

New York City Conflicts of Interest Board

Notice of Public Hearing and Opportunity to Comment on Proposed Rules Regarding Gifts

What are we proposing? The Conflicts of Interest Board is proposing to amend its rules governing the acceptance by public servants of gifts of meals or refreshments at events.

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 by video conference at 11:30 a.m. on Thursday, February 4, 2021:

- **Internet Video and Audio.** To access the hearing by Zoom, use the following URL: <https://us02web.zoom.us/j/89423047052?pwd=T1Y2SXJhUG14eHINM2g4Wlp5dGRQZz09>.
- **Telephone.** To access the hearing by telephone, dial (929) 436-2866. When prompted, use the following access code 894-2304-7052 and password 835312.

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.
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing may speak for up to three minutes. Please access the public hearing by Internet Video and Audio or by Telephone using the instructions above. It is recommended, but not required, that commenters sign up prior to the hearing by contacting the Conflicts of Interest Board by phone at (212) 437-0730 or by email at lee@coib.nyc.gov.

Is there a deadline to submit comments? Yes, you must submit written comments by February 4, 2021.

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 February 2, 2021.

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, 2603(a), 2603(c)(4), and 2604(b)(5) of the City Charter authorize the Conflicts of Interest Board to make this proposed rule.

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

In accordance with the mandate of City Charter § 2603(c)(4) for the Board to review all its advisory opinions and initiate rulemaking to adopt those with “interpretative value in construing provisions” of Chapter 68, the Board has been reviewing the 29 advisory opinions it has issued concerning public servants’ acceptance of gifts. In connection with this comprehensive review, the Board proposes to update Board Rules § 1-01(e), the exception to the “Valuable Gifts Rule” that permits a public servant to accept gifts of meals when conducting City business, in light of the Board’s almost 30 years of experience administering these rules.

Existing Board Rules § 1-01(e) has not provided sufficient guidance to public servants as to whether they could accept food offered to them during or after meetings attended in connection with the performance of their City duties. This rule has proven to be so over-inclusive that it has been difficult to provide meaningful guidance, with its multiple and seemingly overlapping provisions. As practice has demonstrated, the situations described are not a realistic reflection of the actual situations in which public servants often find themselves.

In proposed Board Rules § 1-01(e), the Board would replace existing Board Rules § 1-01(e)’s scenario-based analysis with a simple rule permitting public servants to accept free meals or refreshments at a meeting attended in the course of and for the purpose of conducting City business provided that four specific criteria are met. First, the public servant cannot accept meals or refreshments that they have solicited, such as by suggesting that a vendor order food for a City

meeting. Second, the meal or refreshments must be available to all people participating in the meeting or event without additional charge. Third, the meal or refreshments may not be separable from the meeting at which the City business is being conducted. This means, for example, that the public servant cannot accept the meal if it would take place after the meeting's City purpose has been concluded; nor, also by way of example, can they accept refreshments offered at an event around the corner from the office where City business is being conducted.

Finally, the meeting at which the City business is being conducted cannot have been scheduled for the purpose of obtaining the meal or refreshments, such as by scheduling the meeting to take place at a restaurant over lunch or dinner. This particular revision codifies the Board's oft-given informal advice that public servants should not accept free meals at meetings except under limited circumstances, thus avoiding the practice of a vendor scheduling an important "meeting" to negotiate the terms of a City contract over dinner or cocktails or of a legitimate meeting "running long" so that a developer can continue the business discussion while hosting the public servant at an expensive restaurant. See COIB v. Tuller, COIB Case No. 2015-428 (2016); COIB v. Secreto, COIB Case No. 2015-428a (2016); COIB v. Pizzuti, COIB Case No. 2015-428b (2016) (three NYPD Chiefs each paid fines of \$1,500 in connection with their receipt of gifts of meals from the Queens Library President and CEO with whom they dealt as part of their NYPD duties).

New material is underlined.

Section 1. Section 1-01(e) of Chapter 1 of Title 53 of the Rules of the City of New York is REPEALED and new a Section 1-01(e) is added to read as follows:

(e) Meals and Refreshments at Meetings

(1) For the purposes of Charter § 2604(b)(3) and Charter § 2604(b)(5), a public servant may accept free meals or refreshments otherwise prohibited as valuable gifts at a meeting attended in the course of and for the purpose of conducting City business, provided that:

- i. the public servant did not solicit the meal or refreshments;
- ii. the meal or refreshments are available to all participants without charge;
- iii. the meal or refreshments are not separable from the meeting at which the City business is being conducted; and
- iv. the meeting at which the City business is being conducted was not scheduled for the purpose of obtaining the meal or refreshments.

NEW YORK CITY LAW DEPARTMENT

DIVISION OF LEGAL COUNSEL

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NEW YORK, NY 10007

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

RULE TITLE: Amendment to Gift Rules

REFERENCE NUMBER: 2020 RG 101

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

Date: December 24, 2020

Acting Corporation Counsel

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: Amendment to Gift Rules

REFERENCE NUMBER: COIB-20

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/ Francisco X. Navarro

Mayor's Office of Operations

December 28, 2020

Date