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Date May 31, 2000

FROM Agency Conflicts of Interest Board Division Enforcement

TO THE DIRECTOR OF THE CITY RECORD: Pursuant to Section 1043(e) of the NYC Charter *, please publish in one consecutive issues of THE CITY RECORD starting 6 / 9 / 00 and ending / / the attached material, the title of which is Notice of Adoption

Please print it in the CITY RECORD Section checked below:

- Public Hearing or Meeting (all hearings except agency rules)
- Court Matters
- Property Disposition Offerings
- Agency Rules (includes rules hearings)
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Additional Info:

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*Identify the specific law which requires this material to be printed in THE CITY RECORD

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CITY OF NEW YORK CONFLICTS OF INTEREST BOARD

Notice of Adoption of an Amendment
To the Board's Valuable Gift Rule in Order to Alert Public Servants to their Reporting
Obligations and to Criminal and Other Laws Governing Receipt of Gifts

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE Conflicts of Interest Board by Sections 2603(a) and 2604(b)(5) of the New York City Charter that the Conflicts of Interest Board has adopted an amendment to its rule on valuable gifts, amending Section 1-01(i), and adding a new subsection 1-01(k), Title 53 of the Rules of the City of New York, alerting public servants to their reporting obligations and to criminal and other laws governing receipt of gifts. Pursuant to a notice published in the City Record on February 4, 2000, a public hearing was held on March 20, 2000, from 9:30 a.m. to 5:30 p.m., 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, as it last appeared in the City Record to delete one phrase ("the Department of Investigation assigned to" in subparagraph (i)), adopted the following amendment to the rule as final. The text of the rule as amended is set forth below.

§ 1-01 Valuable Gifts.

(a) For the purposes of Charter §2604(b)(5), a "valuable gift" means any gift to a public servant which has a value of \$50.00 or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form. Two or more gifts to a public servant shall be deemed to be a single gift for purposes of this subdivision and Charter §2604(b)(5) if they are given to the public servant within a twelve-month period under one or more of the following circumstances: (1) they are given by the same person; and/or (2) they are given by persons who the public servant knows or should know are (i) relatives or domestic partners of one another; or (ii) are directors, trustees, or employees of the same firm or affiliated firms.

[Subdivisions (b) through (h) remain unchanged]

(i) A public servant should not accept a "valuable gift," as defined herein, from [a] any person or entity engaged in business dealings with the City. If the public servant receives [a] such valuable gift, he or she should return the gift to the donor. If that is not practical, the public servant should report the receipt of a valuable gift to the inspector general of the public servant's agency, who shall determine the appropriate disposition of the gift. Nothing in this section shall be deemed to authorize a public servant to act in violation of any applicable laws, including the criminal law, 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.

[Subdivision (j) remains unchanged]

(k) (1) Nothing in this section shall be deemed to authorize a public servant to accept a gift of any value in violation of any other applicable federal, state or local law, rule or regulation, including but not limited to the New York State Penal Law.

(2) The provisions of this section shall be read in conjunction with the provisions of Charter §2604(b)(2) and §1-13 of the Rules of the Board (prohibiting certain conduct that conflicts with the proper discharge of a public servant's official duties); §2604(b)(3) of the Charter (prohibiting the use or attempted use of one's City position for private gain); and §2604(b)(13) of the Charter (prohibiting receipt by public servants of compensation except from the City for performing any official duty and prohibiting receipt of gratuities).

STATUTORY AUTHORITY: Sections 2603(a) and 2604(b)(5) of the New York City Charter.

STATEMENT OF BASIS AND PURPOSE OF THE AMENDMENT: Charter § 2604(b)(5) provides:

No public servant shall accept any valuable gift, as defined by rule of the board, from any person or firm which such public servant knows is or intends to become engaged in business dealings with the city, except that nothing contained herein shall prohibit a public servant from accepting a gift which is customary on family and social occasions.

The purpose of the amendment to § 1-01(i) is to alert public servants to their reporting and other obligations with respect to gifts. The current rule, § 1-01(i), provides that public servants should return valuable gifts to the donor, and report such gifts to the inspector general (“IG”) of the public servant’s agency if it is not practical to return the gifts. This provision has allowed situations where an employee of a mayoral agency could receive and return a gift and report nothing to the IG, thereby complying with the Board’s Valuable Gift Rule, but violating his or her reporting obligations under Executive Order No. 16 (1978), which imposes on public servants in mayoral agencies an affirmative obligation to report to the IG’s of their respective agencies, the offer and/or receipt of all gifts that may involve corrupt or other criminal activity or conflict of interest, directly and without undue delay, **whether or not the gift is returned to the**

donor. The amendment corrects this anomaly, helps City employees to comply with their various reporting obligations by highlighting those other obligations, and eliminates possible confusion among public servants.

The purpose of the amendment adding a new subdivision (k) of the Board's Valuable Gift Rule is to inform public servants that the receipt and acceptance of gifts or gratuities may give rise to liability under other provisions of Chapter 68 of the City Charter as well as other sources of law, such as the criminal law. This proposed change would serve to reinforce for public servants their obligation to exercise caution **before accepting any gift of any value** because, whether or not the gift meets the \$50 "valuable gift" definition in subdivision (a), acceptance may constitute a violation of other provisions of law. For example, a public servant should never accept any gift in exchange for taking any official action, even though the gift may be worth less than \$50 and would not be deemed a "valuable gift" under subdivision (a) (assuming no other gifts to be aggregated for a twelve-month period), because this conduct would constitute a violation of Charter § 2604(b)(13), which prohibits public servants from receiving compensation except from the City in exchange for performing any official duty, and could also violate the criminal law. See, e.g., New York State Penal Law § 200.10. In addition, accepting a gift of any value can violate Charter § 2604(b)(3), which prohibits public servants from using or even attempting to use their official positions to obtain a financial gain or other privilege or private or personal advantage for themselves or those associated with them.

In response to the public hearing notice on the proposed rule, the Board received comments from the Comptroller's Office and the City Council. While the comments

from the Comptroller's office were insightful, the Board and the Comptroller's Office agreed that their suggestions did not pertain to the thrust of the instant rule change. The Board was persuaded by the City Council's comment that the inclusion of the phrase "the Department of Investigation assigned to" after "the inspector general of" in subparagraph (i) of the rule, as initially proposed by the Board, raised questions regarding the separation of powers among the various branches of government and was unnecessary. Therefore, the Board left the pertinent language of that subparagraph intact.

See Appendix A for illustrative examples of provisions of law that may apply to gifts.

APPENDIX A

Illustrative Examples of Provisions of Law That May Apply to Gifts

I. Chapter 68 of the New York City Charter

§ 2604(b)(2)

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.

§ 2604(b)(3)

No public servant shall use or attempt to use his or her position as a public servant to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant.

§ 2604(b)(5)

No public servant shall accept any valuable gift, as defined by rule of the board, from any person or firm which such public servant knows is or intends to become engaged in business dealings with the city, except that nothing contained herein shall prohibit a public servant from accepting a gift which is customary on family and social occasions.

§ 2604(b)(13)

No public servant shall receive compensation except from the city for performing any official duty or accept or receive any gratuity from any person whose interests may be affected by the public servant's official action.

Violation of any of the foregoing provisions is a misdemeanor. See Charter § 2606.

II. Conflicts of Interest Rules of the Board

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

(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, personnel, equipment, resources, or supplies for any non-City purpose.

(c) (1) 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.

(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.

(d) 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.

(e) 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 subdivisions (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 subdivisions (a), (b), or (c) of this section.

III. Penal Law Provisions

200.10 Bribe receiving in the third degree

A public servant is guilty of bribe receiving in the third degree when he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that his vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.

Bribe receiving in the third degree is a class D felony.

200.25 Receiving reward for official misconduct in the second degree

A public servant is guilty of receiving reward for official misconduct in the second degree when he solicits, accepts or agrees to accept any benefit from another person for having violated his duty as a public servant.

Receiving reward for official misconduct in the second degree is a class E felony.

200.35 Receiving unlawful gratuities

A public servant is guilty of receiving unlawful gratuities when he solicits, accepts or agrees to accept any benefit for having engaged in official conduct which he was required or authorized to perform, and for which he was not entitled to any special or additional compensation.

Receiving unlawful gratuities is a class A misdemeanor.

200.50 Bribe receiving for public office

A public servant or a party officer is guilty of bribe receiving for public office when he solicits, accepts or agrees to accept any money or other property from another person upon an agreement or understanding that some person will or may be appointed to a public office or designated or nominated as a candidate for public office.

Bribe receiving for public office is a class D felony.

195.00 Official misconduct

A public servant is guilty of official misconduct when, with intent to obtain a benefit or deprive another person of a benefit:

1. He commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized; or
2. He knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office.

Official misconduct is a class A misdemeanor.

IV. Executive Order No. 16 (1978)

§ 4(d)

Every officer and employee of the City shall have the affirmative obligation to report, directly and without undue delay, to the Commissioner or an Inspector General any and all information concerning conduct which they know or should reasonably know to involve corrupt or other criminal activity or conflict of interest, (i) by another City officer or employee, which concerns his or her office or employment, or (ii) by persons dealing with the City, which concerns their dealings with the City. The knowing failure of any officer or employee to report as required above shall constitute cause for removal from office or employment or other appropriate penalty.

[amendedgfrule5_00]