

July 9, 2019, Agenda – Open Meeting Matter
March 12, 2019, Agenda – Open Meeting Matter

To: The Board
From: Christopher M. Hammer *cmbh*
Date: June 4, 2019
Re: Proposed Board Rule on Community Boards

The proposed community board rule returns to the Board after discussion at its March 2019 meeting. As requested at that meeting, Staff has revised the draft commentary to identify which of the eighteen advisory opinions on community boards the proposed rule would incorporate and which opinions are not incorporated and thus limited to the public servant who requested the opinion. As a result of Staff's review of those advisory opinions, Staff has also made three additions to the proposed rule, as well as some clarifying edits.

With the Board's approval, Staff will formally submit the proposed rule to the New York City Law Department and the Mayor's Office of Operations, as required by the City Administrative Procedure Act. See Charter § 1043(d).

Attached are the following:

1. Minutes of the March 12, 2019, Open Meeting (**Exhibit 1**);
2. Summary of Advisory Opinions on Community Boards (**Exhibit 2**);
3. Tracked changes version of draft Notice of Public Hearing (**Exhibit 3**); and
4. Clean version of draft Notice of Public Hearing (**Exhibit 4**).

Analysis & Discussion

In reviewing and adding each advisory opinion to the draft commentary, Staff made three additions to the proposed rule:

- Specified that a community board member, including the chair, is not a public servant charged with substantial policy discretion. See proposed amendments to Board Rules § 1-02(a), **Exhibit 3** at 8, ln. 16; commentary, **Exhibit 3** at 7, ln. 4-6. This change would codify Advisory Opinion No. 1991-12.
- Specified that an employee of a community board is the subordinate of each community board member. See proposed Board Rules § 1-15(e), **Exhibit 3** at 11, ln. 16-18; commentary, **Exhibit 3** at 7, ln. 1-3. This change would codify Advisory Opinion No. 2004-3.
- Applied Charter § 2604(b)(2) equally to a community board member's employment with any of the government and quasi-government entities listed in Board Rules § 1-08, not just City agencies. See proposed Board Rules §§ 1-15(b) and 1-15(c)(2), **Exhibit 3** at 9, ln. 13-22; 10, ln. 18-22; and 11, ln. 1-12; commentary, **Exhibit 3** at 7, ln. 21-32. Adopting a consistent standard to all government and quasi-government service would effectively limit Advisory Opinion Nos. 1993-3, 2003-3, and 2010-1 to the public servants who requested the advice.

Staff also made the following clarifications to the proposed rule:

- Identified particular employment actions that rise to the level of a “business or financial relationship” between a community board member and his or her boss in private employment: hiring and firing decisions, assigning work, approving leave, and evaluating performance. See proposed Board Rules § 1-15(a)(3)(i), **Exhibit 3** at 9, ln. 5-10; commentary, **Exhibit 3** at 4, ln. 16-26.
- Changed the word “represent” to “appear” when referring to a community board member's prohibited interactions with the community board on behalf of the member's government or quasi-government employer. See proposed Board Rules § 1-15(b)(1), **Exhibit 3** at 9, ln. 16. By using term “appear,” a term defined in Charter § 2601(4), the prohibition would not apply to ministerial communications.
- Changed the word “role” to “position,” a term defined in Charter § 2601(18), when referring to a community board member's other government or quasi-government service. See proposed Board Rules § 1-15(b)(3), **Exhibit 3** at 9, ln. 21.
- Switched the order of (i) and (ii) in proposed Board Rules §§ 1-15(c)(1) and (c)(2) so that (iii) in these subsections would define a term used only in (ii). See **Exhibit 3** at 10, ln. 3-12 and 21-22; and 11, ln. 1-5.

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

Date: March 12, 2019

Location: Baker Hostetler, 45 Rockefeller Plaza, 14th Fl., New York, New York

Present:

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

Board Staff: Ethan Carrier, Chad Gholizadeh, Christopher Hammer, Gavin Kendall, Julia Lee, Carolyn Miller, Katherine Miller, Ari Mulgay, Jeff Tremblay, Michele Weinstat, Clare Wiseman, and Juliya Ziskina.

Guests: None

The meeting was called to order by the Chair at approximately 10:00 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 proposed amendments to Title 53 of the Rules of the City of New York, Board Rules Chapter 2, Board Rules Chapter 3, Board Rules § 1-15, and Board Rules § 1-01.

Board Rules Chapter 2:

After a brief introduction on the proposed amendments to Board Rules Chapter 2, the Chair asked for any comments by the Board or Staff.

There were no comments.

Upon motion duly made and seconded, the Board unanimously voted to approve the proposed amendments incorporating the changes as discussed as the final rule.

Board Rules Chapter 3:

After a brief introduction on the proposed amendments to Board Rules Chapter 3, the Chair asked for any comments by the Board or Staff.

The following comment constitutes the change as agreed upon by the Board to the proposed amendments to Board Rules Chapter 3:

- Board § 3-03(h): change “elected officials serve” to “elected official serves”

Upon motion duly made and seconded, the Board unanimously voted to approve the proposed amendments incorporating the changes as discussed as the final rule.

Board Rules § 1-15:

After a brief introduction by a member of Board Staff on the proposed amendments to Board Rules § 1-15, the Chair asked for any comments by the Board or Staff.

In the Statement of Basis and Purpose of the Proposed Rule, the following changes were agreed upon by the Board:

- To include language clarifying the status of all advisory opinions relating to community boards
- On p. 2, first paragraph: to modify language to reflect that, consistent with longstanding Board interpretation, the “catch-all” provision of Charter § 2604(b)(2) applies to City employment.

Upon motion duly made and seconded, the Board unanimously voted to continue discussion at a future Board meeting for Board Rules § 1-15 and § 1-01.

The open meeting was adjourned at approximately 10:45 a.m.

Respectfully submitted,

Julia Lee
Recording Secretary

Summary of Advisory Opinions related to Community Board Members

1991-3: A community board member may not vote on any matter in which the member or any associated person or firm has a personal and direct economic interest or on any matter that has been or may be considered by a City agency employing the member. The community board member may participate in the community board's discussion of these matters provided that, before participating, the member discloses the nature and extent of his or her private interest or other City employment.

1991-12: A community board chair and a community board district manager do not exercise substantial policy discretion, defined in Board Rules § 1-02 as having major responsibilities and exercising independent judgment in connection with important agency matters.

1992-27: A community board may fundraise to hire a consultant to study land use within the community board district, provided that the board (1) does not solicit funds from any person or firm with a matter pending before the board and (2) ensures that donors affected by the study are not involved in selecting the consultant.

1992-31: A community board member may not sell services to his or her own community board.

1993-2 (*superseded by 2010-1*): A community board member who is also a member of a local community school board may not chair the community board committee with jurisdiction over the school board or vote on funding recommendations involving the community school board.

1993-3: A community board member who holds an unpaid position with a local development corporation or public benefit corporation may vote on matters involving the corporation, as long as the vote would not result in a personal and direct economic gain to the member or an associate of the member.

1995-18: A community board member may not chair a committee likely to have before it matters involving the community board member's private interests or employment.

1995-27: A community board may fundraise to support its programs and initiatives but may not solicit donations from individuals or firms with matters pending before the board.

1996-4: Neither a member of a community board, nor the member's partner or employee at a private firm, may appear before the community board on behalf of private clients.

1996-8: A community board chair may have an interest in a firm that regularly has matters before the community board but must step down at meetings involving such matters.

1998-9: The Board granted a waiver to permit a community board member's indirect appearance before the community board by another attorney at the member's law firm, on the condition that the member recused himself from participating in the matter both at his law firm and in the community board's vote. The Board also granted a waiver to permit an architect to appear

before the New York City Board of Standards and Appeals and a Borough President's Office on behalf of a private client in connection with a matter pending before the community board.

2003-2: A community board member who has an interest in a licensed liquor facility may not chair a community board committee responsible for considering liquor license applications and may not vote on their own license applications or those of persons with whom they are associated, but they may vote on matters involving liquor license applications of others.

2003-3: It would not violate Chapter 68 for a Council Member to nominate his staff member's spouse to serve on a community board, but it would violate Chapter 68 for a community board member to simultaneously work for a member of the Council whose district substantially overlaps that community board district.

2004-1: "Public members" of community board committees who are not members of the community board itself are not public servants within the meaning of Charter Section 2601(19) and hence are not subject to the provisions of the City's conflicts of interest law.

2004-3: Because a community board member is the superior of the paid staff of the community board, a community board may not hire any person associated with one of its members.

2005-3: A community board member may vote on the rezoning of a large area in which the member owns a home because such a large area does not constitute a personal and direct economic impact, but the member must disclose the interest at the community board meeting and to the Board.

2008-2: A community board member may not vote on any matter that may provide a direct financial benefit to an associated person or firm, such as any person who determines the terms and conditions of the member's private employment. A community board member who serves as an employee of a not-for-profit organization may not vote on any matter that may provide a direct financial benefit to a donor of a significant part of the organization's revenues.

2010-1: A community board member who also serves as a member of a community education council of the New York City Department of Education may vote on a matter at one entity that had been or might be considered at the other entity and may chair a committee at one entity that might consider matters that had been or might be considered at the other.

EXHIBIT 2

New York City Conflicts of Interest Board

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

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 [time] on [date]. The hearing will be at [location].

This location has the following accessibility option(s) available: []

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 [date]. You can speak for up to three minutes.

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) 437-0730. 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.

1 **What authorizes the Conflicts of Interest Board to make this rule?** Sections 1043 and 2603(a)
2 of the City Charter authorize the Conflicts of Interest Board to make this proposed rule. This
3 proposed rule was not included in the Conflicts of Interest Board's regulatory agenda for this Fiscal
4 Year because it was not contemplated when the Conflicts of Interest Board published the agenda.

5
6 **Where can I find the Conflicts of Interest Board's rules?** The Conflicts of Interest Board's
7 rules are in Title 53 of the Rules of the City of New York.

8
9 **What rules govern the rulemaking process?** The Conflicts of Interest Board must meet the
10 requirements of Section 1043 of the City Charter when creating or changing rules. This notice is
11 made according to the requirements of Section 1043 of the City Charter.

12
13
14 **Statement of Basis and Purpose of the Proposed Rule**

15
16 Throughout its history, the Board has frequently answered questions from community
17 board members, as part-time public servants, about the application of Chapter 68, the City's
18 conflicts of interest law, to the conduct of their work as community board members. Believing
19 that other community board members would benefit from advice given to the individual requestors,
20 the Board has issued ~~upwards of a dozen~~ eighteen advisory opinions relating to community board
21 members. See Advisory Opinion ("A.O.") Nos. 1991-3, 1991-12, 1992-27, 1992-31, 1993-2,
22 1993-3, 1995-18, 1995-27, 1996-4, 1996-8, 1998-9, 2003-2, 2003-3, 2004-1, 2004-3, 2005-3,
23 2008-2, and 2010-1. ~~The Board proposes to consolidate~~ These advisory opinions contain a total of
24 116 pages of Board discussion and analysis of Chapter 68 as applied to community board members,
25 and the Board recognizes that it can be difficult for members to understand how the interpretations
26 of Chapter 68 contained in these opinions may apply to their service. To provide guidance, clarity,
27 and compactness, and in fulfillment of its Charter mandate under § 2603(c)(4), the Board proposes
28 to consolidate ten of these opinions into a single rule that codifies the Board's interpretation of
29 Chapter 68's application to community board members.

1 Chapter 68 prohibits all public servants, including community board members, from using
2 their City position for the financial benefit of the member or of any person or firm “associated”
3 with the member. See Charter § 2601(5). Proposed Board Rules § 1-15 would address this
4 prohibition with respect to the three basic activities of community board members: (1) voting on
5 matters as community board members, (2) discussing matters at a community board meeting, and
6 (3) chairing a community board committee or meeting. Proposed Board Rules § 1-15 and the
7 proposed amendment to Board Rules § 1-02 would also define and clarify certain provisions of
8 Chapter 68.

9 *1. Voting on Matters as Community Board Members*

10 Proposed Board Rules § 1-15(a), which applies Charter § 2604(b)(1)(b), would prohibit a
11 community board member from voting on any matter that may result in a personal and direct
12 economic gain to the member or to any associated person or firm. See A.O. 1991-3 at 3 (“[A]
13 community board member is specifically prohibited under the revised Chapter 68 from voting on
14 matters in which he or she has a direct economic interest.”). The proposed definition of “personal
15 and direct economic gain” as a specific economic gain (or mitigation of a loss) that would
16 distinguish flow to the financial interests of a member or associated person or firm as a proximate
17 result of the matter’s ultimate approval or rejection would thus incorporate several of the Board’s
18 advisory opinions on community board voting: his or her associates from other interests, such as
19 an ideological interest or policy goal, like less noise pollution or more trees. Proposed Board Rules
20 § 1-15(a) would codify the Board’s advice in A.O. 2008-2: “if ... a vote would merely advance a
21 position or cause advocated by” an organization with which a community board member is

1 ~~associated, the member may vote on the matter as long as the matter may not “result in any~~
2 ~~financial impact on the organization.”~~

- 3 • The Board in A.O. No. 2003-2 advised that a community board member
4 who owned a licensed liquor facility are not prohibited from voting on the
5 liquor licensing of another, possibly competing, facility within the district,
6 because any impact on member’s interests would be speculative and
7 indirect.
- 8 • The Board in A.O. No. 2005-3 advised that community board members who
9 are homeowners in a proposed rezoning area covering 310 blocks are not
10 prohibited from voting on the proposed rezoning area because “the
11 economic benefit to the members, while in some sense ‘direct,’ is not
12 specifically directed to them alone.”
- 13 • The Board in A.O. 2008-2 advised that an ideological interest or policy goal,
14 like less noise pollution or more trees, does not by itself rise to the level of
15 a personal and direct economic gain for an organization.

16 In proposed Board Rules § 1-15(a)(3), the Board would codify -its interpretation in A.O.
17 ~~No. 2008-2 of a person or firm “associated” with a community board member by virtue of a~~
18 ~~“business or other financial relationship.” for purposes of Charter § 2601(5). First, it would clarify~~
19 ~~that a community board member is associated not just with the firm that employs the member, but~~
20 ~~also with his or her individual boss(es), that is, “any person who, in the member’s private~~
21 ~~employment, may hire or fire the member, assign work to the member, approve the member’s~~
22 ~~leave, or evaluate the member’s work performance.” -determines the terms and conditions of the~~
23 ~~private employment of the member,” not just the firm that employs the member.—See A.O. No.~~
24 ~~2008-2 at 6-7 (advising that a community board member employed as the executive director of a~~
25 ~~not-for-profit organization is associated with someone serving on the board of that organization~~
26 ~~where that person was “effectively her boss” at the not-for-profit organization). Second, it would~~
27 ~~clarify that a community board member employed by a not-for-profit organization is associated~~
28 ~~with a major donor to the not-for-profit, given that an organization’s most substantial donors are~~

1 “in effect underwriting the member’s salary” at the not-for-profit. A.O. No. 2008-2 at 9. Proposed
2 Board Rules § 1-15(a)(3) would establish 10% as an easy-to-calculate threshold at which the
3 amount of the donation becomes so substantial to create an association between the donor and the
4 not-for-profit employee.

5 In proposed Board Rules § 1-15(b), the Board would codify its longstanding advice that
6 community board members who serve another City agency as an official, officer, or employee may
7 not vote on any matter involving the member’s other City agency, and it would apply that advice
8 to the other governmental or quasi-governmental entities listed in Charter § 2601(11) and Board
9 Rules § 1-08. See A.O. No. 1991-3 at 2 (adopting the ~~position~~conclusion of the Board’s
10 predecessor agency, the Board of Ethics, that it would be “inappropriate for an employee of a City
11 agency to cast a formal vote [on a community board] which might be in opposition to a position
12 theretofore or thereafter taken by his or her agency”). This proposed rule ~~thus applies~~ is consistent
13 with the Board’s longstanding interpretation of the “catch-all” provision of Charter § 2604(b)(2),
14 which states that “[n]o public servant shall engage from having a position or engaging
15 in any business, transaction, or private employment, or have any financial or other private interest,
16 direct or indirect, which conduct that “is in conflict with the proper discharge of his or her official
17 duties.”

18 *2. Discussing Matters at a Community Board Meeting*

19 Proposed Board Rules § 1-15(b) would codify the Board’s long-standing advice to
20 community board members, starting in A.O. No. 1991-3, that they may participate in any
21 discussion at the community board in matters involving the member’s private interests or other

1 City service, provided that the member discloses his or her interest prior to such discussion. See
2 also A.O. Nos. 2003-2 and 2008-2.

3 *3. Chairing a Community Board Committee or Meeting*

4 In A.O. No. 1993-2, the Board explained that “a committee chair can, if she or he so wishes,
5 greatly influence a committee by controlling the agenda, recognizing speakers, and making
6 rulings.” In proposed Board Rules § 1-15(c), the Board would both codify and clarify its prior
7 advice on chairing meetings. Specifically, the proposed rule would state that a community board
8 member may not serve as the chair of a committee or subcommittee that regularly considers
9 matters involving that member’s private interests (A.O. Nos. 1995-18 and 2003-2) or that
10 member’s other City agency (A.O. No. 1993-2) and may not chair any meeting that considers
11 matters involving such private interests or other government or quasi-government entity
12 served~~City agency~~ (A.O. No. 1996-8). The Board had ~~not~~ specified how frequently a matter
13 involving the member’s private interest or other government or quasi-government~~City~~ service
14 must arise for the committee to “regularly consider” such matters; the Board now proposes to
15 define that frequency as three or more times over a twelve-month period or, in the case of another
16 City agency, jurisdiction ~~or oversight~~ over that government or quasi-government entity~~agency~~.

17 *4. Additional Defined Terms*

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

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

4 The proposed amendment to Board Rules § 1-02 would codify A.O. 1991-12, in which the
5 Board advised that a community board chair is not a public servant with substantial policy
6 discretion.

7 5. Additional Advisory Opinions

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

- 12 • In two advisory opinions, Nos. 1992-27 and 1995-27, the Board advised
13 community board members on the rules by which they may engage in
14 fundraising activities to benefit the community board. Official fundraising
15 is the subject of Board Rules § 1-14.
- 16
17 • In three advisory opinions, Nos. 1992-31, 1996-4, and 1998-9, the Board
18 applied provisions of Chapter 68 to community board members the same as
19 it would to other public servants.
- 20
21 • In three advisory opinions, Nos. 1993-3, 2003-3, and 2010-1, the Board
22 answered specific questions concerning the government or quasi-
23 government service of community board members: service with a local
24 development corporation, proposed service on the staff of a Council
25 Member, and service on a Community Education Council of the New York
26 City Department of Education, respectively. In the interests of creating a
27 single standard that applies to all community board members, the proposed
28 rule would not incorporate the particular exceptions described in these
29 opinions, thereby limiting their application to the particular public servants
30 who requested the Board's advice. The Board can address any unusual
31 circumstances on a case-by-case basis through the waiver process available
32 to all public servants pursuant to Charter § 2604(e).

1 **Text of the Proposed Rule**

2
3 New material is underlined.

4
5 [Deleted material is in brackets.]

6
7 **Section 1.** Section 1-02 of Title 53 of the Rules of the City of New York is amended to read as follows:

8
9
10 (a) For purposes of Charter § 2604(b)(12) and § 2604(b)(15), a public servant is deemed to
11 have substantial policy discretion if he or she has major responsibilities and exercises
12 independent judgment in connection with determining important agency matters. Public
13 servants with substantial policy discretion include, but are not limited to: agency heads,
14 deputy agency heads, assistant agency heads, [members of boards and commissions, and]
15 public servants in charge of any major office, division, bureau, or unit of an agency, and
16 members of boards and commissions other than community boards. Agency heads shall:

17 * * *

18 **Section 2.** Section 1-15 of Title 53 of the Rules of the City of New York is amended to read as follows:

19
20
21 [Reserved.]

22
23 (a) **Voting and Private Interests.** For purposes of Charter §§ 2604(b)(1)(b) and 2604(b)(2), a
24 community board member may not vote at the community board on any matter that may result
25 in a personal and direct economic gain to the member or to any person or firm associated with
26 the member, but the member may participate in discussions at the community board on such
27 matters, after the member discloses his or her private interest at the meeting.

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

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

5 (3) For purposes of Charter § 2601(5), the definition of “associated” in Charter § 2601(5), a
6 ~~person who or firm that has~~ “a business or other financial relationship” ~~with a community~~
7 ~~board member will include the following~~ includes, but is not limited to:

8 (i) Any person who ~~determines the terms and conditions of the,~~ in the member’s
9 private employment of, may hire or fire the member, assign work to the member,
10 approve the member’s leave, or evaluate the member’s work performance.

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

13 (b) Other City Government and Quasi-Government Service. For purposes of Charter §
14 2604(b)(2), a community board member who serves ~~another City agency~~ any entity listed in
15 Board Rules § 1-08 as an official, officer, or employee:

16 (1) ~~may not represent~~ appear, whether paid or unpaid, on behalf of the other City agency entity
17 before the member’s community board;

18 (2) may not vote at the community board on any matter involving ~~the member’s other City~~
19 ~~agency~~ that entity; and

20 (3) may participate in discussions at the community board on matters involving ~~the member’s~~
21 ~~other City agency~~ that entity, after the member discloses his or her ~~re~~ reposition at that
22 agency entity at the meeting.

1 (c) Service as Chair of Community Board or Committees or Subcommittees.

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

3 (i) may not chair any meeting of the community board, committee, or subcommittee
4 where any matter particularly affecting the member’s private employer, financial
5 interest, or other private interest is being considered; and

6 ~~(i)(ii)~~ may not chair a committee or subcommittee that regularly reviews matters
7 particularly affecting the member’s private employer, financial interest, or other
8 private interest, including the interest of any person or firm associated with the
9 member; and,

10 ~~(ii) may not chair any meeting of the community board, committee, or subcommittee~~
11 ~~where any matter particularly affecting the member’s private employer, financial~~
12 ~~interest, or other private interest is being considered.~~

13 (iii) For purposes of this paragraph, a committee or subcommittee of a community board
14 “regularly reviews” matters involving the member’s private employer, financial
15 interest, or other private interest if the committee or subcommittee considers or
16 expects to consider a matter involving the member’s employer or interest three or
17 more times over a twelve-month period.

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

21 ~~(i) may not chair a committee or subcommittee that regularly reviews matters~~
22 ~~involving the member’s other City agency; and~~

1 ~~(i)~~(i) may not chair any meeting of the community board, committee, or subcommittee
2 that considers any matters involving ~~the member's other City agency~~ that entity;

3 and

4 (ii) may not chair a committee or subcommittee that regularly reviews matters
5 involving that entity.

6 (iii) For purposes of this paragraph, a committee or subcommittee of a community board
7 “regularly reviews” matters involving ~~the member's other City agency~~ a
8 government or quasi-government entity if either (A) the committee or
9 subcommittee has jurisdiction ~~or oversight over that agency~~ over matters within the
10 entity's responsibilities or (B) the committee or subcommittee considers or
11 anticipates considering matters involving that ~~agency~~ entity three or more times
12 over a twelve-month period.

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

16 (e) **Community Board Staff.** For purposes of Charter §§ 2604(b)(2), 2604(b)(3), 2604(b)(9)(b),
17 2604(b)(11)(c), and 2604(b)(14) and Board Rules § 1-10, a public servant employed by the
18 community board is the subordinate public servant of each community board member.

19 (f) **Agency Head Designations.** For purposes of Charter ~~Section~~ § 2604(e) and the Board Rules,
20 a community board member serves as the agency head for any designation or approval for him
21 or herself. The chair of a community board is the agency head for the public servants employed
22 by the community board.

New York City Conflicts of Interest Board

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

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 [time] on [date]. The hearing will be at [location].

This location has the following accessibility option(s) available: []

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

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- **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 [date]. You can speak for up to three minutes.

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) 437-0730. 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.

1 **What authorizes the Conflicts of Interest Board to make this rule?** Sections 1043 and 2603(a)
2 of the City Charter authorize the Conflicts of Interest Board to make this proposed rule. This
3 proposed rule was not included in the Conflicts of Interest Board’s regulatory agenda for this Fiscal
4 Year because it was not contemplated when the Conflicts of Interest Board published the agenda.
5

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

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

13
14 **Statement of Basis and Purpose of the Proposed Rule**
15

16 Throughout its history, the Board has frequently answered questions from community
17 board members, as part-time public servants, about the application of Chapter 68, the City’s
18 conflicts of interest law, to the conduct of their work as community board members. Believing
19 that other community board members would benefit from advice given to the individual requestors,
20 the Board has issued eighteen advisory opinions relating to community board members. See
21 Advisory Opinion (“A.O.”) Nos. 1991-3, 1991-12, 1992-27, 1992-31, 1993-2, 1993-3, 1995-18,
22 1995-27, 1996-4, 1996-8, 1998-9, 2003-2, 2003-3, 2004-1, 2004-3, 2005-3, 2008-2, and 2010-1.
23 These advisory opinions contain a total of 116 pages of Board discussion and analysis of Chapter
24 68 as applied to community board members, and the Board recognizes that it can be difficult for
25 members to understand how the interpretations of Chapter 68 contained in these opinions may
26 apply to their service. To provide guidance, clarity, and compactness, and in fulfillment of its
27 Charter mandate under § 2603(c)(4), the Board proposes to consolidate ten of these opinions into
28 a single rule that codifies the Board’s interpretation of Chapter 68’s application to community
29 board members.

1 Chapter 68 prohibits all public servants, including community board members, from using
2 their City position for the financial benefit of the member or of any person or firm “associated”
3 with the member. See Charter § 2601(5). Proposed Board Rules § 1-15 would address this
4 prohibition with respect to the three basic activities of community board members: (1) voting on
5 matters as community board members, (2) discussing matters at a community board meeting, and
6 (3) chairing a community board committee or meeting. Proposed Board Rules § 1-15 and the
7 proposed amendment to Board Rules § 1-02 would also define and clarify certain provisions of
8 Chapter 68.

9 *1. Voting on Matters as Community Board Members*

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

- 19 • The Board in A.O. No. 2003-2 advised that a community board member
20 who owned a licensed liquor facility are not prohibited from voting on the
21 liquor licensing of another, possibly competing, facility within the district,
22 because any impact on member’s interests would be speculative and
23 indirect.
- 24 • The Board in A.O. No. 2005-3 advised that community board members who
25 are homeowners in a proposed rezoning area covering 310 blocks are not

1 prohibited from voting on the proposed rezoning area because “the
2 economic benefit to the members, while in some sense ‘direct,’ is not
3 specifically directed to them alone.”

- 4 • The Board in A.O. 2008-2 advised that an ideological interest or policy goal,
5 like less noise pollution or more trees, does not by itself rise to the level of
6 a personal and direct economic gain for an organization.

7 In proposed Board Rules § 1-15(a)(3), the Board would codify its interpretation in A.O.
8 No. 2008-2 of a “business or other financial relationship” for purposes of Charter § 2601(5). First,
9 it would clarify that a community board member is associated not just with the firm that employs
10 the member, but also with his or her individual boss(es), that is, “any person who, in the member’s
11 private employment, may hire or fire the member, assign work to the member, approve the
12 member’s leave, or evaluate the member’s work performance.” See A.O. No. 2008-2 at 6-7
13 (advising that a community board member employed as the executive director of a not-for-profit
14 organization is associated with someone serving on the board of that organization where that
15 person was “effectively her boss” at the not-for-profit organization). Second, it would clarify that
16 a community board member employed by a not-for-profit organization is associated with a major
17 donor to the not-for-profit, given that an organization’s most substantial donors are “in effect
18 underwriting the member’s salary” at the not-for-profit. A.O. No. 2008-2 at 9. Proposed Board
19 Rules § 1-15(a)(3) would establish 10% as an easy-to-calculate threshold at which the amount of
20 the donation becomes so substantial to create an association between the donor and the not-for-
21 profit employee.

22 In proposed Board Rules § 1-15(b), the Board would codify its longstanding advice that
23 community board members who serve another City agency as an official, officer, or employee may
24 not vote on any matter involving the member’s other City agency, and it would apply that advice
25 to the other governmental or quasi-governmental entities listed in Charter § 2601(11) and Board

1 Rules § 1-08. See A.O. No. 1991-3 at 2 (adopting the conclusion of the Board’s predecessor
2 agency, the Board of Ethics, that it would be “inappropriate for an employee of a City agency to
3 cast a formal vote [on a community board] which might be in opposition to a position theretofore
4 or thereafter taken by his or her agency”). This proposed rule is consistent with the Board’s
5 longstanding interpretation of the “catch-all” provision of Charter § 2604(b)(2), which prohibits a
6 public servant from having a position or engaging in conduct that “is in conflict with the proper
7 discharge of his or her official duties.”

8 *2. Discussing Matters at a Community Board Meeting*

9 Proposed Board Rules § 1-15(b) would codify the Board’s long-standing advice to
10 community board members, starting in A.O. No. 1991-3, that they may participate in any
11 discussion at the community board in matters involving the member’s private interests or other
12 City service, provided that the member discloses his or her interest prior to such discussion. See
13 also A.O. Nos. 2003-2 and 2008-2.

14 *3. Chairing a Community Board Committee or Meeting*

15 In A.O. No. 1993-2, the Board explained that “a committee chair can, if she or he so wishes,
16 greatly influence a committee by controlling the agenda, recognizing speakers, and making
17 rulings.” In proposed Board Rules § 1-15(c), the Board would both codify and clarify its prior
18 advice on chairing meetings. Specifically, the proposed rule would state that a community board
19 member may not serve as the chair of a committee or subcommittee that regularly considers
20 matters involving that member’s private interests (A.O. Nos. 1995-18 and 2003-2) or that
21 member’s other City agency (A.O. No. 1993-2) and may not chair any meeting that considers
22 matters involving such private interests or other government or quasi-government entity served

1 (A.O. No. 1996-8). The Board had not specified how frequently a matter involving the member's
2 private interest or other government or quasi-government service must arise for the committee to
3 "regularly consider" such matters; the Board now proposes to define that frequency as three or
4 more times over a twelve-month period or, in the case of another City agency, jurisdiction over
5 that government or quasi-government entity.

6 *4. Additional Defined Terms*

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

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

13 The proposed amendment to Board Rules § 1-02 would codify A.O. 1991-12, in which the
14 Board advised that a community board chair is not a public servant with substantial policy
15 discretion.

16 *5. Additional Advisory Opinions*

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

- 21 • In two advisory opinions, Nos. 1992-27 and 1995-27, the Board advised
22 community board members on the rules by which they may engage in
23 fundraising activities to benefit the community board. Official fundraising
24 is the subject of Board Rules § 1-14.

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- In three advisory opinions, Nos. 1992-31, 1996-4, and 1998-9, the Board applied provisions of Chapter 68 to community board members the same as it would to other public servants.
- 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, thereby limiting their application to the particular public servants who requested the Board’s advice. The Board can address any unusual circumstances on a case-by-case basis through the waiver process available to all public servants pursuant to Charter § 2604(e).

19 **Text of the Proposed Rule**

20
21 New material is underlined.

22
23 [Deleted material is in brackets.]

24
25 **Section 1.** Section 1-02 of Title 53 of the Rules of the City of New York is amended to read as follows:

26
27
28 (a) For purposes of Charter § 2604(b)(12) and § 2604(b)(15), a public servant is deemed to
29 have substantial policy discretion if he or she has major responsibilities and exercises
30 independent judgment in connection with determining important agency matters. Public
31 servants with substantial policy discretion include, but are not limited to: agency heads,
32 deputy agency heads, assistant agency heads, [members of boards and commissions, and]
33 public servants in charge of any major office, division, bureau, or unit of an agency, and
34 members of boards and commissions other than community boards. Agency heads shall:

35 * * *

1 **Section 2.** Section 1-15 of Title 53 of the Rules of the City of New York is amended to read as
2 follows:

3
4 [Reserved.]

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

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

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

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

17 **(i) Any person who, in the member’s private employment, may hire or fire the**
18 **member, assign work to the member, approve the member’s leave, or evaluate the**
19 **member’s work performance.**

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

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

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

3 (2) may not vote at the community board on any matter involving that entity; and

4 (3) may participate in discussions at the community board on matters involving that entity,
5 after the member discloses his or her position at that entity at the meeting.

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

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

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

11 (ii) may not chair a committee or subcommittee that regularly reviews matters
12 particularly affecting the member's private employer, financial interest, or other
13 private interest, including the interest of any person or firm associated with the
14 member.

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

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

- 1 (i) may not chair any meeting of the community board, committee, or subcommittee
2 that considers any matters involving that entity; and
- 3 (ii) may not chair a committee or subcommittee that regularly reviews matters
4 involving that entity.
- 5 (iii) For purposes of this paragraph, a committee or subcommittee of a community board
6 “regularly reviews” matters involving a government or quasi-government entity if
7 either (A) the committee or subcommittee has jurisdiction over matters within the
8 entity’s responsibilities or (B) the committee or subcommittee considers or
9 anticipates considering matters involving that entity three or more times over a
10 twelve-month period.
- 11 **(d) Public Members of Community Board Committees.** A public member of a community
12 board committee, appointed pursuant to Charter § 2800(i), is not a public servant within the
13 meaning of Charter § 2601(19).
- 14 **(e) Community Board Staff.** For purposes of Charter §§ 2604(b)(2), 2604(b)(3), 2604(b)(9)(b),
15 2604(b)(11)(c), and 2604(b)(14) and Board Rules § 1-10, a public servant employed by the
16 community board is the subordinate public servant of each community board member.
- 17 **(f) Agency Head Designations.** For purposes of Charter § 2604(e) and the Board Rules, a
18 community board member serves as the agency head for any designation or approval for him
19 or herself. The chair of a community board is the agency head for the public servants employed
20 by the community board.