

December 12, 2019, Agenda – Open Meeting Matter

To: The Board
From: Chad H. Gholizadeh *CHG*
Date: November 18, 2019
Re: Proposed Amendments to Board Rules § 1-01(h): Gifts of Travel

Gifts to public servants, including both those prohibited by City Charter § 2604(b)(5) by City Charter § 2604(b)(3),¹ are the topic of frequent requests to the Board for advice, resulting in 29 advisory opinions. As part of the Board's considerations of its advisory opinions for codification as rules as required by City Charter § 2603(c)(4), Staff has reviewed these 29 opinions and proposes to revise Board Rules § 1-01 (the "Valuable Gifts Rule") in stages, beginning with Board Rules § 1-01(h).²

Board Rules § 1-01(h) provides an exception whereby otherwise prohibited gifts of travel-related expenses may be accepted as gifts to the City to facilitate official City business travel. Of the 29 advisory opinions on gifts, many address questions related to this subject at

¹ City Charter § 2604(b)(5) states: "No public servant shall accept any valuable gift, as defined by rule of the board, from any person or firm which such public servant knows is or intends to become engaged in business dealings with the city, except that nothing contained herein shall prohibit a public servant from accepting a gift which is customary on family and social occasions."

City Charter § 2604(b)(3) states: "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."

² Board Rules § 1-01(h) states: "(1) For the purposes of Charter § 2604(b)(5), a public servant's acceptance of travel-related expenses from a private entity can be considered a gift to the City rather than to the public servant, when:

- (i) the trip is for a City purpose and therefore could properly be paid for with City funds;
- (ii) the travel arrangements are appropriate to that purpose; and
- (iii) the trip is no longer than reasonably necessary to accomplish the business which is its purpose.

(2) To avoid an appearance of impropriety, it is recommended that for public servants who are not elected officials, each such trip and the acceptance of payment therefor be approved in advance and in writing by the head of the appropriate agency, or if the public servant is an agency head, by a deputy mayor."

least in part. Four advisory opinions, cited in the proposed Statement of Basis and Purpose, contain the generally applicable standards that Staff proposes to incorporate into a revised rule.

The proposed revisions to Board Rules § 1-01(h) would:

- Incorporate the Board’s longstanding interpretation that the acceptance of a gift by a public servant that was offered because of that public servant’s City position constitutes a “private or personal advantage” and would violate City Charter § 2604(b)(3).
- Add to the existing requirements of Board Rules § 1-01(h) by prohibiting the public servant who would take the travel, or the public servant’s subordinate, from soliciting the travel-related expenses and codifying the requirement in Advisory Opinion No. 2011-2 that the public servant must receive prior written approval from his or her agency head upon the presentation of a detailed itinerary.
- Codify advice provided to public servants informally and in Advisory Opinion Nos. 2016-1, 2018-1, and 2006-5 regarding (a) travel by elected officials that includes events that have both political and City purposes; (b) public servants engaging in personal travel either before or after the trip with City business; (c) the acceptance of vouchers offered by an airline for food, accommodations, and ground transportation in connection with delayed City travel; and (d) frequent flyer miles.

Attached are the following:

1. Draft Notice of Public Hearing and Opportunity to Comment for Board Rules § 1-01(h) (Exhibit 1); and
2. Existing Board Rules § 1-01(h) alongside Proposed Board Rules § 1-01(h) (Exhibit 2).

Staff has consulted informally with the New York City Law Department about the proposed Rule. With the Board’s approval, Staff 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 Gifts**

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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].

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

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

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- 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.

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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.

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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.

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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.

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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.

19 City Charter § 2604(b)(5) and Board Rules § 1-01 provide that public servants are
20 prohibited from accepting gifts of \$50.00 from any firm that the public servant knows is or
21 intends to become engaged in business dealings with the City. Additionally, City Charter §
22 2604(b)(3) prohibits public servants from using their City position to obtain any financial gain or
23 other private or personal advantage. The Board has consistently advised public servants that
24 gifts given because of the public servant's City position constitute a private or personal
25 advantage and that their acceptance of such gifts would violate City Charter § 2604(b)(3). See
26 Advisory Opinion ("A.O.") Nos. 1990-3 (advising that receipt of a gift of travel to an elected
27 official from a firm with no current City business, absent a clear City purpose, may give rise to
28 an appearance that the gift was made to lobby or solicit the goodwill of the elected official);

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2 offered by a firm which at the time of the speech had not had City business dealings but
3 subsequently acquired extensive City business, to avoid creating the appearance that the
4 honorarium had been offered as a quid pro quo in return for the firm's getting City business);
5 1992-10 (advising that, in the absence of a government purpose for accepting a trip to a resort, an
6 elected official's acceptance of the trip could create the appearance that he has received a
7 valuable gift solely because of his official position and was therefore prohibited); 1992-23
8 (advising that an elected official could not accept two free tickets from a common carrier for
9 travel to a destination outside of the State of New York because the official's acceptance of the
10 tickets would create the appearance that he received a gift because of his official position); 1994-
11 12 (advising that a public servant could not accept a ceremonial sword presented to him as a
12 personal gift from a restaurant and entertainment center located outside of the City after he
13 participated in a ribbon cutting ceremony as a representative of the City because it would create
14 the appearance that the public servant used his official position for private gain); 2000-4
15 (advising that it would violate Section 2604(b)(3) for members of an elected official's staff to
16 solicit access to purchase or receive tickets that are limited or to which they are provided special
17 access because of their public office).

18 Existing Board Rules § 1-01(h)—unchanged since it was promulgated in 1990—provides
19 that gifts of travel-related expenses may be accepted as gifts to the City if (1) the trip is for a City
20 purpose and therefore could properly be paid for with City funds; (2) the travel arrangements are
21 appropriate to that purpose; and (3) the trip is no longer than reasonably necessary to accomplish
22 the business that is its purpose. This exception allows public servants to attend meetings and
23 conferences that, if the City were required to use its own funds, they might be unable to attend.

1 The proposed amendments to Board Rules § 1-01(h) would refine the standard for a public
2 servant's acceptance of travel-related expenses from a third party by adding additional factors
3 and codifying advice provided to public servants in its series of relevant advisory opinions.

4 In proposed Board Rules § 1-01(h)(1), the Board would retain the three requirements of
5 existing Board Rules § 1-01(h) and would add two additional requirements. First, the public
6 servant, or the public servant's subordinate, may not solicit the travel-related expenses. This
7 would prevent public servants from, either personally or through their subordinates, targeting
8 vendors or individuals with whom they deal for travel that may benefit the public servants
9 personally. Second, the public servant must receive prior written approval from his or her
10 agency head upon the presentation of a detailed itinerary. While existing Board Rules § 1-01(h)
11 merely recommends that the public servant obtain written agency head approval in advance to
12 avoid an appearance of impropriety, the Board has consistently advised public servants to seek
13 such approval to provide much needed oversight. See A.O. No. 2011-2 (advising that in order to
14 review a request to accept the gift of travel expenses the Board expects to receive a detailed
15 itinerary of the trip); A.O. No. 1992-19 (advising the Acting Director of the Mayor's Office of
16 Film, Theater and Broadcasting that she could accept the gift of travel-expenses to the Cannes
17 International Film Festival because the trip had a City purpose of promoting film production in
18 the City and had been approved in writing by the Deputy Mayor).

19 In proposed Board Rules § 1-01(h)(2), the Board would codify the advice provided to an
20 elected official in A.O. No. 2016-1 that the official could not accept a gift of travel-related
21 expenses for the portion of time spent during the trip on political activity. Just as an elected
22 official could not spend City funds to travel to attend a political event, so too would an elected
23 official be prohibited from using funds accepted as a gift to the City to fund his or her political

1 activities. As it did in the Advisory Opinion, the Board would continue to limit this provision to
2 elected officials, recognizing elected officials' broader responsibilities, distinct from those of
3 non-elected public servants, and that those responsibilities are rarely limited by the traditional
4 City workday.

5 Proposed Board Rules § 1-01(h)(3) would codify the Board's longstanding advice that a
6 public servant who accepts a gift of travel-related expenses for governmental business may use
7 his or her accrued leave and personal funds for personal travel before or after the City trip.

8 Proposed Board Rules § 1-01(h)(4) and 1-01(h)(5) would codify advice provided in A.O. No.
9 2018-1 that a public servant was permitted to accept vouchers offered by an airline for food,
10 accommodations, and ground transportation in connection with delayed City travel but not
11 additional compensation. Here, the Board would expand its prior advice to encompass all forms
12 of travel, not just airline. In proposed Board Rules § 1-01(h)(6), the Board would codify advice
13 provided in A.O. No. 2006-5 permitting public servants to accrue frequent flyer miles during
14 City travel provided that they do not choose travel arrangements designed to inflate the public
15 servant's frequent flyer benefits at additional expense to the City.

16

17 New material is underlined.

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

20 (h) Travel and Travel-Related Expenses

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

- 1 i. neither the public servant nor a subordinate solicit the gift;
- 2 ii. the trip is for a City purpose and therefore could properly be paid for with
- 3 City funds;
- 4 iii. the travel arrangements are appropriate to that purpose;
- 5 iv. the trip is no longer than reasonably necessary to accomplish the
- 6 governmental business which is its City purpose; and
- 7 v. a public servant who is not an elected official receives agency head
- 8 approval in advance upon presenting such agency head with a detailed
- 9 itinerary which reflects the trip's City purpose.

10 (2) An elected official whose trip includes both City governmental activities and
11 political activities may accept as a gift to the City travel-related expenses from a
12 third party only to cover the percentage of the costs equal to the time spent on
13 City governmental business. A public servant working in an agency or office
14 headed by an elected official may accompany such elected official on a mixed-
15 purpose trip and use his or her personal time for the political purposes of the trip
16 but may accept as a gift to the City travel-related expenses from a third party only
17 to cover the percentage of the costs equal to the time spent on governmental
18 business.

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

- 22 i. any increased or additional costs resulting from the personal travel are
- 23 borne solely by the public servant; and

1 ii. such personal travel receives agency head approval in advance.

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

6 i. request the compensation offered be issued in a form payable or
7 transferable to the City; and

8 ii. transfer such compensation to the City.

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

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

Existing Board Rules §1-01(h)

(h)(1) For the purposes of Charter §2604(b)(5), a public servant's acceptance of travel-related expenses from a private entity can be considered a gift to the City rather than to the public servant, when:

- (i) the trip is for a City purpose and therefore could properly be paid for with City funds;
- (ii) the travel arrangements are appropriate to that purpose; and
- (iii) the trip is no longer than reasonably necessary to accomplish the business which is its purpose.

(2) To avoid an appearance of impropriety, it is recommended that for public servants who are not elected officials, each such trip and the acceptance of payment therefor be approved in advance and in writing by the head of the appropriate agency, or if the public servant is an agency head, by a deputy mayor.

Proposed Board Rules §1-01(h)

(h) Travel and Travel-Related Expenses

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- v. a public servant who is not an elected official receives agency head approval in advance upon presenting such agency head with a detailed itinerary which reflects the trip's City purpose.

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

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

- i. any increased or additional costs resulting from the personal travel are borne solely by the public servant; and
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Proposed Board Rules §1-01(h) (cont.)

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December 12, 2019, Agenda – Open Meeting Matter

To: The Board
From: Chad H. Gholizadeh 
Date: December 10, 2019
Re: Revision to Proposed Amendments to Board Rules § 1-01(h): Gifts of Travel

In response to a Board Member’s question about the solicitation of travel-related expenses, Staff has prepared a revised version of the Draft Notice of Public Hearing and Opportunity to Comment with changes tracked to the previous version, attached as **Exhibit 1**.

Staff’s prior draft would have prohibited the solicitation of travel-related expenses by the public servant taking the trip and would have also prohibited his or her subordinates from making that solicitation. The Board Member was concerned that this prohibition could limit the City from obtaining the benefit of the gift of travel under appropriate circumstances. This question highlighted that the proposed prohibition on solicitation was inconsistent with the Board’s rules on official fundraising, Board Rules § 1-14. In the revised Draft Notice of Public Hearing and Opportunity to Comment, Staff has endeavored to resolve these issues by: (a) removing the prohibition on solicitation; and (b) harmonizing the solicitation requirement to be consistent with the requirements of Board Rules § 1-14.

1 **New York City Conflicts of Interest Board**

2
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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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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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43 **What authorizes the Conflicts of Interest Board to make this rule?** Sections 1043, 2603(a),
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45 proposed rule. This proposed rule was not included in the Conflicts of Interest Board's regulatory

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13 its advisory opinions and initiate rulemaking to adopt those with “interpretative value in
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3 subsequently acquired extensive City business, to avoid creating the appearance that the
4 honorarium had been offered as a quid pro quo in return for the firm's getting City business);
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8 servant obtain written agency head approval in advance to avoid an appearance of impropriety,
9 the Board has consistently advised public servants to seek such approval to provide much needed
10 oversight. See A.O. No. 2011-2 (advising that in order to review a request to accept the gift of
11 travel expenses the Board expects to receive a detailed itinerary of the trip); A.O. No. 1992-19
12 (advising the Acting Director of the Mayor's Office of Film, Theater and Broadcasting that she
13 could accept the gift of travel-expenses to the Cannes International Film Festival because the trip
14 had a City purpose of promoting film production in the City and had been approved in writing by
15 the Deputy Mayor). Second, any solicitation of travel-related expenses must be made in
16 compliance with the rules governing official fundraising, codified at Board Rules § 1-14. This
17 means that a public servant may solicit an entity to pay for travel undertaken by that agency's
18 employees or him or herself, even if that entity has business dealings with that City agency,
19 provided that: (1) the entity receiving the solicitation does not have a particular matter pending
20 before the soliciting public servant; and (2) donations from that entity to the City agency,
21 including payment of travel-related expenses, cumulatively amounting to \$5,000 or more in any
22 calendar year are reported in the manner required by Board Rules § 1-14.

1 In proposed Board Rules § 1-01(h)(2), the Board would codify the advice provided to an
2 elected official in A.O. No. 2016-1 that the official could not accept a gift of travel-related
3 expenses for the portion of time spent during the trip on political activity. Just as an elected
4 official could not spend City funds to travel to attend a political event, so too would an elected
5 official be prohibited from using funds accepted as a gift to the City to fund his or her political
6 activities. As it did in the Advisory Opinion, the Board would continue to limit this provision to
7 elected officials, recognizing elected officials' broader responsibilities, distinct from those of
8 non-elected public servants, and that those responsibilities are rarely limited by the traditional
9 City workday.

10 Proposed Board Rules § 1-01(h)(3) would codify the Board's longstanding advice that a
11 public servant who accepts a gift of travel-related expenses for governmental business may use
12 his or her accrued leave and personal funds for personal travel before or after the City trip.
13 Proposed Board Rules § 1-01(h)(4) and 1-01(h)(5) would codify advice provided in A.O. No.
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15 accommodations, and ground transportation in connection with delayed City travel but not
16 additional compensation. Here, the Board would expand its prior advice to encompass all forms
17 of travel, not just airline. In proposed Board Rules § 1-01(h)(6), the Board would codify advice
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19 City travel provided that they do not choose travel arrangements designed to inflate the public
20 servant's frequent flyer benefits at additional expense to the City.

21

22 New material is underlined.

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

3 (h) Travel and Travel-Related Expenses

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

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

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

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

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

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

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

1 to cover the percentage of the costs equal to the time spent on governmental
2 business.

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

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

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

- 13 i. request the compensation offered be issued in a form payable or
14 transferable to the City; and
- 15 ii. transfer such compensation to the City.

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

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