

May 18, 2021 – Open Meeting Matter
July 14, 2020 – Open Meeting Matter

To: The Board
From: Chad H. Gholizadeh
Date: May 12, 2021
Re: Proposed Amendments to Board Rules § 1-01(a)-(c)

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), the Board at its July 2020 meeting considered proposed amendments to Board Rules § 1-01(c), which defines the exception articulated in City Charter § 2604(b)(5) permitting a public servant to accept a valuable gift that “is customary on family and social occasions.” At that meeting, Board Members requested a number of different revisions to the proposed amendments. Over the course of the following months, Staff encountered difficulties in its efforts to both incorporate the proposed edits and harmonize the different ideas that arose in the course of that discussion. This led Staff to conclude that the existing Board Rules § 1-01(c) strikes the right balance between the disparate concerns raised by the Board and thus does not require any substantial revision. Instead, Staff proposes more modest revisions of Board Rules § 1-01(a) through § 1-01(c) with an eye towards three things.

First, the proposed amendments would update the formatting of these sections by adding line breaks and headers, making the section easier to read and conforming these sections with the other amended Board Rules.

Second, the proposed amendments would update the definitions used in these sections by:

- replacing the term “relative” with “family member” to make its use consistent across the Board Rules;

- incorporating step-relatives into the definition of “family member;”
- including “forbearance” among the examples of a valuable gift; and
- replacing the word “thing” in the definition of “Valuable gift” with the more illustrative but substantively identical term “item of value.”

Third, the proposed amendments would incorporate exceptions to the definition of “valuable gift” gleaned from the Board’s advisory opinions, enforcement matters, and informal advice. Exempted from the definition of “valuable gift” would be unsolicited certain discounts; raffle prizes; free attendance at union conferences and events ; and reasonable travel expenses incurred by a public servant in the course of an interview for a job that are reimbursed by the prospective employer.

Attached are the following:

1. Minutes of the July 2020 Open Meeting (**Exhibit 1**);
2. Notice of Public Hearing and Opportunity to Comment (**Exhibit 2**); and
3. Existing Board Rules § 1-01(a) to § 1-01(c) alongside Proposed Board Rules § 1-01(a) to § 1-01(c) (**Exhibit 3**).

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).

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

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

2
3 **Notice of Public Hearing and Opportunity to Comment on Proposed Rules Regarding Gifts**

4
5 **What are we proposing?** The Conflicts of Interest Board is proposing to amend its rule governing the
6 acceptance of valuable gifts by public servants.

7
8 **When and where is the Hearing?** The Conflicts of Interest Board will hold a public hearing on
9 the proposed rule. The public hearing will take place by video conference at [] on [] and is
10 accessible by:

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

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

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

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

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

29 **Do you need assistance to participate in the hearing?** You must tell the Conflicts of Interest
30 Board if you need a reasonable accommodation of a disability at the hearing, including if you need
31 a sign language interpreter or simultaneous transcription. You can advise us by email at
32 lee@coib.nyc.gov or by telephone at (212) 437-0730. You must tell us by [].

33 **Can I review the comments made on the proposed rules?** You can review the comments made
34 online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. Copies of all
35 comments submitted online, copies of all written comments, and a summary of oral comments
36 concerning the proposed rule will be available to the public on the Conflicts of Interest Board's website
37 (<https://www1.nyc.gov/site/coib/public-documents/open-meetings-and-public-hearings.page>) as soon
38 as practicable.

1
2 **What authorizes the Conflicts of Interest Board to make this rule?** Sections 1043, 2603(a),
3 2603(c)(4), and 2604(b)(5) of the City Charter authorize the Conflicts of Interest Board to make this
4 proposed rule. This proposed rule was included in the Conflicts of Interest Board’s regulatory agenda
5 for this Fiscal Year.

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

14 **STATEMENT OF BASIS AND PURPOSE**

15 In accordance with the mandate of City Charter § 2603(c)(4) for the Board to review all its
16 advisory opinions and initiate rulemaking to adopt those with “interpretative value in construing
17 provisions” of Chapter 68, the Board has been reviewing the 29 advisory opinions it has issued
18 concerning public servants’ acceptance of gifts. In connection with this comprehensive review,
19 the Board proposes to amend Board Rules §§ 1-01(a) through 1-01(c) to provide additional clarity.

20 **a. What is a Valuable Gift**

21 Proposed Board Rules § 1-01(a) would primarily reorganize the text of existing Board
22 Rules § 1-01(a), adding line breaks to improve readability. Proposed Board Rules § 1-01(a)(1)
23 would substantively amend the definition of “valuable gift” in two ways. First, proposed Board
24 Rules § 1-01(a)(1) would incorporate “forbearance” alongside examples of valuable gifts, in line
25 with definition promulgated by the United States Office of Government Ethics in its regulations.
26 See 5 CFR § 2635.203(b). Adding “forbearance” would recognize that a decision by a firm with
27 City business dealings to delay enforcement of a debt when that debt is due presents a financial
28 benefit to a public servant comparable to the provision of a new loan or a straightforward cash gift.

1 Second, proposed Board Rules § 1-01(a)(1) would replace “thing” with the more illustrative, but
2 substantively identical, term “item of value.”

3 Proposed Board Rules § 1-01(a)(2) would codify four exceptions to the definition of
4 “valuable gift.” First, proposed Board Rules § 1-01(a)(2)(i) would codify the Board’s longstanding
5 advice that public servants may utilize discounts available to the general public. See Advisory
6 Opinion (“A.O.”) No. 1995-5 (advising that soliciting a discount for a subset of City employees
7 would violate Charter § 2604(b)(3)); A.O. No. 1995-14 (advising that public servants may utilize
8 a special offer extended by a bank to both City employees and many businesses and organizations
9 in a geographic area); A.O. No. 2006-4 (advising that public servants may utilize generally
10 available government employee discounts). Second, proposed Board Rules § 1-01(a)(2)(ii) would
11 codify the Board’s longstanding advice that public servants may accept prizes from raffles or
12 giveaways that are available without respect to whether the participants are public servants and
13 where participation in the raffle or giveaway does not use City resources or identify the participant
14 as a public servant. See A.O. No. 1991-20 (advising that a public servant may accept a prize from
15 a competition because, in part, he did not identify himself as a public servant in his submission);
16 A.O. No. 2012-3 (advising that a public servant may accept a raffle prize exceeding \$50 where no
17 City resources were used in the raffle entry). Third, proposed Board Rules § 1-01(a)(2)(iii) would
18 codify the Board’s determination that public servants may accept free attendance at union
19 conferences in order to conduct union business. See A.O. No. 2006-3 (advising that public
20 servants may accept free food and accommodation from a union to attend that union’s conference
21 on their own time). Finally, proposed Board Rules § 1-01(a)(2)(iv) would permit public servants
22 interviewing for a job opening to accept reasonable travel expenses in the course of that interview
23 process. Because a public servant seeking employment is prohibited from participating in any

1 particular matter involving the potential employer, the acceptance of reasonable travel expenses
2 poses a diminished risk of any actual or perceived impropriety. See Charter § 2604(d)(1).

3 **b. Definitions**

4 Proposed Board Rules § 1-01(b) would reorganize the clauses and add sub-sections to
5 existing Board Rules § 1-01(b) with two substantive changes. First, proposed Board Rules § 1-
6 01(b) would replace the term “relative” with “family member” to harmonize the usage of that term
7 with other sections of the Board Rules. Second, proposed Board Rules § 1-01(b)(2) would
8 expressly include step-relatives, consistent with the Board’s longstanding interpretation of Chapter
9 68. See, e.g., *COIB v. J. Purvis*, COIB Case No. 2012-898a (2013) (finding that an Associate Job
10 Opportunity Specialist with the New York City Human Resources Administration (“HRA”)
11 misused his position in the HRA Rental Assistance Unit to issue an assistance check from HRA to
12 his stepdaughter), *COIB v. G. Jones*, COIB Case No. 2012-458 (2013) (finding that a New York
13 City Housing Authority (“NYCHA”) Construction Project Manager misused his position when he
14 recommended his stepson for a job with a vendor that the Construction Project Manager supervised
15 as part of his official NYCHA duties).

16 **c. Gifts from Family Members or Close Personal Friends**

17 Proposed Board Rules § 1-01(c) is identical to existing Board Rule § 1-01(c) except for the
18 addition of a header.

19 New material is underlined.

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

22 (a) What is a Valuable Gift

1 (1) For the purposes of Charter § 2604(b)(5), a “valuable gift” is any gift to a public
2 servant that has a value of \$50.00 or more, whether in the form of money, service,
3 loan, forbearance, travel, entertainment, hospitality, promise, or item of value in
4 any other form.

5 (2) For the purposes of Charter § 2604(b)(5), a “valuable gift” does not include:

6 i. Unsolicited discounts available to any purchaser, including City or
7 government employees, or to a category of people, irrespective of whether
8 the recipients are public servants.

9 ii. Prizes from raffles or giveaways made available irrespective of whether
10 the participants are public servants and where participation in the raffle or
11 giveaway does not use City resources or identify the participant as a public
12 servant.

13 iii. Free attendance at labor union conferences and events, and any attendant
14 meals or refreshments, offered by such union for the purposes of
15 conducting union business.

16 iv. Reasonable travel expenses incurred by a public servant in the course of
17 an interview for a job which are reimbursed by the prospective employer.

18 (3) For the purposes of Charter § 2604(b)(5), two or more gifts to a public servant
19 shall be considered a single gift if they are given to the public servant within a
20 twelve-month period by:

21 i. the same person;

22 ii. persons who the public servant knows or should know are

23 iii. family members of one another; or

1 iv. directors, trustees, or employees of the same firm or affiliated firms.

2 (b) Definitions

3 As used in this section:

4 (1) “family member” means:

5 i. a spouse, child, grandchild, parent, sibling, and grandparent;

6 ii. any parent, domestic partner, child, or sibling of a spouse or domestic
7 partner; and

8 iii. a spouse or domestic partner of a parent, child, or sibling.

9 (2) “child,” “grandchild,” “parent,” “grandparent,” and “sibling” includes a step-
10 child, step-grandchild, step-parent, step-grandparent, and step-sibling

11 (3) firms are “affiliated” if:

12 i. one is a subsidiary of the other; or

13 ii. a single person or firm owns at least 25 percent of each firm

14 (c) Gifts from Family Members or Close Personal Friends

15 For the purposes of Charter § 2604(b)(5), a public servant may accept gifts that are
16 customary on family or social occasions from a family member or close personal friend
17 who the public servant knows is or intends to become engaged in business dealings with
18 the City, when:

19 (1) it can be shown under all relevant circumstances that it is the family or personal
20 relationship rather than the business dealings that is the controlling factor; and

21 (2) the public servant's receipt of the gift would not result in or create the appearance
22 of:

23 i. using his or her office for private gain;

- 1 ii. giving preferential treatment to any person or entity;
- 2 iii. losing independence or impartiality; or
- 3 iv. accepting gifts or favors for performing official duties.

(a) What is a Valuable Gift

(1) For the purposes of Charter § 2604(b)(5), a “valuable gift” is any gift to a public servant that has a value of \$50.00 or more, whether in the form of money, discount, service, loan, forbearance, travel, entertainment, hospitality, promise, or item of value in any other form.

(2) For the purposes of Charter § 2604(b)(5), a “valuable gift” does not include:

(i) Unsolicited discounts available to any purchaser, including City or government employees, or to a category of people, irrespective of whether the recipients are public servants.

(ii) Prizes from raffles or giveaways made available irrespective of whether the participants are public servants and where participation in the raffle or giveaway does not use City resources or identify the participant as a public servant.

(iii) Free attendance at labor union conferences and events, and any attendant meals or refreshments, offered by such union for the purposes of conducting union business.

(iv) Reasonable travel expenses incurred by a public servant in the course of an interview for a job which are reimbursed by the prospective employer.

(3) For the purposes of Charter § 2604(b)(5), two or more gifts to a public servant shall be considered a single gift if they are given to the public servant within a twelve-month period by:

(i) the same person;

(ii) persons who the public servant knows or should know are

(iii) family members of one another; or

(iv) directors, trustees, or employees of the same firm or affiliated firms.

(a) For the purposes of Charter §2604(b)(5), a "valuable gift" means any gift to a public servant which has a value of \$50.00 or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form. Two or more gifts to a public servant shall be deemed to be a single gift for purposes of this subdivision and Charter §2604(b)(5) if they are given to the public servant within a twelve- month period under one or more of the following circumstances: (1) they are given by the same person; and/or (2) they are given by persons who the public servant knows or should know are (i) relatives or domestic partners of one another; or (ii) are directors, trustees, or employees of the same firm or affiliated firms.

(b) Definitions

As used in this section:

(1) “family member” means:

- (i) a spouse, child, grandchild, parent, sibling, and grandparent;
- (ii) any parent, domestic partner, child, or sibling of a spouse or domestic partner; and
- (iii) a spouse or domestic partner of a parent, child, or sibling.

(2) “child,” “grandchild,” “parent,” “grandparent,” and “sibling” includes a step-child, step-grandchild, step-parent, step-grandparent, and step-sibling

(3) firms are “affiliated” if:

- (i) one is a subsidiary of the other; or
- (ii) a single person or firm owns at least 25 percent of each firm

(b) As used in subdivision (a) of this section: (1) “relative” shall mean a spouse, child, grandchild, parent, sibling, and grandparent; a parent, domestic partner, child, or sibling of a spouse or domestic partner; and a spouse or domestic partner of a parent, child, or sibling; (2) firms are “affiliated” if one is a subsidiary of the other or if they have a parent firm in common or if they have a stockholder in common who owns at least 25 percent of the shares of each firm; (3) “firm,” “spouse,” and “ownership interest” shall have the meaning ascribed to those terms in section 2601 of the Charter; (4) “domestic partner” means a domestic partner as defined in New York City Administrative Code §1-112(21).

(c) Gifts from Family Members or Close Personal Friends

For the purposes of Charter § 2604(b)(5), a public servant may accept gifts that are customary on family or social occasions from a family member or close personal friend who the public servant knows is or intends to become engaged in business dealings with the City, when:

- (1) it can be shown under all relevant circumstances that it is the family or personal relationship rather than the business dealings that is the controlling factor; and
- (2) the public servant's receipt of the gift would not result in or create the appearance of:
 - (i) using his or her office for private gain;
 - (ii) giving preferential treatment to any person or entity;
 - (iii) losing independence or impartiality; or
 - (iv) accepting gifts or favors for performing official duties.

(c) For the purposes of Charter §2604(b)(5), a public servant may accept gifts that are customary on family or social occasions from a family member or close personal friend who the public servant knows is or intends to become engaged in business dealings with the City, when:

- (1) it can be shown under all relevant circumstances that it is the family or personal relationship rather than the business dealings that is the controlling factor; and
- (2) the public servant's receipt of the gift would not result in or create the appearance of:
 - i. using his or her office for private gain;
 - ii. giving preferential treatment to any person or entity;
 - iii. losing independence or impartiality; or
 - iv. accepting gifts or favors for performing official duties.