

November 24, 2020, Agenda – Open Meeting Matter
September 22, 2020, Agenda – Open Meeting Matter

To: The Board

From: Chad H. Gholizadeh

Date: November 16, 2020

Re: Proposed Amendments to Board Rules §§ 1-01(i), (j), and (k)
Proposed New Board Rules §§ 1-01 (l) and (m)

In response to the discussion at the September 2020 Open Meeting, Staff has made the requested changes to the Notice of Public Hearing and Opportunity to Comment. The most significant substantive change is to Board Rules § 1-01(i)(1)(i), governing the acceptance of free attendance at events to reward performance or boost morale. The initial proposal would have prohibited “supervisory” and “managerial” public servants from accepting free attendance to these events in the interest of preventing donors from targeting influential decision-makers. While there was Board consensus about the policy objective of this restriction, the description seemed overly broad, capturing low-level public servants with modest managerial responsibilities. The Board directed Staff to consult with the New York City Department of Citywide Administrative Services (“DCAS”) to identify an existing category of public servants that would prohibit high-ranking public servants from accepting gifts that may influence their decisions without reaching lower level public servants who should be able to receive these “morale-boosting” gifts. DCAS recommended using the category of public servants who file annual disclosure reports for this restriction because public servants who file annual disclosure reports exercise independent authority, such as negotiating contracts or authorizing construction projects. Staff believes that the use of this discrete, identifiable class of public servants satisfies the objective of this subsection.

Additional changes include: (a) consolidation of Board Rules §§ 1-01(j)(1)(i)-(vi); (b) removal of the limitation on the value of gifts given by superiors to subordinates in Board Rules § 1-01(k)(3); and (c) changes to the text of the Statement of Basis and Purpose reflecting these revisions. Upon Board approval of the proposed amended and new 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 September 22, 2020, Open Meeting (Exhibit 1);
2. Notice of Public Hearing and Opportunity to Comment (Exhibit 2); and
3. Notice of Public Hearing and Opportunity to Comment with changes tracked to the version discussed at the September 22, 2020, Board Meeting (Exhibit 3).

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

Date: September 22, 2020

Present:

Board Members: Chair Jeffrey D. Friedlander and Members Fernando A. Bohorquez, Jr., Anthony W. Crowell, Wayne G. Hawley, and Nisha Agarwal

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

Guests: None

The Board and Staff participated by videoconference pursuant to Executive Order No. 202 issued on March 7, 2020. The meeting was called to order by the Chair at approximately 9:32 a.m. The Chair stated that the meeting was being conducted pursuant to the New York State Open Meetings Law to discuss proposed amendments to Board Rules §§ 4-01 to 4-03, 1-04, and 1-01(i) to (m).

Board Rules §§ 4-01 to 4-03

After a brief introduction, the Chair asked for any comments by the Board or Staff. There were no comments. The Board unanimously agreed to adopt the proposed Notice of Adoption of Final Rule.

Board Rules § 1-04

After an introduction by Staff and discussion with the Board, the following change was agreed to by Board and Staff:

- § 1-04(b): add phrase to clarify that individual investments in sector-based mutual funds are to be considered for “ownership interest.”

Staff will consult with the Comptroller’s Office and other resources for further insight into current investment vehicles.

The Board agreed to continue discussions at a future open meeting.

Board Rules §§ 1-01(i) to (m)

After an introduction by Staff and discussion with the Board, the following changes were agreed to by Board and Staff:

- § 1-01(i)(1)(i): revise “supervisory or managerial public servants” in consultation with DCAS to exclude low level supervisors
- § 1-01(j)(1)(i)-(vi): condense the six conditions into three
- § 1-01(k)(3): remove prohibition on gifts from superiors; incorporate in (k)(4)

The Board agreed to continue discussions at a future open meeting.

The open meeting was adjourned at approximately 10:49 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 by video conference at [] on [] and is accessible by:

10 • **Internet Video and Audio.** To access the hearing by Zoom, use the following URL: [].

11
12 • **Telephone.** To access the hearing by telephone, dial []. When prompted, use the following
13 access code [] and password [].

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

15 • **Website.** You can submit comments to the Conflicts of Interest Board through the NYC
16 rules website at <http://rules.cityofnewyork.us>.

17 • **Email.** You can email comments to Rules@COIB.nyc.gov.

18 • **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the
19 public hearing may speak for up to three minutes. Please access the public hearing by
20 Internet Video and Audio or by Telephone using the instructions above. It is
21 recommended, but not required, that commenters sign up prior to the hearing by contacting
22 the Conflicts of Interest Board by phone at (212) 437-0730 or by email at
23 lee@coib.nyc.gov.

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

25
26 **Do you need assistance to participate in the hearing?** You must tell the Conflicts of Interest Board if
27 you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign
28 language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone
29 at (212) 437-0723. You must tell us by [date].

30
31 **Can I review the comments made on the proposed rules?** You can review the comments made online
32 on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the
33 hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral
34 comments concerning the proposed rule will be available to the public at the Conflicts of Interest Board,
35 2 Lafayette Street, Suite #1010, New York, New York 10007.

36
37 **What authorizes the Conflicts of Interest Board to make this rule?** Sections 1043, 2603(a),
38 2603(c)(4), and 2604(b)(5) of the City Charter authorize the Conflicts of Interest Board to make this
39 proposed rule. This rule was included in the Conflicts of Interest Board's regulatory agenda for this Fiscal
40 Year.

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

3
4 **What rules govern the rulemaking process?** The Conflicts of Interest Board must meet the
5 requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made
6 according to the requirements of Section 1043 of the City Charter.

8 **STATEMENT OF BASIS AND PURPOSE**

9 In accordance with the mandate of City Charter § 2603(c)(4) for the Board to review all its
10 advisory opinions and initiate rulemaking to adopt those with “interpretative value in construing
11 provisions” of Chapter 68, the Board has been reviewing the 29 advisory opinions it has issued
12 concerning public servants’ acceptance of gifts. These proposed amendments to Board Rules § 1-
13 01 (the “Valuable Gifts Rule”) codify advisory opinions with interpretive value and clarify existing
14 rules to conform with current practice. Additionally, the proposed amendments would incorporate
15 the Board’s longstanding interpretation of Charter § 2604(b)(3) that the acceptance of gifts offered
16 as a result of a public servant’s City position would violate Charter § 2604(b)(3). See, e.g.,
17 Advisory Opinion (“A.O.”) No. 1990-3, 1991-4, 1992-10, 1992-23, 1994-12, and 2000-4.

18 **1. Gifts to Enhance Agency Morale**

19 In proposed Board Rules § 1-01(i), the Board would address acceptance by the City of
20 blocks of free tickets for entertainment, sporting, and cultural events. For these kinds of events,
21 the attending public servants would not be performing any governmental work; instead, the City
22 is distributing the gifted tickets to its employees to promote office morale or reward good
23 performance. The Board addressed such gifts in A.O. No. 2000-4, advising that it would be
24 permissible to accept the donation of tickets for use by City employees if: (1) approved by and
25 distributed in a manner approved by an agency head; and (2) the donation lacked serious indicia
26 of concerns, such as the donor having a project pending before the accepting City agency or the

1 donor selecting the public servants who will attend. See also A.O. No. 1992-33 at 4 (advising that
2 agency employees cannot accept free travel and hotel stays offered a part of a morale boosting
3 program by a firm with matters before that agency).

4 This longstanding interpretation of Chapter 68 is consistent with advice provided by the
5 Board in A.O. No. 2007-3, permitting a registered lobbyist to offer blocks of tickets as gifts to the
6 City with agency head approval. The four-factor test in proposed Board Rules § 1-01(i) would
7 provide a mechanism by which the City may accept gifts to benefit its workforce while also
8 safeguarding against the efforts of donors to target public servants involved in their City business
9 or reward public servants for providing them with favorable determinations.

10 One of the four factors would exclude from acceptance of free attendance those public
11 servants who hold positions of authority, defined as any public servant who is required by New
12 York City Administrative Code Section 12-110 to file an annual disclosure report. Members of
13 this group of public servants (which includes elected officials; public servants who are candidates
14 for City elective office; public servants who have been designated as having substantial policy
15 discretion pursuant to Board Rules Section 1-02; public servants responsible for reviewing
16 contracts, leases, and other agreements; members of boards and commissions; and certain classes
17 of higher-ranking public servants) are excluded from accepting free tickets to purely recreational
18 events because such acceptance implicate almost unavoidably donors targeting them in the hopes
19 of securing favorable City determinations.

20 **2. Donations for Personal Emergencies**

21 In proposed Board Rules § 1-01(j), the Board would establish a standard to permit a public
22 servant to accept otherwise prohibited donations in the event of a personal emergency similar to
23 that articulated in A.O. No. 1992-29. In A.O. No. 1992-29, the Board advised an injured public

1 servant's co-workers that they could raise funds for his medical expenses from firms that were
2 regulated by their agency or may have matters before the injured public servant, provided that all
3 funds were collected by a third party not connected to the agency and that the donors' identities
4 were not revealed to the public servant or to any other agency employee. Proposed Board Rules
5 § 1-01(j) would permit public servants to accept anonymized donations in emergency situations,
6 subject to strict restrictions on who may solicit donations and from whom donations may be
7 solicited. Public servants who comply with these requirements would be able to accept otherwise
8 prohibited contributions, provided that the contributions address the need caused by the
9 emergency.

10 **3. Gifts between Public Servants**

11 In proposed Board Rules § 1-01(k), the Board would refine advice provided in A.O. No.
12 2013-1 concerning gifts between public servants. Consistent with that opinion, proposed Board
13 Rules § 1-01(k)(1) would permit a superior to accept an unsolicited gift from a subordinate on a
14 special occasion marking a major life event, such as a wedding, the birth or adoption of a child, or
15 retirement, where the gift is appropriate to the occasion. On any other event, such as a birthday or
16 holiday, a public servant could accept from their subordinates, or a group of subordinates, only
17 unsolicited gifts where the total value of the gift is \$10 or less; the gift cannot be cash or cash
18 equivalents, like gift cards. By providing a clear \$10 limit on the value of a gift, and excluding
19 cash and cash equivalents, proposed Board Rules § 1-01(k)(1)(ii) would offer a safeguard against
20 a superior, particularly in a large City agency or office, regularly collecting hundreds of dollars in
21 cash or cash equivalents, such as Amazon gift cards, from their subordinates.

22 Finally, proposed Board Rules § 1-01(k)(3) would permit public servant peers to give gifts
23 to each other and permit superiors to give gifts to subordinates. In both scenarios, the recipient of

1 the gift has no authority in their City job over the giver, and thus, accepting the gift would be
2 permissible.

3 **4. Disposition of Impermissible Gifts**

4 In proposed Board Rules § 1-01(l), the Board would clarify existing Board Rules § 1-01(i)
5 by setting the order of steps a public servant must take to dispose of an impermissible gift. A
6 public servant who receives an impermissible gift must first attempt to return the gift because that
7 gift should not be accepted. If the gift cannot be returned, the public servant's agency head may,
8 after providing written notice to the inspector general for the agency: (a) direct the item to be
9 donated to the agency, to an entity as defined in Board Rules § 1-14(a)(1)(iii), or to the Mayor's
10 Fund to Advance New York; (b) share the item within the agency; or (c) destroy the item.

11 **5. Compatibility with Other Laws**

12 In proposed Board Rules § 1-01(m), the Board would consolidate provisions of existing
13 Board Rules § 1-01 addressing other regulatory or statutory regimes. Proposed Board Rules § 1-
14 01(m) would not substantively change the restrictions set forth in existing Board Rules § 1-01(i),
15 (j), and (k) except to explicitly reference Charter § 2604(b)(3) and Charter § 2604(b)(14).

16
17 New material is underlined.

18 Section 1. Section 1-01(i)-(k) of Chapter 1 of Title 53 of the Rules of the City of New
19 York are REPEALED and new Sections 1-01(i)-(m) are added to read as follows:

20 (i) Gifts to Enhance Employee Morale

21 (1) For the purposes of Charter § 2604(b)(3) and Charter § 2604(b)(5), tickets to an
22 entertainment, sporting, or cultural event can be accepted as a gift to the City for
23 use by City employees provided that:

- i. the attending public servants are not required to file annual disclosure reports pursuant to New York City Administrative Code Section 12-110;
- ii. the offer of the free attendance is unsolicited;
- iii. the public servants attending the event are selected according to a method that receives agency head approval in writing; and
- iv. the public servants attending the event are not involved in the consideration of any pending particular matter, legislative proposal, action on the City budget, or text of the zoning resolution in which the offeror or the host of the event is a party or has an interest.

(j) Donations for Personal Emergencies

(1) For the purposes of Charter § 2604(b)(3) and Charter § 2604(b)(5), donations may be solicited to alleviate a public servant's immediate and serious financial need caused by a personal emergency such as an accident, sickness, or being the victim of a crime, provided that no donations are solicited from:

- i. any subordinate of the beneficiary public servant or soliciting public servant;
- ii. any firm or individual that has a particular matter, legislative proposal, action on the City budget, or text of the zoning resolution pending before the beneficiary public servant or soliciting public servant; or
- iii. any firm with which the beneficiary public servant or soliciting public servant deals in his or her City work.

(2) For the purposes of Charter § 2604(b)(3) and Charter § 2604(b)(5), a public servant may accept donations to alleviate such public servant's immediate and

1 serious financial need caused by a personal emergency such as an accident
2 provided that the donors' identities are not in any way revealed to the public
3 servant and the donations directly address the immediate and serious financial
4 need caused by the personal emergency.

5 (k) Gifts Between Public Servants

6 (1) Pursuant to Charter § 2604(b)(3), a public servant may accept an unsolicited gift
7 from a subordinate or group of subordinates in connection with a special occasion
8 marking a major life event, such as a wedding, the birth or adoption of a child, or
9 retirement, provided that the gift is of the type and value customary to the
10 occasion in question.

11 (2) Pursuant to Charter § 2604(b)(3), a public servant may accept an unsolicited gift
12 from a subordinate or group of subordinates in connection with a holiday,
13 birthday, or other event and is of nominal value not exceeding \$10 and is not cash
14 or a cash equivalent.

15 (3) Pursuant to Charter § 2604(b)(3), a public servant may give a gift to a subordinate
16 and may give a gift to or receive a gift from a public servant who is not a superior
17 or a subordinate.

18 (l) Disposition of Impermissible Gifts

19 (1) If a public servant receives a gift not covered by any of the exceptions in this
20 section, the public servant must return the gift to the giver.

21 (2) If a gift cannot be returned, the public servant's agency head may, after providing
22 written notice to the inspector general of the public servant's agency:

1 i. donate the item to the agency, to an entity as defined in Board Rules § 1-
2 14(a)(1)(iii), or to the Mayor's Fund to Advance New York;

3 ii. share the item within the agency; or

4 iii. destroy the item.

5 (m)Compatibility with Other Laws

6 (1) City agencies may establish rules concerning gifts for their own employees that
7 may not be less restrictive than the requirements set forth in Charter § 2604(b)(3)
8 and Charter § 2604(b)(5) as interpreted by this section.

9 (2) Nothing in this section will be deemed to authorize a public servant to act or
10 accept a gift of any value in violation of any applicable federal, state, or local law,
11 including the criminal law, City agency rules, or Mayoral Executive Orders
12 (including, but not limited to, Executive Order No. 16 of 1978 (as amended)),
13 which may impose additional requirements to report gifts and offers of gifts to the
14 agency's inspector general, whether or not a gift is accepted or returned.

15 (3) This section must be read in conjunction with the provisions of Charter §
16 2604(b)(2) and Board Rules § 1-13; Charter § 2604(b)(13); and Charter §
17 2604(b)(14) and Board Rules § 1-10.

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17 Advisory Opinion (“A.O.”) No. 1990-3, 1991-4, 1992-10, 1992-23, 1994-12, and 2000-4.

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8 prohibited contributions, provided that the contributions address the need caused by the
9 emergency.

10 **3. Gifts between Public Servants**

11 In proposed Board Rules § 1-01(k), the Board would refine advice provided in A.O. No.
12 2013-1 concerning gifts between public servants. Consistent with that opinion, proposed Board
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14 special occasion marking a major life event, such as a wedding, the birth or adoption of a child, or
15 retirement, where the gift is appropriate to the occasion. On any other event, such as a birthday or
16 holiday, a public servant could accept from their subordinates, or a group of subordinates, only
17 unsolicited gifts where the total value of the gift is \$10 or less; the gift cannot be cash or cash
18 equivalents, like gift cards. By providing a clear \$10 limit on the value of a gift, and excluding
19 cash and cash equivalents, proposed Board Rules § 1-01(k)(1)(ii) would offer a safeguard against
20 a superior, particularly in a large City agency or office, regularly collecting hundreds of dollars in
21 cash or cash equivalents, such as Amazon gift cards, from their subordinates.

22 ~~Additionally, proposed Board Rules § 1-01(k)(2) would permit superiors to give gifts to~~
23 ~~subordinates provided that the gifts do not exceed \$1,000 over the course of a twelve-month period.~~

1 ~~See A.O. No. 2013-1 at 5-6 (advising that a superior public servant would be permitted to purchase~~
2 ~~gifts for his or subordinates except under unusual circumstances in which the frequency or~~
3 ~~extravagance of the gifts might unduly burden the subordinates or the superior's generosity might~~
4 ~~compromise the subordinates' primary duty of loyalty to the City). Unlike gifts from subordinates~~
5 ~~to their superiors, gifts from superiors to subordinates raise fewer concerns about the inherent~~
6 ~~power imbalance and accordingly are permissible except in extreme circumstances. With the~~
7 ~~proposed \$1,000 ceiling on gifts from superiors to subordinates, the Board seeks to provide~~
8 ~~sufficient flexibility to superiors to pay for the occasional team building lunch or thank you gift~~
9 ~~for a subordinate while simultaneously protecting subordinates from becoming obligated to their~~
10 ~~superiors through too frequent and too generous gift giving.~~

11 ~~Finally, consistent with the advice provided in A.O. No. 2013-1~~Finally, proposed Board
12 Rules § 1-01(k)(3) would permit public servant peers to give gifts to each other.~~For public~~
13 ~~servants who are peers, there is minimal risk of coercion since the giver and~~and permit superiors
14 to give gifts to subordinates. In both scenarios, the recipient ~~do not exercise~~of the gift has no
15 authority over the other in their City ~~jobs~~job over the giver, and thus, accepting the gift would be
16 permissible.

17 **4. Disposition of Impermissible Gifts**

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19 by setting the order of steps a public servant must take to dispose of an impermissible gift. A
20 public servant who receives an impermissible gift must first attempt to return the gift because that
21 gift should not be accepted. If the gift cannot be returned, the public servant's agency head may,
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18 York City Administrative Code Section 12-110;

19 ii. the offer of the free attendance is unsolicited;

20 iii. the public servants attending the event are selected according to a method
21 that receives agency head approval in writing; and

22 iv. the public servants attending the event are not involved in the
23 consideration of any pending particular matter, legislative proposal, action

1 on the City budget, or text of the zoning resolution in which the offeror or
2 the host of the event is a party or has an interest.

3 (j) Donations for Personal Emergencies

4 (1) For the purposes of Charter § 2604(b)(3) and Charter § 2604(b)(5), donations may
5 be solicited to alleviate a public servant's immediate and serious financial need
6 caused by a personal emergency such as an accident, sickness, or being the victim
7 of a crime, provided that no donations are solicited from:

8 i. any subordinate of the beneficiary public servant; or soliciting public
9 servant;

10 ~~ii. any subordinate of a soliciting public servant~~

11 ~~iii.ii.~~ any firm or individual that has a particular matter, legislative proposal,

12 action on the City budget, or text of the zoning resolution pending before

13 the beneficiary public servant; or soliciting public servant; or

14 ~~iv. any firm or individual that has a particular matter, legislative proposal,~~

15 ~~action on the City budget, or text of the zoning resolution pending before a~~

16 ~~soliciting public servant;~~

17 ~~v. any firm with which the beneficiary public servant deals in his or her City~~

18 ~~work; or~~

19 ~~vi.iii.~~ any firm with which a or soliciting public servant deals in his or her City

20 work.

21 (2) For the purposes of Charter § 2604(b)(3) and Charter § 2604(b)(5), a public
22 servant may accept donations to alleviate such public servant's immediate and
23 serious financial need caused by a personal emergency such as an accident

1 provided that the donors' identities are not in any way revealed to the public
2 servant and the donations directly address the immediate and serious financial
3 need caused by the personal emergency.

4 (k) Gifts Between Public Servants

5 (1) Pursuant to Charter § 2604(b)(3), a public servant may accept an unsolicited gift
6 from a subordinate or group of subordinates in connection with a special occasion
7 marking a major life event, such as a wedding, the birth or adoption of a child, or
8 retirement, provided that the gift is of the type and value customary to the
9 occasion in question.

10 (2) Pursuant to Charter § 2604(b)(3), a public servant may accept an unsolicited gift
11 from a subordinate or group of subordinates in connection with a holiday,
12 birthday, or other event and is of nominal value not exceeding \$10 and is not cash
13 or a cash equivalent.

14 ~~(3) Pursuant to Charter § 2604(b)(3), a public servant may give a gift to a subordinate~~
15 ~~provided that the gifts to such subordinate during a twelve-month period are~~
16 ~~collectively valued at less than \$1,000.~~

17 ~~(4)(3) Pursuant to Charter § 2604(b)(3), a public servant and~~ may give a gift to or
18 receive a gift from a public servant who is not a superior or a subordinate.

19 (l) Disposition of Impermissible Gifts

20 (1) If a public servant receives a gift not covered by any of the exceptions in this
21 section, the public servant must return the gift to the giver.

22 (2) If a gift cannot be returned, the public servant's agency head may, after providing
23 written notice to the inspector general of the public servant's agency:

1 i. donate the item to the agency, to an entity as defined in Board Rules § 1-
2 14(a)(1)(iii), or to the Mayor's Fund to Advance New York;

3 ii. share the item within the agency; or

4 iii. destroy the item.

5 (m)Compatibility with Other Laws

6 (1) City agencies may establish rules concerning gifts for their own employees that
7 may not be less restrictive than the requirements set forth in Charter § 2604(b)(3)
8 and Charter § 2604(b)(5) as interpreted by this section.

9 (2) Nothing in this section will be deemed to authorize a public servant to act or
10 accept a gift of any value in violation of any applicable federal, state, or local law,
11 including the criminal law, City agency rules, or Mayoral Executive Orders
12 (including, but not limited to, Executive Order No. 16 of 1978 (as amended)),
13 which may impose additional requirements to report gifts and offers of gifts to the
14 agency's inspector general, whether or not a gift is accepted or returned.

15 (3) This section must be read in conjunction with the provisions of Charter §
16 2604(b)(2) and Board Rules § 1-13; Charter § 2604(b)(13); and Charter §
17 2604(b)(14) and Board Rules § 1-10.