

# Rules of the Board

## *Conflicts of Interest*

### RULES OF THE CITY OF NEW YORK TITLE 53

<b>CHAPTER 1: CONFLICTS OF INTEREST</b>	<b>1</b>
§ 1-01 Valuable Gifts.	1
§ 1-02 Public Servants Charged with Substantial Policy Discretion.	6
§ 1-03 Definition of Lesser Political Office than that of Assembly District Leader which may be Held by Members of the City Council.	7
§ 1-04 Investments in Publicly Traded Securities.	7
§ 1-05 Definition of Blind Trust.	8
§ 1-06 Definition of Primary Employment with the City.	10
§ 1-07 Post-Employment.	10
§ 1-08 Definition of “other similar entity” within the definition of “firm”.	13
§ 1-09 Prohibited Appearances Before City Agencies by City Planning Commissioners.	13
§ 1-10 Prohibited Business or Financial Relationships Between a Superior and a Subordinate.	14
§ 1-11 Adjustment of Dollar Amount in Definition of “Ownership Interest.”	15
§ 1-12 Definition of “Particular Matter” for Tax Commissioners and Certain Other Public Servants in the Tax Commission, Department of Finance, Comptroller’s Office, and Law Department in Relation to Real Estate Tax Assessments.	16
§ 1-13 Use of City Time and City Resources	16
§ 1-14 Official Fundraising.	18
§ 1-15 Special Rules for Community Board Members.	20
§ 1-16 Prohibited Gifts From Lobbyists and Exceptions Thereto.	22
§ 1-17 Accomplice Liability.	24
§ 1-18 Use of City Title in Promotional Materials.	24
<b>CHAPTER 2: PROCEDURAL RULES FOR ENFORCEMENT ACTIONS</b>	<b>26</b>
§ 2-01 Applicability and Definitions.	26

§ 2-02 Commencement of Formal Proceedings and Pleadings.	27
§ 2-03 Formal Proceedings.	30
<b>CHAPTER 3: ORGANIZATIONS AFFILIATED WITH ELECTED OFFICIALS</b>	<b>34</b>
§ 3-01. Definitions.	34
§ 3-02. Procedures for Obtaining a Determination by the Board that an Elected Official or an Agent of an Elected Official Does Not Exercise Control over an Entity.	36
§ 3-03. Factors by which the Board Will Determine Whether an Entity is Affiliated with an Elected Official.	36
§ 3-04. Annual Reporting by Organizations Affiliated with an Elected Official.	37
§ 3-05. Record Retention.	39
<b>CHAPTER 4: ANNUAL DISCLOSURE</b>	<b>41</b>
§ 4-01 Procedures for Obtaining an Extension of Time to File an Annual Disclosure Report.	41
§ 4-02 Retention of Annual Disclosure Reports.	41
§ 4-03 City Employees Holding Policymaking Positions for Purposes of the Annual Disclosure Law.	42
§ 4-04 City Employees Whose Duties Involve the Negotiation, Authorization, or Approval of Contracts and of Certain Other Matters.	42
§ 4-05 Filing Deadlines for Candidates Seeking Payment of Public Funds from the New York City Campaign Finance Board.	43
§ 4-06 Procedures to Appeal a Designation as a Required Filer of a Financial Disclosure Report.	43
<b>CHAPTER 5: LEGAL DEFENSE TRUSTS</b>	<b>48</b>
§ 5-01 Definitions.	48
§ 5-02 Donations.	48
§ 5-03 Reporting and Disclosure.	48
§ 5-04 Dissolution.	49
§ 5-05 Electronic Submission of Compliance Documents.	50
§ 5-06 Record Retention.	50

## Chapter 1: Conflicts of Interest

### § 1-01 Valuable Gifts.

- (a) For the purposes of Charter § 2604(b)(5), a “valuable gift” means any gift to a public servant which has a value of \$50.00 or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form. Two or more gifts to a public servant shall be deemed to be a single gift for purposes of this subdivision and Charter § 2604(b)(5) if they are given to the public servant within a twelve-month period under one or more of the following circumstances: (1) they are given by the same person; and/or (2) they are given by persons who the public servant knows or should know are (i) relatives or domestic partners of one another; or (ii) are directors, trustees, or employees of the same firm or affiliated firms.
- (b) As used in subdivision (a) of this section: (1) “relative” shall mean a spouse, child, grandchild, parent, sibling, and grandparent; a parent, domestic partner, child, or sibling of a spouse or domestic partner; and a spouse or domestic partner of a parent, child, or sibling; (2) firms are “affiliated” if one is a subsidiary of the other or if they have a parent firm in common or if they have a stockholder in common who owns at least 25 percent of the shares of each firm; (3) “firm,” “spouse,” and “ownership interest” shall have the meaning ascribed to those terms in section 2601 of the Charter; (4) “domestic partner” means a domestic partner as defined in New York City Administrative Code § 1-112(21).
- (c) For the purposes of Charter § 2604(b)(5), a public servant may accept gifts that are customary on family or social occasions from a family member or close personal friend who the public servant knows is or intends to become engaged in business dealings with the City, when:
- (1) it can be shown under all relevant circumstances that it is the family or personal relationship rather than the business dealings that is the controlling factor; and
  - (2) the public servant's receipt of the gift would not result in or create the appearance of:
    - (i) using his or her office for private gain;
    - (ii) giving preferential treatment to any person or entity;
    - (iii) losing independence or impartiality; or
    - (iv) accepting gifts or favors for performing official duties.
- (d) For the purposes of Charter § 2604(b)(5), a public servant may accept awards, plaques and other similar items which are publicly presented in recognition of public service, provided that the item or items have no substantial resale value.

(e) Meals and Refreshments at Meetings

For the purposes of Charter § 2604(b)(3) and Charter § 2604(b)(5), a public servant may accept free meals or refreshments otherwise prohibited as valuable gifts at a meeting attended in the course of and for the purpose of conducting City business, provided that:

- (1) the public servant did not solicit the meal or refreshments;
- (2) the meal or refreshments are available to all participants without charge;
- (3) the meal or refreshments are not separable from the meeting at which the City business is being conducted; and
- (4) the meeting at which the City business is being conducted was not scheduled for the purpose of obtaining the meal or refreshments.

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

- (1) accept meals or refreshments when participating as a panelist or speaker in a professional or educational program and the meals or refreshments are provided to all panelists;
- (2) be present at a professional or educational program as a guest of the sponsoring organization;
- (3) be a guest at ceremonies or functions sponsored or encouraged by the City as a matter of City policy, such as, for example, those involving housing, education, legislation or government administration;
- (4) attend a public affair of an organization composed of representatives of business, labor, professions, news media or organizations of a civic, charitable or community nature, when invited by the sponsoring organization, provided that this exception does not apply when the invitation is from an organization which has business dealings, as defined in Charter Section 2601(8), with, or a matter before, the public servant's agency;
- (5) be a guest at any function or occasion where the attendance of the public servant has been approved in writing as in the interests of the City, in advance where practicable or within a reasonable time thereafter, by the employee's agency head or by a deputy mayor if the public servant is an agency head.

(g) For the purposes of Charter § 2604(b)(5), a public servant who is an elected official or a member of the elected official's staff authorized by the elected official may attend a

function given by an organization composed of representatives of business, labor, professions, news media or organizations of a civic, charitable or community nature, when invited by the sponsoring organization. For the purpose of this subdivision, the authorizing elected official for the central staff of the council is the speaker of the council.

(h) Travel and Travel-Related Expenses

- (1) For the purposes of Charter § 2604(b)(3) and Charter § 2604(b)(5), a public servant may accept travel-related expenses from a third party as a gift to the City provided that the following conditions are met:
  - (i) the trip is for a City purpose and therefore could properly be paid for with City funds;
  - (ii) the travel arrangements are appropriate to that purpose;
  - (iii) the trip is no longer than reasonably necessary to accomplish the governmental business which is its City purpose;
  - (iv) the public servant received agency head approval in advance upon presenting such agency head with a detailed itinerary which reflects the trip's City purpose; and
  - (v) all solicitation for and reporting of travel-related expenses are made in accordance with Board Rules § 1-14.
- (2) An elected official whose trip includes both City governmental activities and political activities may accept as a gift to the City travel-related expenses from a third party only to cover the percentage of the costs equal to the time spent on City governmental business. A public servant working in an agency or office headed by an elected official may accompany such elected official on a mixed-purpose trip and use his or her personal time for the political purposes of the trip, but may accept as a gift to the City travel-related expenses from a third party only to cover the percentage of the costs equal to the time spent on governmental business.
- (3) A public servant may use his or her own funds and accrued leave for personal travel before or after a trip taken for a City purpose provided that:
  - (i) any increased or additional costs resulting from the personal travel are borne solely by the public servant; and
  - (ii) such personal travel receives agency head approval in advance.

- (4) A public servant may not accept compensation for personal use from a common carrier for the voluntary or involuntary surrender of a seat on a trip taken for a City purpose. A public servant offered compensation for the surrender of the seat must:
    - (i) request the compensation offered be issued in a form payable or transferable to the City; and
    - (ii) transfer such compensation to the City.
  - (5) A public servant may accept and use vouchers for food, accommodations, and ground transportation offered by a common carrier in connection with delayed City travel, provided that the public servant does not use his or her City position to obtain additional compensation from the common carrier.
  - (6) A public servant may accumulate reward points or frequent flyer miles for personal use while traveling on City business, provided that the public servant does not make a travel selection based on receiving or increasing frequent reward points or flyer benefits that result in additional expense to the City.
  - (7) For the purposes of this subdivision, agency head approval must be by the head of the agency served by the public servant, or by a deputy mayor if the public servant is an agency head. A public servant who is an elected official, including a District Attorney, is the agency head for the public servants employed by the official's agency or office. A public servant who is an elected official, including a District Attorney, may provide agency head approval for himself or herself.
- (i) Gifts to Enhance Employee Morale
- (1) For the purposes of Charter § 2604(b)(3) and Charter § 2604(b)(5), tickets to an entertainment, sporting, or cultural event may be accepted as a gift to the City for use by City employees provided that:
    - (i) the attending public servants are not required to file annual disclosure reports pursuant to New York City Administrative Code Section 12-110;
    - (ii) the offer of the free attendance is unsolicited by any public servant;
    - (iii) the public servants attending the event are selected according to a method that receives agency head approval in writing; and
    - (iv) the public servants attending the event are not involved in the consideration of any pending particular matter, legislative proposal, action on the City

budget, or text of the zoning resolution in which the offeror of the tickets or the host of the event is a party or has an interest.

(j) Donations for Personal Emergencies

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

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

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

(k) Gifts Between Public Servants

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

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

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

- (i) a public servant may accept a gift from a subordinate or group of subordinates in connection with a special occasion marking a major life event, such as a wedding, the birth or adoption of a child, or retirement, provided that the gift is of the type and value customary to the occasion in question; and

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

(l) Disposition of Impermissible Gifts

- (1) If a public servant receives a gift not addressed by any of the exceptions set forth in this section, the public servant must return the gift to the giver.
- (2) If a gift cannot be returned, the public servant's agency head may, after providing written notice to the inspector general of the public servant's agency:
  - (i) donate the item to the agency, to an entity as defined in Board Rules § 1-14(a)(1)(iii), or to the Mayor's Fund to Advance New York;
  - (ii) share the item within the agency; or
  - (iii) destroy the item.

(m) Compatibility with Other Laws

- (1) City agencies may establish rules concerning gifts for their own employees that may not be less restrictive than the requirements set forth in Charter § 2604(b)(3) and Charter § 2604(b)(5) as interpreted by this section.
- (2) Nothing in this section will be deemed to authorize a public servant to act or accept a gift of any value in violation of any applicable federal, state, or local law, including criminal laws, City agency rules, or Mayoral Executive Orders (including, but not limited to, Executive Order No. 16 of 1978 (as amended)), which may impose additional requirements to report gifts and offers of gifts to the agency's inspector general, whether or not a gift is accepted or returned.
- (3) This section must be read in conjunction with the provisions of Charter § 2604(b)(2) and Board Rules § 1-13; Charter § 2604(b)(13); and Charter § 2604(b)(14) and Board Rules § 1-10.

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

- (a) For purposes of Charter § 2604(b)(12) and § 2604(b)(15), a public servant is deemed to have substantial policy discretion if he or she has major responsibilities and exercises independent judgment in connection with determining important agency matters. Public servants with substantial policy discretion include, but are not limited to: agency heads, deputy agency heads, assistant agency heads, 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:

- (1) designate by title, or position, and name the public servants in their agencies who have substantial policy discretion as defined by this section;
- (2) file annually with the Conflicts of Interest Board, no later than February 28 of each year, a list of such titles or positions and the names of the public servants holding them; and
- (3) notify these public servants in writing of the restrictions set forth in Charter § 2604(b)(12) and § 2604(b)(15) to which they are subject.

If the Conflicts of Interest Board determines that the title, position, or name of any public servant should be added to or deleted from the list supplied by an agency, the Board shall notify the head of the agency involved of that addition or deletion; the agency shall in turn promptly notify the affected public servant of the change.

- (b) Each agency may make available for public inspection a copy of the most recent list filed by the agency, with any additions or deletions made by the Board pursuant to subdivision (a) of this section.

**§ 1-03 Definition of Lesser Political Office than that of Assembly District Leader which may be Held by Members of the City Council.**

For purposes of Charter § 2604(b)(15), the definition of a political office which is a "lesser political office" than that of assembly district leader includes:

- (a) membership on a county committee;
- (b) membership on a county executive committee;
- (c) membership on a state committee; and
- (d) membership on a national committee.

**§ 1-04 Investments in Publicly Traded Securities.**

- (a) **Definition of a Firm Whose Shares are Publicly Traded.** For purposes of Charter § 2604(a)(1)(b), "a firm whose shares are publicly traded" means a firm which offers or sells its shares to the public and is listed and registered with the Securities and Exchange Commission for public trading on national securities exchanges or over-the-counter markets.

(b) **Investments held in IRAs.** For purposes of Charter § 2601(16), an “ownership interest” includes investments in firms held in an individual retirement account (“IRA”), Roth IRA, Simplified Employee Pension IRA, or Keogh plan, provided that the investment is not otherwise excluded from the definition of “ownership interest.”

(c) **Public Debt Obligations.**

(1) Except as provided in paragraph (2) of this subdivision, for purposes of Charter § 2604(a)(1) and § 2601(11), a public servant is not prohibited from owning debt obligations issued by the City or “other similar entities” as defined in Board Rules § 1-08.

(2) For purposes of Charter § 2604(b)(2), § 2604(b)(3), and § 2604(b)(4), a public servant prior to becoming personally and substantially involved in the issuance and/or management of City debt obligations, must divest their ownership in such debt obligations, and for the duration of such involvement may not buy or hold such City debt obligations on behalf of the public servant or an associated person or firm. For purposes of Charter § 2604(b)(3), a public servant who is personally and substantially involved in the issuance and/or management of City debt obligations may not trade, or participate in trading, City debt obligations on behalf of, or for the account of, an associated person or firm.

**§ 1-05 Definition of Blind Trust.**

(a) For purposes of Charter § 2601(6), the term “blind trust” means a trust in which a public servant, or the public servant's spouse, domestic partner, as defined in New York City Administrative Code § 1-112(21), or unemancipated child, has a beneficial interest, the holdings and sources of income of which the public servant, the public servant's spouse, domestic partner, as defined in New York City Administrative Code § 1-112(21), and unemancipated child have no knowledge, and which meets the following requirements:

(1) The trust is under the management and control of a trustee who is a bank or trust company authorized to exercise fiduciary powers, a licensed attorney, a certified public accountant, a broker or an investment advisor who is:

(i) independent of any interested party;

(ii) is not or has not been an employee of any interested party or any firm in which any interested party has a substantial investment, and is not a partner of, or involved in any joint venture or other investment with any interested party; and

(iii) is not a relative of any party.

(2) The trust instrument provides that:

- (i) the trustee in the exercise of his or her authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;
  - (ii) the trust tax return shall be prepared by the trustee or his or her designee and such return and any information relating thereto (except as such information may be needed by an interested party in order to complete a personal tax return) shall not be disclosed to any interested party;
  - (iii) no interested party shall receive any report on the holdings and sources of income of the trust, except periodic reports with respect to the total cash value of the trust or the net income or loss of the trust;
  - (iv) there shall be no communications, direct or indirect, between the trustee and an interested party with respect to the trust unless such communication is in writing. Except as provided elsewhere in this subdivision, such written communications shall be limited to the general financial interest and needs of the interested party, including requests for distribution of cash or other unspecified assets of the trust;
  - (v) the interested parties shall make no effort to obtain, and shall take appropriate action to avoid, receiving information with respect to the holdings and the sources of income of the trust including obtaining a copy of any trust tax return filed or any information relating thereto except as such information may be needed by an interested party in order to complete a personal tax return.
- (3) For purposes of this subdivision, the term “interested party” means a public servant, or the public servant’s spouse, domestic partner, as defined in New York City Administrative Code § 1-112(21), or unemancipated child.

(b) *Existing trusts.*

- (1) Any trust existing as of the effective date of these regulations shall be deemed a blind trust for purposes of these regulations if the trust instrument is amended to comply with the requirements of paragraph 2 of subdivision (a) of this section and the trustee of the trust meets the requirements of paragraph 1 of subdivision (a) of such section, or, in the case of a trust instrument which does not by its terms permit amendment, if the trustee and the trust beneficiary (or, if the trust beneficiary is a dependent child, any other interested party) agree in writing that the trust shall be administered in accordance with the requirements of paragraph 2 of subdivision (a) of this section and the trustee of the trust meets the requirement of paragraph 1 of subdivision (a) of this section.

(c) *Establishment and dissolution of blind trust.*

- (1) The preparer of a blind trust instrument, or agreement entered into pursuant to subdivision (a) of this section shall, within thirty days of the establishment of such trust or agreement, file an affidavit with the Conflicts of Interest Board stating that the blind trust instrument or trust as agreed to be administered pursuant to agreement, as the case may be, conforms to the requirements set forth in paragraph 2 of subdivision (a) of this section and that the trustee meets the requirements of paragraph 1 of subdivision (a) of such section.
- (2) Within thirty days of the dissolution of a blind trust, the beneficiary of such trust or other interested party shall file an affidavit with the Conflicts of Interest Board stating that such blind trust has been dissolved and identifying the date of such dissolution.

**§ 1-06 Definition of Primary Employment with the City.**

- (a) For purposes of Charter § 2601(20), “primary employment with the City” means the employment of those public servants who receive compensation from the City and are employed on a full-time basis or the equivalent or who are regularly scheduled to work the equivalent of 20 or more hours per week.
- (b) “Primary employment with the City” shall not mean employment of:
  - (i) members of the City Planning Commission, except for the Chair;
  - (ii) interns employed in connection with a program at an educational institution or full-time students;
  - (iii) persons employed for a period not to exceed six consecutive months; or
  - (iv) persons employed on special projects, investigations or programs, in excess of six months but of limited duration, as the Board shall determine.
- (c) For purposes of Charter § 2601(20), the term “compensation” shall not mean reimbursement for expenses or per diem payments to members of commissions and boards.

**§ 1-07 Post-Employment.**

- (a) Post-Employment Appearances
  - (1) For the purposes of the restrictions set forth in Charter § 2604(d) on appearances by a former public servant before their former City agency, or a branch of City government, or the City, such prohibited appearances include compensated communications with representatives of that former agency or branch of City

government sitting as members of City boards, commissions, or other governmental entities.

- (2) The restrictions set forth in Charter § 2604(d) on appearances by a former public servant do not include appearances related to non-City matters.

(b) Date of Termination of City Service

- (1) For purposes of Charter § 2604(d)(2), the date of termination of a former public servant's City service is the later of the last day a former public servant performed official City duties or the last day they received benefits conditioned upon current City employment.
- (2) A former public servant who has served more than one City agency within one year prior to the termination of such public servant's service with the City may not appear before each such City agency for a period of one year after the termination of service from each such agency.

(c) Waivers of the Post-Employment Restrictions

- (1) In determining whether to issue a waiver pursuant to Charter § 2604(e) of the post-employment restrictions of Charter § 2604(d) the Board will consider the totality of the circumstances, including, but not limited to:
  - (i) whether the City shares an identity of interest with, or controls or effectively controls, the former public servant's private employer;
  - (ii) whether the former public servant is uniquely suited to perform work that would benefit the City because:
    - (a) the private employer has no other employees able to engage in the proposed appearances or work; or
    - (b) the former public servant has rare or unique technical or professional expertise necessary to engage in the proposed appearances or work;
  - (iii) whether the former public servant is unlikely to exercise undue influence on government decision-making because they were a public servant for only a short period of time; and
  - (iv) whether the former public servant's proposed appearances or work do not pose a risk of harm to firms similar to, or in competition, with the former public servant's private employer.

(2) The Board will not grant requests for waivers of Charter § 2604(d):

- (i) made after undue delay; or
- (ii) for former public servants who were not fully and formally recused from all particular matters involving the private employer from the time of soliciting or negotiating for employment with the private employer through the termination of their City service.

(d) Consulting for a Former City Agency

(1) Pursuant to Charter § 2604(d)(6), with the written approval of the agency head, a former public servant may be directly retained by their former City agency as a consultant within one year of the termination of their City service, and may work on particular matters with which they were personally and substantially involved, provided that:

- (i) the consulting arrangement is made for the purpose of continuing or completing work left unfinished by the former public servant at the time their City service terminated, or for training their replacement, or for filling a vacancy until a replacement can be hired;
- (ii) the duration of the consulting arrangement is no longer than reasonably necessary;
- (iii) the former public servant has technical, professional, or other subject-matter expertise or skills not otherwise available among the agency's employees;
- (iv) the compensation is comparable to what the former public servant last earned at the agency; and
- (v) within 30 days the written approval of the agency head is disclosed to the Conflicts of Interest Board, which approval will be posted on the Board's website.

(2) Where a proposed consulting arrangement between a City agency and a former public servant does not meet all of the requirements set forth in paragraph (1) of this subdivision and is therefore not covered by Charter § 2604(d)(6), a waiver may be sought for such a proposed arrangement pursuant to Board Rules § 1-07(c).

(3) Pursuant to Charter § 2604(e), a consulting arrangement between a former public servant and their former agency that meets the requirements of paragraph (1) of this subdivision but under which the former public servant is retained through a private firm for the administrative convenience of the City may be entered into if:

- (i) the former public servant played no role in the recommendation or selection of the

private firm in his or her work as a public servant; and

(ii) after receiving written approval of the head of the City agency, the Board determines that the proposed consulting arrangement would provide a benefit to the City distinct from the benefit to the former public servant or to the private firm.

**§ 1-08 Definition of “other similar entity” within the definition of “firm”.**

(a) For the purposes of Charter § 2601(11), the term “other similar entity” includes, but is not limited to, any of the following entities:

- (1) local, state, and federal governments and their agencies;
- (2) New York State public authorities;
- (3) New York local public authorities;
- (4) the United Nations;
- (5) the United States Postal Service;
- (6) the State University of New York, the City University of New York, and the public university systems of the United States or any United States state, municipality, or territory;
- (7) the Brooklyn Public Library;
- (8) the Queens Public Library; and
- (9) charter schools created pursuant to New York State Education Law Article 56.

(b) For the purposes of Charter § 2601(11), the term “local development corporation” includes only local development corporations affiliated with, sponsored by, or created by New York State government or by a New York county, city, town, or village.

**§ 1-09 Prohibited Appearances Before City Agencies by City Planning Commissioners.**

(a) For the purposes of Charter Section 192(b), no member of the City Planning Commission shall appear, within the meaning of Charter Section 2601(4), directly or indirectly on any matter before:

- (1) the Mayor, Deputy Mayor, and their staffs;
- (2) the Mayor’s Office of Environmental Coordination;

- (3) the offices of the Borough Presidents;
  - (4) the City Council, including any individual Council Members and their staffs;
  - (5) Community Boards;
  - (6) the Art Commission/Public Design Commission; and
  - (7) the Landmarks Preservation Commission.
- (b) For the purposes of Charter Section 192(b), no member of the Commission shall appear, within the meaning of Charter Section 2601(4), directly or indirectly on any matter involving zoning or land use before:
- (1) the Department of Buildings, provided that a member of the Commission shall not be barred from filing plans with the Department of Buildings or from making appearances related to the filing of such plans, except that appearances in reconsideration proceedings before a Borough Commissioner, the Commissioner, or a Deputy Commissioner of the Department of Buildings shall be prohibited;
  - (2) the Board of Standards and Appeals;
  - (3) the Department of Consumer Affairs;
  - (4) the Economic Development Corporation; and
  - (5) the Department of Small Business Services and any local development corporation or business improvement district that has entered into a contract with the City to perform services on behalf of the Department of Small Business Services.
- (c) For the purposes of Charter Section 192(b), no member of the Commission shall appear, within the meaning of Charter Section 2601(4), before any City agency with respect to the planning, environmental, financial or other aspects of a matter that can reasonably be expected to come before the Commission for approval or other formal action, including, but not limited to, the acquisition or disposition of City-owned land; an application for a zoning change or special permit; action pursuant to the Uniform Land Use Review Procedure; or action on major concessions and franchises.

**§ 1-10 Prohibited Business or Financial Relationships Between a Superior and a Subordinate.**

- (a) For purposes of Charter § 2604(b)(14), the term “business or financial relationship” between a superior and subordinate includes but is not limited to:



- (1) outstanding loans collectively amounting to \$25.00 or more;
  - (2) a purchase or sale of any property valued at \$25.00 or more;
  - (3) the leasing of any property;
  - (4) cohabitation;
  - (5) participation in a lottery pool;
  - (6) participation in a savings club;
  - (7) shared ownership of real property or any other property worth more than \$100.00;
  - (8) shared ownership of financial instruments;
  - (9) shared ownership interest in a firm other than a publicly traded company;
  - (10) shared ownership interest in a cooperative apartment building with fewer than six units;
  - (11) employer-employee, consultant, contractor, attorney-client, agent-principal, brokerage, or other similar relationships;
  - (12) establishing a trust or serving as a trustee of a trust in which one of them or a person associated with one of them has a beneficial interest; and
  - (13) payment of each other's recurring expenses such as rent or payments for a vehicle.
- (b) Expenses for activities related to public servants' City jobs which are shared between public servants, including superiors and subordinates, such as expenses related to a carpool or a coffee club, will not be deemed a "business or financial relationship" within the meaning of Charter § 2604(b)(14) if:
- (1) the benefit is shared by the participants; and
  - (2) each public servant bears a fair proportion of the expense or effort involved for the activity.

**§ 1-11 Adjustment of Dollar Amount in Definition of "Ownership Interest."**

Effective as of January 1, 2018, the dollar amount in the definition of "Ownership Interest" in subdivision (16) of § 2601 of the New York City Charter shall be adjusted from \$48,000 to \$50,000.

**§ 1-12 Definition of “Particular Matter” for Tax Commissioners and Certain Other Public Servants in the Tax Commission, Department of Finance, Comptroller’s Office, and Law Department in Relation to Real Estate Tax Assessments.**

- (a) Pursuant to City Charter § 2604(d)(4), no former public servant who has served on or been employed by the Tax Commission, the Department of Finance, the Comptroller’s Office, or the Law Department shall appear, whether paid or unpaid, before the City, or receive compensation for any services rendered, in relation to a proceeding involving a tax year or the immediately subsequent tax year for a given parcel of property with respect to which the public servant engaged in one or more of the activities described in subdivision (b).
- (b) Subdivision (a) shall apply with respect to a parcel and tax year about which the former public servant: (1) heard an application for correction of assessment for taxation (“protest”) from any real estate tax assessment; or (2) reviewed any proposal to settle or offer to reduce the assessment with respect to any such protest; or (3) participated personally and substantially in (i) the preparation or review of an appraisal, (ii) the review, analysis, or recommendation of a real estate tax assessment, or (iii) the conducting of a tax *certiorari* proceeding, which shall include but not be limited to its negotiation, settlement, trial, or review.

**§ 1-13 Use of City Time and City Resources**

- (a) Except as provided in subdivision (c) of this section, it shall be a violation of City Charter § 2604(b)(2) for any public servant to pursue personal and private activities during times when the public servant is required to perform services for the City.
- (b) Except as provided in subdivision (c) of this section, it shall be a violation of City Charter § 2604(b)(2) for any public servant to use City letterhead, title, personnel, equipment, resources, supplies, or technology assets for any non-City purpose. For purposes of this subdivision “technology assets” includes but is not limited to e-mail accounts, internet access, and official social media accounts.
- (c) (1) A public servant may perform volunteer services on behalf of a not-for-profit entity during times when such public servant is required to perform work for the City and may use City personnel, equipment, resources, supplies, and technology assets, but not City letterhead, their title or City email account(s), provided that
  - (i) the public servant’s agency head approves in writing the proposed volunteer services; and
  - (ii) the Board determines that the proposed volunteer services advance the public

servant's professional development, further the purposes and interests of the City, or benefit the public at large.

- (2) The agency head approval required by paragraph (1) of this subdivision must be by the head of the agency served by the public servant, or by a deputy mayor if the public servant is an agency head. A public servant who is an elected official, including a District Attorney, is the agency head for the public servants employed by the elected official's agency or office. Public servants who are elected officials, including District Attorneys, may approve their own activities as agency heads pursuant to paragraph (1).
- (d) A public servant engaging in a personal and private activity may use, or permit the use of, their City title in connection with print or online published work, teaching, or paid speaking engagements, under either of the following circumstances:
- (1) their City title is one of several biographical details used to identify such public servant; or
  - (2) their City title is used to demonstrate such public servant's relevant professional qualifications provided that their City title is accompanied by a reasonably prominent disclaimer stating that the views expressed in the work, teaching, or speaking engagement do not necessarily represent the views of the agency or the City.
- (e) (1) An agency head may designate a public servant to perform work on behalf of a not-for-profit corporation, association, or other such entity that operates on a not-for-profit basis, including serving as a board member or other position with fiduciary responsibilities provided that:
- (i) there is a demonstrated nexus between the proposed work, the public servant's City job, and the mission of the public servant's agency;
  - (ii) such work furthers the agency's mission and is not undertaken primarily for the benefit or interests of the not-for-profit;
  - (iii) the designated public servant takes no part in the entity's business dealings with the City at the entity or at his or her agency, except that Council Members may sponsor and vote on discretionary funding for the entity; and
  - (iv) within 30 days the written designation is disclosed to the Conflicts of Interest Board.
- (2) A public servant designated in accordance with paragraph (1) of this subdivision may take part in such entity's business dealings with the City at the entity and/or at his or her agency if, after written approval by the agency head, the Board determines that

there is a demonstrated nexus between the proposed participation, the public servant's City job, and the mission of the public servant's agency and that such participation furthers the agency's mission and is not undertaken primarily for the benefit or interests of the not-for-profit entity.

(3) The Board will post designations of public servants made pursuant to paragraph (1) on its website. When an agency makes a request pursuant to paragraph (2) of this subdivision for a public servant both to perform work on behalf of a not-for-profit entity and be involved in that entity's City business, only the Board's determination will be posted on its website.

(4) The designation made pursuant to paragraph (1) and approval made pursuant to paragraph (2) of this subdivision must be by the head of the agency served by the public servant, or by a deputy mayor if the public servant is an agency head. A public servant who is an elected official, including a District Attorney, is the agency head for the public servants employed by the official's agency or office. A public servant who is an elected official, including a District Attorney, may provide the designation pursuant to paragraph (1) and the agency head approval pursuant to paragraph (2) for him or herself.

(f) An elected official, including a District Attorney, may use or permit the use of their City title in an endorsement of a candidate for elective office. No other public servant may use, or permit others to use, their City title to endorse another person's campaign for elective office.

#### **§ 1-14 Official Fundraising.**

(a) For purposes of Charter § 2604(b)(2) and Charter § 2604(b)(3), a public servant may use his or her position as a public servant to solicit a donation provided that all of the following conditions are met:

(1) The solicitation seeks a donation for one of the following:

(i) the City agency or office served by the public servant;

(ii) another City agency or office designated by the public servant's agency head, with the written approval of the head of the other agency or office;

(iii) a not-for-profit organization subject to Chapter 9 of Title 3 of the Administrative Code over which the public servant's agency head exercises control as part of his or her City position; or

(iv) a not-for-profit organization designated by the public servant's agency head pursuant to subdivision (b) of this section, provided that the public servant is not

associated, within the meaning of Charter Section 2601(5), with the organization or an employee of the organization.

- (2) The solicitation is directed either to the general public or to an individual or firm that does not have a particular matter pending before the public servant.
  - (3) The solicitation is accompanied by a disclaimer that a contribution will not affect any business dealings with the City or provide special access to City officials.
- (b) An agency head may designate in writing one or more not-for-profit organizations for solicitations made by agency or office employees pursuant to subdivision (a) of this section, provided that both of the following conditions are met:
- (1) the not-for-profit organization has a clear and direct nexus to the City and its residents and with the mission or duties of the City agency or office; and
  - (2) the agency head is not associated, within the meaning of Charter Section 2601(5), with the organization or an employee of the organization.
- (c) Pursuant to Charter § 2604(b)(2), each agency head must report to the Board annually by February 28:
- (1) the name of any individual or firm that made one or more donations totaling \$5,000 or more to the agency during the previous calendar year, the total amount of these donations, and whether the donation was cash or an in-kind donation; and
  - (2) the name of any not-for-profit organization designated by the agency head pursuant to subdivision (b) of this section for which agency employees solicited donations during the previous calendar year.
- (d) An agency head may submit to the Board a written request that disclosure, pursuant to subdivision (c)(1) of this section, of one or more of its donors and/or the amount of donation not be made public. The written request must be submitted no later than January 31 for the previous calendar year and must explain why the release of such information to the public may cause harm, threats, harassment, or reprisals to the donor or to individuals or property affiliated with the donor. Whether or not an agency head has submitted a request pursuant to this subdivision, the Board may on its own initiative grant privacy as to any information submitted by an agency head, upon a finding by the Board that the release of such information would pose a risk to the safety or security of any person.
- (e) For purposes of this section, an elected official, including a District Attorney, is the agency head of the staff members in his or her office. The Speaker of the New York City Council is the agency head of the central staff of Council, and a Council Member is the agency

head of the staff of his or her office.

**§ 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.

**§ 1-16 Prohibited Gifts From Lobbyists and Exceptions Thereto.**

- (a) Pursuant to Administrative Code § 3-225, no person required to be listed on a statement of registration pursuant to § 3-213(c)(1) of the Administrative Code shall offer or give a gift to any public servant.
- (b) For purposes of this section:
  - (1) the persons required to be listed on a statement of registration pursuant to § 3-213(c)(1) of the Administrative Code include (i) the lobbyist, (ii) the spouse or domestic partner of the lobbyist, (iii) the unemancipated children of the lobbyist, and (iv) if the lobbyist in an organization, the officers or employees of such lobbyist who engage in any lobbying activities or who are employed in such lobbyist's division that engages in lobbying activities and the spouse or domestic partner and unemancipated children of such officers or employees;
  - (2) the term "lobbyist" shall have the same meaning as used in § 3-211 of the Administrative Code;
  - (3) the term "offer" shall include every (i) attempt or offer to give a gift, or (ii) attempt or offer to arrange for the making of a gift;
  - (4) The term "give" shall include every (i) tender of a gift, or (ii) action as an agent in the making of a gift, or (iii) arrangement for the making of a gift;
  - (5) the term "gift" shall include any gift which has any value whatsoever, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form.
- (c) For purposes of Administrative Code § 3-225 and this section, the following gifts shall not be prohibited:
  - (1) *de minimis* promotional items having no substantial resale value such as pens, mugs, calendars, hats, and t-shirts which bear an organization's name, logo, or message in a manner which promotes the organization's cause;
  - (2) gifts that are customary on family or social occasions from a family member or close personal friend, when it can be shown under all relevant circumstances that it is the family or personal relationship rather than the lobbying activity that is the controlling factor and the public servant's receipt of the gift would not result in or create the



appearance of:

- (i) using his or her office for private gain;
  - (ii) giving preferential treatment to any person or entity;
  - (iii) losing independence or impartiality; or
  - (iv) accepting gifts or favors for performing official duties;
- (3) awards, plaques, and other similar items which are publicly presented in recognition of public service, provided that the item or items have no substantial resale value;
- (4) free meals or refreshments in the course of and for the purpose of conducting City business under the following circumstances;
- (i) when offered during a meeting which the public servant is attending for official reasons;
  - (ii) when offered at a company cafeteria, club or other setting where there is no public price structure and individual payment is impractical
  - (iii) when a meeting the public servant is attending for official reasons begins in a business setting but continues through normal meal hours in a restaurant, and refusal to participate and/or individual payment would be impractical;
  - (iv) when the free meals or refreshments are provided by the host entity at a meeting held at an out-of-the-way location, alternative facilities are not available and individual payment would be impractical; or,
  - (v) when the public servant would not have otherwise purchased food and refreshments had he or she not been placed in such a situation while representing the interests of the City;
- (5) meals or refreshments when participating as a panelist or speaker in a professional or educational program and the meals or refreshments are provided to all panelists;
- (6) invitation to attendance at professional or educational programs as a guest of the sponsoring organization;
- (7) invitation to attendance at ceremonies or functions sponsored or encouraged by the City as a matter of City policy, such as, for example, those involving housing, education, legislation or government administration;

- (8) invitation to attendance at a public affair of an organization composed of representatives of business, labor, professions, news media or organizations of a civic, charitable or community nature, when invited by the sponsoring organization;
  - (9) invitation to attendance by a public servant who is an elected official, a member of the elected official's staff authorized by the elected official, or a member of the central staff for the council authorized by the speaker of the council at a function given by an organization composed of representatives of business, labor, professions, news media or organizations of a civic, charitable or community nature, when invited by the sponsoring organization;
  - (10) travel-related expenses from a private entity which is offered or given as a gift to the City rather than to the public servant, so long as: (i) the trip is for a City purpose and therefore could properly be paid for with City funds; (ii) the travel arrangements are appropriate for that purpose; and (iii) the trip is no longer than reasonably necessary to accomplish the business which is its purpose;
- (d) Nothing in this section shall be deemed to authorize a person required to be listed on a statement of registration pursuant to § 3-213(c)(1) of the Administrative Code to offer or give a gift to any public servant in violation of any other applicable federal, state or local law, rule or regulation, including but not limited to the New York State Lobbying Act.

**§ 1-17 Accomplice Liability.**

- (a) It shall be a violation of City Charter § 2604(b)(2) for any public servant to intentionally or knowingly:
- (1) solicit, request, command, importune, aid, induce, or cause another public servant to engage in conduct that violates any provision of City Charter § 2604; or
  - (2) agree with one or more persons to engage in or cause conduct that violates any provision of City Charter § 2604.
- (b) For the purposes of this section "any provision of City Charter § 2604" shall not include a violation of City Charter § 2604(b)(2) that does not also violate a rule of the Board.

**§ 1-18 Use of City Title in Promotional Materials.**

- (a) Pursuant to Charter § 2604(b)(2) and § 2604(b)(3), a public servant may use or permit the use of his or her City title and/or City agency in promotional materials produced by or on behalf of a non-City product, program, or entity provided that all of the following conditions are met:

§ 1-18 Use of City Title in Promotional Materials.

- (i) a demonstrable nexus exists between the product, program, or entity and the mission of the public servant's agency;
  - (ii) neither the agency head nor the public servant is associated, within the meaning of Charter § 2601(5), with either the person or entity or an employee of the person or entity that is the subject of the endorsement or whose product or program is the subject of the endorsement.
  - (iii) the public servant's agency head approves in writing the use of the public servant's City title and/or City agency and;
  - (iv) if the promotional materials solicit donations for a not-for-profit organization, the public servant and public servant's agency comply with the requirements of Board Rules § 1-14.
- (b) For purposes of this section, an elected official, including a District Attorney, is the agency head of the staff members in their office. The Speaker of the New York City Council is the agency head of the central staff of Council, and a Council Member is the agency head of the staff of their office.

## **Chapter 2: Procedural Rules for Enforcement Actions**

### **§ 2-01 Applicability and Definitions.**

(a) *Applicability.*

This chapter establishes the procedural rules for enforcement actions brought pursuant to Charter § 2603(h) to address alleged violations of:

- (1) Chapter 68 of the City Charter (the Conflicts of Interest Law);
- (2) § 3-224 through § 3-228 of the Administrative Code (the Lobbyist Gift Law);
- (3) § 3-901 through § 3-907 of the Administrative Code (the Affiliated Not-for-Profits Law); and
- (4) § 3-1101 through § 3-1107 of the Administrative Code (the Legal Defense Trusts Law).

(b) *Definitions.*

“Board” means the Conflicts of Interest Board.

“Board Rules” means the rules of the Conflicts of Interest Board, as set forth in Title 53 of the Rules of the City of New York.

“Day” means a calendar day. When the last day of a time period is a Saturday, Sunday, or public holiday, the time period will run through the end of the next business day.

“Enforcement attorney” means an attorney prosecuting an enforcement action on behalf of the Board.

“OATH” means the New York City Office of Administrative Trials and Hearings.

“OATH Rules” means OATH’s Rules of Practice, as set forth in Title 48 of the Rules of the City of New York.

“Respondent” means a public servant or former public servant; a lobbyist or any other person required to be listed on a statement of registration pursuant to Administrative Code § 3-213(c)(1); an organization affiliated with an elected official or an agent of an elected official, as defined by Administrative Code § 3-901; or a legal defense trust, trustee, or beneficiary, as defined by Administrative Code § 3-1101, who has been served a Notice of Initial Determination of Probable Cause.

**§ 2-02 Commencement of Formal Proceedings and Pleadings.**

*(a) Notice of Initial Determination of Probable Cause.*

For the purposes of Charter § 2603(h)(1), the Board will commence an enforcement action by serving a Notice of Initial Determination of Probable Cause by first class mail to the respondent's last known residential address or actual place of business.

*(b) Response to the Notice of Initial Determination of Probable Cause.*

(1) For the purposes of Charter § 2603(h)(1), the respondent has twenty (20) days from the date of service to submit a written response to the Notice of Initial Determination of Probable Cause ("Notice") or request an extension. The response is an opportunity to explain, rebut, or provide information concerning the factual or legal allegations in the Notice. The Board will not consider requests for discovery of evidence during informal proceedings.

(2) Upon oral or written request within twenty (20) days from the date of service of the Notice, the respondent will be granted a thirty- (30-) day extension within which to submit a written response. Upon oral or written request made prior to the expiration of the first extension, the respondent may be granted a second thirty- (30-) day extension for good cause shown, including, but not limited to, ongoing settlement negotiations. Any further extensions must be requested in writing to the Board and will be granted only in exigent circumstances.

(3) For the purposes of Charter § 2603(h)(2):

(i) If the respondent submits a substantive written response to the Notice, the Board will review the response to determine whether there remains probable cause to believe that any alleged violation occurred and will either dismiss the enforcement action or sustain its initial determination of probable cause in whole or in part.

(ii) If the respondent does not submit a written response to the Notice or submits only a general denial of the allegations in the Notice, the Board's initial determination of probable cause will be deemed sustained.

*(c) Referral to agency.*

If the Board sustains its initial determination of probable cause against a respondent who is entitled to disciplinary rights as described in Charter § 2603(h)(2), the Board will notify the respondent's employing City agency in writing of the alleged facts and violations. After such a referral, the Board retains separate and continuing jurisdiction over the enforcement action.

- (1) If the agency does not pursue disciplinary action against the respondent, the Board will commence formal proceedings against the respondent.
- (2) If the agency pursues disciplinary action against the respondent, the Board may resolve the enforcement action by a joint settlement agreement with the respondent and agency or commence formal proceedings against the respondent.

(d) *Representation by an attorney or other person.*

- (1) If the respondent chooses to be represented by an attorney or any other person, the representative appearing for the respondent must submit a written and signed Notice of Appearance to the Board. The appearance of a member in good standing of the bar of a court of general jurisdiction of any state or territory of the United States will be indicated by the designation "Attorney for (person represented)." The appearance of any other person will be indicated by the designation "Representative for (person represented)." The Board will not accept a response from or discuss the details of an enforcement action with any attorney or other person who has not submitted a Notice of Appearance.
- (2) To withdraw from representation, the representative must submit a written notice of withdrawal to the Board, signed by the respondent or otherwise explaining the reason for withdrawal. An attorney who has submitted a Notice of Appearance may withdraw from representation only with consent of the respondent or when other cause exists, as delineated in the applicable provisions of the New York Rules of Professional Conduct.
- (3) A Notice of Appearance, withdrawal or substitution may be submitted to the Board at any time prior to commencement of formal proceedings. After the service of the Notice of Petition and Petition pursuant to Board Rules § 2-03(b)(1), the OATH Rules govern the procedures for a Notice of Appearance, withdrawal or substitution.

(e) *Stay of an enforcement action.*

To obtain a stay of an enforcement action prior to commencement of formal proceedings, the respondent must submit a written request to the Board for its review and approval. After the service of the Notice of Petition and Petition pursuant to Board Rules § 2-03(b)(1), the OATH Rules govern the procedures for a stay.

(f) *Settlement.*

- (1) At any time after the service of the Notice of Initial Determination of Probable Cause, an enforcement action may be resolved by settlement agreement in the form of a Public Disposition or Public Warning Letter.

- (i) A Public Disposition must include an admission of the relevant facts; an acknowledgment that the admitted conduct violated a specific provision of the Conflicts of Interest Law, the Lobbyist Gift Law, the Affiliated Not-for-Profits Law, or the Legal Defense Trusts Law; and a penalty that addresses the admitted conduct.
  - (ii) A Public Warning Letter must include a statement of relevant facts, and a description of each violation of a specific provision of the Conflicts of Interest Law, the Lobbyist Gift Law, the Affiliated Not-for-Profits Law, or the Legal Defense Trusts Law.
- (2) The language and penalty of the proposed settlement agreement will be negotiated between the enforcement attorney and the respondent or the respondent's representative, if applicable. If the respondent requests that the respondent's employing City agency be a party to the settlement, the respondent must submit a signed waiver of confidentiality to the Board to allow the enforcement attorney to discuss the proposed settlement agreement with such agency.
- (3) If the enforcement attorney and the respondent reach a proposed settlement agreement, it will be reduced to writing and signed by the respondent, the respondent's representative, if applicable, and a representative of the respondent's employing City agency, if applicable. Any monetary penalty to be paid to the Board is due upon signing unless otherwise specified in the proposed settlement agreement. Monetary penalty payments will be held by the Board in escrow until the proposed settlement agreement is fully executed by the Board.
- (4) After receiving the full payment of any monetary penalty to be paid to the Board, the enforcement attorney will present the proposed settlement agreement to the Board for its review and approval.
- (i) If the Board approves the proposed settlement agreement, the settlement agreement will be signed by the Board Chair. The fully-executed settlement agreement will be made public, but all underlying records, reports, memoranda, and files of the enforcement action will remain confidential in accordance with Charter § 2603(k).
  - (ii) If the Board does not approve the proposed settlement agreement, the Board may direct the enforcement attorney to seek modification of the penalty or the language in the settlement agreement. The modified proposed settlement agreement must be reviewed and approved by the Board.

**§ 2-03 Formal Proceedings.**

(a) *Designation of OATH.*

For the purposes of Charter § 2603(h)(2), and in accordance with Charter § 1048, the Board designates OATH to conduct hearings in accordance with the OATH Rules, except as otherwise provided by these rules.

(b) *Commencement of formal proceedings.*

(1) The Board will commence formal proceedings at OATH by serving a Notice of Petition and Petition by certified mail, return receipt requested, and first class mail, to the respondent's last known residential address or actual place of business and to the respondent's representative, if applicable. After service, the enforcement attorney will file the Notice of Petition and Petition with OATH and will provide OATH with potential dates for a settlement conference and potential dates for a hearing.

(2) After the conference and hearing dates have been scheduled at OATH, the enforcement attorney will serve a Notice of Hearing by certified mail, return receipt requested, and first class mail, to the respondent's last known residential address or actual place of business and to the respondent's representative, if applicable.

(c) *Ex Parte communications with the Board.*

(1) After service of the Notice of Petition and Petition pursuant to Board Rules § 2-03(b)(1), any Board attorney involved in the prosecution of the enforcement action may not communicate *ex parte* with any member of the Board or any attorney serving as counsel to the Board concerning the merits of the enforcement action, except as provided in paragraph (2) of this subdivision.

(2) An enforcement attorney may communicate *ex parte* with members of the Board or an attorney serving as counsel to the Board with respect to ministerial matters involving the enforcement action; on consent of the respondent or respondent's representative; or if deemed necessary by the Board or by an attorney serving as counsel to the Board.

(d) *Answer.*

The respondent may serve and file a written answer to the Petition in accordance with the OATH Rules. The answer may contain specific responses, by admission, denial, or otherwise, to each allegation of the Petition and assert all affirmative defenses, if any. The respondent may include in the answer matters in mitigation. The answer must contain the full name, address, telephone number, and email address of the respondent. If the respondent is represented, the representative's name, address, telephone number



and email address must also appear on the answer. The answer must be signed by the respondent or respondent's representative.

(e) *Settlement.*

At the OATH settlement conference, an enforcement action may be resolved by settlement agreement pursuant to Board Rules § 2-02(f).

(f) *Hearing.*

- (1) The enforcement attorney will have the burden of proof by a preponderance of the evidence.
- (2) The enforcement attorney will make an opening statement first, after which the respondent may make an opening statement.
- (3) The enforcement attorney will initiate the presentation of evidence. After the enforcement attorney has completed the presentation of the Board's evidence, the respondent may present evidence. The enforcement attorney may present rebuttal evidence.
- (4) The enforcement attorney will make a closing statement first, after which the respondent may make a closing statement.

(g) *OATH report.*

After a hearing has been conducted, OATH will issue a confidential report of its recommended findings of fact and conclusions of law and its recommended disposition of the enforcement action. OATH will send the report, along with the original transcript of the hearing and all documents introduced into the record, to the Board for review. OATH will send a copy of the report to the enforcement attorney and the respondent or respondent's representative, if applicable.

(h) *Comment on OATH report.*

Within twenty (20) days from the date of the OATH report, each party may submit a comment to the Board to explain, rebut, or provide information concerning OATH's recommended findings of fact, conclusions of law, and disposition. If either party submits a comment, the opposing party may submit to the Board a response to such comment within thirty (30) days from the date of the OATH report. Copies of all such submissions must be shared with the opposing party. The Board will not consider new evidence submitted in a comment or in a response to a comment.

(i) *Final review by the Board.*

For the purposes of Charter § 2603(h)(3), the Board will review the OATH report, along with the original transcript of the hearing and all documents introduced into the record, and any comments and responses to comments submitted to the Board pursuant to Board Rules § 2-03(h), to determine whether it has been proven by a preponderance of the evidence that the respondent violated a provision of the Conflicts of Interest Law, the Lobbyist Gift Law, the Affiliated Not-for-Profits Law, or the Legal Defense Trusts Law. In accordance with Board Rules § 2-03(c), any Board attorney involved in the prosecution of the enforcement action will not participate in the Board's final review.

(j) *Board order finding a violation.*

- (1) If the Board determines that it has been proven by a preponderance of the evidence that the respondent violated a provision of the Conflicts of Interest Law, the Lobbyist Gift Law, the Affiliated Not-for-Profits Law, or the Legal Defense Trusts Law, the Board will issue an order stating its final findings of fact and conclusions of law and imposing a penalty, except, if the respondent is a current Member or employee of the New York City Council, the Board will issue an order stating its final findings of fact and conclusions of law and recommending a penalty to the New York City Council. The order will include notice of the respondent's right to appeal to the New York State Supreme Court.
- (2) All orders of the Board will be made public. The Board may also make the OATH report public as part of its order, but all other underlying records, reports, memoranda, and files will remain confidential in accordance with Charter § 2603(k).
- (3) The order will be sent by first class mail to the respondent's last known residential address or actual place of business and to the respondent's representative, if applicable.
- (4) If the order imposes a monetary penalty, payment is due to the Board within thirty (30) days of the date of service. If the respondent does not pay the full monetary penalty amount, the Board will refer the matter to the New York City Law Department for collection.

(k) *Board dismissal.*

If the Board determines that it has not been proven by a preponderance of the evidence that the respondent violated any provision of the Conflicts of Interest Law, the Lobbyist Gift Law, the Affiliated Not-for-Profits Law, or the Legal Defense Trusts Law, the Board will issue a written decision that dismisses the enforcement action and states its final findings of fact and conclusions of law. The decision will be sent to the respondent and respondent's representative, if applicable, and will not be made public. All underlying records, reports, memoranda, and files will remain confidential in accordance with Charter § 2603(k).

### Chapter 3: Organizations Affiliated with Elected Officials

#### § 3-01. Definitions.

For purposes of this chapter, the following terms have these meanings:

- (a) *Doing Business Database*. “Doing Business Database” means the Doing Business Database as defined in Administrative Code § 3-702.
- (b) *Donation*. “Donation” means any contribution from a non-governmental source, including in-kind donations, gifts, loans, advances or deposits of money, or anything of value.
- (c) *Elected official*. “Elected official” means a person holding office as Mayor, Comptroller, Public Advocate, Borough President or member of the Council.
- (d) *Elected official communication*.
  - (1) An “elected official communication” means a communication that includes the name, voice, or likeness of the elected official with whom the entity making such communication is affiliated and that is in the form of: (i) radio, television, cable, or satellite broadcast; (ii) printed material such as advertisements, pamphlets, circulars, flyers, brochures, or letters; (iii) telephone communication; or (iv) paid internet advertising.
  - (2) An elected official communication does not include: (i) communications with a professional journalist or newscaster, including an editorial board or editorial or opinion writer of a newspaper, magazine, news agency, press association, or wire service; or (ii) a communication that is: (A) directed, sent, or distributed by the distributing organization only to individuals who affirmatively consent to be members of the distributing organization, contribute funds to the distributing organization, or, pursuant to the distributing organization’s articles or bylaws, have the right to vote directly or indirectly for the election of directors or officers, or on changes to bylaws, disposition of all or substantially all of the distributing entity’s assets or the merger or dissolution of the distributing entity; or (B) for the purpose of promoting or staging any candidate debate, town hall, or similar forum to which at least two candidates seeking the same office, or two proponents of differing positions on a referendum or question submitted to voters, are invited as participants, and which does not promote or advance one candidate or position over another.
- (e) *Household member*. “Household member” means a person’s spouse or domestic partner and unemancipated children.

(f) *In-kind donation.* “In-kind donation” to an organization affiliated with an elected official in this Chapter means: (1) any gift, loan, advance of, or payment for, anything of value, other than money, made to or for the organization by a non-governmental source; or (2) the payment by any non-governmental source for the personal services of another person that is provided to an organization affiliated with an elected official without charge to the organization. “In-kind donation” does not include personal services provided without compensation by individuals volunteering their time on behalf of the organization on matters outside of their professional expertise.

(g) *Organization affiliated with an elected official.* “Organization affiliated with an elected official” means:

(1) a non-profit entity other than an agency, public authority, public benefit corporation, or local development corporation;

(2) which has received at least one donation in the previous or current calendar year; and

(3) over which a person holding office as Mayor, Comptroller, Public Advocate, Borough President or Member of the Council, or an agent of such a person, which shall include an appointee of such person serving at the pleasure of such person, exercises control.

There shall be a rebuttable presumption of control by an elected official where such official, or such an agent, appoints a majority of seats on the board of the entity (not including appointees nominated by another individual or entity that is not such an agent of the elected official), or is a principal officer of the entity. Principal committees and political committees, as those terms are defined in Administrative Code § 3-702, are not organizations affiliated with an elected official.

(h) *Principal officers.* “Principal officer” means an organization’s executive director, chief financial officer, and chief development officer, or the organization’s three executive staff members who perform equivalent duties.

(i) *Restricted organization.* “Restricted organization” means an organization affiliated with an elected official that accepted a donation and either:

(1) spent at least 10% of its expenditures on elected official communications in the calendar year it accepted the donation; or

(2) reasonably expects to spend at least 10% of its expenditures on elected official communications in the calendar year after it accepted the donation.

(j) *Spend.* “Spend” means to spend or to cause to be spent.

(k) *Unrestricted organization.* “Unrestricted organization” means an organization affiliated with an elected official that accepted a donation and satisfies both of the following conditions:

- (1) the organization did not spend at least 10% of its expenditures on elected official communications in the calendar year it accepted the donation and
- (2) the organization does not reasonably expect to spend at least 10% of its expenditures on elected official communications in the calendar year after it accepted the donation.

**§ 3-02. Procedures for Obtaining a Determination by the Board that an Elected Official or an Agent of an Elected Official Does Not Exercise Control over an Entity.**

For purposes of Administrative Code § 3-904(c), a non-profit entity may apply to the Board for a formal determination that an elected official or an agent of an elected official does not exercise control over the entity. Such an application must be in writing, signed by an agent of the not-for-profit entity, and provide a detailed explanation of the underlying facts that show why, consistent with the considerations included in the definition of “organization affiliated with an elected official” set forth in Administrative Code § 3-901 and Board Rules § 3-03, the entity should not be considered an “organization affiliated with an elected official.”

**§ 3-03. Factors by which the Board Will Determine Whether an Entity is Affiliated with an Elected Official.**

For purposes of Administrative Code § 3-901, in determining whether a person holding office as Mayor, Comptroller, Public Advocate, Borough President or member of the Council, or an agent or appointee of such a person, exercises control over a non-profit entity, the Board will consider the totality of the circumstances by weighing each of the following individual factors:

- (a) whether the organization was created by a person currently holding office as Mayor, Comptroller, Public Advocate, Borough President, or member of the Council, or an agent of such official, or by an individual who was previously employed by, or was a paid political consultant of, the elected official, and, if so, how recently such organization was created;
- (b) whether the board of the organization is chaired by such an elected official or the official’s agent;
- (c) whether board members are appointed by such an elected official or the official’s agent or only upon nomination of other individuals or entities that are not agents of such elected official;
- (d) whether board members serve for fixed terms or can be removed without cause by an elected official or the official’s agent;

- (e) the degree of involvement or direction by such an elected official or the official's agent in such organization's policies, operations, and activities;
- (f) the degree to which public servants, acting under the authority or direction of the elected official or an agent of the elected official, perform duties on behalf of the organization as part of their official City employment; and
- (g) whether the purpose of the organization advances either the mission of a City agency under the control of the elected official or the political or policy interests of the elected official; and
- (h) whether more than one elected official serves on the board of the organization.

**§ 3-04. Annual Reporting by Organizations Affiliated with an Elected Official.**

Pursuant to Administrative Code § 3-902, all organizations affiliated with an elected official must submit the reporting required pursuant to Administrative Code § 3-902(a) on the Board's website, no later than August 1 for the previous calendar year, as follows.

*(a) Reporting Requirements for Restricted Organizations*

- (1) A restricted organization must submit the information listed in Administrative Code §§ 3-902(a)(1) to 3-902(a)(8).
- (2) In addition to the reporting requirement of Administrative Code §§ 3-902(a)(6) and 3-902(a)(7), a restricted organization must report for each donation received during the previous calendar year:
  - (i) if the donor was the household member of a person listed in the City's Doing Business Database as of the date of such donation, or added to the City's Doing Business Database within 180 days after the receipt of such donation, the name of the person listed in the City's Doing Business Database;
  - (ii) the value of any excess donation refunded pursuant to Administrative Code §§ 3-903(a) or 3-903(b); and
  - (iii) the date of any excess donation refunded pursuant to Administrative Code §§ 3-903(a) or 3-903(b).
- (3) Multiple donations made by a person listed in the City's Doing Business Database and that person's household members in the same calendar year are considered in the aggregate for purposes of Administrative Code §§ 3-903(a), and 3-903(b). Multiple donations made by an individual in the same calendar year are considered in the

aggregate for purposes of obtaining the individual donor's written submission pursuant to Administrative Code § 3-903(d).

- (4) In determining whether and when a donation must be returned pursuant to Administrative Code § 3-903(b), where a person is added to the City's Doing Business Database in a calendar year and the donor or household members of the donor make multiple donations to the organization that in the aggregate exceed \$400 in that calendar year, the date of receipt will be deemed to be the date that the aggregate donations for the calendar year among the donor and household members of the donor exceed \$400.
- (5) To determine whether a donation may be accepted pursuant to Administrative Code §§ 3-903(a) and (b), and to comply with the reporting requirement of Administrative Code § 3-902(a)(6), a restricted organization must take the following steps to determine whether a donor was listed in the City's Doing Business Database or was a household member of a person listed in the City's Doing Business Database, either on the date of the donation or as of 180 days after the date of the donation:
  - (i) check the name of the donor against the City's Doing Business Database both at the time of the donation and as of 180 days after the date of the donation;
  - (ii) consult the organization's records, including but not limited to donors' written submissions collected pursuant to Administrative Code § 3-903(d), if any, to determine whether the donor was a household member of a person listed in the City's Doing Business Database;
  - (iii) consult each of the following people: (a) the organization's affiliated elected official or the agent of the organization's affiliated elected official who exercises control over the organization; (b) each board member of the organization; and (c) each principal officer of the organization. The organization must request that each person consulted pursuant to this subparagraph review a list of the organization's most recent donors and inform the organization if such person believes that a donor is the household member of a person listed in the Doing Business Database. The organization must obtain the names of the spouse or domestic partner of any such donor (or, if the donor is an unemancipated child, his or her parent) and check those names against the Doing Business Database; and
  - (iv) if an organization believes that a donor, a donor's spouse or domestic partner (or, if a donor is an unemancipated child, his or her parent), is not a person with business dealings with the City, despite such person's name matching the name of an individual in the Doing Business Database, the organization must submit information supporting that conclusion to the Board. The Board will review the submission and determine whether the donation may be accepted pursuant to



Administrative Code §§ 3-903(a) or 3-903(b) and if it must be reported pursuant to Administrative Code § 3-902(a)(6).

(6) To comply with the reporting requirement of Administrative Code § 3-902(a)(8), a restricted organization must submit to the Board a list of each elected official communication created or distributed, which list must include a description, the date, and the total cost of each such communication. In calculating the total cost of an elected official communication, a restricted organization must include the value of all goods and services paid by the organization to create and distribute the elected official communication, including without limitation the value of the time of its employees and the value of all goods and services donated by a non-governmental source for the communication's creation or distribution.

(b) *Reporting Requirements for Unrestricted Organizations.* An unrestricted organization must submit the information listed in Administrative Code §§ 3-902(b)(1) to (b)(8).

(c) *Privacy, Safety, and Security Requests*

(1) Pursuant to Administrative Code § 3-902(c), a restricted organization may submit a request to the Board that disclosure of one or more of its donors and/or the amount of donation not be made public. The organization must make such a request in writing no later than April 1 for the previous calendar year and must explain why the release of such information to the public may cause harm, threats, harassment, or reprisals to the donor, or to individuals or property affiliated with the donor.

(2) Whether or not a reporting entity has submitted a request pursuant to this subdivision, the Board may upon its own initiative grant privacy as to any information submitted by an organization affiliated with an elected official, upon a finding by the Board that the release of such information would constitute a risk to the safety or security of any person.

### **§ 3-05. Record Retention.**

(a) *Records to be Retained.* An organization affiliated with an elected official must retain all documents that enable the Board to verify the accuracy of the reporting required pursuant to Administrative Code § 3-902. Organizations must maintain clear and accurate records sufficient to demonstrate compliance with Administrative Code §§ 3-901 to 3-907.

(b) *Retention Period.* An organization affiliated with an elected official must retain all records and documents required to be kept pursuant to this rule for at least 6 years after filing the report pursuant to Administrative Code § 3-902 to which the records or documents relate.

- (c) *Custodian of Records.* An organization affiliated with an elected official must designate a custodian of the organization's records or documents that substantiate the reporting required pursuant to Administrative Code § 3-902 and must submit, at the time of each reporting pursuant to Administrative Code § 3-902, the name, address, e-mail address, and telephone number of the custodian of the organization's records. If an organization is no longer subject to the annual reporting requirement pursuant to Administrative Code § 3-902, the organization must, for 6 years after the date of its last filing required by Administrative Code § 3-902, notify the Board, in writing, of any change of custodian, or of the custodian's address, e-mail address, or telephone number, no later than 30 days after such change.

## **Chapter 4: Annual Disclosure**

### **§ 4-01 Procedures for Obtaining an Extension of Time to File an Annual Disclosure Report.**

- (a) For the purposes of Administrative Code § 12-110(c)(4), a request for an extension of time within which to file an annual disclosure report must be made in writing, including by email, and received by the Board no later than 10 calendar days prior to the filing deadline set by the Board.
- (b) The request for an extension of time must include:
  - (1) The name of the filer and the filer's City agency or public entity; and
  - (2) An explanation of justifiable cause or undue hardship that would warrant extension, accompanied by any supporting documentation. A justifiable cause or undue hardship shall not be based on periods of annual leave, attendance at conferences or meetings, or other scheduled or voluntary absences from work, unless there are extenuating circumstances detailed in the request.
- (c) The Board will review any timely request for an extension and give written notice to the filer of its determination.
- (d) If the request for an extension of time is approved, such report must be filed on or prior to the new filing deadline set by the Board in its determination. The new filing deadline will not be greater than four months from the original filing deadline set by the Board.
- (e) If the request for an extension of time is denied, such report must be filed by the original filing deadline set by the Board.

### **§ 4-02 Retention of Annual Disclosure Reports.**

- (a) For the purposes of Administrative Code § 12-110(f), the Board will retain each annual disclosure report filed with the Board for six years after the close of the calendar year to which such report relates.
- (b) The Board will retain an annual disclosure report beyond the six-year retention period at the request of the Department of Investigation or any governmental unit, or component thereof, that performs as one of its principal functions any activity pertaining to law enforcement. Such request must be made in writing and received by the Board no later than 10 calendar days prior to the expiration of the six-year retention period. The Board will retain the report only for the additional time necessary or for the law enforcement matter identified in the request to be concluded.

**§ 4-03 City Employees Holding Policymaking Positions for Purposes of the Annual Disclosure Law.**

For purposes of Administrative Code § 12-110(b)(3)(a)(3), a person holds a “policymaking position” if they have been designated as having substantial policy discretion pursuant to Board Rules § 1-02.

**§ 4-04 City Employees Whose Duties Involve the Negotiation, Authorization, or Approval of Contracts and of Certain Other Matters.**

- (a) For purposes of Administrative Code § 12-110(b)(3)(a)(4), a City employee shall be deemed to have duties that involve the negotiation, authorization, or approval of contracts, leases, franchises, revocable consents, concessions, and applications for zoning changes, variances, and special permits if the employee performs any of the following duties:
- (1) Determines the substantive content of a request for proposals or other bid request or change order;
  - (2) Makes a determination as to the responsiveness of a bid or the responsibility of a vendor or bidder;
  - (3) Evaluates a bid;
  - (4) Negotiates or determines the substantive content of a contract, lease, franchise, revocable consent, concession, or application for a zoning change, variance, or special permit or change order;
  - (5) Recommends or determines whether or to whom a contract, lease, franchise, revocable consent, concession, or application for a zoning change, variance, or special permit or change order should be awarded or granted;
  - (6) Approves a contract, lease, franchise, revocable consent, or concession or change order on behalf of the City or any agency subject to Administrative Code § 12-110; or
  - (7) Determines the content of or promulgates City procurement policies, rules, or regulations.
- (b) Clerical personnel and other public servants who, in relation to the negotiation, authorization, or approval of contracts, leases, franchises, revocable consents, concessions, and applications for zoning changes, variances, and special permits, perform *only* ministerial tasks shall not be required to file a Financial Disclosure Report pursuant to Administrative Code § 12-110(b)(3)(a)(4). For example, public servants who are under

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

#### **§ 4-05 Filing Deadlines for Candidates Seeking Payment of Public Funds from the New York City Campaign Finance Board.**

Pursuant to Administrative Code §12-110(b)(2)(a), each person who has declared his or her intention to seek a designation or nomination for election to an office and who is seeking payment of public funds for the first time in February, March, or April of the election year must submit an annual disclosure report with the Conflicts of Interest Board by the following deadlines: for the payment date of February 15, the annual disclosure report must be submitted by January 21; for the payment date of March 15, the annual disclosure report must be submitted by February 19; and for the payment date of April 15, the annual disclosure report must be submitted by March 21. If the final date to submit the annual disclosure report falls on a Saturday, Sunday, or public holiday, the deadline will be extended to the following business day.

#### **§ 4-06 Procedures to Appeal a Designation as a Required Filer of a Financial Disclosure Report.**

(a) **Applicability.** Any employee designated as a required filer by his or her agency may appeal the determination that he or she is required to file a financial disclosure report with the Conflicts of Interest Board (“the Board”) pursuant to New York City Administrative Code § 12-110, first to his or her agency head and then to the Board.

(b) **Appeal to the Agency Head.**

(1) Any employee seeking to appeal the determination that he or she is required to file a financial disclosure report shall complete a “Notice of Appeal to Agency Head,” on such form as the Board shall adopt and make available on the Board’s website. The completed form shall include the employee’s name, employee identification number (“EIN”) or agency identifier, agency name, agency code, civil service title, office title, and a brief statement of the grounds for the appeal.

- (2) An employee seeking to appeal such agency determination shall file, in the manner designated by the agency, the completed Notice of Appeal form with his or her agency financial disclosure liaison prior to the deadline for filing his or her financial disclosure report but in any event the employee shall have no fewer than twenty-one days within which to file such Notice of Appeal after receiving the notification by the agency that he or she must file such Notice of Appeal after receiving the notification by the agency that he or she must file a financial disclosure report. Failure to file the Notice of Appeal by the later of twenty-one days after such notification or the deadline for filing, as the case may be, shall constitute a waiver of the right to appeal and the employee will be required to file a financial disclosure report.
- (3) Upon receipt of the completed Notice of Appeal, the agency financial disclosure liaison shall:
  - (i) Time and date stamp the Notice of Appeal form;
  - (ii) Provide the employee with a copy of such time and date-stamped form as a receipt;
  - (iii) Transmit the Notice of Appeal form forthwith to the agency head or his or her designee; and
  - (iv) Within five days of the receipt of the Notice of Appeal, notify the Board by e-mail of the pendency of the appeal and the date that the appeal was received by the agency. Such notice to the Board shall contain the employee's name, agency, EIN (or agency identifier), and the date that the appeal was filed.
  - (v) No later than fourteen days after filing the Notice of Appeal, the employee shall submit to his or her agency head or such agency head's designee a written statement and any documentation in support thereof setting forth the reasons that such employee believes he or she should not be designated as a required filer of a financial disclosure report. Failure to submit such written statement within such fourteen-day period shall constitute a waiver of the right to appeal.
  - (vi) Within fourteen days of the agency's receipt of the employee's written statement, the agency head or his or her designee shall advise in writing or by email the employee, his or her employee's collective bargaining representative, attorney or other representative, if any, and the Board of the agency's decision as to whether or not the employee is required to file. If the agency head or the agency head's designee fails to meet such fourteen-day deadline, the appeal shall be deemed granted upon default.
  - (vii) A decision of the agency head or his or her designee that denies an appeal shall set forth the reasons for and evidence relied upon in reaching such decision.

Such denial shall be predicated on a showing that the employee meets the requirements of at least one of the filing categories set forth in New York City Administrative Code § 12-110(b)(3)(a)(3)-(4) and §§ 1-02, [4-03], and [4-04] of the Board's rules. If the agency denies the appeal, the notice to the Board shall state the manner by which the employee was notified and the date of such notification.

- (viii) The agency head or his or her designee may consult with the Board prior to rendering its decision.

**(c) Procedure Upon Agency's Grant of Appeal.**

If the agency grants the employee's appeal, the employee's name shall be removed from the Board's list of required filers and the employee will not be required to file a financial disclosure report for that filing year or in future years until or unless the employee's title, position, duties, or responsibilities change in such a way that he or she would be required to file pursuant to the criteria set forth in New York City Administrative Code § 12-110(b).

**(d) Procedure Upon Agency's Denial of Appeal.**

- (1) An employee whose appeal is denied by his or her agency shall, within thirty days after service of the agency's notice of denial, either:
  - (i) file a completed financial disclosure report with the Board, or
  - (ii) file with the Board and with the employee's agency head or his or her designee a completed "Notice of Appeal to Board," on such form as the Board shall prescribe and make available on the Board's website.

Failure to file either a financial disclosure report or an appeal within the thirty-day period shall constitute a waiver of the right to a further appeal and shall subject the employee to the imposition of the statutory late filing fine pursuant to Ad. Code § 12-110(g).

- (2) Within thirty days after filing of a Notice of Appeal to the Board, the employee shall file with the Board and file with the employee's agency head or his or her designee the following materials:
  - (i) A copy of the statement and any supporting materials previously submitted to the agency head by the employee on the appeal in accordance with paragraph one of subdivision (a) of this section;
  - (ii) A copy of the agency head's decision on such appeal; and
  - (iii) Any supplemental documents the employee elects to provide.

- (3) Within thirty days after the employee files the materials set forth in paragraph two of this subdivision, the agency shall file with the Board all materials relied upon by the agency in making its determination that the employee is required to file a financial disclosure report, as well as any additional documents in support of the agency's determination.
- (4) Within thirty days after the agency has filed the materials set forth in paragraph three of this subdivision, the employee may file with the Board such additional materials as he or she deems necessary to either rebut evidence produced by the agency or otherwise support his or her position.
- (5) The Board's Director of Financial Disclosure shall review the agency's determination and the documents submitted by the employee and the agency and shall make a recommendation to the Board, or to the Executive Director upon delegation by the Board, as to whether the agency's determination should be upheld or reversed. The agency and employee shall each be served with a copy of the recommendation, may submit written comments to the Board or Executive Director, as the case may be, upon the proposed recommendation.
- (6) In the event that the Board, in its sole discretion, determines that issues are presented by the written materials filed on the appeal that require an evidentiary hearing, the Board may order such a hearing before the full Board, or, in the discretion of the Chair, before a member or members of the Board or before the Executive Director, designated for that purpose, at which the employee and agency may call witnesses to testify under oath to determine any such issue. If the Board requests additional information, both the employee and the agency shall provide to the Board whatever additional information it requests, within fourteen days after service of such a request in writing or by email by the Board. Failure of either party to timely provide any of the requested information may result in a summary finding adverse to that party.
- (7) The Board or the Executive Director, as the case may be, shall review the recommendation and any comments submitted in response thereto and issue a decision and order either upholding or reversing the agency's decision.
- (8) If the Board grants the appeal, the employee's name shall be removed from the Board's list of required filers and the employee will not be required to file a financial disclosure report for that filing year or in future years until or unless the employee's title, position, duties, or responsibilities change such that he or she would be required to file pursuant to the criteria set forth in New York City Administrative Code § 12-110(b).
- (9) If the appeal is denied, the employee shall either:



- (i) file a financial disclosure report for that filing year within thirty days after service of the denial of the appeal by the Board, and shall file for future years until or unless the employee's title, position, duties, or responsibilities change such that he or she would not be required to file pursuant to the criteria set forth in Administrative Code § 12-110(b); or
- (ii) commence, within the time provided by law, an Article 78 proceeding to review the Board's decision.

**(e) General Provisions**

- (1) At all stages of the financial disclosure appeals process, the employee may be represented by a union representative, an attorney or other representative.
- (2) Once an employee files an appeal with the Board, neither the employee nor the agency or their respective representatives may communicate *ex parte* with any member of the Board staff or Board with respect to the matter, except on consent of the opposing party or in an emergency.
- (3) During the pendency of the appeal and any court proceeding timely brought by the employee to review a denial of the appeal by the Board, the employee need not file a financial disclosure report, and no late filing fines will be assessed for that period.
- (4) Whenever a deadline in the process set forth in this section is measured from the filing or service of notice and notice is filed or served by United States Postal Service mail, five days shall be added to the deadline.
- (5) The Board may, in its discretion and for good cause shown, extend any deadline set forth in this rule. An application for such extension must be made in writing and prior to the expiration of the deadline.
- (6) In the case of any appeal that is decided upon default, whether in favor of the employee or the agency, that decision shall apply to that filing year only and shall not be a determination on the merits.
- (7) Unless otherwise stated, any reference to a number of days specified as a period within which an act is required to be done means such number of calendar days.
- (8) Nothing in this rule shall prevent the Board from determining, pursuant to New York City Administrative Code § 12-110(b)(3)(a)(2)-(3), that any public servant, regardless of an agency's determination, is required to file a financial disclosure report.

## **Chapter 5: Legal Defense Trusts**

### **§ 5-01 Definitions.**

“In-kind donation” means any donation of any value, other than money, such as the use of space, materials, supplies, or perishables. The donation value of an in-kind donation will be established by a reasonable estimate of that portion of its fair market value that is not paid or reimbursed by the trust. Personal expenses paid by the trustee(s) or volunteer clerical staff for the purpose of administering the trust are not in-kind donations.

“Pro bono assistance” means the provision of professional services, including but not limited to legal, accounting, and fundraising services. The donation value of pro bono assistance will be established by a reasonable estimate of that portion of its fair market value that is not paid or reimbursed by the trust. Pro bono assistance does not include uncompensated work by the trustee(s) for the purpose of administering the trust or volunteer clerical assistance.

### **§ 5-02 Donations.**

- (a) Multiple donations made by a person shall be aggregated for the purposes of the:
  - (1) \$5,000 donation limit established in Administrative Code § 3-1102(e)(1); and
  - (2) \$100 reporting threshold established in Administrative Code § 3-1103(a)(1).
- (b) A legal defense trust may not accept cash totaling \$100 or more from a single donor.
- (c) A legal defense trust may not accept a donation without having received the signed disclosure document from the donor as required by Administrative Code § 3-1102(e)(3).
- (d) In-kind donations and pro bono assistance may only be accepted for the purposes of administering the trust, pursuant to Administrative Code § 3-1102(f)(1)(b).

### **§ 5-03 Reporting and Disclosure.**

- (a) In addition to the information required by Administrative Code § 3-1103(a)(1) regarding the reporting of donations, the trustee(s) must:
  - (1) Disclose
    - (i) the description and use of any in-kind donation and any pro bono assistance accepted; and
    - (ii) the date and amount of any refund to a donor.

- (2) Submit the following documents:
  - (i) a copy of the receipt, check, or other document establishing that the donation was made by the donor;
  - (ii) a copy of the receipt, check, or other document establishing that a refund, if any, was made by the legal defense trust;
  - (iii) a copy of the receipt or other written record establishing the value of in-kind donations or pro bono assistance; and
  - (iv) a copy of the donor's signed disclosure document.
  
- (b) In addition to the information required by Administrative Code § 3-1103(a)(2) regarding the reporting of expenditures, the trustee(s) must:
  - (1) Disclose
    - (i) the date the expense was incurred;
    - (ii) the date the expense was paid; and
    - (iii) the amount, if any, returned to the trust pursuant to Administrative Code § 3-1102(f)(4).
  - (2) Submit the following documents:
    - (i) a copy of the itemized receipt for each expense; and
    - (ii) a copy of the check or other document establishing that the expenditure was paid by the legal defense trust.
  
- (c) Quarterly reports submitted by the legal defense trust must include all bank, credit card, and merchant account statements received by the trust during the reporting period.

**§ 5-04 Dissolution.**

- (a) If the trustee(s) returns donations on dissolution of a legal defense trust, the trustee(s) must submit in the last disclosure report pursuant to Administrative Code § 3-1103:
  - (1) the name and address of each donor receiving a refund;
  - (2) the amount of the refund;

- (3) the date of the refund; and
  - (4) a copy of the check or other document establishing that the refund was made.
- (b) If the trustee(s) transfers donations to a charitable organization upon dissolution of a legal defense trust, the trustee(s) must submit in the last disclosure report submitted pursuant to Administrative Code § 3-1103:
- (1) the name and address of each charitable organization receiving a transfer;
  - (2) the amount of the transfer;
  - (3) the date of the transfer; and
  - (4) a copy of the check or other document establishing that the transfer was made.

**§ 5-05 Electronic Submission of Compliance Documents.**

All information and documents required by this chapter must be submitted by the trustee(s) using the reporting website maintained by the Board.

**§ 5-06 Record Retention.**

The trustee(s) must maintain records and documents sufficient to demonstrate compliance with these rules and must retain these records and documents for 2 years following completion of the final audit upon dissolution of the legal defense trust.