

September 22, 2020, Agenda – Open Meeting Matter

August 28, 2020 – Public Hearing

July 14, 2020, Agenda – Open Meeting Matter

To: The Board

From: Julia H. Lee

Date: August 31, 2020

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

As directed by the Board at its July 2020 meeting, Staff submitted the proposed amendments to Board Rules §§ 4-01, 4-02, and 4-03 to the New York City Law Department and Mayor's Office of Operations for review, as required by the City Administrative Procedure Act. See Charter Section 1043(d). During the course of the review, some minor stylistic edits were made. On July 29, 2020, Staff published for public comment the proposed amendments to the Board Rules in advance of a public hearing, which was held on August 28, 2020. The Board did not receive any written or oral comments at the public hearing.

The proposed amendments return to the Board for consideration of the draft Notice of Adoption. If adopted, the Notice will be published in the City Record pursuant to City Charter § 1043(f), and the rules will take effect 30 days after publication.

Attached are the following:

- 1) Minutes of the July 14, 2020 Open Meeting (Exhibit 1);
- 2) Proposed Notice of Hearing and Opportunity to Comment, as submitted for publication in the City Record on July 29, 2020 (Exhibit 2);
- 3) Proposed Notice of Adoption (tracked version) (Exhibit 3); and
- 4) Proposed Notice of Adoption (clean version) (Exhibit 4).

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

Date: July 14, 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, Ana Gross, 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 §§ 4-01, 4-02, 4-03, 1-01(c), and 1-07.

Board Rules §§ 4-01 to 4-03

After a brief introduction, the Chair asked for any comments by the Board or Staff. The following constitutes the changes agreed upon by the Board and Staff:

- Statement of Basis & Purpose, p. 4, ln. 2: change “a report filed in 2014” to “a 2013 report”
- Statement of Basis & Purpose, p. 4, ln. 4: change “would permit” to “would require”
- § 4-01: No comments
- § 4-02(a): Insert “close of” before “calendar year”
- § 4-02(b): Change “the enforcement of criminal laws” to “law enforcement”
- § 4-03: No comments

The Board unanimously agreed to adopt the proposed amendments incorporating the proposed changes as the final rule to be sent to the Law Department and the Mayor’s Office of Operations for review.

Board Rules § 1-01(c)

After a brief introduction, the Chair asked for any comments by the Board or Staff. The following constitute the changes agreed upon by the Board and Staff:

- § 1-01(c)(1): include additional safeguards or restrictions on gifts that may be accepted from a “family member.”
- § 1-01(c)(3): revise so as not to preclude friendships made during City service; and to clarify what is meant by “independent”.

The Board agreed to continue discussions at a future open meeting.

Board Rules § 1-07

After a brief introduction, the Chair asked for any comments by the Board or Staff. The following comments constitute the changes agreed upon by the Board and Staff:

- § 1-07(a)(1): revise to clarify that prohibition applies to an appearance only before a representative of the former agency who sits on a board, commission, or other governmental entity other than the former agency
- § 1-07(b)(1): revise definition of the date of termination by replacing “or” with an inclusive conjunction to incorporate last day of official duties and the cessation of benefits and removing the phrase “after resigning, retiring, or being terminated”

The Board agreed to continue discussions at a future open meeting.

The open meeting was adjourned at approximately 10:36 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 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 10:30 a.m. on Friday, August 28, 2020 and is accessible by:

- **Internet Video and Audio.** To access the hearing by Zoom, use the following URL: <https://us02web.zoom.us/j/88337228953?pwd=ZHIJWW5Oa0RTUnh4c1g0akFZS0d3UT09>
- **Telephone.** To access the hearing by telephone, dial (929) 436-2866. When prompted, use the following access code 883 3722 8953 and password 018705.

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 Friday, August 28, 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 tell us by email at lee@coib.nyc.gov or by telephone at (212) 437-0730. You must tell us by Tuesday, August 25, 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 written comments, a summary of oral comments concerning the proposed rule, and the video of the public hearing will be available as soon as practicable at <https://www1.nyc.gov/site/coib/public-documents/open-meetings-and-public-hearings.page>.

What authorizes the Conflicts of Interest Board to make this rule? City Charter § 1043 and New York City Administrative Code § 12-110(b)(2)(a) authorize the Conflicts of Interest Board to amend these rules. These rules were included in the Conflicts of Interest Board's regulatory agenda for this Fiscal Year.

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 promulgating or amending its rules. This notice is made according to the requirements of Section 1043 of the City Charter.

STATEMENT OF BASIS AND PURPOSE

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

Proposed Board Rules § 4-01: Procedure for Requesting Extensions

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

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

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

Proposed Board Rules § 4-02 would maintain the current six-year retention period (established by former Board Rules § 1-10 in accordance with Administrative Code § 12-110(f)) for all annual disclosure reports. The retention period would start on the date the report was filed with the Board and end on the sixth anniversary of December 31 of the calendar year to which the

report relates. For example, a 2013 report is available for public inspection up to and including December 31, 2019. Proposed Board Rules § 4-02 would require the Board to retain reports beyond the six-year retention period only upon a timely request by a law enforcement agency. The retention period would only be extended as necessary or until the law enforcement matter is concluded.

Proposed Board Rules § 4-03: Definition of Policymaker

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

Text of Proposed Board Rules

New material is underlined

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

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

(a) For the purposes of Administrative Code § 12-110(c)(4), a request for an extension of time within which to file an annual disclosure report must be made in writing, including by email, and received by the Board no later than 10 calendar days prior to the filing deadline set by the Board.

(b) The request for an extension of time must include:

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

(2) An explanation of justifiable cause or undue hardship that would warrant an extension, accompanied by any supporting documentation. A justifiable cause or undue hardship shall

not be based on periods of annual leave, attendance at conferences or meetings, or other scheduled or voluntary absences from work, unless there are extenuating circumstances detailed in the request.

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

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

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

§4-02 Retention of Annual Disclosure Reports.

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

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

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

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

**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: Filing and Retention of Financial Disclosure Reports

REFERENCE NUMBER: 2020 RG 072

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: July 20, 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: Filing and Retention of Financial Disclosure Reports

REFERENCE NUMBER: COIB-19

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

July 20, 2020
Date

New York City Conflicts of Interest Board

Notice of Adoption of Final Rule

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE NEW YORK CITY CONFLICTS OF INTEREST BOARD BY Sections 1043 and 2063 of the City Charter that the Conflicts of Interest Board has promulgated Board Rules Sections 4-01, 4-02, and 4-03 which contains the Board's rules on the retention and filing of annual disclosure reports.

The proposed Rules were published in the City Record on July 29, 2020, and a public hearing was held on August 28, 2020. No testimony or comments were received. The Conflicts of Interest Board now adopts the following Rules.

STATEMENT OF BASIS AND PURPOSE

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

~~Proposed~~ Board Rules § 4-01: Procedure for Requesting Extensions

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

Under ~~proposed~~ Board Rules § 4-01, extensions would only be granted if there is a justifiable cause or undue hardship that would prevent filers from completing the report during the four-week filing period. For example, the Board may grant an extension of time to a filer who has requested an extension of time to file a tax return with the Internal Revenue Service or to a filer who has been on an extended medical leave of absence during the filing period. However, most scheduled absences from work, such as vacation and attendance at conferences, or increases in workloads do not qualify as justifiable causes or undue hardships warranting an extension of time,

unless there are extenuating circumstances. In the event that an extension is granted, the new filing deadline would not be more than four months from the original filing deadline.

~~Proposed~~ Board Rules § 4-02: Retention of Annual Disclosure Reports

~~Proposed~~ Board Rules § 4-02 would maintain the current six-year retention period (established by former Board Rules § 1-10 in accordance with Administrative Code § 12-110(f)) for all annual disclosure reports. The retention period would start on the date the report was filed with the Board and end on the sixth anniversary of December 31 of the calendar year to which the report relates. For example, a 2013 report is available for public inspection up to and including December 31, 2019. ~~Proposed~~ Board Rules § 4-02 would require the Board to retain reports beyond the six-year retention period only upon a timely request by a law enforcement agency. The retention period would only be extended as necessary or until the law enforcement matter is concluded.

~~Proposed~~ Board Rules § 4-03: Definition of Policymaker

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

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(b) The request for an extension of time must include:

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

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§4-02 Retention of Annual Disclosure Reports.

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

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§4-02 Retention of Annual Disclosure Reports.

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