

May 14, 2020 Agenda – Open Meeting Matter

To: The Board

From: Christopher M. Hammer *cmh*

Date: March 13, 2020

Re: Proposed Amendments to Board Rules § 1-09: City Planning Commissioners

Charter § 192(b), adopted by the voters in November 1989, provides: “No member [of the New York City Planning Commission (the “Commission”)], while serving as a member, shall appear directly or indirectly before the department [of City Planning], the commission, or any other city agency for which the conflicts of interest board shall, by rule, determine such appearance creates a conflict of interest with the duties and responsibilities of the member.” Accordingly, in 1992, the Board adopted Board Rules § 1-09, identifying those “other City agencies” that are so involved in the City’s system of land use regulation to create a substantial risk that a Commission member appearing before those agencies or offices would use, or appear to be using, his or her Commission position to advance his or her own interests or the interests of private clients. Current Board Rules § 1-09 is attached as **Exhibit 1**. In the subsequent 28 years, a number of these “other City agencies” have changed their names, ceased to exist, or otherwise been reorganized, necessitating some maintenance of the rule and providing an opportunity to improve the rule’s clarity. Accordingly, the proposed amendments would: (1) remove definitional sections contained in Board Rules § 1-09(a) because they do not apply uniquely to the Commission; (2) organize the prohibitions into a more user-friendly format; and (3) update the agency names that have been changed in the intervening years. The proposed amendments make no substantive changes to the rule.

The Draft Notice of Public Hearing and Opportunity to Comment, attached as **Exhibit 2**, has been informally reviewed by the New York City Law Department. Staff has also consulted with the General Counsel of the New York City Department of City Planning, who was generally supportive of the scope of the existing rule. With the Board's approval, Staff will formally submit the new Board Rules to the Law Department and the Mayor's Office of Operations, as required by the City Administrative Procedure Act. See Charter § 1043(d).

§ 1-09 Prohibited Appearances Before City Agencies by City Planning Commissioners.

(a) Definitions.

Appear.

“Appear,” in accordance with Charter Section 2601(4), means to make any communication, for compensation, other than those involving ministerial matters.

Indirect Appearance.

A member of the Commission will be deemed to “appear indirectly” before a City agency concerning a particular matter if he or she communicates indirectly with such agency, by, for example, having another person, including but not limited to a member of the Commissioner’s firm, represent to the agency orally or in writing what the Commissioner’s views are on such matter. An indirect appearance will not include, in and of itself and without more, the presentation of project plans or documents bearing the Commissioner’s name or seal.

Ministerial.

A “ministerial” matter, in accordance with Charter Section 2601(15), shall mean an administrative act, including the issuance of a license, permit or other permission by the City which is carried out in a prescribed manner and which does not involve substantial personal discretion.

(b) Prohibited appearances.

- (1) For the purposes of Charter Section 192(b), no member of the City Planning Commission (the Commission) while serving as a member, shall appear directly or indirectly before: the Mayor and Deputy Mayors and their staffs; the Mayor's Office of Planning and Coordination; the offices of the Borough Presidents; the City Council; community boards; the Art Commission; the Office of Environmental Coordination; the Landmarks Preservation Commission; and the Hardship Appeals Panel to which certain determinations of the Landmarks Preservation Commission may be appealed.
- (2) For the purposes of Charter Section 192(b), no member of the Commission, while serving as a member, shall appear directly or indirectly:
 - (i) before the Department of Buildings on any matter involving zoning or land use, provided that a member of the Commission shall not be barred from filing plans with the Department of Buildings or from making appearances related to the filing of such plans, except that appearances in reconsideration proceedings before a borough supervisor or the Commissioner of the Department of Buildings shall be prohibited;
 - (ii) before the Board of Standards and Appeals on any matter involving zoning or land use;

- (iii) before the Department of Consumer Affairs with respect to licenses and permits which involve land use;
- (iv) before the Department of Business Services (DBS), and any local development corporation that has entered into a contract with the City to perform services on behalf of DBS, on any matter involving zoning or land use;
- (v) before any City agency with respect to planning, environmental, financial or other aspects of a project that can reasonably be expected to come before the Commission for a statutory approval or other formal action, including, but not limited to action on major concessions, franchises, the acquisition, use or disposition of City-owned land, an application for a zoning change or special permit, or any action before the Commission pursuant to the Uniform Land Use Review Procedure.

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New York City Conflicts of Interest Board

Notice of Public Hearing and Opportunity to Comment on Proposed Rules Regarding City Planning Commissioners

What are we proposing? The Conflicts of Interest Board proposes to amend its rules regarding City Planning Commissioners.

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) 437-0730. 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 192(b),
2 1043, and 2603(a) of the City Charter authorize the Conflicts of Interest Board to make this
3 proposed rule. This proposed rule was not included in the Conflicts of Interest Board’s regulatory
4 agenda for this Fiscal Year because it was not anticipated to be a subject of rulemaking at that
5 time.

6
7 **Where can I find the Conflicts of Interest Board’s rules?** The Conflicts of Interest
8 Board’s 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
11 the requirements of Section 1043 of the City Charter when creating or changing rules. This notice
12 is made according to the requirements of Section 1043 of the City Charter.
13

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

15 The City Planning Commission (the “Commission”) is comprised of thirteen members,
16 including a Chair who serves as a regular employee of the City. Pursuant to City Charter § 192(b),
17 Commission members are prohibited from appearing, directly or indirectly, before the
18 Commission, the Department of City Planning, “or any other city agency for which the conflicts
19 of interest board shall, by rule, determine such appearance creates a conflict of interest with the
20 duties and responsibilities of the member.” Pursuant to City Charter § 192(b), the Board adopted
21 Board Rules § 1-09 in 1992 to identify the City agencies before which a Commission member’s
22 appearance would pose a conflict. The Board notes, in accordance with City Charter § 2603(c)(4),
23 that two advisory opinions, A.O. Nos. 1993-32 and 2007-2, are straightforward applications of
24 Board Rules § 1-09, requiring no codification into a rule.

25 The Board now proposes to update and clarify the rule. The proposed amendments would:
26 (1) remove the definitional sections contained in Board Rules § 1-09(a), which are not unique to
27 the Commission: City Charter § 2601(4) (“Appear”), § 2601(15) (“Ministerial”), and § 2604(b)(6)
28 (“Indirect Appearance”); (2) organize the prohibitions into a more user-friendly format; and (3)

1 update the agency names that have been changed in the intervening years. The agency names are
2 deleted or revised as follows:

- 3 • The reference to the Mayor's Office of Planning and Coordination has been deleted,
4 as such office has ceased to exist.
- 5 • The Art Commission has been designated, by Executive Order No. 119 of 2008, as
6 the Public Design Commission.
- 7 • The Department of Business Services has become the Department of Small
8 Business Services (Local Law 34 of 2002).
- 9 • Reference to the Hardship Appeals Panel has been deleted for two reasons: first, no
10 person has been appointed to serve on the Hardship Appeals Panel since its creation
11 (Local Law 70 of 1991) as § 3021 of City Charter Chapter 74. Second, because the
12 Hardship Appeals Panel is part of the same Charter chapter establishing the New
13 York City Landmarks Preservation Commission, the proposed Board Rules § 1-
14 09(a)(7) would already prohibit any appearances before the Hardship Appeals
15 Panel.

16
17 New material is underlined. [Deleted material is bracketed.]

18 **Section 1.** Section 1-09 of Chapter 1 of Title 53 of the Rules of the City of New York is
19 REPEALED and a new Section 1-09 is added to read as follows:

20 §1-09 **Prohibited Appearances Before City Agencies by City Planning**
21 **Commissioners.**
22

23 (a) For the purposes of Charter Section 192(b), no member of the City Planning
24 Commission shall appear directly or indirectly on any matter before:
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26 (1) the Mayor, Deputy Mayor, and their staffs;

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2 (2) the Mayor's Office of Environmental Coordination;

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4 (3) the offices of the Borough Presidents;

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6 (4) the City Council, including any individual Council Members and their
7 staffs;

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9 (5) Community Boards;

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11 (6) the Public Design Commission; and

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13 (7) the Landmarks Preservation Commission.

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15 (b) For the purposes of Charter Section 192(b), no member of the Commission shall
16 appear directly or indirectly on any matter involving zoning or land use before:

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18 (1) the Department of Buildings, provided that a member of the Commission
19 shall not be barred from filing plans with the Department of Buildings or
20 from making appearances related to the filing of such plans, except that
21 appearances in reconsideration proceedings before a Borough
22 Commissioner, the Commissioner, or a Deputy Commissioner of the
23 Department of Buildings shall be prohibited;

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25 (2) the Board of Standards and Appeals;

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27 (3) the Department of Consumer Affairs; and

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29 (4) the Department of Small Business Services and any local development
30 corporation that has entered into a contract with the City to perform services
31 on behalf of the Department of Small Business Services.

32
33 (c) For the purposes of Charter Section 192(b), no member of the Commission shall
34 appear before any City agency with respect to planning, environmental, financial
35 or other aspects of a matter that can reasonably be expected to come before the
36 Commission for approval or other formal action, including, but not limited to, the
37 acquisition or disposition of City-owned land; an application for a zoning change
38 or special permit; action pursuant to the Uniform Land Use Review Procedure; or
39 action on major concessions and franchises.

Chris Hammer

From: Chris Hammer
Sent: Tuesday, May 12, 2020 4:50 PM
To: 'Anthony Crowell'; 'Fernando A. Bohorquez, Jr.'; 'Jeffrey D. Friedlander'; 'Nisha Agarwal'; 'Wayne G. Hawley'
Cc: Carolyn Miller (miller@coib.nyc.gov); Ethan Carrier (Carrier@coib.nyc.gov)
Subject: Open Meeting Item A-2: Proposed Amendments to Board Rules Section 1-09
Attachments: 2020-05-12 revised Exhibit 2 (Board Rules Section 1-09).docx

Good afternoon, Board Members:

Staff has received three questions from a Board Member regarding proposed Board Rules Section 1-09. Staff summarizes those questions, as well as its responses.

First, the Board Member asked whether the proposed rule, which removes the definitions of “appear,” “indirect appearance,” and “ministerial,” should retain the definition of “appear.” Staff responded that the Board’s approach to drafting rules has been for the Board Rules to supplement and interpret Charter provisions, but not to repeat them where no additional interpretation is provided. For example, the Board removed provisions duplicative of Chapter 68 in its head-to-toe overhaul of the Enforcement Procedures in Board Rules Chapter 2. In light of the City Administrative Procedure Act’s requirement that rules be simply written and use ordinary language, Staff has received similar feedback on keeping the Rules as short and streamlined as possible from both the Law Department and the Mayor’s Office of Operations, whose review and approval is required under CAPA.

The Board Rules and Charter provisions thus are understood holistically, with each doing their limited jobs. Of course, it’s important that the regulated parties—here, the twelve part-time City Planning Commissioners—know their responsibilities under Chapter 68. In Staff’s view, the place to provide information about the definitions contained in the Charter is not in the Rule itself but in educational materials—whether waivers, advice letters, advisory opinions, or informal advice.

Second, the Board Member asked about the reference to the Board of Standards and Appeals (“BSA”) in the rule, which prohibits appearances before BSA “on any matter involving zoning or land use.” The Board Member asked whether, BSA handles any non-zoning or land use matters, which staff answered “yes”: Charter Section 666 gives BSA the authority to review any order by the DOB or FDNY Commissioner, including the revocation of a Certificate of Occupancy.

Third, the Board Member asked whether the rule prohibits a CPC member from appearing before a business improvement district (“BID”) on a matter of zoning and land use, given the rule’s reference to local development corporations that contract with the City to perform services on behalf of the Department of Small Business Services (“SBS”). Staff also answered this question “yes,” after confirming that the Department of City Planning has a similar understanding of the existing rule. Staff proposes to clarify the rule to make an explicit reference to BIDs in both the Statement of Basis and Purpose and the proposed rule. The attachment contains these edits in tracked changes format.

We look forward to discussion at Thursday’s Open Meeting.

Sincerely,
Chris

Christopher M. Hammer

Deputy General Counsel
New York City Conflicts of Interest Board
2 Lafayette Street, Suite 1010
New York, New York 10007
hammer@coib.nyc.gov
(212) 437-0721 (direct line)

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- 9 • Reference to local development corporations that contract with the Department of
10 Small Business Services has been clarified to include business improvement
11 districts.

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