


September 17, 2019, Agenda – Open Meeting Matter

To: The Board
From: Chad H. Gholizadeh 
Date: September 9, 2019
Re: Proposed Amendments to Board Rules § 1-13(e)

As directed by the Board at its July 2019 meeting (Exhibit 1), and as required by the City's Administrative Procedure Act, Staff formally submitted the Board's proposed rule amending Board Rules § 1-13(e) to the New York City Law Department and Mayor's Office of Operations. Board Rules § 1-13(e) contains a mechanism for an agency to assign a public servant to use City time and City resources in support of a not-for-profit entity that serves a City purpose and, if approved by the Board, be involved in that not-for-profit's City business. The proposed amendment to subdivision (e) clarifies which documents will be posted on the Board's website.

During the review by the Law Department and the Mayor's Office of Operations, changes were made to the Statement of Basis and Purpose and to the text of the proposed rule with the intent of making the purpose of the proposed change as clear as possible for agencies making use of the rule. The revisions are substantial but not substantive and primarily reflect Staff's efforts to revise the Statement of Basis and Purpose in response to a desire for greater clarity expressed by the Law Department and the Mayor's Office of Operations. The minor changes to the text of the rule itself have no substantive impact on the operation of the rule. The rule, as amended, now returns to the Board for its approval. With the Board's approval, Staff will notice the rule for a public hearing and opportunity to comment, as required by the City Administrative Procedure Act. See Charter § 1043(d).

Attached are the following:

1. Minutes of the July 9, 2019, Open Meeting (Exhibit 1);
2. Proposed Notice of Public Hearing with changes tracked (Exhibit 2); and
3. Proposed Notice of Public Hearing, with certifications from the Law Department and Mayor's Office of Operations (Exhibit 3).

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

Date: July 9, 2019

Location: Conflicts of Interest Board, 2 Lafayette Street, Suite 1010, New York, New York

Present:

Board Members: Chair Richard Briffault and Members Fernando A. Bohorquez, Jr., Anthony Crowell, Jeffrey D. Friedlander, and Erika Thomas.

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 meeting was called to order by the Chair at approximately 9:37 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 Title 53 of the Rules of the City of New York, Board Rules §§ 1-02 and 1-15, Board Rules § 1-13(c), and Board Rules §§ 1-13(e) and (f).

Board Rules §§ 1-02 and 1-15:

After a brief introduction on the proposed amendments to Board Rules §§ 1-02 and 1-15, the Chair asked for any comments by the Board or Staff.

The following comments constitute the changes as agreed upon by the Board to the proposed amendments to the Statement of Basis and Purpose:

- page 2, lines 24 and 25: create new sentence by inserting period after “members” and starting the next sentence with “The Board”
- page 2, line 28: change language to read “these Board interpretations”
- page 4, line 4: change “are” to “is”
- page 4, line 6: insert “the” before “member’s interests”

Upon motion duly made and seconded, the Board unanimously voted to approve the proposed amendments incorporating the changes as discussed as the final rule.

Board Rules § 1-13(c):

After a brief introduction on the proposed amendments to Board Rules § 1-13(c), the Chair asked for any comments by the Board or Staff.

The following comments constitute the changes as agreed upon by the Board to the proposed amendments to Board Rules § 1-13(c):

- Statement of Basis and Purpose, page 4, line 4: change “is” to “in” to read “engaged in business”

- Statement of Basis and Purpose, page 5, line 3: delete the letter “s” from “acts”
- § 1-13(c)(1)(i): add City title and City email accounts
- Staff to propose language clarifying ministerial exceptions to the not-for-profit entity’s business dealings as referenced in Board Rules § 1-13(c)(1)(ii)

Upon motion duly made and seconded, the Board unanimously voted to continue the discussion at a future Board meeting.

Board Rules §§ 1-13(e) and (f):

After a brief introduction on the proposed amendments to Board Rules § 1-13(e), 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 adopt the proposed amendments to Board Rules § 1-13(e) as the final rule.

Discussion of proposed amendments to Board Rules § 1-13(f) was tabled for a future Board meeting.

The open meeting was adjourned at approximately 10:30 a.m.

Respectfully submitted,

Julia Lee
Recording Secretary

New York City Conflicts of Interest Board

1 Notice of Public Hearing and Opportunity to Comment on Proposed Rules Regarding Conduct
2 Prohibited by City Charter § 2604(h)(2)

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4 What are we proposing? The Conflicts of Interest Board intends to amend its rules by clarifying
5 which documents will be publicly posted.

6
7 When and where is the Hearing? The Conflicts of Interest Board will hold a public hearing on the
8 proposed rule. The public hearing will take place at [time] on [date]. The hearing will be at [location].

9
10 This location has the following accessibility option(s) available: []

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

- 13
- 14 • Website. You can submit comments to the Conflicts of Interest Board through the NYC rules
15 website at <http://rules.civofnewyork.us>.
 - 16
 - 17 • Email. You can email comments to Chad H. Gholizadeh at Rules@COIB.nyc.gov.
 - 18
 - 19 • Mail. You can mail comments to Chad H. Gholizadeh, Assistant Counsel, Conflicts of Interest
20 Board, 2 Lafayette Street, Suite #1010, New York, New York 10007.
 - 21
 - 22 • Fax. You can fax comments to the Conflicts of Interest Board at (212) 437-0705.
 - 23
 - 24 • By Speaking at the Hearing. Anyone who wants to comment on the proposed rule at the public
25 hearing must sign up to speak. You can sign up before the hearing by calling (212) 437-0730. You
26 can also sign up in the hearing room before the hearing begins on [date]. You can speak for up to
27 three minutes.

28
29 Is there a deadline to submit comments? Yes, you must submit written comments by [date].

30
31 Do you need assistance to participate in the hearing? You must tell the Conflicts of Interest Board if
32 you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign
33 language interpreter. You can tell us by mail at the address given above. You may also tell us by
34 telephone at (212) 437-0723. You must tell us by [date].

35
36 Can I review the comments made on the proposed rules? You can review the comments made
37 online on the proposed rules by going to the website at <http://rules.civofnewyork.us/>. A few days after
38 the hearing, copies of all comments submitted online, copies of all written comments, and a summary of
39 oral comments concerning the proposed rule will be available to the public at the Conflicts of Interest
40 Board, 2 Lafayette Street, Suite #1010, New York, New York 10007.

41
42 What authorizes the Conflicts of Interest Board to make this rule? Sections 1043 and 2603(a) of
43 the City Charter and authorize the Conflicts of Interest Board to make this proposed rule. This proposed

1 rule was not included in the Conflicts of Interest Board's regulatory agenda for this Fiscal Year because
2 it was not contemplated when the Conflicts of Interest Board published the agenda.

3
4 **Where can I find the Conflicts of Interest Board's rules?** The Conflicts of Interest Board's rules are
5 in Title 53 of the Rules of the City of New York.

6
7 **What rules govern the rulemaking process?** The Conflicts of Interest Board must meet the
8 requirements of Section 10-43 of the City Charter when creating or changing rules. This notice is made
9 according to the requirements of Section 10-43 of the City Charter.

10

11 **STATEMENT OF BASIS AND PURPOSE**

12 The Conflicts of Interest Board (the "Board") is proposing to amend subdivision (e) of
13 Board Rules § 1-13.

14 Proposed Revisions to Board Rules § 1-13(e)

15 Subdivision ~~the process set forth in subdivision (e)~~ was recently amended ~~incorporated~~
16 ~~into~~ a rule that went into effect on March 10, 2019. This subdivision provides a mechanism for
17 an agency to assign a public servant: (a) ~~to use~~ City time and City resources ~~in support of~~
18 ~~perform work~~ for a not-for-profit entity that serves a City purpose; and (b) ~~to be involved, if~~
19 ~~approved by the Board, in that not-for-profit's City business, if approved by the Board. The~~. As
20 ~~part of this process, for each designation or request, the Board will post one document on its~~
21 ~~website; the proposed revisions would clarify the nature~~ which of the two possible documents
22 ~~that would~~ will be posted ~~on the Board's website pursuant to Board Rules § 1-13(e).~~

23 ~~The first is~~ If the designation made public servant is designated by an agency head
24 pursuant to Board Rules § 1-13(e)(1) ~~for a public servant to use~~ City time and City resources ~~in~~
25 ~~support of a not-for-profit entity that, among its other purposes, serves a City purpose as part of~~
26 ~~the public servant's City agency responsibilities, provided that~~ to perform work for a not-for-
27 profit, but the public servant takes no part in the ~~will~~ not-for-profit's business dealings with the
28 City. ~~The second posted document contains the Board's determination pursuant to Board Rules~~

1 ~~§ 1-13(e)(2) that a public servant may be involved in the not-for-profit's business dealings with~~
2 ~~the City; City business, then the Board will post only the agency head's letter making that~~
3 ~~designation. If the agency head's request for such a Board determination would remain a~~
4 ~~confidential document pursuant to Charter § 2403(d), which mandates the confidentiality of all~~
5 ~~designation under Board Rules § 1-13(e)(1) also requests approval from the Board for either~~
6 ~~advice on the public servant to be involved in the City business dealings of a not-for-profit~~
7 ~~pursuant to Board Rules § 1-13(e)(2), then only the Board's letter approving that request will be~~
8 ~~posted by the Board on its website. The agency head's letter to the Board requesting that~~
9 ~~approval pursuant to Section 1-13(e)(2) would remain confidential for two reasons: first, the~~
10 ~~Board would be treating these requests the same as it does similar requests from agency heads~~
11 ~~for waivers of the moonlighting restrictions for agency employees; second, the Board's~~
12 ~~determination would include all relevant information, including, of necessity, a statement of the~~
13 ~~agency head's designation made pursuant to Section 1-13(e)(1).~~

14 **Text of the Proposed Rule**

15 New material is underlined.
17 [Deleted material is in brackets.]

18
19
20 Section 1. Subdivision (e) of Section 1-13 of Chapter 1 of Title 53 of the Rules of the
21 City of New York is amended to read as follows:

22 (e) (1) An agency head may designate a public servant to perform work on behalf of a
23 not-for-profit corporation, association, or other such entity that operates on a not-for-profit basis,
24 including serving as a board member or other position with fiduciary responsibilities provided
25 that:

1 (i) there is a demonstrated nexus between the proposed [activity] work, the public servant's
2 City job, and the mission of the public servant's agency; [and]

3 (ii) such work furthers the agency's mission and is not undertaken primarily for the benefit or
4 interests of the not-for-profit;

5 [(ii) (iii) the designated public servant takes no part in the entity's business dealings with the
6 City at the entity or at his or her agency, except that Council Members may sponsor and vote on
7 discretionary funding for the entity; and

8 [(iii) (iv) within 30 days the written designation is disclosed to the Conflicts of Interest Board
9 [and will be posted on the Board's website].

10 (2) A public servant designated in accordance with paragraph (1) of this subdivision may take
11 part in such entity's business dealings with the City at the entity and/or at his or her agency if,

12 after written approval [of] by the agency head, the Board determines that there is a demonstrated
13 nexus between the proposed [participation] work, the public servant's City job, and the mission
14 of the public servant's agency[:]; and that such participation furthers the agency's mission and is
15 not undertaken primarily for the benefit or interests of the not-for-profit entity.

16 ~~(3) The Board will post on its website designations of a public servant/servants made pursuant~~
17 ~~to paragraph (1) of this subdivision or the Board's determination made on its website. When an~~
18 ~~agency makes a request pursuant to paragraph (2) of this subdivision for a public servant both to~~
19 ~~perform work on behalf of a not-for-profit entity and be involved in that entity's City business,~~
20 ~~only the Board's determination will be posted on its website.~~

21 ((3)) (4) The designation made pursuant to paragraph (1) and approval made pursuant to
22 paragraph (2) of this subdivision must be by the head of the agency served by the public servant,
23 or by a deputy mayor if the public servant is an agency head. A public servant who is an elected

1 official, including a district attorney, is the agency head for the public servants employed by the
2 official's agency or office. A public servant who is an elected official, including a district
3 attorney, may provide the designation pursuant to paragraph (1) and the agency head approval
4 pursuant to paragraph (2) for him or herself.

5

1 NEW YORK CITY LAW DEPARTMENT
2 DIVISION OF LEGAL COUNSEL
3 100 CHURCH STREET
4 NEW YORK, NY 10007
5 212-356-4028

6
7 CERTIFICATION PURSUANT TO
8 CHARTER §1043(d)
9

10 RULE TITLE: Publication of Documents Relating to Work by Public Servants in Support of
11 Not-for-Profit Entities

12 REFERENCE NUMBER: 2019 RG 056

13 RULEMAKING AGENCY: Conflicts of Interest Board
14

15 I certify that this office has reviewed the above-referenced proposed rule as
16 required by section 1043(d) of the New York City Charter, and that the above-referenced
17 proposed rule:

18
19 (i) is drafted so as to accomplish the purpose of the authorizing provisions of
20 law;

21 (ii) is not in conflict with other applicable rules;

22 (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its
23 stated purpose; and

24 (iv) to the extent practicable and appropriate, contains a statement of basis and
25 purpose that provides a clear explanation of the rule and the requirements
26 imposed by the rule.

27
28 /s/ STEVEN GOULDEN Date, August 16, 2019
29 Acting Corporation Counsel
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31

1 NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
2 253 BROADWAY, 10th FLOOR
3 NEW YORK, NY 10007
4 212-788-1400
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6

7 CERTIFICATION / ANALYSIS
8 PURSUANT TO CHARTER SECTION 1043(d)
9

10
11 RULE TITLE: Publication of Documents Relating to Work by Public Servants in Support
12 of Not-for-Profit Entities

13 REFERENCE NUMBER: COIB-11

14 RULEMAKING AGENCY: Conflicts of Interest Board
15

16
17 I certify that this office has analyzed the proposed rule referenced above as required by
18 Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:
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- 20 (i) Is understandable and written in plain language for the discrete regulated
21 community or communities;
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23 (ii) Minimizes compliance costs for the discrete regulated community or
24 communities consistent with achieving the stated purpose of the rule, and
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26 (iii) Does not provide a cure period because it does not establish a violation,
27 modification of a violation, or modification of the penalties associated with a
28 violation.
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31 /s/ Francisco X. Navarro August 16, 2019
32 Mayor's Office of Operations Date
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New York City Conflicts of Interest Board

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4 **What are we proposing?** The Conflicts of Interest Board intends to amend its rules by clarifying
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8 proposed rule. The public hearing will take place at [time] on [date]. The hearing will be at [location].

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25 hearing must sign up to speak. You can sign up before the hearing by calling (212) 437-0730. You
26 can also sign up in the hearing room before the hearing begins on [date]. You can speak for up to
27 three minutes.

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

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1 rule was not included in the Conflicts of Interest Board's regulatory agenda for this Fiscal Year because
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8 requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made
9 according to the requirements of Section 1043 of the City Charter.

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STATEMENT OF BASIS AND PURPOSE

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Proposed Revisions to Board Rules § 1-13(e)

15 The process set forth in subdivision (e) was recently incorporated into a rule that went
16 into effect on March 10, 2019. This subdivision provides a mechanism for an agency to assign a
17 public servant: (a) to use City time and City resources to perform work for a not-for-profit entity
18 that serves a City purpose; and (b) to be involved, if approved by the Board, in that not-for-
19 profit's City business. As part of this process, for each designation or request, the Board will
20 post one document on its website; the proposed revisions would clarify which of two possible
21 documents will be posted.

22 If the public servant is designated by an agency head pursuant to Board Rules § 1-
23 13(e)(1) to use City time and City resources to perform work for a not-for-profit, but the public
24 servant will not be involved in the not-for-profit's City business, then the Board will post only
25 the agency head's letter making that designation. If the agency head's designation under Board
26 Rules § 1-13(e)(1) also requests approval from the Board for the public servant to be involved in
27 the City business dealings of a not-for-profit pursuant to Board Rules § 1-13(e)(2), then only the
28 Board's letter approving that request will be posted by the Board on its website. The agency

1 head's letter to the Board requesting that approval pursuant to Section 1-13(e)(2) would remain
2 confidential for two reasons: first, the Board would be treating these requests the same as it does
3 similar requests from agency heads for waivers of the moonlighting restrictions for agency
4 employees; second, the Board's determination would include all relevant information, including,
5 of necessity, a statement of the agency head's designation made pursuant to Section 1-13(e)(1).

6 **Text of the Proposed Rule**

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18 (i) there is a demonstrated nexus between the proposed [activity] work, the public servant's
19 City job, and the mission of the public servant's agency; [and]

20 (ii) such work furthers the agency's mission and is not undertaken primarily for the benefit or
21 interests of the not-for-profit;

22 [(ii)] (iii) the designated public servant takes no part in the entity's business dealings with the
23 City at the entity or at his or her agency, except that Council Members may sponsor and vote on
24 discretionary funding for the entity; and

25 [(iii)] (iv) within 30 days the written designation is disclosed to the Conflicts of Interest Board
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1 (2) A public servant designated in accordance with paragraph (1) of this subdivision may take
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3 after written approval [of] by the agency head, the Board determines that there is a demonstrated
4 nexus between the proposed [participation] work, the public servant's City job, and the mission
5 of the public servant's agency[;] and that such participation furthers the agency's mission and is
6 not undertaken primarily for the benefit or interests of the not-for-profit entity.

7 (3) The Board will post designations of public servants made pursuant to paragraph (1) on its
8 website. When an agency makes a request pursuant to paragraph (2) of this subdivision for a
9 public servant both to perform work on behalf of a not-for-profit entity and be involved in that
10 entity's City business, only the Board's determination will be posted on its website.

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14 official, including a district attorney, is the agency head for the public servants employed by the
15 official's agency or office. A public servant who is an elected official, including a district
16 attorney, may provide the designation pursuant to paragraph (1) and the agency head approval
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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: Publication of Documents Relating to Work by Public Servants in Support of Not-for-Profit Entities

REFERENCE NUMBER: 2019 RG 056

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: August 16, 2019

1 **NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS**
2 **253 BROADWAY, 10th FLOOR**
3 **NEW YORK, NY 10007**
4 **212-788-1400**

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6
7 **CERTIFICATION / ANALYSIS**
8 **PURSUANT TO CHARTER SECTION 1043(d)**
9

10
11 **RULE TITLE: Publication of Documents Relating to Work by Public Servants in Support**
12 **of Not-for-Profit Entities**

13 **REFERENCE NUMBER: COIB-11**

14 **RULEMAKING AGENCY: Conflicts of Interest Board**

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23 (ii) Minimizes compliance costs for the discrete regulated community or
24 communities consistent with achieving the stated purpose of the rule; and
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26 (iii) Does not provide a cure period because it does not establish a violation,
27 modification of a violation, or modification of the penalties associated with a
28 violation.
29

30
31 /s/ Francisco X. Navarro
32 Mayor's Office of Operations

August 16, 2019
Date