

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 of gifts by public servants.

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 11:00 a.m. on Thursday, April 1, 2021, and is accessible by:

- **Internet Video and Audio.** To access the hearing by Zoom, use the following URL: <https://us02web.zoom.us/j/89282689118?pwd=Y2hoN1d1ZERYbGluMWtDbUdrTHpkdz09>.
- **Telephone.** To access the hearing by telephone, dial (929) 436-2866. When prompted, use the following meeting code 892 8268 9118 and password 811858.

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) 437-0721 or by email at hammer@coib.nyc.gov

Is there a deadline to submit comments? Yes, you must submit written comments by Thursday, April 1, 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) 437-0721. You must tell us by Tuesday, March 30, 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/>. 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 on the Conflicts of Interest Board's website (<https://www1.nyc.gov/site/coib/public-documents/open-meetings-and-public-hearings.page>) as soon as practicable.

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. This rule was included in the Conflicts of Interest Board’s regulatory agenda for this Fiscal Year.

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. These proposed amendments to Board Rules § 1-01 (the “Valuable Gifts Rule”) codify advisory opinions with interpretive value and clarify existing rules to conform with current practice. Additionally, the proposed amendments would incorporate the Board’s longstanding interpretation of Charter § 2604(b)(3) that the acceptance of gifts offered as a result of a public servant’s City position would violate Charter § 2604(b)(3). See, e.g., Advisory Opinion (“A.O.”) Nos. 1990-3, 1991-4, 1992-10, 1992-23, 1994-12, and 2000-4.

1. Gifts to Enhance Agency Morale

In proposed Board Rules § 1-01(i), the Board would address acceptance by the City of blocks of free tickets for entertainment, sporting, and cultural events. For these kinds of events, the attending public servants would not be performing any governmental work; instead, the City is distributing the gifted tickets to its employees to promote office morale or reward good performance. The Board addressed such gifts in A.O. No. 2000-4, advising that it would be

permissible to accept the donation of tickets for use by City employees if: (1) approved by and distributed in a manner approved by an agency head; and (2) the donation does not raise significant concerns of a conflict of interest, such as the donor having a project pending before the accepting City agency or the donor having any role in selecting the public servants who will attend. See also A.O. No. 1992-33 at 4 (advising that agency employees cannot accept free travel and hotel lodging offered a part of a morale boosting program by a firm with matters before that agency).

This longstanding interpretation of Chapter 68 is consistent with advice provided by the Board in A.O. No. 2007-3, permitting a registered lobbyist to offer blocks of tickets as gifts to the City with agency head approval. The four-factor test in proposed Board Rules § 1-01(i) would provide a mechanism by which the City may accept gifts to benefit its workforce while also safeguarding against the efforts of donors to target public servants involved in their City business or reward public servants for providing them with favorable determinations.

One of the four factors would exclude from acceptance of free attendance those public servants who hold positions of authority, defined as any public servant who is required by New York City Administrative Code Section 12-110 to file an annual disclosure report. Members of this group of public servants (which includes elected officials; public servants who are candidates for City elective office; public servants who have been designated as having substantial policy discretion pursuant to Board Rules Section 1-02; public servants responsible for reviewing contracts, leases, and other agreements; members of boards and commissions; and certain classes of higher-ranking public servants) are excluded from accepting free tickets to purely recreational events because such acceptance may implicate donors targeting them in the hopes of securing favorable City determinations.

2. Donations for Personal Emergencies

In proposed Board Rules § 1-01(j), the Board would establish a standard to permit a public servant to accept otherwise prohibited donations in the event of a personal emergency similar to that articulated in A.O. No. 1992-29. In A.O. No. 1992-29, the Board advised an injured public servant's co-workers that they could raise funds for his medical expenses from firms that were regulated by their agency or may have matters before the injured public servant, provided that all funds were collected by a third party not connected to the agency and that the donors' identities were not revealed to the public servant or to any other agency employee. Proposed Board Rules § 1-01(j) would permit public servants to accept anonymized donations in emergency situations, subject to strict restrictions on who may solicit donations and from whom donations may be solicited. Public servants who comply with these requirements would be able to accept otherwise prohibited contributions, provided that the contributions address the need caused by the emergency.

3. Gifts between Public Servants

In proposed Board Rules § 1-01(k), the Board would refine the advice provided in A.O. No. 2013-1 concerning gifts between public servants. Proposed Board Rules § 1-01(k)(1) would make it clear that public servant peers may give gifts to each other and that superiors may give gifts to subordinates. In both scenarios, the recipient of the gift has no authority in their City job over the giver; thus, accepting the gift would be permissible. Proposed Board Rules § 1-01(k)(2) would set forth the general prohibition against public servants accepting gifts from their subordinates, with two exceptions: first, proposed Board Rules §1-01(k)(2)(i) would permit a superior to accept a gift from a subordinate on a special occasion marking a major life event, such as a wedding, the birth or adoption of a child, or retirement, where the gift is appropriate to the

occasion; second, proposed Board Rules § 1-01(k)(2)(ii) would permit a public servant to accept gifts other than gifts of cash or cash equivalents (such as gift cards) on other events, such as holidays or birthday, from their subordinates, or a group of subordinates, where the total value of the gift is \$10 or less. By providing a \$10 limit on the total value of any gift accepted by a supervisor, and by excluding cash and cash equivalents, proposed Board Rules § 1-01(k)(2)(ii) would offer a safeguard against a superior -- particularly in a large City agency or office -- receiving hundreds of dollars in cash or cash equivalents, such as gift cards, from their subordinates.

4. Disposition of Impermissible Gifts

In proposed Board Rules § 1-01(l), the Board would clarify existing Board Rules § 1-01(i) by setting the order of steps a public servant must take to dispose of an impermissible gift. A public servant who receives an impermissible gift must first attempt to return the gift because that gift should not be accepted. If the gift cannot be returned, the public servant's agency head may, after providing written notice to the inspector general for the agency: (a) direct the item to be donated to the agency, to an entity as defined in Board Rules § 1-14(a)(1)(iii), or to the Mayor's Fund to Advance New York; (b) share the item within the agency; or (c) destroy the item.

5. Compatibility with Other Laws

In proposed Board Rules § 1-01(m), the Board would consolidate provisions of existing Board Rules § 1-01 addressing other regulatory or statutory regimes. Proposed Board Rules § 1-01(m) would not substantively change the restrictions set forth in existing Board Rules § 1-01(i), (j), and (k) except to explicitly reference Charter § 2604(b)(3) and Charter § 2604(b)(14).

New material is underlined.

Section 1. Subdivisions (i) through (k) of Chapter 1 of Title 53 of the Rules of the City of New York, relating to acceptance of valuable gifts, are REPEALED and new subdivisions (i) through (m) are added to read as follows:

(i) Gifts to Enhance Employee Morale

(1) For the purposes of Charter § 2604(b)(3) and Charter § 2604(b)(5), tickets to an entertainment, sporting, or cultural event may be accepted as a gift to the City for use by City employees provided that:

- i. the attending public servants are not required to file annual disclosure reports pursuant to New York City Administrative Code Section 12-110;
- ii. the offer of the free attendance is unsolicited by any public servant;
- iii. the public servants attending the event are selected according to a method that receives agency head approval in writing; and
- iv. the public servants attending the event are not involved in the consideration of any pending particular matter, legislative proposal, action on the City budget, or text of the zoning resolution in which the offeror of tickets or the host of the event is a party or has an interest.

(j) Donations for Personal Emergencies

(1) For the purposes of Charter § 2604(b)(3) and Charter § 2604(b)(5), donations may be solicited to alleviate a public servant's immediate and serious financial need caused by a personal emergency such as an accident, sickness, or being the victim of a crime, provided that no donations are solicited from:

- i. any subordinate of the beneficiary public servant or soliciting public servant;

- ii. any firm or individual that has a particular matter, legislative proposal, action on the City budget, or text of the zoning resolution pending before the beneficiary public servant or soliciting public servant; or
- iii. any firm with which the beneficiary public servant or soliciting public servant deals in his or her City work.

(2) For the purposes of Charter § 2604(b)(3) and Charter § 2604(b)(5), a public servant may accept donations to alleviate such public servant's immediate and serious financial need caused by a personal emergency, provided that the donors' identities are not in any way revealed to the public servant and the donations directly address the immediate and serious financial need caused by the personal emergency.

(k) Gifts Between Public Servants

(1) Charter § 2604(b)(3) does not prohibit a public servant from giving:

- i. a gift to a subordinate; or
- ii. a gift to or receiving a gift from a public servant who is not a superior or a subordinate.

(2) Pursuant to Charter § 2604(b)(3), a public servant may not accept or solicit a gift

from a subordinate or group of subordinates except:

- i. a public servant may accept a gift from a subordinate or group of subordinates in connection with a special occasion marking a major life event, such as a wedding, the birth or adoption of a child, or retirement, provided that the gift is of the type and value customary to the occasion in question; and

- ii. a public servant may accept a gift from a subordinate or group of subordinates in connection with a holiday, birthday, or other event if the total value of the gift is does not exceed \$10 and the gift is not cash or a cash equivalent.

(l) Disposition of Impermissible Gifts

- (1) If a public servant receives a gift not addressed by any of the exceptions set forth in this section, the public servant must return the gift to the giver.
- (2) If a gift cannot be returned, the public servant's agency head may, after providing written notice to the inspector general of the public servant's agency:
 - i. donate the item to the agency, to an entity as defined in Board Rules § 1-14(a)(1)(iii), or to the Mayor's Fund to Advance New York;
 - ii. share the item within the agency; or
 - iii. destroy the item.

(m) Compatibility with Other Laws

- (1) City agencies may establish rules concerning gifts for their own employees that may not be less restrictive than the requirements set forth in Charter § 2604(b)(3) and Charter § 2604(b)(5) as interpreted by this section.
- (2) Nothing in this section will be deemed to authorize a public servant to act or accept a gift of any value in violation of any applicable federal, state, or local law, including criminal laws, City agency rules, or Mayoral Executive Orders (including, but not limited to, Executive Order No. 16 of 1978 (as amended)), which may impose additional requirements to report gifts and offers of gifts to the agency's inspector general, whether or not a gift is accepted or returned.

(3) This section must be read in conjunction with the provisions of Charter § 2604(b)(2) and Board Rules § 1-13; Charter § 2604(b)(13); and Charter § 2604(b)(14) and Board Rules § 1-10.

**NEW YORK CITY LAW DEPARTMENT
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NEW YORK, NY 10007
212-356-4028**

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

RULE TITLE: Rules Governing Acceptance of Gifts by Public Servant

REFERENCE NUMBER: 2021 RG 002

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: February 22, 2021

**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 Governing Acceptance of Gifts by Public Servant

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 the violations pose significant risks to public health and safety.

/s/ Francisco X. Navarro
Mayor's Office of Operations

February 23, 2021
Date