

October 19, 2018, Agenda – Open Meeting Matter A-1
September 21, 2018, Agenda – Open Meeting Matter

To: The Board
From: Chad H. Gholizadeh *CHG*
Date: October 5, 2018
Re: Proposed Board Rules: Work for Not-For-Profits

In response to the discussion at the September 2018 Board meeting, Staff has made the requested revisions to the text of proposed Board Rules § 1-13(e). Additionally, Staff has revised proposed Board Rules § 1-13(e)(1)(b) to reflect more clearly the advice provided in Advisory Opinion No. 2009-2. The provision now more closely mirrors the narrow exception set forth in Advisory Opinion No. 2009-2 for City Council Members to sponsor and vote on discretionary funding for not-for-profits when their involvement with those not-for-profits is part of their official duties. The commentary related to this provision has been revised accordingly, as discussed at the September Board meeting. Also, in light of the soon-to-be implemented requirements of Intro. 735, the commentary has also been revised to identify two more advisory opinions where the advice provided is incorporated into or superseded by this Rule.

Upon Board approval of the proposed rules, Staff will formally submit them to the Law Department and Mayor's Office of Operations, as required by the City Administrative Procedure Act. See Charter § 1043(d).

Attached are the following:

- 1) Minutes of the September 21, 2018, Open Meeting (**Exhibit 1**);
- 2) Staff's September Memorandum to the Board (**Exhibit 2**); and
- 3) Staff's Proposed Draft Board Rules and Commentary, with changes tracked (**Exhibit 3**);
- 4) Staff's Proposed Draft Board Rules and Commentary (**Exhibit 4**).

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

Date: September 21, 2018

Location: Baker Hostetler, 45 Rockefeller Plaza, 11th Fl., 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: Evan Berkow, Ethan Carrier, Chad Gholizadeh, Amber Gonzalez, Christopher Hammer, Gavin Kendall, Julia Lee, Carolyn Miller, Katherine Miller, Summer Payton, Jeff Tremblay, Michele Weinstat, and Clare Wiseman.

Guests: Stephanie Blattmachr

The meeting was called to order by the Chair at approximately 9:35 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 consider Staff's proposed amendments to Title 53 of the Rules of the City of New York in continuation of the Open Meeting on August 22, 2018 and Board Rules § 1-13.

After a brief introduction by a member of the Board Staff on the proposed amendments to the rules, the Chair then asked for any comments by the Board or Staff concerning the proposed amendments to Title 53 of the Rules of the City of New York.

Comments:

The following comments constitute further changes as agreed upon by the Board and Staff:

- Proposed Board Rules § 1-08: Retain language of § 1-10(a)(3) as it refers to "local public authorities."
- Proposed Board Rules § 1-08: Addition of language defining "local development corporation" in § 1-08(b).
- Proposed Board Rules § 1-10: Retain language of § 1-10(a)(10) as it refers to cooperative apartment buildings.
- Statement of Basis and Purpose: Addition of language providing definitions of New York State local authorities and local development corporations; addition of a sentence that "As stated in Rules § [], this list "includes but not limited to" and thus is not exhaustive." as cited in §§ 1-08(a) and 1-10(a) in the paragraphs pertaining to the respective rules.

Upon motion duly made and seconded, the Board unanimously voted to pass Staff's proposed amendments to Title 53 of the Rules of the City of New York with modifications as discussed in the August 22, 2018, Open Meeting and today as the final rule.

The Chair stated that the meeting was called to consider Staff's proposed amendments to Board Rules § 1-13.

After a brief introduction by a member of the Board Staff on the proposed amendments to Board Rules § 1-13, the Chair then asked for any comments by the Board or Staff concerning the proposed amendments to Board Rule § 1-13.

Comments:

The following comments constitute the changes as agreed upon by the Board and Staff:

- § 1-13(e)(1): Revise beginning of sentence to state: "An agency head may designate a public servant to perform work..."
- §§1-13(e)(1)(a) and 1-13(e)(2): Replace the word "demonstrable" with "demonstrated"
- § 1-13(e)(a): Delete the word "that"
- § 1-13(e)(1)(c): Revise to state as follows: "the written designation is disclosed to the Conflicts of Interest Board within thirty days and will be posted on the Board's website."
- § 1-13(e)(2): Insert language after "written approval" to state who will be giving written approval
- § 1-13(e)(3): Revise language to clarify the role of elected officials in the approval process
- Statement of Basis and Purpose: Add an explanation of discretionary funding and sponsorship as referenced in § 1-13(e)(1)(b), including citation to the applicable Advisory Opinion, and why "district attorney" is mentioned separately from "elected official" in § 1-13(e)(3).

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

The open meeting was adjourned at approximately 10:20 a.m.

Respectfully submitted,

Julia H. Lee
Recording Secretary

September 21, 2018, Agenda – Open Meeting Matter

To: The Board
From: Chad H. Gholizadeh
Date: September 7, 2018 *CAG*
Re: Proposed Board Rule: Work for Not-For-Profits

As part of its review of the Board's existing rules, practices, and advisory opinions, Staff has identified the issue of public servants' official work on behalf of private not-for-profits as an area where it would be helpful to encapsulate the Board's thinking and practice into a new Board Rule. This new Board Rule would: (a) establish a process by which an agency head may designate an agency employee to perform work on behalf of a not-for-profit as part of the employee's regular City duties, which would not require Board approval; (b) establish a process by which public servants designated to work on behalf of not-for-profits having City business dealings may receive approval to be involved in those business dealings, which would require Board approval; and (c) require public disclosure of all such designations.

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

Attached are the following:

- 1) Proposed Board Rule and Commentary (**Exhibit 1**); and
- 2) Proposed Board Rule without Commentary (**Exhibit 2**).

Analysis & Discussion

The proposed Rule was developed to address the increasingly common practice of public servants, as part of their City jobs, serving as staff or board members of private not-for-profits or providing them other kinds of technical, fundraising, or logistical services. Public servants' use of City time and their City titles, staff, and/or resources to do work for not-for-profits, as well as their involvement with the City business of these not-for-profits, implicate several provisions of Chapter 68. City Charter § 2604(b)(2) prohibits public servants from engaging in any conduct which conflicts with the proper discharge of their official duties.¹ The Charter Revision Commission, in commenting on this provision at the time it was under consideration, stated that it had

retained this "catch-all" prohibition in recognition of the fact that the specific prohibitions set forth in [Chapter 68] cannot address all conflict of interest situations which may arise in the future and that the [Conflicts of Interest] [B]oard must retain the flexibility to handle new situations as they arise.

Volume II, Report of the New York City Charter Revision Commission, December 1986 – November 1988, at 175.

In 1998 the Board promulgated Board Rules § 1-13, enunciating specific activities which would be prohibited by City Charter § 2604(b)(2). Board Rules §§ 1-13(a) and 1-13(b) prohibit any use of City time and City resources on activities for a public servant's private interests.²

¹ Charter § 2604(b)(2) provides that: "No public servant shall engage in any business, transaction or private employment, or have any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties."

² Board Rules § 1-13(a) provides that: "Except as provided in subdivision (c) of this section, it shall be a violation of City Charter §2604(b)(2) for any public servant to pursue personal and private activities during times when the public servant is required to perform services for the City."

Board Rules § 1-13(b) provides that: "Except as provided in subdivision (c) of this section, it shall be a violation of City Charter §2604(b)(2) for any public servant to use City letterhead, personnel, equipment, resources, or supplies for any non-City purpose."

Board Rules § 1-13(c) permits City employees to engage in personal and private activities using City time and City resources, but not City letterhead, upon a written application by the agency head if the Board determines that the activity furthers the purposes and interests of the City.³ This provision exists because in some situations a public servant's private activities provide an incidental benefit to the City. See Notice of Adoption of Rule Identifying Certain Conduct Prohibited by Charter § 2604(b)(2) ("For example, a public servant's uncompensated participation on a bar association committee not only may help the public servant meet his or obligations to the profession but may reflect favorably upon the City and the public servant's agency, may assist in the professional development of the public servant, and may provide him or her with new insights into the performance of his or her City job, all to the City's benefit."). In its Advisory Opinion No. 2001-3, the Board acknowledged these benefits, noting among the benefits of public servants engaging in, for example, pro bono legal services to be "skills training and professional development, public esteem for the legal profession, attorney job satisfaction, and generally a more efficient use of legal resources." Advisory Opinion No. 2001-3 at 8-9.

Staff has identified a noticeable and widening regulatory gap that exists between public servants' personal and private activities, like pro bono legal work addressed by Board Rules § 1-

³ Board Rules § 1-13(c) provides that:

- (1) A public servant may pursue a personal and private activity during normal business hours and may use City equipment, resources, personnel, and supplies, but not City letterhead, if
 - (i) the type of activity has been previously approved for employees of the public servant's agency by the Conflicts of Interest Board, upon application by the agency head and upon a determination by the Board that the activity furthers the purposes and interests of the City; and
 - (ii) the public servant shall have received approval to pursue such activity from the head of his or her agency.
- (2) In any instance where a particular activity may potentially directly affect another City agency, the employee must obtain approval from his or her agency head to participate in such particular activity. The agency head shall provide written notice to the head of the potentially affected agency at least 10 days prior to approving such activity."

13(c), and an expanding set of activities which, while not personal and private, are also not, strictly speaking, City work. Public servants have repeatedly sought advice from the Board on the best way to reconcile the prohibition on the use of City time and City resources for non-City activities with: (i) sitting on the board of a not-for-profit which promotes an issue relevant to the public servant's City work and taking on other responsibilities on behalf of the not-for-profit; (ii) sitting on a professional association committee to advocate for adoption of policies which the public servant's City agency believes are beneficial; and (iii) providing analysis and support to a not-for-profit as part of that not-for-profit's advocacy on issues related to the City's policy goals. In each of these situations, an agency has determined that the activity is in the City's interest and directed the public servant to engage in these activities, but a public servant's use of City time and City resources to do work specifically advancing the interests and for the benefit of the not-for-profit would be prohibited by Board Rules §§ 1-13(a) and 1-13(b). The mechanism currently available under § 1-13(c) does not apply because the proposed involvement in a not-for-profit's activities are not the "personal and private" activities of the public servant, but rather work given to the public servant as part of his or her City job.

In Advisory Opinion No. 1999-1, the Board engaged in an early attempt to bridge this divide. When faced with an inquiry as to how elected officials could use City time and City resources in the course of serving as *ex officio* members of not-for-profit boards, the Board advised that elected officials could designate in writing members of their staff to attend board meetings and participate in the not-for-profit's governance. See Advisory Opinion No. 1999-1 at 4-5. This mechanism, however, fails to address the challenges faced by the vast majority of public servants engaged in similar activities because it is expressly limited to elected officials. Additionally, Advisory Opinion No. 1999-1 failed to provide a robust mechanism for addressing

the more serious conflicts of interest that may arise when public servants are involved in the City business of the not-for-profit on whose behalf they are working as part of their City jobs.

Building on the mechanism first envisioned in Advisory Opinion No. 1999-1, and in order to provide a clear path to compliance with Chapter 68 for public servants engaged in such activities, Staff proposes a new subdivision (e) of § 1-13. The proposed Board Rules § 1-13(e) provide a clear means for a public servant, at the direction of his or her agency head, to use City time and City resources in support of a not-for-profit entity that, among its other purposes, serves a City purpose as part of his or her City agency responsibilities. Board Rules § 1-13(e)(1) permits an agency head or elected official to designate a public servant in his or her agency or office to perform work on behalf of a not-for-profit corporation as part of their regular City duties, without the need to request a waiver. In the event the agency head or elected official would want the designated public servant to be involved in the business dealings between the not-for-profit and the City, proposed Board Rules § 1-13(e)(2) permits the agency head or elected official to submit a request for that public servant's involvement to the Board for its approval.

In either a designation pursuant to proposed Board Rules § 1-13(e)(1) or an application for Board approval pursuant to proposed Board Rules § 1-13(e)(2), an agency head or elected official would be required to state that there is a demonstrable nexus between the proposed work on behalf of a not-for-profit, the public servant's City job, and the mission of the public servant's agency and that such work furthers the agency's mission and is not undertaken primarily for the benefit or interests of the not-for-profit. The proposed subdivision (e)(3) defines who may submit designations and requests in a manner similar to the waiver provisions of Charter § 2604(e), with the exception of elected officials who, in light of their unique roles and positions in

City government, may designate or approve such participation for themselves and members of their staff.

Recommendation

Staff recommends that the Board approve the proposed Board Rule and Commentary for submission to the Law Department and the Mayor's Office of Operations for review and approval pursuant to Charter § 1043(d).

New York City Conflicts of Interest Board

Notice of Public Hearing and Opportunity to Comment on Proposed Rule Regarding Work for Not-For-Profit Entities

What are we proposing? The Conflicts of Interest Board intends to amend its rules by creating a procedure whereby agency heads may designate public servants to perform work on behalf of not-for-profit organizations and, with the approval of the Conflicts of Interest Board, participate in such organizations' business dealings with the City.

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 at [time] on [date]. The hearing will be at [location].

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

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 [] Chad H. Gholizadeh at Rules@COIB.nyc.gov.
- **Mail.** You can mail comments to Chad H. Gholizadeh, Assistant Counsel, Conflicts of Interest Board, 2 Lafayette Street, Suite #1010, New York, New York 10007.
- **Fax.** You can fax comments to the Conflicts of Interest Board at (212) 437-0705.
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 437-xxxx. You can also sign up in the hearing room before the hearing begins on [date]. You can speak for up to three minutes.

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

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. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at (212) 437-0723. You must tell us by [date].

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/>. A few days after the hearing, 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 at the Conflicts of Interest Board, 2 Lafayette Street, Suite #1010, New York, New York 10007.

1 **What authorizes the Conflicts of Interest Board to make this rule?** Sections 1043 and 2603(a) of
2 the City Charter and authorize the Conflicts of Interest Board to make this proposed rule. This proposed
3 rule was not included in the Conflicts of Interest Board's regulatory agenda for this Fiscal Year because
4 it was not contemplated when the Conflicts of Interest Board published the agenda.

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

8
9 **What rules govern the rulemaking process?** The Conflicts of Interest Board must meet the
10 requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made
11 according to the requirements of Section 1043 of the City Charter.

12
13 **STATEMENT OF BASIS AND PURPOSE**

14 ~~_____~~ New York City Charter § 2604(b)(2) provides that "[n]o public servant shall engage in
15 any business, transaction, or private employment, or have any financial or other private interest,
16 direct or indirect, which is in conflict with the proper discharge of his or her official duties."

17 ~~_____~~ The Charter Revision Commission, in commenting on this provision at the time it was
18 under consideration, stated that it had

19 retained this "catch-all" prohibition in recognition of the fact that the
20 specific prohibitions set forth in [Chapter 68] cannot address all conflict
21 of interest situations which may arise in the future and that the [Conflicts
22 of Interest] [B]oard must retain the flexibility to handle new situations as
23 they arise.

24 ~~_____~~ Volume II, Report of the New York City Charter Revision Commission, December 1986 –
25 November 1988, at p-175.

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26 ~~_____~~ Another provision of Charter Chapter 68, § 2603(a), sets forth the Board's general
27 rulemaking authority, and provides that "[t]he [B]oard shall promulgate rules as are necessary to
28 implement and interpret the provisions of this chapter, consistent with the goal of providing clear
29 guidance regarding prohibited conduct."

30 In 1998, after numerous requests for advice and enforcement actions, the Board
31 promulgated rules implementing Charter § 2604(b)(2), set forth in Board Rules § 1-13 ("Conduct

1 Prohibited by City Charter § 2604(b)(2)”), identifying what sorts of activities would present a
2 conflict with the proper discharge of a public servant’s official duties. In its rules, the Board
3 prohibits a public servant from “pursu[ing] personal and private activities during times when the
4 public servant is required to perform services for the City” and from “us[ing] City letterhead,
5 personnel, equipment, resources, or supplies for any non-City purpose.” Board Rules §§ 1-13(a)
6 and (b). These rules prohibit any use of City time and City resources on activities for a public
7 servant’s private interests.

8 The Board’s Rules currently permit City employees to engage in personal and private
9 activities using City time and City resources, but not letterhead, upon a written application by the
10 agency head if the Board determines that the activity furthers the purposes and interests of the
11 City. See Board Rules § 1-13(c). This provision exists because in some situations a public
12 servant’s private activities provide an incidental benefit to the City. *See* Notice of Adoption of
13 Rule Identifying Certain Conduct Prohibited by Charter § 2604(b)(2), Statement of Basis and
14 Purpose of Rule at 3; *see also* Advisory Opinion No. 2001-3 at 8-9 (noting “skills training and
15 professional development, public esteem for the legal profession, attorney job satisfaction, and
16 generally a more efficient use of legal resources” as benefits of *pro bono* work by government
17 attorneys, an example of such outside activity).

18 In the time since the Board promulgated Board Rules § 1-13, many public servants have
19 requested advice about holding positions with firms or engaging in activities which, while not
20 personal and private activities as described above, are also not strictly speaking City work. For
21 example, a public servant may be asked to sit on the board of a not-for-profit which promotes an
22 issue relevant to the public servant’s City work but in the course of that board service take on
23 other responsibilities on behalf of the not-for-profit. Or a public servant could be asked by her

1 supervisor to accept offers to sit on a professional association committee to advocate for
2 adoption of policies which the public servant's City agency believes are beneficial. Another
3 example is the public servant who may be asked to provide analysis and support to a not-for-
4 profit as part of that not-for-profit's advocacy on issues related to the City's policy goals. In
5 each of these situations, an agency has determined that the activity is in the City's interest and is
6 also part of the public servant's City job.

7 However, a public servant's use of City time and City resources to work on behalf of the
8 not-for-profit would be prohibited by Board Rules §§ 1-13(a) and 1-13(b), which forbid public
9 servants from using City time or City resources for the work of these non-City entities. Under
10 current rules, the mechanism made available by § 1-13(c) would not apply because the proposed
11 involvement in a not-for-profit's activities are not the "personal and private" activities of the
12 public servant, but rather the work of the public servant's City agency.

13 These inquiries have arisen with more frequency because, in recent years, City agencies
14 have increasingly made use of and relied upon not-for-profit entities to implement policies and
15 projects that serve the City and its residents. Public servants often serve as staff or board
16 members of these not-for-profit entities or provide other kinds of technical, fundraising, or
17 logistical services to the not-for-profits. In the course of this work, public servants' use of City
18 time and their City titles, staff, and/or resources, as well as some of their involvement with the
19 City business of these not-for-profits, implicate several provisions of Chapter 68.

20 Many of these not-for-profits have business dealings with the City, as defined in Charter
21 § 2601(8) (including "any transaction with the city involving the sale, purchase, rental,
22 disposition or exchange of any goods, services, or property, any license, permit, grant or benefit,
23 and any performance of or litigation with respect to any of the foregoing, but shall not include

1 any transaction involving a public servant's residence or any ministerial matter"). Examples of
2 such business dealings include, but are not limited to, the following scenarios: contracting with
3 the City to provide services related to a City program; selling training and educational materials
4 to City agencies for use by public servants; applying for and receiving funds from City agencies;
5 applying for permits from City agencies; and leasing space from the City. Some of the public
6 servants working with these entities might have duties involving such business dealings, and a
7 mechanism should be available to address these situations.

8 This proposed rule amendment, a new subdivision (e) of § 1-13, would provide a means
9 for a public servant, at the direction of his or her agency head, to use City time and City
10 resources in support of a not-for-profit entity that, among its other purposes, serves a City
11 purpose as part of his or her City agency responsibilities. Specifically, this Rule would ~~not~~
12 establish a process by which an agency head may designate a public servant to perform work on
13 behalf of a not-for-profit corporation as part of their regular City duties, which in and of itself
14 would not require a Board waiver; ~~it~~ provide, provided that the public servant takes no part in
15 the not-for-profit's City business. This proposed Rule incorporates the limited exception
16 provided in advice provided by the Board in Advisory Opinion 2009-2, permitting City Council
17 Members to sponsor and vote on discretionary funding for not-for-profits when their
18 involvement with those not-for-profits is part of their official duties. See Advisory Opinion No.
19 2009-2 at 10-12; see also Advisory Opinion No. 1999-1 at 4 and Advisory Opinion No. 1992-22
20 at 2 (advising that elected officials do not require a waiver to serve on a not-for-profit board
21 where such board service is part of the elected official's official duties but are still required to
22 disclose pursuant to Charter § 2604(b)(1)(a)). The proposed Rule also provides a process by
23 which public servants designated to work on behalf of not-for-profits having City business

1 dealings may receive approval to be involved in the business dealings between those not-for-
2 profits and the City, requiring Board approval; and (c) require public disclosure of all such
3 designations.

4 In either a designation pursuant to proposed Board Rules § 1-13(e)(1) or an application
5 for Board approval pursuant to proposed Board Rules § 1-13(e)(2), an agency head would be
6 required to state that there is a demonstrable nexus between the proposed work on behalf of a
7 not-for-profit, the public servant's City job, and the mission of the public servant's agency and
8 that such work furthers the agency's mission and is not undertaken primarily for the benefit or
9 interests of the not-for-profit. ~~The proposed subdivision (e)~~Proposed Board Rules § 1-13(e)(3)
10 would define who may submit designations and requests in a manner similar to the waiver
11 provisions of Charter § 2604(e), with the exception of elected officials who, in light of their
12 unique roles and positions in City government, may designate or approve themselves and
13 members of their staff. See Advisory Opinion No. 1999-1 (advising that elected officials may
14 designate in writing members of their staff to serve on a not-for-profit board where such board
15 service is part of the elected official's and the staff member's official duties). Because the
16 definition of "elected official" in Charter § 2601(10) does not include district attorneys, proposed
17 Board Rules § 1-13(e)(3) specifically identifies district attorneys as having the same role and
18 responsibility under this rule as other City elected officials. For the purposes of this rule,
19 members of an elected official's staff would include the Councilmanic ~~aides~~Aides in the office of
20 a City ~~Councilmember~~Council Member.

21
22 **Text of the Proposed Rule**

23 New material is underlined.
24
25

1
2 Section 1. Subdivision (e) of Chapter 1 of Title 53 of the Rules of the City of New York
3 is re-lettered as subdivision (f).

4 § 2. Section 1-13 of Chapter 1 of Title 53 of the Rules of the City of New York is
5 amended by adding a new subdivision (e), to read as follows:

6 **§ 1-13. Conduct Prohibited by City Charter § 2604(b)(2).**

7 * * *

8 (e) (1) An agency head may designate a public servant may be designated by their
9 agency head to perform work on behalf of a not-for-profit corporation, association, or other such
10 entity that operates on a not-for-profit basis, including serving as a board member or other
11 position with fiduciary responsibilities, and may utilize City equipment, resources, personnel,
12 supplies, and title, but not City letterhead, as part of that work if provided that:

13 (a) there is a demonstrabledemonstrated nexus between the proposed activity, the public
14 servant's City job, and the mission of the public servant's agency; and that such work furthers
15 the agency's mission and is not undertaken primarily for the benefit or interests of the not-for-
16 profit;

17 (b) the designated public servant takes no part in the entity's business dealings with the
18 City at the entity or at his or her agency. For the purpose of this section, the sponsorship of
19 discretionary funding by elected officials will not constitute participation in an entity's business
20 dealings with the City, except that Council Members may sponsor and vote on discretionary
21 funding for the entity; and

22 (c) the written designation is disclosed to the Conflicts of Interest Board within 30 days
23 and will be posted on its the Board's website.

1 (2) A public servant designated in accordance with paragraph (1) of this subdivision may
2 take part in such entity's business dealings with the City at the entity and/or at his or her agency
3 if, after written approval of the agency head, the Board determines that there is a
4 demonstrated nexus between the proposed participation, the public servant's City
5 job, and the mission of the public servant's agency; and that such participation furthers the
6 agency's mission and is not undertaken primarily for the benefit or interests of the not-for-profit
7 entity.

8 (3) The designation made pursuant to paragraph (1) and approval made pursuant to
9 paragraph (2) of this subdivision must be by the head of the agency served by the public servant,
10 or by a deputy mayor if the public servant is an agency head. A public servant who is an elected
11 official, including a district attorney, may provide these designations and approvals for
12 themselves, members of their staff, and for the public servants who serve in the agencies they
13 lead is the agency head for the public servants employed by the official's agency or office. A
14 public servant who is an elected official, including a district attorney, may provide the
15 designation pursuant to paragraph (1) and the approval pursuant to paragraph (2) for him or
16 herself.

New York City Conflicts of Interest Board

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Notice of Public Hearing and Opportunity to Comment on Proposed Rule Regarding Work for Not-For-Profit Entities

What are we proposing? The Conflicts of Interest Board intends to amend its rules by creating a procedure whereby agency heads may designate public servants to perform work on behalf of not-for-profit organizations and, with the approval of the Conflicts of Interest Board, participate in such organizations' business dealings with the City.

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 at [time] on [date]. The hearing will be at [location].

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

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 Chad H. Gholizadeh at Rules@COIB.nyc.gov.
- **Mail.** You can mail comments to Chad H. Gholizadeh, Assistant Counsel, Conflicts of Interest Board, 2 Lafayette Street, Suite #1010, New York, New York 10007.
- **Fax.** You can fax comments to the Conflicts of Interest Board at (212) 437-0705.
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 437-xxxx. You can also sign up in the hearing room before the hearing begins on [date]. You can speak for up to three minutes.

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

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. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at (212) 437-0723. You must tell us by [date].

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/>. A few days after the hearing, 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 at the Conflicts of Interest Board, 2 Lafayette Street, Suite #1010, New York, New York 10007.

1 **What authorizes the Conflicts of Interest Board to make this rule?** Sections 1043 and 2603(a) of
2 the City Charter and authorize the Conflicts of Interest Board to make this proposed rule. This proposed
3 rule was not included in the Conflicts of Interest Board’s regulatory agenda for this Fiscal Year because
4 it was not contemplated when the Conflicts of Interest Board published the agenda.

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

8
9 **What rules govern the rulemaking process?** The Conflicts of Interest Board must meet the
10 requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made
11 according to the requirements of Section 1043 of the City Charter.

12

13 **STATEMENT OF BASIS AND PURPOSE**

14 New York City Charter § 2604(b)(2) provides that “[n]o public servant shall engage in
15 any business, transaction, or private employment, or have any financial or other private interest,
16 direct or indirect, which is in conflict with the proper discharge of his or her official duties.” The
17 Charter Revision Commission, in commenting on this provision at the time it was under
18 consideration, stated that it had

19 retained this “catch-all” prohibition in recognition of the fact that the
20 specific prohibitions set forth in [Chapter 68] cannot address all conflict
21 of interest situations which may arise in the future and that the [Conflicts
22 of Interest] [B]oard must retain the flexibility to handle new situations as
23 they arise.

24 Volume II, Report of the New York City Charter Revision Commission, December 1986 –
25 November 1988, at 175.

26 In 1998, after numerous requests for advice and enforcement actions, the Board
27 promulgated rules implementing Charter § 2604(b)(2), set forth in Board Rules § 1-13 (“Conduct
28 Prohibited by City Charter § 2604(b)(2)”), identifying what sorts of activities would present a
29 conflict with the proper discharge of a public servant’s official duties. In its rules, the Board
30 prohibits a public servant from “pursu[ing] personal and private activities during times when the
31 public servant is required to perform services for the City” and from “us[ing] City letterhead,

1 personnel, equipment, resources, or supplies for any non-City purpose.” Board Rules §§ 1-13(a)
2 and (b). These rules prohibit any use of City time and City resources on activities for a public
3 servant’s private interests.

4 The Board’s Rules currently permit City employees to engage in personal and private
5 activities using City time and City resources, but not letterhead, upon a written application by the
6 agency head if the Board determines that the activity furthers the purposes and interests of the
7 City. See Board Rules § 1-13(c). This provision exists because in some situations a public
8 servant’s private activities provide an incidental benefit to the City. *See* Notice of Adoption of
9 Rule Identifying Certain Conduct Prohibited by Charter § 2604(b)(2), Statement of Basis and
10 Purpose of Rule at 3; *see also* Advisory Opinion No. 2001-3 at 8-9 (noting “skills training and
11 professional development, public esteem for the legal profession, attorney job satisfaction, and
12 generally a more efficient use of legal resources” as benefits of *pro bono* work by government
13 attorneys, an example of such outside activity).

14 In the time since the Board promulgated Board Rules § 1-13, many public servants have
15 requested advice about holding positions with firms or engaging in activities which, while not
16 personal and private activities as described above, are also not strictly speaking City work. For
17 example, a public servant may be asked to sit on the board of a not-for-profit which promotes an
18 issue relevant to the public servant’s City work but in the course of that board service take on
19 other responsibilities on behalf of the not-for-profit. Or a public servant could be asked by her
20 supervisor to accept offers to sit on a professional association committee to advocate for
21 adoption of policies which the public servant’s City agency believes are beneficial. Another
22 example is the public servant who may be asked to provide analysis and support to a not-for-
23 profit as part of that not-for-profit’s advocacy on issues related to the City’s policy goals. In

1 each of these situations, an agency has determined that the activity is in the City’s interest and is
2 also part of the public servant’s City job.

3 However, a public servant’s use of City time and City resources to work on behalf of the
4 not-for-profit would be prohibited by Board Rules §§ 1-13(a) and 1-13(b), which forbid public
5 servants from using City time or City resources for the work of these non-City entities. Under
6 current rules, the mechanism made available by §1-13(c) would not apply because the proposed
7 involvement in a not-for-profit’s activities are not the “personal and private” activities of the
8 public servant, but rather the work of the public servant’s City agency.

9 These inquiries have arisen with more frequency because, in recent years, City agencies
10 have increasingly made use of and relied upon not-for-profit entities to implement policies and
11 projects that serve the City and its residents. Public servants often serve as staff or board
12 members of these not-for-profit entities or provide other kinds of technical, fundraising, or
13 logistical services to the not-for-profits. In the course of this work, public servants’ use of City
14 time and their City titles, staff, and/or resources, as well as some of their involvement with the
15 City business of these not-for-profits, implicate several provisions of Chapter 68.

16 Many of these not-for-profits have business dealings with the City, as defined in Charter
17 § 2601(8) (including “any transaction with the city involving the sale, purchase, rental,
18 disposition or exchange of any goods, services, or property, any license, permit, grant or benefit,
19 and any performance of or litigation with respect to any of the foregoing, but shall not include
20 any transaction involving a public servant’s residence or any ministerial matter”). Examples of
21 such business dealings include, but are not limited to, the following scenarios: contracting with
22 the City to provide services related to a City program; selling training and educational materials
23 to City agencies for use by public servants; applying for and receiving funds from City agencies;

1 applying for permits from City agencies; and leasing space from the City. Some of the public
2 servants working with these entities might have duties involving such business dealings, and a
3 mechanism should be available to address these situations.

4 This proposed rule amendment, a new subdivision (e) of § 1-13, would provide a means
5 for a public servant, at the direction of his or her agency head, to use City time and City
6 resources in support of a not-for-profit entity that, among its other purposes, serves a City
7 purpose as part of his or her City agency responsibilities. Specifically, this Rule would establish
8 a process by which an agency head may designate a public servant to perform work on behalf of
9 a not-for-profit corporation as part of their regular City duties, which in and of itself would not
10 require a Board waiver, provided that the public servant takes no part in the not-for-profit's City
11 business. This proposed Rule incorporates the limited exception provided in advice provided by
12 the Board in Advisory Opinion 2009-2, permitting City Council Members to sponsor and vote on
13 discretionary funding for not-for-profits when their involvement with those not-for-profits is part
14 of their official duties. See Advisory Opinion No. 2009-2 at 10-12; see also Advisory Opinion
15 No. 1999-1 at 4 and Advisory Opinion No. 1992-22 at 2 (advising that elected officials do not
16 require a waiver to serve on a not-for-profit board where such board service is part of the elected
17 official's official duties but are still required to disclose pursuant to Charter § 2604(b)(1)(a)).
18 The proposed Rule also provides a process by which public servants designated to work on
19 behalf of not-for-profits having City business dealings may receive approval to be involved in
20 the business dealings between those not-for-profits and the City, requiring Board approval; and
21 (c) require public disclosure of all such designations.

22 In either a designation pursuant to proposed Board Rules § 1-13(e)(1) or an application
23 for Board approval pursuant to proposed Board Rules § 1-13(e)(2), an agency head would be

1 required to state that there is a demonstrable nexus between the proposed work on behalf of a
2 not-for-profit, the public servant's City job, and the mission of the public servant's agency and
3 that such work furthers the agency's mission and is not undertaken primarily for the benefit or
4 interests of the not-for-profit. Proposed Board Rules § 1-13(e)(3) would define who may submit
5 designations and requests in a manner similar to the waiver provisions of Charter § 2604(e), with
6 the exception of elected officials who, in light of their unique roles and positions in City
7 government, may designate or approve themselves and members of their staff. See Advisory
8 Opinion No. 1999-1 (advising that elected officials may designate in writing members of their
9 staff to serve on a not-for-profit board where such board service is part of the elected official's
10 and the staff member's official duties). Because the definition of "elected official" in Charter §
11 2601(10) does not include district attorneys, proposed Board Rules § 1-13(e)(3) specifically
12 identifies district attorneys as having the same role and responsibility under this rule as other
13 City elected officials. For the purposes of this rule, members of an elected official's staff would
14 include the Councilmanic Aides in the office of a City Council Member.

15

16 **Text of the Proposed Rule**

17

18 New material is underlined.

19

20

21 Section 1. Subdivision (e) of Chapter 1 of Title 53 of the Rules of the City of New York
22 is re-lettered as subdivision (f).

23 § 2. Section 1-13 of Chapter 1 of Title 53 of the Rules of the City of New York is
24 amended by adding a new subdivision (e), to read as follows:

25 **§ 1-13. Conduct Prohibited by City Charter § 2604(b)(2).**

26

* * *

1 (e) (1) An agency head may designate a public servant to perform work on behalf of a
2 not-for-profit corporation, association, or other such entity that operates on a not-for-profit basis,
3 including serving as a board member or other position with fiduciary responsibilities, and may
4 utilize City equipment, resources, personnel, supplies, and title, but not City letterhead, as part of
5 that work provided that:

6 (a) there is a demonstrated nexus between the proposed activity, the public servant's City
7 job, and the mission of the public servant's agency; and such work furthers the agency's mission
8 and is not undertaken primarily for the benefit or interests of the not-for-profit;

9 (b) the designated public servant takes no part in the entity's business dealings with the
10 City at the entity or at his or her agency, except that Council Members may sponsor and vote on
11 discretionary funding for the entity; and

12 (c) the written designation is disclosed to the Conflicts of Interest Board within 30 days
13 and will be posted on the Board's website.

14 (2) A public servant designated in accordance with paragraph (1) of this subdivision may
15 take part in such entity's business dealings with the City at the entity and/or at his or her agency
16 if, after written approval of the agency head, the Board determines that there is a demonstrated
17 nexus between the proposed participation, the public servant's City job, and the mission of the
18 public servant's agency; and that such participation furthers the agency's mission and is not
19 undertaken primarily for the benefit or interests of the not-for-profit entity.

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

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