

## CITY OF NEW YORK CONFLICTS OF INTEREST BOARD

### Notice of Adoption of Rule Identifying Certain Conduct Prohibited by Charter § 2604(b)(2)

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE Conflicts of Interest Board by Sections 2603(a) and 2606(d) of the New York City Charter that the Conflicts of Interest Board has adopted a new rule, Section 1-13 of Title 53 of the Rules of the City of New York, identifying conduct prohibited by Charter § 2604(b)(2). Pursuant to a notice published on December 12, 1997, in the City Record, a public hearing was held on January 23, 1998, at 2 Lafayette Street, Suite 1010, New York, New York. The Board received comments from the City Council and the Comptroller's Office and, after changing the proposed rule in response to those comments, adopted the proposed rule as final. The text of the new rule is set forth below.

#### SECTION 1-13. CONDUCT PROHIBITED BY CITY CHARTER § 2604(b)(2)

1. Except as provided in subdivision 3 of this section, it shall be a violation of City Charter § 2604(b)(2) for any public servant to pursue personal and private activities during times when the public servant is required to perform services for the City.

2. Except as provided in subdivision 3 of this section, it shall be a violation of City Charter § 2604(b)(2) for any public servant to use City letterhead, personnel, equipment, resources, or supplies for any non-City purpose.

3. (a) A public servant may pursue a personal and private activity during normal business hours and may use City equipment, resources, personnel, and supplies, but not City letterhead, if, (i) the type of activity has been previously approved for employees of the public servant's agency by the Conflicts of Interest Board, upon application by the agency head and upon a determination by the Board that the activity furthers the purposes and interests of the City; and (ii) the public servant shall have received approval to pursue such activity from the head of his or her agency.

(b) 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.

4. It shall be a violation of City Charter § 2604(b)(2) for any public servant to intentionally or knowingly induce or cause another public servant to engage in conduct that violates any provision of City Charter § 2604.

5. Nothing contained in this section shall preclude the Conflicts of Interest Board from finding that conduct other than that proscribed by subdivisions (1) through (4) of this section violates City Charter § 2604(b)(2), although the Board may impose a fine for a violation of City Charter § 2604(b)(2) only if the conduct violates subdivision (1), (2), (3), or (4) of this section. The Board may not impose a fine for violation of subdivision (4) where the public servant induced or caused another public servant to engage in conduct that violates City Charter § 2604(b)(2), unless such other public servant violated subdivision (1), (2), or (3) of this section.

STATUTORY AUTHORITY: Sections 2603(a) and 2606(d) of the New York City Charter.

STATEMENT OF BASIS AND PURPOSE OF RULE: New York City Charter § 2604(b)(2) provides:

No 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

retained this "catch-all" prohibition in recognition of the fact that the specific prohibitions set forth in the [Charter] chapter [68] cannot address all conflict of interest situations which may arise in the future and that the [Conflicts of Interest] board must retain the flexibility to handle new situations as they arise. However, fairness to public servants dictates that no punishment be imposed for actions not previously identified as prohibited.

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

Accordingly, Charter § 2606(d) precludes the Conflicts of Interest Board (the "Board") from imposing penalties for a violation of Charter § 2604(b)(2), "unless such violation involved conduct identified by rule of the board as prohibited by such paragraph." The purpose of the rule is to identify certain such conduct. As experience reveals additional conduct, the Board may amend the rule to add it.

Since its establishment the Board has received hundreds of requests from public servants for advice as to whether the public servant may engage in various outside activities, such as volunteering for a non-profit organization or working for a private business. Often the Board finds that Chapter 68 permits the

particular activity, provided that the public servant abides by certain restrictions. In that regard, the Board cites, among other provisions, Charter § 2604(b)(2), cautioning the public servant that he or she must pursue the activity at times when he or she is not required to perform services for the City.

So, too, in the enforcement context, the Board has observed on a number of occasions that a public servant has violated Charter § 2604(b)(2) by performing an outside activity, particularly a compensated outside activity, on City time. The Board has also noted that from time to time public servants have, in violation of Charter § 2604(b)(2), encouraged or caused another public servant to violate the provisions of Charter § 2604 by, for example, inducing that second public servant to obtain from the City a financial benefit for a son or daughter, in violation of Charter § 2604(b)(3).

In addition, the Board has received complaints about City employees using City personnel, equipment, letterhead, resources, or supplies for non-City purposes. If such a use is to obtain a private or personal advantage for the employee, for a member of his or her immediate family, for a person with whom the employee has a business or other financial relationship, or for a firm with which the employee has a present or potential position or ownership interest, then the use might be a violation of Charter § 2604(b)(3). However, (b)(3) might not apply, for example, where a City employee writes a letter on City letterhead endorsing a political candidate or uses a City photocopier to make photocopies for a volunteer organization. Adoption of the rule will permit the Board to impose penalties for such violations of Charter § 2604(b)(2), either alone or in combination with the imposition of penalties for violation of other provisions of Chapter 68.

It is important to note, however, that certain public service activities, such as volunteering one's services for a professional organization, may in some instances further the City's interests. For example, a public servant's uncompensated participation on a bar association committee not only may help the public servant meet his or her obligations to the profession but also may reflect favorably upon the City and the public servant's agency, may assist in the professional development of the public servant, and may provide him or her with new insights into the performance of his or her City job, all to the City's benefit.

For this reason, the rule, in subdivision (3), permits an agency head to apply to the Conflicts Board for permission for the employees of the agency to engage in such activities during normal working hours and to use City equipment, resources, personnel, and supplies - but not City letterhead - in connection with the activity. Thus, for example, the Corporation Counsel could seek approval of the Board for attorneys in the Law Department to attend bar association committee meetings during the day and even to type

and photocopy a bar association report on City computers and photocopiers - but not to use Law Department letterhead. If, however, the work of the bar association committee has a direct impact upon another City agency, then the Corporation Counsel would have to give the head of that other agency at least 10 days written notice before approving the employee's request.

Furthermore, once a type of activity has been approved by the Board for the employees of a particular agency under this provision, other employees of that agency who wish to engage in the same type of activity need obtain approval only from their agency head; additional approval from the Board is not required.

Three additional points should be noted. First, as with any ethics law, the rule must be interpreted in light of reason, experience, and common sense. A brief telephone call to a friend or doctor would not constitute a violation of the rule. Running an outside business from one's City office would, as would spending an afternoon at the beach during City time.

Second, as stated in subdivision (4) of the rule, conduct other than that identified in the rule may constitute a violation of Charter § 2604(b)(2), although, under Charter § 2606(d), the Board may not impose any penalties for such other conduct, unless it violates some other provision of Charter § 2604. As noted by the Charter Revision Commission, "the board may in some situations adjudicate a public servant to be in violation of paragraph two [of section 2604(b)] without imposing any penalties." Volume II, Report of the New York City Charter Revision Commission, December 1986 - November 1988, at pp. 175-176. The Board may in the future amend the rule to identify other conduct prohibited by section 2604(b)(2).

Third, where a charitable or philanthropic activity, such as the annual toy collection drive or the Combined Municipal Campaign, is sanctioned by the Mayor as a City activity, neither Charter § 2604(b)(2) nor this rule comes into play. Accordingly, City employees may use City time, letterhead, and resources in connection with that activity.

In response to the public hearing notice on the proposed rule, the Board received detailed and persuasive comments from the City Council and the Comptroller's Office. In response to those comments, the Board changed the rule in several respects: to delete the requirement that a public servant may engage in an activity permitted under subdivision 3 only at times when the public servant is not required to perform services for the City; to remove the prohibition on using City personnel for an activity permitted under subdivision 3; to require that such an activity further the purposes and interests of the City (the same standard as that set forth in Charter § 2604(c)(6)(b)); to replace with a notice requirement the requirement that permission for such an activity be

obtained from every affected City agency; to add a mental state ("intentionally and knowingly") to subdivision 4; and to make certain technical changes in the rule.

[COIB28: (b)(2).x11]

CITY OF NEW YORK  
CONFLICTS OF INTEREST BOARD

Notice of Adoption of Amendment to Rule Defining Conduct Prohibited by City Charter  
§ 2604(b)(2)

NOTICE IS HEREBY GIVEN THAT, pursuant to the authority vested in the Conflicts of Interest Board by Sections 2603(a) and 2606(d) of the New York City Charter, the Conflicts of Interest Board has adopted an amendment to its rule on conduct prohibited by City Charter § 2604(b)(2), which rule is found at Section 1-13(d) of Title 53 of the Rules of the City of New York. The text of the amendment is set forth below.

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

[Subdivisions (a)-(c) and (e) remain unchanged.]

(d) It shall be a violation of City Charter § 2604(b) (2) for any public servant to intentionally or knowingly:

(1) solicit, request, command, importune, aid, induce or cause another public servant to engage in conduct that violates any provision of City Charter § 2604; or

(2) agree with one or more persons to engage in or cause the performance of conduct that violates any provision of City Charter § 2604.

STATUTORY AUTHORITY: Section 2603(a) and 2606(d) of the New York City Charter.

STATEMENT OF BASIS OF PURPOSE

New York City Charter § 2604(b) (2) provides:

No 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.

Rule 1-13(d) currently provides:

It shall be a violation of City Charter § 2604(b) (2) for any public servant to intentionally or knowingly induce or cause another public servant to engage in conduct that violates any provision of City Charter § 2604 (emphasis added).

The language “induce or cause” has proven to be too narrow in scope and does not capture all of the conduct that could be subject to accessorial liability under the Penal Law. Accordingly, the amendment would modify the language of the rule to be parallel with that in section 20.20 of the Penal Law, as specified in the proposed paragraph (1) above. In addition, the current rule does not provide for liability for those persons who engaged in a conspiracy with others to violate the conflicts of interest law. The proposed paragraph (2) would adopt the Penal Law definition of conspiracy in the sixth degree found in Penal Law § 105.00 to specify additional conduct that would form the basis for liability for the acts of another under this provision.

A public hearing on these rules was held on November 28, 2006, pursuant to notice published in the City Record on October 19, 2006, and no one attended to provide testimony or comment, nor were comments received prior thereto.

Main Street, Poughkeepsie, NY 12601, for Corrective Maintenance of Fire Alarm Systems. The Contract term shall be 2 months from the date of the written notice to proceed. The Contract amount shall be \$150,000.00 — Location: Citywide: Pin 9030789

Contract was selected by Innovative Procurement, pursuant to Section 3-12(e) of the PPB Rules.

A copy of the Purchase may be inspected, at the Department of Environmental Protection, 59-17 Junction Boulevard, Flushing, NY 11373, on the 17<sup>th</sup> Floor Bid Room, on business days from January 25, 2019 to February 11, 2019, between the hours of 9:30 A.M. – 12:00 P.M. and from 1:00 P.M. – 4:00 P.M.

Pursuant to Section 2-11(c)(3) of the Procurement Policy Board Rules, if DEP does not receive, by February 1, 2019, from any individual a written request to speak at this hearing, then DEP need not conduct this hearing. Written notice should be sent to Mr. Noah Shieh, NYCDEP, 59-17 Junction Boulevard, 17<sup>th</sup> Floor, Flushing, NY 11373, or via email to noahs@dep.nyc.gov.

Note: Individuals requesting Sign Language Interpreters should contact Mr. Noah Shieh, Office of the Agency Chief Contracting Officer, 59-17 Junction Boulevard, 17<sup>th</sup> Floor, Flushing, NY 11373, (718) 595-3241, no later than FIVE (5) BUSINESS DAYS PRIOR TO THE PUBLIC HEARING.

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## AGENCY RULES

## CONFLICTS OF INTEREST BOARD

### ■ NOTICE

#### Notice of Adoption of Final Rules

**NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE NEW YORK CITY CONFLICTS OF INTEREST BOARD** by Section 1043 of the City Charter and Section 3-907 of the New York City Administrative Code that the Conflicts of Interest Board has adopted Board Rules that create 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.

The proposed Rules were published in the *City Record* on December 18, 2018, and a public hearing was held on January 18, 2019. No testimony or comments were received. The Conflicts of Interest Board now adopts the following Rules.

#### 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 rule amendment, a new Subdivision (e) of § 1-13, provides 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. There is 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, will be a public document. These public Board documents will 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 Board Rules § 1-13(e)(1) or an application for Board approval pursuant to Board Rules § 1-13(e)(2), an agency head will 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. Board Rules § 1-13(e)(3) defines 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, 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 include the staff employed in the District Office of a City Council Member.

**Text of the Adopted 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 agency head approval, pursuant to Paragraph (2) for him or herself.

**SPECIAL MATERIALS**

**ADMINISTRATION FOR CHILDREN'S SERVICES**

**■ NOTICE**

In advance of releasing a request for proposals, ACS offers this Concept Paper as a statement of our vision and goals for the future of Prevention Services in NYC. ACS is seeking feedback from providers and the community at large on the concepts outlined herein, which are rooted in research, stakeholder engagement and ACS's experience delivering prevention services.

The concept paper will be posted on the ACS website, [www.nyc.gov/acs](http://www.nyc.gov/acs), from February 8, 2019 through March 25, 2019. All comments in response to the concept paper should be in writing via email to: [Prevention-CP@acs.nyc.gov](mailto:Prevention-CP@acs.nyc.gov), by March 25, 2019.

**f4-12**

**CITY PLANNING**

**■ NOTICE**

**POSITIVE DECLARATION**

<b>Project Identification</b>	<b>Lead Agency</b>
960 Franklin Avenue Rezoning	City Planning Commission
CEQR No. 19DCP095K	120 Broadway, 31 <sup>st</sup> Floor
ULURP Nos. Pending	New York, NY 10271
SEQRA Classification: Type I	Contact: Olga Abinader
	(212) 720-3493

**Name, Description and Location of Proposal:**

**960 Franklin Avenue Rezoning**

The Applicant, Franklin Avenue Acquisition LLC, is requesting a series of discretionary approvals from the City Planning Commission. The land use actions include: a zoning map amendment to change an R6A district to an R9D with a C2-4 commercial overlay; a zoning text amendment to establish a Mandatory Inclusionary Housing (MIH) area; a special permit for a Large Scale Residential Development (LSRD); and a special permit for a reduction in required parking spaces to facilitate the proposed development (the "Proposed Actions").

The area affected by the Proposed Actions consists of a portion of the block bound by Montgomery Street, Franklin Avenue, Sullivan Place, and Washington Avenue in the Crown Heights neighborhood of Brooklyn Community District (CD) 9. The sites within the affected area are located on Block 1192 and include Lots 40, 41, 46, 63, and 66, the "Development Site," as well as Lot 40 and part of Lots 1, 77, and 85, the "Affected Area." The Proposed Actions would facilitate the development of two buildings totaling 1,369,314 gross square feet (gsf). The first proposed building would be a 39-story, 431-foot mixed-use building with 705,652 gsf of residential space or approximately 810 dwelling units (DUs), approximately 9,641 gsf of local retail space. The second proposed building would be a 39-story, approximately 434-foot mixed-use building with 663,662 gsf of residential space or approximately 768 DUs, approximately 11,542 gsf of local retail space, and approximately 9,678 gsf of community facility space. In total, the Applicant's proposed development would have approximately 1,578 residential units including up to 789 affordable residences (of which 473 would be affordable, pursuant to MIH), approximately 21,183 gsf of local retail space, and approximately 9,678 gsf of community facility space.

Absent the Proposed Actions, an as-of-right residential development would be constructed on the Development Site (lots 41, 46, 63 and 66) in two phases, pursuant to the existing R6A zoning district, which permits 3.0 FAR and a maximum base height of 60-feet (65-feet with a qualifying ground floor) with a maximum building height of 70-feet (75-feet with a qualifying ground floor). The development in the no-action scenario would provide a total of approximately 414,607 gsf of residential space with approximately 518 dwelling units.

The net change that would result from the Proposed Actions is an addition of 1,060 dwelling units (848,418 gsf), 21,183 gsf of local retail

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

### **Notice of Adoption of Final Rules**

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE NEW YORK CITY CONFLICTS OF INTEREST BOARD by Sections 1043 and 2603(a) of the City Charter, that the Conflicts of Interest Board has adopted Board Rules that amend Board Rules Section 1-13(e) by clarifying which documents will be publicly posted.

The proposed Rules were published in the City Record on September 24, 2019, and a public hearing was held on October 25, 2019. No testimony was received and one comment was submitted. The Conflicts of Interest Board now adopts the following Rules.

#### **Statement of Basis and Purpose**

The Conflicts of Interest Board (the “Board”) has amended subdivision (e) of Board Rules § 1-13. The process set forth in subdivision (e) was recently incorporated into a rule that went into effect on March 10, 2019. This subdivision provides a mechanism for an agency to assign a public servant: (a) to use City time and City resources to perform work for a not-for-profit entity that serves a City purpose; and (b) to be involved, if approved by the Board, in that not-for-profit’s City business. As part of this process, for each designation or request, the Board will post one document on its website; the new revisions clarify which of two possible documents will be posted.

If the public servant is designated by an agency head pursuant to Board Rules § 1-13(e)(1) to use City time and City resources to perform work for a not-for-profit, but the public servant will not be involved in the not-for-profit’s City business, then the Board will post only the agency head’s letter making that designation. If the agency head’s designation under Board Rules § 1-13(e)(1) also requests approval from the Board for the public servant to be involved in the City business dealings of a not-for-profit pursuant to Board Rules § 1-13(e)(2), then only the Board’s letter approving that request will be posted by the Board on its website. The agency head’s letter to the Board requesting that approval pursuant to Section 1-13(e)(2) remain confidential for two reasons: first, the Board will treat these requests the same as it does similar requests from agency heads for waivers of the moonlighting restrictions for agency employees; second, the Board’s determination will include all relevant information, including, of necessity, a statement of the agency head’s designation made pursuant to Section 1-13(e)(1).

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

New material is underlined.

[Deleted material is in brackets.]

Section 1. Subdivision (e) of Section 1-13 of Chapter 1 of Title 53 of the Rules of the City of New York is amended to read as follows:

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

(i) there is a demonstrated nexus between the proposed [activity] work, the public servant's City job, and the mission of the public servant's agency; [and]

(ii) such work furthers the agency's mission and is not undertaken primarily for the benefit or interests of the not-for-profit;

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

[(iii)] (iv) 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] by the agency head, the Board determines that there is a demonstrated nexus between the proposed participation, the public servant's City job, and the mission of the public servant's agency[;] and that such participation furthers the agency's mission and is not undertaken primarily for the benefit or interests of the not-for-profit entity.

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

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

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

### **Notice of Adoption of Final Rules**

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE NEW YORK CITY CONFLICTS OF INTEREST BOARD by Sections 1043 and 2603(a) of the City Charter, that the Conflicts of Interest Board has amended its rules governing the use of City time and City resources and accomplice liability.

The proposed Rules were published in the City Record on April 17, 2020, and a public hearing was held on May 18, 2020. No comments were received. The Conflicts of Interest Board now adopts the following Rules.

### **Statement of Basis and Purpose**

The Board adopted Board Rules § 1-13 in 1998 to provide broad guidance regarding City Charter § 2604(b)(2), Chapter 68’s “catch-all” provision, which prohibits a public servant from engaging in “any business, transaction or private employment, or hav[ing] any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties.” Pursuant to Board Rules § 1-13, City Charter § 2604(b)(2) prohibits the use of City time and City resources for non-City purposes and establishes accomplice liability for Chapter 68 violations by others.

When initially drafted, § 1-13 was the only rule of the Board that interpreted City Charter § 2604(b)(2). Since then, the Board has adopted other rules that construe various aspects of City Charter § 2604(b)(2), including § 1-14 (Official Fundraising) and § 1-15 (Community Board Members). The Board has also adopted two provisions as part of § 1-13 that govern the permissible use of City time and City resources: existing Board Rules § 1-13(c) permits a public servant to use a limited amount of City time and City resources to pursue a personal and private activity, upon the approval of the public servant’s agency head and the Board’s determination that the activity furthers the purposes and interests of the City; and Board Rules § 1-13(e) establishes parameters

by which public servants may perform work on behalf of not-for-profit organizations as part of their City jobs.

Given these intervening additions and to improve the overall organizational structure of the Board Rules, the Board now (1) reorganizes Board Rules § 1-13 into a rule that focuses exclusively on the use of City time and City resources; (2) moves the provisions regarding accomplice liability into a new Board Rules § 1-17; and (3) renumbers the existing Board Rules § 1-17 (Procedures to Appeal a Designation as a Required Filer of a Financial Disclosure Report) as Board Rules § 4-06, to place it in Chapter 4 with the other Board Rules relating to Annual Disclosure.

The Board also amends Board Rules § 1-13 to codify advice given in two Advisory Opinions that reflect the Board's practice regarding the use of City time and City resources:

- Board Rules § 1-13(d), a new provision, clarifies that a public servant may use his or her City title in connection with the non-City authorship of print or online published work, teaching, and paid speaking engagements under circumstances where it is clear that the public servant is not speaking on behalf of the City. This amendment codifies, in part, advice given in Advisory Opinion No. 1999-4 permitting a public servant who engages in teaching to list his or her title as part of biographical information about the public servant. See A.O. No. 1999-4 at 7.
- Board Rules § 1-13(f) codifies the advice given in Advisory Opinion No. 2009-5 permitting an elected official, including a District Attorney, to use his or her City title in endorsing a candidate for public office. See A.O. No. 2009-5 at 3 n. 1. The new text in subdivision (f) clarifies that other public servants (that is, not elected officials) may not use their titles in endorsing candidates for public office but it does not otherwise prohibit them from disclosing that they are public servants when engaging in political speech—such as the biography of a candidate for City Council identifying the candidate as a community board member, among the candidate's other qualifications, or a participant at a political rally identifying themselves as a public school teacher.

The Board also adopts the following clarifications consistent with the Board's previous confidential advice and enforcement dispositions:

- Board Rules § 1-13(b) clarifies that a public servant’s City title as well as City technology assets (such as e-mail, official social media accounts, and internet access) are City resources for purposes of City Charter § 2604(b)(2).
- Board Rules § 1-13(c) permits the Board to authorize, after a public servant receives approval from their agency head, the use of City time and City resources to perform non-City work on behalf of not-for-profit entities where the Board determines that at least one of the following circumstances exists: the work advances the professional development of the public servant, it furthers the purposes and interests of the City, or it benefits the public at large. As a result of these revisions, this subdivision (c) is harmonized with the provisions of Board Rules § 1-13(e), and each of its provisions applies only to activities performed on behalf of not-for-profit entities.

**Text of the Rule**

New material is underlined.

[Deleted material is in brackets.]

**Section 1.** Section 1-13 of Title 53 of the Rules of the City of New York is amended to read as follows:

**§ 1-13 [Conduct Prohibited by City Charter § 2604(b)(2)] Use of City Time and City Resources.**

- (a) Except as provided in subdivision (c) of this section, it shall be a violation of City Charter § 2604(b)(2) for any public servant to pursue personal and private activities during times when the public servant is required to perform services for the City.
- (b) Except as provided in [subdivision (c) of] this section, it shall be a violation of City Charter § 2604(b)(2) for any public servant to use City letterhead, title, personnel, equipment, resources, [or] supplies, or technology assets for any non-City purpose. For purposes of this subdivision “technology assets” includes but is not limited to e-mail accounts, internet access, and official social media accounts.

(c) (1) A public servant may [pursue a personal and private activity during normal business hours] perform volunteer services on behalf of a not-for-profit entity during times when such public servant is required to perform work for the City and may use City personnel, equipment, resources, [personnel, and] supplies, and technology assets, but not City letterhead, [if] their title or City email account(s), provided that

(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] the public servant's agency head approves in writing the proposed volunteer services; and

(ii) [the public servant shall have received approval to pursue such activity from the head of his or her agency] the Board determines that the proposed volunteer services advance the public servant's professional development, further the purposes and interests of the City, or benefit the public at large.

(2) [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.] The agency head approval required by paragraph (1) of this subdivision must be by the head of the agency served by the public servant, or by a deputy mayor if the public servant is an agency head. A public servant who is an elected official, including a District Attorney, is the agency head for the public servants employed by the elected official's

agency or office. Public servants who are elected officials, including District Attorneys, may approve their own activities as agency heads pursuant to paragraph (1).

(d) [It shall be a violation of City Charter § 2604(b)(2) for any public servant to intentionally or knowingly:] A public servant engaging in a personal and private activity may use, or permit the use of, their City title in connection with print or online published work, teaching, or paid speaking engagements, under either of the following circumstances:

(1) [solicit, request, command, importune, aid, induce or cause another public servant to engage in conduct that violates any provision of City Charter § 2604] their City title is one of several biographical details used to identify such public servant; or

(2) [agree with one or more persons to engage in or cause the performance of conduct that violates any provision of City Charter § 2604] their City title is used to demonstrate such public servant's relevant professional qualifications provided that their City title is accompanied by a reasonably prominent disclaimer stating that the views expressed in the work, teaching, or speaking engagement do not necessarily represent the views of the agency or the City.

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

(i) there is a demonstrated nexus between the proposed 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;



- (ii) 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
  - (iii) 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] 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] District Attorney, may provide the designation pursuant to paragraph (1) and the agency head approval pursuant to paragraph (2) for him or herself.
- (f) [Nothing contained in this section shall preclude the Conflicts of Interest Board from finding that conduct other than that proscribed by subdivisions (a) through (d) of this section violates City Charter § 2604(b)(2), although the Board may impose a fine for a

violation of City Charter § 2604(b)(2) only if the conduct violates subdivision (a), (b), (c), or (d) of this section. The Board may not impose a fine for violation of subdivision (d) where the public servant induced or caused another public servant to engage in conduct that violates City Charter § 2604(b)(2), unless such other public servant violated subdivision (a), (b), or (c) of this section] An elected official, including a District Attorney, may use or permit the use of their City title in an endorsement of a candidate for elective office. No other public servant may use, or permit others to use, their City title to endorse another person’s campaign for elective office.

§ 2. Section 1-17 of Title 53 of the Rules of the City of New York is renumbered as Section 4-06 and a new Section 1-17 is added to read as follows:

**§ 1-17 Accomplice Liability.**

(a) It shall be a violation of City Charter § 2604(b)(2) for any public servant to intentionally or knowingly:

(1) solicit, request, command, importune, aid, induce, or cause another public servant to engage in conduct that violates any provision of City Charter § 2604; or

(2) agree with one or more persons to engage in or cause conduct that violates any provision of City Charter § 2604.

(b) For the purposes of this section, “any provision of City Charter § 2604” shall not include a violation of City Charter § 2604(b)(2) that does not also violate a rule of the Board.