

New York City Conflicts of Interest Board

Notice of Adoption

NOTICE IS HEREBY GIVEN PURSUANT TO AUTHORITY VESTED IN THE NEW YORK CITY CONFLICTS OF INTEREST BOARD by Sections 1043, 2603, and 2604 of the New York City Charter that the Conflicts of Interest Board has amended Chapter 1 of Title 53 of the Rules of the City of New York and has repealed Section 4-03 of Chapter 4 of Title 53 of the Rules of the City of New York to update its rule defining substantial policy discretion.

The proposed Rules were published in the City Record on March 12, 2024, and a public hearing was held on April 17, 2024. After consideration of the written comments received, the Conflicts of Interest Board added the final sentence at the end of Sections 1-02(b)(2) and 1-02(c) to clarify that the Board will promptly post to its website an updated list of public servants with substantial policy discretion and will promptly notify affected public servants of their status. The Conflicts of Interest Board now adopts the following Rules.

STATEMENT OF BASIS AND PURPOSE

Board Rules § 1-02 defines which public servants are charged with “substantial policy discretion” (also known as “policymakers”) for the purposes of City Charter § 2604(b)(12), which prohibits policymakers from fundraising for the campaigns of City elected officials or candidates for City elected offices; Charter § 2604(b)(15), which prohibits policymakers from holding certain political party positions; Administrative Code § 3-1102(e)(6), which prohibits policymakers from fundraising for legal defense trusts except their own; and Administrative Code § 12-110(b)(3)(a), which requires policymakers to file an annual disclosure report with the Conflicts of Interest Board (the “Board”). Board Rules § 1-02 requires each City agency to make its list of policymakers available to the public, to report that list annually to the Board, and to notify policymakers of the additional restrictions on their political activities found in Charter §§ 2604(b)(12) and 2604(b)(15).

The Board amends Board Rules § 1-02 for four purposes: first, to make non-substantive improvements to the readability of the definition of policymakers; second, to change the date by which City agencies must report their lists of policymakers to the Board and to add a second reporting date; third, to establish a mechanism by which an agency head can dispute a Board determination to add or remove a policymaker from that agency's list; and, fourth, to codify the current practice that the Board, and not City agencies, notifies policymakers of the additional restrictions on their political activities.

Board Rules § 1-02(a) makes formatting and other non-substantive changes to the text of the existing definition of who is a policymaker to improve its readability, including by separating into individual subcategories the general definition and the specific positions identified in the Rule.

In Board Rules § 1-02(b), the Board moves the deadline for City agencies to provide their policymakers lists to the Board each year from February 28 to February 7 to coordinate with the administrative need for agencies to identify their required filers in advance of the annual filing period under the Annual Disclosure Law. Additionally, the Board adds a second date (August 7) for City agencies to provide their lists of policymakers. In 1997, the Board amended a prior version of this Rule to change the then real-time reporting requirement to an annual requirement, after finding that the real-time requirement was overly burdensome. The Board has found annual reporting to be too infrequent, resulting in delays in the identification and notification of public servants who are policymakers. Thus, the Board adopts a middle ground by requiring reporting and notification semiannually. Additionally, the Board adds to Board Rules § 1-02(b) a mechanism by which an agency head can dispute a Board determination to add or

remove a policymaker from that agency's list, which is missing from existing Board Rules § 1-02.

In Board Rules § 1-02(c), the Board codifies its existing practice of itself, and not City agencies, notifying policymakers of their status under the Rule; the Board has assumed this obligation from City agencies to ensure that the educational purpose of this requirement is fulfilled. Board Rules § 1-02(b)(2) codifies the Board's current practice of making agencies' policymakers lists public by posting them on the Board's website; the Board has created a centralized place for the public to obtain this information.

Finally, the Board repeals Board Rules § 4-03 because it is redundant to City Administrative Code § 12-110(a)(12), and Board Rules § 1-02 makes clear that its definition applies for the purposes of the Annual Disclosure Law.

Text of Adopted Board Rules

New material is underlined.

[Deleted material is in brackets.]

Section 1. Section 4-03 of Chapter 4 of Title 53 of the Rules of the City of New York, relating to City employees holding policymaking positions for purposes of annual disclosure, is REPEALED.

§2. Section 1-02 of Chapter 1 of Title 53 of the Rules of the City of New York is amended to read as follows:

§ 1-02 Public Servants Charged with Substantial Policy Discretion.

- (a) Definition. For purposes of Charter §§ 2604(b)(12) and [§] 2604(b)(15), and Administrative Code §§ 3-1102(e)(6) and 12-110, a public servant [is deemed to have] charged with substantial policy discretion [if] includes:

(1) [he or she has] public servants with major responsibilities and who exercise[s] independent judgment in connection with determining important agency matters[.];

(2) [Public servants with substantial policy discretion include, but are not limited to:] agency heads, deputy agency heads, assistant agency heads, and public servants in charge of any major office, division, bureau, or unit of an agency[, and];

(3) members of boards and commissions other than community boards.

[Agency heads shall:

(1) designate by title, or position, and name the public servants in their agencies who have substantial policy discretion as defined by this section;

(2) file annually with the Conflicts of Interest Board, no later than February 28 of each year, a list of such titles or positions and the names of the public servants holding them; and

(3) notify these public servants in writing of the restrictions set forth in Charter § 2604(b)(12) and § 2604(b)(15) to which they are subject. If the Conflicts of Interest Board determines that the title, position, or name of any public servant should be added to or deleted from the list supplied by an agency, the Board shall notify the head of the agency involved of that addition or deletion; the agency shall in turn promptly notify the affected public servant of the change.]

(b) [Each agency may make available for public inspection a copy of the most recent list filed by the agency, with any additions or deletions made by the Board pursuant to subdivision (a) of this section.] Reporting. By February 7 and August 7 each

year, agency heads must provide to the Board a list of the public servants at their agencies charged with substantial policy discretion. The list must include a current agency organizational chart and the name; office title; agency office, division, or unit; and email address of each public servant charged with substantial policy discretion.

(1) If the Board determines that a public servant should be added to or removed from this list, the Board shall notify the agency head of that determination. Within 30 days of receipt of the Board determination, an agency head may submit to the Board a written request for reconsideration of the Board's determination.

(2) Within 30 days of receipt of an agency's list, the Board will post on its website the name; office title; agency; and office, division, or unit of those public servants charged with substantial policy discretion. If the Board determines that a public servant should be added to or removed from this list, the Board shall promptly post an updated list on the Board's website.

(c) Notification. Within 30 days of receipt of an agency's list, the Board will notify in writing those public servants charged with substantial policy discretion that they are subject to the restrictions set forth in Charter § 2604(b)(12) and § 2604(b)(15). If the Board determines that a public servant should be added to or removed from this list, the Board will promptly notify such public servant.