

January 17, 2024 – Open Meeting Matter
August 24, 2023 – Open Meeting Matter

To: The Board

From: Clare Wiseman



Date: January 4, 2024

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

At its August 2023 Open Meeting, the Board considered proposed amendments to Board Rules § 1-02, which defines those public servants who are “charged with substantial policy discretion” (also known as “policymakers”) and establishes related requirements for reporting and notification. The proposed amendments included a change to the definition of who is a policymaker to include all public servants in the top four levels of management at City agencies with 25,000 or more employees, which Staff believed would address the perceived under-designation of policymakers by these very large City agencies. The Board directed Staff to obtain additional information to better understand the inconsistency in designation of policymakers and the impact of that proposed amendment. Having obtained this additional information, Staff returns to the Board with revised proposed amendments.

Attached are the following:

1. Staff’s memorandum for the August 2023 Open Meeting (**Exhibit 1**);
2. Minutes of the August 2023 Open Meeting (**Exhibit 2**);
3. Consolidated organizational chart for the New York City Department of Education (**Exhibit 3**);
4. Table calculating the percentage of public servants at each agency designated as policymakers in 2023 (**Exhibit 4**);

5. Draft Notice of Public Hearing and Opportunity to Comment for Board Rules § 1-02, tracked to the version reviewed by the Board in August 2023 (**Exhibit 5**);
6. Draft Notice of Public Hearing and Opportunity to Comment for Board Rules § 1-02 (**Exhibit 6**); and
7. Current Board Rules § 1-02 compared with the proposed amendments to Board Rules § 1-02 (**Exhibit 7**).

To address the questions posed by the Board, Staff took two steps. First, Staff obtained organizational charts from the three largest City agencies: New York City Police Department (“NYPD”), New York City Health + Hospitals, and New York City Department of Education (“DOE”). None of these large agencies had a single chart showing the top four levels of management, so Staff consolidated many separate unit or division charts into a single organizational chart for each agency. Staff then cross-referenced these consolidated organizational charts with the policymaking positions designated by each agency in 2023.

Staff found that these three large City agencies are designating public servants as policymakers in a way that does not directly correspond with those public servants’ place within their agency’s hierarchy. For example, although DOE designated many public servants within its top four levels of management as policymakers in 2023, as illustrated by DOE’s consolidated organizational chart (**Exhibit 3**), it also left out many. It is unclear from the structure of the organizational charts, or from the public servants’ job titles, how DOE made those designations and whether those designations are appropriate. It is possible that the designations are individually considered and intentional or are artifacts of prior organizational structures.

To further understand whether City agencies are over- or under-designating policymakers, Staff obtained the number of employees at each agency from the New York

City Department of Citywide Administrative Services' Workforce Profile Report for 2020 and the Mayor's Management Report for 2023 to calculate the percentage of public servants at each agency designated as policymakers. As reflected in **Exhibit 4**, there is a wider range than Staff expected, including among smaller and medium-sized City agencies, some of which seem to be designating too many of their employees as policymakers.

Given these findings, Staff has reconsidered the merits of its proposal to change the definition of who is "charged with substantial policy discretion" to include all public servants in the top four levels of management at City agencies with 25,000 or more employees. Instead, Staff proposes that, after City agencies report their policymakers to the Board, Staff will review those lists and contact agencies individually if it appears that the agency is under- or over-designating policymakers. Staff believes that an agency-by-agency assessment, rather than a rule change, is the better course of action at this time.

Staff continues to recommend that the Board move forward with the remainder of the proposed amendments to Board Rules § 1-02, which are unchanged from the proposal discussed at the August 2023 Open Meeting. These include: changing the reporting date by which City agencies must submit their policymakers lists to the Board; making that reporting semi-annual rather than annual; codifying the Board's current practice of collecting agency policymakers list and of directly notifying policymakers of their additional restrictions rather than requiring City agencies to do so; and establishing a mechanism for agencies to dispute a Board determination to add or remove a policymaker from the agency's list. The new requirement, under proposed Board Rules § 1-02(b), that agencies submit their latest organizational charts to the Board along with

their policymakers list will aid Staff in making individualized assessments concerning an agency's designations.

Accordingly, Staff recommends the Board approve the revised Notice of Public Hearing and Opportunity to Comment (**Exhibit 6**). With the Board's approval, Staff will formally submit the proposed amendments to the New York City Law Department and the Mayor's Office of Operations, as required by the City Administrative Procedure Act. See Charter Section 1043(d).

August 24, 2023 – Open Meeting Matter

To: The Board

From: Clare Wiseman
Ethan A. Carrier

Date: August 15, 2023

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

Chapter 68 contains several restrictions on public servants engaging in political activities, two of which, Charter §§ 2604(b)(12) and 2604(b)(15), apply to public servants “charged with substantial policy discretion as defined by rule of the board.”¹ In 1990 the Board promulgated Board Rules § 1-02 to define which public servants are “charged with substantial policy discretion” (also known as “policymakers”) and to establish requirements for reporting those designations to the Board and the public and for notification of the individual public servants who are designated as policymakers. Since its adoption in 1990, the Board has amended Board Rules § 1-02 four times to refine the definition of policymakers and better balance the need for timely identification, public

¹ Charter § 2604(b)(12) states: “No public servant, other than an elected official, who is a deputy mayor, or head of an agency or who is charged with substantial policy discretion as defined by rule of the board, shall directly or indirectly request any person to make or pay any political assessment, subscription or contribution for any candidate for an elective office of the city or for any elected official who is a candidate for any elective office; provided that nothing contained in this paragraph shall be construed to prohibit such public servant from speaking on behalf of any such candidate or elected official at an occasion where a request for a political assessment, subscription or contribution may be made by others.”

Charter § 2604(b)(15) states: “No elected official, deputy mayor, deputy to a citywide or boroughwide elected official, head of an agency, or other public servant who is charged with substantial policy discretion as defined by rule of the board may be a member of the national or state committee of a political party, serve as an assembly district leader of a political party or serve as the chair or as an officer of the county committee or county executive committee of a political party, except that a member of the council may serve as an assembly district leader or hold any lesser political office as defined by rule of the board.”

reporting, and notice to individual public servants against the administrative burden of these reporting and notification requirements on City agencies. Current Board Rules § 1-02 is attached as **Exhibit 1**.

This proposed rule amendment continues these efforts in four ways: First, by improving the policymaker definition as it applies to very large City agencies; second, by changing the date by which City agencies must report their lists of policymakers to the Board and making that reporting semi-annual rather than annual; third, by establishing a formal process by which a City agency may dispute the Board's determination of whether a public servant is or is not a policymaker; and, fourth, by codifying the Board's current practice of directly notifying policymakers of their additional restrictions rather than requiring City agencies to do so.

Definition of Public Servants Charged with Substantial Policy Discretion

The core of the policymaker definition has remained almost unchanged since its adoption in 1990. Specifically, since its inception the rule has stated that “a public servant is deemed to have substantial policy discretion if he or she has major responsibilities and exercises independent judgment in connection with determining important agency matters.” The original 1990 rule then goes on to state that policymakers “include, but are not limited to, agency heads, deputy agency heads, assistant agency heads and public servants in charge of any major office, division, bureau or unit of an agency.” The current rule includes additions to that list of “members of boards and commissions” (1997 amendment) “other than community boards” (2019 amendment).

The proposed amendment seeks to improve this definition as it applies to very large City agencies. These very large City agencies, namely the New York City Police Department, New York City Health + Hospitals, and the New York City Department of Education, have routinely identified too few public servants as being charged with substantial policy discretion. This under-designation appears to be a result of not including the heads of large offices or units that often are, by themselves, larger than many small City agencies.

To address this issue, Staff proposes the Board amend Board Rules § 1-02 to establish a baseline for City agencies with 25,000 or more employees such that all public servants in the top four levels of management at these very large agencies will be policymakers. There may be additional public servants at these very large agencies outside of the top four levels of management who are also policymakers pursuant to the definition in the rule; the establishment of this baseline will make it easier to individually designate these additional public servants based on their specific responsibilities.

Reporting Requirement

When originally promulgated in 1990, Board Rules § 1-02 required that City agencies annually report lists of policymaking positions to the Board, notify these policymakers, and update the Board of any changes within thirty days. The Board amended the rule in 1997 to eliminate the thirty-day update requirement, leaving only the annual reporting and notification requirements. The 1997 amendment reflects the Board's conclusion that this regular updating of policymaker lists is overly burdensome to City agencies and the Board. However, the current structure of annual reporting and

notification has proven to be too infrequent. A public servant who starts a policymaking position shortly after the annual reporting and notification date might go nearly a year before being identified as a policymaker and notified of the additional political activities restrictions to which they are subject. Thus, proposed Board Rules § 1-02(b) would add a second reporting date for policymakers, such that the delay in identifying and notifying a policymaker of their additional Charter restrictions would never be more than six months. This interval better balances the administrative burden against the need for transparency and notification.²

Procedure for City Agencies to Seek Reconsideration of Board Determinations

In its 1997 amendments to Board Rules § 1-02, the Board codified its authority to determine that a public servant was or was not a policymaker and that a City agency would be obligated to adjust its list of policymakers at the Board's direction. Missing from the rule has been a procedure for City agencies to seek the Board's reconsideration of such a determination. Proposed Board Rules § 1-02(b) adds such a mechanism.

Notification Requirement and Public Inspection of Policymaker Lists

Board Rules § 1-02 requires that City agencies notify their policymakers of the additional political activities restrictions to which they are subject, but the Board has found instances where City agencies have not fulfilled this notification obligation. As a result, since 2021, Board Staff have assumed this administrative responsibility by notifying

² City Administrative Code § 12-110(b)(3)(a) requires policymakers to file annual disclosure reports with the Board. The proposed rule amendment sets the first date for semi-annual agency reporting of policymaker lists slightly earlier in the year than the current annual reporting date to better coordinate with the administrative functions of the annual disclosure process.

policymakers directly rather than relying on City agencies to do so. Similarly, while Board Rules § 1-02 provides that City agencies “may make available for public inspection” their lists of policymakers, the Board routinely posts these lists on its website to provide a centralized public source for this information. Proposed Board Rules §§ 1-02(b)(2) and 1-02(c) codify these established practices.

Conclusion

Proposed Board Rules § 1-02 is attached as **Exhibit 2**. The Draft Notice of Public Hearing and Opportunity to Comment including the Statement of Basis and Purposes is attached as **Exhibit 3**. With the Board’s approval, Staff will formally submit the proposed Board Rules to the New York City Law Department and the Mayor’s Office of Operations for review and approval as required by the City Administrative Procedure Act. See Charter § 1043(d).

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

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

Name of City Agency	Acronym	Number of Employees	Policymakers (2023)	%
Department of Education	DOE*	141,594	143	0.1%
Police Department	NYPD*	48,914	85	0.2%
Health + Hospitals	HHC*	39,738	75	0.2%
Fire Department	FDNY*	17,070	62	0.4%
Housing Authority	NYCHA*	11,891	92	0.8%
Human Resources Administration	HRA*	10,841	159	1.5%
Department of Sanitation	DSNY*	10,024	38	0.4%
Department of Correction	DOC*	7,851	18	0.2%
Department of Parks & Recreation	DPR*	6,785	32	0.5%
Administration for Children's Services	ACS*	6,222	106	1.7%
Department of Health & Mental Hygiene	DOHMH*	6,164	124	2.0%
Department of Environmental Protection	DEP*	5,761	41	0.7%
Department of Transportation	DOT*	5,707	56	1.0%
Department of Housing Preservation & Development	HPD*	2,410	51	2.1%
Department of Citywide Administrative Services	DCAS*	2,068	65	3.1%
Department of Homeless Services	DHS*	1,797	43	2.4%
Department of Finance	DOF*	1,691	34	2.0%
Department of Buildings	DOB*	1,569	67	4.3%
District Attorney, New York County	DANYC	1,543	28	1.8%
Law Department	LAW*	1,462	24	1.6%
Mayor's Office	MO	1,332	89	6.7%
Office of Technology & Innovation	OTI*	1,166	128	11.0%
District Attorney, Kings County	DAKC	1,166	15	1.3%
Department of Design & Construction	DDC*	1,076	165	15.3%
District Attorney, Bronx County	DABC	1,053	24	2.3%
Department of Probation	DOP*	1,014	20	2.0%
School Construction Authority	SCA*	883	27	3.1%
Board of Elections	BOE*	860	24	2.8%
City Council	COUNCIL	823	13	1.6%
Comptroller's Office	COMP	782	54	6.9%
District Attorney, Queens County	DAQC	744	11	1.5%
Chief Medical Examiner's Office	OCME*	716	12	1.7%
Financial Information Services Agency/Office of Payroll Administration	FISA/OPA	583	9	1.5%
Economic Development Corporation	EDC*	518	23	4.4%
Department of Youth & Community Development	DYCD*	505	33	6.5%
NYC Employees' Retirement System	NYCERS	476	94	19.7%
Taxi & Limousine Commission	TLC*	462	27	5.8%
Office of Administrative Trials & Hearings	OATH*	429	17	4.0%
Department of Consumer Affairs	DCA*	413	8	1.9%
Teachers' Retirement System	TRS	339	19	5.6%
Department of City Planning	DCP*	320	32	10.0%
Department for the Aging	DFTA*	312	26	8.3%
Small Business Services	SBS*	288	21	7.3%
Department of Investigation	DOI*	272	42	15.4%
Civilian Complaint Review Board	CCRB*	230	19	8.3%
District Attorney, Richmond County	DARC	211	26	12.3%

EXHIBIT 4

Name of City Agency	Acronym	Number of Employees	Policymakers (2023)	%
Office of Emergency Management	OEM*	211	20	9.5%
Police Pension Fund	PPF	144	7	4.9%
Borough President, Brooklyn	BKBP	120	17	14.2%
Campaign Finance Board	CFB	113	13	11.5%
Borough President, Queens	QBP	106	4	3.8%
Commission on Human Rights	CHR*	101	24	23.8%
Borough President, Manhattan	MNBP	93	7	7.5%
Borough President, Bronx	BXBP	91	4	4.4%
Public Advocate, Office of	PA	77	14	18.2%
Landmarks Preservation Commission	LPC*	76	20	26.3%
Office of the City Clerk	CLERK	71	7	9.9%
Business Integrity Commission	BIC*	70	11	15.7%
Department of Cultural Affairs	DCLA*	64	13	20.3%
Department of Records & Information Services	DORIS*	58	9	15.5%
Borough President, Staten Island	SIBP	52	5	9.6%
Office of the Actuary	ACT	44	8	18.2%
Independent Budget Office	IBO	38	4	10.5%
Fire Department Pension Fund	FDPF	37	24	64.9%
Veteran's Services (Department of)	DVS*	34	10	29.4%
Board of Correction	BOC	28	12	42.9%
Conflicts of Interest Board	COIB	26	6	23.1%
City Civil Service Commission	CCSC	15	5	33.3%
Office of Collective Bargaining	OCB	15	12	80.0%
Equal Employment Practices Commission	EEPC	13	7	53.8%
Administrative Tax Appeals (Office of)	OATA	**	9	
Board of Education Retirement System	BERS	**	34	
Board of Standards & Appeals	BSA	**	7	
Civil Engagement Commission	CEC	**	15	
Districting Commission	DC	**	15	
Environmental Control Board	OATH-ECB	**	6	
Franchise Concession Review Committee	FCRC	**	19	
Housing Development Corporation	HDC	**	21	
Labor Relations (Office of)	OLR	**	19	
Management & Budget (Office of)	OMB	**	59	
Mayor's Office of Contract Services	MOCS	**	30	
Mayor's Office of Media & Entertainment	MOME	**	18	
Procurement Policy Board	PPB	**	5	
Public Design Commission	PDC	**	11	
Rent Guidelines Board	RGB	**	9	
Special Commissioner of Investigation	SCI	**	3	
Water Board	WB	**	9	
Total Policy-makers: 2,873				

* = workforce headcounts obtained from September 2023 Mayor's Management Report

** = no workforce headcount available

EXHIBIT 4

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

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].

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

- Is there a deadline to submit comments?** Yes, you must submit written comments 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/>. 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 on the Conflicts of Interest Board's website (<https://www1.nyc.gov/site/coib/public-documents/open-meetings-and-public-hearings.page>) as soon as practicable.

1
2 **What authorizes the Conflicts of Interest Board to make this rule?** Sections 1043,
3 2603(a), 2603(d), 2604(b)(12), and 2604(b)(15) of the City Charter authorize the Conflicts
4 of Interest Board to make this proposed rule. These rules were included in the Conflicts
5 of Interest Board's regulatory agenda for this Fiscal Year.

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

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

13 **STATEMENT OF BASIS AND PURPOSE**

14 Board Rules § 1-02 defines which public servants are charged with "substantial
15 policy discretion" (also known as "policymakers") for the purposes of City Charter
16 § 2604(b)(12), which prohibits policymakers from ~~engaging in~~ fundraising for the
17 campaigns of City elected officials or candidates for City elected offices; City Charter
18 § 2604(b)(15), which prohibits policymakers from holding certain political party positions;
19 City Administrative Code § 3-1102(e)(6), which prohibits policymakers from fundraising
20 for legal defense trusts except their own; and City Administrative Code § 12-110(b)(3)(a),
21 which requires policymakers to file an annual disclosure report with the Conflicts of
22 Interest Board (the "Board"). Board Rules § 1-02 requires each City agency to make its
23 list of policymakers available to the public, to report that list annually to the Board, and to
24 notify policymakers of the additional restrictions on their political activities found in City
25 Charter §§ 2604(b)(12) and 2604(b)(15).

26 The Board proposes to amend Board Rules § 1-02 for four purposes: first, to make
27 non-substantive improvements to the readability of the definition of policymakers~~provide~~
28 ~~additional guidance to very large City agencies as to which public servants are~~
29 ~~policymakers~~; second, to change the date by which City agencies must report their lists

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

6 Proposed Board Rules § 1-02(a) would make formatting and other non-substantive
7 changes to the text of the existing definition of who is a policymaker to improve its
8 readability, including by separating into individual subcategories the general definition and
9 the specific positions identified in the Rule. ~~The Board has found that the definition of~~
10 ~~public servants with substantial policy discretion in existing Board Rules § 1-02(a)~~
11 ~~provides insufficient guidance to very large City agencies, resulting in under-inclusion on~~
12 ~~their policymakers lists. This under-inclusion is due to very large agencies failing to~~
13 ~~identify the heads of offices or units that are, by themselves, larger than many small City~~
14 ~~agencies. Accordingly, proposed Board Rules § 1-02(a) would determine the top four~~
15 ~~levels of management at these very large agencies, those with 25,000 or more~~
16 ~~employees, are charged with substantial policy discretion. This blanket determination is~~
17 ~~not intended to limit who is a policymaker at such agencies, as other public servants at~~
18 ~~these very large agencies who are not in the top four levels of management may also~~
19 ~~meet the criteria for policymakers set forth in Board Rules § 1-02(a)(1).~~

20 In proposed Board Rules § 1-02(b), the Board would move the deadline for City
21 agencies to provide their policymakers lists to the Board each year from February 28 to
22 February 7 to coordinate with the administrative need for agencies to identify their
23 required filers in advance of the annual filing period under the Annual Disclosure Law.

1 Additionally, the Board would add a second date for City agencies to provide their lists of
2 policymakers. In 1997, the Board amended a prior version of this Rule to change the then
3 real-time reporting requirement to an annual requirement, after finding that the real-time
4 requirement was overly burdensome. The Board has found annual reporting to be too
5 infrequent, resulting in delays in the identification and notification of public servants who
6 are policymakers. Thus, the Board proposes a middle ground by requiring reporting and
7 notification semiannually. Additionally, the Board would add to proposed Board Rules
8 § 1-02(b) a mechanism by which an agency head can dispute a Board determination to
9 add or remove a policymaker from that agency's list, which is missing from existing Board
10 Rules § 1-02.

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

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

21 **Text of Proposed Board Rules**

22 New material is underlined.

23 [Deleted material is in brackets.]

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

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

5 **§ 1-02 Public Servants Charged with Substantial Policy Discretion.**

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

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

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

16 ~~(3) for City agencies employing 25,000 or more public servants, public servants~~
17 ~~who are in the top four levels of management, with the first level of management~~
18 ~~being the agency head; and~~

19 ~~(34)~~ members of boards and commissions other than community boards.

20 (b) Reporting. By February 7 and August 7 each year, agency heads must provide to
21 the Board a list of the public servants at their agencies charged with substantial
22 policy discretion. The list must include a current agency organizational chart and

1 the name; office title; agency office, division, or unit; and email address of each
2 public servant charged with substantial policy 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.

11 (c) Notification. Within 30 days of receipt of an agency's list, the Board will notify in
12 writing those public servants charged with substantial policy discretion that they
13 are subject to the restrictions set forth in Charter § 2604(b)(12) and § 2604(b)(15).

14 [Agency heads shall:

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

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

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

1 shall notify the head of the agency involved of that addition or deletion; the
2 agency shall in turn promptly notify the affected public servant of the change.
3 (b) Each agency may make available for public inspection a copy of the most recent
4 list filed by the agency, with any additions or deletions made by the Board pursuant
5 to subdivision (a) of this section.]

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

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].

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

- Is there a deadline to submit comments?** Yes, you must submit written comments 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/>. 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 on the Conflicts of Interest Board's website (<https://www1.nyc.gov/site/coib/public-documents/open-meetings-and-public-hearings.page>) as soon as practicable.

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2 **What authorizes the Conflicts of Interest Board to make this rule?** Sections 1043,
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15 policy discretion” (also known as “policymakers”) for the purposes of City Charter
16 § 2604(b)(12), which prohibits policymakers from fundraising for the campaigns of City
17 elected officials or candidates for City elected offices; City Charter § 2604(b)(15), which
18 prohibits policymakers from holding certain political party positions; City Administrative
19 Code § 3-1102(e)(6), which prohibits policymakers from fundraising for legal defense
20 trusts except their own; and City Administrative Code § 12-110(b)(3)(a), which requires
21 policymakers to file an annual disclosure report with the Conflicts of Interest Board (the
22 “Board”). Board Rules § 1-02 requires each City agency to make its list of policymakers
23 available to the public, to report that list annually to the Board, and to notify policymakers
24 of the additional restrictions on their political activities found in City Charter
25 §§ 2604(b)(12) and 2604(b)(15).

26 The Board proposes to amend Board Rules § 1-02 for four purposes: first, to make
27 non-substantive improvements to the readability of the definition of policymakers; second,
28 to change the date by which City agencies must report their lists of policymakers to the
29 Board and to add a second reporting date; third, to establish a mechanism by which an

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

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

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

22 In proposed Board Rules § 1-02(c), the Board would codify its existing practice of
23 itself, and not City agencies, notifying policymakers of their status under the Rule; the

Board has assumed this obligation from City agencies to ensure that the educational purpose of this requirement is fulfilled. Proposed Board Rules § 1-02(b)(2) would codify the Board's current practice of making agencies' policymakers lists public by posting them on the Board's website; the Board has created a centralized place for the public to obtain this information.

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

Text of Proposed Board Rules

New material is underlined.

[Deleted material is in brackets.]

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

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

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

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

(1) [he or she has] public servants with major responsibilities and who exercise[s] independent judgment in connection with determining important agency 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 (b) Reporting. By February 7 and August 7 each year, agency heads must provide to
7 the Board a list of the public servants at their agencies charged with substantial
8 policy discretion. The list must include a current agency organizational chart and
9 the name; office title; agency office, division, or unit; and email address of each
10 public servant charged with substantial policy discretion.

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

16 (2) Within 30 days of receipt of an agency's list, the Board will post on its website
17 the name; office title; agency; and office, division, or unit of those public
18 servants charged with substantial policy discretion.

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 [Agency heads shall:

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

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

6 (3) notify these public servants in writing of the restrictions set forth in Charter
7 § 2604(b)(12) and § 2604(b)(15) to which they are subject. If the Conflicts of
8 Interest Board determines that the title, position, or name of any public servant
9 should be added to or deleted from the list supplied by an agency, the Board
10 shall notify the head of the agency involved of that addition or deletion; the
11 agency shall in turn promptly notify the affected public servant of the change.

12 (b) Each agency may make available for public inspection a copy of the most recent
13 list filed by the agency, with any additions or deletions made by the Board pursuant
14 to subdivision (a) of this section.]

Existing Board Rules §1-02

(a) For purposes of Charter § 2604(b)(12) and § 2604(b)(15), a public servant is deemed to have substantial policy discretion if he or she has major responsibilities and exercises independent judgment in connection with determining important agency matters. Public servants with substantial policy discretion include, but are not limited to: agency heads, deputy agency heads, assistant agency heads, public servants in charge of any major office, division, bureau, or unit of an agency, and members of boards and commissions other than community boards. Agency heads shall:

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

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

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

(b) Each agency may make available for public inspection a copy of the most recent list filed by the agency, with any additions or deletions made by the Board pursuant to subdivision (a) of this section.

Proposed Board Rules §1-02

(a) Definition. For purposes of City Charter § 2604(b)(12) and § 2604(b)(15), and City Administrative Code §§ 3-1102(e)(6) and 12-110, a public servant charged with substantial policy discretion includes:

- (1) public servants with major responsibilities and who exercise independent judgment in connection with determining important agency matters;
- (2) agency heads, deputy agency heads, assistant agency heads, and public servants in charge of any major office, division, bureau, or unit of an agency;
- (3) members of boards and commissions other than community boards.

(b) Reporting. By February 7 and August 7 each year, agency heads must provide to the Board a list of the public servants at their agencies charged with substantial policy discretion. The list must include a current agency organizational chart and the name; office title; agency office, division, or unit; and email address of each public servant charged with substantial policy discretion.

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

(2) Within 30 days of receipt of an agency's list, the Board will post on its website the name; office title; agency; and office, division, or unit of those public servants charged with substantial policy discretion.

(c) Notification. Within 30 days of receipt of an agency's list, the Board will notify in writing those public servants charged with substantial policy discretion that they are subject to the restrictions set forth in Charter § 2604(b)(12) and § 2604(b)(15)