

October 10, 2019 – Open Meeting Matter

September 27, 2019 – Public Hearing

August 20, 2019, Agenda – Open Meeting Matter

July 9, 2019, Agenda – Open Meeting Matter

March 12, 2019, Agenda – Open Meeting Matter

To: The Board

From: Christopher M. Hammer *cmh*

Date: October 2, 2019

Re: Proposed Board Rules § 1-02 and 1-15: Community Board Members

As directed by the Board at its August 2019 meeting (**Exhibit 1**), Staff submitted the proposed Board Rules on community board members for publication in the City Record (**Exhibit 2**). Publication occurred on August 27, 2019, in advance of the public hearing held on September 27, 2019. The Board received no written comments in advance of the public hearing and received oral comments from two attendees at the public hearing: Patricia Charles, a member of Bronx Community Board 11, and Alex Camarda, Senior Policy Advisor at Reinvent Albany. Mr. Camarda also provided written comments (**Exhibit 3**). Having considered these comments, Staff does not recommend any substantive changes to the text of the rules and offers minor clarifying edits to the Statement of Basis and Purpose, along with conforming edits to reflect that the rules would be a final rule (**Exhibit 4**).

With the Board's adoption of the final rules, Staff will publish the Notice of Adoption in the City Record, and the rules will take effect 30 days after publication. See City Charter § 1043(f).

Attached are the following:

1. Minutes of the August 20, 2019, Open Meeting (**Exhibit 1**);
2. Notice of Public Hearing and Opportunity to Comment (**Exhibit 2**);
3. Comment submitted by Alex Camarda, Senior Policy Advisor for Reinvent Albany (**Exhibit 3**);

4. Draft Notice of Adoption, with changes tracked (**Exhibit 4**); and
5. Draft Notice of Adoption, clean version (**Exhibit 5**).

Analysis of Comments to the Proposed Rules

Patricia Charles, a member of Bronx Community Board 11, offered general observations on the importance of community boards and on the importance of understanding the rules that apply to community board members, particularly for relatively new members like herself. She explained that, in reading the Board's proposal, she understands the need to abstain from voting on a matter that affects her private interests. She did not recommend any changes to the proposed rules.¹

As reflected in its written comment (**Exhibit 3**), a summary of which was presented at the public hearing by Mr. Camarda, Reinvent Albany generally supports the Board's proposed rules on community boards and makes several additional recommendations. These recommendations fall into three broad categories: (1) codifying internal community board practices; (2) codifying specific Chapter 68 provisions or circumstances; and (3) increasing Board oversight of community board activities.

Codifying Internal Community Board Practices: Reinvent Albany recommends that the Board prohibit a community board member from discussing matters in which the member has a conflict unless the discussion occurs at a public meeting after the member discloses the conflict on the record. When a public servant has an interest in a firm that is not prohibited by Chapter 68, that public servant is ordinarily prohibited from "tak[ing] any action as a public servant particularly affecting that interest." Charter § 2604(b)(1)(b). For community board members, however Charter § 2604(b)(1)(b) provides that "such action shall not be prohibited, but no member may vote on any

¹ A video recording of the entire public hearing is available at: <https://www.youtube.com/watch?v=0YiSHn03QBA>

matter” before the community board that “may result in a personal and direct economic gain” to the member or associated person.

The proposed rules, following the Board’s long-standing guidance, are already more restrictive than Charter § 2604(b)(1)(b) in that they add the requirement for public disclosure of an interest prior to discussion about that interest, and Staff does not recommend imposing any additional restrictions to the proposed rule. These rules codify and clarify the advice the Board has already given community board members throughout its history, with only minor changes. The additional policies recommended by Reinvent Albany go beyond both the requirements of Chapter 68 and the Board’s historic advice and likely would prove difficult for community boards to police and implement.

Codifying Specific Chapter 68 Prohibitions or Circumstances: Reinvent Albany recommends that the Board codify in the proposed rule certain specific Chapter 68 provisions or circumstances:

- **Reinvent Albany recommends that the rule expressly prohibit a community board member from appearing before their own community board on behalf of a private business or private client.** Community board members are already prohibited by Charter § 2604(b)(6) from making the kinds of communications to their own community boards that Reinvent Albany describes, as are all part-time public servants with regard to their agency served, and as are all full-time public servants with regard to any City agency.² This rule focuses on applications of Chapter 68 specific to community board members; this rule does not repeat the other requirements of Chapter 68 applicable to all public servants. Staff recommends amending the Statement of Basis and Purpose to state explicitly that the rest of Chapter 68 continues to apply. See Exhibit 4 at 2.
- **Reinvent Albany recommends that the Board address Advisory Opinion Nos. 1993-3 and 2010-1 in the rule.** With respect to Advisory Opinion No. 1993-3, Reinvent Albany recommends that the Board prohibit a community

² Charter § 2604(b)(6) provides that “[n]o public servant shall, for compensation, represent private interests before any city agency or appear directly or indirectly on behalf of private interests in matters involving the city. For a public servant who is not a regular employee,” such as a community board member, “this prohibition shall apply only to the agency served by the public servant.”

board member from voting on a matter involving a local development corporation the member serves. Reinvent Albany's recommendation is in agreement with the proposed rules, which treat employees of local development corporations and other quasi-government entities the same as employees of City agencies. Staff recommends clarifying in the Statement of Basis and Purpose that a position at a local development corporation falls within the "government or quasi-government service" requiring abstention from voting. See Exhibit 4 at 4; see also id. at 6 (stating that Advisory Opinion No. 1993-3 would be limited to the public servant who requested it). With respect to Advisory Opinion No. 2010-1, Reinvent Albany recommends that the Board create a specific rule for community board members who also serve a Community Education Council of the New York City Department of Education. Staff does not recommend such a change. What is proposed is a single rule applicable to all community board members, and there is no indication that applying this bright-line rule to CEC members would detrimentally affect the functioning of either a community board or a CEC. As noted in the Statement of Basis and Purpose, the Board may issue waivers to community board members who are also CEC members so that they may vote on CEC matters or chair educational committees where necessary. See Exhibit 4 at 6.

Increasing Board Oversight of Community Board Activities: Reinvent Albany recommends that the Board maintain an online database of the conflicts that community board members disclose at public meetings. The Board does not have the additional resources needed to compile and publish such a database, much less to enforce compliance with such a requirement, which would apply to thousands of community board members. Reinvent Albany also recommends that the Board conduct trainings and monitor how well community boards comply with Chapter 68 and the relevant Board Rules. This recommendation is outside the scope of the proposed rule, but Staff notes that the Board's Education and Engagement Unit regularly trains community boards on the requirements of Chapter 68 and the Board Rules. With its small staff, the Board's Education & Engagement Unit was able to conduct 30 trainings at community boards around the City during 2017 and 2018, frequently at evening meetings after normal City work hours.

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

Date: August 20, 2019

Location: Conflicts of Interest Board, 2 Lafayette Street, Suite 1010, New York, New York

Present:

Board Members: Chair Richard Briffault and Members Fernando A. Bohorquez, Jr., Anthony Crowell, Jeffrey D. Friedlander, and Erika Thomas

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

Guests: None

The meeting was called to order by the Chair at approximately 9:30 a.m. The Chair stated that the meeting was being conducted pursuant to the New York State Open Meetings Law and designated the undersigned as the Recording Secretary for purposes of the meeting.

The Chair stated that the meeting was called to discuss the amendment and/or adoption of Board Rules concerning three topics.

First, the Chair commenced discussion of the proposed adoption of Board Rules Chapter 5, which were considered at an Open Meeting held on May 9, 2019, and at a Public Hearing held on August 1, 2019.

The Chair asked for any comments by the Board or Staff concerning the proposed amendments to Board Rules Chapter 5. There were no comments.

Upon motion duly made and seconded, the Board unanimously voted to approve Board Rules Chapter 5.

Second, the Chair commenced discussion of proposed amendments to Board Rules Chapter 2, which amendments were considered at Open Meetings held on February 28, March 12, and June 12, 2019, and at a Public Hearing held on July 25, 2019.

A member of Staff summarized the comments received at the Public Hearing held on July 25, 2019. The Chair asked for any comments by the Board or Staff concerning the proposed amendments to Chapter 2 of the Board Rules.

Comments:

- The Board discussed whether the enforcement procedures should require the publication of an OATH Report & Recommendation whenever it contains a substantiated violation. Staff noted that, under the proposed rules, it is within the Board's discretion to publish the Report & Recommendation as part of the Order. Staff advised against requiring publication because, although the Board has always published the Report & Recommendation when it contained a substantiated charge, adopting such a requirement would prevent the Board from avoiding unnecessary disclosures, such as in instances where the Report & Recommendation discusses both substantiated and unsubstantiated charges. The Board declined to incorporate the proposed change.

Upon motion duly made and seconded, the Board unanimously voted to adopt the proposed amendments to Chapter 2 of the Board Rules.

Third, the Chair commenced discussion of proposed amendments to Board Rules § 1-02 and the adoption of Board Rules § 1-15, which rules were considered at Open Meetings held on March 12 and July 9, 2019.

A member of Staff reported that the proposed rules and Statement of Basis and Purpose had been revised slightly for clarity and precision based on edits received from the City's Law Department and the Mayor's Office of Operations. The Chair asked for any additional comments by the Board or Staff concerning the proposed amendments to Chapter 2 of the Board Rules. There were no comments.

Upon motion duly made and seconded, the Board unanimously voted to adopt the proposed amendments to Board Rules §§ 1-02 and 1-15.

The Open Meeting was adjourned at approximately 9:42 a.m.

Respectfully submitted,

Jeffrey Tremblay
Recording Secretary

New York City Conflicts of Interest Board

Notice of Public Hearing and Opportunity to Comment on Proposed Rule Regarding Community Board Members

What are we proposing? The Conflicts of Interest Board proposes to adopt rules regarding community board service.

When and where is the hearing? The Conflicts of Interest Board will hold a public hearing on the proposed rule. The public hearing will take place at 12:30 p.m. on Friday, September 27, 2019. The hearing will be at Spector Hall, 22 Reade Street, New York, New York.

This location has the following accessibility option(s) available: Wheelchair accessible.

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

- **Website.** You can submit comments to the Conflicts of Interest Board through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to rules@coib.nyc.gov.
- **Mail.** You can mail comments to Christopher M. Hammer, Deputy General Counsel, Conflicts of Interest Board, 2 Lafayette Street, Suite 1010, New York, New York 10007.
- **Fax.** You can fax comments to the Conflicts of Interest Board at (212) 437-0705.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 437-0730. You can also sign up in the hearing room before the hearing begins on September 27. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes; you must submit written comments by Friday, September 27, 2019.

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) 437-0730. You must tell us by Wednesday, September 25, 2019.

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 and 2603(a) of the City Charter authorize the Conflicts of Interest Board to make this proposed rule. This proposed rule was not included in the Conflicts of Interest Board's regulatory agenda for this Fiscal Year because it was not contemplated when the Conflicts of Interest Board published the agenda.

Where can I find the Conflicts of Interest Board's rules? The Conflicts of Interest Board's rules are in Title 53 of the 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 of the Proposed 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 proposes to consolidate 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 would remain as separate opinions applicable only to the individuals who sought the Board's advice at the time.

Chapter 68 prohibits all public servants, including community board members, from using their City position for the financial benefit of the member or of any person or firm "associated" with the member. See Charter § 2601(5). Proposed Board Rules § 1-15 would address 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. Proposed Board Rules § 1-15 and the proposed amendment to Board Rules § 1-02 would also define and clarify certain provisions of Chapter 68 as applicable to community board members.

1. Voting on Matters as Community Board Members

Proposed Board Rules § 1-15(a), which applies Charter § 2604(b)(1)(b), would prohibit 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 proposed 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 would 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.

In proposed Board Rules § 1-15(a)(3), the Board would codify its 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 would clarify 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 would clarify 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. Proposed Board Rules § 1-15(a)(3) would establish 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.

In proposed Board Rules § 1-15(b), the Board would codify its 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 would apply that advice to the other governmental or quasi-governmental entities listed in Charter § 2601(11) and Board

Rules § 1-08. 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 proposed 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

Proposed Board Rules § 1-15(b) would codify 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.” In proposed Board Rules § 1-15(c), the Board would both codify and clarify its prior advice on chairing meetings. Specifically, the proposed rule would state 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 proposes to define that frequency as three or more times over a twelve-month period or, in the case of another City agency, jurisdiction over that government or quasi-government entity.

4. Additional Defined Terms

Proposed Board Rules § 1-15(d) would codify 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).

Proposed Board Rules § 1-15(e) would codify 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 proposed amendment to Board Rules § 1-02 would codify 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 is not incorporating eight opinions into this proposed 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 proposed rule would 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 Proposed 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:

* * *

Section 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.

NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400

CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)

RULE TITLE: Rules Regarding Community Board Service

REFERENCE NUMBER: COIB-10

RULEMAKING AGENCY: Conflict of Interest Board

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Lindsay Fuller
Mayor's Office of Operations

August 14 2019
Date

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Conflicts of Interest Rules Applicable to Community Board Members

REFERENCE NUMBER: 2019 RG 055

RULEMAKING AGENCY: Conflicts of Interest Board

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: August 14, 2019

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

September 27, 2019

Good afternoon Chair Briffault and members of the Conflicts of Interest Board. My name is Alex Camarda, and I am the Senior Policy Advisor for Reinvent Albany. Reinvent Albany is a government watchdog organization that advocates for open and accountable government. While we largely focus on Albany, we have an interest in strengthening ethics in New York City because the City serves as a model for better ethics laws and practices. We appreciate COIB's interest in improving community board ethics and thank COIB for the concise and well-targeted [Top 9 Things Community Boards Need to Know](#) web page.

Our testimony today has 7 major points:

- 1. COIB's promulgating rules on community boards is essential to make ethical standards clear**
- 2. Most of COIB's proposed rules for community boards are reasonable**
- 3. Community board members with conflicts should only discuss those matters during public meetings**
- 4. Community board members should be required to record conflicts and recusals from voting in their meeting minutes**
- 5. COIB should codify in its rules that community board members are barred from appearing before their own community board on behalf of a private business or private client**
- 6. COIB should address in its community board rules the omitted Advisory Opinions 1993-3 and 2010-1**
- 7. Beyond rules, COIB should consider:**
 - o monitoring community boards more and investigating noncompliance**

- **increasing ethics training of board members and district managers**
- **creating a database of conflicts and recusals from voting that all boards report information to**

Promulgating Rules on Community Boards is Essential

Reinvent Albany supported Local Law 177 of 2018, which requires COIB promulgate rules for advisory opinions that are binding on public servants generally and have interpretative value.

Over the years, COIB has issued 18 Advisory Opinions, totaling 116 pages, related to community board members. During the 2018 Charter Revision Commission hearings, individuals raised community board members' conflicts. This revealed the difficulty of deciphering what the ethics requirements for boards were and whether they were being followed.

We therefore strongly support COIB promulgating its many Advisory Opinions on community board conflicts of interest as rules. Land use decisions that impact our urban landscape begin with consideration by the city's 59 community boards. Community boards also provide input on the city's budget. It is important that the public believes community boards are making determinations on the merits and are not conflicted in providing advice on development and budgetary matters. Greater clarity will help the boards and the public better understand what qualifies as a conflict of interest.

Reinvent Albany Supports Most of the Proposed Rules for Community Boards

COIB has promulgated rules for 10 of the 18 Advisory Opinions it has issued related to community boards. The Board has largely achieved a reasonable balance between recognizing that community board members are part-time public servants with advisory roles and maintaining high ethical standards.

In particular, we support COIB's rules that community board members:

- may not appear on behalf of a government entity they serve before the member's community board or vote on any matter involving such entity;
- shall not chair any community board, committee or subcommittee meeting:
 - when any matter particularly affecting the member's private employer, financial interest or other private interest is being considered; or

- that considers any matter involving a governmental entity served by the community board member as an official, officer or employee.
- shall not regularly chair any community board, committee or subcommittee:
 - that regularly reviews any matters involving the member's private employer, financial interest or other private interest; or
 - that regularly reviews any matters involving a governmental entity served by the community board member as an official, officer or employee.
- do not have substantial policy discretion because community board opinions are advisory.

Reinvent Albany Recommended Changes to Proposed Rules

Under COIB rules, community board members are not able to vote at a meeting on matters that may result in a personal and direct economic gain (or mitigation of a loss) to them or any person or firm they are associated with, nor vote at a meeting on a matter involving the agency they serve.

We agree with the prohibition on voting, but COIB rules allow these same conflicted individuals to participate in discussions about matters they are barred from voting on if they disclose the conflict first at a public meeting. The conflicted members can therefore attempt to persuade other community board members to vote on a matter that personally favors them or the agency they serve, and can also do so formally at a public meeting or informally behind closed doors, where the disclosure of the conflict is not likely to be monitored or enforced.

Reinvent Albany believes the following amendments should be made to COIB's proposed rules:

- In addition to recusal from voting, community board members should be prohibited from communicating or seeking to communicate, directly or indirectly, with any other member on the community board they serve on regarding a matter in which they have a conflict except at a public meeting where they first disclose their conflict one time before making any statements on the matter.
- Community boards should be required to record in their meeting minutes any conflicts members recused themselves from voting on, disclosing the name of the member with the conflict, a description of the conflict, and the name of the firm or person or relative or government entity the conflict involves.

- COIB should codify in its rules that community board members are barred from appearing before their own community board on behalf of a private business or private client. Community board members who serve a government entity are barred from appearing before their own community board on behalf of their agency in the proposed rules.

Address Two Community Board Advisory Opinions Not in the Draft Rules

COIB did not promulgate rules for eight Advisory Opinions related to community boards because, according to COIB, the ethics standards are already clear in the charter, in other rules or because COIB believes the circumstances presented in the Advisory Opinion were unusual or special. We believe it should promulgate as part of these rules ethics standards for two of these Advisory Opinions.

Advisory Opinion 1993-3 allows community board members who serve on a local development corporation to vote on matters that impact the local development corporation, like a community board recommendation regarding a budgetary allocation to the local development corporation. We think these conflicted members should not be able to vote and should follow the same disclosure procedure we recommend for conflicted members who serve a governmental entity. In fact, COIB's list of governmental entities in Rule 1-08 includes New York local public authorities, meaning they are seemingly already barred. A local development corporation is a "local authority" in New York State Public Authorities Law. We do not believe it matters that a local development corporation is not considered a "firm" as described in the Advisory Opinion. We call on COIB to address the issues raised in AO 1993-3 in these rules it is promulgating.

We also think Advisory Opinion 2010-1 concludes a member of both a community board and a Community Education Council (CEC) can fully participate in both since they are both advisory bodies, and that no conflict exists. We agree with the conclusion that voting should be allowed for a member of a community board and a Community Education Council (CEC) since they are both advisory bodies, but believe the member should be required to disclose their CEC membership in any education-related discussion by board members. We also believe they should be able to participate but not chair an education-related community board committee at any time. The community board is a distinct entity from the CEC, which consists of parents of school children, and may have a different perspective on educational issues. Allowing a CEC member to chair an education-related community board committee does not ensure that the distinction is preserved.

Actions COIB Should Take Regarding Community Boards Apart from Rulemaking

It appears to Reinvent Albany from news reports and testimony by the public that community boards are not always following ethics laws and are unaware of what the rules are.

We think this lack of awareness and compliance needs to be addressed. COIB should consider the following approaches:

1. COIB could monitor community boards more to determine if they are complying with ethics laws and, if not, train and investigate as appropriate.
2. COIB could conduct additional trainings of community board members and district managers on conflicts of interest law. We have read pamphlets COIB has issued that provide simple explanations of the ethics laws. The [Top 9 Things Community Boards Need to Know](#) on COIB's website is a good starting point.
3. COIB proposes in its rules that community board members disclose their conflicts of interest and recuse themselves from voting on those matters. COIB could additionally require community boards report recusals from voting and associated conflicts to COIB, and create an online database listing these. This would reveal how frequently conflicts are occurring, what the conflicts are, and help COIB monitor whether boards are abiding by disclose and recuse requirements.

Thank you for the opportunity to testify today. I welcome any questions you may have.

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 Proposed 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 ~~proposes to consolidate~~ 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 ~~would~~ 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 ~~all~~ any public servants, including a community board members, from using ~~their~~ 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). ~~Proposed~~ Board Rules § 1-15 ~~would~~ 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. ~~Proposed~~ Board Rules § 1-15 and the ~~proposed~~ amendment to Board Rules § 1-02 ~~would~~ also define and clarify certain provisions of Chapter 68 as applicable to community board members.

1. Voting on Matters as Community Board Members

~~Proposed~~ Board Rules § 1-15(a), which applies Charter § 2604(b)(1)(b), ~~would~~ 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 ~~proposed~~ 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 ~~would~~ 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.

~~In proposed Board Rules § 1-15(a)(3), the Board would~~ codify its 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 ~~would~~ clarify 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 ~~would~~ clarify 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. ~~Proposed-Board Rules § 1-15(a)(3) would establish~~ es 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.

~~In proposed-Board Rules § 1-15(b), the Board would codify~~ es ~~its~~ 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 ~~would apply~~ es 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 ~~proposed~~-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*

~~Proposed-Board Rules § 1-15(b) would codify~~ es 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.” ~~In proposed Board Rules § 1-15(c), the Board would both codify and clarify its the~~ Board’s prior advice on chairing meetings. Specifically, the ~~proposed rule would state~~ 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 ~~proposes to define~~ that frequency as three or more times ~~over~~ 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

~~Proposed Board Rules § 1-15(d) would codify~~ 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).

~~Proposed Board Rules § 1-15(e) would codify~~ 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 ~~proposed-amendment~~ to Board Rules § 1-02 ~~would-codify~~ 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 ~~ing~~ eight opinions into this ~~proposed-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 ~~proposed rule would~~ 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 ~~Proposed-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:

* * *

Section 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.

Notice of Adoption of Final Rules

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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 Proposed 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:

* * *

Section 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.