



**May 15, 2024 – Open Meeting Matter**

April 17, 2024 – Public Hearing

January 17, 2024 – Open Meeting

August 24, 2023 – Open Meeting

To: The Board

From: Ethan A. Carrier   
Clare Wiseman 

Date: May 7, 2024

Re: Proposed Amendments to Board Rules § 1-02:  
Public Servants Charged with Substantial Policy Discretion

At its January 2024 Open Meeting, the Board authorized Staff to submit proposed amendments to Board Rules § 1-02 to the New York City Law Department and Mayor's Office of Operations for formal review prior to holding a public hearing. The public hearing was held on April 17, 2024; the proposed amendments now return to the Board for final adoption.

Attached to this memorandum are the following:

1. Minutes of the January 17, 2024, Open Meeting (**Exhibit 1**);
2. Minutes of the August 24, 2023, Open Meeting (**Exhibit 2**);
3. Watchdog Groups' Comment to the Proposed Amendments, dated April 17, 2024 (**Exhibit 3**);
4. Common Cause NY's Comment to the Proposed Amendments, dated April 12, 2024 (**Exhibit 4**);
5. Proposed Notice of Adoption (**Exhibit 5**); and
6. Proposed Notice of Adoption, tracked to the version reviewed by the Board in January 2024 (**Exhibit 6**).

## Board Rules § 1-02

Board Rules § 1-02 defines those public servants who are “charged with substantial policy discretion” (“policymakers”) and establishes related requirements for reporting and notification. Being designated as a policymaker subjects that public servant to additional prohibitions and requirements: Policymakers are prohibited from fundraising for the campaigns of City elected officials or candidates for City elected offices (City Charter § 2604(b)(12)); are prohibited from holding certain political party positions (City Charter § 2604(b)(15)); are prohibited from fundraising for legal defense trusts except their own (City Administrative Code § 3-1102(e)(6)); and are required to file an annual disclosure report with the Board (though most policymakers would still be required to file annual disclosure reports for other reasons even if they were not designated as policymakers) (City Administrative Code § 12-110(b)(3)(a)).

## Proposed Amendments

The proposed amendments leave the policymaker definition substantively unchanged, with minor edits to improve readability, but make more significant alterations to the rule’s reporting and notification requirements. These changes include: (1) changing the reporting date by which City agencies must submit their policymakers lists to the Board; (2) making that reporting semi-annual rather than annual; (3) codifying the Board’s current practice of directly notifying policymakers that their agencies have designated them and of their additional restrictions rather than requiring City agencies to do so; (4) establishing a procedure for agencies to dispute a Board determination to add or remove a policymaker from the agency’s list, and (5) requiring that agencies submit their latest

organizational charts to the Board to aid Board Staff in making individualized assessments concerning an agency's designations.

With the Board's authorization, Board Staff submitted the proposed amendments to the Law Department and the Mayor's Office of Operations to seek certification prior to holding a public hearing, as required pursuant to the City Administrative Procedure Act. The Law Department and Mayor's Office of Operations requested minor clarifying and stylistic edits and, with those edits, certified the proposed amendments. Staff published the proposed amendments for public comment in the City Record on March 12, 2024, and held a public hearing on April 17, 2024.

### Public Comments

The Board received two comments to the proposed amendments. Good government advocacy organizations Reinvent Albany, Citizens Union, and Common Cause NY provided comments as a group (the "Watchdog Groups") (**Exhibit 3**).<sup>1</sup> The Watchdog Groups express support for the proposed amendments but request that the Board make three additional changes.

### *Clarification of Timelines*

The Watchdog Groups suggest that some of the proposed timelines need clarification, noting that, as amended, the rule would require that the Board post an agency's policymaker list on the Board's website and notify policymakers within 30 days of receipt, but that, if the Board determines that a public servant should be added to or removed from an agency's policymaker list, the agency would have 30 days to make a

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<sup>1</sup> The Board received a second comment from Common Cause NY, expressing general support for the Board's proposed amendments and for the recommendations expressed in the comment letter from the three Watchdog Groups (of which they are one) (**Exhibit 4**).

written request for reconsideration. The concern expressed by the Watchdog Groups is that this timeline creates the possibility that the Board would post a policymaker list that was incomplete or in dispute. The proposed amendment sought to codify the Board's current practice of posting policymaker lists that are accurate as of the date of posting and that, if an error is identified, the Board would promptly post a corrected list and notify the affected public servant. The rule also intended to codify the anticipated practice of posting an updated list reflecting a Board determination regarding a policymaker pursuant to proposed Board Rules §§ 1-02(b)(1) and 1-02(b)(2). Board Staff recommends making this intent explicit with two small additions to the proposed rule amendments regarding posting the lists and notifying public servants (**Exhibit 6** at 6, ll. 16-18 and 22-23).

#### *Publication and Standardization of Policymaker Data*

The Watchdog Groups make two requests related to the publication of policymaker data. First, the Watchdog Groups request that the Board amend the rule to codify that the policymaker list will be published in the City's Open Data Portal, which, as the comment acknowledges, is already the Board's current practice. The City's Open Data Law requires, as a general matter, that datasets made available on the internet by City agencies must be accessible through the City's Open Data Portal. Admin. Code § 23-502(a). The proposed amendment already requires that the policymaker list be posted on the Board's website, which would therefore cause this dataset to be subject to the City's Open Data Law. Adding an additional requirement that the data set be published in the Open Data Portal would therefore be unnecessarily duplicative.

Second, the Watchdog Groups ask that the policymaker data be standardized, pointing out that the names of City agencies are inconsistent. Despite limited time and

personnel, Board Staff has made enormous progress over the last several years in making the information in the policymaker lists more consistent. Starting in 2018, Board Staff began asking City agencies to provide their policymaker lists in an Excel spreadsheet, which Board Staff then combines into single spreadsheet, permitting better standardization and searchability. The Watchdog Groups are correct that the names of some agencies vary across the years, which is a result of several factors, including both that City agencies have been renamed or rebranded and that the data originates from several dozen City agencies who report their agency names differently from year to year. Board Staff will continue to endeavor to impose greater consistency on this dataset but, with resources being limited, recommends that no change be made to the rule in this regard.

*Publication of Additional Information in the Board's Annual Report*

Third, the Watchdog Groups ask that the Board publish in its annual report (1) “how many individuals or positions were added or removed from the list because of COIB’s determinations, and from what agencies,” and (2) “information about the determinations disputed by agency heads and the result of these proceedings” (**Exhibit 3** at 3). Board Staff recommends declining to make these changes at this time. Chapter 68 generally prohibits the Board from disclosing its records, except when it grants a waiver of the law under Charter Section 2604(e) or makes a final determination that a public servant has violated Chapter 68 under Charter Section 2603(h). See Charter Section 2603(k). While the Board has made efforts to achieve as much transparency as possible, it must also respect the important policy purposes justifying this strict confidentiality regime, that is, to encourage public servants to seek advice from the Board about the application of the

restrictions in Chapter 68. Thus, some general information about the Board's work on the policymaker lists might appropriately be disclosed in the Board's annual report, but information about guidance or determinations made with regard to specific public servants cannot and should not be disclosed, as this involves neither the granting of waivers nor final findings of violations. Board Staff will seek to identify opportunities for greater transparency consistent with the letter and purpose of Chapter 68's confidentiality restriction, whether in the annual report or another forum, but recommends no change to the proposed amendments.

#### Recommendation

Staff recommends that the Board adopt the proposed amendments of Board Rules Section 1-02 as revised (1) with the stylistic edits requested by the Law Department and Mayor's Office of Operations, (2) in light of the Watchdog Groups' first comment as described above, and (3) to reflect that the rule is no longer a proposal, but rather has been adopted as a final rule. (**Exhibit 6**). If approved by the Board, the Notice of Adoption will be published in the City Record and the amendments will take effect 30 days after publication. See Charter Section 1043(f).

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

**Date:** January 17, 2024

**Present:**

Board Members: Chair Milton L. Williams Jr. and Members Fernando A. Bohorquez Jr., Wayne G. Hawley, Ifeoma Ike, and Georgia M. Pestana

Board Staff: Anita Armstrong, Ethan A. Carrier, Christopher M. Hammer, Carolyn Lisa Miller, Katherine J. Miller, Yasong Niu, Jeffrey Tremblay, Florence Watson, Katherine J. Weall, Maryann White, and Clare Wiseman

Guests: None

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The open meeting was called to order by the Chair at approximately 9:37 a.m. to discuss proposed amendments to Board Rules.

### **Board Rules § 1-02**

Staff introduced revised proposed amendments to Board Rules § 1-02 regarding the definition of “substantial policy discretion.” After a brief discussion between the Board and Staff about how to assess whether agencies are properly designating public servants as policymakers, a motion was made and seconded to adopt the proposed amendments without any changes. The motion was passed by a vote of 5-0.

### **Board Rules Chapter 2**

Staff introduced proposed amendments to Board Rules Chapter 2 regarding the Board’s procedural rules for enforcement actions, noting a revision made in response to a comment received from the New York City Office of Administrative Trials and Hearings. A motion was made and seconded to adopt the proposed amendments to Board Rules Chapter 2 as the final rule. The motion was passed by a vote of 5-0.

The open meeting was adjourned at approximately 9:45 a.m.

Respectfully submitted,  
Katherine J. Miller  
Recording Secretary

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

**Date:** August 24, 2023

**Present:**

Board Members: Chair Milton L. Williams Jr. and Members Fernando A. Bohorquez Jr., Wayne G. Hawley, and Georgia M. Pestana (Board Member Ifeoma Ike not present)

Board Staff: Anita Armstrong, Ethan A. Carrier, Christopher M. Hammer, Carolyn Lisa Miller, Katherine J. Miller, Jeffrey Nelson, Yasong Niu, Jeffrey Tremblay, Katherine J. Weall, Maryann White, and Clare Wiseman

Guests: None

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The open meeting was called to order by the Chair at approximately 9:37 a.m.

Staff introduced proposed amendments to Board Rules § 1-02, regarding the definition of “substantial policy discretion” as used in City Charter §§ 2604(b)(12) and 2604(b)(15) and City Administrative Code § 12-110, and further proposed the repeal of Board Rules § 4-03. After a brief introduction, Staff asked for any questions or comments from the Board.

### **Board Rules § 1-02**

The following was discussed among Board and Staff:

- § 1-02(a)(3): Board requested Staff obtain the organizational charts for the three agencies that would be affected by this provision to assess which public servants would be designated as policymakers. Given the limit placed on First Amendment rights by City Charter § 2604(b)(12), want to ensure that it is not overly inclusive.
- § 1-02(b)(1): Consider whether there should be a mechanism for public servants to challenge their designation as a policymaker.

After this discussion, a motion was made by the Chair and seconded by Board Member Hawley to continue discussion at a future open meeting. The motion was passed by a vote of 4-0.

The open meeting was adjourned at approximately 10:00 a.m.

Respectfully submitted,  
Katherine J. Miller  
Recording Secretary





**Joint Testimony to the New York City Conflicts of Interest Board (COIB)  
on Proposed Rules Regarding Policymaker List**

***Re: Support for Rule Changes Increasing Reporting of NYC Policymakers,  
and Need for Cleaning of Policymaker Dataset on NYC Open Data Portal***

**April 17, 2024**

Thank you for the opportunity for our groups to submit testimony for this hearing. This testimony is being jointly submitted by Reinvent Albany, Citizens Union, and Common Cause NY.

We support [COIB's proposed rules](#) regarding city policymakers. We think the proposed rules are reasonable, and will ensure that there is timely enforcement of associated restrictions on city policymakers, including fundraising for anyone running for city office, and holding political party positions such as district leader or state committee member.

We specifically support the following changes made by COIB's proposed amendments that:

1. **Clarify the definition of "policymaker."** We think COIB's proposed language makes the definition more readable and easily understood. This is essential to proper application of the law.
2. **Change the reporting deadlines for agencies to submit their list of employees defined as policymakers to February 7th (from February 28th) – and adds a second reporting date of August 7th.** We agree with COIB's reasoning that it makes sense to have an earlier first reporting date to ensure policy makers complete financial disclosures on time. The additional reporting time will ensure that limits on political activity are able to be enforced in a more timely manner. If new individuals are hired by the city after the February reporting date, under the current process, these policymakers could go months before being notified of the restrictions on their political activities.

Additionally, the public, including journalists and watchdog organizations, will have more timely information about the individuals who are reporting as policymakers with a list that is updated twice a year, rather than once.

3. **Establish a mechanism by which an agency head can dispute a COIB determination to add or remove a policymaker from an agency's list.** We like this mechanism because it creates a uniform and logical process for agencies to correct potential mistakes or misunderstandings.
4. **Codify the current practice that COIB, not city agencies, notifies policymakers of restrictions on their political activities.** We understand that this change is merely putting into rules what is current practice, but this is important to formalize. Making COIB responsible for this notification will ensure policymakers across all agencies will be informed in a consistent, timely, and well-documented way.

We ask that the COIB make the following additional changes:

1. **Clarify the timelines in the regulations,** given that the period for publishing the policymaker list, the reconsideration period, and the notification timeline are all 30 days. For example, will the COIB be publishing a policymaker list with names that are under dispute, or that COIB believes are incomplete? Will notifications be made after the receipt of the list, as well as after names are added? We encourage the COIB to make sure that the timelines are sensible and take the reconsideration process into account.
2. **Require all policymaker data be published as open data and ensure the data is standardized and correct.** We appreciate that the proposed revisions codify that the COIB provide the list of policymakers on its website. We recommend that the rules also codify that the policymaker list be published on the NYC Open Data Portal, [as is current practice](#). However, we note that the list must be improved to ensure that the public is better able to analyze the data and determine trends over time with city agencies. Currently, the dataset is not standardized and there are multiple naming conventions for the same agencies. We ask that the dataset be cleaned to remove any errors and inconsistencies.
3. **Publish in the COIB annual report aggregate data about the changes made to the list of policymakers, including the number of determinations, additions, and subtractions from specific agencies.**

Under the current Board Rule § 1-02 (a)(3), COIB currently has the power to intervene in the list submitted by agencies, and under the proposed amendments, agencies will newly be able to dispute COIB's determinations to add or remove individuals from the list. The COIB should include information in its annual report about its activities related to the policymaker list, including how many individuals or positions were added or removed from the list because of COIB's determinations, and from what agencies. If the proposed rule is adopted, COIB should also include information about the determinations disputed by agency heads and the result of these proceedings.

As reported by [The City](#), we are concerned that some NYC agencies report a much smaller share of their employees as policymakers than others. We note in particular that COIB has flagged three large agencies for having an inordinately small share of policy makers: the New York Police Department, NYC Health + Hospitals Corporation, and the Department of Education.

The measures we are asking COIB to consider will help the City Council, Public Advocate, City Comptroller's office, and the public to better understand the scope of reporting by agencies, as well as COIB's enforcement activities.

See below a [chart of the data](#) showing changes to the numbers of policymakers reported by agencies over the last five years. Unfortunately, to do this analysis, we had to do a substantial amount of data cleaning to the policymaker list that is currently published on COIB's website and open data portal. We urge the COIB to make sure this list is clean, so it more clearly shows potential underreporting by agencies.

Thank you again for the opportunity to submit testimony. Please send any follow-up questions to Rachael Fauss at rachael [at] reinventalbany.org.

## NYC Agency Policymaker List Totals - Conflicts of Interest Board Data, 2018-2024

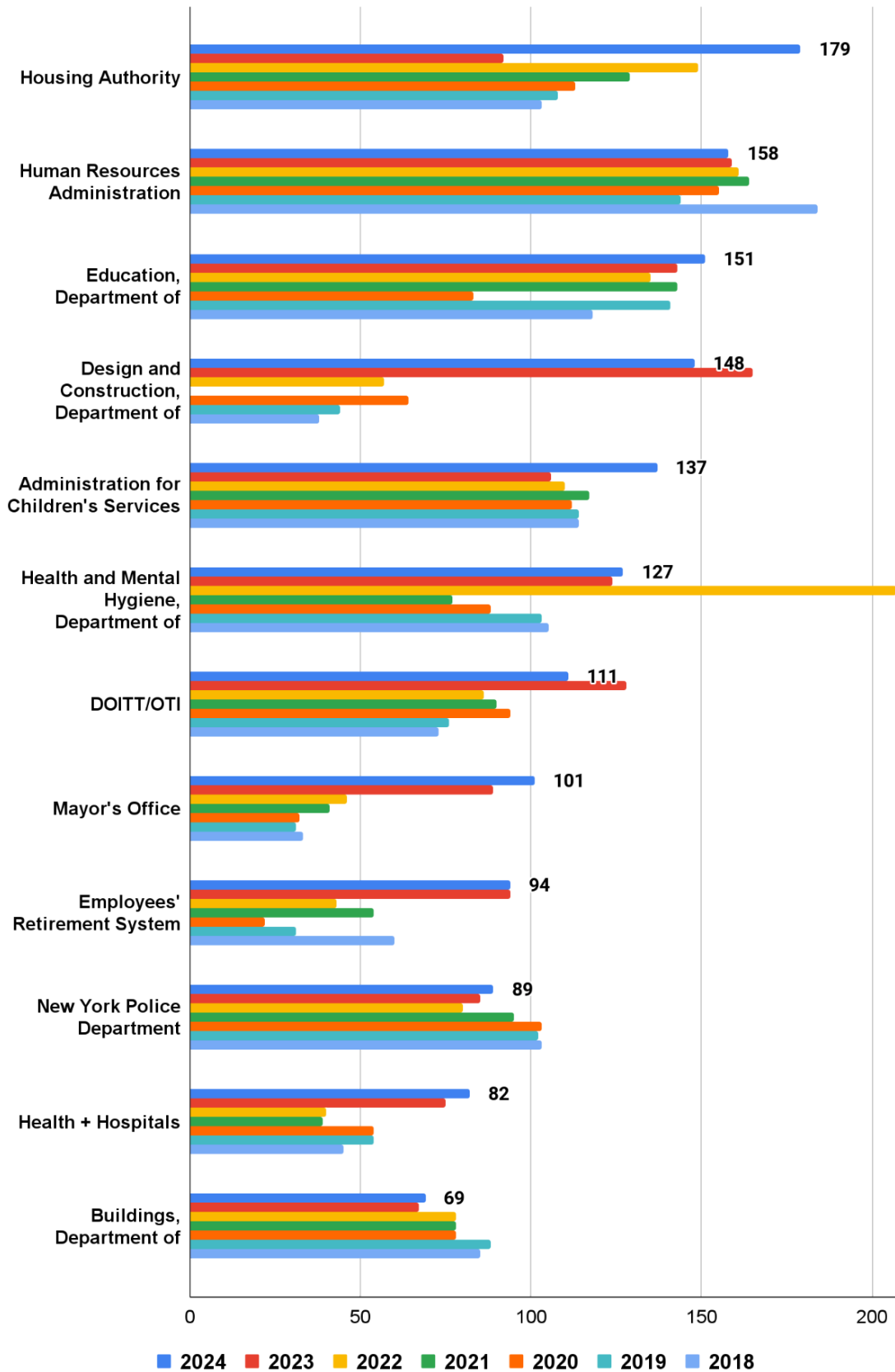


EXHIBIT 3

**WRITTEN COMMENT ON BEHALF OF COMMON CAUSE NEW YORK RE:  
NEW YORK CITY'S CONFLICTS OF INTEREST BOARD (COIB) PROPOSED RULE  
CHANGE TO THE DEFINITION OF "SUBSTANTIAL POLICY DISCRETION" TO THE  
CITY CHARTER AND ADMINISTRATIVE CODE**

April 12,2024

**Relevant to:** City Charter Sections 2604(b)(12) and 2604(b)(15) and City Administrative Code Section 12-110.

Common Cause New York supports the COIB's proposed rule changes to both the City Charter and Administrative Code. These changes codify existing practice and streamline timelines and procedures to provide clarity to the process.

We also support our colleagues' recommendations to require policymaker data be released as open data with uniform data standards to ensure ease of use for members of the general public.

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

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3 **Notice of Adoption**

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5 NOTICE IS HEREBY GIVEN PURSUANT TO AUTHORITY VESTED IN THE  
6 NEW YORK CITY CONFLICTS OF INTEREST BOARD by Sections 1043, 2603, and  
7 2604 of the New York City Charter that the Conflicts of Interest Board has amended  
8 Chapter 1 of Title 53 of the Rules of the City of New York and has repealed Section 4-03  
9 of Chapter 4 of Title 53 of the Rules of the City of New York to update its rule defining  
10 substantial policy discretion.

11  
12 The proposed Rules were published in the City Record on March 12, 2024, and a  
13 public hearing was held on April 17, 2024. After consideration of the written comments  
14 received, the Conflicts of Interest Board now adopts the following Rules.

15  
16 **STATEMENT OF BASIS AND PURPOSE**

17 Board Rules § 1-02 defines which public servants are charged with “substantial  
18 policy discretion” (also known as “policymakers”) for the purposes of City Charter  
19 § 2604(b)(12), which prohibits policymakers from fundraising for the campaigns of City  
20 elected officials or candidates for City elected offices; Charter § 2604(b)(15), which  
21 prohibits policymakers from holding certain political party positions; Administrative Code  
22 § 3-1102(e)(6), which prohibits policymakers from fundraising for legal defense trusts  
23 except their own; and Administrative Code § 12-110(b)(3)(a), which requires  
24 policymakers to file an annual disclosure report with the Conflicts of Interest Board (the  
25 “Board”). Board Rules § 1-02 requires each City agency to make its list of policymakers  
26 available to the public, to report that list annually to the Board, and to notify policymakers  
27 of the additional restrictions on their political activities found in Charter §§ 2604(b)(12)  
28 and 2604(b)(15).

29 The Board amends Board Rules § 1-02 for four purposes: first, to make non-  
30 substantive improvements to the readability of the definition of policymakers; second, to  
31 change the date by which City agencies must report their lists of policymakers to the

1 Board and to add a second reporting date; third, to establish a mechanism by which an  
2 agency head can dispute a Board determination to add or remove a policymaker from  
3 that agency's list; and, fourth, to codify the current practice that the Board, and not City  
4 agencies, notifies policymakers of the additional restrictions on their political activities.

5 Board Rules § 1-02(a) makes formatting and other non-substantive changes to the  
6 text of the existing definition of who is a policymaker to improve its readability, including  
7 by separating into individual subcategories the general definition and the specific  
8 positions identified in the Rule.

9 In Board Rules § 1-02(b), the Board moves the deadline for City agencies to  
10 provide their policymakers lists to the Board each year from February 28 to February 7 to  
11 coordinate with the administrative need for agencies to identify their required filers in  
12 advance of the annual filing period under the Annual Disclosure Law. Additionally, the  
13 Board adds a second date (August 7) for City agencies to provide their lists of  
14 policymakers. In 1997, the Board amended a prior version of this Rule to change the then  
15 real-time reporting requirement to an annual requirement, after finding that the real-time  
16 requirement was overly burdensome. The Board has found annual reporting to be too  
17 infrequent, resulting in delays in the identification and notification of public servants who  
18 are policymakers. Thus, the Board adopts a middle ground by requiring reporting and  
19 notification semiannually. Additionally, the Board adds to Board Rules § 1-02(b) a  
20 mechanism by which an agency head can dispute a Board determination to add or  
21 remove a policymaker from that agency's list, which is missing from existing Board Rules  
22 § 1-02.

1 In Board Rules § 1-02(c), the Board codifies its existing practice of itself, and not  
2 City agencies, notifying policymakers of their status under the Rule; the Board has  
3 assumed this obligation from City agencies to ensure that the educational purpose of this  
4 requirement is fulfilled. Board Rules § 1-02(b)(2) codifies the Board's current practice of  
5 making agencies' policymakers lists public by posting them on the Board's website; the  
6 Board has created a centralized place for the public to obtain this information.

7 Finally, the Board repeals Board Rules § 4-03 because it is redundant to City  
8 Administrative Code § 12-110(a)(12), and Board Rules § 1-02 makes clear that its  
9 definition applies for the purposes of the Annual Disclosure Law.

10 **Text of Adopted Board Rules**

11 New material is underlined.

12 [Deleted material is in brackets.]

13 Section 4-03 of Chapter 4 of Title 53 of the Rules of the City of New York is  
14 REPEALED and reserved.

15 Section 1-02 of Chapter 1 of Title 53 of the Rules of the City of New York is  
16 amended to read as follows:

17 **§ 1-02 Public Servants Charged with Substantial Policy Discretion.**

18 (a) Definition. For purposes of Charter §§ 2604(b)(12) and [§] 2604(b)(15), and  
19 Administrative Code §§ 3-1102(e)(6) and 12-110, a public servant [is deemed to  
20 have] charged with substantial policy discretion [if] includes:

21 (1) [he or she has] public servants with major responsibilities and who exercise[s]  
22 independent judgment in connection with determining important agency  
23 matters[.];



1           (2) [Public servants with substantial policy discretion include, but are not limited  
2           to:] agency heads, deputy agency heads, assistant agency heads, and public  
3           servants in charge of any major office, division, bureau, or unit of an agency[,  
4           and];

5           (3) members of boards and commissions other than community boards.

6           [Agency heads shall:

7           (1) designate by title, or position, and name the public servants in their agencies  
8           who have substantial policy discretion as defined by this section;

9           (2) file annually with the Conflicts of Interest Board, no later than February 28 of  
10          each year, a list of such titles or positions and the names of the public servants  
11          holding them; and

12          (3) notify these public servants in writing of the restrictions set forth in Charter  
13          § 2604(b)(12) and § 2604(b)(15) to which they are subject. If the Conflicts of  
14          Interest Board determines that the title, position, or name of any public servant  
15          should be added to or deleted from the list supplied by an agency, the Board  
16          shall notify the head of the agency involved of that addition or deletion; the  
17          agency shall in turn promptly notify the affected public servant of the change.]

18          (b) [Each agency may make available for public inspection a copy of the most recent  
19          list filed by the agency, with any additions or deletions made by the Board pursuant  
20          to subdivision (a) of this section.] Reporting. By February 7 and August 7 each  
21          year, agency heads must provide to the Board a list of the public servants at their  
22          agencies charged with substantial policy discretion. The list must include a current  
23          agency organizational chart and the name; office title; agency office, division, or

1 unit; and email address of each public servant charged with substantial policy  
2 discretion.

3 (1) If the Board determines that a public servant should be added to or removed  
4 from this list, the Board shall notify the agency head of that determination.  
5 Within 30 days of receipt of the Board determination, an agency head may  
6 submit to the Board a written request for reconsideration of the Board's  
7 determination.

8 (2) Within 30 days of receipt of an agency's list, the Board will post on its website  
9 the name; office title; agency; and office, division, or unit of those public  
10 servants charged with substantial policy discretion. If the Board determines  
11 that a public servant should be added to or removed from this list, the Board  
12 shall promptly post an updated list on the Board's website.

13 (c) Notification. Within 30 days of receipt of an agency's list, the Board will notify in  
14 writing those public servants charged with substantial policy discretion that they  
15 are subject to the restrictions set forth in Charter § 2604(b)(12) and § 2604(b)(15).  
16 If the Board determines that a public servant should be added to or removed from  
17 this list, the Board will promptly notify such public servant.

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**New York City Conflicts of Interest Board**

**Notice of ~~Adoption~~ Public Hearing and Opportunity to Comment on Proposed Rules Regarding Public Servants Charged with Substantial Policy Discretion**

NOTICE IS HEREBY GIVEN PURSUANT TO AUTHORITY VESTED IN THE NEW YORK CITY CONFLICTS OF INTEREST BOARD by Sections 1043, 2603, and 2604 of the New York City Charter that the Conflicts of Interest Board has amended Chapter 1 of Title 53 of the Rules of the City of New York and has repealed Section 4-03 of Chapter 4 of Title 53 of the Rules of the City of New York to update its rule defining substantial policy discretion.

The proposed Rules were published in the City Record on March 12, 2024, and a public hearing was held on April 17, 2024. After consideration of the written comments received, the Conflicts of Interest Board now adopts the following Rules.

~~**What are we proposing?** The Conflicts of Interest Board is proposing to amend its rule concerning the definition of “substantial policy discretion” as used in City Charter §§ 2604(b)(12) and 2604(b)(15) and City Administrative Code § 12-110. The Board is further proposing to repeal Section 4-03 of Chapter 4 of Title 53 of the Rules of the City of New York.~~

~~**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 [TBD].~~

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

~~**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 [Rules@COIB.nyc.gov](mailto:Rules@COIB.nyc.gov).~~
- ~~• **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing may speak for up to three minutes. It is recommended, but not required, that commenters sign up prior to the hearing by contacting the Conflicts of Interest Board by telephone at (212) 437-xxxx or by email at [TBD]. You can also sign up in the hearing room before the hearing begins on [date].~~

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

1 ~~**Do you need assistance to participate in the hearing?** You must tell the Conflicts of~~  
2 ~~Interest Board if you need a reasonable accommodation of a disability at the hearing,~~  
3 ~~including if you need a sign language interpreter. You can advise us by telephone at (212)~~  
4 ~~437-xxxx or by email at [TBD]. You must tell us by [date].~~

5  
6 ~~**Can I review the comments made on the proposed rules?** You can review the~~  
7 ~~comments made online on the proposed rules by going to the website at~~  
8 ~~<http://rules.cityofnewyork.us/>. Copies of all comments submitted online, copies of all~~  
9 ~~written comments, and a summary of oral comments concerning the proposed rule will~~  
10 ~~be available to the public on the Conflicts of Interest Board's website~~  
11 ~~([https://www1.nyc.gov/site/coib/public-documents/open-meetings-and-public-](https://www1.nyc.gov/site/coib/public-documents/open-meetings-and-public-hearings.page)~~  
12 ~~[hearings.page](https://www1.nyc.gov/site/coib/public-documents/open-meetings-and-public-hearings.page)) as soon as practicable.~~

13  
14 ~~**What authorizes the Conflicts of Interest Board to make this rule?** Sections 1043,~~  
15 ~~2603(a), 2603(d), 2604(b)(12), and 2604(b)(15) of the City Charter authorize the Conflicts~~  
16 ~~of Interest Board to make this proposed rule. These rules were included in the Conflicts~~  
17 ~~of Interest Board's regulatory agenda for this Fiscal Year.~~

18  
19 ~~**Where can I find the Conflicts of Interest Board's rules?** The Conflicts of Interest~~  
20 ~~Board's rules are in Title 53 of the Rules of the City of New York.~~

21  
22 ~~**What rules govern the rulemaking process?** The Conflicts of Interest Board must meet~~  
23 ~~the requirements of Section 1043 of the City Charter when creating or changing rules.~~  
24 ~~This notice is made according to the requirements of Section 1043 of the City Charter.~~

## 25 **STATEMENT OF BASIS AND PURPOSE**

26 Board Rules § 1-02 defines which public servants are charged with “substantial  
27 policy discretion” (also known as “policymakers”) for the purposes of City Charter  
28 § 2604(b)(12), which prohibits policymakers from fundraising for the campaigns of City  
29 elected officials or candidates for City elected offices; ~~City~~ Charter § 2604(b)(15), which  
30 prohibits policymakers from holding certain political party positions; ~~City~~ Administrative  
31 Code § 3-1102(e)(6), which prohibits policymakers from fundraising for legal defense  
32 trusts except their own; and ~~City~~ Administrative Code § 12-110(b)(3)(a), which requires  
33 policymakers to file an annual disclosure report with the Conflicts of Interest Board (the  
34 “Board”). Board Rules § 1-02 requires each City agency to make its list of policymakers  
35 available to the public, to report that list annually to the Board, and to notify policymakers

1 of the additional restrictions on their political activities found in ~~City~~ Charter  
2 §§ 2604(b)(12) and 2604(b)(15).

3 The Board ~~proposes to amend~~s Board Rules § 1-02 for four purposes: first, to  
4 make non-substantive improvements to the readability of the definition of policymakers;  
5 second, to change the date by which City agencies must report their lists of policymakers  
6 to the Board and to add a second reporting date; third, to establish a mechanism by which  
7 an agency head can dispute a Board determination to add or remove a policymaker from  
8 that agency's list; and, fourth, to codify the current practice that the Board, and not City  
9 agencies, notifies policymakers of the additional restrictions on their political activities.

10 ~~Proposed~~ Board Rules § 1-02(a) ~~would make~~s formatting and other non-  
11 substantive changes to the text of the existing definition of who is a policymaker to  
12 improve its readability, including by separating into individual subcategories the general  
13 definition and the specific positions identified in the Rule.

14 In ~~proposed~~ Board Rules § 1-02(b), the Board ~~would move~~s the deadline for City  
15 agencies to provide their policymakers lists to the Board each year from February 28 to  
16 February 7 to coordinate with the administrative need for agencies to identify their  
17 required filers in advance of the annual filing period under the Annual Disclosure Law.  
18 Additionally, the Board ~~would add~~s a second date (August 7) for City agencies to provide  
19 their lists of policymakers. In 1997, the Board amended a prior version of this Rule to  
20 change the then real-time reporting requirement to an annual requirement, after finding  
21 that the real-time requirement was overly burdensome. The Board has found annual  
22 reporting to be too infrequent, resulting in delays in the identification and notification of  
23 public servants who are policymakers. Thus, the Board ~~proposes to adopt~~s a middle ground

1 by requiring reporting and notification semiannually. Additionally, the Board ~~would add~~  
2 to ~~proposed~~ Board Rules § 1-02(b) a mechanism by which an agency head can dispute  
3 a Board determination to add or remove a policymaker from that agency's list, which is  
4 missing from existing Board Rules § 1-02.

5 In ~~proposed~~ Board Rules § 1-02(c), the Board ~~would codifiesy~~ its existing practice  
6 of itself, and not City agencies, notifying policymakers of their status under the Rule; the  
7 Board has assumed this obligation from City agencies to ensure that the educational  
8 purpose of this requirement is fulfilled. ~~Proposed~~ Board Rules § 1-02(b)(2) ~~would~~  
9 ~~codifiesy~~ the Board's current practice of making agencies' policymakers lists public by  
10 posting them on the Board's website; the Board has created a centralized place for the  
11 public to obtain this information.

12 Finally, the Board ~~proposes~~ ~~repealsing~~ Board Rules § 4-03 because it is redundant  
13 ~~efo~~ City Administrative Code § 12-110(a)(12), and ~~proposed~~ Board Rules § 1-02 makes  
14 clear that its definition applies for the purposes of the Annual Disclosure Law.

### 15 Text of ~~Adopted Proposed~~ Board Rules

16 New material is underlined.

17 [Deleted material is in brackets.]

18 Section 4-03 of Chapter 4 of Title 53 of the Rules of the City of New York is  
19 REPEALED and reserved.

20 Section 1-02 of Chapter 1 of Title 53 of the Rules of the City of New York is  
21 amended to read as follows:

22 **§ 1-02 Public Servants Charged with Substantial Policy Discretion.**

1 (a) Definition. For purposes of ~~City~~ Charter §§ 2604(b)(12) and [§] 2604(b)(15), and  
2 ~~City Administrative Code §§ 3-1102(e)(6) and 12-110~~, a public servant [is deemed  
3 to have] charged with substantial policy discretion [if] includes:

4 (1) [he or she has] public servants with major responsibilities and who exercise[s]  
5 independent judgment in connection with determining important agency  
6 matters[.];

7 (2) [Public servants with substantial policy discretion include, but are not limited  
8 to:] agency heads, deputy agency heads, assistant agency heads, and public  
9 servants in charge of any major office, division, bureau, or unit of an agency[,  
10 and];

11 (3) members of boards and commissions other than community boards.

12 [Agency heads shall:

13 (1) designate by title, or position, and name the public servants in their agencies  
14 who have substantial policy discretion as defined by this section;

15 (2) file annually with the Conflicts of Interest Board, no later than February 28 of  
16 each year, a list of such titles or positions and the names of the public servants  
17 holding them; and

18 (3) notify these public servants in writing of the restrictions set forth in Charter  
19 § 2604(b)(12) and § 2604(b)(15) to which they are subject. If the Conflicts of  
20 Interest Board determines that the title, position, or name of any public servant  
21 should be added to or deleted from the list supplied by an agency, the Board  
22 shall notify the head of the agency involved of that addition or deletion; the  
23 agency shall in turn promptly notify the affected public servant of the change.]

1 (b) [Each agency may make available for public inspection a copy of the most recent  
2 list filed by the agency, with any additions or deletions made by the Board pursuant  
3 to subdivision (a) of this section.] Reporting. By February 7 and August 7 each  
4 year, agency heads must provide to the Board a list of the public servants at their  
5 agencies charged with substantial policy discretion. The list must include a current  
6 agency organizational chart and the name; office title; agency office, division, or  
7 unit; and email address of each public servant charged with substantial policy  
8 discretion.

9 (1) If the Board determines that a public servant should be added to or removed  
10 from this list, the Board shall notify the agency head of that determination.  
11 Within 30 days of receipt of the Board determination, an agency head may  
12 submit to the Board a written request for reconsideration of the Board's  
13 determination.

14 (2) Within 30 days of receipt of an agency's list, the Board will post on its website  
15 the name; office title; agency; and office, division, or unit of those public  
16 servants charged with substantial policy discretion. If the Board determines  
17 that a public servant should be added to or removed from this list, the Board  
18 shall promptly post an updated list on the Board's website.

19 (c) Notification. Within 30 days of receipt of an agency's list, the Board will notify in  
20 writing those public servants charged with substantial policy discretion that they  
21 are subject to the restrictions set forth in Charter § 2604(b)(12) and § 2604(b)(15).  
22 If the Board determines that a public servant should be added to or removed from  
23 this list, the Board will promptly notify such public servant.