

January 9, 2019, Agenda – Open Meeting Matter

To: The Board
From: Chad H. Gholizadeh
Date: November 20, 2019 *CAE*
Re: Proposed Amendments to Board Rules § 1-07: Post-Employment

Requests for guidance about compliance with the post-employment restrictions of Charter § 2604(d), and requests for waivers of those restrictions pursuant to Charter § 2604(e), have been regular subjects of consideration by the Board over its 30-year history. The Board has issued 30 advisory opinions on this topic, in addition to responding to numerous requests for waivers and informal advice. This extensive public guidance, totaling 207 pages, presents an opportunity for the Board to adopt some of its well-considered standards as a rule and to set forth a broad, non-exclusive set of factors to evaluate requests for waivers of the post-employment restrictions.

Existing Board Rules § 1-07 defines “agency served” for the purposes of the one-year post-employment appearance prohibition of Charter § 2604(d)(2). As described in detail in the attached draft, Staff proposes to replace Board Rules § 1-07 with a new, comprehensive rule that addresses the Board’s extensive interpretations and applications of Chapter 68’s post-employment restrictions. In brief, the proposed amendments to Board Rules § 1-07 would:

- Set forth a new multi-factor balancing test, codifying a non-exclusive set of factors articulated in the Board’s advisory opinions and offering additional factors to reflect the many, varied circumstances in which City agencies seek post-employment waivers for their former employees, for the purposes of articulating how the Board considers requests for waivers of the post-employment restrictions.
- Codify definitions of “agency served” and “termination of service” – concepts necessary for compliance with Charter § 2604(d).
- Provide a new framework for agencies to comply with the Board’s long-standing guidance on a unique type of post-employment work: consulting for one’s former City agency, known as “consulting back.”

Attached as Exhibit 1 is the Draft Notice of Public Hearing and Opportunity to Comment for Board Rules § 1-07.

Staff has consulted informally with the New York City Law Department about the proposed Board Rule and, with the Board's approval, will formally submit the Rule to the Law Department and Mayor's Office of Operations, as required by the City Administrative Procedure Act. See Charter § 1043(d).

1 New York City Conflicts of Interest Board

2
3 Notice of Public Hearing and Opportunity to Comment on Proposed Rules Regarding Post-
4 Employment Restrictions

5
6 **What are we proposing?** The Conflicts of Interest Board is proposing to establish rules governing the
7 issuance of waivers of the post-employment restrictions and the definition of terms related to the
8 application of such restrictions.

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

12
13 This location has the following accessibility option(s) available: []

14
15 **How do I comment on the proposed rules?** Anyone can comment on the proposed rules by:

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

31
32 **Is there a deadline to submit comments?** Yes, you must submit written comments by [date].

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

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

44
45 **What authorizes the Conflicts of Interest Board to make this rule?** Sections 1043, 2603(a), and
46 2603(c)(4) of the City Charter authorize the Conflicts of Interest Board to make this proposed rule.

1

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

4

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

8

9 **STATEMENT OF BASIS AND PURPOSE**

10 The post-employment restrictions of Chapter 68 of the City Charter, contained in
11 Charter § 2604(d), were primarily created to balance two competing City interests: the need to
12 recruit to public service talented individuals who may wish to return to or pursue private sector
13 employment, and the need to prevent public servants from trading on connections made in City
14 government service or using confidential City information for the benefit of themselves or future
15 employers. See Volume I, Report of the New York City Charter Revision Commission,
16 December 1986 – November 1988, at 28-29; see also Advisory Opinions (“A.O.”) Nos. 1993-11
17 at 6, 1993-12 at 4, and 1994-15 at 11-12. In fact, restrictions on the conduct of former public
18 servants pre-date the existence of the currently established Conflicts of Interest Board. See,
19 e.g., A.O. Nos. 1989-1 (advising that the post-employment restrictions of the former Code of
20 Ethics applied to City employees who had resigned or retired, been terminated, or had been on
21 discretionary leaves of absence before the revised post-employment restrictions of the current
22 Chapter 68 became effective); 1992-2 (advising a public servant, who had resigned before the
23 revised post-employment restrictions of the current Chapter 68 became effective, about the
24 applicability of the post-employment restrictions of the Code of Ethics).

25 Since 1989, the Board has issued 30 advisory opinions providing guidance on the
26 application of the post-employment restrictions set forth in Charter § 2604(d) and on how the
27 Board has considered requests for waivers of those restrictions. See A.O. Nos. 1989-1, 1991-8,

1 1991-19, 1992-2, 1992-13, 1992-17, 1992-32, 1992-37, 1992-38, 1993-11, 1993-12, 1993-13,
2 1993-18, 1993-30, 1994-7, 1994-15, 1994-19, 1994-21, 1994-22, 1995-1, 1996-1, 1997-1, 1998-
3 11, 1999-3, 2000-2, 2007-1, 2008-1, 2008-4, 2009-5, 2012-2. The Board's extensive public
4 advice, totaling 207 pages of Board discussion and analysis, has primarily been provided in the
5 context of responding to requests for waivers of the post-employment restrictions. Because of
6 the limited scope and duration of the post-employment restrictions, requests for waivers of the
7 post-employment are never merely technical: the former public servant is seeking to be in a
8 position where he or she would be able to use the relationships developed in their former City
9 position to influence City decision-making, in that the proposed communications are with the
10 same City agency where the former public servant served or involve the exact "particular
11 matters" on which the former public servant personally and substantially worked while in City
12 service. Additionally a former public servant, because of their experience working in a City
13 agency, will be more familiar with the informal and uncodified practices an agency uses to make
14 decisions and prioritize matters. The former public servant's familiarity with, and ability to
15 navigate, the subtle culture of their former agency poses a special concern when they propose to
16 communicate with that former agency on behalf of a private employer shortly after departing.

17 In evaluating the many requests for waivers it has received, the Board has sought to
18 balance adhering to the integrity of the post-employment restrictions of the Charter with the
19 asserted need for a particular former public servant to engage in otherwise prohibited conduct to
20 further an identified City interest. The factors the Board has considered in those difficult
21 determinations have evolved over time, alongside the evolution of the types of proposed post-
22 City employment activities of departing public servants and the needs of City agencies to utilize
23 former employees with unique or otherwise difficult-to-find skills, primarily the expansion in

1 scope and variety of not-for-profit organizations with which the City engages to perform
2 essential City functions. As the post-employment landscape has changed, the Board has sought
3 to educate public servants about its thinking that is reflected in its 30 advisory opinions.

4 With the benefit of 28 years of experience in evaluating requests for post-employment
5 waivers, and in fulfillment of its Charter mandate under Charter § 2603(c) to determine which of
6 its advisory opinions “has interpretative value in construing provisions of this chapter,” the
7 Board proposes a rule setting forth a new multi-factor balancing test to guide the Board’s
8 consideration of requests for waivers of the post-employment restrictions. In this proposed rule,
9 the Board would both codify factors articulated in its advisory opinions and offer additional
10 factors to reflect more expansively the situations in which City agencies seek to avail themselves
11 of the services of their former employees. In addition to setting forth this new multi-factor test,
12 the Board in this rule would codify answers it has provided to public servants concerning the
13 meaning of terms within Charter § 2604(d) – such as “agency served” and “termination of
14 service” – and would codify its long-standing guidance on a unique type of post-employment
15 work: consulting for one’s former City agency, known as “consulting back.”

16 **1. Definitions**

17 **a. Post-Employment Appearances**

18 In determining whether a particular communication is prohibited by Charter § 2604(d)(2),
19 the Board must consider two issues: first, whether the communication is with the “agency
20 served” by the former public servant; and second, whether the communication is an
21 “appearance” within the meaning of Chapter 68 -- that is, a compensated, non-ministerial
22 communication.

1 On the first question, in proposed Board Rules § 1-07(a)(1), the Board would codify its
2 long-standing interpretation that a former public servant may not communicate with any City
3 board or commission on which a representative of the former public servant’s agency sits as part
4 of that current agency employee’s official City duties. For example, an employee of the New
5 York City Department of Housing Preservation and Development (“HPD”) would be prohibited
6 from appearing before the board of the Housing Development Corporation (“HDC”) within their
7 first post-employment year because a representative of HPD sits on the board of HDC. By
8 contrast, the former HPD employee would not be prohibited from communicating with
9 employees of HDC because that appearance is not before the board on which their former
10 agency’s representatives sit. See A.O. No. 2008-1 (advising that when a public servant
11 simultaneously holds positions at multiple City agencies the post-employment appearance
12 restriction of Charter § 2604(d)(2) applies to each position); see also COIB v. Sirefman, COIB
13 Case No. 2007-847 (2009) (fining the former Interim President of the New York City Economic
14 Development Corporation (“EDC”) \$1,500 for appearing before the Hudson Yards Development
15 Corporation (“HYDC”) within one year of his resignation from EDC because the EDC President
16 serves as an *ex-officio* Member and Director of HYDC and the incumbent EDC President was
17 present at a meeting attended by the former Interim President).

18 On the second question, the Board has frequently been asked whether Charter §
19 2604(d)(2) prohibits all communications with employees of the former City agency. In proposed
20 Board Rules § 1-07(a)(2), the Board would provide a non-exhaustive and illustrative list of
21 examples of communications that would not be prohibited by the post-employment restrictions,
22 such as socializing or discussions of personal matters. See A.O. No. 2009-5 (advising a public
23 servant that the post-employment appearance restriction did not prohibit communication with a

1 current public servant in their private capacity, such as reaching out to perform personal legal
2 work related to estate planning); A.O. No. 2008-1 (advising that the one-year communication
3 restriction applied only to communications with public servants acting in their official
4 capacities).

5 **b. Date of Termination of City Service**

6 In advising a public servant about when the one-year post-employment appearance
7 restriction ends and they may begin communicating with their former City agency, the Board
8 must determine on which day the public servant's City service terminated, that is, when the "one
9 year" starts. In proposed Board Rules § 1-07(b)(1), the Board would incorporate the method of
10 calculating the date of a public servant's termination from City service set forth in A.O. Nos.
11 1998-11 and 2019-1. The proposed rule would set the date of termination from City service as
12 the last day such former public servant performed official City duties or received benefits
13 conditioned upon current City employment after resigning, retiring, or being terminated.

14 In proposed Board Rules § 1-07(b)(2), the Board would retain the substance of existing
15 Board Rules § 1-07 and would adopt A.O. No. 2008-1 by including additional language to codify
16 the application of Charter § 2604(d)(2) to public servants who serve multiple City agencies. See
17 also A.O. No. 1993-30 (providing advice on the tolling dates of the one-year appearance
18 restriction to a public servant who served two agencies in succession before leaving City
19 service). The proposed rule would clarify that a former public servant who has served more than
20 one City agency, concurrently or sequentially, is prohibited from appearing before each such
21 agency for one year after the termination of service, as determined by proposed Board Rules § 1-
22 07(b)(1), with each such agency.

23 **2. Otherwise Prohibited Conduct**

1 **a. Waivers of the Post-Employment Restrictions**

2 Chapter 68 contains a broad prohibition against full-time public servants having
3 ownership interests in or positions at firms that do business with *any* City agency, but the Board
4 has frequently and routinely granted waivers for public servants to hold such interests or
5 positions when they are unrelated to the public servant’s official duties and do not involve the
6 public servant’s City agency. In those circumstances, the public servant often has no actual
7 conflict of interest but would be committing a technical violation of Chapter 68 if the ownership
8 interest or outside position was held without a Board order or waiver. The one-year post-
9 employment appearance restriction, however, applies *only* to a former public servant’s
10 communications with their former employing City agency and *only* for one year after leaving
11 City service, and the lifetime post-employment particular matter restriction applies only to a
12 narrow set of matters (as defined in Charter § 2601(17)) on which a former public servant
13 worked personally and substantially while in City service. Because public servants requesting
14 waivers are seeking to hold a new position where they would be able to use the relationships
15 developed in their former City position to influence decision-making by their former City
16 agency, which may put them in a position to utilize their superior familiarity with an agency’s
17 informal culture to achieve preferential treatment for their private employer, or which involve the
18 exact particular matters on which the former public servant personally and substantially worked
19 while in City service, the Board has analyzed requests for waivers of the post-employment
20 restrictions differently from waivers of other provisions of Chapter 68.

21 Over the last 28 years, the Board has grappled with articulating and applying a standard
22 to requests for waivers of the post-employment restrictions that would fulfill the objectives of the
23 post-employment restrictions while also addressing the needs of City agencies and the City’s

1 changing relationship with not-for-profit partners. See, e.g., A.O. Nos. 1992-13 (declining to
2 issue a waiver of Charter Section 2604(d)(3) to a public servant seeking to communicate with
3 their former branch of government on behalf of a private employer because such waivers should
4 "be granted sparingly, and only in exigent circumstances), 1993-18 (declining to issue a waiver
5 of the one-year appearance restriction for a former public servant working for a for-profit
6 corporation even when the former public servant's work for the corporation may help to advance
7 agency goals because such a waiver was not justified by compelling circumstances), 1993-30
8 (declining to issue a waiver of the one-year appearance restriction for a former public servant
9 working for a for-profit corporation even when the former public servant's work for the
10 corporation may help to advance agency goals), 1994-15 (granting a waiver of the one-year
11 appearance restriction for a public servant working for a unique not-for-profit created by New
12 York State to communicate with a unit of his former City agency other than the one for which he
13 worked because government decision-making would not be compromised, the public servant's
14 contacts with their former City agency would be with a unit other than the unit to which he was
15 assigned, the public servant had not worked on projects with the not-for-profit while employed at
16 his former City agency, and the public servant would not be in a position to divulge confidential
17 information obtained during City service), 1994-19 (granting a waiver of Charter Section
18 2604(d)(3) permitting a former public servant to communicate with his former branch of
19 government on behalf of two new not-for-profit employers, in part because the purpose of those
20 employers was to benefit the City by developing programs and raising funds to support City
21 government initiatives).

22 The Board's advisory opinions on the criteria required to qualify for a waiver of Chapter
23 68's post-employment restrictions reflect its efforts to balance these concerns. See generally

1 A.O. Nos. 2008-4 (advising that a more permissive standard for granting post-employment
2 waivers may be applied when an entity is one that contributes private resources to the City in a
3 joint venture with a City agency), and 2000-2 (advising that a more permissive standard for
4 granting waivers of the post-employment restrictions may be available for former public servants
5 working for organizations which have developed partnerships with the City and perform services
6 deemed to be in the City's best interests). To establish the Board's method of balancing the
7 competing City interests at hand in every request for a waiver of the post-employment
8 restrictions, the Board now proposes a multi-factor balancing test. Many of the listed factors are
9 more specific and illustrative versions of the four factors the Board historically considered (that
10 is, in the "four-part exigent circumstances test"). However, with every request, the Board would
11 consider the totality of the identified circumstances.

12 The enumerated factors in proposed Board Rules § 1-07(c)(1) cluster around three themes
13 that would guide the Board's deliberations about requests for waivers. First, the Board would
14 evaluate whether the public servant who is the subject of the request has come before the Board
15 in good faith and not having engaged in conduct that would prejudice the City or the ability of
16 the Board to evaluate the request. As part of determining that a request meets this standard, the
17 Board would evaluate whether the request has been made promptly and without undue delay in
18 order to ensure that self-created exigencies do not overwhelm other relevant facts. See Proposed
19 Board Rules § 1-07(c)(1)(x); see also A.O. Nos. 2012-2 (advising that request for waivers of the
20 post-employment restrictions should be submitted in advance of departure from City service),
21 and 1992-37 (noting with disapproval that a former public servant did not request a waiver prior
22 to having accepted the position with a private employer). Additionally, the Board would seek an
23 affirmative representation from the former City agency that the former public servant complied

1 with Charter § 2604(d)(1), which requires recusal from any particular matters involving a private
2 employer while soliciting or negotiating for a position with that employer. See Proposed Board
3 Rules § 1-07(c)(1)(iii); see also A.O. No. 1992-37 (observing that a former public servant's
4 solicitation and negotiation for a position with a private employer prior to leaving City service
5 increase the possibility that a violation of Charter Section 2604(d)(1) occurred). Requiring a
6 representation that the former public servant was formally and fully recused from all matters
7 involving the private employer would help protect against the risk of a former public servant
8 directly leveraging their City position into new employment.

9 Second, the Board would evaluate whether the proposed waiver of the post-employment
10 restrictions is genuinely in the interests of the City. The Board would be more likely to grant a
11 waiver of the post-employment restrictions if the proposed work could provide a substantial
12 benefit to the City, distinct from the benefit provided to the private employer. See Proposed
13 Board Rules § 1-07(c)(1)(ii). While many not-for-profits and other entities perform important
14 work serving City residents, any proposed waiver of the post-employment restrictions should
15 provide some additional benefit to the City beyond the private employer executing its own
16 mission or fulfilling a contract with the City. Another way the Board would protect the interests
17 of the City is by favoring waivers where the City and the former public servant's private
18 employer share an identity of interest. See Proposed Board Rules § 1-07(c)(1)(i). When a
19 former public servant's work for a private employer involves furthering an interest identical to
20 that of the City, there are diminished concerns about a former public servant using their special
21 access or knowledge to the detriment of the City's interests. Similarly, the Board would look
22 favorably upon requests for waivers for former public servants who work for entities which the
23 City itself controls or effectively controls, because such arrangements protect the City's interests.

1 See Proposed Board Rules § 1-07(c)(1)(vi). Finally, the Board would look favorably upon
2 requests for waivers where the former public servant is, among the subsequent employer's
3 employees, uniquely qualified to make or perform the otherwise prohibited communications or
4 work by virtue of their technical or professional expertise. See Proposed Board Rules § 1-
5 07(c)(1)(v); see also A.O. No. 1992-17 (granting a public servant a waiver of the post-
6 employment restrictions to work for an entity when his expertise would help remedy contractual
7 disputes between the entity and the agency). As with other related factors, the focus is on
8 harnessing a former public servant's special skills to further the City's objectives.

9 Third, the Board would evaluate whether granting a waiver could result in a former
10 public servant exercising undue influence at their former agency or providing special access for
11 their private employer. To mitigate this concern, the Board would look favorably upon requests
12 in which the former public servant does not propose to communicate with units or divisions at
13 the former agency with which he or she worked regularly. See Proposed Board Rules § 1-
14 07(c)(1)(viii). In circumstances where a former public servant seeks to communicate with units
15 or divisions with which they did not deal while at that City agency, there is a decreased risk of
16 exercising undue influence over those unfamiliar public servants. Additionally, the Board would
17 disfavor requests for waivers for former public servants who seek to communicate with their
18 former agencies to seek new business for their private employers in the forms of licenses,
19 permits, grants, or contracts. See Proposed Board Rules § 1-07(c)(1)(vii). To the extent the City
20 chooses to enter into additional business arrangements with a firm that employs a former public
21 servant, the City's assessment of its interests should not be swayed by the presence of a familiar
22 face. Finally, because public servants who have worked for the City for brief periods of time are
23 unlikely to have developed the connections necessary to afford them undue influence or unfair

1 access, the Board will be more likely to grant waivers for public servants who worked for the
2 City for fewer than 60 days. See Proposed Board Rules § 1-07(c)(1)(ix).

3 **2. Consulting for a Former City Agency**

4 As part of its experience applying the post-employment restrictions the Board has also
5 considered how those restrictions impact the City's ability to retain directly the expertise held by
6 retiring and departing City employees. The Board's approach to this issue has been informed by
7 Charter § 2604(d)(6), the so-called "government-to-government" exception, which provides that
8 the post-employment restrictions "shall not apply to positions with or representation on behalf of
9 any local, state or federal agency." This provision, however, exists in apparent tension with the
10 post-employment restrictions in Charter § 2604(d) which, as discussed above, aim to protect
11 against the genuine conflict of interest presented when former City employees use their
12 connections at and intimate familiarity with the inner workings of their former City agency to
13 benefit themselves or their new employers.

14 Because it is unlikely that the drafters of the post-employment restrictions intended or
15 reasonably expected the post-employment restrictions to restrict the City's ability to retain its
16 former employees as consultants, the Board has long articulated a standard whereby a City
17 agency may consult with a former employee provided that certain conditions were met. See
18 A.O. Nos. 1993-12; 1995-1. Proposed Board Rules § 1-07(d)(1) would provide more specific
19 and detailed conditions which, if met, would permit a former public servant to be retained
20 directly, rather than through an employer, as a consultant by the City agency for which he or she
21 worked with the written approval of the agency head. The new conditions, including requiring
22 that the consulting arrangement not exceed six months and limiting the purposes of a consulting
23 arrangement to either completing work left unfinished by the public servant or training the public

1 servant's replacement, could help to ensure that any consulting arrangement benefits the City and
2 does not reflect either the lingering influence of a departing public servant or the desire of
3 current public servants to reward favored former colleagues. In addition to requiring compliance
4 with specified conditions, the written approval of the agency head would have to be disclosed to
5 the Board so that it can be posted publicly. See Board Rules § 1-07(d)(1).

6 The Board has also reviewed matters where, for reasons of administrative convenience, a
7 City agency seeks to employ a former employee as a consultant through an intermediary entity,
8 rather than directly as a consultant. One of the most frequent ways in which this scenario has
9 presented itself to the Board is when a City agency seeks to retain a public servant as a
10 consultant through a temporary staffing agency with which the agency already has a staffing
11 contract. In this case, because the former public servant would be an employee of the temporary
12 staffing agency or other intermediary entity, the "government-to-government" exception of
13 Charter § 2604(d)(6) would not apply. However, because in many circumstances the consulting
14 arrangement is motivated by the same City purpose that motivates direct consulting
15 arrangements, the Board has often issued waivers to public servants whose former City agencies
16 seek to employ them in this manner. The Board's decisions to grant waivers in these
17 circumstances have always been informed by the risk of disproportionate benefits the
18 intermediary entity may reap from a City agency's need to retain its former employee. See A.O.
19 No. 1995-1 at 6. In proposed Board Rules § 1-07(d)(2) the Board articulates a standard that such
20 waivers must meet, incorporating the requirements of proposed Board Rules § 1-07(d)(1), but
21 also requiring that the private intermediary is selected by the City rather than by the public
22 servant. By requiring the intermediary to be selected by the City, the Board's proposed rule

1 would help safeguard against consulting and other employment agencies reaping
2 disproportionate benefit from the expertise of departing City employees.

3

4

5 New material is underlined.

6 Section 1. Section 1-07 of Chapter 1 of Title 53 of the Rules of the City of New York is
7 REPEALED and a new Section 1-07 is added to read as follows:

8 §1-07 Post-Employment

9 (a) Post-Employment Appearances

10 (1) For the purposes of Charter § 2604(d)(2), “appear before the City agency served
11 by such public servant” includes compensated communications with any City
12 board, commission, or other governmental entity on which a representative of the
13 former City agency sits.

14 (2) For the purposes of Charter § 2604(d)(2), “appear before the City agency served
15 by such public servant” does not include communications related to non-City
16 matters, including but not limited to:

17 (i) social communications with an employee of the former City
18 agency;

19 (ii) communications with an employee of the former City agency
20 about the employee’s personal finances, other personal services unrelated
21 to the City, or future employment; or

22 (iii) communications related to securing the political endorsement of an
23 elected official.

1 (b) Date of Termination of City Service

2 (1) For purposes of Charter § 2604(d)(2), the date of termination of a former public
3 servant's City service is the last day such former public servant performed official
4 City duties or received benefits conditioned upon current City employment after
5 resigning, retiring, or being terminated.

6 (2) A former public servant who has served more than one City agency within one
7 year prior to the termination of such public servant's service with the City may
8 not appear before each such City agency for a period of one year after the
9 termination of service from each such agency.

10 (c) Waivers of the Post-Employment Restrictions

11 (1) Pursuant to Charter § 2604(e), the Board may waive the one-year post-
12 employment appearance restriction of Charter § 2604(d)(2) or the lifetime post-
13 employment particular matter restriction of Charter § 2604(d)(4) if it determines
14 both that the proposed conduct does not conflict with the purposes and interests of
15 the City and that it benefits the City. In making this determination, the Board will
16 consider the totality of the circumstances by weighing each of the following
17 individual factors:

18 (i) whether the former public servant proposes to work on a matter
19 where the former public servant's private employer and the City share an
20 identity of interest:

21 (ii) whether the former public servant's proposed work would provide
22 a substantial benefit to the City distinct from the benefit to the former
23 public servant or to the private employer:

- 1 (iii) whether the former public servant was fully and formally recused
2 from all particular matters involving the private employer from the time of
3 soliciting or negotiating for employment with the private employer
4 through the termination of City service;
- 5 (iv) whether the subsequent employer has no other employees able to
6 appear before the former public servant's agency or perform the prohibited
7 work;
- 8 (v) whether the former public servant has unique technical or
9 professional expertise to make or perform the prohibited appearances or
10 work;
- 11 (vi) whether the City controls or effectively controls the private
12 employer;
- 13 (vii) whether the matters on which the former public servant proposes to
14 communicate with the City or perform work are new applications or
15 requests to the City for any license, permit, grant, contract;
- 16 (viii) whether the proposed appearances would not involve any unit or
17 division at the former public servant's agency with which the former
18 public servant worked regularly;
- 19 (ix) whether the former public servant was employed by the City for
20 fewer than 60 days; and
- 21 (x) whether the City agency's request for the waiver was made without
22 undue delay.

23 (d) Consulting for a Former City Agency

1 (1) Pursuant to Charter § 2604(d)(6), with the written approval of the agency head, a
2 former public servant may be directly retained by their former City agency as a
3 consultant within one year of the termination of his or her City service, and may
4 work on particular matters with which he or she was personally and substantially
5 involved, provided that:

6 (i) the consulting arrangement is made for the purpose of either
7 completing work left unfinished by the former public servant at the time
8 their City service terminated or training their replacement:

9 (ii) the consulting arrangement will not exceed six months:

10 (iii) the former public servant has technical, professional, or other
11 subject-matter expertise or skills not otherwise available among the
12 agency's employees:

13 (iv) the compensation is not significantly higher than what the former
14 public servant last earned at the agency; and

15 (v) within 30 days the written approval is disclosed to the Conflicts of
16 Interest Board and will be posted on the Board's website.

17 (2) Pursuant to Charter § 2604(e), a consulting arrangement between a former public
18 servant and their former agency that meets the requirements of paragraph (1) of
19 this subdivision but in which the former public servant is retained through a
20 subsequent employer may be entered into if:

21 (i) the subsequent employer was selected by the City rather than by
22 the former public servant; and

1 (ii) after written approval of the head of the City agency, the Board
2 determines that the proposed consulting arrangement would provide a
3 substantial benefit to the City distinct from the benefit to the former public
4 servant or to the private employer.