

March 26, 2020, Agenda – Open Meeting Matter

March 6, 2020 – Public Hearing

January 9, 2020, Agenda – Open Meeting Matters

December 12, 2019, Agenda – Open Meeting Matter

To: The Board

From: Chad H. Gholizadeh

Date: March 17, 2020

Re: Proposed Amendments to Board Rules § 1-01(h): Gifts of Travel

As directed by the Board at its January 2020 meeting and in accordance with the City Administrative Procedure Act, Staff published for public comment the proposed amendments to Board Rules § 1-01(h). A public hearing was held on March 6, 2020. A representative of Reinvent Albany attended the hearing and submitted a comment (Exhibit 3) with three recommendations:

First: Reinvent Albany recommends the Board adopt a rule prohibiting elected officials from accepting gifts of travel-related expenses from corporate and not-for-profit groups. Exhibit 3 at 2. Preventing elected officials from accepting gifts of travel expenses to conduct legitimate City functions is counter to the express policy purpose of this proposed Rule and decades of Board practice. Accordingly, Staff recommends that the Board not adopt this recommendation.

Second: Reinvent Albany proposes that all public servants be required to seek the Board's permission for all travel funded by a third party, mistakenly believing that, under the proposed Rule, agency heads "will oversee their own conflicts of interest." Exhibit 3 at 2. Here Reinvent Albany is not reading the proposed Rule correctly: Proposed Board Rules § 1-01(h)(7) states that approval must be "by a deputy mayor if the public servant is an agency head." Staff recommends that the Board not adopt Reinvent Albany's proposal, as the new requirement of approval by

agency heads (or deputy mayors) of the acceptance of gifts of travel expenses by public servants is a sufficient, and appropriate, screening mechanism.

Third: Reinvent Albany recommends that the Board require all frequent flyer miles earned by public servants to be surrendered to the City. Staff recommends that the Board not adopt this recommendation for two reasons. First, this change would be a reversal of the Board's longstanding advice on this matter without any evidence of abuse by City employees. See Advisory Opinion No. 2006-5. Second, the proposed Rule sufficiently addresses any possible conflict of interest by requiring that "the public servant does not make a travel selection based on receiving or increasing frequent reward points or flyer benefits that result in additional expense to the City." Proposed Board Rules § 1-01(h)(6).

In sum, Staff recommends that the Board adopt the text of amended Board Rules § 1-01(h) with no substantive changes and with stylistic edits to the Statement of Basis and Purpose to reflect that the Rule is no longer a proposal. (Exhibit 5.)

Attached are the following:

- 1) Minutes of the December 2019 and January 2020 Open Meetings (**Exhibit 1**);
- 2) Proposed Board Rules and Commentary, as submitted for publication in the City Record on January 31, 2020 (**Exhibit 2**);
- 3) Reinvent Albany's Testimony on Proposed Rules Regarding Gifts of Travel, dated March 6, 2020; (**Exhibit 3**);
- 4) Proposed Notice of Adoption (Tracked Version) (**Exhibit 4**);
- 5) Proposed Notice of Adoption (Clean Version) (**Exhibit 5**).

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

Date: December 12, 2019

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, Caitlyn Louie, Carolyn Miller, Katherine Miller, Ari Mulgay, Yasong Niu, Jeffrey Tremblay, Clare Wiseman, and Juliya Ziskina.

Guests: None

The meeting was called to order by the Chair at approximately 10:02 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 § 1-01(h). 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:

In the Statement of Basis and Purpose:

- page 2, line 15: insert additional sentence that the proposed rule codifies 11 advisory opinions and add elsewhere (in text or footnote) a list of the 11 advisory opinions
- page 5, line 10: insert the word “informal” so that it reads “longstanding informal advice”
- page 5, first paragraph: add language from page 6 of AO 2016-01 to explain breakdown of payments from a third party in § 1-01(h)(2)

In the text of Board Rules § 1-01(h) as revised in the version attached to the December 10, 2019 memorandum:

- page 7, lines 4 and 5: revise to state “travel before or after a trip taken for a City purpose provided that:”
- page 7, lines 22 and 23: remove commas
- page 6, line 12: remove “who is not an elected official” and amend “receives” to “received”
- add section (h)(7) to define “agency head approval” for agency heads and elected officials similar to § 1-13(e)(3)

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

The open meeting was adjourned at approximately 10:22 a.m.

Respectfully submitted,

Julia H. Lee
Recording Secretary

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

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

New York City Conflicts of Interest Board

Notice of Public Hearing and Opportunity to Comment on Proposed Rules Regarding Gifts of Travel-Related Expenses

What are we proposing? The Conflicts of Interest Board is proposing to amend its rules governing the acceptance of gifts by public servants.

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 3:00 p.m. on March 6, 2020. The hearing will be at Spector Hall at 22 Reade Street, New York, NY 10007.

This location has the following accessibility option(s) available: wheelchair accessible

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 Chad H. Gholizadeh at Rules@COIB.nyc.gov
- **Mail.** You can mail comments to Chad H. Gholizadeh, Assistant 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 March 6, 2020. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes, you must submit written comments by March 6, 2020.

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) 437-0723. You must tell us by March 5, 2020.

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.

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

proposed rule. This proposed rule was not included in the Conflicts of Interest Board's regulatory agenda for this Fiscal Year because it was not contemplated when the Conflicts of Interest Board published the agenda.

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

In accordance with the mandate of City Charter § 2603(c)(4) for the Board to review all its advisory opinions and initiate rulemaking to adopt those with “interpretative value in construing provisions” of Chapter 68, the Board has been reviewing the 29 advisory opinions it has issued concerning public servants’ acceptance of gifts. In connection with this comprehensive review, the Board proposes to amend Board Rules § 1-01(h), the exception to the “Valuable Gifts Rule” that permits a public servant to accept a gift of travel-related expenses for official City travel. Of the Board’s 29 advisory opinions regarding gifts, nine relate, at least in part, to the acceptance of gifts of travel-related expenses for official City travel. These nine opinions are the subject of this rulemaking: Advisory Opinion (“A.O.”) Nos. 1990-3; 1992-10; 1992-19; 1992-23; 1999-4; 2006-5; 2011-2; 2016-1; 2018-1.

City Charter § 2604(b)(5) and Board Rules § 1-01 provide that public servants are prohibited from accepting gifts of \$50.00 or more from any firm that the public servant knows is or intends to become engaged in business dealings with the City. Additionally, City Charter § 2604(b)(3) prohibits public servants from using their City position to obtain any financial gain or other private or personal advantage. The Board has consistently advised public servants that gifts given because of the public servant’s City position constitute a private or personal

advantage and that their acceptance of such gifts would violate City Charter § 2604(b)(3). See A.O. No. 1990-3 (advising that receipt of a gift of travel to an elected official from a firm with no current City business, absent a clear City purpose, may give rise to an appearance that the gift was made to lobby or solicit the goodwill of the elected official); A.O. No. 1991-4 (advising that an elected official could not accept an honorarium for giving a speech, offered by a firm which at the time of the speech had not had City business dealings but subsequently acquired extensive City business, to avoid creating the appearance that the honorarium had been offered as a quid pro quo in return for the firm's getting City business); A.O. No. 1992-10 (advising that, in the absence of a government purpose for accepting a trip to a resort, an elected official's acceptance of the trip could create the appearance that he has received a valuable gift solely because of his official position and the acceptance of the gift was therefore prohibited); A.O. No. 1992-23 (advising that an elected official could not accept two free tickets from a common carrier for travel to a destination outside of the State of New York because the official's acceptance of the tickets would create the appearance that he received a gift because of his official position); A.O. No. 1994-12 (advising that a public servant could not accept a ceremonial sword presented to him as a personal gift from a restaurant and entertainment center located outside of the City after he participated in a ribbon cutting ceremony as a representative of the City because it would create the appearance that the public servant used his official position for private gain); A.O. No. 2000-4 (advising that it would violate Section 2604(b)(3) for members of an elected official's staff to solicit access to purchase or receive tickets that are limited or to which they are provided special access because of their public office).

Existing Board Rules § 1-01(h)—unchanged since it was promulgated in 1990—provides that gifts of travel-related expenses may be accepted as gifts to the City if (1) the trip is for a City

purpose and therefore could properly be paid for with City funds; (2) the travel arrangements are appropriate to that purpose; and (3) the trip is no longer than reasonably necessary to accomplish the business that is its purpose. This exception allows public servants to attend meetings and conferences that, if the City were required to use its own funds, they might be unable to attend. The proposed amendments to Board Rules § 1-01(h) would refine the standard for a public servant's acceptance of travel-related expenses from a third party by adding factors to be analyzed and codifying advice provided to public servants in its series of relevant advisory opinions.

In proposed Board Rules § 1-01(h)(1), the Board would retain the three requirements of existing Board Rules § 1-01(h) and would add two additional requirements. First, the public servant must receive prior written approval from his or her agency head upon the presentation of a detailed itinerary. While existing Board Rules § 1-01(h) merely recommends that the public servant obtain written agency head approval in advance to avoid an appearance of impropriety, the Board has consistently advised public servants to seek such approval to provide much needed oversight. See A.O. No. 2011-2 (advising that in order to review a request to accept the gift of travel expenses the Board expects to receive a detailed itinerary of the trip); A.O. No. 1992-19 (advising the Acting Director of the Mayor's Office of Film, Theater and Broadcasting that she could accept the gift of travel-expenses to the Cannes International Film Festival because the trip had a City purpose of promoting film production in the City and had been approved in writing by the Deputy Mayor). Second, any solicitation of travel-related expenses must be made in compliance with the rules governing official fundraising, codified at Board Rules § 1-14. This means that a public servant may solicit an entity to pay for travel undertaken by that agency's employees, or himself or herself, even if that entity has business dealings with that City agency,

provided that: (1) the entity receiving the solicitation does not have a particular matter pending before the soliciting public servant; and (2) donations from that entity to the City agency, including payment of travel-related expenses, cumulatively amounting to \$5,000 or more in any calendar year are reported in the manner required by Board Rules § 1-14.

In proposed Board Rules § 1-01(h)(2), the Board would codify the advice provided to an elected official in A.O. No. 2016-1 that the official could not accept a gift of travel-related expenses for the portion of time spent during the trip on political activity. Just as an elected official could not spend City funds to travel to attend a political event, so too would an elected official be prohibited from using funds accepted as a gift to the City to fund his or her political activities. Costs for mixed-purpose travel must be allocated between its governmental and political purposes, and the official may accept payment only for the cost allocated to the governmental purposes. See A.O. No. 2016-1 at 6. For example, if an elected official spends eight hours on governmental activity on a particular trip, with two other hours devoted to political activity, the official could accept payment from a third party for only 80% of the cost of the total travel expenses associated with the trip. Id. As it did in A.O. No. 2016-1, the Board would continue to limit this provision to elected officials, recognizing elected officials' broader responsibilities, distinct from those of non-elected public servants, and the fact that those responsibilities are rarely limited by the traditional City workday.

Proposed Board Rules § 1-01(h)(3) would codify the Board's longstanding informal advice that a public servant who accepts a gift of travel-related expenses for governmental business may use his or her accrued leave and personal funds for personal travel before or after the City trip. Proposed Board Rules § 1-01(h)(4) and 1-01(h)(5) would codify advice provided in A.O. No. 2018-1 that a public servant was permitted to accept vouchers offered by an airline

for food, accommodations, and ground transportation in connection with delayed City travel but was not permitted to accept additional compensation. Here, the Board would expand its prior advice to encompass all forms of travel, not just airline. In proposed Board Rules § 1-01(h)(6), the Board would codify advice provided in A.O. No. 2006-5 permitting public servants to accrue frequent flyer miles during City travel provided that they do not choose travel arrangements designed to inflate the public servant's frequent flyer benefits at additional expense to the City.

New material is underlined.

Section 1. Section 1-01(h) of Chapter 1 of Title 53 of the Rules of the City of New York is REPEALED and a new subdivision (h) of such section is added to read as follows:

(h) Travel and Travel-Related Expenses

(1) For the purposes of Charter § 2604(b)(3) and Charter § 2604(b)(5), a public servant may accept travel-related expenses from a third party as a gift to the City provided that the following conditions are met:

- i. the trip is for a City purpose and therefore could properly be paid for with City funds;
- ii. the travel arrangements are appropriate to that purpose;
- iii. the trip is no longer than reasonably necessary to accomplish the governmental business which is its City purpose;
- iv. the public servant received agency head approval in advance upon presenting such agency head with a detailed itinerary which reflects the trip's City purpose; and

v. all solicitation for and reporting of travel-related expenses are made in accordance with Board Rules § 1-14.

(2) An elected official whose trip includes both City governmental activities and political activities may accept as a gift to the City travel-related expenses from a third party only to cover the percentage of the costs equal to the time spent on City governmental business. A public servant working in an agency or office headed by an elected official may accompany such elected official on a mixed-purpose trip and use his or her personal time for the political purposes of the trip, but may accept as a gift to the City travel-related expenses from a third party only to cover the percentage of the costs equal to the time spent on governmental business.

(3) A public servant may use his or her own funds and accrued leave for personal travel before or after a trip taken for a City purpose provided that:

- i. any increased or additional costs resulting from the personal travel are borne solely by the public servant; and
- ii. such personal travel receives agency head approval in advance.

(4) A public servant may not accept compensation for personal use from a common carrier for the voluntary or involuntary surrender of a seat on a trip taken for a City purpose. A public servant offered compensation for the surrender of the seat must:

- i. request the compensation offered be issued in a form payable or transferable to the City; and
- ii. transfer such compensation to the City.

- (5) A public servant may accept and use vouchers for food, accommodations, and ground transportation offered by a common carrier in connection with delayed City travel, provided that the public servant does not use his or her City position to obtain additional compensation from the common carrier.
- (6) A public servant may accumulate reward points or frequent flyer miles for personal use while traveling on City business, provided that the public servant does not make a travel selection based on receiving or increasing frequent reward points or flyer benefits that result in additional expense to the City.
- (7) For the purposes of this subdivision, agency head approval must be by the head of the agency served by the public servant, or by a deputy mayor if the public servant is an agency head. A public servant who is an elected official, including a District Attorney, is the agency head for the public servants employed by the official's agency or office. A public servant who is an elected official, including a District Attorney, may provide agency head approval for himself or herself.

NEW YORK CITY LAW DEPARTMENT

DIVISION OF LEGAL COUNSEL

100 CHURCH STREET

NEW YORK, NY 10007

212-356-4028

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Proposed rules regarding gifts of travel-related expenses

REFERENCE NUMBER: 2020 RG 003

RULEMAKING AGENCY: Conflicts of Interest Board

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN

Date: January 21, 2020

Acting Corporation Counsel

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Proposed rules regarding gifts of travel-related expenses

REFERENCE NUMBER: COIB-15

RULEMAKING AGENCY: Conflicts of Interest Board

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Upasna Saha
Mayor's Office of Operations

January 24, 2020
Date

**Testimony to the New York City Conflicts of Interest Board (COIB)
on Proposed Rules Regarding Gifts of Travel**

March 6, 2020

Good afternoon Chair Briffault and members of the Conflicts of Interest Board (COIB). My name is Tom Speaker, and I am a Policy Analyst for Reinvent Albany. We advocate for open and accountable New York government.

Today we are testifying on changes being made to Board Rule §1-01(h) regarding gifts of travel.

Reinvent Albany supports many of the proposed changes to §1-01(h), which provide much-needed clarity on how public servants should handle vouchers and trips paid for by third parties. The additions to §1-01(h)(1) in particular will be useful for ensuring public servants seek permission for third-party-funded travel, and help them better determine what constitutes an acceptable use of third-party funds for public business.

Our testimony today makes three major recommendations to further strengthen the rules:

- 1. Prohibit elected officials from receiving corporate or nonprofit funding for City travel**
- 2. Require public servants to receive approval from COIB for all travel funded by third parties**
- 3. Require public servants to transfer all frequent flyer miles acquired through official business to the City**

1. Prohibit elected officials from receiving corporate or nonprofit funding for City travel

Reinvent Albany opposes the provisions under §1-01(h)(2) allowing elected officials to receive corporate or nonprofit funding for City travel. We believe this is a considerable risk for abuse and that elected officials should be required to pay for such travel with personal or campaign funds.

Third-party-funded travel already creates a corruption risk as funders could easily exploit the good will they've accumulated with elected officials to later influence City policy or have their past behavior rewarded. Even if the travel is treated as a "gift to the City," elected officials still get to enjoy hotels, catering, and sightseeing that might impact their future decisions. New York City has already seen conflicts arise when officials have had travel paid for by companies, such as when voting machine company Election Systems & Software paid for NYC Board of Elections executive director Michael Ryan's travel while he served on the company's advisory board.¹

Travel funded by other city or state governments should be permitted as it allows for collaboration and learning opportunities, but COIB should prohibit corporate and nonprofit funding for all City travel by elected officials.

2. Require public servants to receive approval from COIB for all travel funded by third parties

We urge COIB to require Board approval for *all* public travel that involves third-party funding for public servants (including agency heads), rather than allowing officials to approve their staff's and their own travel as proposed under §1-01(h)(1)(iv) and §1-01(h)(7). We recognize that this may create an additional workload for COIB staff but believe such a process would better protect the City from pay-to-play.

§1-01(h)(7) effectively allows agency heads to oversee their own conflicts of interest, a practice with a concerning history. JCOPE once allowed Joe Lhota to oversee his own conflicts when he served both as Chair of the MTA Board and a director on the board of the Madison Square Garden Company, despite the extensive dealings between the two

¹ Courtney, Gross. "NYC Board of Elections Boss Resigns from Voting Machine Advisory Board After NY1 Investigation." December 11, 2018. *Spectrum News NY1*.
<https://www.ny1.com/nyc/all-boroughs/politics/2018/12/12/mike-ryan-board-of-elections-executive-director-resigns-from-election-systems-and-software-es-s-advisory-board>

entities. Within a year, JCOPE determined that Lhota could not continue his position at the MTA, as there was no way to resolve the conflict.²

Given the risks involved, public servants should have to provide detailed itineraries and receive COIB approval for *all* third-party funded travel, with such approval made public in advance of trips.

3. Require public servants to transfer all frequent flyer miles acquired through official business to the City

§1-01(h)(6) provides that public servants are allowed to collect frequent flyer miles for trips taken on public business, on the basis that banning the accrual of miles would be too difficult to administer. Reinvent Albany believes that public servants should be required to transfer frequent flyer miles to the City when possible.

We understand that there are hurdles in enforcing such a rule, but the Board's other proposed rule prohibiting compensation for surrendered seats will be similarly difficult to enforce. We are also concerned about public servants exploiting the revised rule for their personal benefit: Former Assembly Speaker Sheldon Silver was known to use public funds to fly from New York City to Albany through the District of Columbia and accumulate more frequent flyer miles. During his tenure, Silver used at least \$20,000 in taxpayer funds to collect 200,000 miles.³

Administrative hurdles have not stopped other states from banning the personal use of frequent flyer miles accrued through public business. As COIB notes in Advisory Opinion 2006-05, Ohio bans personal use of frequent flyer miles gained through public business.⁴ At the very least, New York City could follow Hawaii and require public servants to transfer frequent flyer miles acquired on official business to the City unless technically impossible. If states around the country have stronger restrictions, we do not see why New York City cannot as well.

Thank you for the opportunity to testify today. I welcome any questions you may have.

² Rubinstein, Dana, "Potential conflicts of interest the real reason Lhota left the MTA." *Politico New York*, July 30, 2019. <https://www.politico.com/states/new-york/albany/story/2019/07/30/potential-conflicts-of-interest-the-real-reason-lhota-left-the-mta-1122198>

³ Giove, Candice M. "Sheldon Silver goes out of his way to bank frequent flyer miles – and you pay for it." *New York Post*, August 11, 2013. <https://nypost.com/2013/08/11/sheldon-silver-goes-out-of-his-way-to-bank-frequent-flier-miles-and-you-pay-for-it/>

⁴ Conflicts of Interest Board. "Advisory Opinion No. 2006-05." August 24, 2006. https://www1.nyc.gov/assets/coib/downloads/pdf5/aos/2004-2013/AO2006_05.pdf

New York City Conflicts of Interest Board

Notice of Public Hearing and Opportunity to Comment on Proposed Adoption of Final Rules Regarding Gifts of Travel-Related Expenses

~~What are we proposing?~~ The NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE NEW YORK CITY CONFLICTS OF INTEREST BOARD by Sections 1043, 2603(a), 2603(c)(4), and 2604(b)(5) of the City Charter, that the Conflicts of Interest Board ~~is proposing to amend~~ has adopted Board Rules amending its rules governing the acceptance of gifts by public servants.

~~When~~ The proposed Rules were published in the City Record on January 31, 2020, and ~~where is the Hearing?~~ a public hearing was held on March 6, 2020. One comment was received. The Conflicts of Interest Board ~~will hold a public hearing on the proposed rule. The public hearing will take place at 3:00 p.m. on March 6, 2020. The hearing will be at Spector Hall at 22 Reade Street, New York, NY 10007.~~

This location has ~~now adopts~~ the following ~~accessibility option(s) available: wheelchair accessible~~ Rules.

~~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 Chad H. Gholizadeh at Rules@COIB.nyc.gov
- ~~• Mail.~~ You can mail comments to Chad H. Gholizadeh, Assistant 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 March 6, 2020. You can speak for up to three minutes.

~~Is there a deadline to submit comments?~~ Yes, you must submit written comments by March 6, 2020.

~~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) 437-0723. You must tell us by March 5, 2020.

~~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.~~

~~**What authorizes the Conflicts of Interest Board to make this rule?** Sections 1043, 2603(a), 2603(c)(4), and 2604(b)(5) of the City Charter authorize the Conflicts of Interest Board to make this proposed rule. This proposed rule was not included in the Conflicts of Interest Board's regulatory agenda for this Fiscal Year because it was not contemplated when the Conflicts of Interest Board published the agenda.~~

~~**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~~Statement of Basis and Purpose

In accordance with the mandate of City Charter § 2603(c)(4) for the Board to review all its advisory opinions and initiate rulemaking to adopt those with “interpretative value in construing provisions” of Chapter 68, the Board has been reviewing the 29 advisory opinions it has issued concerning public servants’ acceptance of gifts. In connection with this comprehensive review, the Board ~~proposes to amend~~amends Board Rules § 1-01(h), the exception to the “Valuable Gifts Rule” that permits a public servant to accept a gift of travel-related expenses for official City travel. Of the Board’s 29 advisory opinions regarding gifts, nine relate, at least in part, to the acceptance of gifts of travel-related expenses for official City travel. These nine opinions are the subject of this rulemaking: Advisory Opinion (“A.O.”) Nos. 1990-3; 1992-10; 1992-19; 1992-23; 1999-4; 2006-5; 2011-2; 2016-1; 2018-1.

City Charter § 2604(b)(5) and Board Rules § 1-01 provide that public servants are prohibited from accepting gifts of \$50.00 or more from any firm that the public servant knows is or intends to become engaged in business dealings with the City. Additionally, City Charter § 2604(b)(3) prohibits public servants from using their City position to obtain any financial gain or other private or personal advantage. The Board has consistently advised public servants that gifts given because of the public servant’s City position constitute a private or personal advantage and that their acceptance of such gifts would violate City Charter § 2604(b)(3). See A.O. No. 1990-3 (advising that receipt of a gift of travel to an elected official from a firm with no current City business, absent a clear City purpose, may give rise to an appearance that the gift was made to lobby or solicit the goodwill of the elected official); A.O. No. 1991-4 (advising that an elected official could not accept an honorarium for giving a speech, offered by a firm which at the time of the speech had not had City business dealings but subsequently acquired extensive City business, to avoid creating the appearance that the honorarium had been offered as a quid pro quo in return for the firm's getting City business); A.O. No. 1992-10 (advising that, in the absence of a government purpose for accepting a trip to a resort, an elected official's acceptance of the trip could create the appearance that he has received a valuable gift solely because of his official position

and the acceptance of the gift was therefore prohibited); A.O. No. 1992-23 (advising that an elected official could not accept two free tickets from a common carrier for travel to a destination outside of the State of New York because the official's acceptance of the tickets would create the appearance that he received a gift because of his official position); A.O. No. 1994-12 (advising that a public servant could not accept a ceremonial sword presented to him as a personal gift from a restaurant and entertainment center located outside of the City after he participated in a ribbon cutting ceremony as a representative of the City because it would create the appearance that the public servant used his official position for private gain); A.O. No. 2000-4 (advising that it would violate Section 2604(b)(3) for members of an elected official's staff to solicit access to purchase or receive tickets that are limited or to which they are provided special access because of their public office).

Existing

The previous version of Board Rules § 1-01(h)—~~unchanged since it was first~~ promulgated in 1990—~~provides~~provided that gifts of travel-related expenses may be accepted as gifts to the City if (1) the trip is for a City purpose and therefore could properly be paid for with City funds; (2) the travel arrangements are appropriate to that purpose; and (3) the trip is no longer than reasonably necessary to accomplish the business that is its purpose. This exception ~~allows~~allowed public servants to attend meetings and conferences that, if the City were required to use its own funds, they might be unable to attend. ~~The proposed~~These amendments to Board Rules § 1-01(h) ~~would refine~~refined the standard for a public servant's acceptance of travel-related expenses from a third party by adding factors to be analyzed and codifying advice provided to public servants in its series of relevant advisory opinions.

In ~~proposed~~ Board Rules § 1-01(h)(1), the Board ~~would retain~~retains the three requirements of ~~existing~~the previous version of Board Rules § 1-01(h) and ~~would add~~adds two additional requirements. First, the public servant must receive prior written approval from his or her agency head upon the presentation of a detailed itinerary. While ~~existing~~previous Board Rules § 1-01(h) merely ~~recommends~~recommended that the public servant obtain written agency head approval in advance to avoid an appearance of impropriety, the Board has consistently advised public servants to seek such approval to provide much needed oversight. See A.O. No. 2011-2 (advising that in order to review a request to accept the gift of travel expenses the Board expects to receive a detailed itinerary of the trip); A.O. No. 1992-19 (advising the Acting Director of the Mayor's Office of Film, Theater and Broadcasting that she could accept the gift of travel-expenses to the Cannes International Film Festival because the trip had a City purpose of promoting film production in the City and had been approved in writing by the Deputy Mayor). Second, any solicitation of travel-related expenses must be made in compliance with the rules governing official fundraising, codified at Board Rules § 1-14. This means that a public servant may solicit an entity to pay for travel undertaken by that agency's employees, or himself or herself, even if that entity has business dealings with that City agency, provided that: (1) the entity receiving the solicitation does not have a particular matter pending before the soliciting public servant; and (2) donations from that entity to the City agency, including payment of travel-related expenses, cumulatively amounting to \$5,000 or more in any calendar year are reported in the manner required by Board Rules § 1-14.

In ~~proposed~~ Board Rules § 1-01(h)(2), the Board ~~would codify~~codifies the advice provided to an elected official in A.O. No. 2016-1 that the official could not accept a gift of travel-related expenses for the portion of time spent during the trip on political activity. Just as an elected official

could not spend City funds to travel to attend a political event, so too would an elected official be prohibited from using funds accepted as a gift to the City to fund his or her political activities. Costs for mixed-purpose travel must be allocated between its governmental and political purposes, and the official may accept payment only for the cost allocated to the governmental purposes. See A.O. No. 2016-1 at 6. For example, if an elected official spends eight hours on governmental activity on a particular trip, with two other hours devoted to political activity, the official could accept payment from a third party for only 80% of the cost of the total travel expenses associated with the trip. Id. As it did in A.O. No. 2016-1, the Board ~~would continue~~continues to limit this provision to elected officials, recognizing elected officials' broader responsibilities, distinct from those of non-elected public servants, and the fact that those responsibilities are rarely limited by the traditional City workday.

~~Proposed~~

Board Rules § 1-01(h)(3) ~~would codify~~codifies the Board's longstanding informal advice that a public servant who accepts a gift of travel-related expenses for governmental business may use his or her accrued leave and personal funds for personal travel before or after the City trip. ~~Proposed~~ Board Rules § 1-01(h)(4) and 1-01(h)(5) ~~would~~ codify advice provided in A.O. No. 2018-1 that a public servant was permitted to accept vouchers offered by an airline for food, accommodations, and ground transportation in connection with delayed City travel but was not permitted to accept additional compensation. Here, the Board ~~would expand~~expands its prior advice to encompass all forms of travel, not just airline. In ~~proposed~~ Board Rules § 1-01(h)(6), the Board ~~would codify~~codifies advice provided in A.O. No. 2006-5 permitting public servants to accrue frequent flyer miles during City travel provided that they do not choose travel arrangements designed to inflate the public servant's frequent flyer benefits at additional expense to the City.

New material is underlined.

Section 1. Section 1-01(h) of Chapter 1 of Title 53 of the Rules of the City of New York is REPEALED and a new subdivision (h) of such section is added to read as follows:

(h) Travel and Travel-Related Expenses

- (1) For the purposes of Charter § 2604(b)(3) and Charter § 2604(b)(5), a public servant may accept travel-related expenses from a third party as a gift to the City provided that the following conditions are met:
 - i. the trip is for a City purpose and therefore could properly be paid for with City funds;
 - ii. the travel arrangements are appropriate to that purpose;
 - iii. the trip is no longer than reasonably necessary to accomplish the governmental business which is its City purpose;
 - iv. the public servant received agency head approval in advance upon presenting such agency head with a detailed itinerary which reflects the trip's City purpose; and
 - v. all solicitation for and reporting of travel-related expenses are made in accordance with Board Rules § 1-14.
- (2) An elected official whose trip includes both City governmental activities and political activities may accept as a gift to the City travel-related expenses from a

third party only to cover the percentage of the costs equal to the time spent on City governmental business. A public servant working in an agency or office headed by an elected official may accompany such elected official on a mixed-purpose trip and use his or her personal time for the political purposes of the trip, but may accept as a gift to the City travel-related expenses from a third party only to cover the percentage of the costs equal to the time spent on governmental business.

- (3) A public servant may use his or her own funds and accrued leave for personal travel before or after a trip taken for a City purpose provided that:

 - i. any increased or additional costs resulting from the personal travel are borne solely by the public servant; and
 - ii. such personal travel receives agency head approval in advance.
- (4) A public servant may not accept compensation for personal use from a common carrier for the voluntary or involuntary surrender of a seat on a trip taken for a City purpose. A public servant offered compensation for the surrender of the seat must:

 - i. request the compensation offered be issued in a form payable or transferable to the City; and
 - ii. transfer such compensation to the City.
- (5) A public servant may accept and use vouchers for food, accommodations, and ground transportation offered by a common carrier in connection with delayed City travel, provided that the public servant does not use his or her City position to obtain additional compensation from the common carrier.
- (6) A public servant may accumulate reward points or frequent flyer miles for personal use while traveling on City business, provided that the public servant does not make a travel selection based on receiving or increasing frequent reward points or flyer benefits that result in additional expense to the City.
- (7) For the purposes of this subdivision, agency head approval must be by the head of the agency served by the public servant, or by a deputy mayor if the public servant is an agency head. A public servant who is an elected official, including a District Attorney, is the agency head for the public servants employed by the official's agency or office. A public servant who is an elected official, including a District Attorney, may provide agency head approval for himself or herself.

New York City Conflicts of Interest Board

Notice of Adoption of Final Rules

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE NEW YORK CITY CONFLICTS OF INTEREST BOARD by Sections 1043, 2603(a), 2603(c)(4), and 2604(b)(5) of the City Charter, that the Conflicts of Interest Board has adopted Board Rules amending its rules governing the acceptance of gifts by public servants.

The proposed Rules were published in the City Record on January 31, 2020, and a public hearing was held on March 6, 2020. One comment was received. The Conflicts of Interest Board now adopts the following Rules.

Statement of Basis and Purpose

In accordance with the mandate of City Charter § 2603(c)(4) for the Board to review all its advisory opinions and initiate rulemaking to adopt those with “interpretative value in construing provisions” of Chapter 68, the Board has been reviewing the 29 advisory opinions it has issued concerning public servants’ acceptance of gifts. In connection with this comprehensive review, the Board amends Board Rules § 1-01(h), the exception to the “Valuable Gifts Rule” that permits a public servant to accept a gift of travel-related expenses for official City travel. Of the Board’s 29 advisory opinions regarding gifts, nine relate, at least in part, to the acceptance of gifts of travel-related expenses for official City travel. These nine opinions are the subject of this rulemaking: Advisory Opinion (“A.O.”) Nos. 1990-3; 1992-10; 1992-19; 1992-23; 1999-4; 2006-5; 2011-2; 2016-1; 2018-1.

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The previous version of Board Rules § 1-01(h)—first promulgated in 1990—provided that gifts of travel-related expenses may be accepted as gifts to the City if (1) the trip is for a City purpose and therefore could properly be paid for with City funds; (2) the travel arrangements are appropriate to that purpose; and (3) the trip is no longer than reasonably necessary to accomplish the business that is its purpose. This exception allowed public servants to attend meetings and conferences that, if the City were required to use its own funds, they might be unable to attend. These amendments to Board Rules § 1-01(h) refined the standard for a public servant's acceptance of travel-related expenses from a third party by adding factors to be analyzed and codifying advice provided to public servants in its series of relevant advisory opinions.

In Board Rules § 1-01(h)(1), the Board retains the three requirements of the previous version of Board Rules § 1-01(h) and adds two additional requirements. First, the public servant must receive prior written approval from his or her agency head upon the presentation of a detailed itinerary. While previous Board Rules § 1-01(h) merely recommended that the public servant obtain written agency head approval in advance to avoid an appearance of impropriety, the Board has consistently advised public servants to seek such approval to provide much needed oversight. See A.O. No. 2011-2 (advising that in order to review a request to accept the gift of travel expenses the Board expects to receive a detailed itinerary of the trip); A.O. No. 1992-19 (advising the Acting Director of the Mayor's Office of Film, Theater and Broadcasting that she could accept the gift of travel-expenses to the Cannes International Film Festival because the trip had a City purpose of promoting film production in the City and had been approved in writing by the Deputy Mayor). Second, any solicitation of travel-related expenses must be made in compliance with the rules governing official fundraising, codified at Board Rules § 1-14. This means that a public servant may solicit an entity to pay for travel undertaken by that agency's employees, or himself or herself, even if that entity has business dealings with that City agency, provided that: (1) the entity receiving the solicitation does not have a particular matter pending before the soliciting public servant; and (2) donations from that entity to the City agency, including payment of travel-related expenses, cumulatively amounting to \$5,000 or more in any calendar year are reported in the manner required by Board Rules § 1-14.

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governmental activity on a particular trip, with two other hours devoted to political activity, the official could accept payment from a third party for only 80% of the cost of the total travel expenses associated with the trip. Id. As it did in A.O. No. 2016-1, the Board continues to limit this provision to elected officials, recognizing elected officials' broader responsibilities, distinct from those of non-elected public servants, and the fact that those responsibilities are rarely limited by the traditional City workday.

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