

August 13, 2020, Agenda – Open Meeting Matter

July 20, 2020 – Public Hearing

June 11, 2020, Agenda – Open Meeting Matter

May 14, 2020, Agenda – Open Meeting Matter

To: The Board

From: Christopher M. Hammer *cmh*

Date: August 4, 2020

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

As directed by the Board at its June 2020 meeting (**Exhibit 1**), Staff submitted proposed amendments to Board Rules § 1-09 to the City Record (**Exhibit 2**). Publication occurred on June 18, 2020, and the public hearing was held on July 20, 2020. The Board received no written comments in advance of the public hearing and received an oral comment from one attendee at the public hearing: Joseph Douek, a City Planning Commissioner.¹

Commissioner Douek asked whether the rule would prohibit two types of communications made by City Planning Commissioners: (1) communications made while performing the work of the City Planning Commission and (2) communications made as private citizens on rezoning matters in their own neighborhoods, where they neither represent a client nor have a financial interest in the matter's outcome. Neither of these communications is prohibited by Board Rules Section 1-09 or the proposed amendments. The amendments to Board Rules Section 1-09 specify that the rule applies only to appearances "within the meaning of Charter Section 2601(4)," defined as a "communication, for compensation, other than those involving ministerial matters." Thus, the rule only prohibits communications when a City Planning Commissioner is being paid to communicate with the identified City agencies on behalf of a private interest.

¹ A video recording of the entire public hearing is available at: <https://www.youtube.com/watch?v=KKikYLnIDdA>

Accordingly, Board Staff does not propose any changes to the draft Notice of Adoption other than the changes, tracked in **Exhibit 3**, that reflect that the rule will no longer be a proposed rule. A clean version of the draft Notice of Adoption is attached as **Exhibit 4**. If adopted, the Notice of Adoption will be published in the City Record pursuant to City Charter § 1043(f), and the rule will take effect 30 days after such publication.

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

Date: June 11, 2020

Present:

Board Members: Chair Jeffrey D. Friedlander and Members Fernando A. Bohorquez, Jr., Anthony Crowell, Wayne Hawley, and Nisha Agarwal

Board Staff: Ethan Carrier, Chad Gholizadeh, Christopher Hammer, Gavin Kendall, Julia Lee, Carolyn Miller, Katherine Miller, Ari Mulgay, Yasong Niu, Jeffrey Tremblay, Clare Wiseman, and Juliya Ziskina.

Guests: None

The Board and Staff participated by videoconference pursuant to Executive Order No. 202 issued on March 7, 2020. The meeting was called to order by the Chair at approximately 9:32 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 §§ 1-09, 1-13, 1-17, and 1-18.

Board Rules § 1-09

After a brief introduction, the Chair asked for any comments by the Board or Staff. There were no comments. Upon motion duly made and seconded, the Board unanimously voted to notice the proposed amendments for public comment and hearing.

Board Rules §§ 1-13 and 1-17

After a brief introduction, the Staff and Board Chair explained that the provisions regarding accomplice liability would become Board Rules § 1-17 while existing Board Rules § 1-17 would be renumbered as Board Rules § 4-06, to be placed with the other annual disclosure rules in Chapter 4. Staff stated that the Law Department advised that a second public hearing would not be required to effectuate this numbering change.

Upon motion duly made and seconded, the Board unanimously voted to adopt the proposed amendments as the final rule.

Board Rules § 1-18

After a brief introduction, the Chair asked for any comments by the Board or Staff. Staff reported a comment made by one Board Member to amend proposed paragraph (a)(ii) to refer to a “person or entity.” Upon motion duly made and seconded, the Board unanimously voted to notice the proposed amendments incorporating the proposed changes for public comment and hearing.

The open meeting was adjourned at approximately 9:47 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 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 by video conference at 10:30 a.m. on Monday, July 20, 2020 and is accessible by:

- **Internet Video and Audio.** To access the hearing by Zoom, use the following URL: <https://us02web.zoom.us/j/86956127825?pwd=SXBDTWVnNWRjcCtmdXMlVW5TNVRtUT09>.
- **Telephone.** To access the hearing by telephone, dial (929) 436-2866. When prompted, enter the Meeting ID 869 5612 7825 and password 080824.

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.
- **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 commenters sign up prior to the hearing by contacting the Conflicts of Interest Board by phone 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 Monday, July 20, 2020.

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 advise us by email at lee@coib.nyc.gov or by telephone at (212) 437-0730. You must tell us by Thursday, July 16, 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/>. 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 on the Conflicts of Interest Board's website (<https://www1.nyc.gov/site/coib/public-documents/open-meetings-and-public-hearings.page>) as soon as practicable.

What authorizes the Conflicts of Interest Board to make this rule? Sections 192(b), 1043, and 2603(a) 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 anticipated to be a subject of rulemaking at that time.

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 of the Proposed Rule

The City Planning Commission (the "Commission") is comprised of thirteen members, including a Chair who serves as a regular employee of the City. Pursuant to City Charter § 192(b), Commission members are prohibited from appearing, directly or indirectly, before the Commission, the Department of City Planning, "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." Pursuant to City Charter § 192(b), the Board adopted Board Rules § 1-09 in 1992 to identify the City agencies before which a Commission member's appearance would pose a conflict. The Board notes, in accordance with City Charter § 2603(c)(4), that two advisory opinions, A.O. Nos. 1993-32 and 2007-2, are straightforward applications of Board Rules § 1-09, requiring no codification as a rule.

The Board now proposes to update and clarify the rule. The proposed amendments would:

(1) remove the definitional sections contained in Board Rules § 1-09(a), which are not unique to the Commission: City Charter § 2601(4) (“Appear”), § 2601(15) (“Ministerial”), and § 2604(b)(6) (“Indirect Appearance”);

(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 agency names are deleted or revised as follows:

- The reference to the Mayor’s Office of Planning and Coordination has been deleted, as such office has ceased to exist.
- The Art Commission has been designated, by Executive Order No. 119 of 2008, as the Public Design Commission. Because the Art Commission remains part of the City Charter, both names are included.
- The Department of Business Services has become the Department of Small Business Services (Local Law 34 of 2002).
- The Economic Development Corporation, originally formed as a local development corporation, was incorporated as a not-for-profit corporation in 2012 but, as a City agency within the meaning of Charter Section 2601(2), has been named explicitly.
- Reference to local development corporations that contract with the Department of Small Business Services has been clarified to include business improvement districts.
- Reference to the Hardship Appeals Panel has been deleted for two reasons: first, no person has been appointed to serve on the Hardship Appeals Panel since its creation (Local Law 70 of 1991) as § 3021 of City Charter Chapter 74. Second,

because the Hardship Appeals Panel is part of the same Charter chapter establishing the New York City Landmarks Preservation Commission, the proposed Board Rules § 1-09(a)(7) would already prohibit any appearances before the Hardship Appeals Panel.

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

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

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

(a) For the purposes of Charter Section 192(b), no member of the City Planning Commission shall appear, within the meaning of Charter Section 2601(4), directly or indirectly on any matter before:

- (1) the Mayor, Deputy Mayor, and their staffs;
- (2) the Mayor's Office of Environmental Coordination;
- (3) the offices of the Borough Presidents;
- (4) the City Council, including any individual Council Members and their staffs;
- (5) Community Boards;
- (6) the Art Commission/Public Design Commission; and
- (7) the Landmarks Preservation Commission.

(b) For the purposes of Charter Section 192(b), no member of the Commission shall appear, within the meaning of Charter Section 2601(4), directly or indirectly on any matter involving zoning or land use before:

- (1) the Department of Buildings, 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

Commissioner, the Commissioner, or a Deputy Commissioner of the Department of Buildings shall be prohibited;

(2) the Board of Standards and Appeals;

(3) the Department of Consumer Affairs;

(4) the Economic Development Corporation; and

(5) the Department of Small Business Services and any local development corporation or business improvement district that has entered into a contract with the City to perform services on behalf of the Department of Small Business Services.

(c) For the purposes of Charter Section 192(b), no member of the Commission shall appear, within the meaning of Charter Section 2601(4), before any City agency with respect to planning, environmental, financial or other aspects of a matter that can reasonably be expected to come before the Commission for approval or other formal action, including, but not limited to, the acquisition or disposition of City-owned land; an application for a zoning change or special permit; action pursuant to the Uniform Land Use Review Procedure; or action on major concessions and franchises.

**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: Amendment of Rules for City Planning Commissioners

REFERENCE NUMBER: 2020 RG 057

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
Acting Corporation Counsel

Date: May 29, 2020

**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: Amendment of Rules for City Planning Commissioners

REFERENCE NUMBER: COIB-18

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/ Francisco X. Navarro
Mayor's Office of Operations

May 31, 2020
Date

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 192(b), 1043, and 2603(a) of the New York City Charter, that the Conflicts of Interest Board has amended Board Rules Section 1-09 governing City Planning Commissioners.

The proposed Rule was published in the City Record on June 18, 2020, and a public hearing was held on July 20, 2020. After consideration of the testimony received, the Conflicts of Interest Board now adopts the following Rule.

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

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