October 19, 2011 Agenda—Item A (Open Meeting Matter)

To: The Board

cc: Legal Staff

From: Wayne Hawley

Date: October 11, 2011

Re: Proposed Charter Amendment

In addition to the proposed Charter amendments that the Board has previously approved, which amendments have been submitted to the Council pursuant to Charter Section 2603(j), staff submits herewith for the Board's consideration one additional proposed amendment.

Attached are the following:

1) The proposed amendment, a new Charter Section 2608 (City Planning Commission), and the commentary thereto.

2) The Board's Advisory Opinion No. 2007-2.

As the commentary states, this amendment would make explicit in the Charter what, the Advisory Opinion holds, is implicitly there, namely, that the Board has the authority to interpret and enforce the conflicts of interest provisions of Charter Section 192(b) regarding the part-time members of the City Planning Commission.

Staff recommends that the Board approve this amendment for submission to the Council.

§ 2608. City planning commission.

The board shall have the powers set forth in this chapter, including without limitation the power to promulgate rules, conduct training, render advisory opinions, grant waivers, receive complaints, direct investigations to be conducted, hold hearings, and impose penalties, with respect to the conflicts of interest provisions of subdivision b of section one hundred ninety-two of the charter. The penalties for a violation of these provisions shall be as provided for in section twenty-six hundred six of this chapter.

Commentary: *This amendment is intended to make explicit what the Charter as currently drafted implicitly provides, namely, that the Board has authority to interpret and enforce the conflicts of interest provision set forth in Charter §192(b), a provision of Charter Chapter 8 (City Planning). As set forth in more detail in the Board's Advisory Opinion No. 2007-2, the 1988 Charter Revision Commission proposed, and the voters approved in 1988, the substantial amendments to Chapter 68 that created the conflicts of interest law that, with some subsequent amendments, exists today. On the heels of those amendments, the 1989 Charter Revision Commission proposed, and the voters in 1989 approved, substantial changes to Chapter 8, including section 192(b) regarding conflicts of interest of members of the City Planning Commission. That new section refers throughout to Chapter 68 and specifically assigns to the Board the authority to promulgate a rule regarding prohibited appearances before City agencies by members of the Commission, a rule the Board adopted in 1992. See Board Rules §1-09. The amendment embodied in new §2608 recognizes, as the language of section 192(b) reflects, that the substantive conflicts of interest restrictions that section 192(b) imposes on members of the City Planning Commission, like the conflicts of interests prohibitions that Charter §2604 imposes on all of the City's public servants, are intended to be interpreted and enforced by the Board.*

CITY OF NEW YORK
CONFLICTS OF INTEREST BOARD
2 Lafayette Street, Suite 1010
New York, New York 10007
(212) 442-1400
Fax: (212) 442-1407 TDD: (212) 442-1443

Steven B. Rosenfeld
Chair/Board Member

Monica Blum
Board Member

Kevin B. Frawley
Board Member

Angela Mariana Freyre
Board Member

Andrew Irving
Board Member

Mark Davies
Executive Director

Wayne G. Hawley
Deputy Executive Director & General Counsel

Felicia A. Mennin
Special Counsel & Director of Financial Disclosure

Carolyn Lisa Miller
Director of Enforcement

Alex Kipp
Director of Training & Education

Ute O'Malley
Director of Administration

Derick Yu
Director of Information Technology

City Planning Commissioners

Charter Sections: 2601(5), (11), (12), (16), and (18); 2603; 2604(a)(1)(a), (b)(2), (b)(3), (b)(6), (c)(6), and (e); 192(a), 192(b)

Board Rules: 1-06, 1-09, 1-11

Opinions Cited: 99-6

Advisory Opinion No. 2007-2

The Conflicts of Interest Board (the "Board") has in recent years received several requests for opinions regarding the impact of the conflict of interest provisions of the City Charter on the outside activities of the part-time members of the City Planning Commission (the "Commission"). Because the Board anticipates receiving similar such requests in the future, because of the prominent role the Commission plays in the regulation of land use in the City, and because of the special conflict of interest provisions of the Charter applicable only to Commission members, the Board issues this public opinion to set forth its determinations in these matters.

EXHIBIT 2

Background

Under the Charter, the City Planning Commission is responsible for planning related to the orderly growth and development of the City. In this role, the Commission reviews and considers amendments to the City's Zoning Resolution and other applications concerning the use, development, and improvement of real property. These applications include applications filed by City agencies for the acquisition and disposition of City-owned property, as well as for site selection for new City facilities; applications filed by the Department of City Planning (the "Department") for neighborhood and other area-wide rezonings; and applications filed by private property owners for rezoning, or for special permits to facilitate development, of their property. The Commission's approval of applications filed pursuant to the City's Uniform Land Use Review Procedure are subject to review and final action by the City Council, while the Commission is the final decision-maker with respect to other land use actions. The Commission typically meets every other week to consider agenda items at a working session known as a "review session," and also holds public hearings.

Charter Section 192(a) specifies that the Commission has thirteen members: the Chair, a full-time City employee, who also serves, at the pleasure of the Mayor, as the director of the Department, and twelve part-time Commissioners -- six appointed by the Mayor, one by the Public Advocate, and one by each of the five Borough Presidents, all subject to confirmation by the City Council. These twelve members serve five-year terms and receive annual salaries of $50,064, except the Vice-Chair, whom the Mayor designates and whose salary is $57,573. These salaries distinguish these part-time Planning Commissioners from other part-time members of City boards and commissions, who receive either no compensation (for example, the

members of the Landmarks Preservation Commission) or a modest per diem (for example, the members of the Campaign Finance Board).

It is the twelve part-time members of the Commission whose outside activities are the subject of this opinion. Before turning to the specific outside activities in question, we first set forth the relevant laws and rules.

Relevant Law

The provisions of Chapter 68 of the Charter which have been implicated by various advice requests relating to Commission members are as follows:

- Charter Section 2604(a)(1)(a) provides that no public servant shall have an interest in a firm which is engaged in business dealings with the public servant's own agency. As defined in Charter Section 2601(12), "interest" includes an ownership interest in, or a position with a firm. Charter Section 2601(18) defines a "position" as, inter alia, "a position in a firm, such as an officer, director, trustee, employee, or any management position... which does not constitute an ownership interest in the firm." "Ownership interest," is defined in Charter Section 2601(16) and Board Rules Section 1-11 relating to the dollar amount thereof, as, inter alia, "an interest in a firm held by a public servant, or the public servant's spouse, domestic partner, or unemancipated child, which exceeds five percent of the firm or an investment of [forty] thousand dollars in cash or other form of commitment, whichever is less. . . ."

- Different restrictions govern positions at not-for-profit entities. Charter Section 2604(c)(6) provides that a public servant may serve as an officer or director of a not-for-profit organization which is interested in business dealings with the City, provided that the public servant takes no direct or indirect part in those business dealings; the not-for-profit organization

has no business dealings with the City agency served by the public servant, except where the head of the public servant's agency, or the mayor where the public servant is an agency head, determines that the service furthers the purposes and interests of the City; all work for the not-for-profit organization is performed at times when the public servant is not required to perform services for the City; and the public servant receives no salary or other compensation for service to the not-for-profit organization.

- Charter Section 2604(b)(2) provides that a public servant may not engage in any business, transaction, or private employment, and may not have any private interest, direct or indirect, that is in conflict with the proper discharge or his or her official duties.

- Charter Section 2604(b)(3) provides that public servants may not use their City positions for personal advantage or for the advantage of a person or firm with whom or which they are associated. Charter Section 2601(5) provides that those "associated" with a public servant include "a spouse, domestic partner, child, parent or sibling; a person with whom the public servant has a business or other financial relationship; and each firm in which the public servant has a present or potential interest."

- Charter Section 2604(b)(6) provides that no regular City employee shall, for compensation, represent private interests before <u>any</u> City agency. For part-time public servants, this prohibition applies only to the agency served by the public servant. (All members of the Commission, except the Chair, are considered part-time public servants. Board Rules Section 1-06(b)(i); Charter Section 192(b).)

- Charter Section 2604(e) authorizes the Board to grant *waivers* permitting public servants to hold interests or positions, or engage in conduct, that would otherwise violate Chapter 68. Such waivers are granted if the Board determines, after receiving written approval of the

public servant's agency head, that such interest, position or conduct does not involve a conflict with the purposes and interests of the City.

However, the Charter also contains a separate section (Section 192(b)) applicable *only* to members of the City Planning Commission. It reads as follows:

> Members, except for the chair, shall not be considered regular employees of the city for purposes of chapter sixty-eight. The agency served by the members of the commission shall for purposes of chapter sixty-eight be deemed to be both the commission and the department of city planning. *No member, while serving as a member, shall appear directly or indirectly before the department, the commission, or any other city agency for which the conflicts of interest board shall, by rule, determine such appearance creates a conflict of interest with the duties and responsibilities of the member.* No firm in which a member has an interest may appear directly or indirectly before the department or commission. For purposes of this section, the terms "agency," "appear," "firm," and "interest" shall be defined as provided in chapter sixty-eight. (Emphasis added.)

Board Rules Section 1-09, which was promulgated in response to the above-highlighted sentence, provides, in pertinent part:

> (b) *Prohibited Appearances.*
>
> (1) For the purposes of Charter Section 192(b), no member of the City Planning Commission (the Commission) while serving as a member, shall appear directly or indirectly before: the Mayor and Deputy Mayors and their staffs; the Mayor's Office of Planning and Coordination; the offices of the Borough Presidents; the City Council; community boards; the Art Commission; the Office of Environmental Coordination; the Landmarks Preservation Commission; and the Hardship Appeals Panel to which certain determinations of the Landmarks Preservation Commission may be appealed.
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> (2) For the purposes of Charter Section 192(b), no member of the Commission, while serving as a member, shall appear directly or indirectly:
>
> (i) before the Department of Buildings on any matter involving zoning or land use, provided that a member of the Commission shall not be barred from filing plans with the Department of Buildings or from making appearances related to the filing of such plans, except that appearances in reconsideration proceedings before a borough supervisor or the Commissioner of the Department of Buildings shall be prohibited;

> (ii) before the Board of Standards and Appeals on any matter involving zoning or land use;
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> (iii) before the Department of Consumer Affairs with respect to licenses and permits which involve land use;
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> (iv) before the Department of Business Services (DBS), and any local development corporation that has entered into a contract with the City to perform services on behalf of DBS, on any matter involving zoning or land use;
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> (v) before any City agency with respect to planning, environmental, financial or other aspects of a project that can reasonably be expected to come before the Commission for a statutory approval or other formal action, including, but not limited to action on major concessions, franchises, the acquisition, use or disposition of City-owned land, an application for a zoning change or special permit, or any action before the Commission pursuant to the Uniform Land Use Review Procedure.

The special restrictions on Commission members in Charter Section 192(b), adopted by the voters in November of 1989, reflected the 1989 Charter Revision Commission's recognition of both the special place that land use regulation plays in the fabric of the City and the critical role of the Commission in the regulatory scheme. On that same basis, in fulfilling its mandate under Section 192(b) to designate by rule those "other City agencies" before which Planning Commission members may not appear, the Board sought to identify those City agencies and offices so involved in the City's system of land use regulation that there was the real risk that a Planning Commissioner appearing before those agencies or offices would use, or appear to be using, his or her Commission position to advance his or her own interests or the interests of private clients.

Discussion

The provisions cited above are found in two distinct Chapters of the City Charter. The noted subdivisions of Section 2604 are all part of Charter Chapter 68, the City's Conflicts of Interest Law, which establishes the Conflicts of Interest Board (see Charter Section 2603) and sets forth the basic code of ethics for all public servants of the City. Section 192(b), in contrast, is a provision of Charter Chapter 8 (City Planning), which sets forth, among other things, the powers of the City Planning Commission.

Chapter 68 in its current form is the creation of the 1988 Charter Revision Commission and was approved by the voters in 1988. The 1989 Charter Revision Commission, as noted above, reconfigured the City Planning Commission by amending Charter Chapter 8. Among the provisions the voters approved in 1989 was Charter Section 192(b) regarding conflicts of interests of members of the Commission. The references in Section 192(b) to terms defined in Chapter 68, and the provision's assignment to the Board of the responsibility to adopt a rule specifying which other City agencies Planning Commissioners may not appear before, make clear that Section 192(b) was intended to supplement, for Planning Commissioners, the more general conflicts of interest provisions adopted the previous year in Chapter 68. It also appears clear, and the Board has so determined, that its responsibility under Chapter 68 to interpret and enforce the conflicts of interest provisions of Chapter 68 extends to all of Charter Section 192(b).

It is not, however, immediately clear from the language or legislative history of Section 192(b) whether the Board was intended to have the power, pursuant to Charter Section 2604(e), to grant *waivers* of any of the restrictions of Section 192(b), which apply only to members of the Commission. Nevertheless, having considered that question, the Board has concluded that exercising the waiver power of Section 2604(e) with respect to the restrictions of Section 192(b)

is fully consistent with the structure of the Charter and the intent underlying Section 192(b) -- in particular, the express delegation to the Board in that Section of the power to determine by rule which City agencies (in addition to the Commission and the Department of City Planning) members of the Commission should be barred from appearing before. Accordingly, the Board has considered the specific requests for advice from members of the Commission that are the subject of this Advisory Opinion in light of its conclusion that it has the power to grant waivers of Section 192(b) restrictions in appropriate circumstances – *i.e.* after receiving the written approval of the Commission's Chair, and based on an express finding that the proposed interest, position, or conduct does not conflict with the purposes and interests of the City.

In interpreting all these provisions, and in making determinations as to whether and when it should exercise its power to grant waivers for interests or conduct that would otherwise violate Chapter 68 or Section 192(b), the Board has taken notice of the balancing act embodied in the Charter. As noted in 1992 in the Board's Statement of Basis and Purpose for adopting the above-referenced Rule 1-09, the Charter scheme envisions a Planning Commission whose members are "knowledgeable and experienced in a variety of disciplines and in civic affairs," including some people whose work involves real estate development or land use. On the other hand, the Charter drafters aimed to avoid both the reality and the appearance of conflicts of interest, and to that end the Charter not only prescribes what Commissioners may and may not do while serving as members of the Commission, but also limits what sorts of private positions they may hold and what actions they may take in their private positions.

With this background, we address the circumstances of three members of the City Planning Commission who have recently sought the Board's advice.

Commissioner No. 1

Commissioner No. 1 is employed by a large private entity ("the Firm"), which owns real property in the City that occasionally is the subject of an application before the Commission. Real estate ownership and development is not the Firm's primary business, and its infrequent applications to the Commission are only incidental to that business. Moreover, in his work for the Firm, Commissioner No. 1 has no involvement in these applications to the Commission. He advised the Board that he would recuse himself from the Commission's consideration of any matters involving the Firm or property owned by the Firm and would not appear on behalf of the Firm before the Commission or the Department. His request for a waiver was supported by the Chair of the Commission, who wrote to the Board that, in her opinion, the Commissioner's employment by the Firm, with the specified recusals, would not conflict with the purposes and interests of the City.

The Board first considered whether Commissioner No. 1's employment by the Firm runs afoul of the portion of Charter Section 192(b) that states that "[n]o firm in which a member [of the Commission] has an interest may appear directly or indirectly before the Department or the Commission." Since Commissioner No. 1 plainly has an "interest" in the Firm within the meaning of Chapter 68 (see Charter Section 2601(16)), this language might be read to prevent the Firm from bringing any applications to the Commission regarding property it owns so long as Commissioner No. 1 serves there. In fact, however, that language of Section 192(b) has been understood by the Commission and the Board to bar from serving as Planning Commissioners only individuals who have interests in firms that regularly *practice* before the Commission. Thus, the architects, lawyers, and planners whose firms regularly, or even occasionally, represent property owners before the Commission or the Department are ineligible to serve as

Commissioners. However, with appropriate recusals and approvals, individuals employed by firms that own realty which may occasionally be the subject of applications to the Commission or the Department will not be barred. In other words, this appearances prohibition in Charter Section 192(b) applies to representational appearances, not to an entity's appearances on its own behalf.

This means that Commissioner No. 1, because he does not work at a firm that represents others before the Commission or the Department, does not violate the above-quoted provision of Charter Section 192(b). His service on the Commission would nevertheless violate Charter Section 2604(a)(1)(a), absent a waiver from the Board, because he holds a position at a firm that has business dealings with his own City agency. However, pursuant to Charter Section 2604(e), the waiver provision of Chapter 68, the Commission Chair has provided the Board with her written approval of Commissioner No. 1's position at the Firm, conditioned on his recusal at both the Firm and the Commission from any involvement in the Firm's dealings with the Commission and the Department. The Board determines, based on this written approval, and considering the facts that real estate ownership and development is not the Firm's primary business and that its applications to the Commission are infrequent and incidental to that business, that Commissioner No. 1's position at the Firm will not conflict with the purposes and interests of the City. The Board thus grants a waiver under Charter Section 2604(e), subject to the stated recusals.[1]

[1] This ruling should not, however, be read to suggest that the Board will issue a waiver for every Planning Commissioner who is a principal or employee of a firm owning real estate that may be the subject of applications before the Commission or the Department. For example, the Board might well decline to grant a waiver to a Commissioner who is an officer or a principal of a major real estate developer that brings multiple land use applications before the Commission and the Department.

As the Commission Chair's waiver request anticipated, the required recusal also means that Commissioner No. 1 may not do work at the Firm related to any of its applications to the Commission. He is thus recused on both sides: not only may he not be involved as a Commissioner in considering the Firm's applications when they come before the Commission, but he also may have absolutely no involvement in the Firm's preparation of any such applications.

Commissioner No. 1's agreement thus to recuse himself from any involvement in matters his firm might have before the Commission avoids a violation of Charter Section 2604(b)(6), which states that part-time public servants may not, in their private work, appear before their own City agency. However, Board Rules Section 1-09, adopted pursuant to the grant of authority in Charter Section 192(b), provides a much broader restriction on the ability of Planning Commissioners to appear before *other* related agencies as well. Thus, in *all* aspects of his private work, Commissioner No. 1 may not make any of the communications proscribed by Board Rules Section 1-09, and thus may not communicate with, for example, the offices of the Mayor and the Deputy Mayors, the City Council, the offices of the Borough Presidents, and the community boards. As noted above, these restrictions go further than those imposed on members of other City boards and commissions, because of the considerable authority of Planning Commissioners and the concern that they should not use, or appear to use, that authority to their own or their clients' advantage.

Commissioner No. 2

Commissioner No. 2's request presents the Board with a more difficult case. Commissioner No. 2 is employed by a subsidiary of a New York State public benefit corporation

("the PBC subsidiary"), which is likely to have matters before the Commission. However, in order to perform her job for the PBC subsidiary, Commissioner No. 2 must communicate regularly with a number of the City offices and agencies listed in Board Rules Section 1-09, including the Department. Indeed, the entire purpose of the subsidiary is to plan for and to promote the orderly development of a particular geographic area in the City. Thus, reflecting the shared interest of the City and the State in this area, the members of the subsidiary's board of directors are appointed in equal numbers by the Governor and the Mayor. The City agencies and offices with which Commissioner No. 2 plans to communicate are those which share a role in the possible development of this area, and in fact include several offices headed or overseen by City officials who sit on the subsidiary's governing board. Her communications will thus be in furtherance of the joint undertaking by the City and the State to address the development of this area of the City and will involve the sorts of consultations and exchanges of information that characterize any such joint effort.

Commissioner No. 2 pledges to recuse herself at the Commission from consideration of any matters involving her employer and not to appear before the Commission on its behalf. However, she seeks a waiver of the appearance ban of Section 192(b) and its implementing Board rule, in order to permit her to have the communications with the various City agencies that, as noted above, her job requires. Her waiver application to the Board has the written approval of the Chair of the Commission.

Unlike Commissioner No. 1, who works for what is clearly a private, real estate-owning "firm," it is less clear whether the entity employing Commissioner No. 2 is a "firm" within the meaning of Chapter 68. Charter Section 2601(11) expressly excludes public benefit corporations (of which Commissioner No. 2's employer is a subsidiary) from the definition of a "firm." If the

subsidiary is similarly excluded, Commissioner No. 2 would not have a position with a "firm" engaged in business dealings with her own agency, and thus would not be in violation of Charter Section 2604(a)(1)(a). (See Advisory Opinion 99-6, in which the Board determined that CUNY and SUNY are not "firms" for the purpose of Chapter 68, so that public servants holding positions with either of those universities will not be in violation of Charter Section 2604(a)(1).) However, the Board has determined that it need not reach that question here, because the Board is prepared to grant the requested waivers.

Absent a waiver, Board Rules Section 1-09(b), as noted above, would prohibit Planning Commissioners from appearing before a large number of City offices and agencies, including many with which Commissioner No. 2 desires to communicate on behalf of her employer. However, viewing Board Rules Section 1-09 as primarily concerned with limiting communication made for the purpose of furthering *private* interests, not governmental interests, the Board, on the specific facts, here concludes that a waiver is appropriate to allow Commissioner No. 2 to communicate with such agencies for consultation and exchange of information. As noted above, Commissioner No. 2 works for a subsidiary of a State public benefit corporation whose mission is to advance the shared interests of the State and the City in the development of a specific region of the City. Given this subsidiary's mission and its relationship with the City, the Board concludes that the subsidiary and the City have a common interest and consequently that both the Commissioner's position with her employer and her communications on behalf of her employer not only do not conflict with the purposes and interests of the City as a whole, but indeed advance those interests. Having received the statutorily required written approval of the Commission Chair, the Board therefore grants a waiver to permit such appearances, conditioned on the requirements that Commissioner No. 2

must still recuse herself at the Commission from matters involving her employer and from all representational appearances before the Commission.

Commissioner No. 3

Commissioner No. 3 presents the Board with a question not regarding his private compensated activity, but rather concerning his unpaid service on the board of directors of a not-for-profit corporation (the "Organization") that provides a range of human services to certain disadvantaged New Yorkers. The Organization has contracts with several City agencies (but not with the Department) and also owns real property which will be the subject of an upcoming application to the Department and the Commission. Commissioner No. 3 has agreed that he will have no involvement at either the Organization or the Commission in any aspect of the Organization's application. The Chair of the Commission has provided her approval of Commissioner No. 3's volunteer activity for the Organization.

The Board first notes that, as a general matter, part-time public servants such as Planning Commissioners are prohibited from holding positions in firms only if the firm does business with their own City agency (*see* Charter Section 2604(a)(1)(a)). Likewise, Section 2604(b)(6) makes the same distinction in prohibiting compensated appearances before City agencies – *i.e.*, part-time public servants are barred only from appearances before their own agency. However, Charter Section 2604(c)(6) offers a safe harbor, permitting public servants to hold positions with not-for-profit entities, provided that the following four conditions are met: (a) the public servant has no direct or indirect involvement in the not-for-profit's business dealings with the City; (b) the not-for-profit has no business dealings with, and is not subject to the supervision, control, or regulation of, the City agency served by the public servant, unless the agency head determines

that the service to the not-for-profit furthers the purposes and interests of the City; (c) the not-for-profit activity is not performed on the City's time; and (d) the service to the not-for-profit is uncompensated.

In applying this "safe harbor" to *part-time* public servants, the Board has historically read the first condition, the one requiring no involvement in the organization's business dealings with the City, to mean that the public servant may not be involved in the dealings between the not-for-profit and the City *agency served* by the part-time public servant. This reading rationalizes Section 2604(c)(6) with Sections 2604(a)(1)(a) and (b)(6), which distinguish between full-time and part-time public servants. It would surely be illogical to bar a volunteer board member from involvement on behalf of a non-profit entity in matters before City agencies other than the one he or she serves, while permitting, as Charter Section 2604(b)(6) clearly does, that same part-time public servant to represent private clients for pay before these same other City agencies.

Were it not for Section 192(b) and Board Rules Section 1-09, therefore, it would seem clear that part-time Planning Commissioners ought to be able to take advantage of the safe-harbor in Section 2604(c)(6), as so interpreted by the Board, to permit them to do uncompensated service for not-for-profit entities, subject only to the requirement of recusal from any business dealings of the not-for-profits before the Commission and the Department. However, simply to prohibit a Commissioner's involvement in Commission and Department matters would, given the sweep of Board Rules Section 1-09 and Charter Section 192(b), require too little. The Board instead views the proper standard to lie within Section 192(b) itself. As applied to Commissioner No. 3, this means that, in addition to recusal at the Commission from all matters involving the Organization, and at the Organization from all matters involving the Commission or the Department, he must refrain from making any appearances on behalf of the

Organization before the other City offices and agencies listed in Board Rules Section 1-09(b) and must recuse himself at the Organization from any involvement in matters the Organization may have before the offices and agencies listed in Board Rules Section 1-09(b)(1) and in any of the types of matters listed in Section 1-09(b)(2) of those rules.[2]

The above conclusion addresses only the first of the four conditions of Section 2604(c)(6). The others are easily met. The Chair of the Commission has provided her written approval and her determination that Commissioner No. 3's service on the Organization's governing board furthers the purposes and interests of the City; his service will be on his own time (indeed, for part-time members of most City boards and commissions, the concept of "City time" has little, if any, meaning); and his service to the Organization is, like most service on not-for-profit boards, uncompensated.

In summary, since the Chair of the Commission has determined that his service furthers the purposes and interests of the City, Commissioner No. 3 may serve on the board of directors of the Organization, a not-for-profit entity with a land use matter before the Commission, provided that his service to the Organization is uncompensated; that he recuses himself at the Commission from all matters involving the Organization; that he recuses himself at the Organization from all matters involving the Commission or the Department; that he makes no appearances on behalf of the Organization before any of the City agencies and offices enumerated in Board Rules Section 1-09; and that he recuses himself at the Organization from all

[2] Nevertheless, on a case-by-case basis, the Board will consider applications from the Planning Commission Chair for limited waivers, pursuant to Charter Section 2604(e), of the Section 2604(c)(6)(a) recusal requirements, for the limited purpose of permitting a Commissioner to discuss, with fellow members of the governing board of a not-for-profit, some aspect of the organization's business dealings with the City, but will rarely permit the public servant to communicate on behalf of the not-for-profit with the City agencies listed in Rule 1-09(b).

matters involving the agencies listed in Board Rules Section 1-09(b)(1) or involving any project or matter listed in Board Rules Section 1-09(b)(2).

Conclusion

While a Planning Commissioner may not work at a firm that practices before the Planning Department or the Planning Commission, a Planning Commissioner may, with a waiver from the Board, work for a private entity that owns real property that may be the subject of a land use application to the Department or the Commission. The Board will typically require, as a condition of such a waiver, that the Commissioner recuse himself or herself both at his or her private employer and at the Commission from any involvement in the land use application. The Board will also advise such Commissioners that they must not communicate on behalf of their private employer concerning *any* matter with the City agencies listed in Board Rules Section 1-09.

For Planning Commissioners working at public benefit corporations or their affiliates, and other quasi-government organizations, the Board may, upon written application, not only permit the employing entity to bring matters before the Commission or the Department, but may also grant a waiver to permit the Commissioner, in his or her work for such an entity, to communicate with the City agencies listed in Board Rules Section 1-09. In evaluating such waiver applications, the Board will consider that Rule 1-09 was aimed, in the main, at communications made on behalf of a private *firm* for which the Commissioner works, but will nevertheless look closely at whether the quasi-public entity employing the Commissioner has a shared purpose with the City.

A Planning Commissioner who is an uncompensated member of the board of directors of a not-for-profit organization with an interest in real property that may be the subject of an application to the Department or the Commission will not violate the Charter, provided that 1) the Commission Chair determines that the board service furthers the purposes and interests of the City; 2) he or she recuses himself or herself at the Commission from all matters involving the Organization, and at the Organization from all matters involving the Commission or the Department; 3) the Commissioner makes no communications on behalf of the not-for-profit that would violate Board Rules Section 1-09; and 4) the Commissioner recuses himself or herself at the not-for-profit from all matters involving the agencies listed in Board Rules Section 1-09(b)(1) or involving any project or matter listed in Board Rules Section 1-09(b)(2).

Steven B. Rosenfeld
Chair

Monica Blum
Kevin B. Frawley
Angela Mariana Freyre
Andrew Irving

Dated: October 24, 2007