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**CONFLICTS OF INTEREST  
BOARD**

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*Adoption of Rules*

The Conflicts of Interest Board adopted the following rule at its meeting on June 14, 1990:

**Section 9. Definition of a Valuable Gift.**

1. For the purposes of Charter Section 2604(b)(5), a "valuable gift" means any gift to a public servant which has a value of \$50.00 or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form. When a public servant has received two or more gifts from any one source within a calendar year which individually are worth less than \$50.00 but in the aggregate exceed a value of \$50.00, the public servant shall disclose the gifts in writing to his or her agency head.

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

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

- (ii) the public servant's receipt of the gift would not result in or create the appearance of: (a) using his or her office for private gain; (b) giving preferential treatment to any person or entity; (c) losing independence or impartiality; or (d) accepting gifts or favors for performing official duties.

3. For the purposes of Charter Section 2604(b)(5), a public servant may accept awards and plaques valued at less than \$150.00 which are publicly presented in recognition of public service.

4. For the purposes of Charter Section 2604(b)(5), a public servant may accept free meals or refreshments in the course of and for the purpose of conducting City business under the following circumstances:

- (i) when offered during a meeting which the public servant is attending for official reasons;
- (ii) when offered at a company cafeteria, club or other setting where there is no public price structure and individual payment is impractical;
- (iii) when a meeting the public servant is attending for official reasons begins in a business setting but continues through normal meal hours in a restaurant, and a refusal to participate and/or individual payment would be impractical;
- (iv) when the free meals or refreshments are provided by the host entity at a meeting held at an out-of-the-way location, alternative facilities are not available and individual payment would be impractical;
- (v) when it is customary business practice to hold a meeting over meals or refreshments and customary business practice for one party to make payment for the other and payment by the public servant would be inappropriate, provided: (a) that the selection of the restaurant and the selection of the meal also conform to customary business practice; and (b) the public servant, except in the case of an elected official, reports acceptance of such meals or refreshments to his or her agency head on a monthly basis or to a deputy mayor if the public servant is an agency head; and
- (vi) when the public servant would not have otherwise purchased food and refreshments had he or she not been placed in such a situation while representing the interests of the City.

5. For the purposes of Charter Section 2604(b)(5), a public servant may:

- (i) accept meals or refreshments when participating as a panelist or speaker in a professional or educational program and the meals or refreshments are provided to all panelists;
- (ii) be present at a professional or educational program as a guest of the sponsoring organization;
- (iii) be a guest at ceremonies or functions sponsored or encouraged by the City as a matter of City policy, such as, for example, those involving housing, education, legislation or government administration;
- (iv) attend an annual public affair of an organization composed of representatives of business, labor, professions, news media or organizations of a civic, charitable or community nature, when invited by the sponsoring organization, provided that this exception does not apply when the invitation is from a civic, charitable or community organization which has a contract or contracts with the public servant's agency;
- (v) be a guest at any function or occasion where the attendance of the public servant has been approved in writing as in the interests of the City, in advance where practicable or within a reasonable time thereafter, by the employee's agency head or by a deputy mayor if the public servant is an agency head.

6. For the purposes of Charter Section 2604(b)(5), a public servant who is an elected official or a member of the elected official's staff authorized by the elected official may attend a function given by an organization composed of representatives of business, labor, professions, news media or organizations of a civic, charitable or community nature, when invited by the sponsoring organization.

7. (a) For the purposes of Charter Section 2604(b)(5), a public servant's acceptance of travel-related expenses from a private entity can be considered a gift to the City rather than to the public servant, when:

- (i) the trip is for a City purpose and therefore could properly be paid for with City funds;
- (ii) the travel arrangements are appropriate to that purpose; and
- (iii) the trip is no longer than reasonably necessary to accomplish the business which is its purpose.

(b) To avoid an appearance of impropriety, it is recommended that for public servants who are not elected officials, each such trip and the acceptance of payment therefor be approved in advance and in writing by the head of the appropriate agency, or if the public servant is an agency head, by a deputy mayor.

8. A public servant should not accept a "valuable gift" as defined herein from a person or entity engaged in business dealings with the City. If the public servant receives a valuable gift he or she should return the gift to the donor. If that is not practical, the public servant should report the receipt of a valuable gift to the inspector general of the public servant's agency who shall determine the disposition of the gift.

9. City agencies are encouraged to establish rules concerning gifts for their own employees which may not be less restrictive than as set forth in Charter Section 2604(b)(5) as interpreted by these rules.

Statement of Basis and Purpose of Regulation:

Pursuant to the authority vested in the Conflicts of Interest Board by Section 2604(b)(5) of the New York City Charter and in accordance with the requirements of Section 1043 of the New York City Charter, the Conflicts of Interest Board is authorized to promulgate a rule concerning the definition of a valuable gift, for the purpose of ensuring compliance by the City and all public servants with the applicable provisions of the conflicts of interest law. New York City Charter Section 2604(b)(5) provides that no public servant shall accept any valuable gift from any person or firm which such public servant knows is or intends to become engaged in business dealings with the City.

Dated: June 29, 1990 Merrell E. Clark, Jr., Chair

The Conflicts of Interest Board adopted the following rule at its meeting on June 14, 1990:

Section 10. Definition of a Public Servant Charged with Substantial Policy Discretion.

For purposes of Charter Sections 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 and public servants in charge of any major office, division, bureau or unit of an agency. Agency heads are requested to: (1) designate by title or position the public servants in their agencies who have substantial policy discretion as defined by this rule; (2) file a list of such titles or positions with the Conflicts of Interest Board no later than September 30, 1990; and (3) notify these public servants in writing of the restrictions set forth in Charter Sections 2604(b)(12) and 2604(b)(15) to which they are subject. Agency heads shall update the filing within 30 days of the creation or elimination of any title or position which involves the exercise of substantial policy discretion.

Statement of Basis and Purpose of Regulation:

Pursuant to the authority vested in the Conflicts of Interest Board by Sections 2604(b)(12) and 2604(b)(15) of the New York City Charter and in accordance with the requirements of Section 1043 of the New York City Charter, the Conflicts of Interest Board is authorized to promulgate a rule concerning the definition of a public servant charged with substantial policy discretion, for the purpose of

ensuring compliance by the City and all public servants with the applicable provisions of the conflicts of interest law. New York City Charter Section 2604(b)(12) provides that a public servant who is charged with substantial policy discretion shall not 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. New York City Charter Section 2604(b)(15) provides that a public servant charged with substantial policy discretion may not 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.

Dated: June 29, 1990

Merrell E. Clark, Jr., Chair

July 13

# AGENCY RULES

## CONFLICTS OF INTEREST BOARD

### NOTICE

#### CITY OF NEW YORK CONFLICTS OF INTEREST BOARD

##### Notice of Adoption of Amendment to Rule on Public Servants Charged with Substantial Policy Discretion

NOTICE IS HEREBY GIVEN THAT, pursuant to the authority vested in the Conflicts of Interest Board by Sections 2603(a), 2604(b)(12), and 2604(b)(15) of the New York City Charter, the Conflicts of Interest Board has adopted an amendment to its rule on public servants charged with substantial policy discretion, Section 1-02 of Title 53 of the Rules of the City of New York, (1) making explicit that members of boards and commissions fall within the rule, that the agency-prepared lists of titles or positions of persons charged with substantial policy discretion must also set forth their names, that the determination of which public servants fall within the rule ultimately lies with the Board, and (2) deleting the requirement that agency heads update the list within 30 days of every change in it and requiring instead only an annual update. Pursuant to a notice published on July 24, 1997, in The City Record, a public hearing on the proposed amendment was held on August 28, 1997, at 2 Lafayette Street, Suite 1010, New York, New York. The Board received no comments on the proposed amendment and adopted the proposed amendment as final. The text of the amendment is set out below.

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

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, members of boards and commissions, and public servants in charge of any major office, division, bureau or unit of an agency. Agency heads (are requested to) shall:

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

(b) file annually with the Conflicts of Interest Board, no later than September 30 of each year, a list of such titles or positions and the names of the public servants holding them (with the Conflicts of Interest Board no later than September 30, 1990); and

(c) 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. [Agency heads shall update the filing within 30 days of the creation or elimination of any title or position which involves the exercise of substantial policy discretion.]

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.

STATUTORY AUTHORITY: Sections 2603(a), 2604(b)(12), and 2604(b)(15) of the New York City Charter.

#### STATEMENT OF BASIS AND PURPOSE OF THE PROPOSED AMENDMENT:

Charter § 2604(b)(12) prohibits certain public servants, including those charged with "substantial policy discretion as defined by rule of the board," from soliciting political contributions for candidates for elective City office or for City elected officials who are running for any elective office. Charter § 2604(b)(15) prohibits certain public servants, including those charged with "substantial policy discretion as defined by rule of the board," from holding certain political party positions.

Section 1-02 of the Board's rules sets forth the Board's definition of "substantial policy discretion" for purposes of those Charter provisions. While that rule has worked reasonably well in practice, one aspect of the rule has proven impractical and unnecessarily burdensome on agency heads: the requirement that agency heads update their list of substantial policy discretion titles or positions within 30 days of any change in the list. The Board has thus decided to require only an annual update.

In addition, the Board has consistently interpreted its substantial policy discretion rule (1) to apply to members of boards and commissions, (2) to require that the agency's list include not only the titles or positions but also the names of the employees who, in the opinion of the agency head, fall within the rule, and (3) to recognize that the Charter vests in the Board the ultimate authority to determine whether any particular title, position, or person is in fact charged with substantial policy discretion within the meaning of Chapter 68. The Board, however, believes that these interpretations of the substantial policy discretion rule should be made explicit in the text of the rule itself to prevent any misunderstandings by public servants or political party leaders. In regard to the inclusion of members of boards and committees, it should be noted that the rule does not apply to unpaid members of advisory committees - that is, to members of advisory committees who are not entitled to receive per diem or other compensation - since such members are not subject to Chapter 68. See Charter §§ 2601(1), (19).

TUESDAY, SEPTEMBER 23, 1997

THE CITY RECORD



CONFLICTS OF INTEREST BOARD

NOTICE

Notice of Adoption of Amendment to Rule Determining Public Servants Charged with Substantial Policy Discretion
NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE Conflicts of Interest Board by Sections 2603(a), 2604(b)(12), and 2604(b)(15) of the New York City Charter that the Conflicts of Interest Board has adopted an amendment to its rule on public servants charged with substantial policy discretion, Section 1-02 of Title 53 of the Rules of the City of New York, authorizing agencies to make available for public inspection a copy of the agency's current list of those public servants whom the agency has

designated as having substantial policy discretion.

Pursuant to a notice published on April 4, 2001, in The City Record, a public hearing was held on May 15, 2001, at 2 Lafayette Street, Suite 1010, New York, New York. The Board received no comments on the proposed amendment. The text of the amendment is set forth below.

§ 1-02. PUBLIC SERVANTS CHARGED WITH SUBSTANTIAL POLICY DISCRETION.

(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, members of boards and commissions, and public servants in charge of any major office, division, bureau or unit of an agency. Agency heads shall:

- (a)(1) designate by title, or position, and name the public servants in their agencies who have substantial policy discretion as defined by this section;
(b)(2) file annually with the Conflicts of Interest

Board, no later than September 30 of each year, a list of such titles or positions and the names of the public servants holding them; and

(c)(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.

STATUTORY AUTHORITY: Sections 2603(a), 2604(b)(12), and 2604(b)(15) of the New York City Charter.

STATEMENT OF BASIS OF PURPOSE OF THE AMENDMENT:

Section 2604(b) of the New York City contains two provisions

imposing restrictions on political fundraising and the holding of political party office by certain high-level public servants. Included within the restriction are enumerated officials as well as those public servants who are charged with "substantial policy discretion as defined by rule of the board." Specifically, section 2604(b)(12) provides:

12. 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.

Section 2604(b)(15) provides:

15. 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.

Pursuant to those Charter provisions, the Board adopted section 1-02 of Title 53 of the Rules of the City of New York, set forth above, defining "substantial policy discretion" and requiring each agency head to designate the public servants within the agency having such discretion, to file annually with the Board a list of those public servants, and to notify them of the restrictions set forth in Charter §§ 2604(b)(12) and 2604(b)(15). The rule further provides that the list supplied by the agency to the Board is subject to review and modification by the Board.

Although, as reflected in the Board's rule, the Charter vests in the Board the ultimate authority to determine whether any particular public servant is in fact charged with substantial policy discretion within the meaning of Chapter 68, prudent use of the Board's limited resources dictates that the Board not expend the enormous amount of staff time that would be required to review the actual duties of all higher level public servants throughout City service to determine whether the lists submitted by the agencies are accurate and complete. Instead, the Board currently reviews each list to determine whether it appears to include the types of positions required by the rule and then relies upon the public, the media, and other public servants to apprise the Board of possible errors in the lists submitted by agencies.

Thus, for example, if the media reports that a public servant, whose name does not appear on his or her agency's list, has hosted a fundraiser for a candidate for elective City office, the Board may investigate whether the duties and responsibilities of that public servant are such that he or she in fact possesses substantial policy discretion. Similarly, the Board sometimes receives a complaint that a public servant listed by his or her agency as having substantial policy discretion has acted in violation of Charter § 2604(b)(12) or § 2604(b)(15) but, upon investigation, determines that the public servant in fact possesses no such discretion and should be deleted from the agency's list.

Accordingly, in policing compliance with the requirements of Charter §§ 2604(b)(12) and 2604(b)(15), the Board must depend largely upon inquiries, reports, and complaints from the public, the media, and other public servants. Those communications, however, can prove meaningful only if the contents of the agencies' lists are available for public inspection. Therefore, the Board is amending its substantial policy discretion rule to provide for such public availability.

## AGENCY RULES

### CONFLICTS OF INTEREST BOARD

#### ■ NOTICE

Notice of Adoption of Rule Defining City Employees Involved in the Negotiation, Authorization, or Approval of Contracts and of Certain Other Matters within the Meaning of Section 12-110(b)(3)(a)(4) of the Administrative Code

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Conflicts of Interest Board by Section 2603(a) of the New York City Charter and Section 12-110(b)(3)(a)(4) of the New York City Administrative Code that the Conflicts of Interest Board has adopted a new rule, Section 1-15 of Title 53 of the Rules of the City of New York, defining City employees involved in the negotiation, authorization, or approval of contracts and of certain other matters within the meaning of Section 12-110(b)(3)(a)(4) of the Administrative Code. Pursuant to a notice published on November 26, 2003, in the *City Record*, a public hearing was held on December 29, 2003, at 2 Lafayette Street, Suite 1010, New York, New York. The Board received no comments and adopted the proposed rule as final. The text of the new rule is set forth below.

Title 53 of the Rules of the City of New York is amended by adding a new Section 1-15, to read as follows:

[New matter is underscored]

#### § 1-15. CITY EMPLOYEES WHOSE DUTIES INVOLVE THE NEGOTIATION, AUTHORIZATION, OR APPROVAL OF CONTRACTS AND OF CERTAIN OTHER MATTERS.

(a) For purposes of Administrative Code § 12-110(b)(3)(a)(4), a City employee shall be deemed to have duties that involve the negotiation, authorization, or approval of contracts, leases, franchises, revocable consents, concessions, and applications for zoning changes, variances, and special permits if the employee performs any of the following duties:

- (1) Determines the substantive content of a request for proposals or other bid request or change order;
- (2) Makes a determination as to the responsiveness of a bid or the responsibility of a vendor or bidder;
- (3) Evaluates a bid;
- (4) Negotiates or determines the substantive content of a contract, lease, franchise, revocable consent, concession, or application for a zoning change, variance, or special permit or change order;
- (5) Recommends or determines whether or to whom a contract, lease, franchise, revocable consent, concession, or application for a zoning change, variance, or special permit or change order should be awarded or granted;
- (6) Approves a contract, lease, franchise, revocable consent, or concession or change order on behalf of the City or any agency subject to Administrative Code § 12-110; or
- (7) Determines the content of or promulgates City procurement policies, rules, or regulations.

(b) Clerical personnel and other public servants who, in

relation to the negotiation, authorization, or approval of contracts, leases, franchises, revocable consents, concessions, and applications for zoning changes, variances, and special permits, perform only ministerial tasks shall not be required to file a financial disclosure report pursuant to Administrative Code § 12-110(b)(3)(a)(4). For example, public servants who are under the supervision of others and are without substantial personal discretion, and who perform only clerical tasks (such as typing, filing, or distributing contracts, leases, franchises, revocable consents, concessions, or zoning changes, variances, or special permits or calendaring meetings or who identify potential bidders or vendors) shall not, on the basis of such tasks alone, be required to file a financial disclosure report. Similarly, public servants who write a request for proposals, bid request, change order, contract, lease, franchise, revocable consent, concession, or application for a zoning change, variance, or special permit or procurement policy, rule, or regulation under the direction of a superior but who do not determine the substantive content of the document shall not, on the basis of such tasks alone, be required to file a financial disclosure report.

STATUTORY AUTHORITY: Sections 2603(a) of the New York City Charter and Section 12-110(b)(3)(a)(4) of the New York City Administrative Code.

Statement of Basis of Purpose OF THE RULE:

As mandated by New York State law, the City's Financial Disclosure Law requires the filing of an annual financial disclosure report by, among others,

Each city employee whose duties at any time during the preceding calendar year involved the negotiation, authorization or approval of contracts, leases, franchises, revocable consents, concessions and applications for zoning changes, variances and special permits, as defined by rule of the conflicts of interest board and as annually determined by his or her agency head, subject to review by the conflicts of interest board.

Ad. Code § 12-110(b)(3)(a)(4), as amended by Local Law 43 of 2003, effective January 1, 2004. See also NYS Gen. Mun. Law §§ 811(1)(a), 813(9)(k). The Board must, therefore, adopt a rule defining these so-called "contract" filers.

The Board must also adopt a separate rule regulating appeals by public servants who contest their designation as "contract" filers. See Ad. Code § 12-110(c)(2), as amended by Local Law 43 of 2003. Historically, determination of such appeals by unionized employees has consumed considerable time of the filer's agency, which makes the initial determination as to whether the agency correctly identified the public servant as a "contract" filer and provides documentation in support of that initial determination; the filer's union, which prosecutes the appeal; the Office of Labor Relations, which currently defends the appeal; the Office of Collective Bargaining, which currently hears the appeal and makes a recommendation; the Department of Investigation, which currently makes the final determination of the public servant's filing status; and the Board, which currently provides technical and legal support throughout the appeal process. As of January 1, 2004, appeals will be determined by the Board. See Ad. Code § 12-110(c)(2), as amended by Local Law 43 of 2003.

Moreover, in the Board's experience, agencies differ widely in their interpretation of what constitutes the "negotiation, authorization or approval of contracts." Some agencies include everyone involved in purchasing, even clerical help; other agencies include only procurement officers. Little uniformity exists among agencies in interpreting this provision of law.

As the Board has often stated, the purpose of the City's ethics laws, including its Financial Disclosure Law, lies in promoting both the reality and the perception of integrity in City government by preventing conflicts of interest before they occur. The focus, therefore, lies on prevention, not punishment. Thus, financial disclosure focuses the official's attention at least once each year upon the Conflicts of Interest Law; alerts the public, the media, supervisors, vendors, and the filer to his or her possible conflicts of interest, thereby helping to avoid them; and provides a check on transactional disclosure and recusal by a public servant when a potential conflict actually arises.

In light of the foregoing, the Board's intent in drafting the rule is threefold: (1) to limit financial disclosure filing to those public servants who are at risk of conflicts of interest; (2) to ensure that rules for determining who is a "contract" filer are uniform and uniformly applied throughout the City; and (3) to reduce the number of appeals by defining with some precision who should and should not be filing a financial disclosure report because of "contracting" duties.

[Financial Disclosure: FD Amendments: Contracting Duties

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Notice of Adoption of Amendment to Rule Defining "Substantial Policy Discretion" within the Meaning of Sections 2604(b)(12) and 2604(b)(15) of the New York City Charter

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Conflicts of Interest Board by Sections 2603(a), 2604(b)(12), and 2604(b)(15) of the New York City Charter that the Conflicts of Interest Board has adopted an amendment to its rule, Section 1-02 of Title 53 of the Rules of the City of New York, defining "substantial policy discretion" within the meaning of Charter Sections 2604(b)(12) and 2604(b)(15), to change the deadline for filing annual lists of public servants having substantial policy discretion. Pursuant to a notice published on November 26, 2003, in the City Record, a public hearing was held on December 29, 2003, at 2 Lafayette Street, Suite 1010, New York, New York. The Board received no comments and adopted the proposed amendment as final. The text of the amendment is set forth below.

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

[New matter is underscored; material in brackets is deleted]

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

(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, members of boards and commissions, and public servants in charge of any major office, division, bureau or unit of an agency. 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 [September 30] 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.

STATUTORY AUTHORITY: Sections 2603(a), 2604(b)(12), and 2604(b)(15) of the New York City Charter.

STATEMENT OF BASIS OF PURPOSE OF THE AMENDMENT:



## **Notice of Adoption of Final Rules**

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE NEW YORK CITY CONFLICTS OF INTEREST BOARD by Section 1043 of the City Charter and Section 3-907 of the New York City Administrative Code that the Conflicts of Interest Board has adopted Board Rules regarding community board service.

The proposed Rules were published in the City Record on August 27, 2019, and a public hearing was held on September 27, 2019. After consideration of the testimony and written comments received, the Conflicts of Interest Board now adopts the following Rules.

### **Statement of Basis and Purpose of the Rule**

Throughout its history, the Board has frequently answered questions from community board members, as part-time public servants, about the application of Chapter 68, the City's conflicts of interest law, to the conduct of their work as community board members. Believing that other community board members would benefit from advice given to the individual requestors, the Board has issued eighteen advisory opinions relating to community board members. See Advisory Opinion ("A.O.") Nos. 1991-3, 1991-12, 1992-27, 1992-31, 1993-2, 1993-3, 1995-18, 1995-27, 1996-4, 1996-8, 1998-9, 2003-2, 2003-3, 2004-1, 2004-3, 2005-3, 2008-2, and 2010-1. These advisory opinions contain a total of 116 pages of Board discussion and analysis of Chapter 68 as applied to community board members in connection with various issues arising from their board service.

The Board recognizes that it can be difficult for members to understand how the interpretations of Chapter 68 contained in these opinions may apply to their service. To provide clear, concise, and comprehensive guidance, and in fulfillment of its Charter mandate under § 2603(c)(4), the Board consolidates ten of these opinions into a single rule that codifies these Board interpretations of Chapter 68's application to community board members. The other eight opinions remain as separate opinions applicable only to the individuals who sought the Board's advice at the time.



By defining “public servant” to include community board members in Charter § 2601(19), Chapter 68 makes clear that its various prohibitions—such as the prohibitions on using or disclosing confidential City information contained in Charter § 2604(b)(4), on accepting valuable gifts contained in Charter § 2604(b)(5), and on appearing before a member’s own community board on behalf of private interests contained in Charter § 2604(b)(6)—apply equally to community board members as to all public servants. Relevant to and reflected in this rule, Chapter 68 prohibits any public servant, including a community board member, from using his or her City position for the financial benefit of the member or of any person or firm “associated” with the member. See Charter §§ 2601(5), 2604(b)(1)(b), and 2604(b)(2). Board Rules § 1-15 addresses this prohibition with respect to the three basic activities of community board members: (1) voting on matters as community board members, (2) discussing matters at a community board meeting, and (3) chairing a community board committee or meeting. Board Rules § 1-15 and the amended Board Rules § 1-02 define and clarify certain provisions of Chapter 68 as applicable to community board members.

*1. Voting on Matters as Community Board Members*

Board Rules § 1-15(a), which applies Charter § 2604(b)(1)(b), prohibits a community board member from voting on any matter that may result in a personal and direct economic gain to the member or to any associated person or firm. See A.O. 1991-3 at 3 (“[A] community board member is specifically prohibited under the revised Chapter 68 from voting on matters in which he or she has a direct economic interest.”). The definition of “personal and direct economic gain” as a specific economic gain (or mitigation of a loss) that would flow to the member or associated person or firm as a proximate result of the matter’s ultimate approval or rejection incorporate several of the Board’s advisory opinions on community board voting:

- The Board in A.O. No. 2003-2 advised that a community board member who owns a licensed liquor facility is not prohibited from voting on the liquor licensing of another, possibly competing, facility within the district, because any impact on the member's interests would be speculative and indirect.
- The Board in A.O. No. 2005-3 advised that community board members who are homeowners in a proposed rezoning area covering 310 blocks are not prohibited from voting on the proposed rezoning area because "the economic benefit to the members, while in some sense 'direct,' is not specifically directed to them alone."
- The Board in A.O. 2008-2 advised that an ideological interest or policy goal, regarding such issues as noise pollution or planting trees, does not by itself rise to the level of a personal and direct economic gain for an organization.

Board Rules § 1-15(a)(3) codifies the Board's application in A.O. No. 2008-2 of the definition of "associated" in Charter § 2601(5), which includes "a person with whom the public servant has a business or other financial relationship." First, it clarifies that a community board member is associated not just with the firm that employs the member, but also with his or her individual supervisor(s), that is, "any person who, in the member's private employment, may hire or fire the member, assign work to the member, approve the member's leave, or evaluate the member's work performance." A.O. No. 2008-2 at 6-7 (advising that a community board member employed as the executive director of a not-for-profit organization is associated with someone serving on the board of that organization where that person was "effectively her boss" at the not-for-profit organization). Second, it clarifies that a community board member employed by a not-for-profit organization is associated with a major donor to the not-for-profit, given that an organization's most substantial donors are "in effect underwriting the member's salary" at the not-for-profit. A.O. No. 2008-2 at 9. Board Rules § 1-15(a)(3) establishes 10% of the not-for-profit's operating budget as an easy-to-calculate threshold at which the amount of the donation becomes so substantial to create an association between the donor and the not-for-profit employee.

Board Rules § 1-15(b) codifies the Board’s longstanding advice that community board members who serve another City agency as an official, officer, or employee may not vote on any matter involving the member’s other City agency, and it applies that advice to the other governmental or quasi-governmental entities listed in Charter § 2601(11) and Board Rules § 1-08, such as federal and state agencies, public authorities, and local development corporations. See A.O. No. 1991-3 (adopting the conclusion of the Board’s predecessor agency, the Board of Ethics, that it would be “inappropriate for an employee of a City agency to cast a formal vote [on a community board] which might be in opposition to a position theretofore or thereafter taken by his or her agency”). This rule is consistent with the Board’s longstanding interpretation of the “catch-all” provision of Charter § 2604(b)(2), which prohibits a public servant from having a position or engaging in conduct that “is in conflict with the proper discharge of his or her official duties.”

*2. Discussing Matters at a Community Board Meeting*

Board Rules § 1-15(b) codifies the Board’s long-standing advice to community board members, starting in A.O. No. 1991-3, that they may participate in any discussion at the community board in matters involving the member’s private interests or other government or quasi-government entity served, provided that the member discloses his or her interest prior to such discussion. See also A.O. Nos. 2003-2 and 2008-2.

*3. Chairing a Community Board Committee or Meeting*

In A.O. No. 1993-2, the Board explained that “a committee chair can, if she or he so wishes, greatly influence a committee by controlling the agenda, recognizing speakers, and making rulings.” Board Rules § 1-15(c) both codifies and clarifies the Board’s prior advice on chairing meetings. Specifically, the rule states that a community board member may not serve as the chair of a committee or subcommittee that regularly considers matters involving that member’s private

interests (A.O. Nos. 1995-18 and 2003-2) or matters involving the interests of another government or quasi-government entity served by a member (A.O. No. 1993-2) and may not chair any meeting that considers matters involving a member's private interests or other government or quasi-government entity served (A.O. No. 1996-8). The Board had not specified how frequently a matter involving the member's private interest or other government or quasi-government service must arise for the committee to "regularly consider" such matters. The Board now defines that frequency as three or more times within a twelve-month period or, in the case of another City agency, jurisdiction over that government or quasi-government entity.

#### *4. Additional Defined Terms*

Board Rules § 1-15(d) codifies the Board's advice in A.O. No. 2004-1 that public members of community board committees, appointed pursuant to Charter § 2800(i), are not public servants within the meaning of Charter § 2601(19).

Board Rules § 1-15(e) codifies the Board's advice in A.O. No. 2004-3 that an employee of the community board is a subordinate public servant of each community board member.

The amended Board Rules § 1-02 codifies A.O. 1991-12, in which the Board advised that a community board chair is not a public servant with substantial policy discretion.

#### *5. Additional Advisory Opinions*

Pursuant to Charter § 2604(c)(4), the Board must determine which of its advisory opinions have interpretive value in construing the provisions of Chapter 68. Of its eighteen advisory opinions on community boards, the Board does not incorporate eight opinions into this rule:

- In three advisory opinions, Nos. 1992-31, 1996-4, and 1998-9, the Board applied provisions of Chapter 68 to community board members as it would to other public servants, reflecting that Charter § 2601(19) defines "public servant" explicitly to include community board members.

- In two advisory opinions, Nos. 1992-27 and 1995-27, the Board advised community board members on the rules by which they may engage in fundraising activities to benefit the community board. The subject of official fundraising was comprehensively addressed in Board Rules § 1-14, effective June 16, 2019.
- In three advisory opinions, Nos. 1993-3, 2003-3, and 2010-1, the Board answered specific questions concerning the government or quasi-government service of community board members: service with a local development corporation, proposed service on the staff of a Council Member, and service on a Community Education Council of the New York City Department of Education, respectively. In the interests of creating a single standard that applies to all community board members, the rule does not incorporate the particular exceptions described in these opinions, thus limiting their application to the particular public servants who requested the Board's advice. The Board can and will continue to address any unusual or special circumstances on a case-by-case basis through the waiver process available to all public servants pursuant to Charter § 2604(e).

### **Text of the Rule**

New material is underlined.

[Deleted material is in brackets.]

**Section 1.** The first unnumbered paragraph of section 1-02 of Title 53 of the Rules of the City of New York is amended to read as follows:

- (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, [members of boards and commissions, and] 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:

\* \* \*

§ 2. Title 53 of the Rules of the City of New York is amended by adding a new section 1-15, to read as follows:

**§ 1-15 Special Rules for Community Board Members.**

(a) **Voting and Private Interests.** For purposes of Charter §§ 2604(b)(1)(b) and 2604(b)(2), a community board member shall not vote at a community board meeting on any matter that may result in a personal and direct economic gain to the member or to any person or firm associated with the member, within the meaning of Charter § 2601(5), but the member may participate in discussion about such matter at a community board meeting after the member discloses at such meeting his or her private interest.

(1) For purposes of this paragraph, a “personal and direct” economic gain means a specific economic gain that would flow to the member or an associated person or firm as an anticipated result of the matter’s ultimate approval or rejection.

(2) For purposes of this paragraph, “economic gain” includes the mitigation of a loss.

(3) For purposes of Charter § 2601(5), the definition of “a business or other financial relationship” includes, but is not limited to, a relationship with:

(i) any person who, in the context of the member’s private employment, may hire or terminate the member, assign work to the member, approve the member’s leave, or evaluate the member’s work performance; or

(ii) any person who or firm that donates to the member’s not-for-profit employer in an amount of 10% or more of the not-for-profit’s annual operating budget.

(b) **Other Government and Quasi-Government Service.** For purposes of Charter § 2604(b)(2), a community board member who serves any entity listed in Board Rules § 1-08 as an official, officer, or employee:

(1) may not appear, whether paid or unpaid, on behalf of such entity before the member's community board;

(2) may not vote at a community board meeting on any matter involving such entity; and

(3) may participate in discussion at a community board meeting on matters involving such entity only after the member discloses at the meeting his or her position with such entity.

**(c) Service as Chair of a Community Board or Its Committees or Subcommittees.**

(1) For purposes of Charter §§ 2604(b)(1)(b) and 2604(b)(2), a community board member:

(i) shall not chair any meeting of the community board, a community board committee, or a community board subcommittee where any matter particularly affecting the member's private employer, financial interest, or other private interest is being considered; and

(ii) shall not chair a community board committee or subcommittee that regularly reviews matters particularly affecting the member's private employer, financial interest, or other private interest, including the interest of any person or firm associated with such member.

(iii) For purposes of this subparagraph, a committee or subcommittee of a community board "regularly reviews" matters involving the member's private employer, financial interest, or other private interest if the committee or subcommittee considers or expects to consider a matter involving the member's employer or interest three or more times within a twelve-month period.

(2) For purposes of Charter § 2604(b)(2), a community board member who serves another government or quasi-government entity listed in Board Rules § 1-08 as an official, officer, or employee:



- (i) shall not chair any meeting of the community board, committee, or subcommittee that considers any matters involving that entity; and
- (ii) shall not chair a committee or subcommittee that regularly reviews matters involving that entity.
- (iii) For purposes of this subparagraph, a committee or subcommittee of a community board “regularly reviews” matters involving a government or quasi-government entity if either (A) the committee or subcommittee has jurisdiction over matters within the entity’s responsibilities or (B) the committee or subcommittee considers or anticipates considering matters involving that entity three or more times within a twelve-month period.

**(d) Public Members of Community Board Committees.** A public member of a community board committee, appointed pursuant to Charter § 2800(i), is not a public servant within the meaning of Charter § 2601(19).

**(e) Community Board Staff.** For purposes of Charter §§ 2604(b)(2), 2604(b)(3), 2604(b)(9)(b), 2604(b)(11)(c), 2604(b)(14), and Board Rules § 1-10, a public servant employed by the community board is a subordinate public servant of each community board member.

**(f) Agency Head Designations.** A community board member serves as the agency head for any agency head designation or approval for himself or herself required by Charter § 2604(e) or the Board Rules. The chair of a community board is the agency head for the public servants employed by the community board.