

**February 4, 2020 – Open Meeting Matter**

To: The Board

From: Christopher M. Hammer



Date: December 19, 2019

Re: Proposed New Board Rules § 1-18: Endorsements

As part of its review of the Board's existing rules, practices, and advisory opinions in accordance with City Charter § 2603(c)(4),<sup>1</sup> Staff brings to the Board a proposed new rule regarding a public servant's use of his or her City title in promotional materials produced by or on behalf of a non-City product, program, or entity.

Endorsements by public servants—such as book blurbs or print advertisements—have been the subject of four advisory opinions and many subsequent requests for private Board advice. In each of these cases, the Board has advised that “the City's interests must be the clear determinant” of a public servant's use of his or her City title to promote a non-City product, program, or entity. See Advisory Opinion No. 1995-2 at 4. Like the Board's application of Chapter 68 to official fundraising, the Board's application of Chapter 68 to endorsements has, over time, become more permissive. Nevertheless, under all circumstances, there must be a City purpose for the fundraising or endorsement, and a public servant may not use his or her position to benefit himself or herself or an associated person or firm.

The Board has codified its advice on fundraising for outside not-for-profit entities into Board Rules § 1-14, and proposed Board Rules § 1-18 parallels this advice in the endorsement

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<sup>1</sup> City Charter § 2603(c)(4) requires the Board to “initiate a rulemaking to adopt, as interpretive of the provisions of [Chapter 68] any advisory opinion of the board issued after the year 1990 and before [October 27, 2018] which the board determines to be consistent with and have interpretive value in construing the provisions of this chapter and which either (a) establishes a test, standard, or criterion; or (b) is anticipated by the board to be the subject of future advisory opinion requests from multiple persons.”

context. The Draft Notice of Public Hearing and Opportunity to Comment, attached as **Exhibit 1**, has been informally reviewed by the New York City Law Department. With the Board's approval, Staff will formally submit the new Board Rules to the Law Department and the Mayor's Office of Operations, as required by the City Administrative Procedure Act. See Charter Section 1043(d).

New York City Conflicts of Interest Board

**Notice of Public Hearing and Opportunity to Comment on Proposed Rules Regarding the Use of City Title in Promotional Materials**

**What are we proposing?** The Conflicts of Interest Board proposes to adopt rules regarding a public servant’s use of City title in promotional materials produced by or on behalf of a non-City product, program, or entity.

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

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

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

- **Website.** You can submit comments to the Conflicts of Interest Board through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to [Rules@COIB.nyc.gov](mailto:Rules@COIB.nyc.gov).
- **Mail.** You can mail comments to Christopher M. Hammer, Deputy General Counsel, Conflicts of Interest Board, 2 Lafayette Street, Suite #1010, New York, New York 10007.
- **Fax.** You can fax comments to the Conflicts of Interest Board at (212) 437-0705.
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 437-0730. You can also sign up in the hearing room before the hearing begins on []. You can speak for up to three minutes.

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

**Do you need assistance to participate in the hearing?** You must tell the Conflicts of Interest Board if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at (212) 437-0721. You must tell us by [].

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

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1 **What authorizes the Conflicts of Interest Board to make this rule?** Sections 1043 and  
2 2603(a) of the City Charter and authorize the Conflicts of Interest Board to make this proposed  
3 rule. This proposed rule was not included in the Conflicts of Interest Board’s regulatory agenda  
4 for this Fiscal Year because it was not contemplated when the Conflicts of Interest Board  
5 published the agenda.  
6

7 **Where can I find the Conflicts of Interest Board’s rules?** The Conflicts of Interest Board’s  
8 rules are in Title 53 of the Rules of the City of New York.  
9

10 **What rules govern the rulemaking process?** The Conflicts of Interest Board must meet the  
11 requirements of Section 1043 of the City Charter when creating or changing rules. This notice is  
12 made according to the requirements of Section 1043 of the City Charter.  
13

14 **Statement of Basis and Purpose of the Proposed Rule**

15 City Charter § 2604(b)(2) prohibits a public servant from engaging in “any business,  
16 transaction or private employment, or hav[ing] any financial or other private interest, direct or  
17 indirect, which is in conflict with the proper discharge of his or her official duties.” As codified  
18 in Board Rules § 1-13(b), this means that a public servant may not use City resources, including  
19 his or her City title, “for any non-City purpose.”

20 The Conflicts of Interest Board proposes to adopt a new § 1-18 of the Board Rules to apply  
21 City Charter § 2604(b)(2) to promotional materials produced by or on behalf of a non-City product,  
22 program, or entity. The Board has addressed such promotional materials, including book blurbs  
23 and print advertisements, in four advisory opinions on endorsements: Nos. 1991-1, 1995-2, 1998-  
24 6, and 2000-3. These opinions reflect a determination by the Board that “the City’s interest must  
25 be the clear determinant” for a public servant to use his or her City title to promote non-City  
26 products, programs, or entities. A.O. No. 1995-2 at 4. Without such a clear City purpose, the use  
27 of City resources would “present[] a significant risk of creating the appearance that the public  
28 servant’s official position is being used to advance a private interest.” A.O. No. 1991-1 at 1.

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1           The Board’s experience in the intervening years has shown that a City agency itself is in  
2 the best position to decide how best to advance its mission. Thus, in Advisory Opinion No. 2008-  
3 6, an opinion on official fundraising, the Board observed: “Elected and appointed officials are  
4 selected for, among other things, their good judgment, and the Board finds no basis in Chapter 68  
5 to limit the discretion of these officials as to their official charitable fundraising if they are  
6 exercising discretion within their defined areas of responsibility.” A.O. No. 2008-6 at 10-11. As  
7 a result, the Board advised in this Advisory Opinion, subsequently codified in Board Rules § 1-  
8 14, that an agency head need not obtain the Board’s individualized approval every time the agency  
9 wanted to fundraise on behalf of a not-for-profit organization.

10           In providing advice about an individual public servant’s use of City title for endorsements,  
11 the Board under normal circumstances defers to an agency head’s determination provided that a  
12 demonstrable nexus exists between the product, program, or entity and the agency’s mission.  
13 Accordingly, the Board proposes to codify a rule that would permit public servants, with the  
14 approval of their agency head, to use their City titles in promotional materials produced by or on  
15 behalf of a non-City product, program, or entity, provided that there is a demonstrable nexus  
16 between the product, program, or entity and the mission of the public servant’s City agency.

17           To ensure that a public servant is not acting to benefit an associated person or firm, the rule  
18 would prohibit an endorsement where the public servant or the public servant’s agency head is  
19 associated, within the meaning of City Charter § 2601(5), with either the entity or an employee of  
20 the entity that is the subject of the endorsement. This means, for example, that if an agency head’s  
21 spouse wrote a book on a matter connected to the mission of the agency, an agency employee may  
22 not provide a promotional blurb for the book on behalf of the agency.

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1 **Text of the Proposed Rule**

2  
3 New material is underlined.

4  
5 [Deleted material is in brackets.]

6  
7 **Section 1.** Title 53 of the Rules of the City of New York is amended by adding a new section 1-  
8 18, to read as follows:

9 **§ 1-18 Endorsements**

10 (a) Pursuant to Charter § 2604(b)(2) and § 2604(b)(3), a public servant may use or permit the  
11 use of his or her City title and/or City agency in promotional materials produced by or on  
12 behalf of a non-City product, program, or entity provided that all of the following  
13 conditions are met:

14 (i) a demonstrable nexus exists between the product, program, or entity and the mission  
15 of the public servant's agency;

16 (ii) neither the agency head nor the public servant is associated, within the meaning of  
17 Charter § 2601(5), with either the entity or an employee of the entity that is the subject  
18 of the endorsement or whose product or program is the subject of the endorsement;

19 (iii) the public servant's agency head approves in writing the use of the public servant's  
20 City title and/or City agency; and

21 (iv) if the promotional materials solicit donations for a not-for-profit organization, the  
22 public servant and public servant's agency comply with the requirements of Board  
23 Rules § 1-14.

24 (b) For purposes of this section, an elected official, including a District Attorney, is the agency  
25 head of the staff members in his or her office. The Speaker of the New York City Council

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- 1 is the agency head of the central staff of Council, and a Council Member is the agency head
- 2 of the staff of his or her office.