 permitting public servants to accrue frequent flyer miles
3 during City travel provided that they do not choose travel arrangements designed to inflate the
4 public servant's frequent flyer benefits at additional expense to the City.

5

6 New material is underlined.

7 Section 1. Section 1-01(h) of Chapter 1 of Title 53 of the Rules of the City of New York
8 is REPEALED and a new subdivision (h) of such section is added to read as follows:

9 (h) Travel and Travel-Related Expenses

10 (1) For the purposes of Charter § 2604(b)(3) and Charter § 2604(b)(5), a public
11 servant may accept travel-related expenses from a third party as a gift to the City
12 provided that the following conditions are met:

13 i. the trip is for a City purpose and therefore could properly be paid for with
14 City funds;

15 ii. the travel arrangements are appropriate to that purpose;

16 iii. the trip is no longer than reasonably necessary to accomplish the
17 governmental business which is its City purpose;

18 iv. a public servant ~~who is not an elected official receives~~ received agency
19 head approval in advance upon presenting such agency head with a
20 detailed itinerary which reflects the trip's City purpose; and

21 v. all solicitation for and reporting of travel-related expenses are made in
22 accordance with Board Rules § 1-14.

1 (2) An elected official whose trip includes both City governmental activities and
2 political activities may accept as a gift to the City travel-related expenses from a
3 third party only to cover the percentage of the costs equal to the time spent on
4 City governmental business. A public servant working in an agency or office
5 headed by an elected official may accompany such elected official on a mixed-
6 purpose trip and use his or her personal time for the political purposes of the trip
7 but may accept as a gift to the City travel-related expenses from a third party only
8 to cover the percentage of the costs equal to the time spent on governmental
9 business.

10 (3) A public servant may use his or her own funds and accrued leave for personal
11 travel before or after a trip ~~that has taken for a City purpose will be paid for by a~~
12 third party provided that:

- 13 i. any increased or additional costs resulting from the personal travel are
14 borne solely by the public servant; and
15 ii. such personal travel receives agency head approval in advance.

16 (4) A public servant may not accept compensation for personal use from a common
17 carrier for the voluntary or involuntary surrender of a seat on a trip taken for a
18 City purpose. A public servant offered compensation for the surrender of the seat
19 must:

- 20 i. request the compensation offered be issued in a form payable or
21 transferable to the City; and
22 ii. transfer such compensation to the City.

1 (5) A public servant may accept and use vouchers for food, accommodations, and
2 ground transportation offered by a common carrier in connection with delayed
3 City travel, provided that the public servant does not use his or her City position
4 to obtain increased compensation from the common carrier.

5 (6) A public servant may accumulate reward points or frequent flyer miles for
6 personal use while traveling on City business, provided that the public servant
7 does not make a travel selection based on receiving or increasing frequent reward
8 points or flyer benefits that results in additional expense to the City.

9 ~~(6)~~(7) For the purposes of this subdivision, agency head approval must be by the
10 head of the agency served by the public servant, or by a deputy mayor if the
11 public servant is an agency head. A public servant who is an elected official,
12 including a district attorney, is the agency head for the public servants employed
13 by the official's agency or office. A public servant who is an elected official,
14 including a district attorney, may provide agency head approval for him or
15 herself.

1 New York City Conflicts of Interest Board

2

3 **Notice of Public Hearing and Opportunity to Comment on Proposed Rules Regarding Gifts**

4

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6 acceptance of gifts by public servants.

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9 proposed rule. The public hearing will take place at [time] on [date]. The hearing will be at [location].

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16 website at <http://rules.cityofnewyork.us>.

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26 hearing must sign up to speak. You can sign up before the hearing by calling (212) 437-xxxx. You
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28 three minutes.

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18 the Deputy Mayor). Second, any solicitation of travel-related expenses must be made in
19 compliance with the rules governing official fundraising, codified at Board Rules § 1-14. This
20 means that a public servant may solicit an entity to pay for travel undertaken by that agency's
21 employees or him or herself, even if that entity has business dealings with that City agency,
22 provided that: (1) the entity receiving the solicitation does not have a particular matter pending
23 before the soliciting public servant; and (2) donations from that entity to the City agency,

1 including payment of travel-related expenses, cumulatively amounting to \$5,000 or more in any
2 calendar year are reported in the manner required by Board Rules § 1-14.

3 In proposed Board Rules § 1-01(h)(2), the Board would codify the advice provided to an
4 elected official in A.O. No. 2016-1 that the official could not accept a gift of travel-related
5 expenses for the portion of time spent during the trip on political activity. Just as an elected
6 official could not spend City funds to travel to attend a political event, so too would an elected
7 official be prohibited from using funds accepted as a gift to the City to fund his or her political
8 activities. Costs for mixed-purpose travel must be allocated between its governmental and
9 political purposes, and the official may accept payment only for the cost allocated to the
10 governmental purposes. See A.O. No. 2016-1 at 6. For example, if an elected official spends
11 eight hours on governmental activity on a particular trip, with two other hours devoted to
12 political activity, the official could accept payment from a third party for only 80% of the cost of
13 the total travel expenses associated with the trip. Id. As it did in A.O. No. 2016-1, the Board
14 would continue to limit this provision to elected officials, recognizing elected officials' broader
15 responsibilities, distinct from those of non-elected public servants, and that those responsibilities
16 are rarely limited by the traditional City workday.

17 Proposed Board Rules § 1-01(h)(3) would codify the Board's longstanding informal
18 advice that a public servant who accepts a gift of travel-related expenses for governmental
19 business may use his or her accrued leave and personal funds for personal travel before or after
20 the City trip. Proposed Board Rules § 1-01(h)(4) and 1-01(h)(5) would codify advice provided
21 in A.O. No. 2018-1 that a public servant was permitted to accept vouchers offered by an airline
22 for food, accommodations, and ground transportation in connection with delayed City travel but
23 not additional compensation. Here, the Board would expand its prior advice to encompass all

1 forms of travel, not just airline. In proposed Board Rules § 1-01(h)(6), the Board would codify
2 advice provided in A.O. No. 2006-5 permitting public servants to accrue frequent flyer miles
3 during City travel provided that they do not choose travel arrangements designed to inflate the
4 public servant's frequent flyer benefits at additional expense to the City.

5

6 New material is underlined.

7 Section 1. Section 1-01(h) of Chapter 1 of Title 53 of the Rules of the City of New York
8 is REPEALED and a new subdivision (h) of such section is added to read as follows:

9 (h) Travel and Travel-Related Expenses

10 (1) For the purposes of Charter § 2604(b)(3) and Charter § 2604(b)(5), a public
11 servant may accept travel-related expenses from a third party as a gift to the City
12 provided that the following conditions are met:

13 i. the trip is for a City purpose and therefore could properly be paid for with
14 City funds;

15 ii. the travel arrangements are appropriate to that purpose;

16 iii. the trip is no longer than reasonably necessary to accomplish the
17 governmental business which is its City purpose;

18 iv. a public servant received agency head approval in advance upon
19 presenting such agency head with a detailed itinerary which reflects the
20 trip's City purpose; and

21 v. all solicitation for and reporting of travel-related expenses are made in
22 accordance with Board Rules § 1-14.

1 (2) An elected official whose trip includes both City governmental activities and
2 political activities may accept as a gift to the City travel-related expenses from a
3 third party only to cover the percentage of the costs equal to the time spent on
4 City governmental business. A public servant working in an agency or office
5 headed by an elected official may accompany such elected official on a mixed-
6 purpose trip and use his or her personal time for the political purposes of the trip
7 but may accept as a gift to the City travel-related expenses from a third party only
8 to cover the percentage of the costs equal to the time spent on governmental
9 business.

10 (3) A public servant may use his or her own funds and accrued leave for personal
11 travel before or after a trip taken for a City purpose provided that:

- 12 i. any increased or additional costs resulting from the personal travel are
13 borne solely by the public servant: and
- 14 ii. such personal travel receives agency head approval in advance.

15 (4) A public servant may not accept compensation for personal use from a common
16 carrier for the voluntary or involuntary surrender of a seat on a trip taken for a
17 City purpose. A public servant offered compensation for the surrender of the seat
18 must:

- 19 i. request the compensation offered be issued in a form payable or
20 transferable to the City: and
- 21 ii. transfer such compensation to the City.

22 (5) A public servant may accept and use vouchers for food, accommodations, and
23 ground transportation offered by a common carrier in connection with delayed

1 City travel, provided that the public servant does not use his or her City position
2 to obtain increased compensation from the common carrier.

3 (6) A public servant may accumulate reward points or frequent flyer miles for
4 personal use while traveling on City business, provided that the public servant
5 does not make a travel selection based on receiving or increasing frequent reward
6 points or flyer benefits that results in additional expense to the City.

7 (7) For the purposes of this subdivision, agency head approval must be by the head of
8 the agency served by the public servant, or by a deputy mayor if the public
9 servant is an agency head. A public servant who is an elected official, including a
10 district attorney, is the agency head for the public servants employed by the
11 official's agency or office. A public servant who is an elected official, including a
12 district attorney, may provide agency head approval for him or herself.