

New York City Conflicts of Interest Board

Notice of Public Hearing and Opportunity to Comment on Proposed Rule Regarding Community Board Members

What are we proposing? The Conflicts of Interest Board proposes to adopt rules regarding community board service.

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 12:30 p.m. on Friday, September 27, 2019. The hearing will be at Spector Hall, 22 Reade Street, New York, New York.

This location has the following accessibility option(s) available: Wheelchair accessible.

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 rules@coib.nyc.gov.
- **Mail.** You can mail comments to Christopher M. Hammer, Deputy General 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) 437-0730. You can also sign up in the hearing room before the hearing begins on September 27. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes; you must submit written comments by Friday, September 27, 2019.

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) 437-0730. You must tell us by Wednesday, September 25, 2019.

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 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 of the Proposed Rule

Throughout its history, the Board has frequently answered questions from community board members, as part-time public servants, about the application of Chapter 68, the City’s conflicts of interest law, to the conduct of their work as community board members. Believing that other community board members would benefit from advice given to the individual requestors, the Board has issued eighteen advisory opinions relating to community board members. See Advisory Opinion (“A.O.”) Nos. 1991-3, 1991-12, 1992-27, 1992-31, 1993-2, 1993-3, 1995-18, 1995-27, 1996-4, 1996-8, 1998-9, 2003-2, 2003-3, 2004-1, 2004-3, 2005-3, 2008-2, and 2010-1. These advisory opinions contain a total of 116 pages of Board discussion and analysis of Chapter 68 as applied to community board members in connection with various issues arising from their board service.

The Board recognizes that it can be difficult for members to understand how the interpretations of Chapter 68 contained in these opinions may apply to their service. To provide clear, concise, and comprehensive guidance, and in fulfillment of its Charter mandate under § 2603(c)(4), the Board proposes to consolidate ten of these opinions into a single rule that codifies these Board interpretations of Chapter 68’s application to community board members. The other

eight opinions would remain as separate opinions applicable only to the individuals who sought the Board's advice at the time.

Chapter 68 prohibits all public servants, including community board members, from using their City position for the financial benefit of the member or of any person or firm "associated" with the member. See Charter § 2601(5). Proposed Board Rules § 1-15 would address this prohibition with respect to the three basic activities of community board members: (1) voting on matters as community board members, (2) discussing matters at a community board meeting, and (3) chairing a community board committee or meeting. Proposed Board Rules § 1-15 and the proposed amendment to Board Rules § 1-02 would also define and clarify certain provisions of Chapter 68 as applicable to community board members.

1. Voting on Matters as Community Board Members

Proposed Board Rules § 1-15(a), which applies Charter § 2604(b)(1)(b), would prohibit a community board member from voting on any matter that may result in a personal and direct economic gain to the member or to any associated person or firm. See A.O. 1991-3 at 3 ("[A] community board member is specifically prohibited under the revised Chapter 68 from voting on matters in which he or she has a direct economic interest."). The proposed definition of "personal and direct economic gain" as a specific economic gain (or mitigation of a loss) that would flow to the member or associated person or firm as a proximate result of the matter's ultimate approval or rejection would incorporate several of the Board's advisory opinions on community board voting:

- The Board in A.O. No. 2003-2 advised that a community board member who owns a licensed liquor facility is not prohibited from voting on the liquor licensing of another, possibly competing, facility within the district, because any impact on the member's interests would be speculative and indirect.
- The Board in A.O. No. 2005-3 advised that community board members who are homeowners in a proposed rezoning area covering 310 blocks are not

prohibited from voting on the proposed rezoning area because “the economic benefit to the members, while in some sense ‘direct,’ is not specifically directed to them alone.”

- The Board in A.O. 2008-2 advised that an ideological interest or policy goal, regarding such issues as noise pollution or planting trees, does not by itself rise to the level of a personal and direct economic gain for an organization.

In proposed Board Rules § 1-15(a)(3), the Board would codify its application in A.O. No. 2008-2 of the definition of “associated” in Charter § 2601(5), which includes “a person with whom the public servant has a business or other financial relationship.” First, it would clarify that a community board member is associated not just with the firm that employs the member, but also with his or her individual supervisor(s), that is, “any person who, in the member’s private employment, may hire or fire the member, assign work to the member, approve the member’s leave, or evaluate the member’s work performance.” A.O. No. 2008-2 at 6-7 (advising that a community board member employed as the executive director of a not-for-profit organization is associated with someone serving on the board of that organization where that person was “effectively her boss” at the not-for-profit organization). Second, it would clarify that a community board member employed by a not-for-profit organization is associated with a major donor to the not-for-profit, given that an organization’s most substantial donors are “in effect underwriting the member’s salary” at the not-for-profit. A.O. No. 2008-2 at 9. Proposed Board Rules § 1-15(a)(3) would establish 10% of the not-for-profit’s operating budget as an easy-to-calculate threshold at which the amount of the donation becomes so substantial to create an association between the donor and the not-for-profit employee.

In proposed Board Rules § 1-15(b), the Board would codify its longstanding advice that community board members who serve another City agency as an official, officer, or employee may not vote on any matter involving the member’s other City agency, and it would apply that advice to the other governmental or quasi-governmental entities listed in Charter § 2601(11) and Board

Rules § 1-08. See A.O. No. 1991-3 (adopting the conclusion of the Board’s predecessor agency, the Board of Ethics, that it would be “inappropriate for an employee of a City agency to cast a formal vote [on a community board] which might be in opposition to a position theretofore or thereafter taken by his or her agency”). This proposed rule is consistent with the Board’s longstanding interpretation of the “catch-all” provision of Charter § 2604(b)(2), which prohibits a public servant from having a position or engaging in conduct that “is in conflict with the proper discharge of his or her official duties.”

2. Discussing Matters at a Community Board Meeting

Proposed Board Rules § 1-15(b) would codify the Board’s long-standing advice to community board members, starting in A.O. No. 1991-3, that they may participate in any discussion at the community board in matters involving the member’s private interests or other government or quasi-government entity served, provided that the member discloses his or her interest prior to such discussion. See also A.O. Nos. 2003-2 and 2008-2.

3. Chairing a Community Board Committee or Meeting

In A.O. No. 1993-2, the Board explained that “a committee chair can, if she or he so wishes, greatly influence a committee by controlling the agenda, recognizing speakers, and making rulings.” In proposed Board Rules § 1-15(c), the Board would both codify and clarify its prior advice on chairing meetings. Specifically, the proposed rule would state that a community board member may not serve as the chair of a committee or subcommittee that regularly considers matters involving that member’s private interests (A.O. Nos. 1995-18 and 2003-2) or matters involving the interests of another government or quasi-government entity served by a member (A.O. No. 1993-2) and may not chair any meeting that considers matters involving a member’s private interests or other government or quasi-government entity served (A.O. No. 1996-8). The

Board had not specified how frequently a matter involving the member's private interest or other government or quasi-government service must arise for the committee to "regularly consider" such matters. The Board now proposes to define that frequency as three or more times over a twelve-month period or, in the case of another City agency, jurisdiction over that government or quasi-government entity.

4. Additional Defined Terms

Proposed Board Rules § 1-15(d) would codify the Board's advice in A.O. No. 2004-1 that public members of community board committees, appointed pursuant to Charter § 2800(i), are not public servants within the meaning of Charter § 2601(19).

Proposed Board Rules § 1-15(e) would codify the Board's advice in A.O. No. 2004-3 that an employee of the community board is a subordinate public servant of each community board member.

The proposed amendment to Board Rules § 1-02 would codify A.O. 1991-12, in which the Board advised that a community board chair is not a public servant with substantial policy discretion.

5. Additional Advisory Opinions

Pursuant to Charter § 2604(c)(4), the Board must determine which of its advisory opinions have interpretive value in construing the provisions of Chapter 68. Of its eighteen advisory opinions on community boards, the Board is not incorporating eight opinions into this proposed rule:

- In three advisory opinions, Nos. 1992-31, 1996-4, and 1998-9, the Board applied provisions of Chapter 68 to community board members as it would to other public servants, reflecting that Charter § 2601(19) defines "public servant" explicitly to include community board members.

- In two advisory opinions, Nos. 1992-27 and 1995-27, the Board advised community board members on the rules by which they may engage in fundraising activities to benefit the community board. The subject of official fundraising was comprehensively addressed in Board Rules § 1-14, effective June 16, 2019.
- In three advisory opinions, Nos. 1993-3, 2003-3, and 2010-1, the Board answered specific questions concerning the government or quasi-government service of community board members: service with a local development corporation, proposed service on the staff of a Council Member, and service on a Community Education Council of the New York City Department of Education, respectively. In the interests of creating a single standard that applies to all community board members, the proposed rule would not incorporate the particular exceptions described in these opinions, thus limiting their application to the particular public servants who requested the Board's advice. The Board can and will continue to address any unusual or special circumstances on a case-by-case basis through the waiver process available to all public servants pursuant to Charter § 2604(e).

Text of the Proposed Rule

New material is underlined.

[Deleted material is in brackets.]

Section 1. The first unnumbered paragraph of section 1-02 of Title 53 of the Rules of the City of New York is amended to read as follows:

- (a) For purposes of Charter § 2604(b)(12) and § 2604(b)(15), a public servant is deemed to have substantial policy discretion if he or she has major responsibilities and exercises independent judgment in connection with determining important agency matters. Public servants with substantial policy discretion include, but are not limited to: agency heads, deputy agency heads, assistant agency heads, [members of boards and commissions, and] public servants in charge of any major office, division, bureau, or unit of an agency, and members of boards and commissions other than community boards. Agency heads shall:

* * *

Section 2. Title 53 of the Rules of the City of New York is amended by adding a new section 1-15, to read as follows:

§ 1-15 Special Rules for Community Board Members.

(a) **Voting and Private Interests.** For purposes of Charter §§ 2604(b)(1)(b) and 2604(b)(2), a community board member shall not vote at a community board meeting on any matter that may result in a personal and direct economic gain to the member or to any person or firm associated with the member, within the meaning of Charter § 2601(5), but the member may participate in discussion about such matter at a community board meeting after the member discloses at such meeting his or her private interest.

(1) For purposes of this paragraph, a “personal and direct” economic gain means a specific economic gain that would flow to the member or an associated person or firm as an anticipated result of the matter’s ultimate approval or rejection.

(2) For purposes of this paragraph, “economic gain” includes the mitigation of a loss.

(3) For purposes of Charter § 2601(5), the definition of “a business or other financial relationship” includes, but is not limited to, a relationship with:

(i) any person who, in the context of the member’s private employment, may hire or terminate the member, assign work to the member, approve the member’s leave, or evaluate the member’s work performance; or

(ii) any person who or firm that donates to the member’s not-for-profit employer in an amount of 10% or more of the not-for-profit’s annual operating budget.

(b) **Other Government and Quasi-Government Service.** For purposes of Charter § 2604(b)(2), a community board member who serves any entity listed in Board Rules § 1-08 as an official, officer, or employee:

(1) may not appear, whether paid or unpaid, on behalf of such entity before the member's community board;

(2) may not vote at a community board meeting on any matter involving such entity; and

(3) may participate in discussion at a community board meeting on matters involving such entity only after the member discloses at the meeting his or her position with such entity.

(c) Service as Chair of a Community Board or Its Committees or Subcommittees.

(1) For purposes of Charter §§ 2604(b)(1)(b) and 2604(b)(2), a community board member:

(i) shall not chair any meeting of the community board, a community board committee, or a community board subcommittee where any matter particularly affecting the member's private employer, financial interest, or other private interest is being considered; and

(ii) shall not chair a community board committee or subcommittee that regularly reviews matters particularly affecting the member's private employer, financial interest, or other private interest, including the interest of any person or firm associated with such member.

(iii) For purposes of this subparagraph, a committee or subcommittee of a community board "regularly reviews" matters involving the member's private employer, financial interest, or other private interest if the committee or subcommittee considers or expects to consider a matter involving the member's employer or interest three or more times within a twelve-month period.

(2) For purposes of Charter § 2604(b)(2), a community board member who serves another government or quasi-government entity listed in Board Rules § 1-08 as an official, officer, or employee:

- (i) shall not chair any meeting of the community board, committee, or subcommittee that considers any matters involving that entity; and
- (ii) shall not chair a committee or subcommittee that regularly reviews matters involving that entity.
- (iii) For purposes of this subparagraph, a committee or subcommittee of a community board “regularly reviews” matters involving a government or quasi-government entity if either (A) the committee or subcommittee has jurisdiction over matters within the entity’s responsibilities or (B) the committee or subcommittee considers or anticipates considering matters involving that entity three or more times within a twelve-month period.

(d) Public Members of Community Board Committees. A public member of a community board committee, appointed pursuant to Charter § 2800(i), is not a public servant within the meaning of Charter § 2601(19).

(e) Community Board Staff. For purposes of Charter §§ 2604(b)(2), 2604(b)(3), 2604(b)(9)(b), 2604(b)(11)(c), 2604(b)(14) and Board Rules § 1-10, a public servant employed by the community board is a subordinate public servant of each community board member.

(f) Agency Head Designations. A community board member serves as the agency head for any agency head designation or approval for himself or herself required by Charter § 2604(e) or the Board Rules. The chair of a community board is the agency head for the public servants employed by the community board.

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

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

RULE TITLE: Rules Regarding Community Board Service

REFERENCE NUMBER: COIB-10

RULEMAKING AGENCY: Conflict 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 a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Lindsay Fuller
Mayor's Office of Operations

August 14 2019
Date

**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: Conflicts of Interest Rules Applicable to Community Board Members

REFERENCE NUMBER: 2019 RG 055

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: August 14, 2019