


**December 11, 2018, Agenda – Open Meeting Matter A-1**  
October 19, 2018, Agenda – Open Meeting Matter  
September 21, 2018, Agenda – Open Meeting Matter

To: The Board  
From: Chad H. Gholizadeh   
Date: December 5, 2018  
Re: Proposed Board Rules: Work for Not-For-Profits

As directed by the Board at its October meeting, Staff formally submitted the proposed Rule creating a procedure whereby agency heads may designate public servants to perform work on behalf of not-for-profit organizations and, with the approval of the Conflicts of Interest Board, participate in such organizations' business dealings with the City. During the course of the review process, changes were made both to the commentary and to the text of the proposed Rule. On November 29, 2018, and December 3, 2018, the Law Department and Mayor's Office of Operations provided their respective certifications to the amended proposed Rule.

Staff recommends that the Board accept the changes and authorize Staff to publish the proposed Rule in the City Record for public comment in advance of a public hearing.

Attached are the following:

- 1) Minutes of the September 21, 2018 Open Meeting (**Exhibit 1**);
- 2) Minutes of the October 19, 2018 Open Meeting (**Exhibit 2**);
- 3) Proposed Draft Board Rule and Commentary, with changes tracked (**Exhibit 3**); and
- 4) Proposed Draft Board Rule and Commentary, with the certifications from the Law Department and the Mayor's Office of Operations (**Exhibit 4**).

## Analysis & Discussion

Two substantive changes have been made to the proposed Rule since the Board approved submitting it for certification by the Law Department and the Mayor's Office of Operations. First, questions from the Law Department and the Mayor's Office of Operations revealed that the commentary to the Rule was less than completely clear in its description of the process by which a public servant may be designated by his or her agency to do work on behalf of a not for profit and, with the additional approval of the Board, participate in that not-for-profit's business dealings with the City. The proposed revisions to the commentary refine the description of this process as two sequential steps rather than parallel tracks. Additionally, at the suggestion of the Law Department, Staff included a description of the Board's approval of a request as a public document similar to a waiver, reducing confusion about how the new process will operate by comparing it to one with which public servants are already familiar.

Second, Staff removed the reference to the use of City resources from the proposed Rule. The Rule had permitted the use of City resources, but not City letterhead, by a public servant designated to perform work on behalf of a not-for-profit. This provision was identical to a provision in Board Rules § 1-13(c), which permits City employees to engage in personal and private activities using City time and City resources, but not City letterhead, upon a written application by the agency head if the Board determines that the activity furthers the purposes and interests of the City.<sup>1</sup> However, after further consideration Staff concluded that the exclusion of

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<sup>1</sup> Board Rules § 1-13(c) provides that:

- (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

City letterhead from the resources available under proposed Board Rules § 1-13(e) was unnecessary. A public servant using City time and City resources to work on behalf of a not-for-profit pursuant to this Rule does so as part of his or her official City duties because the work serves a City purpose. The use of City resources, including City letterhead, for such a City purpose would not constitute a conflict of interest.<sup>2</sup> Because the provision referenced City resources only in order to exclude letterhead, if letterhead were permitted it would be superfluous. Accordingly, Staff removed the reference to the use of City resources from the Rule.

All other changes are minor and non-substantive and can be found tracked on Exhibit 3.

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- (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.”

<sup>2</sup> Board Rules § 1-13(b), which states in relevant part: “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.”



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

**Date:** September 21, 2018

**Location:** Baker Hostetler, 45 Rockefeller Plaza, 11<sup>th</sup> Fl., New York, New York

**Present:**

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

Board Staff: Evan Berkow, Ethan Carrier, Chad Gholizadeh, Amber Gonzalez, Christopher Hammer, Gavin Kendall, Julia Lee, Carolyn Miller, Katherine Miller, Summer Payton, Jeff Tremblay, Michele Weinstat, and Clare Wiseman.

**Guests:** Stephanie Blattmachr

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The meeting was called to order by the Chair at approximately 9:35 a.m. The Chair stated that the meeting was being conducted pursuant to the New York State Open Meetings Law and designated the undersigned as the Recording Secretary for purposes of the meeting.

The Chair stated that the meeting was called to consider Staff's proposed amendments to Title 53 of the Rules of the City of New York in continuation of the Open Meeting on August 22, 2018 and Board Rules § 1-13.

After a brief introduction by a member of the Board Staff on the proposed amendments to the rules, the Chair then asked for any comments by the Board or Staff concerning the proposed amendments to Title 53 of the Rules of the City of New York.

**Comments:**

The following comments constitute further changes as agreed upon by the Board and Staff:

- Proposed Board Rules § 1-08: Retain language of § 1-10(a)(3) as it refers to "local public authorities."
- Proposed Board Rules § 1-08: Addition of language defining "local development corporation" in § 1-08(b).
- Proposed Board Rules § 1-10: Retain language of § 1-10(a)(10) as it refers to cooperative apartment buildings.
- Statement of Basis and Purpose: Addition of language providing definitions of New York State local authorities and local development corporations; addition of a sentence that "As stated in Rules § [ ], this list "includes but not limited to" and thus is not exhaustive." as cited in §§ 1-08(a) and 1-10(a) in the paragraphs pertaining to the respective rules.

Upon motion duly made and seconded, the Board unanimously voted to pass Staff's proposed amendments to Title 53 of the Rules of the City of New York with modifications as discussed in the August 22, 2018, Open Meeting and today as the final rule.

The Chair stated that the meeting was called to consider Staff's proposed amendments to Board Rules § 1-13.

After a brief introduction by a member of the Board Staff on the proposed amendments to Board Rules § 1-13, the Chair then asked for any comments by the Board or Staff concerning the proposed amendments to Board Rule § 1-13.

**Comments:**

The following comments constitute the changes as agreed upon by the Board and Staff:

- § 1-13(e)(1): Revise beginning of sentence to state: "An agency head may designate a public servant to perform work..."
- §§1-13(e)(1)(a) and 1-13(e)(2): Replace the word "demonstrable" with "demonstrated"
- § 1-13(e)(a): Delete the word "that"
- § 1-13(e)(1)(c): Revise to state as follows: "the written designation is disclosed to the Conflicts of Interest Board within thirty days and will be posted on the Board's website."
- § 1-13(e)(2): Insert language after "written approval" to state who will be giving written approval
- § 1-13(e)(3): Revise language to clarify the role of elected officials in the approval process
- Statement of Basis and Purpose: Add an explanation of discretionary funding and sponsorship as referenced in § 1-13(e)(1)(b), including citation to the applicable Advisory Opinion, and why "district attorney" is mentioned separately from "elected official" in § 1-13(e)(3).

Upon motion duly made and seconded, the Board unanimously voted to continue the discussion at the next Board meeting.

The open meeting was adjourned at approximately 10:20 a.m.

Respectfully submitted,

Julia H. Lee  
Recording Secretary

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

**Date:** October 19, 2018

**Location:** Baker Hostetler, 45 Rockefeller Plaza, 11<sup>th</sup> Fl., New York, New York

**Present:**

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

Board Staff: Evan Berkow, Ethan Carrier, Chad Gholizadeh, Amber Gonzalez, Christopher Hammer, Gavin Kendall, Carolyn Miller, Katherine Miller, Summer Payton, Jeff Tremblay, Michele Weinstat, and Clare Wiseman.

Guests: None

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The meeting was called to order by the Chair at approximately 9:34 a.m. The Chair stated that the meeting was being conducted pursuant to the New York State Open Meetings Law and designated the undersigned as the Recording Secretary for purposes of the meeting.

The Chair stated that the meeting was called to: (1) continue consideration of Staff's proposed amendments to Board Rules § 1-13, which amendments had previously been considered at an Open Meeting held on September 21, 2018; and (2) continue consideration of Staff's proposed amendments to Title 53 of the Rules of the City of New York, which had previously been considered at Open Meetings held on August 22, 2018, and September 21, 2018.

After a brief introduction by a member of the Board Staff on the proposed amendments to Board Rules § 1-13, the Chair asked for any comments by the Board or Staff concerning the proposed amendments to Board Rules § 1-13.

**Comments:**

The following comments constitute further changes as agreed upon by the Board and Staff:

- Proposed Commentary to Board Rules § 1-13(e): Change "demonstrable" to "demonstrated."
- Proposed Board Rules § 1-13(e)(1)(c): Change "the written designation is disclosed to the Conflicts of Interest Board within 30 days and will be posted on the Board's website" to "within 30 days the written designation is disclosed to the Conflicts of Interest Board and will be posted on the Board's website."

Upon motion duly made and seconded, the Board unanimously voted to approve Staff's proposed amendments to Board Rules § 1-13, with modifications as discussed in the September 21, 2018, Open Meeting and today's Open Meeting, as the final rule. The proposed amendments will go to the New York City Law Department and Mayor's Office for certification.

The Chair then turned discussion to Title 53 of the Rules of the City of New York.

A member of the Board Staff explained that the proposed rule amendments approved by the Board at its September 21, 2018, Open Meeting had been certified, with some non-substantive edits, by the New York City Law Department and Mayor's Office. The Chair then asked for any comments by the Board or Staff concerning the proposed amendments to Title 53 of the Rules of the City of New York.

**Comments:**

- None

Upon motion duly made and seconded, the Board unanimously voted to pass the Title 53 of the Rules of the City of New York, as certified by the Law Department and Mayor's Office, as the final rule.

The open meeting was adjourned at approximately 9:47 a.m.

Respectfully submitted,

Jeffrey Tremblay  
Recording Secretary



**Notice of Public Hearing and Opportunity to Comment on Proposed Rule Regarding Work for Not-For-Profit Entities**

**What are we proposing?** The Conflicts of Interest Board intends to amend its rules by creating a procedure whereby agency heads may designate public servants to perform work on behalf of not-for-profit organizations and, with the approval of the Conflicts of Interest Board, participate in such organizations' business dealings with the City.

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

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

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

- **Website.** You can submit comments to the Conflicts of Interest Board through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to Chad H. Gholizadeh at Rules@COIB.nyc.gov.
- **Mail.** You can mail comments to Chad H. Gholizadeh, Assistant Counsel, Conflicts of Interest Board, 2 Lafayette Street, Suite #1010, New York, New York 10007.
- **Fax.** You can fax comments to the Conflicts of Interest Board at (212) 437-0705.
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 437-xxxx. You can also sign up in the hearing room before the hearing begins on [date]. You can speak for up to three minutes.

**Is there a deadline to submit comments?** Yes, you must submit written comments by [date].

**Do you need assistance to participate in the hearing?** You must tell the Conflicts of Interest Board if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at (212) 437-0723. You must tell us by [date].

**Can I review the comments made on the proposed rules?** You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available to the public at the Conflicts of Interest Board, 2 Lafayette Street, Suite #1010, New York, New York 10007.

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

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

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

#### STATEMENT OF BASIS AND PURPOSE

New York City Charter § 2604(b)(2) provides that “[n]o public servant shall engage in any business, transaction, or private employment, or have any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties.” The Charter Revision Commission, in commenting on this provision at the time it was under consideration, stated that it had

retained this “catch-all” prohibition in recognition of the fact that the specific prohibitions set forth in [Chapter 68] cannot address all conflict of interest situations which may arise in the future and that the [Conflicts of Interest] [B]oard must retain the flexibility to handle new situations as they arise.

Volume II, Report of the New York City Charter Revision Commission, December 1986 – November 1988, at 175.

In 1998, after numerous requests for advice and enforcement actions, the Board promulgated rules implementing Charter § 2604(b)(2), set forth in Board Rules § 1-13 (“Conduct Prohibited by City Charter § 2604(b)(2)”), identifying what sorts of activities would present a conflict with the proper discharge of a public servant's official duties. In its rules, the Board prohibits a public servant from “pursu[ing] personal and private activities during times when the public servant is required to perform services for the City” and from “us[ing] City letterhead,

personnel, equipment, resources, or supplies for any non-City purpose.” Board Rules §§ 1-13(a) and (b). These rules prohibit any use of City time and City resources on activities for a public servant’s private interests.

The Board’s Rules currently permit City employees to engage in personal and private activities using City time and City resources, but not letterhead, upon a written application by the agency head if the Board determines that the activity furthers the purposes and interests of the City. See Board Rules § 1-13(c). This provision exists because in some situations a public servant’s private activities provide an incidental benefit to the City. See Notice of Adoption of Rule Identifying Certain Conduct Prohibited by Charter § 2604(b)(2), Statement of Basis and Purpose of Rule at 3; *see also* Advisory Opinion No. 2001-3 at 8-9 (noting “skills training and professional development, public esteem for the legal profession, attorney job satisfaction, and generally a more efficient use of legal resources” as benefits of *pro bono* work by government attorneys, an example of such outside activity).

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In the time since the Board promulgated Board Rules § 1-13, many public servants have requested advice about holding positions with firms or engaging in activities which, while not personal and private activities as described above, are also not strictly speaking City work. For example, a public servant may be asked to sit on the board of a not-for-profit which promotes an issue relevant to the public servant’s City work but in the course of that board service take on other responsibilities on behalf of the not-for-profit. Or a public servant could be asked by her supervisor to accept offers to sit on a professional association committee to advocate for adoption of policies which the public servant’s City agency believes are beneficial. Another example is the public servant who may be asked to provide analysis and support to a not-for-profit as part of that not-for-profit’s advocacy on issues related to the City’s policy goals. In

each of these situations, an agency has determined that the activity is in the City's interest and is also part of the public servant's City job.

However, a public servant's use of City time and City resources to work on behalf of the not-for-profit would be prohibited by Board Rules §§ 1-13(a) and 1-13(b), which forbid public servants from using City time or City resources for the work of these non-City entities. Under current rules, the mechanism made available by §1-13(c) would not apply because the proposed involvement in a not-for-profit's activities are not the "personal and private" activities of the public servant, but rather the work of the public servant's City agency.

These inquiries have arisen with more frequency because, in recent years, City agencies have increasingly made use of and relied upon not-for-profit entities to implement policies and projects that serve the City and its residents. Public servants often serve as staff or board members of these not-for-profit entities or provide other kinds of technical, fundraising, or logistical services to the not-for-profits. In the course of this work, public servants' use of City time and their City titles, staff, and/or resources, as well as some of their involvement with the City business of these not-for-profits, implicate several provisions of Chapter 68.

Many of these not-for-profits have business dealings with the City, as defined in Charter § 2601(8) (including "any transaction with the city involving the sale, purchase, rental, disposition or exchange of any goods, services, or property, any license, permit, grant or benefit, and any performance of or litigation with respect to any of the foregoing, but shall not include any transaction involving a public servant's residence or any ministerial matter"). Examples of such business dealings include, but are not limited to, the following scenarios: contracting with the City to provide services related to a City program; selling training and educational materials to City agencies for use by public servants; applying for and receiving funds from City agencies;

applying for permits from City agencies; and leasing space from the City. Some of the public servants working with these entities might have duties involving such business dealings, and a mechanism should be available to address these situations.

This proposed rule amendment, a new subdivision (e) of § 1-13, would provide a means for a public servant, at the direction of his or her agency head, to use City time and City resources in support of a not-for-profit entity that, among its other purposes, serves a City purpose as part of his or her City agency responsibilities. ~~Specifically, this Rule would establish a process by which~~

First, where a public servant will not be involved in the not-for-profit's business dealings with the City, if any, an agency head may designate, in writing, a public servant to perform~~do~~ such work on behalf of a not-for-profit corporation as part of their regular City duties, which in and of itself would not require a Board waiver, provided that the public servant takes no part in the not-for-profit's City business. This proposed Rule incorporates~~must publicly disclose such written designation to the Board. The proposal provides a limited exception provided in advice provided by the Board, initially articulated in Advisory Opinion 2009-2, permitting City Council Members to sponsor and vote on discretionary funding for not-for-profits when their involvement with those not-for-profits is part of their official duties. See Advisory Opinion No. 2009-2 at 10-12; see also Advisory Opinion No. 1999-1 at 4 and Advisory Opinion No. 1992-22~~ at 2 (advising that elected officials do not require~~need~~ a waiver to serve on a not-for-profit board where such board service is part of the elected official's official duties but are still required to disclose pursuant to Charter § 2604(b)(1)(a)). The proposed Rule also provides a process by which public servants designated to work on behalf of not-for-profits having City business dealings may receive approval to be involved in the business dealings between those not-for-

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~~profits and the City, requiring Board approval, and (e) require public disclosure of all such designations.~~

Second, where a public servant wishes to be involved in the not-for-profit's business dealings with the City, a public servant's agency head must submit a request for Board approval for that public servant's involvement, in a manner similar to the waiver process of Charter § 2604(e). Such Board approval, like a waiver, would be a public document. These public Board documents would be similar to the ones issued pursuant to Board Rules § 1-13(c), whereby the Board approves, upon application by the agency head, an individual public servant's use of City time and City resources for a specific personal and private activity that furthers the purposes and interests of the City.

In either a designation pursuant to proposed Board Rules § 1-13(e)(1) or an application for Board approval pursuant to proposed Board Rules § 1-13(e)(2), an agency head would be required to state that there is a demonstrated nexus between the proposed work on behalf of a not-for-profit, the public servant's City job, and the mission of the public servant's agency; and that such work furthers the agency's mission and is not undertaken primarily for the benefit or interests of the not-for-profit. Proposed Board Rules § 1-13(e)(3) would define who may submit designations and requests in a manner similar to the waiver provisions of Charter § 2604(e), with the exception of elected officials who, in light of their unique roles and positions in City government, may designate or approve themselves and members of their staff. See Advisory Opinion No. 1999-1 (advising that elected officials may designate in writing members of their staff to serve on a not-for-profit board where such board service is part of the elected official's and the staff member's official duties). Because the definition of "elected official" in Charter § 2601(10) does not include district attorneys, proposed Board Rules § 1-13(e)(3) specifically

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identifies district attorneys as having the same role and responsibility under this rule as other City elected officials. For the purposes of this rule, members of an elected official's staff would include the ~~Councilmanic Aides~~staff employed in the office District Office of a City Council Member.

**Text of the Proposed Rule**

New material is underlined.

Section 1. Subdivision (e) of Section 1-13 of Chapter 1 of Title 53 of the Rules of the City of New York is re-lettered as subdivision (f):

~~§ 2. Section 1-13 of Chapter 1 of Title 53 of the Rules of the City of New York is amended by adding~~ and a new subdivision (e) is added to read as follows:

**§ 1-13. Conduct Prohibited by City Charter § 2604(b)(2).**

\* \* \*

(e) (1) An agency head may designate a public servant to perform work on behalf of a not-for-profit corporation, association, or other such entity that operates on a not-for-profit basis, including serving as a board member or other position with fiduciary responsibilities, and may utilize City equipment, resources, personnel, supplies, and title, but not City letterhead, as part of that work provided that:

(a) there is a demonstrated nexus between the proposed activity, the public servant's City job, and the mission of the public servant's agency; and such work furthers the agency's mission and is not undertaken primarily for the benefit or interests of the not-for-profit;

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(b) the designated public servant takes no part in the entity's business dealings with the City at the entity or at his or her agency, except that Council Members may sponsor and vote on discretionary funding for the entity; and

(c) within 30 days the written designation is disclosed to the Conflicts of Interest Board and will be posted on the Board's website.

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(2) A public servant designated in accordance with paragraph (1) of this subdivision may take part in such entity's business dealings with the City at the entity and/or at his or her agency if, after written approval of the agency head, the Board determines that there is a demonstrated nexus between the proposed participation, the public servant's City job, and the mission of the public servant's agency; and that such participation furthers the agency's mission and is not undertaken primarily for the benefit or interests of the not-for-profit entity.

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



## New York City Conflicts of Interest Board

### **Notice of Public Hearing and Opportunity to Comment on Proposed Rule Regarding Work for Not-For-Profit Entities**

**What are we proposing?** The Conflicts of Interest Board intends to amend its rules by creating a procedure whereby agency heads may designate public servants to perform work on behalf of not-for-profit organizations and, with the approval of the Conflicts of Interest Board, participate in such organizations' business dealings with the City.

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

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

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

- **Website.** You can submit comments to the Conflicts of Interest Board through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to Chad H. Gholizadeh at [Rules@COIB.nyc.gov](mailto:Rules@COIB.nyc.gov).
- **Mail.** You can mail comments to Chad H. Gholizadeh, Assistant Counsel, Conflicts of Interest Board, 2 Lafayette Street, Suite #1010, New York, New York 10007.
- **Fax.** You can fax comments to the Conflicts of Interest Board at (212) 437-0705.
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 437-xxxx. You can also sign up in the hearing room before the hearing begins on [date]. You can speak for up to three minutes.

**Is there a deadline to submit comments?** Yes, you must submit written comments by [date].

**Do you need assistance to participate in the hearing?** You must tell the Conflicts of Interest Board if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at (212) 437-0723. You must tell us by [date].

**Can I review the comments made on the proposed rules?** You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available to the public at the Conflicts of Interest Board, 2 Lafayette Street, Suite #1010, New York, New York 10007.

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

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

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

### **STATEMENT OF BASIS AND PURPOSE**

New York City Charter § 2604(b)(2) provides that “[n]o public servant shall engage in any business, transaction, or private employment, or have any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties.” The Charter Revision Commission, in commenting on this provision at the time it was under consideration, stated that it had

retained this “catch-all” prohibition in recognition of the fact that the specific prohibitions set forth in [Chapter 68] cannot address all conflict of interest situations which may arise in the future and that the [Conflicts of Interest] [B]oard must retain the flexibility to handle new situations as they arise.

Volume II, Report of the New York City Charter Revision Commission, December 1986 – November 1988, at 175.

In 1998, after numerous requests for advice and enforcement actions, the Board promulgated rules implementing Charter § 2604(b)(2), set forth in Board Rules § 1-13 (“Conduct Prohibited by City Charter § 2604(b)(2)”), identifying what sorts of activities would present a conflict with the proper discharge of a public servant’s official duties. In its rules, the Board prohibits a public servant from “pursu[ing] personal and private activities during times when the public servant is required to perform services for the City” and from “us[ing] City letterhead,

personnel, equipment, resources, or supplies for any non-City purpose.” Board Rules §§ 1-13(a) and (b). These rules prohibit any use of City time and City resources on activities for a public servant’s private interests.

The Board’s Rules currently permit City employees to engage in personal and private activities using City time and City resources, but not letterhead, upon a written application by the agency head if the Board determines that the activity furthers the purposes and interests of the City. See Board Rules § 1-13(c). This provision exists because in some situations a public servant’s private activities provide an incidental benefit to the City. See Notice of Adoption of Rule Identifying Certain Conduct Prohibited by Charter § 2604(b)(2), Statement of Basis and Purpose of Rule at 3; *see also* Advisory Opinion No. 2001-3 at 8-9 (noting “skills training and professional development, public esteem for the legal profession, attorney job satisfaction, and generally a more efficient use of legal resources” as benefits of *pro bono* work by government attorneys, an example of such outside activity).

In the time since the Board promulgated Board Rules § 1-13, many public servants have requested advice about holding positions with firms or engaging in activities which, while not personal and private activities as described above, are also not strictly speaking City work. For example, a public servant may be asked to sit on the board of a not-for-profit which promotes an issue relevant to the public servant’s City work but in the course of that board service take on other responsibilities on behalf of the not-for-profit. Or a public servant could be asked by her supervisor to accept offers to sit on a professional association committee to advocate for adoption of policies which the public servant’s City agency believes are beneficial. Another example is the public servant who may be asked to provide analysis and support to a not-for-profit as part of that not-for-profit’s advocacy on issues related to the City’s policy goals. In

each of these situations, an agency has determined that the activity is in the City's interest and is also part of the public servant's City job.

However, a public servant's use of City time and City resources to work on behalf of the not-for-profit would be prohibited by Board Rules §§ 1-13(a) and 1-13(b), which forbid public servants from using City time or City resources for the work of these non-City entities. Under current rules, the mechanism made available by §1-13(c) would not apply because the proposed involvement in a not-for-profit's activities are not the "personal and private" activities of the public servant, but rather the work of the public servant's City agency.

These inquiries have arisen with more frequency because, in recent years, City agencies have increasingly made use of and relied upon not-for-profit entities to implement policies and projects that serve the City and its residents. Public servants often serve as staff or board members of these not-for-profit entities or provide other kinds of technical, fundraising, or logistical services to the not-for-profits. In the course of this work, public servants' use of City time and their City titles, staff, and/or resources, as well as some of their involvement with the City business of these not-for-profits, implicate several provisions of Chapter 68.

Many of these not-for-profits have business dealings with the City, as defined in Charter § 2601(8) (including "any transaction with the city involving the sale, purchase, rental, disposition or exchange of any goods, services, or property, any license, permit, grant or benefit, and any performance of or litigation with respect to any of the foregoing, but shall not include any transaction involving a public servant's residence or any ministerial matter"). Examples of such business dealings include, but are not limited to, the following scenarios: contracting with the City to provide services related to a City program; selling training and educational materials to City agencies for use by public servants; applying for and receiving funds from City agencies;

applying for permits from City agencies; and leasing space from the City. Some of the public servants working with these entities might have duties involving such business dealings, and a mechanism should be available to address these situations.

This proposed rule amendment, a new subdivision (e) of § 1-13, would provide a means for a public servant, at the direction of his or her agency head, to use City time and City resources in support of a not-for-profit entity that, among its other purposes, serves a City purpose as part of his or her City agency responsibilities.

First, where a public servant will not be involved in the not-for-profit's business dealings with the City, if any, an agency head may designate, in writing, a public servant to do such work and must publicly disclose such written designation to the Board. The proposal provides a limited exception, initially articulated in Advisory Opinion 2009-2, permitting City Council Members to sponsor and vote on discretionary funding for not-for-profits when their involvement with those not-for-profits is part of their official duties. See Advisory Opinion No. 2009-2 at 10-12; see also Advisory Opinion No. 1999-1 at 4 and Advisory Opinion No. 1992-22 at 2 (advising that elected officials do not need a waiver to serve on a not-for-profit board where such board service is part of the elected official's official duties but are still required to disclose pursuant to Charter § 2604(b)(1)(a)).

Second, where a public servant wishes to be involved in the not-for-profit's business dealings with the City, a public servant's agency head must submit a request for Board approval for that public servant's involvement, in a manner similar to the waiver process of Charter § 2604(e). Such Board approval, like a waiver, would be a public document. These public Board documents would be similar to the ones issued pursuant to Board Rules § 1-13(c), whereby the Board approves, upon application by the agency head, an individual public servant's use of City

time and City resources for a specific personal and private activity that furthers the purposes and interests of the City.

In either a designation pursuant to proposed Board Rules § 1-13(e)(1) or an application for Board approval pursuant to proposed Board Rules § 1-13(e)(2), an agency head would be required to state that there is a demonstrated nexus between the proposed work on behalf of a not-for-profit, the public servant's City job, and the mission of the public servant's agency; and that such work furthers the agency's mission and is not undertaken primarily for the benefit or interests of the not-for-profit. Proposed Board Rules § 1-13(e)(3) would define who may submit designations and requests in a manner similar to the waiver provisions of Charter § 2604(e), with the exception of elected officials who, in light of their unique roles and positions in City government, may designate or approve themselves and members of their staff. See Advisory Opinion No. 1999-1 (advising that elected officials may designate in writing members of their staff to serve on a not-for-profit board where such board service is part of the elected official's and the staff member's official duties). Because the definition of "elected official" in Charter § 2601(10) does not include district attorneys, proposed Board Rules § 1-13(e)(3) specifically identifies district attorneys as having the same role and responsibility under this rule as other City elected officials. For the purposes of this rule, members of an elected official's staff would include the staff employed in the District Office of a City Council Member.

### **Text of the Proposed Rule**

New material is underlined.

Section 1. Subdivision (e) of Section 1-13 of Chapter 1 of Title 53 of the Rules of the City of New York is re-lettered as subdivision (f) and a new subdivision (e) is added to read as follows:

**§ 1-13. Conduct Prohibited by City Charter § 2604(b)(2).**

\* \* \*

(e) (1) An agency head may designate a public servant to perform work on behalf of a not-for-profit corporation, association, or other such entity that operates on a not-for-profit basis, including serving as a board member or other position with fiduciary responsibilities provided that:

(a) there is a demonstrated nexus between the proposed activity, the public servant's City job, and the mission of the public servant's agency; and such work furthers the agency's mission and is not undertaken primarily for the benefit or interests of the not-for-profit;

(b) the designated public servant takes no part in the entity's business dealings with the City at the entity or at his or her agency, except that Council Members may sponsor and vote on discretionary funding for the entity; and

(c) within 30 days the written designation is disclosed to the Conflicts of Interest Board and will be posted on the Board's website.

(2) A public servant designated in accordance with paragraph (1) of this subdivision may take part in such entity's business dealings with the City at the entity and/or at his or her agency if, after written approval of the agency head, the Board determines that there is a demonstrated nexus between the proposed participation, the public servant's City job, and the mission of the public servant's agency; and that such participation furthers the agency's mission and is not undertaken primarily for the benefit or interests of the not-for-profit entity.

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



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

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

**RULE TITLE:** Work Performed for Non-Profit Organizations

**REFERENCE NUMBER:** 2018 RG 125

**RULEMAKING AGENCY:** Conflicts of Interest Board

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

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

/s/ STEVEN GOULDEN  
Acting Corporation Counsel

Date: November 29, 2018

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

**CERTIFICATION / ANALYSIS  
PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE:** Work Performed for Non-Profit Organizations

**REFERENCE NUMBER:** COIB-5

**RULEMAKING AGENCY:** Conflicts of Interest Board

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

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

/s/ James Archer  
Mayor's Office of Operations

December 3, 2018  
Date