

July 14, 2020, Agenda - Open Meeting Matter

To: The Board

From: Julia H. Lee

Date: May 22, 2020

Re: Proposed Amendments to Board Rules §§ 4-01, 4-02, and 4-03: Annual Disclosure

In 1992, 2001, and 2004, the Board promulgated Board Rules §§ 4-01, 4-02, and 4-03 to address how filers can obtain an extension of time to file the report; how long reports are retained by the Board; and the policymaker criteria for filing, respectively. In the intervening decades, the filing process has changed significantly, most notably transitioning from the paper filing of reports to electronic filing. As a result, many of the practices and procedures outlined in these rules are outdated and impracticable. Accordingly, the proposed amendments to Board Rules §§ 4-01, 4-02, and 4-03 would codify current annual disclosure filing procedures and terminology and eliminate provisions that are no longer relevant in order to provide accurate directions to filers.

The Draft Notice of Public Hearing and Opportunity to Comment has been informally reviewed by the New York City Law Department. With the Board's approval, these proposed amendments will be submitted to the Law Department and Mayor's Office of Operations, as required by the City Administrative Procedure Act. See Charter Section 1043(d).

Attached are the following:

- 1) Current Board Rules §§ 4-01, 4-02, and 4-03 (Exhibit 1); and
- 2) Draft Notice of Public Hearing and Opportunity to Comment (Exhibit 2).

§4-01 Procedures for Obtaining an Extension of Time within Which to File a Financial Disclosure Report.

(a) Bases for obtaining an extension of time to file.

(1) A person required to file a financial disclosure report with the Conflicts of Interest Board (the "Board") pursuant to §12-110 of the Administrative Code of the City of New York (the "Administrative Code") may be granted an extension of time within which to file a report or portion thereof upon a showing of justifiable cause or undue hardship.

(2) A finding of justifiable cause or undue hardship shall not be based on periods of annual leave, attendance at conferences or meetings, or other pre-scheduled or voluntary absences from work.

(b) General procedures.

(1) A request for an extension of time within which to file a financial disclosure report or portions thereof which is due by May first shall be postmarked, or delivery made to the Board, no later than April fifteenth of the year in which such report is to be filed. Where Administrative Code §12-110 requires the filing of such report at a time other than on or before May first, a request for extension of time within which to file shall be postmarked, or delivery made to the Board, no later than fifteen days prior to such filing deadline.

(2) The request for an extension of time shall be mailed to the Board by certified mail or shall be delivered by hand and, upon request, a receipt may be issued upon acceptance of such delivery.

(3) The request for an extension of time within which to file a financial disclosure report or portions thereof due to justifiable cause or undue hardship shall contain the following information:

(i) The name of the person making such request and his or her home address and work address;

(ii) The title of the position or job classification and name of the agency by which he or she is employed;

(iii) Explanation of justifiable cause or undue hardship in the form of a written statement with copies of any necessary supporting documents such person wishes the Board to consider;

(iv) Where the filer is seeking an extension answer a portion of the report on the grounds that certain information is not yet available, the request shall state what information is not available. Documentation, if available, shall be provided in support of such request (for example, a copy of an application to the Internal Revenue Service for an automatic extension of time within which to file one's income tax return); and

(v) The additional time requested and the date by which such person intends to comply with the filing requirements.

(c) Time limitations upon extensions.

(1) The Board shall not grant an extension of time to file a financial disclosure report or portions thereof due to justifiable cause or undue hardship for a period greater than four months from the original date the report was due.

(2) An individual who is seeking an extension of time to answer a portion of the financial disclosure report shall nevertheless file his or her report on or before May first, or at such other time required by Administrative Code §12-110, containing all the information required by such report, except for that information not previously available shall be filed on the date set by the Board. Failure to file such supplemental statement, or the filing of an incomplete or deficient supplemental statement, shall subject the reporting person to the penalties set forth in Administrative Code §12-110(h).

(d) Board action.

(1) Upon receipt of a timely request for an extension of time within which to file a financial disclosure report or portions thereof, the Board shall review the material filed to determine whether an extension is appropriate.

(2) The Board may in its discretion request, in writing, additional information from the person making the request. Such additional information shall be submitted to the Board within ten business days of the date of the Board's request. In the event the Board does not receive the additional information within ten business days, it may make a determination on the basis of the information it has available.

(3) The Board shall give written notice of its determination to the person making the request.

(i) In the event the request for an extension of time within which to file a financial disclosure report or portions thereof is approved, such report shall be filed on or before the date indicated by the Board in its determination.

(ii) In the event the request for an extension of time within which to file a financial disclosure report or portions thereof is denied, such report shall be filed before or on the due date set forth in Administrative Code §12-110 or such date as may thereafter be established by the Board in its determination.

(4) The Board may delegate to its Executive Director the authority to act pursuant to this rule.

§4-02 Retention of Financial Disclosure Reports.

(a) Definitions.

As used in this Rule, the following terms shall have the respective meanings set forth below:

(1) "Administrative Code" shall mean the Administrative Code of the City of New York.

(2) "Board" shall mean the New York City Conflicts of Interest Board, established pursuant to §2602 of the New York City Charter.

(3) "Financial Disclosure Report" shall mean any financial disclosure report filed or on file with the Board pursuant to §12-110 of the Administrative Code, including reports previously filed with the Office of the City Clerk and transferred to the Board's custody.

(4) "Prior Financial Disclosure Report" shall mean any Financial Disclosure Report which, as of the effective date of this Rule, has been retained by the Board for a period in excess of six years from December 31 of the calendar year to which such Report relates.

(b) Retention of Financial Disclosure Reports.

(1) Whenever a Financial Disclosure Report is filed with the Board, it shall be retained by the Board for a period commencing on the date such Report was filed with the Board and expiring on the sixth anniversary of December 31 of the calendar year to which such Report relates. The period during which the Board is required to retain a Financial Disclosure Report, pursuant to this paragraph (1), is hereinafter referred to as the "Required Retention Period" for such Report.

(2) (i) Except as provided in subparagraphs (ii) and (iii) below, upon expiration of the Required Retention Period for Financial Disclosure Report, pursuant to paragraph (1) above, the Board shall either (i) destroy such report, or (ii) if requested by the individual who filed such report, return such report to such individual. Any request that the Board return such report must be made in writing to the Board not later than 10 days prior to the expiration of such period.

(ii) Notwithstanding the provisions of subparagraph (i), if a law enforcement agency requests that the Board retain a Financial Disclosure Report for an additional period of time beyond the expiration of its required retention period, for purposes of an ongoing investigation, the Board shall retain such report for such additional period, provided the request is made in writing and is submitted to the Board not later than 10 days prior to the expiration of such required retention period. Upon expiration of such additional period of time, the Board shall either (i) destroy such report, or (ii) if requested by the individual who filed such report, return such report to such individual. Any such request must be made in accordance with the provision of subparagraph (i) above.

(iii) Notwithstanding the provisions of subparagraph (i), all reports shall be retained by the Board for a period of not less than one year from the date such report was filed with the Board.

(3) In accordance with the provisions of subdivision (e) of Administrative Code §12-110, as amended by Local Law No. 93 of 1992, the retention period established in paragraph (1) is intended to supersede, and shall be observed by the Board in lieu of, the retention periods set forth in such subdivision (e).

(4) Notwithstanding any other provision of this section, the Board shall be entitled, upon the effective date of the Rule, to destroy immediately all Prior Financial Disclosure Reports then in its possession.

§4-03 City Employees Holding Policymaking Positions for Purposes of the Financial Disclosure Law

For purposes of Administrative Code §12-110(b)(3)(a)(3), a City employee shall be deemed to hold a policymaking position, and therefore be required to file a Financial Disclosure Report, if such employee is charged with substantial policy discretion within the meaning of Section 1-02 of Title 53 of the Rules of the City of New York.

New York City Conflicts of Interest Board

Notice of Public Hearing and Opportunity to Comment on Proposed Rules Regarding Annual Disclosure Reports

What are we proposing? The Conflicts of Interest Board proposes to amend its rules regarding the filing and retention of annual disclosure reports.

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 by videoconference at [] on [] and is accessible by:

- **Internet Video and Audio.** To access the hearing by Zoom, use the following URL: [].
- **Telephone.** To access the hearing by telephone, dial []. When prompted, use the following access code [] and password [].

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 Julia H. Lee, Special Counsel, at Rules@COIB.nyc.gov
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing may speak for up to three minutes. Please access the public hearing by Internet Video and Audio or by Telephone using the instructions above. It is recommended, but not required, that anyone who wants to comment sign up prior to the hearing by contacting the Conflicts of Interest Board by telephone at (212) 437-0730 or by email at lee@coib.nyc.gov.

Is there a deadline to submit comments? Yes, you must submit written comments by [].

This hearing has the following accessibility option(s) available: The Zoom platform accommodates screen reader software. Simultaneous transcription or a sign-language interpreter are available upon request.

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, including if you need a sign language interpreter or simultaneous transcription. You can tell us by email at lee@coib.nyc.gov or by telephone at (212) 437-0730. You must tell us by [].

1 **Can I review the comments made on the proposed rules?** You can review the comments made
2 online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. Copies of
3 all written comments, a summary of oral comments concerning the proposed rule, and the video
4 of the public hearing will be available as soon as practicable at
5 <https://www1.nyc.gov/site/coib/public-documents/open-meetings-and-public-hearings.page>.
6

7 **What authorizes the Conflicts of Interest Board to make this rule?** City Charter § 1043 and
8 New York City Administrative Code § 12-110(b)(2)(a) authorize the Conflicts of Interest Board
9 to amend these rules. These proposed rules were not included in the Conflicts of Interest Board's
10 regulatory agenda for this Fiscal Year because they were not contemplated when the Conflicts of
11 Interest Board published the agenda.
12

13 **Where can I find the Conflicts of Interest Board's rules?** The Conflicts of Interest Board's
14 rules are in Title 53 of the Rules of the City of New York.
15

16 **What rules govern the rulemaking process?** The Conflicts of Interest Board must meet the
17 requirements of Section 1043 of the City Charter when promulgating or amending its rules. This
18 notice is made according to the requirements of Section 1043 of the City Charter.
19

20 **STATEMENT OF BASIS AND PURPOSE**

21 New York City Administrative Code § 12-110, the City's Annual Disclosure Law, requires
22 public servants who meet the filing criteria to file reports disclosing certain financial information
23 as well as certain information of their spouse or domestic partner and unemancipated children. In
24 1992, 2001, and 2004, the Board promulgated Board Rules § 4-01 (to address how filers can obtain
25 an extension of time to file the report); Board Rules § 4-02 (how long reports are retained by the
26 Board); and Board Rules § 4-03 (defining the policymaker criteria for filing), respectively. In the
27 intervening years since these rules were promulgated, the Board has transitioned from paper filing
28 to electronic filing of reports. The proposed amendments to Board Rules §§ 4-01, 4-02, and 4-03
29 reflect current annual disclosure filing procedures and terminology.
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1 *Proposed Board Rules § 4-01: Procedure for Requesting Extensions*

2 Filers have a four-week period within which to submit annual disclosure reports. Pursuant
3 to Administrative Code § 12-110(c)(4), filers who are unable to submit their reports during this
4 period can request an extension of time. Proposed Board Rules § 4-01 would allow filers to submit
5 extension requests in writing up to ten calendar days, rather than fifteen days, prior to the filing
6 deadline. With the advent of electronic filing, communications with filers have been conducted
7 by email, which has reduced the time needed to send, receive, review, and make determinations
8 on extension requests. As a result of these more expedient procedures, Board Rules § 4-01 would
9 provide filers an additional five days to make an extension request.

10 Under proposed Board Rules § 4-01, extensions would only be granted if there is a
11 justifiable cause or undue hardship that would prevent filers from completing the report during the
12 four-week filing period. For example, the Board may grant an extension of time to a filer who has
13 requested an extension of time to file a tax return with the Internal Revenue Service or to a filer
14 who has been on an extended medical leave of absence during the filing period. However, most
15 scheduled absences from work, such as vacation and attendance at conferences, or increases in
16 workloads do not qualify as justifiable causes or undue hardships warranting an extension of time,
17 unless there are extenuating circumstances. In the event that an extension is granted, the new filing
18 deadline would not be more than four months from the original filing deadline.

19
20 *Proposed Board Rules § 4-02: Retention of Annual Disclosure Reports*

21 Proposed Board Rules § 4-02 would maintain the current six-year retention period
22 (established by former Board Rules § 1-10 in accordance with Administrative Code § 12-110(f))
23 for all annual disclosure reports. The retention period would start on the date the report was filed

1 with the Board and end on the sixth anniversary of December 31 of the calendar year to which the
2 report relates. For example, a report filed in 2014 is available for public inspection up to and
3 including December 31, 2019. Proposed Board Rules § 4-02 would permit the Board to retain
4 reports beyond the six-year retention period only upon a timely request by a law enforcement
5 agency. The retention period would only be extended as necessary or until the law enforcement
6 matter is concluded.

7
8 *Proposed Board Rules § 4-03: Definition of Policymaker*

9 Following the amendment to Administrative Code § 12-110(b)(3)(a) by Local Law No. 43
10 of 2003 that added to the list of required filers those City employees holding a “policymaking
11 position,” Board Rules § 4-03 was promulgated in January 2004 to specify that those holding a
12 “policymaking position” are filers with substantial policy discretion as defined in Board Rules §
13 1-02. Proposed Board Rules § 4-03 would revise the definition of such term for consistency and
14 clarity.

15 **Text of Proposed Board Rules**

16 New material is underlined

17 [Deleted material is in brackets.]

18 Section 1. Board Rules §§ 4-01, 4-02, and 4-03 of Title 53 of the Rules of the City of New
19 York are REPEALED and new Board Rules §§ 4-01, 4-02, and 4-03 are promulgated to read as
20 follows:

21 **§ 4-01 Procedures for Obtaining an Extension of Time to File an Annual Disclosure Report.**

22 (a) For the purposes of Administrative Code § 12-110(c)(4), a request for an extension of
23 time within which to file an annual disclosure report must be made in writing, including by email,

1 and received by the Board no later than 10 calendar days prior to the filing deadline set by the
2 Board.

3 (b) The request for an extension of time must contain the following information:

4 (1) The name of the filer and the filer's City agency or public entity; and

5 (2) An explanation of justifiable cause or undue hardship that would warrant an extension,
6 accompanied by any supporting documentation. A justifiable cause or undue hardship shall
7 not be based on periods of annual leave, attendance at conferences or meetings, or other
8 scheduled or voluntary absences from work, unless there are extenuating circumstances
9 detailed in the request.

10 (c) The Board will review any timely request for an extension and give written notice to
11 the filer of its determination.

12 (d) If the request for an extension of time is approved, such report must be filed on or prior
13 to the new filing deadline set by the Board in its determination. The new filing deadline will not
14 be greater than four months from the original filing deadline set by the Board.

15 (e) If the request for an extension of time is denied, such report must be filed by the original
16 filing deadline set by the Board.

17
18 **§4-02 Retention of Annual Disclosure Reports.**

19 (a) For the purposes of Administrative Code § 12-110(f), the Board will retain each annual
20 disclosure report filed with the Board for six years after the calendar year to which such report
21 relates.

22 (b) The Board will retain an annual disclosure report beyond the six-year retention period
23 at the request of the Department of Investigation or any governmental unit, or component thereof,
24 that performs as one of its principal functions any activity pertaining to the enforcement of criminal
25 laws. Such request must be made in writing and received by the Board no later than 10 calendar
26 days prior to the expiration of the six-year retention period. The Board will retain the report only
27 for the additional time necessary or for the law enforcement matter identified in the request to be
28 concluded.

29
30 **§4-03 City Employees Holding Policymaking Positions for Purposes of the Annual Disclosure**
31 **Law.**

32 For purposes of Administrative Code § 12-110(b)(3)(a)(3), a person holds a "policymaking
33 position" if they have been designated as having substantial policy discretion pursuant to Board
34 Rules § 1-02.