

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

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3 **Notice of Public Hearing and Opportunity to Comment on Proposed Rules Regarding Gifts**

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5 **What are we proposing?** The Conflicts of Interest Board is proposing to amend its rules governing the
6 acceptance of gifts by public servants.

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8 **When and where is the Hearing?** The Conflicts of Interest Board will hold a public hearing on the
9 proposed rule. The public hearing will take place by video conference at [] on [] and is accessible by:

- 10 • **Internet Video and Audio.** To access the hearing by Zoom, use the following URL: [].
- 11
- 12 • **Telephone.** To access the hearing by telephone, dial []. When prompted, use the following
13 access code [] and password [].

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

- 15 • **Website.** You can submit comments to the Conflicts of Interest Board through the NYC
16 rules website at <http://rules.cityofnewyork.us>.
- 17 • **Email.** You can email comments to Rules@COIB.nyc.gov.
- 18 • **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the
19 public hearing may speak for up to three minutes. Please access the public hearing by
20 Internet Video and Audio or by Telephone using the instructions above. It is
21 recommended, but not required, that commenters sign up prior to the hearing by contacting
22 the Conflicts of Interest Board by phone at (212) 437-0730 or by email at
23 lee@coib.nyc.gov.

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

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

30
31 **Can I review the comments made on the proposed rules?** You can review the comments made online
32 on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the
33 hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral
34 comments concerning the proposed rule will be available to the public at the Conflicts of Interest Board,
35 2 Lafayette Street, Suite #1010, New York, New York 10007.

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37 **What authorizes the Conflicts of Interest Board to make this rule?** Sections 1043, 2603(a),
38 2603(c)(4), and 2604(b)(5) of the City Charter authorize the Conflicts of Interest Board to make this
39 proposed rule. This rule was included in the Conflicts of Interest Board’s regulatory agenda for this Fiscal
40 Year.

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

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

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8 **STATEMENT OF BASIS AND PURPOSE**

9 In accordance with the mandate of City Charter § 2603(c)(4) for the Board to review all its
10 advisory opinions and initiate rulemaking to adopt those with “interpretative value in construing
11 provisions” of Chapter 68, the Board has been reviewing the 29 advisory opinions it has issued
12 concerning public servants’ acceptance of gifts. These proposed amendments to Board Rules § 1-
13 01 (the “Valuable Gifts Rule”) codify advisory opinions with interpretive value and clarify existing
14 rules to conform with current practice. Additionally, the proposed amendments would incorporate
15 the Board’s longstanding interpretation of Charter § 2604(b)(3) that the acceptance of gifts offered
16 as a result of a public servant’s City position would violate Charter § 2604(b)(3). See, e.g.,
17 Advisory Opinion (“A.O.”) No. 1990-3, 1991-4, 1992-10, 1992-23, 1994-12, and 2000-4.

18 **1. Gifts to Enhance Agency Morale**

19 In proposed Board Rules § 1-01(i), the Board would address acceptance by the City of
20 blocks of free tickets for entertainment, sporting, and cultural events. For these kinds of events,
21 the attending public servants would not be performing any governmental work; instead, the City
22 is distributing the gifted tickets to its employees to promote office morale or reward good
23 performance. The Board addressed such gifts in A.O. No. 2000-4, advising that it would be
24 permissible to accept the donation of tickets for use by City employees if: (1) approved by and
25 distributed in a manner approved by an agency head; and (2) the donation lacked serious indicia
26 of concerns, such as the donor having a project pending before the accepting City agency or the

1 donor selecting the public servants who will attend. See also A.O. No. 1992-33 at 4 (advising that
2 agency employees cannot accept free travel and hotel stays offered a part of a morale boosting
3 program by a firm with matters before that agency).

4 This longstanding interpretation of Chapter 68 is consistent with advice provided by the
5 Board in A.O. No. 2007-3, permitting a registered lobbyist to offer blocks of tickets as gifts to the
6 City with agency head approval. The four-factor test in proposed Board Rules § 1-01(i) would
7 provide a mechanism by which the City may accept gifts to benefit its workforce while also
8 safeguarding against the efforts of donors to target public servants involved in their City business
9 or reward public servants for providing them with favorable determinations.

10 One of the four factors would exclude from acceptance of free attendance those public
11 servants who hold positions of authority, defined as any public servant who is required by New
12 York City Administrative Code Section 12-110 to file an annual disclosure report. Members of
13 this group of public servants (which includes elected officials; public servants who are candidates
14 for City elective office; public servants who have been designated as having substantial policy
15 discretion pursuant to Board Rules Section 1-02; public servants responsible for reviewing
16 contracts, leases, and other agreements; members of boards and commissions; and certain classes
17 of higher-ranking public servants) are excluded from accepting free tickets to purely recreational
18 events because such acceptance implicate almost unavoidably donors targeting them in the hopes
19 of securing favorable City determinations.

20 **2. Donations for Personal Emergencies**

21 In proposed Board Rules § 1-01(j), the Board would establish a standard to permit a public
22 servant to accept otherwise prohibited donations in the event of a personal emergency similar to
23 that articulated in A.O. No. 1992-29. In A.O. No. 1992-29, the Board advised an injured public

1 servant's co-workers that they could raise funds for his medical expenses from firms that were
2 regulated by their agency or may have matters before the injured public servant, provided that all
3 funds were collected by a third party not connected to the agency and that the donors' identities
4 were not revealed to the public servant or to any other agency employee. Proposed Board Rules
5 § 1-01(j) would permit public servants to accept anonymized donations in emergency situations,
6 subject to strict restrictions on who may solicit donations and from whom donations may be
7 solicited. Public servants who comply with these requirements would be able to accept otherwise
8 prohibited contributions, provided that the contributions address the need caused by the
9 emergency.

10 **3. Gifts between Public Servants**

11 In proposed Board Rules § 1-01(k), the Board would refine advice provided in A.O. No.
12 2013-1 concerning gifts between public servants. Proposed Board Rules § 1-01(k)(1) would make
13 it clear that public servant peers may give gifts to each other and that superiors may give gifts to
14 subordinates. In both scenarios, the recipient of the gift has no authority in their City job over the
15 giver; thus, accepting the gift would be permissible. Proposed Board Rules § 1-01(k)(2) would set
16 forth the general prohibition against public servants accepting gifts from their subordinates, with
17 two exceptions: first, proposed Board Rules §1-01(k)(2)(i) would permit a superior to accept a
18 from a subordinate on a special occasion marking a major life event, such as a wedding, the birth
19 or adoption of a child, or retirement, where the gift is appropriate to the occasion; second, proposed
20 Board Rules § 1-01(k)(2)(ii) would permit a public servant to accept gifts other than gifts of cash
21 or cash equivalents, like gift cards, on other events, such as holidays or birthday, from their
22 subordinates, or a group of subordinates, where the total value of the gift is \$10 or less. By
23 providing a \$10 limit on the value of a gift, and excluding cash and cash equivalents, proposed

1 Board Rules § 1-01(k)(2)(ii) would offer a safeguard against a superior, particularly in a large City
2 agency or office, regularly collecting hundreds of dollars in cash or cash equivalents, such as
3 Amazon gift cards, from their subordinates.

4

5 **4. Disposition of Impermissible Gifts**

6 In proposed Board Rules § 1-01(l), the Board would clarify existing Board Rules § 1-01(i)
7 by setting the order of steps a public servant must take to dispose of an impermissible gift. A
8 public servant who receives an impermissible gift must first attempt to return the gift because that
9 gift should not be accepted. If the gift cannot be returned, the public servant’s agency head may,
10 after providing written notice to the inspector general for the agency: (a) direct the item to be
11 donated to the agency, to an entity as defined in Board Rules § 1-14(a)(1)(iii), or to the Mayor’s
12 Fund to Advance New York; (b) share the item within the agency; or (c) destroy the item.

13 **5. Compatibility with Other Laws**

14 In proposed Board Rules § 1-01(m), the Board would consolidate provisions of existing
15 Board Rules § 1-01 addressing other regulatory or statutory regimes. Proposed Board Rules § 1-
16 01(m) would not substantively change the restrictions set forth in existing Board Rules § 1-01(i),
17 (j), and (k) except to explicitly reference Charter § 2604(b)(3) and Charter § 2604(b)(14).

18

19 New material is underlined.

20 Section 1. Section 1-01(i)-(k) of Chapter 1 of Title 53 of the Rules of the City of New
21 York are REPEALED and new Sections 1-01(i)-(m) are added to read as follows:

22 (i) Gifts to Enhance Employee Morale

1 (1) For the purposes of Charter § 2604(b)(3) and Charter § 2604(b)(5), tickets to an
2 entertainment, sporting, or cultural event can be accepted as a gift to the City for
3 use by City employees provided that:

- 4 i. the attending public servants are not required to file annual disclosure
5 reports pursuant to New York City Administrative Code Section 12-110;
- 6 ii. the offer of the free attendance is unsolicited;
- 7 iii. the public servants attending the event are selected according to a method
8 that receives agency head approval in writing; and
- 9 iv. the public servants attending the event are not involved in the
10 consideration of any pending particular matter, legislative proposal, action
11 on the City budget, or text of the zoning resolution in which the offeror or
12 the host of the event is a party or has an interest.

13 (j) Donations for Personal Emergencies

14 (1) For the purposes of Charter § 2604(b)(3) and Charter § 2604(b)(5), donations may
15 be solicited to alleviate a public servant's immediate and serious financial need
16 caused by a personal emergency such as an accident, sickness, or being the victim
17 of a crime, provided that no donations are solicited from:

- 18 i. any subordinate of the beneficiary public servant or soliciting public
19 servant;
- 20 ii. any firm or individual that has a particular matter, legislative proposal,
21 action on the City budget, or text of the zoning resolution pending before
22 the beneficiary public servant or soliciting public servant; or

1 iii. any firm with which the beneficiary public servant or soliciting public
2 servant deals in his or her City work.

3 (2) For the purposes of Charter § 2604(b)(3) and Charter § 2604(b)(5), a public
4 servant may accept donations to alleviate such public servant's immediate and
5 serious financial need caused by a personal emergency such as an accident
6 provided that the donors' identities are not in any way revealed to the public
7 servant and the donations directly address the immediate and serious financial
8 need caused by the personal emergency.

9 (k) Gifts Between Public Servants

10 (1) Charter § 2604(b)(3) does not prohibit a public servant from giving:

- 11 i. a gift to a subordinate; or
12 ii. a gift to or receiving a gift from a public servant who is not a superior or a
13 subordinate.

14 (2) Pursuant to Charter § 2604(b)(3), a public servant may not accept or solicit a gift
15 from a subordinate or group of subordinates except:

- 16 i. a public servant may accept a gift from a subordinate or group of
17 subordinates in connection with a special occasion marking a major life
18 event, such as a wedding, the birth or adoption of a child, or retirement,
19 provided that the gift is of the type and value customary to the occasion in
20 question; and
21 ii. , a public servant may accept a gift from a subordinate or group of
22 subordinates in connection with a holiday, birthday, or other event and the

1 gift is of nominal value not exceeding \$10 and is not cash or a cash
2 equivalent.

3 (l) Disposition of Impermissible Gifts

4 (1) If a public servant receives a gift not covered by any of the exceptions in this
5 section, the public servant must return the gift to the giver.

6 (2) If a gift cannot be returned, the public servant's agency head may, after providing
7 written notice to the inspector general of the public servant's agency:

8 i. donate the item to the agency, to an entity as defined in Board Rules § 1-

9 14(a)(1)(iii), or to the Mayor's Fund to Advance New York;

10 ii. share the item within the agency; or

11 iii. destroy the item.

12 (m) Compatibility with Other Laws

13 (1) City agencies may establish rules concerning gifts for their own employees that
14 may not be less restrictive than the requirements set forth in Charter § 2604(b)(3)
15 and Charter § 2604(b)(5) as interpreted by this section.

16 (2) Nothing in this section will be deemed to authorize a public servant to act or
17 accept a gift of any value in violation of any applicable federal, state, or local law,
18 including the criminal law, City agency rules, or Mayoral Executive Orders
19 (including, but not limited to, Executive Order No. 16 of 1978 (as amended)),
20 which may impose additional requirements to report gifts and offers of gifts to the
21 agency's inspector general, whether or not a gift is accepted or returned.

1 (3) This section must be read in conjunction with the provisions of Charter §
2 2604(b)(2) and Board Rules § 1-13; Charter § 2604(b)(13); and Charter §
3 2604(b)(14) and Board Rules § 1-10.