

March 26, 2020 – Open Meeting Matter
February 4, 2020 – Open Meeting Matter

To: The Board

From: Christopher M. Hammer 

Date: March 16, 2020

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

The proposed new Board Rules § 1-18 on endorsements returns to the Board after discussion at the February 2020 Open Meeting (**Exhibit 1**). The Board asked Staff to identify advice regarding endorsements that applies the requirement that a demonstrable nexus exists between the product, program, or entity being endorsed and the mission of the City agency endorsing the product, program, or entity. Examples of appropriate and inappropriate endorsements are included in bullet points on pp. 3-4 of **Exhibit 2**. Other than the addition of these examples, the proposed Statement of Basis and Purpose and text of the proposed new rule are unchanged.

With the Board's approval, Staff will formally submit the new Board Rule to the Law Department and the Mayor's Office of Operations, as required by the City Administrative Procedure Act. See Charter Section 1043(d).

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

Date: February 4, 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

The meeting was called to order by the Chair at approximately 9:35 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 § 4-05, Chapter 3, § 1-18, and § 1-07.

Board Rules § 4-05

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

There were no comments. Upon motion duly made and seconded, the Board unanimously voted to adopt the proposed amendments incorporating the proposed changes as the final rule.

Board Rules Chapter 3

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

There were no comments. Upon motion duly made and seconded, the Board unanimously voted to adopt the proposed amendments incorporating the proposed changes as the final rule.

Board Rules § 1-18

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

In the Statement of Basis and Purpose, the Board asked, and Staff agreed, to cite to examples from the advisory opinions to clarify the term “demonstrable nexus.”

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

Board Rules § 1-07

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

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.
- **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.

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.

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 The determination of whether a demonstrable nexus exists depends on the specific
18 circumstances of the endorsement and the nature of the public servant’s work for the City:

- 19 • In A.O. No. 2000-3, the Board advised the Police Commissioner that he may
20 write and sign a letter that would serve as the introduction to a book published
21 to raise funds for the NYPD Museum, a not-for-profit organization with the sole
22 mission of educating the public about the New York City Police Department.
- 23
- 24 • In confidential advice, the Board advised an elected official that the elected
25 official may author a welcome letter for the first edition of a privately published
26 freely distributed magazine promoting public transportation in the City. The
27 Board advised the official that the official may write the letter for the purpose

1 of promoting tourism and the use of public transportation within the elected
2 official's district.

- 3
- 4 • In confidential advice, the Board advised an elected official that the elected
5 official may not appear in an advertisement for a hospital located within the
6 elected official's district. The Board provided similar advice to a high-ranking
7 public servant's proposed appearance in an advertisement for a for-profit
8 business in A.O. No. 1991-1.
- 9
- 10 • In confidential advice, Board staff advised a high-ranking public servant that
11 the public servant may author a testimonial for a book on the alleviation of
12 inequality and poverty for the City purpose of demonstrating the City's role in
13 alleviating poverty.
- 14

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

21

22 **Text of the Proposed Rule**

23

24 New material is underlined.

25

26 [Deleted material is in brackets.]

27

28 **Section 1.** Title 53 of the Rules of the City of New York is amended by adding a new section 1-
29 18, to read as follows:

30 **§ 1-18 Endorsements**

- 31 (a) Pursuant to Charter § 2604(b)(2) and § 2604(b)(3), a public servant may use or permit the
32 use of his or her City title and/or City agency in promotional materials produced by or on

- 1 behalf of a non-City product, program, or entity provided that all of the following
2 conditions are met:
- 3 (i) a demonstrable nexus exists between the product, program, or entity and the mission
4 of the public servant's agency;
- 5 (ii) neither the agency head nor the public servant is associated, within the meaning of
6 Charter § 2601(5), with either the entity or an employee of the entity that is the subject
7 of the endorsement or whose product or program is the subject of the endorsement;
- 8 (iii) the public servant's agency head approves in writing the use of the public servant's
9 City title and/or City agency; and
- 10 (iv) if the promotional materials solicit donations for a not-for-profit organization, the
11 public servant and public servant's agency comply with the requirements of Board
12 Rules § 1-14.
- 13 (b) For purposes of this section, an elected official, including a District Attorney, is the agency
14 head of the staff members in his or her office. The Speaker of the New York City Council
15 is the agency head of the central staff of Council, and a Council Member is the agency head
16 of the staff of his or her office.