

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