

May 18, 2021, Agenda – Open Meeting Matter

April 1, 2021, Agenda – Public Hearing

January 14, 2021, Agenda – Open Meeting Matter

November 24, 2020, Agenda – Open Meeting Matter

September 22, 2020, Agenda – Open Meeting Matter

To: The Board

From: Chad H. Gholizadeh

Date: May 12, 2021

Re: Proposed Amendments to Board Rules §§ 1-01(i), (j), and (k)
Proposed New Board Rules §§ 1-01(l) and (m)

At its January 2021 Open Meeting, the Board authorized Staff to submit to the New York City Law Department and Mayor’s Office of Operations for formal review, and to hold a public hearing for, proposed amendments to Board Rules §§ 1-01(i), (j), and (k) and new proposed Board Rules §§ 1-01(l) and (m). The minutes to the Open Meetings at which the proposed amendments were discussed are attached as **Exhibit 1**. The proposed amendments were certified pursuant to the City Administrative Procedure Act and were published in the City Record on March 2, 2021. A public hearing was held on April 1, 2021.

The Law Department and the Mayor’s Office of Operations suggested some edits, and the Board received two written comments during the public comment period. Staff recommends incorporating the proposed edits from the Law Department and Mayor’s Office of Operations, which are minor and non-substantive, and recommends against adopting the proposed edits of the two public comments.

The edits proposed by the Law Department and the Mayor’s Office of Operations, tracked in Exhibit 3, are as follows:

- The proposed limit on gifts from subordinates to superiors in connection with holidays and birthdays of “the gift [being] of nominal value not

exceeding \$10” was seen to be repetitive and potentially confusing. Board Rules § 1-01(k)(2)(ii) (**Exhibit 3** at 5 ll. 31-32). At the suggestion of the Law Department, the reference to “nominal value” was removed.

- The Law Department suggested removal of the phrase “such as an accident” in Board Rules § 1-01(j)(2) as unnecessary (**Exhibit 3** at 5 l. 14).
- The Law Department suggested substituting “covered” with “addressed” in Board Rules § 1-01(l)(1) (**Exhibit 3** at 5 l. 35).
- The Law Department suggested a number of non-substantive changes to the Statement of Basis and Purpose, each of which is tracked in **Exhibit 3**.

No one testified at the public hearing, but two written comments were submitted (**Exhibit 2**). The first comment, from a public servant, seeks to clarify whether the Board intended the \$10 limit on gifts from subordinates to superiors on holidays or birthdays in Board Rules § 1-01(k)(2)(ii) to apply to the entire gift or to each person’s contribution to a shared gift and proposes a revision to the text if it was intended to apply to each person’s contribution. Because the Board intends for the \$10 limit to apply to the entire gift (**Exhibit 4** at 2), no revision is necessary.

The second comment, from Reinvent Albany, proposes that the Board impose a \$50 limit on the value of gifts from subordinates to superiors given in connection with major life events. While such a limit would provide definitive guidance, Staff does not recommend that the Board adopt this proposal. Gifts between City employees on the limited occasions considered major life events, such as weddings or baby showers, are often heavily informed by specific social contexts, and a wide variety of gifts may be appropriate as these contexts shift. In light of that complicated social context, and that these are gifts between City co-workers, Staff does not believe that the Board should adopt the same rigid standard on the receipt of gifts from firms with City business dealings to gifts between City employees.

Staff recommends that the Board adopt the text of amended Board Rules § 1-01(i), (j), and (k) and new Board Rules §§ 1-01(l) and (m) incorporating the changes suggested by the Law

Department and the Mayor's Office of Operations as well as stylistic edits to the Statement of Basis and Purpose to reflect that the amended and new rules are no longer proposals. Once approved by the Board, the Notice of Adoption will be published in the City Record and will take effect 30 days after publication. See Charter Section 1043(f).

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

Date: September 22, 2020

Present:

Board Members: Chair Jeffrey D. Friedlander and Members Fernando A. Bohorquez, Jr., Anthony W. Crowell, Wayne G. Hawley, and Nisha Agarwal

Board Staff: Ethan Carrier, Chad Gholizadeh, Ana Gross, Christopher Hammer, Gavin Kendall, Julia Lee, Carolyn Miller, Katherine Miller, Ari Mulgay, Yasong Niu, Jeffrey Tremblay, Clare Wiseman, and Juliya Ziskina.

Guests: None

The Board and Staff participated by videoconference pursuant to Executive Order No. 202 issued on March 7, 2020. The meeting was called to order by the Chair at approximately 9:32 a.m. The Chair stated that the meeting was being conducted pursuant to the New York State Open Meetings Law to discuss proposed amendments to Board Rules §§ 4-01 to 4-03, 1-04, and 1-01(i) to (m).

Board Rules §§ 4-01 to 4-03

After a brief introduction, the Chair asked for any comments by the Board or Staff. There were no comments. The Board unanimously agreed to adopt the proposed Notice of Adoption of Final Rule.

Board Rules § 1-04

After an introduction by Staff and discussion with the Board, the following change was agreed to by Board and Staff:

- § 1-04(b): add phrase to clarify that individual investments in sector-based mutual funds are to be considered for “ownership interest.”

Staff will consult with the Comptroller’s Office and other resources for further insight into current investment vehicles.

The Board agreed to continue discussions at a future open meeting.

Board Rules §§ 1-01(i) to (m)

After an introduction by Staff and discussion with the Board, the following changes were agreed to by Board and Staff:

- § 1-01(i)(1)(i): revise “supervisory or managerial public servants” in consultation with DCAS to exclude low level supervisors
- § 1-01(j)(1)(i)-(vi): condense the six conditions into three
- § 1-01(k)(3): remove prohibition on gifts from superiors; incorporate in (k)(4)

The Board agreed to continue discussions at a future open meeting.

The open meeting was adjourned at approximately 10:49 a.m.

Respectfully submitted,
Julia H. Lee
Recording Secretary

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

Date: November 24, 2020

Present:

Board Members: Chair Jeffrey D. Friedlander and Members Fernando A. Bohorquez, Jr., Anthony W. Crowell, Wayne G. Hawley, and Nisha Agarwal

Board Staff: Ethan Carrier, Chad Gholizadeh, Ana Gross, Christopher Hammer, Gavin Kendall, Julia Lee, Carolyn Miller, Katherine Miller, Ari Mulgay, Yasong Niu, Jeffrey Tremblay, Clare Wiseman, and Juliya Ziskina.

Guests: None

The Board and Staff participated by videoconference pursuant to Executive Order No. 202 issued on March 7, 2020. The meeting was called to order by the Chair at approximately 9:35 a.m. The Chair stated that the meeting was being conducted pursuant to the New York State Open Meetings Law to discuss proposed amendments to Board Rules §§ 1-04, 1-01(i)-(m), and 1-01(e).

Board Rules § 1-04

After a brief introduction by Staff and discussion with the Board, the following change was agreed to by the Board and Staff:

- § 1-04(c)(1): replace “(d)(2)” with “(c)(2)”

The Board unanimously agreed to adopt the proposed amendments as the final rule to be submitted to the Law Department and the Mayor’s Office of Operations for review.

Board Rules §§ 1-01(i), (j), (k), (l) and (m)

After a brief introduction by Staff and discussion with the Board, the following change was agreed to by the Board and Staff:

- § 1-01(k): revise to list permissive gifts from superiors to subordinates and between peers first.

The Board agreed to continue discussions at a future open meeting.

Board Rules § 1-01(e)

After a brief introduction by Staff and discussions with the Board, the following change was agreed to by the Board and Staff:

- § 1-01(e)(1): add “otherwise prohibited as a valuable gift”

The Board unanimously agreed to approve the proposed amendments as the final rule to be submitted to the Law Department and the Mayor’s Office of Operations.

The open meeting was adjourned at approximately 10:26 a.m.

Respectfully submitted,
Julia H. Lee
Recording Secretary

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

Date: January 14, 2021

Present:

Board Members: Chair Jeffrey D. Friedlander and Members Fernando A. Bohorquez, Jr., Anthony W. Crowell, Wayne G. Hawley, and Nisha Agarwal

Board Staff: Ethan Carrier, Chad Gholizadeh, Ana Gross, Christopher Hammer, Gavin Kendall, Julia Lee, Carolyn Miller, Katherine Miller, Yasong Niu, Jeffrey Tremblay, Clare Wiseman, and Juliya Ziskina.

Guests: None

The Board and Staff participated by videoconference pursuant to Executive Order No. 202 issued on March 7, 2020. The meeting was called to order by the Chair at approximately 9:33 a.m. The Chair stated that the meeting was being conducted to discuss proposed amendments to Board Rules §§ 1-01(i)-(m).

Board Rules §§ 1-01(i)-(m)

After a brief introduction by Staff and discussion with the Board, the following changes were agreed to by the Board and Staff:

- Statement of Basis and Purpose, p. 3, line 18: replace “implicate almost unavoidably” with “may implicate”
- Statement of Basis and Purpose, p. 5, line 2: replace “regularly collecting” with “receiving”
- § 1-01(i)(1): replace “can” with “may”
- § 1-01(k)(2)(ii): remove comma at beginning of subsection

The Board unanimously agreed to adopt the proposed amendments as the final rule to be submitted to the Law Department and the Mayor’s Office of Operations for review.

The open meeting was adjourned at approximately 9:40 a.m.

Respectfully submitted,
Julia H. Lee
Recording Secretary

Chad Gholizadeh

From: DiLorenzo, Felita <fbramsami@nycers.org>
Sent: Thursday, February 25, 2021 10:59 AM
To: COIB Rules
Subject: comments on Proposed Rules Regarding Gifts
Attachments: COIB Notice of Public Hearing and Opportunity to Comment on Proposed Rules Regarding Gifts.pdf

My comment on:

ii. a public servant may accept a gift from a subordinate or group of subordinates in connection with a holiday, birthday, or other event if the total value of the gift is does not exceed \$10 and the gift is not cash or a cash equivalent.

Should be “does not exceed \$10 per subordinate” – specifically for a special occasion/event as defined by the attached and the “gift” may most likely be from a group of subordinates.

The total value does not exceed \$10 rule translates to “no gifts” if that’s the purpose then keep it this way.

Felita DiLorenzo

N.Y.C.E.R.S.

Chief Compliance Officer

Work Mobile: (347)415-5475 & (347)414-3320

335 Adams Street, Suite 2300

Brooklyn, NY 11201



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NYC Employees' Retirement System



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

April 1, 2021

Thank you for the opportunity to submit written testimony for this hearing. Reinvent Albany advocates for open and accountable New York government.

Reinvent Albany believes most of COIB’s proposed rules regarding public servants’ acceptance of gifts are reasonable and will help city employees determine whether or not gifts are in violation of the rules.

We urge COIB to add a dollar limit under proposed rule §1-01(k)(2)(i), which permits subordinates to give gifts for major life events (wedding, retirements, etc.) so long as “the gift is of the type and value customary to the occasion in question.”

The proposed rules do include a value limit of ten dollars when the gift is for birthdays or holidays (§1-01(k)(2)(ii)). COIB’s statement of basis and purpose declares that this limit “would offer a safeguard against a superior -- particularly in a large City agency or office -- receiving hundreds of dollars in cash or cash equivalents, such as gift cards, from their subordinates.”

Reinvent Albany believes that this same safeguard is needed for gifts for major life events. It is conceivable that a wedding or retirement gift, such as a gift card with a high dollar value, could be considered “customary to the occasion in question” but also be used to influence a superior. For this reason, we believe COIB should apply a value limit to gifts for major life events as well.

Many states and localities [provide an exception](#) for gifts for major life events, so a value limit rule may be unprecedented, but it is also not unprecedented for wedding gifts to be used for personal gain. Former Virginia Governor Bob McDonnell was [convicted on](#)

[federal charges](#) after allegedly promoting the business of a caterer who had provided gifts at his daughter's wedding (the charges were [eventually vacated](#)). Reinvent Albany believes that NYC can be a national leader on this issue by placing a dollar limit of \$50 on gifts for major life events. This would make the limit consistent with the City's [\\$50 valuable gifts rule](#).

Thank you again for the opportunity to submit testimony. Please send any follow-up questions to Tom Speaker at tom [at] reinventalbany.org.

New York City Conflicts of Interest Board

Notice of Public Hearing and Opportunity to Comment on Proposed Adoption of Final Rules Regarding Gifts

~~What are we proposing?~~ The NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE NEW YORK CITY CONFLICTS OF INTEREST BOARD by Sections 1043, 2603(a), 2603(c)(4), and 2604(b)(5) of the City Charter, that the Conflicts of Interest Board ~~is proposing to amend~~ has adopted Board Rules amending its rules governing the acceptance of gifts by public servants.

~~When~~ The proposed Rules were published in the City Record on March 2, 2021, and ~~where is the Hearing?~~ The Conflicts of Interest Board will hold a public hearing ~~was held~~ on the proposed rule. The public hearing will take place by video conference at [] on [] and is accessible by:

- ~~Internet Video and Audio.~~ To access the hearing by Zoom, use the following URL: [].
- ~~Telephone.~~ To access the hearing by telephone, dial []. When prompted, use the following access code [] and password [].

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

- ~~Website.~~ You can submit comments to ~~April 1, 2021.~~ Two written comments were received. After consideration of the written comments received, the Conflicts of Interest Board through the NYC rules website at <http://rules.cityofnewyork.us>.
- ~~Email.~~ You can email comments to Rules@COIB.nyc.gov.
- ~~By Speaking at the Hearing.~~ Anyone who wants to comment on the proposed rule at the public hearing may speak for up to three minutes. Please access the public hearing by Internet Video and Audio or by Telephone using the instructions above. It is recommended, but not required, that commenters sign up prior to the hearing by contacting the Conflicts of Interest Board by phone at (212) 437-0730 or by email at lee@coib.nyc.gov.

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

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

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

~~What authorizes the Conflicts of Interest Board to make this rule? Sections 1043, 2603(a), 2603(e)(4), and 2604(b)(5) of the City Charter authorize the Conflicts of Interest Board to make this proposed rule. This rule was included in the Conflicts of Interest Board's regulatory agenda for this Fiscal Year.~~

~~Where can I find the Conflicts of Interest Board's rules? The Conflicts of Interest Board's rules are in Title 53 of the now adopts the following Rules of the City of New York.~~

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

STATEMENT OF BASIS AND PURPOSE

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

1. Gifts to Enhance Agency Morale

In ~~proposed~~ Board Rules § 1-01(i), the Board ~~would address~~addresses acceptance by the City of blocks of free tickets for entertainment, sporting, and cultural events. For these kinds of events, the attending public servants would not be performing any governmental work; instead, the City is distributing the gifted tickets to its employees to promote office morale or reward good performance. The Board addressed such gifts in A.O. No. 2000-4, advising that it would be permissible to accept the donation of tickets for use by City employees if: (1) approved by and distributed in a manner approved by an agency head; and (2) the donation ~~lacked serious indicia of~~does not raise significant concerns of a conflict of interest, such as the donor having a project pending before the accepting City agency or the donor having any role in selecting the public servants who will attend. See also A.O. No. 1992-33 at 4 (advising that agency employees cannot accept free travel and hotel ~~stays~~lodging offered a part of a morale boosting program by a firm with matters before that agency).

This longstanding interpretation of Chapter 68 is consistent with advice provided by the Board in A.O. No. 2007-3, permitting a registered lobbyist to offer blocks of tickets as gifts to the City with agency head approval. The four-factor test in ~~proposed~~ Board Rules § 1-01(i) ~~would~~ provideprovides a mechanism by which the City may accept gifts to benefit its workforce while

also safeguarding against the efforts of donors to target public servants involved in their City business or reward public servants for providing them with favorable determinations.

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

2. Donations for Personal Emergencies

In ~~proposed~~ Board Rules § 1-01(j), the Board ~~would establish~~establishes a standard to permit a public servant to accept otherwise prohibited donations in the event of a personal emergency similar to that articulated in A.O. No. 1992-29. In A.O. No. 1992-29, the Board advised an injured public servant's co-workers that they could raise funds for his medical expenses from firms that were regulated by their agency or may have matters before the injured public servant, provided that all funds were collected by a third party not connected to the agency and that the donors' identities were not revealed to the public servant or to any other agency employee. ~~Proposed~~ Board Rules § 1-01(j) ~~would permit~~permits public servants to accept anonymized donations in emergency situations, subject to strict restrictions on who may solicit donations and from whom donations may be solicited. Public servants who comply with these requirements ~~would be able to~~may accept otherwise prohibited contributions, provided that the contributions address the need caused by the emergency.

3. Gifts between Public Servants

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

agency or office, ~~regularly collecting -- receiving~~ hundreds of dollars in cash or cash equivalents, such as ~~Amazon~~ gift cards, from their subordinates.

4. Disposition of Impermissible Gifts

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

5. Compatibility with Other Laws

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

New material is underlined.

Section 1. ~~Section 1-01 Subdivisions (i)-(k)~~ of Chapter 1 of Title 53 of the Rules of the City of New York, relating to acceptance of valuable gifts, are REPEALED and new ~~Sections 1-01 subdivisions (i)-(k)~~ Sections 1-01 subdivisions (i)-(m) are added to read as follows:

(i) Gifts to Enhance Employee Morale

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

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

(j) Donations for Personal Emergencies

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

- i. any subordinate of the beneficiary public servant or soliciting public servant;
- ii. any firm or individual that has a particular matter, legislative proposal, action on the City budget, or text of the zoning resolution pending before the beneficiary public servant or soliciting public servant; or
- iii. any firm with which the beneficiary public servant or soliciting public servant deals in his or her City work.

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

(k) Gifts Between Public Servants

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

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

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

- i. a public servant may accept a gift from a subordinate or group of subordinates in connection with a special occasion marking a major life event, such as a wedding, the birth or adoption of a child, or retirement, provided that the gift is of the type and value customary to the occasion in question; and
- ii. ~~a~~ public servant may accept a gift from a subordinate or group of subordinates in connection with a holiday, birthday, or other event ~~and if the gift is of nominal total value of the gift is does not exceeding exceed~~ \$10 and the gift is not cash or a cash equivalent.

(l) Disposition of Impermissible Gifts

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

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

- i. donate the item to the agency, to an entity as defined in Board Rules § 1-14(a)(1)(iii), or to the Mayor's Fund to Advance New York;
- ii. share the item within the agency; or
- iii. destroy the item.

(m) Compatibility with Other Laws

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

- (2) Nothing in this section will be deemed to authorize a public servant to act or accept a gift of any value in violation of any applicable federal, state, or local law, including ~~the criminal law~~laws, City agency rules, or Mayoral Executive Orders (including, but not limited to, Executive Order No. 16 of 1978 (as amended)), which may impose additional requirements to report gifts and offers of gifts to the agency's inspector general, whether or not a gift is accepted or returned.
- (3) This section must be read in conjunction with the provisions of Charter § 2604(b)(2) and Board Rules § 1-13; Charter § 2604(b)(13); and Charter § 2604(b)(14) and Board Rules § 1-10.

New York City Conflicts of Interest Board

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 Sections 1043, 2603(a), 2603(c)(4), and 2604(b)(5) of the City Charter, that the Conflicts of Interest Board has adopted Board Rules amending its rules governing the acceptance of gifts.

The proposed Rules were published in the City Record on March 2, 2021, and a public hearing was held on April 1, 2021. Two written comments were received. After consideration of the written comments received, the Conflicts of Interest Board now adopts the following Rules.

STATEMENT OF BASIS AND PURPOSE

In accordance with the mandate of City Charter § 2603(c)(4) for the Board to review all its advisory opinions and initiate rulemaking to adopt those with “interpretative value in construing provisions” of Chapter 68, the Board has reviewed the 29 advisory opinions it has issued concerning public servants’ acceptance of gifts. These amendments to Board Rules § 1-01 (the “Valuable Gifts Rule”) codify advisory opinions with interpretive value and clarify existing rules to conform with current practice. Additionally, the amendments incorporate the Board’s longstanding interpretation of Charter § 2604(b)(3) that the acceptance of gifts offered as a result of a public servant’s City position would violate Charter § 2604(b)(3). See, e.g., Advisory Opinion (“A.O.”) Nos. 1990-3, 1991-4, 1992-10, 1992-23, 1994-12, and 2000-4.

1. Gifts to Enhance Agency Morale

In Board Rules § 1-01(i), the Board addresses acceptance by the City of blocks of free tickets for entertainment, sporting, and cultural events. For these kinds of events, the attending public servants would not be performing any governmental work; instead, the City is distributing the gifted tickets to its employees to promote office morale or reward good performance. The Board addressed such gifts in A.O. No. 2000-4, advising that it would be permissible to accept the donation of tickets for use by City employees if: (1) approved by and distributed in a manner approved by an agency head; and (2) the donation does not raise significant concerns of a conflict of interest, such as the donor having a project pending before the accepting City agency or the donor having any role in selecting the public servants who will attend. See also A.O. No. 1992-33 at 4 (advising that agency employees cannot accept free travel and hotel lodging offered a part of a morale boosting program by a firm with matters before that agency).

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

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

2. Donations for Personal Emergencies

In Board Rules § 1-01(j), the Board establishes a standard to permit a public servant to accept otherwise prohibited donations in the event of a personal emergency similar to that articulated in A.O. No. 1992-29. In A.O. No. 1992-29, the Board advised an injured public servant's co-workers that they could raise funds for his medical expenses from firms that were regulated by their agency or may have matters before the injured public servant, provided that all funds were collected by a third party not connected to the agency and that the donors' identities were not revealed to the public servant or to any other agency employee. Board Rules § 1-01(j) permits public servants to accept anonymized donations in emergency situations, subject to strict restrictions on who may solicit donations and from whom donations may be solicited. Public servants who comply with these requirements may accept otherwise prohibited contributions, provided that the contributions address the need caused by the emergency.

3. Gifts between Public Servants

In Board Rules § 1-01(k), the Board refines the advice provided in A.O. No. 2013-1 concerning gifts between public servants. Board Rules § 1-01(k)(1) makes it clear that public servant peers may give gifts to each other and that superiors may give gifts to subordinates. In both scenarios, the recipient of the gift has no authority in their City job over the giver; thus, accepting the gift would be permissible. Board Rules § 1-01(k)(2) sets forth the general prohibition against public servants accepting gifts from their subordinates, with two exceptions: first, Board Rules § 1-01(k)(2)(i) permits a superior to accept a gift from a subordinate on a special occasion marking a major life event, such as a wedding, the birth or adoption of a child, or retirement, where the gift is appropriate to the occasion; second, Board Rules § 1-01(k)(2)(ii) permits a public servant to accept gifts other than gifts of cash or cash equivalents (such as gift cards) on other events, such as holidays or birthday, from their subordinates, or a group of subordinates, where the total value of the gift is \$10 or less. By providing a \$10 limit on the total value of any gift accepted by a supervisor, and by excluding cash and cash equivalents, Board Rules § 1-01(k)(2)(ii) offers a safeguard against a superior -- particularly in a large City agency or office -- receiving hundreds of dollars in cash or cash equivalents, such as gift cards, from their subordinates.

4. Disposition of Impermissible Gifts

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

5. Compatibility with Other Laws

In Board Rules § 1-01(m), the Board consolidates provisions of prior Board Rules § 1-01 addressing other regulatory or statutory regimes. Board Rules § 1-01(m) does not substantively change the restrictions set forth in prior Board Rules § 1-01(i), (j), and (k) except to explicitly reference Charter § 2604(b)(3) and Charter § 2604(b)(14).

New material is underlined.

Section 1. Subdivisions (i) through (k) of Chapter 1 of Title 53 of the Rules of the City of New York, relating to acceptance of valuable gifts, are REPEALED and new subdivisions (i) through (m) are added to read as follows:

(i) Gifts to Enhance Employee Morale

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

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

(j) Donations for Personal Emergencies

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

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

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

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

(k) Gifts Between Public Servants

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

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

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

- i. a public servant may accept a gift from a subordinate or group of subordinates in connection with a special occasion marking a major life event, such as a wedding, the birth or adoption of a child, or retirement, provided that the gift is of the type and value customary to the occasion in question; and
- ii. a public servant may accept a gift from a subordinate or group of subordinates in connection with a holiday, birthday, or other event if the total value of the gift is does not exceed \$10 and the gift is not cash or a cash equivalent.

(l) Disposition of Impermissible Gifts

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

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

- i. donate the item to the agency, to an entity as defined in Board Rules § 1-14(a)(1)(iii), or to the Mayor's Fund to Advance New York;
- ii. share the item within the agency; or
- iii. destroy the item.

(m) Compatibility with Other Laws

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

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

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