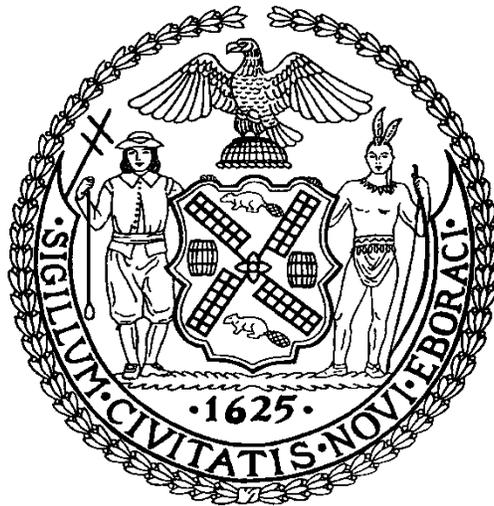


NEW YORK CITY
**CONFLICTS OF
INTEREST BOARD**



RULES OF THE BOARD

REVISED: MARCH 2018

**RULES OF THE BOARD
CONFLICTS OF INTEREST**

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

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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) For the purposes of Charter §2604(b)(5), a public servant may accept free meals or refreshments in the course of and for the purpose of conducting City business under the following circumstances:

(1) when offered during a meeting which the public servant is attending for official reasons;

(2) when offered at a company cafeteria, club or other setting where there is no public price structure and individual payment is impractical;

(3) 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 a refusal to participate and/or individual payment would be impractical;

(4) 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; and

(5) 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.

(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) (1) For the purposes of Charter §2604(b)(5), a public servant's acceptance of travel-related expenses from a private entity can be considered a gift to the City rather than to the public servant, when:

(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; and

(iii) the trip is no longer than reasonably necessary to accomplish the business which is its purpose.

(2) To avoid an appearance of impropriety, it is recommended that for public servants who are not elected officials, each such trip and the acceptance of payment therefor be approved in advance and in writing by the head of the appropriate agency, or if the public servant is an agency head, by a deputy mayor.

(i) A public servant should not accept a "valuable gift," as defined herein, from any person or entity engaged in business dealings with the City. If the public servant receives such valuable gift, he or she should return the gift to the donor. If that is not practical, the public servant should report the receipt of a valuable gift to the inspector general of the public servant's agency, who shall determine the appropriate disposition of the gift. Nothing in this section shall be deemed to authorize a public servant to act in violation of any applicable laws, including the criminal law, 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.

(j) City agencies are encouraged to establish rules concerning gifts for their own employees which may not be less restrictive than as set forth in Charter §2604(b)(5) as interpreted by this section.

(k) (1) Nothing in this section shall be deemed to authorize a public servant to accept a gift of any value in violation of any other applicable federal, state or local law, rule or regulation, including but not limited to the New York State Penal Law.

(2) The provisions of this section shall be read in conjunction with the provisions of Charter §2604(b)(2) and §1-13 of the Rules of the Board (prohibiting certain conduct that conflicts with the proper discharge of a public servant's official duties); §2604(b)(3) of the Charter (prohibiting the use or attempted use of one's City position for private gain); and §2604(b)(13) of the Charter (prohibiting receipt by public servants of compensation except from the City for performing any official duty and prohibiting receipt of gratuities).

§ 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, members of boards and commissions, and public servants in charge of any major office, division, bureau or unit of an agency. 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 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.

§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 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 Definition of Agency Served by a Former Public Servant.

For the purposes of Charter §2604(d)(2), when a former public servant has served more than one agency within one year prior to the termination of such person's service with the City, the former public servant shall not appear before each such City agency for a period of one year after the termination of service from each such agency.

§1-08 Procedures for Obtaining an Extension of Time Within Which to File a Financial Disclosure Report.

(a) *Bases for obtaining an extension of time to file.*

(1) A person required to file a financial disclosure report with the Conflicts of Interest Board (the "Board") pursuant to §12-110 of the Administrative Code of the City of New York (the "Administrative Code") may be granted an extension of time within which to file a report or portion thereof upon a showing of justifiable cause or undue hardship.

(2) A finding of justifiable cause or undue hardship shall not be based on periods of annual leave, attendance at conferences or meetings, or other pre-scheduled or

voluntary absences from work.

(b) *General procedures.*

(1) A request for an extension of time within which to file a financial disclosure report or portions thereof which is due by May first shall be postmarked, or delivery made to the Board, no later than April fifteenth of the year in which such report is to be filed. Where Administrative Code §12-110 requires the filing of such report at a time other than on or before May first, a request for extension of time within which to file shall be postmarked, or delivery made to the Board, no later than fifteen days prior to such filing deadline.

(2) The request for an extension of time shall be mailed to the Board by certified mail or shall be delivered by hand and, upon request, a receipt may be issued upon acceptance of such delivery.

(3) The request for an extension of time within which to file a financial disclosure report or portions thereof due to justifiable cause or undue hardship shall contain the following information:

(i) The name of the person making such request and his or her home address and work address;

(ii) The title of the position or job classification and name of the agency by which he or she is employed;

(iii) Explanation of justifiable cause or undue hardship in the form of a written statement with copies of any necessary supporting documents such person wishes the Board to consider;

(iv) Where the filer is seeking an extension to answer a portion of the report on the grounds that certain information is not yet available, the request shall state what information is not available. Documentation, if available, shall be provided in support of such request (for example, a copy of an application to the Internal Revenue Service for an automatic extension of time within which to file one's income tax return); and

(v) The additional time requested and the date by which such person intends to comply with the filing requirements.

(c) *Time limitations upon extensions.*

(1) The Board shall not grant an extension of time to file a financial disclosure report or portions thereof due to justifiable cause or undue hardship for a period greater than four months from the original date the report was due.

(2) An individual who is seeking an extension of time to answer a portion of the financial disclosure report shall nevertheless file his or her report on or before May first, or at such other time required by Administrative Code §12-110, containing all the information required by such report, except for that information which is not available. A supplemental statement providing information not previously available shall be filed on the date set by the Board. Failure to file such supplemental statement, or the filing of an incomplete or deficient supplemental statement, shall subject the reporting person to the penalties set forth in Administrative Code §12-110(h).

Board action.

(1) Upon receipt of a timely request for an extension of time within which to file a financial disclosure report or portions thereof, the Board shall review the material filed to determine whether an extension is appropriate.

(2) The Board may in its discretion request, in writing, additional information from the person making the request. Such additional information shall be submitted to the Board within ten business days of the date of the Board's request. In the event the Board does not receive the additional information within ten business days, it may make a determination on the basis of the information it has available.

(3) The Board shall give written notice of its determination to the person making the request.

(i) In the event the request for an extension of time within which to file a financial disclosure report or portions thereof is approved, such report shall be filed on or before the date indicated by the Board in its determination.

(ii) In the event the request for an extension of time within which to file a financial disclosure report or portions thereof is denied, such report shall be filed before or on the due date set forth in Administrative Code §12-110 or such date as may thereafter be established by the Board in its determination.

(4) The Board may delegate to its Executive Director the authority to act pursuant to this rule.

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

(a) *Definitions.*

Appear.

"Appear," in accordance with Charter Section 2601(4), means to make any communication, for compensation, other than those involving ministerial matters.

Indirect Appearance.

A member of the Commission will be deemed to "appear indirectly" before a City agency concerning a particular matter if he or she communicates indirectly with such agency, by, for example, having another person, including but not limited to a member of the Commissioner's firm, represent to the agency orally or in writing what the Commissioner's views are on such matter. An indirect appearance will not include, in and of itself and without more, the presentation of project plans or documents bearing the Commissioner's name or seal.

Ministerial.

A "ministerial" matter, in accordance with Charter Section 2601(15), shall mean an administrative act, including the issuance of a license, permit or other permission by the City which is carried out in a prescribed manner and which does not involve substantial personal discretion.

(b) *Prohibited appearances.*

(1) For the purposes of Charter Section 192(b), no member of the City Planning Commission (the Commission) while serving as a member, shall appear directly or indirectly before: the Mayor and Deputy Mayors and their staffs; the Mayor's Office of Planning and Coordination; the offices of the Borough Presidents; the City Council; community boards; the Art Commission; the Office of Environmental Coordination; the Landmarks Preservation Commission; and the Hardship Appeals Panel to which certain determinations of the Landmarks Preservation Commission may be appealed.

(2) For the purposes of Charter Section 192(b), no member of the Commission, while serving as a member, shall appear directly or indirectly:

(i) before the Department of Buildings on any matter involving zoning or land use, 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 supervisor or the Commissioner of the Department of Buildings shall be prohibited;

(ii) before the Board of Standards and Appeals on any matter involving zoning or land use;

(iii) before the Department of Consumer Affairs with respect to licenses and permits which involve land use;

(iv) before the Department of Business Services (DBS), and any local development corporation that has entered into a contract with the City to perform services on behalf of DBS, on any matter involving zoning or land use;

(v) before any City agency with respect to planning, environmental, financial or other aspects of a project that can reasonably be expected to come before the Commission for a statutory approval or other formal action, including, but not limited to action on major concessions, franchises, the acquisition, use or disposition of City-owned land, an application for a zoning change or special permit, or any action before the Commission pursuant to the Uniform Land Use Review Procedure.

§1-10 Retention of Financial Disclosure Reports.

(a) Definitions.

As used in this Rule, the following terms shall have the respective meanings set forth below:

(1) "Administrative Code" shall mean the Administrative Code of the City of New York.

(2) "Board" shall mean the New York City Conflicts of Interest Board, established pursuant to §2602 of the New York City Charter.

(3) "Financial Disclosure Report" shall mean any financial disclosure report filed or on file with the Board pursuant to §12-110 of the Administrative Code, including reports previously filed with the Office of the City Clerk and transferred to the Board's custody.

(4) "Prior Financial Disclosure Report" shall mean any Financial Disclosure Report which, as of the effective date of this Rule, has been retained by the Board for a period in excess of six years from December 31 of the calendar year to which such Report relates.

(b) Retention of Financial Disclosure Reports.

(1) Whenever a Financial Disclosure Report is filed with the Board, it shall be retained by the Board for a period commencing on the date such Report was filed with the Board and expiring on the sixth anniversary of December 31 of the calendar year to which such Report relates. The period during which the Board is required to retain a Financial Disclosure Report, pursuant to this paragraph (1), is hereinafter referred to as the "Required Retention Period" for such Report.

(2) (i) Except as provided in subparagraphs (ii) and (iii) below, upon expiration of the Required Retention Period for a Financial Disclosure Report, pursuant to paragraph (1) above, the Board shall either (i) destroy such report, or (ii) if requested by the individual who filed such report, return such report to such individual. Any request that the Board return such report must be made in writing to the Board not later than 10 days prior to the expiration of such period.

(ii) Notwithstanding the provisions of subparagraph (i), if a law enforcement agency requests that the Board retain a Financial Disclosure Report for an additional period of time beyond the expiration of its required retention period, for purposes of an ongoing investigation, the Board shall retain such report for such additional period, provided the request is made in writing and is submitted to the Board not later than 10 days prior to the expiration of such required retention period. Upon expiration of such additional period of time, the Board shall either (i) destroy such report, or (ii) if requested by the individual who filed such report, return such report to such individual. Any such request must be made in accordance with the provision of subparagraph (i) above.

(iii) Notwithstanding the provisions of subparagraph (i), all reports shall be retained by the Board for a period of not less than one year from the date such report was filed with the Board.

(3) In accordance with the provisions of subdivision (e) of Administrative Code §12-110, as amended by Local Law No. 93 of 1992, the retention period established in paragraph (1) is intended to supersede, and shall be observed by the Board in lieu of, the retention periods set forth in such subdivision (e).

(4) Notwithstanding any other provision of this section, the Board shall be entitled, upon the effective date of the Rule, to destroy immediately all Prior Financial Disclosure Reports then in its possession.

§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 Conduct Prohibited by City Charter §2604 (b)(2).

(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, personnel, equipment, resources, or supplies for any non-City purpose.

(c) (1) A public servant may pursue a personal and private activity during normal business hours and may use City equipment, resources, personnel, and supplies, but not City letterhead, if

(i) the type of activity has been previously approved for employees of the public servant’s agency by the Conflicts of Interest Board, upon application by the agency head and upon a determination by the Board that the activity furthers the purposes and interests of the City; and

(ii) the public servant shall have received approval to pursue such activity from the head of his or her agency.

(2) In any instance where a particular activity may potentially directly affect another City agency, the employee must obtain approval from his or her agency head to participate in such particular activity. The agency head shall provide written notice to the head of the potentially affected agency at least 10 days prior to approving such activity.

(d) 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 the performance of conduct that violates any provision of City Charter §2604.

(e) Nothing contained in this section shall preclude the Conflicts of Interest Board

from finding that conduct other than that proscribed by subdivisions (a) through (d) of this section violates City Charter §2604(b)(2), although the Board may impose a fine for a violation of City Charter §2604(b)(2) only if the conduct violates subdivision (a), (b), (c), or (d) of this section. The Board may not impose a fine for violation of subdivision (d) where the public servant induced or caused another public servant to engage in conduct that violates City Charter §2604(b)(2), unless such other public servant violated subdivision (a), (b), or (c) of this section.

§ 1-14 City Employees Holding Policymaking Positions for Purposes of the Financial Disclosure Law.

For purposes of Administrative Code §12-110(b)(3)(a)(3), a City employee shall be deemed to hold a policymaking position, and therefore be required to file a Financial Disclosure Report, if such employee is charged with substantial policy discretion within the meaning of Section 1-02 of Title 53 of the Rules of the City of New York.

§ 1-15 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.

§ 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 is 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;¹

(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;

¹ § 3-211 of the Administrative Code is set forth in Appendix C herein.

(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.

Effective date: January 26, 2007

Chapter 2: *Procedural Rules for Hearings*

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§2-01 Initial Determination.

(a) *Notice.*

If the Board makes an initial determination, based on a complaint, investigation, or other information available to the Board, that there is probable cause to believe that a public servant (which for purposes of Charter §2603(h) includes a former public servant) has violated a provision of Chapter 68 of the City Charter, the Board shall notify the public servant of its determination in writing. The notice shall contain a statement of the facts upon which the Board relied for its determination of probable cause and a statement of the provisions of law allegedly violated. The notice shall afford the public servant an opportunity, either orally or in writing, to respond to, explain, rebut, or provide information concerning the allegations in such notice within fifteen days of service of the notice. The notice shall also inform the public servant of his or her right to be represented by counsel or any other person, and shall include a copy of the Board's procedural rules. A notice of initial determination shall not be required in a proceeding brought pursuant to Section 12-110 of the Administrative Code.

(b) *Request for a stay.*

In response to the Board's notice, the public servant may apply to the Board for a stay of the proceedings, for good cause shown. The Board may grant or deny such request in its sole discretion.

(c) *Admission of facts.*

If, in response to the Board's notice, the public servant admits to the facts contained therein or to a violation of the provisions of Chapter 68 of the City Charter and elects to forgo a hearing, the Board may, after consulting with the head of the agency

served or formerly served by the public servant, or, in the case of an agency head, after consulting with the Mayor, issue an order finding a violation and imposing the penalties it deems appropriate under Chapter 68 of the City Charter, provided, however, that pursuant to Charter §2603(h)(3), the Board shall not impose penalties against members of the City Council, or public servants employed by the City Council or by members of the City Council, but may recommend to the City Council such penalties as the Board deems appropriate. When a penalty is recommended, the City Council shall report to the Board what action was taken.

(d) *No probable cause finding.*

If, after receipt of the public servant's response, the Board determines that there is no probable cause to believe that a violation has occurred, the Board shall dismiss the matter and inform the public servant in writing of its decision.

§2-02 Commencement of Formal Proceedings and Pleadings.

(a) *Determination of probable cause.*

If, after consideration of the public servant's response, the Board determines that there remains probable cause to believe that a violation of the provisions of Chapter 68 of the City Charter has occurred, and the public servant has not elected to forgo the hearing, the Board shall hold or direct a hearing to be held on the record to determine whether such violation has occurred.

If the public servant is subject to the jurisdiction of a state law provision or collective bargaining agreement which provides for the conduct of a disciplinary hearing by another body, the Board shall refer the matter to the appropriate entity. The hearing shall be conducted in accordance with the rules of that entity.

The Board may also refer a matter to the public servant's agency if the Board deems the violation to be minor or if other disciplinary charges are pending there against the public servant.

(b) *Petition.*

The Board shall institute formal proceedings by serving a petition on the public servant. The petition shall set forth the facts which, if proved, would constitute a violation of Chapter 68 of the City Charter or Section 12-110 of the Administrative Code, as well as the applicable provisions thereof which are alleged to have been violated. The petition shall also advise the public servant of the public servant's rights to file an answer, to a hearing, to be represented at such hearing by counsel or any other person, and to cross-examine witnesses and present evidence.

(c) *Answer.*

(1) *General rule.*

The public servant shall answer the petition by serving an answer on the Board within eight days after service of the petition, unless a different time is fixed by the Board. The public servant shall serve the answer personally or by certified or registered mail, return receipt requested.

(2) *Form and contents of answer.*

The answer shall be in writing and shall contain specific responses, by admission, denial, or otherwise, to each allegation of the petition and shall assert all affirmative defenses, if any. The public servant may include in the answer matters in mitigation. The answer shall be signed and shall contain the full name, address, and telephone number of the public servant. If the public servant is represented, the representative's name, address, and telephone number shall also appear on the answer, which shall be signed by either the public servant or by his or her representative.

(3) *Effect of failure to answer.*

If the public servant fails to serve an answer, all allegations of the petition shall be deemed admitted and the Board shall proceed to hold a hearing in which prosecuting counsel shall submit for the record an offer of proof establishing the factual basis on which the Board may issue an order. If the public servant fails to respond specifically to any allegation or charge in the petition, such allegation or charge shall be deemed admitted.

(d) *Amendment of pleadings.*

Pleadings shall be amended as promptly as possible upon conditions just to all parties. If a pleading is to be amended less than twenty-five days before the commencement of the hearing, the amendment may be made only on consent of the parties or by leave of the Board, if the Board is conducting the hearing, or by leave of a Board member or Administrative Law Judge, if the Board member or Administrative Law Judge is conducting the hearing.

§2-03 Hearing.

(a) *Conduct of hearings generally.*

Hearings shall be conducted by the Board or, upon designation by the Board, by a

member of the Board or the Chief Administrative Law Judge of the Office of Administrative Trials and Hearings (OATH), or such administrative law judge (ALJ) as the Chief Administrative Law Judge shall assign.

(b) *Subpoenas.*

Subpoenas requiring the attendance of a witness and subpoenas *duces tecum* requiring the production of books, papers, and other things may be issued only by (i) the Administrative Law Judge, where the hearing has been referred to OATH, or (ii) a member of the Board, where the hearing is conducted by the Board or by a member of the Board, upon application of a party or upon the Administrative Law Judge's or the Board member's own motion. In addition to or in lieu of these subpoenas, the Administrative Law Judge or the Board member may also issue an order directing the party or person under the control of a party to attend or produce.

(c) *Conduct of hearings by OATH.*

If the Board refers a hearing to OATH, a copy of the petition shall also be sent to OATH at the time the public servant is served with the petition. OATH shall conduct the hearing in accordance with its rules, as set forth in Title 48 of the Rules of the City of New York, except as otherwise provided by these Rules.

(d) *Conduct of hearings by the Board or by a Board member.*

(1) *Generally.*

The Board may hear a case or may designate a member of the Board to hear a case, make findings of fact and conclusions of law, preside over pre-hearing matters and adjournments, and make recommendations to the Board for the proposed disposition of the proceeding. When a hearing is conducted by the Board, the hearing shall be presided over by the Board's Chair or by his or her designee. The Board or Board member shall conduct the hearing, including such pre-hearing matters as conferences, discovery, and motion practice, in conformance with the rules and procedures of OATH, as set forth in Title 48 of the Rules of the City of New York, except as otherwise provided by these rules.

(2) *Disposition conferences and agreements.*

If disposition of the proceeding is to be discussed at a conference, the Board shall designate an individual, other than a Board member participating in the hearing, to conduct the conference. During disposition discussions, upon notice to the parties, the person conducting the conference may confer with each party and/or representative separately. Board members shall not be called to testify in any proceeding concerning statements made at a disposition conference.

(3) *Order of proceedings.*

Prosecuting counsel shall have the burden of proof by the preponderance of the evidence, shall initiate the presentation of evidence, and may present rebuttal evidence. The public servant may introduce evidence after prosecuting counsel has completed his or her case. Opening statements, if any, shall be made first by prosecuting counsel. Closing statements, if any, shall be made first by the public servant. This order of proceedings may be modified at the discretion of the Board or Board member.

§2-04 Decisions and Orders.

(a) *Report to the Board.*

When a hearing has been conducted by either OATH or a member of the Board designated to hear the case, a report of recommended findings of fact and conclusions of law and recommendations for the disposition of the proceeding shall be issued and forwarded, along with the original transcript of the proceeding and all documents introduced into the record, to the Board for review and final action. The report shall not be made public. A copy of the report and recommendation shall be sent to all parties and their counsel or other representative in order to afford them the opportunity to comment before final action is taken by the Board. If prosecuting counsel or the public servant wishes to comment, he or she shall do so within ten days of service of the report and recommendation.

(b) *Finding of violation.*

If after the hearing and upon a consideration of all the evidence in the record of hearing, including comments, the Board finds that a public servant has engaged in conduct prohibited by Chapter 68 of the City Charter, the Board shall consult with the head of the agency served or formerly served by the public servant, or in the case of an agency head, consult with the Mayor. Where the Board finds a violation of Chapter 68 or section 12-110 of the Administrative Code, the Board shall state its final findings of fact and conclusions of law and issue an order imposing any penalties it deems appropriate under either statute. The order shall include notice of the public servant's right to appeal to the New York State Supreme Court. Alternatively, in the case of a violation of Chapter 68, the Board may state its findings and conclusions and recommend a penalty, if any, to the head of the agency served by the public servant or former public servant or, in the case of an agency head or former agency head, to the Mayor. Pursuant to Charter §2603(h)(3), the Board shall not impose penalties against members of the City Council, or public servants employed by the City Council or by members of the City Council, but may state its findings and conclusions and recommend to the City Council such penalties as the Board deems appropriate. When a penalty is recommended, the head of the agency, Mayor, or City Council shall report to the Board what action was taken.

(c) *Consultation by agency.*

In instances where the Board does not hold a hearing and instead refers a matter to the public servant's agency, that agency shall consult with the Board prior to issuing its final decision.

(d) *Dismissals.*

If, after the hearing and upon consideration of the record, the Board finds that a public servant has not engaged in acts prohibited by Chapter 68 of the City Charter or section 12-110 of the Administrative Code, the Board shall state its findings of facts and conclusions of law and shall issue an order dismissing the petition. The order shall not be made public.

§2-05 General Matters.

(a) *Appearances before the Board.*

(1) A party may appear before the Board in person, by an attorney, or by a duly authorized representative. The person appearing for the party shall file a notice of appearance with the Board. The filing of any papers by an attorney or other representative who has not previously appeared shall constitute the filing of a notice of appearance by that person and shall conform to the requirements of paragraphs (2) and (4) of this subdivision.

(2) 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 shall be indicated by the suffix "Esq." and the designation "Attorney for (person represented)." The appearance of any other person shall be indicated by the designation "Representative for (person represented)."

(3) Absent extraordinary circumstances, no application shall be made or argued by any attorney or other representative who has not filed a notice of appearance.

(4) A person may not file a notice of appearance on behalf of a party unless the person has been retained by that party to represent the party before the Board. Filing a notice of appearance constitutes a representation that the person appearing has been so retained.

(b) *Withdrawal and substitution of counsel.*

(1) An attorney who has filed a notice of appearance shall not withdraw from representation without the permission of the Board, upon application. Withdrawals shall not be granted unless upon consent of the client or when other cause exists, as delineated

in the applicable provisions of the Code of Professional Responsibility.*

(2) Notices of substitution of counsel served and filed more than twenty days prior to a hearing before the Board or before a member of the Board may be filed without leave of the Board or Board member. Notices of substitution of counsel served and filed less than twenty-one days prior to a hearing before the Board or before a member of the Board may be filed only with the permission of the Board or Board member, which permission shall be freely given, absent prejudice or substantial delay of the proceedings.

(c) Service of petition by Board.

A petition shall be served on the public servant

(i) in the manner provided in Section 312-a, or subdivisions 1, 2, or 4 of Section 308, of the New York Civil Practice Law and Rules for service of a summons or

(ii) by both certified mail, return receipt requested, and first class mail to the public servant's last known residence or actual place of business or

(iii) in such manner as the Board directs, if service is impracticable under paragraphs (i) and (ii) of this subdivision, or

(iv) in any manner agreed upon by counsel to the Board and the public servant or his or her representative.

Service of other documents by Board.

Notices, orders, and all other documents, except petitions and subpoenas, originating with the Board shall be served on the public servant

by personal delivery to the public servant or

by first class mail to the public servant's last known residence or actual place of business or

by overnight delivery service to the public servant's last known residence or actual place of business or

by telephonic facsimile (FAX) or similar transmission or

by leaving the paper at the public servant's last known residence with a person of suitable age and discretion or

in such manner as the Board directs, if service is impracticable under paragraphs (1), (2), (3), (4), or (5) of this subdivision, or

* Now the Rules of Professional Conduct

in any manner agreed upon by counsel to the Board and the public servant or his or her representative. Where the public servant has appeared by a representative, all papers served by the Board subsequent to that appearance shall be served upon the representative by one of the methods provided in paragraphs (1)-(7) of this subdivision.

(e) *Computation of time.*

The computation of any time period referred to in these rules shall be calculated in calendar days, except that when the last day of the time period is a Saturday, Sunday, or public holiday, the period shall run until the end of the next following business day. Where a period of time prescribed by the rules set forth in this chapter is measured from the service of a paper and service of that paper is made in the manner provided by paragraph (ii) of subdivision (c) or paragraph (2) of subdivision (d) of this section, five days shall be added to the prescribed period.

(f) *Confidentiality.*

All matters relating to complaints submitted to or inquired into by the Board, or any action taken by the Board in connection therewith or hearings conducted by the Board or OATH, shall be kept confidential unless the public servant waives confidentiality and the Board determines that confidentiality is not otherwise required. Hearings conducted by the Board or by OATH shall be public if requested by the public servant. Final findings, conclusions, and orders issued upon a violation of Chapter 68 shall be made public.

(g) *Ex Parte communications with Board.*

(1) After service of the petition in a case, counsel conducting the prosecution of the case on behalf of the Board shall not communicate *ex parte* with any member of the Board concerning the merits of the case, except as provided in paragraph (2) of this subdivision.

(2) Counsel conducting the prosecution of a case on behalf of the Board may communicate *ex parte* with the Board, or any member thereof, with respect to ministerial matters involving the case or on consent of the respondent or respondent's counsel or in an emergency.

(h) *Disposition by agreement.*

At any time after the service of a notice of probable cause in a proceeding brought pursuant to Chapter 68 or at any time after service of a petition in a proceeding brought pursuant to Section 12-110 of the Administrative Code, the public servant and the Board

may agree to dispose of the case by agreement. For this purpose, the Board or any Board member designated by the Board may conduct a disposition conference, provided that, when the Board or a member of the Board conducts or is to conduct the hearing, the Board shall comply with the requirements of section 2-03(d)(2). All offers of disposition, whether made at a conference, hearing, or otherwise, shall be confidential and shall be inadmissible at trial of any case. If a disposition by agreement is reached, it shall be reduced to writing and signed by the public servant or his or her representative and the Board or, in the discretion of the Board, placed on the record. When a disposition by agreement contains an acknowledgment that a public servant's conduct has violated a provision of Chapter 68 of the City Charter or Section 12-110 of the Administrative Code, that disposition by agreement shall be made public by the Board.

(i) *OATH rules.*

In the event of any inconsistency between these rules and the rules of the Office of Administrative Trials and Hearings, these rules shall govern.

Chapter 3: *Organizations Affiliated with Elected Officials*

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§ 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, including:

- (a) whether the organization was created by such an elected official or the official's agent, 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) the purpose 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) To comply with 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) the name of any donor who, as of the date of such donation, was either listed in the City's Doing Business Database or who was a household member of a person listed in the City's Doing Business Database;
 - (ii) the name of any donor who was added to the City's Doing Business Database within 180 days after the receipt of such donation or who was a household member of a person added to the City's Doing Business Database within 180 days after the receipt of such donation;
 - (iii) 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;
 - (iv) the name of any donor who made a donation with a reasonable value of \$1,000 or more;
 - (v) the city and state of residence of the donor;
 - (vi) the date of each donation;
 - (vii) the value of each donation;
 - (viii) the value of any excess donation refunded pursuant to Administrative Code §§ 3-903(a) or 3-903(b); and
 - (ix) 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 Administrative Code § 3-902(a)(7) and 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 concludes 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

- (1) An unrestricted organization must submit the information listed in Administrative Code §§ 3-902(a)(1) to (a)(9).
- (2) To comply with the reporting requirement of Administrative Code § 3-902(a)(6), an unrestricted 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 within 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), 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 listed in the Doing Business Database, or is the domestic partner, spouse, or unemancipated

child 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 concludes 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 must be reported pursuant to Administrative Code § 3-902(a)(6).

(3) To comply with the reporting requirement of Administrative Code § 3-902(a)(7), an unrestricted organization must submit to the Board the names of any individuals who or entities that made a donation with a reasonable value of \$1,000 or more, whether in a single donation or in multiple donations. If an unrestricted organization receives multiple donations from the same individual or entity, the aggregate value of which has a reasonable value of \$1,000 or more, the organization must report the date and value of every donation from that individual or entity.

(4) To comply with the reporting requirement of Administrative Code § 3-902(a)(8), an unrestricted 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, an unrestricted 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.

(5) To comply with the reporting requirement of Administrative Code § 3-902(a)(9), an unrestricted organization must report its total expenditures for the previous calendar year and, for the current calendar year, both total budgeted expenditures and budgeted expenditures for elected official communications.

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

(1) Pursuant to Administrative Code § 3-902(b), an organization affiliated with an elected official 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.

Note on Effective Date: Chapter 3 takes effect on March 16, 2018, except that Board Rules Sections 3-04(a)(1), 3-04(a)(2), 3-04(a)(6), 3-04(b), and 3-04(c) take effect on January 1, 2019.

APPENDIX A

Other Relevant Law

I. Executive Order No. 16 (1978)

§ 4(d)

Every officer and employee of the City shall have the affirmative obligation to report, directly and without undue delay, to the Commissioner or an Inspector General any and all information concerning conduct which they know or should reasonably know to involve corrupt or other criminal activity or conflict of interest, (i) by another City officer or employee, which concerns his or her office or employment, or (ii) by persons dealing with the City, which concerns their dealings with the City. The knowing failure of any officer or employee to report as required above shall constitute cause for removal from office or employment or other appropriate penalty.

II. Section 192 City Planning Commission

§ 192 (b)

Members, except for the chair, shall not be considered regular employees of the City for the purposes of Chapter 68. The agency served by the members of the Commission shall for purposes of Chapter 68 be deemed to be both the Commission and the Department of City Planning. No member, while serving as a member, shall appear directly or indirectly before the Department, the Commission, or any other City agency for which the Conflicts of Interest Board shall, by rule, determine such appearance creates a conflict of interest with the duties and responsibilities of the member. No firm in which a member has an interest may appear directly or indirectly before the Department or Commission. For purposes of this section, the terms “agency,” “appear,” “firm,” and “interest” shall be defined as provided in Chapter 68.

III. Regulation of Lobbying

§ 3-211 of the Administrative Code

§ 3-211 **Definitions.** Whenever used in this subchapter, the following words and

phrases shall be construed as defined in this section:

(a) The term “lobbyist” shall mean every person or organization retained, employed or designated by any client to engage in lobbying. The term “lobbyist” shall not include any officer or employee of the city of New York, the State of New York, any political subdivision of the State, or any public corporation, agency or commission, or the United States when discharging his or her official duties.

IV. Lobbyist Gift Law

§ 3-224 through § 3-228 of the Administrative Code

§ 3-224. **Definitions.** Whenever used in this subchapter, the term “public servant” shall mean a public servant as defined in subdivision nineteen of section two thousand six hundred one of the charter.

§ 3-225. **Prohibition of gifts.** No person required to be listed on a statement of registration pursuant to section 3-213(c)(1) of subchapter 2 of this chapter shall offer or give a gift to any public servant.

§ 3-226. **Enforcement.** Complaints alleging violations of this subchapter shall be made, received, investigated and adjudicated in a manner consistent with investigations and adjudications of conflicts of interest pursuant to chapters sixty-eight and thirty-four of the charter.

§ 3-227. **Penalties.** Any person required to be listed on the statement of registration pursuant to section 3-213(c)(1) that knowingly and willfully violates any provision of this subchapter shall be subject to a civil penalty, which for the first offense shall be not less than two thousand five hundred dollars and not more than five thousand dollars, for the second offense not less than five thousand dollars and not more than fifteen thousand dollars, and for the third and subsequent offenses not less than fifteen thousand dollars and not more than thirty thousand dollars. In addition to such civil penalties, for the second and subsequent offenses a person required to be listed on the statement of registration pursuant to section 3-213(c)(1) that knowingly and willfully violates the provisions of this subchapter shall also be guilty of a class A misdemeanor.

§ 3-228. **Rulemaking.** The conflicts of interest board, in consultation with the clerk, shall adopt such rules as necessary to ensure the implementation of this subchapter, including rules defining prohibited gifts and exceptions including de minimis gifts, such as pens and mugs, gifts that public servants may accept as gifts to the city and gifts from family members and close personal friends on family or social occasions, and to the extent practicable, such rules shall be promulgated in a manner consistent with the rules and advisory opinions of such board governing the receipt of valuable gifts by public servants.

FOR ADDITIONAL INFORMATION, CONTACT

**NEW YORK CITY CONFLICTS OF INTEREST BOARD
2 LAFAYETTE STREET, SUITE 1010
NEW YORK, NY 10007
212-442-1400 (TDD 212-442-1443)**

OR VISIT THE BOARD'S WEB SITE AT
<http://nyc.gov/ethics>