

September 22, 2020, Agenda – Open Meeting Matter

To: The Board

From: Chad H. Gholizadeh

Date: August 3, 2020

Re: Proposed Amendments to Board Rules §§ 1-01(i), (j), (k)
Proposed Board Rules §§ 1-01 (l), (m)

As part of its review of the Board's rules, practices, advisory opinions, and enforcement dispositions in accordance with the mandate of City Charter § 2603(c)(4), Staff brings to the Board proposed amendments to Board Rules §§ 1-01(i), (j), and (k) and new Board Rules §§ 1-01(l) and (m). The proposed amendments and new sections codify advisory opinions with interpretive value and clarify existing rules to conform in the following ways:

- Proposed Board Rules § 1-01(i) would codify a four-part test for when a City agency may accept or gifts of tickets for use by agency employees to boost agency morale from A.O. No. 2000-4 and No. 1992-33.
- Proposed Board Rules § 1-01(j) would codify a standard for public servants being the beneficiaries of fundraising when facing personal emergencies similar to that articulated in A.O. No. 1992-29.
- Proposed Board Rules § 1-01(k) would codify and refine advice related to gifts between public servants from A.O. No. 2013-1.
- Proposed Board Rules § 1-01(l) would clarify existing Board Rules § 1-01(i) by setting an order for the steps a public servant must take to dispose of an impermissible gift.
- Proposed Board Rules § 1-01(m) would consolidate and reorganize existing Board Rules § 1-01(i), (j), and (k), and add the relevant Charter Sections.

Attached are the following:

1. Notice of Public Hearing and Opportunity to Comment (Exhibit 1);
2. Text of proposed Board Rules § 1-01(l) and (m) alongside existing Board Rules § 1-01(i), (j), and (k) (Exhibit 2).

Staff has consulted informally with the New York City Law Department about the proposed amendments. With the Board's approval, Staff will formally submit the proposed amendments to the Law Department and Mayor's Office of Operations, as required by the City Administrative Procedure Act. See City Charter § 1043(d).

1 **New York City Conflicts of Interest Board**

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3 **Notice of Public Hearing and Opportunity to Comment on Proposed Rules Regarding Gifts**

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5 **What are we proposing?** The Conflicts of Interest Board is proposing to amend its rules governing the
6 acceptance of gifts by public servants.

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8 **When and where is the Hearing?** The Conflicts of Interest Board will hold a public hearing on the
9 proposed rule. The public hearing will take place by video conference at [] on [] and is accessible by:

- 10 • **Internet Video and Audio.** To access the hearing by Zoom, use the following URL: [].
- 11
- 12 • **Telephone.** To access the hearing by telephone, dial []. When prompted, use the following
- 13 access code [] and password [].

14 **How do I comment on the proposed rules?** Anyone can comment on the proposed rules by:

- 15 • **Website.** You can submit comments to the Conflicts of Interest Board through the NYC
- 16 rules website at <http://rules.cityofnewyork.us>.
- 17 • **Email.** You can email comments to Rules@COIB.nyc.gov.
- 18 • **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the
- 19 public hearing may speak for up to three minutes. Please access the public hearing by
- 20 Internet Video and Audio or by Telephone using the instructions above. It is
- 21 recommended, but not required, that commenters sign up prior to the hearing by contacting
- 22 the Conflicts of Interest Board by phone at (212) 437-0730 or by email at
- 23 lee@coib.nyc.gov.

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

25

26 **Do you need assistance to participate in the hearing?** You must tell the Conflicts of Interest Board if

27 you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign

28 language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone

29 at (212) 437-0723. You must tell us by [date].

30

31 **Can I review the comments made on the proposed rules?** You can review the comments made online

32 on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the

33 hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral

34 comments concerning the proposed rule will be available to the public at the Conflicts of Interest Board,

35 2 Lafayette Street, Suite #1010, New York, New York 10007.

36

37 **What authorizes the Conflicts of Interest Board to make this rule?** Sections 1043, 2603(a),

38 2603(c)(4), and 2604(b)(5) of the City Charter authorize the Conflicts of Interest Board to make this

39 proposed rule. This rule was included in the Conflicts of Interest Board’s regulatory agenda for this Fiscal

40 Year.

1 **Where can I find the Conflicts of Interest Board’s rules?** The Conflicts of Interest Board’s rules are
2 in Title 53 of the Rules of the City of New York.

3
4 **What rules govern the rulemaking process?** The Conflicts of Interest Board must meet the
5 requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made
6 according to the requirements of Section 1043 of the City Charter.

7

8 **STATEMENT OF BASIS AND PURPOSE**

9 In accordance with the mandate of City Charter § 2603(c)(4) for the Board to review all its
10 advisory opinions and initiate rulemaking to adopt those with “interpretative value in construing
11 provisions” of Chapter 68, the Board has been reviewing the 29 advisory opinions it has issued
12 concerning public servants’ acceptance of gifts. These proposed amendments to Board Rules § 1-
13 01 (the “Valuable Gifts Rule”) codify advisory opinions with interpretive value and clarify existing
14 rules to conform with current practice. Additionally, the proposed amendments would incorporate
15 the Board’s longstanding interpretation of Charter § 2604(b)(3) that the acceptance of gifts offered
16 as a result of a public servant’s City position would violate Charter § 2604(b)(3). See, e.g.,
17 Advisory Opinion (“A.O.”) No. 1990-3, 1991-4, 1992-10, 1992-23, 1994-12, and 2000-4.

18 **1. Gifts to Enhance Agency Morale**

19 In proposed Board Rules § 1-01(i), the Board would address acceptance by the City of
20 blocks of free tickets for entertainment, sporting, and cultural events. For these kinds of events,
21 the attending public servants would not be performing any governmental work; instead, the City
22 is distributing the gifted tickets to its employees to promote office morale or reward good
23 performance. The Board addressed such gifts in A.O. No. 2000-4, advising that it would be
24 permissible to accept the donation of tickets for use by City employees if: (1) approved by and
25 distributed in a manner approved by an agency head; and (2) the donation lacked serious indicia
26 of concerns, such as the donor having a project pending before the accepting City agency or the

1 donor selecting the public servants who will attend. See also A.O. No. 1992-33 at 4 (advising that
2 agency employees cannot accept free travel and hotel stays offered a part of a morale boosting
3 program by a firm with matters before that agency).

4 This longstanding interpretation of Chapter 68 is consistent with advice provided by the
5 Board in A.O. No. 2007-3, permitting a registered lobbyist to offer blocks of tickets as gifts to the
6 City with agency head approval. The four-factor test in proposed Board Rules § 1-01(i) would
7 provide a mechanism by which the City may accept gifts to benefit its workforce while also
8 safeguarding against the efforts of donors to target public servants involved in their City business
9 or reward public servants for providing them with favorable determinations.

10 **2. Donations for Personal Emergencies**

11 In proposed Board Rules § 1-01(j), the Board would establish a standard to permit a public
12 servant to accept otherwise prohibited donations in the event of a personal emergency similar to
13 that articulated in A.O. No. 1992-29. In A.O. No. 1992-29, the Board advised an injured public
14 servant's co-workers that they could raise funds for his medical expenses from firms that were
15 regulated by their agency or may have matters before the injured public servant, provided that all
16 funds were collected by a third party not connected to the agency and that the donors' identities
17 were not revealed to the public servant or to any other agency employee. Proposed Board Rules
18 § 1-01(j) would permit public servants to accept anonymized donations in emergency situations,
19 subject to strict restrictions on who may solicit donations and from whom donations may be
20 solicited. Public servants who comply with these requirements would be able to accept otherwise
21 prohibited contributions, provided that the contributions address the need caused by the
22 emergency.

23 **3. Gifts between Public Servants**

1 In proposed Board Rules § 1-01(k), the Board would refine advice provided in A.O. No.
2 2013-1 concerning gifts between public servants. Consistent with that opinion, proposed Board
3 Rules § 1-01(k)(1) would permit a superior to accept an unsolicited gift from a subordinate on a
4 special occasion marking a major life event, such as a wedding, the birth or adoption of a child, or
5 retirement, where the gift is appropriate to the occasion. On any other event, such as a birthday or
6 holiday, a public servant could accept from their subordinates, or a group of subordinates, only
7 unsolicited gifts where the total value of the gift is \$10 or less; the gift cannot be cash or cash
8 equivalents, like gift cards. By providing a clear \$10 limit on the value of a gift, and excluding
9 cash and cash equivalents, proposed Board Rules § 1-01(k)(1)(ii) would offer a safeguard against
10 a superior, particularly in a large City agency or office, regularly collecting hundreds of dollars in
11 cash or cash equivalents, such as Amazon gift cards, from their subordinates.

12 Additionally, proposed Board Rules § 1-01(k)(2) would permit superiors to give gifts to
13 subordinates provided that the gifts do not exceed \$1,000 over the course of a twelve-month period.
14 See A.O. No. 2013-1 at 5-6 (advising that a superior public servant would be permitted to purchase
15 gifts for his or subordinates except under unusual circumstances in which the frequency or
16 extravagance of the gifts might unduly burden the subordinates or the superior's generosity might
17 compromise the subordinates' primary duty of loyalty to the City). Unlike gifts from subordinates
18 to their superiors, gifts from superiors to subordinates raise fewer concerns about the inherent
19 power imbalance and accordingly are permissible except in extreme circumstances. With the
20 proposed \$1,000 ceiling on gifts from superiors to subordinates, the Board seeks to provide
21 sufficient flexibility to superiors to pay for the occasional team-building lunch or thank you gift
22 for a subordinate while simultaneously protecting subordinates from becoming obligated to their
23 superiors through too frequent and too generous gift-giving.

1 Finally, consistent with the advice provided in A.O. No. 2013-1, proposed Board Rules §
2 1-01(k)(3) would permit public servant peers to give gifts to each other. For public servants who
3 are peers, there is minimal risk of coercion since the giver and the recipient do not exercise
4 authority over the other in their City jobs.

5 **4. Disposition of Impermissible Gifts**

6 In proposed Board Rules § 1-01(l), the Board would clarify existing Board Rules § 1-01(i)
7 by setting the order of steps a public servant must take to dispose of an impermissible gift. A
8 public servant who receives an impermissible gift must first attempt to return the gift because that
9 gift should not be accepted. If the gift cannot be returned, the public servant’s agency head may,
10 after providing written notice to the inspector general for the agency: (a) direct the item to be
11 donated to the agency, to an entity as defined in Board Rules § 1-14(a)(1)(iii), or to the Mayor’s
12 Fund to Advance New York; (b) share the item within the agency; or (c) destroy the item.

13 **5. Compatibility with Other Laws**

14 In proposed Board Rules § 1-01(m), the Board would consolidate provisions of existing
15 Board Rules § 1-01 addressing other regulatory or statutory regimes. Proposed Board Rules § 1-
16 01(m) would not substantively change the restrictions set forth in existing Board Rules § 1-01(i),
17 (j), and (k) except to explicitly reference Charter § 2604(b)(3) and Charter § 2604(b)(14).

18

19 New material is underlined.

20 Section 1. Section 1-01(i)-(k) of Chapter 1 of Title 53 of the Rules of the City of New
21 York are REPEALED and new Sections 1-01(i)-(m) are added to read as follows:

22 (i) Gifts to Enhance Employee Morale

1 (1) For the purposes of Charter § 2604(b)(3) and Charter § 2604(b)(5), tickets to an
2 entertainment, sporting, or cultural event can be accepted as a gift to the City for
3 use by City employees provided that:

4 i. the attending public servants are neither supervisory nor managerial public
5 servants;

6 ii. the offer of the free attendance is unsolicited;

7 iii. the public servants attending the event are selected according to a method
8 that receives agency head approval in writing; and

9 iv. the public servants attending the event are not involved in the
10 consideration of any pending particular matter, legislative proposal, action
11 on the City budget, or text of the zoning resolution in which the offeror or
12 the host of the event is a party or has an interest.

13 (j) Donations for Personal Emergencies

14 (1) For the purposes of Charter § 2604(b)(3) and Charter § 2604(b)(5), donations may
15 be solicited to alleviate a public servant's immediate and serious financial need
16 caused by a personal emergency such as an accident, sickness, or being the victim
17 of a crime, provided that no donations are solicited from:

18 i. any subordinate of the beneficiary public servant;

19 ii. any subordinate of a soliciting public servant

20 iii. any firm or individual that has a particular matter, legislative proposal,
21 action on the City budget, or text of the zoning resolution pending before
22 the beneficiary public servant;

1 iv. any firm or individual that has a particular matter, legislative proposal,
2 action on the City budget, or text of the zoning resolution pending before a
3 soliciting public servant;

4 v. any firm with which the beneficiary public servant deals in his or her City
5 work; or

6 vi. any firm with which a soliciting public servant deals in his or her City
7 work.

8 (2) For the purposes of Charter § 2604(b)(3) and Charter § 2604(b)(5), a public
9 servant may accept donations to alleviate such public servant's immediate and
10 serious financial need caused by a personal emergency such as an accident
11 provided that the donors' identities are not in any way revealed to the public
12 servant and the donations directly address the immediate and serious financial
13 need caused by the personal emergency.

14 (k) Gifts Between Public Servants

15 (1) Pursuant to Charter § 2604(b)(3), a public servant may accept an unsolicited gift
16 from a subordinate or group of subordinates in connection with a special occasion
17 marking a major life event, such as a wedding, the birth or adoption of a child, or
18 retirement, provided that the gift is of the type and value customary to the
19 occasion in question.

20 (2) Pursuant to Charter § 2604(b)(3), a public servant may accept an unsolicited gift
21 from a subordinate or group of subordinates in connection with a holiday,
22 birthday, or other event and is of nominal value not exceeding \$10 and is not cash
23 or a cash equivalent.

1 (3) Pursuant to Charter § 2604(b)(3), a public servant may give a gift to a subordinate
2 provided that the gifts to such subordinate during a twelve-month period are
3 collectively valued at less than \$1,000.

4 (4) Pursuant to Charter § 2604(b)(3), a public servant may give a gift to or receive a
5 gift from a public servant who is not a superior or a subordinate.

6 (l) Disposition of Impermissible Gifts

7 (1) If a public servant receives a gift not covered by any of the exceptions in this
8 section, the public servant must return the gift to the giver.

9 (2) If a gift cannot be returned, the public servant's agency head may, after providing
10 written notice to the inspector general of the public servant's agency:

- 11 i. donate the item to the agency, to an entity as defined in Board Rules § 1-
12 14(a)(1)(iii), or to the Mayor's Fund to Advance New York;
- 13 ii. share the item within the agency; or
- 14 iii. destroy the item.

15 (m) Compatibility with Other Laws

16 (1) City agencies may establish rules concerning gifts for their own employees that
17 may not be less restrictive than the requirements set forth in Charter § 2604(b)(3)
18 and Charter § 2604(b)(5) as interpreted by this section.

19 (2) Nothing in this section will be deemed to authorize a public servant to act or
20 accept a gift of any value in violation of any applicable federal, state, or local law,
21 including the criminal law, City agency rules, or Mayoral Executive Orders
22 (including, but not limited to, Executive Order No. 16 of 1978 (as amended)).

1 which may impose additional requirements to report gifts and offers of gifts to the
2 agency's inspector general, whether or not a gift is accepted or returned.

3 (3) This section must be read in conjunction with the provisions of Charter §
4 2604(b)(2) and Board Rules § 1-13; Charter § 2604(b)(13); and Charter §
5 2604(b)(14) and Board Rules § 1-10.

Existing Board Rules §§ 1-01(i), (j), and (k)

(i) A public servant should not accept a "valuable gift," as defined herein, from any person or entity engaged in business dealings with the City. If the public servant receives such valuable gift, he or she should return the gift to the donor. If that is not practical, the public servant should report the receipt of a valuable gift to the inspector general of the public servant's agency, who shall determine the appropriate disposition of the gift. Nothing in this section shall be deemed to authorize a public servant to act in violation of any applicable laws, including the criminal law, City agency rules, or Mayoral Executive Orders (including, but not limited to, Executive Order No. 16 of 1978 (as amended)), which may impose additional requirements to report gifts and offers of gifts to the agency's inspector general, whether or not a gift is accepted or returned.

(j) City agencies are encouraged to establish rules concerning gifts for their own employees which may not be less restrictive than as set forth in Charter §2604(b)(5) as interpreted by this section.

(k) (1) Nothing in this section shall be deemed to authorize a public servant to accept a gift of any value in violation of any other applicable federal, state or local law, rule or regulation, including but not limited to the New York State Penal Law.

(2) The provisions of this section shall be read in conjunction with the provisions of Charter §2604(b)(2) and §1-13 of the Rules of the Board (prohibiting certain conduct that conflicts with the proper discharge of a public servant's official duties); §2604(b)(3) of the Charter (prohibiting the use or attempted use of one's City position for private gain); and §2604(b)(13) of the Charter (prohibiting receipt by public servants of compensation except from the City for performing any official duty and prohibiting receipt of gratuities).

Proposed Board Rules §§ 1-01(i) and (m)

(l) Disposition of Impermissible Gifts

(1) If a public servant receives a gift not covered by any of the exceptions in this section, the public servant must return the gift to the giver.

(2) If a gift cannot be returned, the public servant's agency head may, after providing written notice to the inspector general of the public servant's agency:

- i. donate the item to the agency, to an entity as defined in Board Rules § 1-14(a)(1)(iii), or to the Mayor's Fund to Advance New York;
- ii. share the item within the agency; or
- iii. destroy the item.

(m) Compatibility with Other Laws

(1) City agencies may establish rules concerning gifts for their own employees that may not be less restrictive than the requirements set forth in Charter § 2604(b)(3) and Charter § 2604(b)(5) as interpreted by this section.

(2) Nothing in this section will be deemed to authorize a public servant to act or accept a gift of any value in violation of any applicable federal, state, or local law, including the criminal law, City agency rules, or Mayoral Executive Orders (including, but not limited to, Executive Order No. 16 of 1978 (as amended)), which may impose additional requirements to report gifts and offers of gifts to the agency's inspector general, whether or not a gift is accepted or returned.

(3) This section must be read in conjunction with the provisions of Charter § 2604(b)(2) and Board Rules § 1-13; Charter § 2604(b)(13); and Charter § 2604(b)(14) and Board Rules § 1-10.