


**February 4, 2020, Agenda – Open Meeting Matter**  
January 9, 2020, Agenda – Open Meeting Matter

To: The Board  
From: Chad H. Gholizadeh   
Date: January 27, 2020  
Re: Proposed Amendments to Board Rules § 1-07: Post-Employment

In response to the discussion at the January 2020 Open Meeting, Staff has made the changes requested by the Board to the Draft Notice of Public Hearing and Opportunity to Comment. In the revised Notice of Public Hearing and Opportunity to Comment, Staff has revised the Statement of Basis and Purpose to:

- Reorganize citations to advisory opinions to improve clarity, including documenting which advisory opinions are not being addressed in this rulemaking;
- Ensure that each standard or concept being adopted from an advisory opinion is accompanied by a citation to the relevant opinion; and
- Provide additional context regarding the Board's historic four-factor test for granting post-employment waivers.

Additionally, Staff has revised the language of proposed Board Rules § 1-07 to:

- Track Charter § 2604(e) where the Board refers to its authority to issue waivers;
- Reorganize and refine the factors identified in proposed Board Rules § 1-07(c) that the Board would consider as part of the proposed totality of the circumstances test for granting post-employment waivers;
- Add a factor to proposed Board Rules § 1-07(c) to emphasize the importance of avoiding harm to competitors of a former public servant's private employer; and
- Incorporated other changes as directed and reflected in the minutes of the January 2020 Open Meeting.

If the Board approves the proposed rule, Staff will formally submit it to the New York City 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 January 2020 Open Meeting (**Exhibit 1**);
- 2) Draft Notice of Public Hearing and Opportunity to Comment (**Exhibit 2**); and
- 3) Draft Notice of Public Hearing and Opportunity to Comment, with changes tracked to the version discussed at the January 2020 Open Meeting, (**Exhibit 3**).

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

**Date:** January 9, 2020

**Location:** Conflicts of Interest Board, 2 Lafayette Street, Suite 1010, New York, New York

**Present:**

Board Members: Chair Richard Briffault and Members Fernando A. Bohorquez, Jr., Anthony Crowell, Jeffrey D. Friedlander, and Erika Thomas.

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: Thomas Speaker, Reinvent Albany

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The meeting was called to order by the Chair at approximately 10:15 a.m. The Chair stated that the meeting was being conducted pursuant to the New York State Open Meetings Law and designated the undersigned as the Recording Secretary for purposes of the meeting.

The Chair stated that the meeting was called to discuss proposed amendments to Board Rules §§ 1-13, 1-17, 1-07, and 1-01(h).

### **Board Rules §§ 1-13 and 1-17**

After a brief introduction, the Chair asked for any comments by the Board or Staff.

The following comments constitute the changes as agreed upon by the Board and Staff to the proposed amendments to Board Rules §§ 1-13 and 1-17:

- Statement of Basis and Purpose, p. 3, line 7: revise paragraph to clarify which bullet points refer to the two Advisory Opinions
- Explain in Statement of Basis and Purposes that the three options in Board Rules § 1-13(c)(1)(ii) are disjunctive
- Board Rules § 1-13(f): replace “themselves” with “their position”

Upon motion duly made and seconded, the Board unanimously voted to adopt the proposed amendments incorporating the changes as discussed as the final rules.

### **Board Rules § 1-07**

After an introduction by Staff, the Chair asked for any comments by the Board or Staff.

The following constitutes the comments by the Board and Staff:

§ 1-07(a) Post-Employment Appearances:

- Start Board Rules § 1-07(a) with core prohibited conduct from the City Charter
- End Board Rules § 1-07(a)(2) after the word “matters.”
- Incorporate the examples listed in Board Rules §1-07(a)(2)(i) through (iii) into the Statement of Basis and Purpose

- Harmonize use of “appear” instead of “communicate” throughout rule

§ 1-07(b): Date of Termination of City Service: No comments

§ 1-07(c): Waivers of Post-Employment Restrictions

The Board and Staff discussed generally the history, purpose, and reasons for codifying into a rule the factors to be used in granting waivers of post-employment restrictions. The discussion focused on what factors should be considered, the revision and reformatting of language for clarification, and the inclusion of the historic four-factor “exigent circumstances” test and a detailed analysis of the Advisory Opinions in the Statement of Basis and Purpose. The discussion concluded with the Board and Staff agreeing that the rule would provide guidance to both the public servant requesting the waiver and to the Board and Staff in deciding to grant or deny the request.

The following constitutes specific changes as agreed upon by the Board and Staff:

- Board Rules § 1-07(c)(1); remove “and that is benefits the City”
- Board Rules § 1-07(c)(1): replace “bv weighing each of the” with “ “including but not limited to” language with respect to the individual factors
- Board Rules § 1-07(c)(1)(iii) and (x): move these two factors into another section
- Board Rules § 1-07(c)(1)(iv) and (v): consider combining into one factor
- Board Rules § 1-07(c)(1)(vii): consider revising so that it is clear to in which direction the factor flows
- Board Rules § 1-07(c)(1)(viii); clarify about inside information/connections
- Board Rules § 1-07(c)(1)(ix): replace “fewer than 60 days” with general language such as “relatively short period of time”
- Add as a factor the third factor from the four-factor exigent circumstances test concerning likelihood of harm to other similar organizations
- Combine other factors wherever possible so that there are fewer factors
- Add to Statement of Basis and Purpose the four-factor “exigent circumstances” test and an explanation of why the Board is moving away from that test
- Reorganize the Statement of Basis and Purposes in order to group the Advisory Opinions by subject area rather than the string cite on pages 2 and 3.

§ 1-07(d): Consulting for a Former City Agency:

- Board Rules § 1-07(d)(1)(ii): replace “six months” with non-specific time frame, proportional to the work being undertaken
- Board Rules § 1-07(d)(2): replace “subsequent employer” with “private firm”
- Board Rules § 1-07(d)(2)(ii): remove “substantial”

Upon motion duly made and seconded, the Board unanimously voted to continue discussions at the next open meeting.

### **Board Rules § 1-01(h)**

After a brief introduction, the Chair asked for any comments by the Board or Staff. The Board and Staff agreed to replace “a” with “the” in Board Rules §1-10(h)(1)(iv).

Upon motion duly made and seconded, the Board unanimously voted to adopt the proposed amendments incorporating the one change discussed as the final rule.

The open meeting was adjourned at approximately 11:25 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 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 those  
8 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, e.g., Advisory Opinions (“A.O.”) Nos. 1993-11  
17 at 6, 1993-12 at 4, 1994-15 at 11-12; 1996-1 at 7. Restrictions on the conduct of former public  
18 servants pre-date the existence of the current Conflicts of Interest Board. See, e.g., A.O. No.  
19 1989-1 (advising that the post-employment restrictions of the former Code of Ethics applied to  
20 City employees who had resigned or retired, been terminated, or had been on discretionary  
21 leaves of absence before the revised post-employment restrictions of the current Chapter 68  
22 became effective); A.O. No. 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 31 advisory opinions, totaling 210 pages, providing  
26 guidance on the application of the post-employment restrictions set forth in Charter § 2604(d)  
27 and on how the Board has considered requests for waivers of those restrictions. With the benefit

1 of almost 30 years of experience in evaluating requests for post-employment waivers, and in  
2 fulfillment of its Charter mandate under Charter § 2603(c) to determine which of its advisory  
3 opinions “has interpretative value in construing provisions of this chapter,” the Board proposes  
4 to codify:

- 5 • Definitions of terms within Charter § 2604(d), such as “agency served” and  
6 “termination of service.”
- 7 • A new “totality of the circumstances” standard with a non-exclusive list of four  
8 factors, drawn from advisory opinions, the Board will consider in evaluating requests  
9 for waivers of the post-employment restrictions.
- 10 • The standard, also from advisory opinions, for evaluating a unique type of post-  
11 employment work: consulting for one’s former City agency, known as “consulting  
12 back.”

13 With the exception of the “consulting back” standard, the proposed rule does not address  
14 the advisory opinions interpreting Charter § 2604(d)(6), which the Board reserves for the subject  
15 of possible rulemaking in the future. See A.O. Nos. 1993-13, 1994-7, 1994-21, 1997-1, and  
16 1999-3. The Board has determined not to adopt A.O. No. 1992-32, which applies only to the  
17 public servant who requested that advisory opinion.

18 **1. Definitions**

19 **a. Post-Employment Appearances**

20 Charter § 2604(d)(2) prohibits a former public servant from appearing before his or her  
21 former City agency served for one year after leaving City service. Charter § 2603(d)(3) expands  
22 this prohibition to the entire branch of City government served for former elected officials and  
23 certain high-level former appointed public servants who have Citywide responsibilities. Charter



1 § 2604(d)(4) prohibits a former public servant from “switching sides” on a particular matter on  
2 which he or she worked in City service for the lifetime of that matter and expressly prohibits that  
3 public servant from making any appearances before any City agency regarding that particular  
4 matter, including unpaid appearances. Therefore, to determine whether a particular  
5 communication is prohibited by Charter § 2604(d), the Board must determine whether the  
6 communication is with the agency or branch of government served by the former public servant  
7 or with the City; either because it is with a governmental body on which an employee of that  
8 agency or branch of government sits or because it is with an employee of that agency or branch  
9 of government who may not be acting in his or governmental capacity.

10 Proposed Board Rules § 1-07(a)(1) would codify the Board’s long-standing interpretation  
11 that the post-employment restrictions of Charter § 2604(d)(2), § 2604(d)(3), and § 2604(d)(4)  
12 prohibit a former public servant from appearing before or communicating with any governmental  
13 board or commission on which a representative of his or her former City agency, branch of City  
14 government, or the City sits. For example, an employee of the New York City Department of  
15 Housing Preservation and Development (“HPD”) would be prohibited by Charter § 2604(d)(2)  
16 from appearing before the board of the New York City Housing Development Corporation  
17 (“HDC”) within their first post-employment year because a representative of HPD sits on the  
18 board of HDC. See A.O. No. 2008-1 (advising that when a public servant simultaneously holds  
19 positions at multiple City agencies the post-employment appearance restriction of Charter §  
20 2604(d)(2) applies to each position); see also COIB v. Sirefman, COIB Case No. 2007-847  
21 (2009) (fining the former Interim President of the New York City Economic Development  
22 Corporation (“EDC”) \$1,500 for appearing before the Hudson Yards Development Corporation  
23 (“HYDC”) within one year of his resignation from EDC because the EDC President was present

1 at a meeting attended by the former Interim President in the EDC President's capacity as an *ex-*  
2 *officio* Member and Director of HYDC). By contrast, the former HPD employee would not be  
3 prohibited from communicating with employees of HDC because that appearance is not before  
4 the board on which their former agency's representatives sit by operation of law.

5 Proposed Board Rules § 1-07(a)(2), would codify the Board's interpretation that the  
6 appearance and communication restrictions of Charter § 2604(d) exclude appearances and  
7 communications related to non-City matters. In particular, the Board has advised public servants  
8 that the following communications do not violate Charter § 2604(d): (1) social communications;  
9 (2) efforts to solicit a public servant's personal legal business or other types of personal services;  
10 and (3) efforts to secure endorsements for a run for political office by a former public servant are  
11 not prohibited by Charter § 2604(d). See A.O. No. 2009-5 (advising a former public servant that  
12 the post-employment appearance restriction did not prohibit communication with a current  
13 public servant in their private capacity, such as reaching out to perform personal legal work,  
14 asking them to leave City employment to join the former public servant's new form, or to solicit  
15 a political endorsement).

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

17 To advise a public servant about the post-employment restrictions, the Board must  
18 determine when the public servant's City service terminated. In proposed Board Rules § 1-  
19 07(b)(1), the Board would incorporate the method of calculating the date of a public servant's  
20 termination from City service set forth in A.O. Nos. 1998-11 and 2019-1, that is, the last day  
21 such former public servant performed official City duties or received benefits conditioned upon  
22 current City employment after resigning, retiring, or being terminated. The one-year appearance  
23 prohibition of Charter § 2604(d)(2) would run from that date.

1           In proposed Board Rules § 1-07(b)(2), the Board would retain the substance of existing  
2 Board Rules § 1-07 and would codify A.O. No. 2008-1 for public servants who serve multiple  
3 City agencies. See also A.O. No. 1993-30 (providing advice on the tolling dates of the one-year  
4 appearance restriction to a public servant who served two agencies in succession before leaving  
5 City service). The proposed rule would clarify that a former public servant who has served more  
6 than one City agency, concurrently or sequentially, is prohibited from appearing before each  
7 such agency for one year after the termination of service, as determined by proposed Board  
8 Rules § 1-07(b)(1), with each such agency.

## 9   **2. Otherwise Prohibited Conduct**

### 10       **a. Waivers of the Post-Employment Restrictions**

11           In contrast to the broad prohibitions against full-time public servants having ownership  
12 interests in or positions at firms that do business with *any* City agency, for the vast majority of  
13 public servants, the post-employment appearance restrictions apply *only* to a former public  
14 servant's communications with their former employing City agency or branch of government and  
15 *only* for one year after leaving City service; similarly, the lifetime post-employment particular  
16 matter restriction applies only to a narrow set of matters (as defined in Charter § 2601(17)) on  
17 which a former public servant worked personally and substantially while in City service. See,  
18 e.g., A.O. No. 1992-38 (advising that a public servant was not prohibited from working on a  
19 project where her involvement had been personal but not substantial). Because public servants  
20 requesting waivers of the post-employment restrictions are seeking to engage in conduct in  
21 which the relationships developed in their former City position may influence decision-making  
22 by their former City agency, or which may put them in a position to utilize their superior  
23 familiarity with, and ability to navigate, the subtle culture of their former agency to achieve

1 preferential treatment for their private employer, or involve the exact particular matters on which  
2 the former public servant personally and substantially worked while in City service, the Board  
3 has analyzed requests for waivers of the post-employment restrictions differently from waivers  
4 of other provisions of Chapter 68.

5 In evaluating the many requests for waivers it has received, the Board has sought to  
6 balance adhering to the integrity of the post-employment restrictions of the Charter with the  
7 asserted need for a particular former public servant to engage in otherwise prohibited conduct to  
8 further an identified City interest. In A.O. No. 1991-8, the Board announced that it would issue  
9 waivers of Chapter 68's post-employment restrictions "sparingly, and only in exigent cases."  
10 A.O. No. 1991-8 at 2-3; see also A.O. No.1992-13 (declining to issue a waiver to a public  
11 servant seeking to communicate with their former branch of government on behalf of a private  
12 employer because such waivers should "be granted sparingly, and only in exigent  
13 circumstances").

14 The Board has traditionally considered four factors when evaluating requests for post-  
15 employment waivers: (1) the relationship of the City to the public servant's private employer; (2)  
16 the benefits to the City (as opposed to the public servant) if the waiver were granted; (3) the  
17 likelihood of harm to other organizations similar to, or in competition with, a public servant's  
18 prospective employer if the waiver were granted; and (4) the extent to which the public servant  
19 had unique skills or experience suited to the particular position that the prospective employer  
20 would be hard-pressed to find in another person. See, e.g., A.O. No. 2012-2. In applying this  
21 historic test, the Board has determined that, when the former public servant's private employer  
22 was a not-for-profit organization working in a public-private partnership with the City in which  
23 the private employer and the City share an identity of interest, all four factors "need not be

1 satisfied.” A.O. No. 2000-2 at 4; see A.O. No. 2008-4. The Board has further explained that, for  
2 private employers that devote substantial private resources to support the work of a City agency  
3 but which do not meet the standard of a public-private partnership, requests for waivers will “be  
4 analyzed in light of [the private employer’s] hybrid status.” A.O. No. 2008-4 at 10.

5 Since 1991, the Board has grappled with articulating and applying a standard to requests  
6 for waivers of the post-employment restrictions that would fulfill the objectives of the post-  
7 employment restrictions while also addressing the needs of City agencies and the City’s  
8 changing relationship with not-for-profit partners. Over the course of these years, it has become  
9 clear that in order to balance the City and personal interests at issue in requests for post-  
10 employment waivers, the Board would benefit from the consideration of a more complete set of  
11 circumstances. Proposed Board Rules §1-07(c)(1) codifies a new totality of the circumstances  
12 standard for determining whether a waiver of the post-employment restrictions would conflict  
13 with the purposes and interests of the City. As part of how the Board will evaluate the totality of  
14 the circumstances, proposed Board Rules §1-07(c)(1) includes a non-exhaustive list of four  
15 factors drawn from the Board’s past deliberations on post-employment waivers.

16 **Proposed Board Rule § 1-07(c)(1):** When a former public servant’s work for a private  
17 employer involves furthering an interest identical to that of the City, there are diminished  
18 concerns about a former public servant using their special access or knowledge to the detriment  
19 of the City’s interests. Therefore, the Board has historically looked favorably upon requests for  
20 waivers for former public servants who work for entities that the City controls or effectively  
21 controls. See A.O. 2008-4 (observing that the Board would look favorably on requests to work  
22 for City-affiliated not-for-profits when those entities were created by City agencies and had a  
23 governing structure that involved public officials as officers and board members). Additionally,

1 the Board has historically granted waivers in situations where the former public servant’s private  
2 employer operates as a public-private partnership with the City and devotes substantial private  
3 resources to support the work of a City agency. See A.O. No. 2008-4 (stating that, “[w]hen the  
4 City and [a private employer] share an ‘identity of interest,’ the City benefits from encouraging  
5 former City employees to effectively remain in public service” by working for that private  
6 employer); A.O. No. 1994-22 (granting a waiver for a public servant to take a position at a bio-  
7 medical facility which operates as a joint venture between the City, the State, and a university).

8 **Proposed Board Rule § 1-07(c)(2):** When the former public servant is uniquely suited to  
9 perform work that would benefit the City, rather than their private employer, the proposed post-  
10 employment activities do not conflict with the purposes and interest of the City. See A.O. No.  
11 2012-2 (stating that, in evaluating a request for a waiver of the post-employment restrictions,  
12 “the Board looks for a demonstration of the benefit *to the City*, not to the new employer”)  
13 (emphasis in original). This capacity to benefit has been articulated in two ways: either by virtue  
14 of the former public servant’s unique technical or professional expertise or because at a small  
15 not-for-profit, there is no other employee able to do the prohibited work. See A.O. No. 1992-17  
16 (granting a public servant a waiver of the post-employment restrictions to work for an entity  
17 when his expertise would help remedy contractual disputes between the entity and the agency);  
18 A.O. No. 1994-19 (granting a waiver of Charter § 2604(d)(3) when a public servant’s proposed  
19 communications on behalf of a not-for-profit entity would primarily benefit the City).

20 **Proposed Board Rule § 1-07(c)(3):** Because public servants who have worked for the  
21 City for brief periods of time are unlikely to have developed the connections necessary to afford  
22 them undue influence or unfair access, the Board has granted requests for waivers on behalf of  
23 these public servants more readily. See COIB Case No. 2019-463 (granting a waiver for a public

1 servant who worked for 40 days); COIB Case No. 2017-790 (granting a waiver for a public  
2 servant who worked 36 days); COIB Case No. 2017-214 (granting a waiver for a public servant  
3 who worked for 38 days); COIB Case No. 2015-646 (granting a waiver for a public servant who  
4 worked for 40 days); COIB Case No. 2013-381 (granting a waiver for a former paid summer  
5 intern); see also A.O. No. 2007-1 (granting a waiver for a former member of a Community  
6 Education Council (“CEC”), a volunteer board composed of primarily of parents of students in  
7 the district which has no executive or administrative powers or functions, no involvement in  
8 contracts between vendors and their respective districts, and no power to determine how districts  
9 spend funds, to appear before that CEC).

10 **Proposed Board Rule § 1-07(c)(4)**: A former public servant communicating with their  
11 former agency on behalf of a private employer shortly after departing may pose a risk of harm to  
12 firms similar to or in competition with that private employer given the former public servant’s  
13 familiarity with, and ability to navigate, the processes of their former agency. To mitigate this  
14 risk, the Board has disfavored requests in which the former public servant proposes to  
15 communicate with units or divisions at the former agency with which he or she worked regularly.  
16 See A.O. No. 1993-8 (stating that one of the purposes of the post-employment restrictions was to  
17 prevent the exertion of special influence on government decision-making by, among other things,  
18 preventing contact with former City colleagues on behalf of a new employer); A.O. No. 1994-15  
19 (granting a waiver of the one-year appearance restriction for a public servant working for a  
20 unique not-for-profit created by New York State to communicate with a unit of his former City  
21 agency other than the one for which he worked). Additionally, the Board has historically  
22 disfavored requests for waivers for former public servants who seek to communicate with their  
23 former agencies to seek new business for their private employers in the forms of licenses,

1 permits, grants, or contracts. Compare A.O. No. 1992-17 (granting a waiver of the post-  
2 employment restrictions to a public servant when her work at a private employer “would help  
3 remedy pending contractual disputes between the entity and the agency”) with A.O. No. 1993-18  
4 (declining to grant a waiver to a public servant whose work at his private employer would focus,  
5 in part, on encouraging the participation of his private employer’s clients in programs run by his  
6 former City agency); see also A.O. No. 1991-19 (prohibiting a public servant making an  
7 otherwise ministerial FOIL request from bypassing normal procedures to contact individuals  
8 directly).

9         Additionally, in proposed Board Rules § 1-07(c)(2), the Board would provide two  
10 procedural requirements for waivers of the post-employment restrictions. First, the Board would  
11 decline to issue waivers when the ability of the Board to evaluate the request for a post-  
12 employment waiver has been prejudiced by undue delay. The Board has emphasized factor to  
13 ensure that self-created exigencies do not overwhelm other relevant facts. See A.O. No. 2012-2  
14 (advising that request for waivers of the post-employment restrictions should be submitted in  
15 advance of departure from City service); A.O. No. 1992-37 (noting with disapproval that a  
16 former public servant did not request a waiver prior to having accepted the position with a  
17 private employer). Second, the Board would decline to issue waivers when a former public  
18 servant has, in the course of soliciting employment, violated Charter § 2604(d)(1), which  
19 requires recusal from any particular matters involving a private employer while soliciting or  
20 negotiating for a position with that employer. See A.O. No. 1992-37 (observing that a former  
21 public servant’s solicitation and negotiation for a position with a private employer that had  
22 business dealings with her own agency raised the possibility that a violation of Charter Section  
23 2604(d)(1) had occurred).



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

2            As part of its experience applying the post-employment restrictions the Board has also  
3 considered how those restrictions impact the City's ability to retain the expertise held by retiring  
4 and departing City employees. The Board's approach to this issue has been informed by Charter  
5 § 2604(d)(6), the so-called "government-to-government" exception, which provides that the  
6 post-employment restrictions "shall not apply to positions with or representation on behalf of any  
7 local, state or federal agency." Historically, the Board has determined that a City agency's  
8 consulting agreement with a former employee falls within the government-to-government  
9 exception when: (1) the former agency must have a pressing need for the former employee's  
10 services, (2) the former agency must contract directly with the former employee, not through a  
11 firm employing the former public servant, and (3) the contracting wage must be comparable to  
12 that of the employee's salary at the time he or she left the agency. See A.O. Nos. 1993-12; 1995-  
13 1. Proposed Board Rules § 1-07(d)(1) would provide a new set of five more specific and  
14 detailed conditions which, if met, would permit a former public servant to be retained directly,  
15 rather than through an employer, as a consultant by the City agency for which he or she worked  
16 with the written approval of the agency head. Such written approval must then be provided to  
17 the Board, which will post that information on its website.

18            The Board has also reviewed matters where, for reasons of administrative convenience, a  
19 City agency seeks to employ a former employee as a consultant through an intermediary entity,  
20 rather than directly as a consultant. This often arises when a City agency seeks to retain a public  
21 servant as a consultant through a temporary staffing agency with which the agency already has a  
22 staffing contract. In this case, because the former public servant would be an employee of the  
23 temporary staffing agency or other intermediary entity, the "government-to-government"

1 exception of Charter § 2604(d)(6) would not apply. However, because in many circumstances  
2 the consulting arrangement is motivated by the same City purpose that motivates direct  
3 consulting arrangements, the Board has often issued waivers to public servants whose former  
4 City agencies seek to employ them in this manner when it has determined there is no likelihood  
5 that the intermediary entity may reap disproportionate benefits from the City agency's need to  
6 retain its former employee. See A.O. No. 1995-1 at 6. In proposed Board Rules § 1-07(d)(2) the  
7 Board articulates a standard that such waivers must meet, incorporating the requirements of  
8 proposed Board Rules § 1-07(d)(1), but also requiring that the intermediary entity is selected by  
9 the City rather than by the public servant.

10

11 New material is underlined.

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

14 §1-07 Post-Employment

15 (a) Post-Employment Appearances

16 (1) For the purposes of the restrictions in Charter § 2604(d) on appearances by a  
17 former public servant before his or her former City agency, branch of City  
18 government, or the City, such prohibited appearances include compensated  
19 communications with any City board, commission, or other governmental entity  
20 on which a representative of his or her former agency or branch of City  
21 government sits by operation of law.

22 (2) The restrictions in Charter § 2604(d) on appearances by a former public servant  
23 do not include appearances related to non-City matters.

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 post-employment  
12 restrictions of Charter § 2604(d) if it determines that the proposed conduct does  
13 not conflict with the purposes and interests of the City after considering the  
14 totality of the circumstances, including, but not limited to:

15 (i) whether the City shares an identity of interest with, or controls or  
16 effectively controls, the former public servant's private employer;

17 (ii) whether the former public servant is uniquely placed to perform  
18 work that would benefit the City because:

19 1. the private employer has no other employees able to engage in the  
20 proposed appearances or work; or

21 2. the former public servant has rare technical or professional  
22 expertise necessary to engage in the proposed appearances or  
23 work;

1 (iii) whether the former public servant could not exercise undue  
2 influence on government decision-making because they were only a public  
3 servant for a short period of time; and

4 (iv) whether the former public servant's proposed appearances or work  
5 pose a risk of harm to firms similar to, or in competition, with the public  
6 servant's private employer because the proposed appearances or work  
7 involve:

- 8 1. new applications or requests to the City for licenses, permits,  
9 grants, or contracts; or
- 10 2. units or divisions at the former public servant's agency with which  
11 the former public servant worked regularly.

12 (2) The Board will not consider requests for waivers of Charter § 2604(d):

- 13 (i) made by City agencies after undue delay; or
- 14 (ii) for public servants who were not fully and formally recused from  
15 all particular matters involving the private employer from the time of  
16 soliciting or negotiating for employment with the private employer  
17 through the termination of City service.

18 (d) Consulting for a Former City Agency

- 19 (1) Pursuant to Charter § 2604(d)(6), with the written approval of the agency head, a  
20 former public servant may be directly retained by their former City agency as a  
21 consultant within one year of the termination of their City service, and may work  
22 on particular matters with which they were personally and substantially involved,  
23 provided that:

- 1 (i) the consulting arrangement is made for the purpose of either  
2 completing work left unfinished by the former public servant at the time  
3 their City service terminated or training their replacement;
- 4 (ii) the consulting arrangement is no longer than reasonably necessary  
5 to complete that unfinished work;
- 6 (iii) the former public servant has technical, professional, or other  
7 subject-matter expertise or skills not otherwise available among the  
8 agency's employees;
- 9 (iv) the compensation is not significantly higher than what the former  
10 public servant last earned at the agency; and
- 11 (v) within 30 days the written approval is disclosed to the Conflicts of  
12 Interest Board and will be posted on the Board's website.

13 (2) Pursuant to Charter § 2604(e), a consulting arrangement between a former public  
14 servant and their former agency that meets the requirements of paragraph (1) of  
15 this subdivision but in which the former public servant is retained through a  
16 private firm for the administrative convenience of the City may be entered into if:

- 17 (i) the private firm was selected by the City rather than by the former  
18 public servant; and
- 19 (ii) after written approval of the head of the City agency, the Board  
20 determines that the proposed consulting arrangement would provide a  
21 benefit to the City distinct from the benefit to the former public servant or  
22 to the private firm.

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 those 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](mailto: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  
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8

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

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

**STATEMENT OF BASIS AND PURPOSE**

The post-employment restrictions of Chapter 68 of the City Charter, contained in Charter § 2604(d), were primarily created to balance two competing City interests: the need to recruit to public service talented individuals who may wish to return to or pursue private sector employment, and the need to prevent public servants from trading on connections made in City government service or using confidential City information for the benefit of themselves or future employers. See Volume 1, Report of the New York City Charter Revision Commission, December 1986 – November 1988, at 28-29; ~~see also, e.g.,~~ Advisory Opinions (“A.O.”) Nos. 1993-11 at 6, 1993-12 at 4, ~~and~~ 1994-15 at 11-12. ~~In fact, restrictions:~~ 1996-1 at 7. Restrictions on the conduct of former public servants pre-date the existence of the ~~currently established~~ current Conflicts of Interest Board. ~~See, e.g.,~~ A.O. ~~Nos~~ No. 1989-1 (advising that the post-employment restrictions of the former Code of Ethics applied to City employees who had resigned or retired, been terminated, or had been on discretionary leaves of absence before the revised post-employment restrictions of the current Chapter 68 became effective); A.O. No. 1992-2 (advising a public servant, who had resigned before the revised post-employment restrictions of the current Chapter 68 became effective, about the applicability of the post-employment restrictions of the Code of Ethics).

Since 1989, the Board has issued ~~3031~~ 31 advisory opinions, totaling 210 pages, providing guidance on the application of the post-employment restrictions set forth in Charter § 2604(d)

1 and on how the Board has considered requests for waivers of those restrictions. ~~See A.O. Nos.~~  
2 ~~1989-1, 1991-8, 1991-19, 1992-2, 1992-13, 1992-17, 1992-32, 1992-37, 1992-38, 1993-11,~~  
3 ~~1993-12, 1993-13, 1993-18, 1993-30, 1994-7, 1994-15, 1994-19, 1994-21, 1994-22, 1995-1,~~  
4 ~~1996-1, 1997-1, 1998-11, 1999-3, 2000-2, 2007-1, 2008-1, 2008-4, 2009-5, 2012-2.~~ The  
5 Board's extensive public advice, totaling 207 pages of Board discussion and analysis, has  
6 primarily been provided in the context of responding to requests for waivers of the post-  
7 employment restrictions. Because of the limited scope and duration of the post-employment  
8 restrictions, requests for waivers of the post-employment are never merely technical: the former  
9 public servant is seeking to be in a position where he or she would be able to use the  
10 relationships developed in their former City position to influence City decision making, in that  
11 the proposed communications are with the same City agency where the former public servant  
12 served or involve the exact "particular matters" on which the former public servant personally  
13 and substantially worked while in City service. Additionally a former public servant, because of  
14 their experience working in a City agency, will be more familiar with the informal and  
15 uncodified practices an agency uses to make decisions and prioritize matters. The former public  
16 servant's familiarity with, and ability to navigate, the subtle culture of their former agency poses  
17 a special concern when they propose to communicate with that former agency on behalf of a  
18 private employer shortly after departing.

19 ~~In evaluating the many requests for waivers it has received, the Board has sought to~~  
20 ~~balance adhering to the integrity of the post-employment restrictions of the Charter with the~~  
21 ~~asserted need for a particular former public servant to engage in otherwise prohibited conduct to~~  
22 ~~further an identified City interest.~~ The factors the Board has considered in those difficult  
23 determinations have evolved over time, alongside the evolution of the types of proposed post-



1 ~~City employment activities of departing public servants and the needs of City agencies to utilize~~  
2 ~~former employees with unique or otherwise difficult to find skills, primarily the expansion in~~  
3 ~~scope and variety of not for profit organizations with which the City engages to perform~~  
4 ~~essential City functions. As the post-employment landscape has changed, the Board has sought~~  
5 ~~to educate public servants about its thinking that is reflected in its 30 advisory opinions.~~

6 With the benefit of ~~28~~almost 30 years of experience in evaluating requests for post-  
7 employment waivers, and in fulfillment of its Charter mandate under Charter § 2603(c) to  
8 determine which of its advisory opinions “has interpretative value in construing provisions of  
9 this chapter,” the Board proposes ~~a rule setting forth a new multi-factor balancing test to guide~~  
10 ~~the Board’s consideration of requests for waivers of the post-employment restrictions. In this~~  
11 ~~proposed rule, the Board would both codify factors articulated in its advisory opinions and offer~~  
12 ~~additional factors to reflect more expansively the situations in which City agencies seek to avail~~  
13 ~~themselves of the services of their former employees. In addition to setting forth this new multi-~~  
14 ~~factor test, the Board in this rule would codify answers it has provided to public servants~~  
15 ~~concerning the meaning of terms within Charter § 2604(d) such as “agency served” and~~  
16 ~~“termination of service” and would codify its long-standing guidance on a unique type of post-~~  
17 ~~employment work: consulting for one’s former City agency, known as “consulting back.”~~to  
18 codify:

- 19 • Definitions of terms within Charter § 2604(d), such as “agency served” and  
20 “termination of service.”
- 21 • A new “totality of the circumstances” standard with a non-exclusive list of four  
22 factors, drawn from advisory opinions, the Board will consider in evaluating requests  
23 for waivers of the post-employment restrictions.

- 1       • The standard, also from advisory opinions, for evaluating a unique type of post-  
2       employment work: consulting for one’s former City agency, known as “consulting  
3       back.”

4       With the exception of the “consulting back” standard, the proposed rule does not address  
5       the advisory opinions interpreting Charter § 2604(d)(6), which the Board reserves for the subject  
6       of possible rulemaking in the future. See A.O. Nos. 1993-13, 1994-7, 1994-21, 1997-1, and  
7       1999-3. The Board has determined not to adopt A.O. No. 1992-32, which applies only to the  
8       public servant who requested that advisory opinion.

9       **1. Definitions**

10       **a. Post-Employment Appearances**

11       ~~In determining whether a particular communication is prohibited by Charter § 2604(d)(2),~~  
12       ~~the Board must consider two issues: first, whether the communication is with the “agency~~  
13       ~~served” by the former public servant; and second, whether the communication is an~~  
14       ~~“appearance” within the meaning of Chapter 68 — that is, a compensated, non ministerial~~  
15       ~~communication.~~

16       ~~On the first question, in proposed~~Charter § 2604(d)(2) prohibits a former public servant  
17       from appearing before his or her former City agency served for one year after leaving City  
18       service. Charter § 2603(d)(3) expands this prohibition to the entire branch of City government  
19       served for former elected officials and certain high-level former appointed public servants who  
20       have Citywide responsibilities. Charter § 2604(d)(4) prohibits a former public servant from  
21       “switching sides” on a particular matter on which he or she worked in City service for the  
22       lifetime of that matter and expressly prohibits that public servant from making any appearances  
23       before any City agency regarding that particular matter, including unpaid appearances.

1 Therefore, to determine whether a particular communication is prohibited by Charter § 2604(d),  
2 the Board must determine whether the communication is with the agency or branch of  
3 government served by the former public servant or with the City; either because it is with a  
4 governmental body on which an employee of that agency or branch of government sits or  
5 because it is with an employee of that agency or branch of government who may not be acting in  
6 his or governmental capacity.

7 Proposed Board Rules § 1-07(a)(1), the Board would codify ~~its~~ the Board's long-standing  
8 interpretation that the post-employment restrictions of Charter § 2604(d)(2), § 2604(d)(3), and §  
9 2604(d)(4) prohibit a former public servant may not communicate from appearing before or  
10 communicating with any ~~City~~ governmental board or commission on which a representative of  
11 the his or her former public servant's City agency, branch of City government, or the City sits as  
12 part of that current agency employee's official City duties. For example, an employee of the  
13 New York City Department of Housing Preservation and Development ("HPD") would be  
14 prohibited by Charter § 2604(d)(2) from appearing before the board of the New York City  
15 Housing Development Corporation ("HDC") within their first post-employment year because a  
16 representative of HPD sits on the board of HDC. ~~By contrast, the former HPD employee would~~  
17 ~~not be prohibited from communicating with employees of HDC because that appearance is not~~  
18 ~~before the board on which their former agency's representatives sit. See A.O. No. 2008-1~~  
19 (advising that when a public servant simultaneously holds positions at multiple City agencies the  
20 post-employment appearance restriction of Charter § 2604(d)(2) applies to each position); see  
21 also COIB v. Sirefman, COIB Case No. 2007-847 (2009) (fining the former Interim President of  
22 the New York City Economic Development Corporation ("EDC") \$1,500 for appearing before  
23 the Hudson Yards Development Corporation ("HYDC") within one year of his resignation from

1 EDC because the EDC President serves as an *ex-officio* Member and Director of HYDC and the  
2 incumbent EDC President was present at a meeting attended by the former Interim President;  
3 in the EDC President's capacity as an *ex-officio* Member and Director of HYDC). By contrast,  
4 the former HPD employee would not be prohibited from communicating with employees of  
5 HDC because that appearance is not before the board on which their former agency's  
6 representatives sit by operation of law.

7 On Proposed Board Rules § 1-07(a)(2), would codify the second question, the Board has  
8 frequently been asked whether Board's interpretation that the appearance and communication  
9 restrictions of Charter § 2604(d)(2) prohibits all exclude appearances and communications with  
10 employees of the former related to non-City agency matters. In proposed particular, the Board  
11 Rules § 1-07(a)(2), has advised public servants that the Board would provide a non-exhaustive  
12 and illustrative list of examples of following communications that would not be do not violate  
13 Charter § 2604(d): (1) social communications; (2) efforts to solicit a public servant's personal  
14 legal business or other types of personal services; and (3) efforts to secure endorsements for a  
15 run for political office by a former public servant are not prohibited by the post-employment  
16 restrictions, such as socializing or discussions of personal matters. Charter § 2604(d). See A.O.  
17 No. 2009-5 (advising a former public servant that the post-employment appearance restriction  
18 did not prohibit communication with a current public servant in their private capacity, such as  
19 reaching out to perform personal legal work related to estate planning); A.O. No. 2008-1  
20 (advising that the one-year communication restriction applied only to communications with  
21 public servants acting in their official capacities, asking them to leave City employment to join  
22 the former public servant's new firm, or to solicit a political endorsement).

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

1 ~~In advising~~To advise a public servant about ~~when the one-year post-employment~~  
2 ~~appearance restriction ends and they may begin communicating with their former City~~  
3 ~~agency~~restrictions, the Board must determine ~~on which day~~when the public servant's City  
4 service terminated, ~~that is, when the "one-year" starts.~~ In proposed Board Rules § 1-07(b)(1),  
5 the Board would ~~incorporate~~incorporate the method of calculating the date of a public  
6 servant's termination from City service set forth in A.O. Nos. 1998-11 and 2019-1. ~~The~~  
7 ~~proposed rule would set the date of termination from City service as, that is,~~ the last day such  
8 former public servant performed official City duties or received benefits conditioned upon  
9 current City employment after resigning, retiring, or being terminated. The one-year appearance  
10 prohibition of Charter § 2604(d)(2) would run from that date.

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

## 20 **2. Otherwise Prohibited Conduct**

### 21 **a. Waivers of the Post-Employment Restrictions**

22 ~~Chapter 68 contains a~~In contrast to the broad ~~prohibition~~prohibitions against full-time  
23 public servants having ownership interests in or positions at firms that do business with *any* City

1 agency, ~~but for the Board has frequently and routinely granted waivers for vast majority of public~~  
2 ~~servants to hold such interests or positions when they are unrelated to, the public servant's~~  
3 ~~official duties and do not involve the public servant's City agency. In those circumstances, the~~  
4 ~~public servant often has no actual conflict of interest but would be committing a technical~~  
5 ~~violation of Chapter 68 if the ownership interest or outside position was held without a Board~~  
6 ~~order or waiver. The one-year post-employment appearance restriction, however,~~  
7 ~~applies~~ restrictions apply only to a former public servant's communications with their former  
8 employing City agency or branch of government and only for one year after leaving City service;  
9 ~~and, similarly,~~ the lifetime post-employment particular matter restriction applies only to a narrow  
10 set of matters (as defined in Charter § 2601(17)) on which a former public servant worked  
11 personally and substantially while in City service. See, e.g., A.O. No. 1992-38 (advising that a  
12 public servant was not prohibited from working on a project where her involvement had been  
13 personal but not substantial). Because public servants requesting waivers of the post-  
14 employment restrictions are seeking to hold a new position where they would be able to use  
15 engage in conduct in which the relationships developed in their former City position ~~to~~ may  
16 influence decision-making by their former City agency, or which may put them in a position to  
17 utilize their superior familiarity with ~~an agency's informal,~~ and ability to navigate, the subtle  
18 culture of their former agency to achieve preferential treatment for their private employer, or  
19 ~~which~~ involve the exact particular matters on which the former public servant personally and  
20 substantially worked while in City service, the Board has analyzed requests for waivers of the  
21 post-employment restrictions differently from waivers of other provisions of Chapter 68.

22 In evaluating the many requests for waivers it has received, the Board has sought to  
23 balance adhering to the integrity of the post-employment restrictions of the Charter with the

1 asserted need for a particular former public servant to engage in otherwise prohibited conduct to  
2 further an identified City interest. Over the last 28 yearsIn A.O. No. 1991-8, the Board  
3 announced that it would issue waivers of Chapter 68's post-employment restrictions "sparingly,  
4 and only in exigent cases." A.O. No. 1991-8 at 2-3; see also A.O. No.1992-13 (declining to  
5 issue a waiver to a public servant seeking to communicate with their former branch of  
6 government on behalf of a private employer because such waivers should "be granted sparingly,  
7 and only in exigent circumstances").

8 The Board has traditionally considered four factors when evaluating requests for post-  
9 employment waivers: (1) the relationship of the City to the public servant's private employer; (2)  
10 the benefits to the City (as opposed to the public servant) if the waiver were granted; (3) the  
11 likelihood of harm to other organizations similar to, or in competition with, a public servant's  
12 prospective employer if the waiver were granted; and (4) the extent to which the public servant  
13 had unique skills or experience suited to the particular position that the prospective employer  
14 would be hard-pressed to find in another person. See, e.g., A.O. No. 2012-2. In applying this  
15 historic test, the Board has determined that, when the former public servant's private employer  
16 was a not-for-profit organization working in a public-private partnership with the City in which  
17 the private employer and the City share an identity of interest, all four factors "need not be  
18 satisfied." A.O. No. 2000-2 at 4; see A.O. No. 2008-4. The Board has further explained that, for  
19 private employers that devote substantial private resources to support the work of a City agency  
20 but which do not meet the standard of a public-private partnership, requests for waivers will "be  
21 analyzed in light of [the private employer's] hybrid status." A.O. No. 2008-4 at 10.

22 Since 1991, the Board has grappled with articulating and applying a standard to requests  
23 for waivers of the post-employment restrictions that would fulfill the objectives of the post-

1 employment restrictions while also addressing the needs of City agencies and the City's  
2 changing relationship with not-for-profit partners. Over the course of these years, it has become  
3 clear that in order to balance the City and personal interests at issue in requests for post-  
4 employment waivers, the Board would benefit from the consideration of a more complete set of  
5 See, e.g., A.O. Nos. 1992-13 (declining to issue a waiver of Charter Section 2604(d)(3) to a  
6 public servant seeking to communicate with their former branch of government on behalf of a  
7 private employer because such waivers should "be granted sparingly, and only in exigent  
8 circumstances). 1993-18 (declining to issue a waiver of the one year appearance restriction for a  
9 former public servant working for a for-profit corporation even when the former public servant's  
10 work for the corporation may help to advance agency goals because such a waiver was not  
11 justified by compelling circumstances). 1993-30 (declining to issue a waiver of the one year  
12 appearance restriction for a former public servant working for a for-profit corporation even when  
13 the former public servant's work for the corporation may help to advance agency goals). 1994-15  
14 (granting. Proposed Board Rules §1-07(c)(1) codifies a waiver of the one year appearance  
15 restriction for a public servant working for a unique not-for-profit created by New York State to  
16 communicate with a unit of his former City agency other than the one for which he worked  
17 because government decision making would not be compromised, the public servant's contacts  
18 with their former City agency would be with a unit other than the unit to which he was assigned,  
19 the public servant had not worked on projects with the not-for-profit while employed at his  
20 former City agency, and the public servant would not be in a position to divulge confidential  
21 information obtained during City service), 1994-19 (granting a waiver of Charter Section  
22 2604(d)(3) permitting a former public servant to communicate with his former branch of  
23 government on behalf of two new not-for-profit employers, in part because the purpose of these



1 ~~employers was to benefit the City by developing programs and raising funds to support City~~  
2 ~~government initiatives).~~

3 ~~The Board's advisory opinions on the criteria required to qualify for a waiver of Chapter~~  
4 ~~68's post-employment restrictions reflect its efforts to balance these concerns. See generally~~  
5 ~~A.O. Nos. 2008 4 (advising that a more permissive standard for granting post-employment~~  
6 ~~waivers may be applied when an entity is one that contributes private resources to the City in a~~  
7 ~~joint venture with a City agency), and 2000 2 (advising that a more permissive totality of the~~  
8 ~~circumstances standard for granting waivers of the post-employment restrictions may be~~  
9 ~~available for former public servants working for organizations which have developed~~  
10 ~~partnerships with the City and perform services deemed to be in the City's best interests). To~~  
11 ~~establish the Board's method of balancing the competing City interests at hand in every request~~  
12 ~~for determining whether a waiver of the post-employment restrictions, the Board now proposes a~~  
13 ~~multi-factor balancing test. Many of the listed factors are more specific and illustrative versions~~  
14 ~~would conflict with the purposes and interests of the four factorsCity. As part of how the Board~~  
15 ~~historically considered (that is, in the "four part exigent circumstances test"). However, with~~  
16 ~~every request, the Board would consider will evaluate the totality of the identified circumstances.~~

17 ~~The enumerated factors in proposed Board Rules §-1-07(c)(1) cluster around three~~  
18 ~~themes that would guide includes a non-exhaustive list of four factors drawn from the Board's~~  
19 ~~past deliberations about requests for waivers. First, the Board would evaluate whether the public~~  
20 ~~servant who is the subject of the request has come before the Board in good faith and not having~~  
21 ~~engaged in conduct that would prejudice the City or the ability of the Board to evaluate the~~  
22 ~~request. As part of determining that a request meets this standard, the Board would evaluate~~  
23 ~~whether the request has been made promptly and without undue delay in order to ensure that~~

1 self-created exigencies do not overwhelm other relevant facts. See Proposed Board Rules § 1-  
2 07(e)(1)(x); see also A.O. Nos. 2012-2 (advising that request for waivers of the post-employment  
3 restrictions should be submitted in advance of departure from City service), and 1992-37 (noting  
4 ~~with disapproval that a former public servant did not request a waiver prior to having accepted~~  
5 ~~the position with a private employer).~~ Additionally, the Board would seek an affirmative  
6 representation from the former City agency that the former public servant complied with Charter  
7 § 2604(d)(1), which requires recusal from any particular matters involving a private employer  
8 while soliciting or negotiating for a position with that employer. See Proposed Board Rules § 1-  
9 07(e)(1)(iii); see also A.O. No. 1992-37 (observing that a former public servant's solicitation and  
10 negotiation for a position with a private employer prior to leaving City service increase the  
11 possibility that a violation of Charter Section 2604(d)(1) occurred). Requiring a representation  
12 that the former public servant was formally and fully recused from all matters involving the  
13 private employer would help protect against the risk of a former public servant directly  
14 leveraging their City position into new employment. on post-employment waivers.

15       Second, the Board would evaluate whether the proposed waiver of the post-employment  
16 restrictions is genuinely in the interests of the City. The Board would be more likely to grant a  
17 waiver of the post-employment restrictions if the proposed work could provide a substantial  
18 benefit to the City, distinct from the benefit provided to the private employer. See Proposed  
19 Board Rules § 1-07(e)(1)(ii). While many not-for-profits and other entities perform important  
20 work serving City residents, any proposed waiver of the post-employment restrictions should  
21 provide some additional benefit to the City beyond the private employer executing its own  
22 mission or fulfilling a contract with the City. Another way the Board would protect the interests  
23 of the City is by favoring waivers where the City and the former public servant's private

1 ~~employer share an identity of interest. See Proposed Board Rules § 1-07(c)(1)(i). Proposed~~  
2 Board Rule § 1-07(c)(1): When a former public servant's work for a private employer involves  
3 furthering an interest identical to that of the City, there are diminished concerns about a former  
4 public servant using their special access or knowledge to the detriment of the City's interests.  
5 ~~Similarly~~Therefore, the Board would lookhas historically looked favorably upon requests for  
6 waivers for former public servants who work for entities ~~which~~that the City ~~itself~~-controls or  
7 effectively controls. ~~because such arrangements protect the City's interests. See Proposed~~  
8 ~~Board Rules § 1-07(c)(1)(vi). Finally, A.O. 2008-4 (observing that the Board would look~~  
9 ~~favorably upon requests for~~on requests to work for City-affiliated not-for-profits when those  
10 entities were created by City agencies and had a governing structure that involved public  
11 officials as officers and board members). Additionally, the Board has historically granted  
12 wavers in situations where the former public servant's private employer operates as a public-  
13 private partnership with the City and devotes substantial private resources to support the work of  
14 a City agency. See A.O. No. 2008-4 (stating that, "[w]hen the City and [a private employer]  
15 share an 'identity of interest,' the City benefits from encouraging former City employees to  
16 effectively remain in public service" by working for that private employer); A.O. No. 1994-22  
17 (granting a waiver for a public servant to take a position at a bio-medical facility which operates  
18 as a joint venture between the City, the State, and a university).

19 Proposed Board Rule § 1-07(c)(2): When the former public servant is, ~~among the~~  
20 ~~subsequent employer's employees, uniquely qualified~~suited to make or perform the otherwise  
21 ~~prohibited communications or work~~work that would benefit the City, rather than their private  
22 employer, the proposed post-employment activities do not conflict with the purposes and interest  
23 of the City. See A.O. No. 2012-2 (stating that, in evaluating a request for a waiver of the post-

1 employment restrictions. “the Board looks for a demonstration of the benefit to the City, not to  
2 the new employer”) (emphasis in original). This capacity to benefit has been articulated in two  
3 ways: either by virtue of their the former public servant’s unique technical or professional  
4 expertise. See Proposed Board Rules § 1-07(c)(1)(v): see also or because at a small not-for-  
5 profit, there is no other employee able to do the prohibited work. See A.O. No. 1992-17  
6 (granting a public servant a waiver of the post-employment restrictions to work for an entity  
7 when his expertise would help remedy contractual disputes between the entity and the agency):  
8 As with other related factors, the focus is on harnessing a former public servant’s special skills to  
9 further the City’s objectives.): A.O. No. 1994-19 (granting a waiver of Charter § 2604(d)(3)  
10 when a public servant’s proposed communications on behalf of a not-for-profit entity would  
11 primarily benefit the City).

12 ——— Third, the Board would evaluate whether Proposed Board Rule § 1-07(c)(3):  
13 Because public servants who have worked for the City for brief periods of time are unlikely to  
14 have developed the connections necessary to afford them undue influence or unfair access, the  
15 Board has granted requests for waivers on behalf of these public servants more readily. See  
16 COIB Case No. 2019-463 (granting a waiver could result in for a former public servant  
17 exercising undue influence at who worked for 40 days); COIB Case No. 2017-790 (granting a  
18 waiver for a public servant who worked 36 days); COIB Case No. 2017-214 (granting a waiver  
19 for a public servant who worked for 38 days); COIB Case No. 2015-646 (granting a waiver for a  
20 public servant who worked for 40 days); COIB Case No. 2013-381 (granting a waiver for a  
21 former paid summer intern): see also A.O. No. 2007-1 (granting a waiver for a former member  
22 of a Community Education Council (“CEC”), a volunteer board composed of primarily of  
23 parents of students in the district which has no executive or administrative powers or functions,

1 no involvement in contracts between vendors and their respective districts, and no power to  
2 determine how districts spend funds, to appear before that CEC).

3 Proposed Board Rule § 1-07(c)(4): A former public servant communicating with their  
4 former agency or providing special access for their on behalf of a private employer, shortly after  
5 departing may pose a risk of harm to firms similar to or in competition with that private  
6 employer given the former public servant's familiarity with, and ability to navigate, the  
7 processes of their former agency. To mitigate this concern risk, the Board would look favorably  
8 upon has disfavored requests in which the former public servant does not propose proposes to  
9 communicate with units or divisions at the former agency with which he or she worked regularly.

10 See Proposed Board Rules § 1-07(c)(1)(viii). In circumstances where a former public servant  
11 seeks See A.O. No. 1993-8 (stating that one of the purposes of the post-employment restrictions  
12 was to prevent the exertion of special influence on government decision-making by, among other  
13 things, preventing contact with former City colleagues on behalf of a new employer): A.O. No.  
14 1994-15 (granting a waiver of the one-year appearance restriction for a public servant working  
15 for a unique not-for-profit created by New York State to communicate with units or divisions  
16 with which they did not deal while at that City agency, there is a decreased risk of exercising  
17 undue influence over those unfamiliar public servants. a unit of his former City agency other than  
18 the one for which he worked). Additionally, the Board would disfavor has historically disfavored  
19 requests for waivers for former public servants who seek to communicate with their former  
20 agencies to seek new business for their private employers in the forms of licenses, permits,  
21 grants, or contracts. Compare A.O. No. 1992-17 (granting a waiver of the post-employment  
22 restrictions to a public servant when her work at a private employer "would help remedy pending  
23 contractual disputes between the entity and the agency") with A.O. No. 1993-18 (declining to

1 grant a waiver to a public servant whose work at his private employer would focus, in part, on  
2 encouraging the participation of his private employer's clients in programs run by his former  
3 City agency); see also A.O. No. 1991-19 (prohibiting a public servant making an otherwise  
4 ministerial FOIL request from bypassing normal procedures to contact individuals directly).

5 Additionally, in proposed Board Rules § 1-07(c)(2), the Board would provide two  
6 procedural requirements for waivers of the post-employment restrictions. First, the Board would  
7 decline to issue waivers when the ability of the Board to evaluate the request for a post-  
8 employment waiver has been prejudiced by undue delay. The Board has emphasized factor to  
9 ensure that self-created exigencies do not overwhelm other relevant facts. See A.O. No. 2012-2  
10 (advising that request for waivers of the post-employment restrictions should be submitted in  
11 advance of departure from City service); A.O. No. 1992-37 (noting with disapproval that a  
12 former public servant did not request a waiver prior to having accepted the position with a  
13 private employer). See Proposed Board Rules § 1-07(c)(1)(vii). To the extent the City chooses  
14 to enter into additionalSecond, the Board would decline to issue waivers when a former public  
15 servant has, in the course of soliciting employment, violated Charter § 2604(d)(1), which  
16 requires recusal from any particular matters involving a private employer while soliciting or  
17 negotiating for a position with that employer. See A.O. No. 1992-37 (observing that a former  
18 public servant's solicitation and negotiation for a position with a private employer that had  
19 business arrangements with a firm that employs a former public servant, the City's assessment of  
20 its interests should not be swayed by the presence of a familiar face. Finally, because public  
21 servants who have worked for the City for brief periods of time are unlikely to have developed  
22 the connections necessary to afford them undue influence or unfair access, the Board will be  
23 more likely to grant waivers for public servants who worked for the City for fewer than 60 days.

1 ~~See Proposed Board Rules § 1-07(e)(dealing with her own agency raised the possibility that a~~  
2 ~~violation of Charter Section 2604(d)(1)(ix) had occurred).~~

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~~  
15 ~~intended or reasonably expected the post-employment restrictions to restrict the City's ability to~~  
16 ~~retain its former employees as consultants~~Historically, the Board has long articulated determined  
17 that a standard whereby a City agency may consult City agency's consulting agreement with a  
18 former employee provided falls within the government-to-government exception when: (1) the  
19 former agency must have a pressing need for the former employee's services, (2) the former  
20 agency must contract directly with the former employee, not through a firm employing the  
21 former public servant, and (3) the contracting wage must be comparable to that certain  
22 conditions were met of the employee's salary at the time he or she left the agency. See A.O.  
23 Nos. 1993-12; 1995-1. Proposed Board Rules § 1-07(d)(1) would provide a new set of five more

1 specific and detailed conditions which, if met, would permit a former public servant to be  
2 retained directly, rather than through an employer, as a consultant by the City agency for which  
3 he or she worked with the written approval of the agency head. ~~The new conditions, including~~  
4 ~~requiring that the consulting arrangement not exceed six months and limiting the purposes of a~~  
5 ~~consulting arrangement to either completing work left unfinished by the public servant or~~  
6 ~~training the public servant's replacement, could help to ensure that any consulting arrangement~~  
7 ~~benefits the City and does not reflect either the lingering influence of a departing public servant~~  
8 ~~or the desire of current public servants to reward favored former colleagues. In addition to~~  
9 ~~requiring compliance with specified conditions, the written approval of the agency head would~~  
10 ~~have to be disclosed to the Board so that it can be posted publicly. See Board Rules § 1-~~  
11 ~~07(d)(1). Such written approval must then be provided to the Board, which will post that~~  
12 information on its website.

13 The Board has also reviewed matters where, for reasons of administrative convenience, a  
14 City agency seeks to employ a former employee as a consultant through an intermediary entity,  
15 rather than directly as a consultant. ~~One of the most frequent ways in which this scenario has~~  
16 ~~presented itself to the Board is~~This often arises when a City agency seeks to retain a public  
17 servant as a consultant through a temporary staffing agency with which the agency already has a  
18 staffing contract. In this case, because the former public servant would be an employee of the  
19 temporary staffing agency or other intermediary entity, the "government-to-government"  
20 exception of Charter § 2604(d)(6) would not apply. However, because in many circumstances  
21 the consulting arrangement is motivated by the same City purpose that motivates direct  
22 consulting arrangements, the Board has often issued waivers to public servants whose former  
23 City agencies seek to employ them in this manner. ~~The Board's decisions to grant waivers in~~



1 ~~these circumstances have always been informed by the risk of disproportionate benefits when it~~  
2 ~~has determined there is no likelihood that the intermediary entity may reap disproportionate~~  
3 ~~benefits from the City agency's need to retain its former employee. See A.O. No. 1995-1 at 6.~~  
4 In proposed Board Rules § 1-07(d)(2) the Board articulates a standard that such waivers must  
5 meet, incorporating the requirements of proposed Board Rules § 1-07(d)(1), but also requiring  
6 that the ~~private-intermediary~~ entity is selected by the City rather than by the public servant. ~~By~~  
7 ~~requiring the intermediary to be selected by the City, the Board's proposed rule would help~~  
8 ~~safeguard against consulting and other employment agencies reaping disproportionate benefit~~  
9 ~~from the expertise of departing City employees.~~

10  
11  
12 New material is underlined.

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

15 §1-07 Post-Employment

16 (a) Post-Employment Appearances

17 (1) For the purposes of the restrictions in Charter § 2604(d)(2), "appear) on  
18 appearances by a former public servant before the his or her former City agency  
19 served by, branch of City government, or the City, such public servant"  
20 includes prohibited appearances include compensated communications with any  
21 City board, commission, or other governmental entity on which a representative  
22 of the his or her former City agency or branch of City government sits by  
23 operation of law.

1 ~~(2) For the purposes of~~ The restrictions in Charter § 2604(d)(2), "appear before the  
2 City agency served) on appearances by such a former public servant" does do not  
3 include communications appearances related to non-City matters, including but  
4 not limited to:

5 (i) ~~social communications with an employee of the former City~~  
6 ~~agency;~~

7 (ii) ~~communications with an employee of the former City agency~~  
8 ~~about the employee's personal finances, other personal services unrelated~~  
9 ~~to the City, or future employment; or~~

10 ~~(3)(2)~~ communications related to securing the political  
11 endorsement of an elected official.

12 (b) Date of Termination of City Service

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

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

21 (c) Waivers of the Post-Employment Restrictions

22 ~~(1)~~ Pursuant to Charter § 2604(e), the Board may waive the one-year post-  
23 employment appearance restriction restrictions of Charter § 2604(d)(2) or the

1 lifetime post-employment particular matter restriction of Charter § 2604(d)(4) if it  
2 determines both that the proposed conduct does not conflict with the purposes and  
3 interests of the City and that it benefits the City. In making this determination,  
4 the Board will consider after considering the totality of the circumstances by  
5 weighing each of the following individual factors:

6 (1) whether the former public servant proposes, including, but not limited to work on  
7 a matter where:

8 (i) whether the City shares an identity of interest with, or controls or  
9 effectively controls, the former public servant's private employer and the  
10 City share an identity of interest;

11 (ii) whether the former public servant's proposed servant is uniquely  
12 placed to perform work that would provide a substantial benefit to the City  
13 distinct from because:

14 1. the benefit to private employer has no other employees able to  
15 engage in the proposed appearances or work; or

16 +2 the former public servant or has rare technical or professional  
17 expertise necessary to the private employer engage in the proposed  
18 appearances or work;

19 (iii) whether the former public servant was could not exercise undue  
20 influence on government decision-making because they were only a public  
21 servant for a short period of time; and

22 (iv) whether the former public servant's proposed appearances or work  
23 pose a risk of harm to firms similar to, or in competition, with the public

1 servant's private employer because the proposed appearances or work  
2 involve:

- 3 1. new applications or requests to the City for licenses, permits,  
4 grants, or contracts; or  
5 2. units or divisions at the former public servant's agency with which  
6 the former public servant worked regularly.

7 (2) The Board will not consider requests for waivers of Charter § 2604(d):

- 8 (i) made by City agencies after undue delay; or  
9 (ii) for public servants who were not fully and formally recused from  
10 all particular matters involving the private employer from the time of  
11 soliciting or negotiating for employment with the private employer  
12 through the termination of City service;  
13 ~~(iii) whether the subsequent employer has no other employees able to~~  
14 ~~appear before the former public servant's agency or perform the prohibited~~  
15 ~~work;~~  
16 ~~(iv) whether the former public servant has unique technical or~~  
17 ~~professional expertise to make or perform the prohibited appearances or~~  
18 ~~work;~~  
19 ~~(v) whether the City controls or effectively controls the private~~  
20 ~~employer;~~  
21 ~~(vi) whether the matters on which the former public servant proposes to~~  
22 ~~communicate with the City or perform work are new applications or~~  
23 ~~requests to the City for any license, permit, grant, contract;~~

1                   (vii) — whether the proposed appearances would not involve any unit or  
2                   division at the former public servant's agency with which the former  
3                   public servant worked regularly;

4                   (viii) — whether the former public servant was employed by the City for  
5                   fewer than 60 days; and

6                   (ix) — whether the City agency's request for the waiver was made without  
7                   undue delay;

8                   (d) Consulting for a Former City Agency

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

14                  (i)       the consulting arrangement is made for the purpose of either  
15                  completing work left unfinished by the former public servant at the time  
16                  their City service terminated or training their replacement;

17                  (ii)       the consulting arrangement will not exceed six months is no longer  
18                  than reasonably necessary to complete that unfinished work;

19                  (iii)       the former public servant has technical, professional, or other  
20                  subject-matter expertise or skills not otherwise available among the  
21                  agency's employees;

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

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

3 (2) Pursuant to Charter § 2604(e), a consulting arrangement between a former public  
4 servant and their former agency that meets the requirements of paragraph (1) of  
5 this subdivision but in which the former public servant is retained through a  
6 subsequent employer private firm for the administrative convenience of the City  
7 may be entered into if:

8 (i) the subsequent employer private firm was selected by the City  
9 rather than by the former public servant: and

10 (ii) after written approval of the head of the City agency, the Board  
11 determines that the proposed consulting arrangement would provide a  
12 substantial benefit to the City distinct from the benefit to the former public  
13 servant or to the private employer firm.