

September 28, 2023 – Open Meeting Matter

To: The Board

From: Christopher M. Hammer *cmh*

Date: September 19, 2023

Re: Proposed Amendments to Board Rules Chapter 2:
Procedural Rules for Enforcement Actions

In 2019, the Board comprehensively revised Board Rules Chapter 2, which governs the Board's enforcement process, "both to reflect [the Board's] current enforcement process and to improve, where needed, various aspects of that process." Board Rules Chapter 2, Statement of Basis and Purpose (City Record, August 30, 2019). In the four years since that revision, the Board has issued 184 public dispositions, including 8 orders after hearings before the New York City Office of Administrative Trials and Hearings ("OATH"). Staff has reflected on how Chapter 2 works in practice and proposes several amendments to continue to improve Chapter 2, attached in tracked changes format as **Exhibit 1**.

The main substantive amendments proposed, which are explained in detail in the draft Statement of Basis and Purpose, attached as **Exhibit 2**, would amend Chapter 2 by:

1. Applying the procedures contained in Chapter 2 to enforcement of intentional violations of the Annual Disclosure Law;
2. Reordering closing statements to follow standard trial practice;
3. Establishing a page limit for written closing statements or comments on the OATH Report and Recommendation;
4. Extending the prohibition on *ex parte* communications with the Board and its counsel to a respondent or respondent's representative; and

5. Specifying that, where the Board has found a violation and imposed a fine, the Board may seek garnishment of a respondent's wages if the respondent is a current City employee.

In addition to these substantive changes, the proposed amendments to Chapter 2 also include clarifying edits. These clarifying edits are in two broad categories: organizational edits so that the order of the sections follows the chronology of a case and descriptive edits to assist respondents and their representatives in understanding the enforcement process. Specifically, these edits:

- Replace the terms “informal proceedings” and “formal proceedings,” which refer to the proceedings prior to a hearing at OATH and the proceedings during and after a hearing at OATH, respectively, with more descriptive language;
- Replace lists of the individual laws subject to various Board enforcement procedures throughout Chapter 2 with a citation to the list of applicable laws identified at Board Rules § 2-01(a) and replace spelled out numbers with just numerals;
- Relabel Board Rules § 2-02(c) as “sustaining probable cause” and restructure the existing subsection into two paragraphs explaining what happens depending on whether a public servant is entitled to disciplinary rights or not;
- Refer to “respondent or respondent’s representative” instead of just “respondent” in Board Rules § 2-03;
- Move the procedures for a representative’s notice of appearance, substitution, or withdrawal at OATH from Board Rules § 2-02 to Board Rules § 2-03 to match the stage in the enforcement process;
- Refer to evidence “admitted,” rather than “introduced,” at trial when describing post-hearing practice and procedure in Board Rules § 2-03; and
- Clarify that a final Board order will be sent to the respondent and respondent’s representative by email or first class mail to reflect the ubiquity of email service in legal proceedings.

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

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); ~~and~~
- (5) § 12-110(g)(2) of the Administrative Code (the Annual Disclosure 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 person or firm alleged to have violated a law identified in subsection (a) of this section~~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 officials, 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 Notices of Probable Cause and Pre-Hearing Procedures~~Informal Proceedings.~~

(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 before it files a Petition at OATH~~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) *Sustaining probable cause*~~*Referral to agency.*~~

(1) 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.~~

- (i1) If the agency does not pursue disciplinary action against the respondent, the Board will commence formal proceedings against the respondent.
- (ii2) 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.

(2) If the Board sustains its initial determination of probable cause against a respondent who is not entitled to disciplinary rights as described in Charter § 2603(h)(2), the Board will file a petition at OATH against the respondent pursuant to Board Rules § 2-03(b)(1).

(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 ~~a law identified in Board Rules § 2-01(a)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 ~~a law identified in Board Rules § 2-01(a)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 Enforcement Hearings and Post-Hearing Procedures ~~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~~ at OATH.*

(1) The Board will ~~commence formal proceedings at OATH by~~ serveing 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), the respondent, respondent's representative, or any enforcementBoard 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) The respondent, respondent's representative, or aAn 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. The OATH Rules govern the procedures for a Notice of Appearance, withdrawal, or substitution of the 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 ~~Board 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 or respondent's representative 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 or respondent's representative may present evidence. The enforcement attorney may present rebuttal evidence.
- (4) If closing statements are made orally at the end of a hearing, the respondent or respondent's representative may~~enforcement attorney will~~ make a closing statement first, after which the ~~enforcement attorney will~~respondent may make a closing statement. If closing statements are authorized to be made in writing, the parties' closing statements may not exceed 30 double-spaced pages.

(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 ~~admitted~~introduced into ~~evidence~~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, which may not exceed 30 double-spaced pages, 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, which may not exceed 15 double-spaced pages, 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 ~~only~~ consider ~~new~~ evidence admitted at trial 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 a law identified in Board Rules § 2-01(a)~~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 a law identified in Board Rules § 2-01(a)~~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 email or 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 pursue all remedies, which may include garnishment of City wages or referral ~~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 laws identified in Board Rules § 2-01(a) 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).

1 **New York City Conflicts of Interest Board**

2
3 **Notice of Public Hearing and Opportunity to Comment on Proposed Rules**
4 **Regarding Procedural Rules for Enforcement Actions**

5
6 **What are we proposing?** The Conflicts of Interest Board intends to amend its rules by
7 updating its procedural rules for enforcement actions brought pursuant to Charter §
8 2603(h).

9
10 **When and where is the hearing?** The Conflicts of Interest Board will hold a public
11 hearing on the proposed rule. The public hearing will take place at [time] on [date]. The
12 hearing will be at [place].

13
14 This location has the following accessibility option(s) available: []

15
16 **How do I comment on the proposed rules?** Anyone can comment on the proposed
17 rules by:

- 18
- 19 • **Website.** You can submit comments to the Conflicts of Interest Board through the
20 NYC Rules website at <http://rules.cityofnewyork.us>.
 - 21
 - 22 • **Email.** You can email comments to Rules@coib.nyc.gov.
 - 23
 - 24 • **By speaking at the hearing.** Anyone who wants to comment on the proposed
25 rule at the public hearing may speak for up to three minutes. It is recommended,
26 but not required, that commenters sign up prior to the hearing by contacting the
27 Conflicts of Interest Board by telephone at (212) 437-0730 or by email at
28 kmiller@coib.nyc.gov. You can also sign up in the hearing room before the hearing
29 begins on [date].
 - 30

31 **Is there a deadline to submit comments?** Yes. You must submit written comments by
32 [date].

33
34 **Do you need assistance to participate in the hearing?** You must tell the Conflicts of
35 Interest Board if you need a reasonable accommodation of a disability at the hearing,
36 including if you need a sign language interpreter. You can advise us by telephone at
37 (212) 437-0730 or by email at kmiller@coib.nyc.gov. You must tell us by [date].

38
39 **Can I review the comments made on the proposed rules?** Yes. You can review the
40 comments made online on the proposed rules by going to the website at
41 <http://rules.cityofnewyork.us>. Copies of all comments submitted online, copies of all
42 written comments, and a summary of oral comments concerning the proposed rule will
43 be available to the public on the Conflicts of Interest Board's website
44 ([https://www1.nyc.gov/site/coib/public-documents/open-meetings-and-public-](https://www1.nyc.gov/site/coib/public-documents/open-meetings-and-public-hearings.page)
45 [hearings.page](https://www1.nyc.gov/site/coib/public-documents/open-meetings-and-public-hearings.page)) as soon as practicable.

1 **What authorizes the Conflicts of Interest Board to make this rule?** Sections 1043
2 and 2603 of the City Charter and Sections 3-228, 3-907, and 3-1106 of the Administrative
3 Code authorize the Conflicts of Interest Board to make this proposed rule. These rules
4 were included in the Conflicts of Interest Board’s regulatory agenda for this fiscal year.

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

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

12
13 **STATEMENT OF BASIS AND PURPOSE**
14

15 In 2019, the Conflicts of Interest Board (the “Board”) comprehensively revised
16 Chapter 2 of the Rules of the Board, which governs the Board’s enforcement process,
17 “both to reflect its current enforcement process and to improve, where needed, various
18 aspects of that process.” Board Rules Chapter 2, Statement of Basis and Purpose (City
19 Record, August 30, 2019). With four years of additional perspective on how Chapter 2
20 works in practice, the Board proposes to clarify and update these procedures.

21 1. Applicability of Chapter 2 to the Annual Disclosure Law

22 In its 2019 revisions to Chapter 2, the Board eliminated references to the Annual
23 Disclosure Law, Administrative Code § 12-110. The Board subsequently codified in
24 Board Rules § 4-07 procedures for assessing penalties against annual disclosure filers
25 who submit late reports in violation of Administrative Code § 12-110(g)(1). However, for
26 intentional violations of the Annual Disclosure Law, identified in administrative Code § 12-
27 110(g)(2), such as failure to include or misstatement of assets or liabilities, the Board has
28 historically utilized the process of, and done so in conjunction with, the enforcement of
29 Chapter 68 violations. Accordingly, the Board proposes to reinsert a reference to
30 Administrative Code § 12-110(g)(2) so that the procedures contained in Chapter 2 apply

1 to enforcement of that provision in the Annual Disclosure Law. See Proposed Board
2 Rules § 2-01(a)(5).

3 2. Order of Closing Statements

4 Prior to 2019, former Board Rules § 2-03(d)(3) provided that closing statements at
5 a hearing “shall be made first by the [respondent].” The 2019 amendments to Board
6 Rules Chapter 2 switched this order to provide that “[t]he enforcement attorney will make
7 a closing statement first, after which the respondent may make a closing statement.”
8 Board Rules § 2-03(f)(4). This amendment is inconsistent with standard trial practice.
9 The Board thus proposes to reorder closing statements so that the respondent or
10 respondent’s representative would have the opportunity to give a closing statement first,
11 followed by the enforcement attorney. See Proposed Board Rules § 2-03(f)(4). The
12 proposed amendment will conform the Board’s procedures to the standard trial practice
13 of giving the party with the burden of proof the final word.

14 3. Page Limit for Written Statements

15 Where a party is authorized to submit a written closing statement in lieu of an oral
16 closing statement, a comment to the Administrative Law Judge’s (“ALJ’s”) Report and
17 Recommendation, or a response to the other party’s comment, they are not presently
18 subject to page limits. The Board proposes to adopt a limit of 30 double-spaced pages
19 for written closing statements or comments to the ALJ’s Report and Recommendation
20 and 15 double-spaced pages for a response to the other party’s comment on the Report
21 and Recommendation. This proposed rule mirrors the page limits contained in the
22 Federal Rules of Appellate Procedure. See Proposed Board Rules § 2-03(f)(4); Fed. R.
23 App. P. 32(a)(7)(A).

1 4. Ex Parte Communications

2 Board Rules § 2-03(c) retains the Board’s longstanding prohibition of *ex parte*
3 communications between the enforcement attorney and the Board and counsel to the
4 Board when the Board reviews the OATH Report and Recommendation and makes its
5 final determination. In practice, the Board and its counsel discourage *ex parte*
6 communications by either party, and the Board proposes to codify this practice. See
7 Proposed Board Rules § 2-03(c).

8 5. Garnishment of City Wages to Collect Penalty

9 The proposed amendment to Board Rules § 2-03(j)(4) recognizes that, among the
10 methods available to the Board for obtaining a penalty, the Board may seek garnishment
11 of the wages of the respondent if the respondent is a current City employee. See
12 Proposed Board Rules § 2-03(j)(4).

13 6. Clarifying Edits

14 Finally, the Board proposes two categories of clarifying edits to make Chapter 2
15 more user-friendly: organizational edits so that the order of the sections follows the
16 chronology of a case and descriptive edits to assist respondents and their representatives
17 in understanding the enforcement process.

18
19 **Text of Proposed Rule**

20
21 New material is underlined.

22
23 [Deleted material is bracketed.]

24
25 **Chapter 2: Procedural Rules for Enforcement Actions**

26 **§ 2-01 Applicability and Definitions.**

1 (a) *Applicability.*

2
3 This chapter establishes [the]procedural rules for enforcement actions [brought
4 pursuant to Charter § 2603(h)]to address alleged violations of:

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6 (1) Chapter 68 of the City Charter (the Conflicts of Interest Law);

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8 (2) § 3-224 through § 3-228 of the Administrative Code (the Lobbyist Gift Law);

9
10 (3) § 3-901 through § 3-907 of the Administrative Code (the Affiliated Not-for-
11 Profits Law);[and]

12
13 (4) § 3-1101 through § 3-1107 of the Administrative Code (the Legal Defense
14 Trusts Law); and

15
16 (5) § 12-110(g)(2) of the Administrative Code (the Annual Disclosure Law).

17
18 (b) *Definitions.*

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20 “Board” means the Conflicts of Interest Board.

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

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

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

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

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

36
37 “Respondent” means a person or firm alleged to have violated a law identified in
38 subsection (a) of this section[public servant or former public servant; a lobbyist or
39 any other person required to be listed on a statement of registration pursuant to
40 Administrative Code § 3-213(c)(1); an organization affiliated with an elected official
41 or an agent of an elected officials, as defined by Administrative Code § 3-901; or
42 a legal defense trust, trustee, or beneficiary, as defined by Administrative Code §
43 3-1101, who has been served a Notice of Initial Determination of Probable Cause].

1 **§ 2-02 Notices of Probable Cause and Pre-Hearing Procedures[Informal**
2 **Proceedings].**

3
4 (a) *Notice of Initial Determination of Probable Cause.*

5
6 For the purposes of Charter § 2603(h)(1), the Board will commence an
7 enforcement action by serving a Notice of Initial Determination of Probable Cause
8 by first class mail to the respondent's last known residential address or actual place
9 of business.

10
11 (b) *Response to the Notice of Initial Determination of Probable Cause.*

12
13 (1) For the purposes of Charter § 2603(h)(1), the respondent has [twenty (]20[)]
14 days from the date of service to submit a written response to the Notice of Initial
15 Determination of Probable Cause ("Notice") or request an extension. The
16 response is an opportunity to explain, rebut, or provide information concerning
17 the factual or legal allegations in the Notice. The Board will not consider
18 requests for discovery of evidence before it files a Petition at OATH[during
19 informal proceedings].

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

29
30 (3) For the purposes of Charter § 2603(h)(2):

31
32 (i) If the respondent submits a substantive written response to the Notice, the
33 Board will review the response to determine whether there remains
34 probable cause to believe that any alleged violation occurred and will either
35 dismiss the enforcement action or sustain its initial determination of
36 probable cause in whole or in part.

37
38 (ii) If the respondent does not submit a written response to the Notice or
39 submits only a general denial of the allegations in the Notice, the Board's
40 initial determination of probable cause will be deemed sustained.

41
42 (c) Sustaining probable cause[Referral to agency].

43
44 (1) If the Board sustains its initial determination of probable cause against a
45 respondent who is entitled to disciplinary rights as described in Charter §
46 2603(h)(2), the Board will notify the respondent's employing City agency in

1 writing of the alleged facts and violations. [After such a referral, the Board
2 retains separate and continuing jurisdiction over the enforcement action.]

3
4 (i[1]) If the agency does not pursue disciplinary action against the respondent,
5 the Board will commence formal proceedings against the respondent.
6

7 (ii[2]) If the agency pursues disciplinary action against the respondent, the
8 Board may resolve the enforcement action by a joint settlement
9 agreement with the respondent and agency or commence formal
10 proceedings against the respondent.
11

12 (2) If the Board sustains its initial determination of probable cause against a
13 respondent who is not entitled to disciplinary rights as described in Charter §
14 2603(h)(2), the Board will file a Petition at OATH against the respondent
15 pursuant to Board Rules § 2-03(b)(1).
16

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

18
19 (1) If the respondent chooses to be represented by an attorney or any other
20 person, the representative appearing for the respondent must submit a written
21 and signed Notice of Appearance to the Board. The appearance of a member
22 in good standing of the bar of a court of general jurisdiction of any state or
23 territory of the United States will be indicated by the designation "Attorney for
24 (person represented)." The appearance of any other person will be indicated
25 by the designation "Representative for (person represented)." The Board will
26 not accept a response from or discuss the details of an enforcement action with
27 any attorney or other person who has not submitted a Notice of Appearance.
28

29 (2) To withdraw from representation, the representative must submit a written
30 notice of withdrawal to the Board, signed by the respondent or otherwise
31 explaining the reason for withdrawal. An attorney who has submitted a Notice
32 of Appearance may withdraw from representation only with consent of the
33 respondent or when other cause exists, as delineated in the applicable
34 provisions of the New York Rules of Professional Conduct.
35

36 [(3) A Notice of Appearance, withdrawal or substitution may be submitted to the
37 Board at any time prior to commencement of formal proceedings. After the
38 service of the Notice of Petition and Petition pursuant to Board Rules § 2-
39 03(b)(1), the OATH Rules govern the procedures for a Notice of Appearance,
40 withdrawal or substitution.]
41

42 (e) *Stay of an enforcement action.*

43
44 To obtain a stay of an enforcement action[prior to commencement of formal
45 proceedings], the respondent must submit a written request to the Board for its
46 review and approval. After the service of the [Notice of Petition and]Petition

1 pursuant to Board Rules § 2-03(b)(1), the OATH Rules govern the procedures for
2 a stay.

3
4 (f) *Settlement.*

5
6 (1) At any time after the service of the Notice of Initial Determination of Probable
7 Cause, an enforcement action may be resolved by settlement agreement in the
8 form of a Public Disposition or Public Warning Letter.

9
10 (i) A Public Disposition must include an admission of the relevant facts; an
11 acknowledgment that the admitted conduct violated a specific provision of
12 a law identified in Board Rules § 2-01(a)[the Conflicts of Interest Law, the
13 Lobbyist Gift Law, the Affiliated Not-for-Profits Law, or the Legal Defense
14 Trusts Law]; and a penalty that addresses the admitted conduct.

15
16 (ii) A Public Warning Letter must include a statement of relevant facts, and a
17 description of each violation of a specific provision of a law identified in
18 Board Rules § 2-01(a)[the Conflicts of Interest Law, the Lobbyist Gift Law,
19 the Affiliated Not-for-Profits Law, or the Legal Defense Trusts Law].

20
21 (2) The language and penalty of the proposed settlement agreement will be
22 negotiated between the enforcement attorney and the respondent or the
23 respondent's representative, if applicable. If the respondent requests that the
24 respondent's employing City agency be a party to the settlement, the
25 respondent must submit a signed waiver of confidentiality to the Board to allow
26 the enforcement attorney to discuss the proposed settlement agreement with
27 such agency.

28
29 (3) If the enforcement attorney and the respondent reach a proposed settlement
30 agreement, it will be reduced to writing and signed by the respondent, the
31 respondent's representative, if applicable, and a representative of the
32 respondent's employing City agency, if applicable. Any monetary penalty to be
33 paid to the Board is due upon signing unless otherwise specified in the
34 proposed settlement agreement. Monetary penalty payments will be held by
35 the Board in escrow until the proposed settlement agreement is fully executed
36 by the Board.

37
38 (4) After receiving the full payment of any monetary penalty to be paid to the Board,
39 the enforcement attorney will present the proposed settlement agreement to
40 the Board for its review and approval.

41
42 (i) If the Board approves the proposed settlement agreement, the settlement
43 agreement will be signed by the Board Chair. The fully-executed settlement
44 agreement will be made public, but all underlying records, reports,
45 memoranda, and files of the enforcement action will remain confidential in
46 accordance with Charter § 2603(k).

- 1
2 (ii) If the Board does not approve the proposed settlement agreement, the
3 Board may direct the enforcement attorney to seek modification of the
4 penalty or the language in the settlement agreement. The modified
5 proposed settlement agreement must be reviewed and approved by the
6 Board.
7

8 **§ 2-03 Enforcement Hearings and Post-Hearing Procedures[Formal Proceedings].**
9

10 (a) *Designation of OATH.*

11
12 For the purposes of Charter § 2603(h)(2), and in accordance with Charter § 1048,
13 the Board designates OATH to conduct hearings in accordance with the OATH
14 Rules, except as otherwise provided by these rules.
15

16 (b) *Commencement of [formal]proceedings at OATH.*

17
18 (1) The Board will [commence formal proceedings at OATH by] serve[ing] a Notice
19 of Petition and Petition by certified mail, return receipt requested, and first class
20 mail, to the respondent's last known residential address or actual place of
21 business and to the respondent's representative, if applicable. After service,
22 the enforcement attorney will file the Notice of Petition and Petition with OATH
23 and will provide OATH with potential dates for a settlement conference and
24 potential dates for a hearing.
25

26 (2) After the conference and hearing dates have been scheduled at OATH, the
27 enforcement attorney will serve a Notice of Hearing by certified mail, return
28 receipt requested, and first class mail, to the respondent's last known
29 residential address or actual place of business and to the respondent's
30 representative, if applicable.
31

32 (c) *Ex p[arte] communications [with the Board].*

33
34 (1) After service of the [Notice of Petition and]Petition pursuant to Board Rules §
35 2-03(b)(1), the respondent, respondent's representative, or any
36 enforcement[Board] attorney [involved in the prosecution of the enforcement
37 action]may not communicate *ex parte* with any member of the Board or any
38 attorney serving as counsel to the Board concerning the merits of the
39 enforcement action, except as provided in paragraph (2) of this subdivision.
40

41 (2) The respondent, respondent's representative, or a[A]n enforcement attorney
42 may communicate *ex parte* with members of the Board or an attorney serving
43 as counsel to the Board with respect to ministerial matters involving the
44 enforcement action; on consent of the respondent or respondent's
45 representative; or if deemed necessary by the Board or by an attorney serving
46 as counsel to the Board.

1
2 (d) *Answer.*
3

4 The respondent may serve and file a written answer to the Petition in accordance
5 with the OATH Rules. The answer may contain specific responses, by admission,
6 denial, or otherwise, to each allegation of the Petition and assert all affirmative
7 defenses, if any. The respondent may include in the answer matters in mitigation.
8 The answer must contain the full name, address, telephone number, and email
9 address of the respondent. If the respondent is represented, the representative's
10 name, address, telephone number and email address must also appear on the
11 answer. The answer must be signed by the respondent or respondent's
12 representative. The OATH Rules govern the procedures for a Notice of
13 Appearance, withdrawal, or substitution of the respondent's representative.
14

15 (e) *Settlement.*
16

17 At the OATH settlement conference, an enforcement action may be resolved by
18 settlement agreement pursuant to Board Rules § 2-02(f).
19

20 (f) *Hearing.*
21

22 (1) The Board[enforcement attorney] will have the burden of proof by a
23 preponderance of the evidence.
24

25 (2) The enforcement attorney will make an opening statement first, after which the
26 respondent or respondent's representative may make an opening statement.
27

28 (3) The enforcement attorney will initiate the presentation of evidence. After the
29 enforcement attorney has completed the presentation of the Board's evidence,
30 the respondent or respondent's representative may present evidence. The
31 enforcement attorney may present rebuttal evidence.
32

33 (4) If closing statements are made orally at the end of a hearing, t[T]he respondent
34 or respondent's representative may[enforcement attorney will] make a closing
35 statement first, after which the enforcement attorney will[respondent may]
36 make a closing statement. If closing statements are authorized to be made in
37 writing, the parties' closing statements may not exceed 30 double-spaced
38 pages.
39

40 (g) *OATH report.*
41

42 After a hearing has been conducted, OATH will issue a confidential report of its
43 recommended findings of fact and conclusions of law and its recommended
44 disposition of the enforcement action. OATH will send the report, along with the
45 original transcript of the hearing and all documents admitted[introduced] into
46 evidence[the record], to the Board for review. OATH will send a copy of the report

1 to the enforcement attorney and the respondent or respondent's representative, if
2 applicable.

3
4 (h) *Comment on OATH report.*

5
6 Within [twenty (]20[)] days from the date of the OATH report, each party may
7 submit a comment to the Board, which may not exceed 30 double-spaced pages,
8 to explain, rebut, or provide information concerning OATH's recommended
9 findings of fact, conclusions of law, and disposition. If either party submits a
10 comment, the opposing party may submit to the Board a response to such
11 comment, which may not exceed 15 double-spaced pages, within [thirty (]30[)]
12 days from the date of the OATH report. Copies of all such submissions must be
13 shared with the opposing party. The Board will only[not] consider [new]evidence
14 admitted at trial[submitted in a comment or in a response to a comment].
15

16 (i) *Final review by the Board.*

17
18 For the purposes of Charter § 2603(h)(3), the Board will review the OATH report,
19 along with the original transcript of the hearing and all documents introduced into
20 the record, and any comments and responses to comments submitted to the Board
21 pursuant to Board Rules § 2-03(h), to determine whether it has been proven by a
22 preponderance of the evidence that the respondent violated a provision of a law
23 identified in Board Rules § 2-01(a)[the Conflicts of Interest Law, the Lobbyist Gift
24 Law, the Affiliated Not-for-Profits Law, or the Legal Defense Trusts Law]. In
25 accordance with Board Rules § 2-03(c), any Board attorney involved in the
26 prosecution of the enforcement action will not participate in the Board's final
27 review.
28

29 (j) *Board order finding a violation.*

30
31 (1) If the Board determines that it has been proven by a preponderance of the
32 evidence that the respondent violated a provision of a law identified in Board
33 Rules § 2-01(a)[the Conflicts of Interest Law, the Lobbyist Gift Law, the
34 Affiliated Not-for-Profits Law, or the Legal Defense Trusts Law], the Board will
35 issue an order stating its final findings of fact and conclusions of law and
36 imposing a penalty, except, if the respondent is a current Member or employee
37 of the New York City Council, the Board will issue an order stating its final
38 findings of fact and conclusions of law and recommending a penalty to the New
39 York City Council. The order will include notice of the respondent's right to
40 appeal to the New York State Supreme Court.
41

42 (2) All orders of the Board will be made public. The Board may also make the
43 OATH report public as part of its order, but all other underlying records, reports,
44 memoranda, and files will remain confidential in accordance with Charter §
45 2603(k).
46

1 (3) The order will be sent by email or first class mail to the respondent's last known
2 residential address or actual place of business and to the respondent's
3 representative, if applicable.
4

5 (4) If the order imposes a monetary penalty, payment is due to the Board within
6 [thirty ([30])] days of the date of service. If the respondent does not pay the full
7 monetary penalty amount, the Board will pursue all remedies, which may
8 include garnishment of City wages or referral [the matter]to the New York City
9 Law Department for collection.

10
11 (k) *Board dismissal.*
12

13 If the Board determines that it has not been proven by a preponderance of the
14 evidence that the respondent violated any provision of the laws identified in Board
15 Rules § 2-01(a)[Conflicts of Interest Law, the Lobbyist Gift Law, the Affiliated Not-
16 for-Profits Law, or the Legal Defense Trusts Law], the Board will issue a written
17 decision that dismisses the enforcement action and states its final findings of fact
18 and conclusions of law. The decision will be sent to the respondent and
19 respondent's representative, if applicable, and will not be made public. All
20 underlying records, reports, memoranda, and files will remain confidential in
21 accordance with Charter § 2603(k).