

November 24, 2020, Agenda – Open Meeting Matter

March 26, 2020, Agenda – Open Meeting Matter

To: The Board

From: Chad H. Gholizadeh

Date: October 1, 2020

Re: Proposed Amendments to Board Rules § 1-01(e): Meals at Meetings

As part of the Board’s continuing work revising Board Rules § 1-01 (the “Valuable Gifts Rule”), Staff brings to the Board proposed amendments to Board Rules § 1-01(e).¹ Because existing Board Rules § 1-01(e) has not provided sufficient guidance to public servants, the proposed amendments would replace that provision with a concise four-factor test for when meals or refreshments can be accepted at meetings attended in the course of and for the purpose of conducting City business.

Attached are the following:

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

Staff has consulted informally with the New York City Law Department about the proposed amendments to Board Rules § 1-01(e). If the Board approves the Draft Notice of Public Hearing and Opportunity to Comment, Staff will formally submit it to the Law Department and Mayor’s Office of Operations, as required by the City Administrative Procedure Act. See Charter § 1043(d).

¹ Board Rules § 1-01(e) was presented to the Board at its March 2020 meeting along with other proposed amendments to § 1-01; the Board did not engage in any substantive discussion of § 1-01(e) at that time; instead, the Board unanimously voted to discuss the proposed amendments at a future open meeting. Proposed Board Rules § 1-01(e) is self-contained and not dependent on the other proposed amendments to § 1-01 presented in March 2020.

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 by public servants of gifts of meals or refreshments at events.

7
8 **When and where is the Hearing?** The Conflicts of Interest Board will hold a public hearing on
9 the proposed rule. The public hearing will take place by video conference at [] on [] and is
10 accessible by:

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

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

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

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

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

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

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

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

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

37
38 **What authorizes the Conflicts of Interest Board to make this rule?** Sections 1043, 2603(a),
39 2603(c)(4), and 2604(b)(5) of the City Charter authorize the Conflicts of Interest Board to make this
40 proposed rule.

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
10 its advisory opinions and initiate rulemaking to adopt those with “interpretative value in
11 construing provisions” of Chapter 68, the Board has been reviewing the 29 advisory opinions it
12 has issued concerning public servants’ acceptance of gifts. In connection with this
13 comprehensive review, the Board proposes to update Board Rules § 1-01(e), the exception to the
14 “Valuable Gifts Rule” that permits a public servant to accept gifts of meals when conducting
15 City business, in light of the Board’s almost 30 years of experience administering these rules.

16 Existing Board Rules § 1-01(e) has not provided sufficient guidance to public servants as
17 to whether they could accept food offered to them during or after meetings attended in
18 connection with the performance of their City duties. Existing Board Rules § 1-01(e)(1) is so
19 over-inclusive that it both swallows the specific scenarios described in the other four paragraphs
20 of the section and also permits the acceptance of meals at an ever-expanding universe of
21 meetings on the sole predicate that the public servant attended the meeting “for official reasons.”
22 Moreover, the existing explanatory materials to Existing Board Rules § 1-01(e) are insufficient
23 to clarify the intent behind each of the remaining paragraphs, and, as practice has demonstrated,
24 these are not often the actual situations in which public servants find themselves.

25 In proposed Board Rules § 1-01(e), the Board would replace existing Board Rules § 1-
26 01(e)’s scenario-based analysis with a simple rule permitting public servants to accept free meals

1 or refreshments at a meeting attended in the course of and for the purpose of conducting City
2 business provided that four specific factors are met: (i) the public servant did not solicit the meal
3 or refreshments; (ii) the meal or refreshments are available to all participants without charge; (iii)
4 the meal or refreshments are not separable from the meeting at which the City business is being
5 conducted; and (iv) the meeting at which the City business is being conducted was not scheduled
6 for the purpose of obtaining the meal or refreshments. This revision codifies the Board’s oft-
7 given informal advice that public servants should not accept free meals at meetings except under
8 limited circumstances, thus avoiding the practice of a vendor scheduling an important “meeting”
9 to negotiate the terms of a City contract over dinner or cocktails or of a legitimate meeting
10 “running long” so that a developer can continue the business discussion while hosting the public
11 servant at an expensive restaurant. See COIB v. Tuller, COIB Case No. 2015-428 (2016); COIB
12 v. Secreto, COIB Case No. 2015-428a (2016); COIB v. Pizzuti, COIB Case No. 2015-428b
13 (2016) (fining a New York City Police Department (“NYPD”) Chief, former Chief, and
14 Assistant Chief \$1,500 each in connection with their receipt of gifts of meals from the Queens
15 Library President and CEO with whom they dealt as part of their NYPD duties).

16
17 New material is underlined.

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

20 (e) Meals and Refreshments at Meetings

21 (1) For the purposes of Charter § 2604(b)(3) and Charter § 2604(b)(5), a public
22 servant may accept free meals or refreshments at a meeting attended in the course
23 of and for the purpose of conducting City business, provided that:

- 1 i. the public servant did not solicit the meal or refreshments;
- 2 ii. the meal or refreshments are available to all participants without charge;
- 3 iii. the meal or refreshments are not separable from the meeting at which the
- 4 City business is being conducted; and
- 5 iv. the meeting at which the City business is being conducted was not
- 6 scheduled for the purpose of obtaining the meal or refreshments.

Existing Board Rules §1-01(e)

(e) For the purposes of Charter §2604(b)(5), a public servant may accept free meals or refreshments in the course of and for the purpose of conducting City business under the following circumstances:

- (1) when offered during a meeting which the public servant is attending for official reasons;
- (2) when offered at a company cafeteria, club or other setting where there is no public price structure and individual payment is impractical;
- (3) when a meeting the public servant is attending for official reasons begins in a business setting but continues through normal meal hours in a restaurant, and a refusal to participate and/or individual payment would be impractical;
- (4) when the free meals or refreshments are provided by the host entity at a meeting held at an out-of-the-way location, alternative facilities are not available and individual payment would be impractical; and
- (5) when the public servant would not have otherwise purchased food and refreshments had he or she not been placed in such a situation while representing the interests of the City.

Proposed Board Rules §1-01(e)

(e) Meals and Refreshments at Meetings

- (1) For the purposes of Charter § 2604(b)(3) and Charter § 2604(b)(5), a public servant may accept free meals or refreshments at a meeting attended in the course of and for the purpose of conducting City business, provided that:
 - (i) the public servant did not solicit the meal or refreshments;
 - (ii) the meal or refreshments are available to all participants without charge;
 - (iii) the meal or refreshments are not separable from the meeting at which the City business is being conducted; and
 - (iv) the meeting at which the City business is being conducted was not scheduled for the purpose of obtaining the meal or refreshments.