
**CONFLICTS OF INTEREST
BOARD**

Adoption of Rules

The Conflicts of Interest Board adopted the following rule at its meeting on June 14, 1990:

Section 9. Definition of a Valuable Gift.

1. For the purposes of Charter Section 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. When a public servant has received two or more gifts from any one source within a calendar year which individually are worth less than \$50.00 but in the aggregate exceed a value of \$50.00, the public servant shall disclose the gifts in writing to his or her agency head.

2. For the purposes of Charter Section 2604(b)(5), a public servant may accept gifts that are customary on family or social occasions from a family member or close personal friend whom the public servant knows is or intends to become engaged in business dealings with the City, when:

- (i) it can be shown under all the relevant circumstances that it is the family or personal relationship rather than the business dealings that is the controlling factor; and

- (ii) the public servant's receipt of the gift would not result in or create the appearance of: (a) using his or her office for private gain; (b) giving preferential treatment to any person or entity; (c) losing independence or impartiality; or (d) accepting gifts or favors for performing official duties.

3. For the purposes of Charter Section 2604(b)(5), a public servant may accept awards and plaques valued at less than \$150.00 which are publicly presented in recognition of public service.

4. For the purposes of Charter Section 2604(b)(5), a public servant may accept free meals or refreshments in the course of and for the purpose of conducting City business under the following circumstances:

- (i) when offered during a meeting which the public servant is attending for official reasons;
- (ii) when offered at a company cafeteria, club or other setting where there is no public price structure and individual payment is impractical;
- (iii) when a meeting the public servant is attending for official reasons begins in a business setting but continues through normal meal hours in a restaurant, and a refusal to participate and/or individual payment would be impractical;
- (iv) when the free meals or refreshments are provided by the host entity at a meeting held at an out-of-the-way location, alternative facilities are not available and individual payment would be impractical;
- (v) when it is customary business practice to hold a meeting over meals or refreshments and customary business practice for one party to make payment for the other and payment by the public servant would be inappropriate, provided: (a) that the selection of the restaurant and the selection of the meal also conform to customary business practice; and (b) the public servant, except in the case of an elected official, reports acceptance of such meals or refreshments to his or her agency head on a monthly basis or to a deputy mayor if the public servant is an agency head; and
- (vi) when the public servant would not have otherwise purchased food and refreshments had he or she not been placed in such a situation while representing the interests of the City.

5. For the purposes of Charter Section 2604(b)(5), a public servant may:

- (i) accept meals or refreshments when participating as a panelist or speaker in a professional or educational program and the meals or refreshments are provided to all panelists;
- (ii) be present at a professional or educational program as a guest of the sponsoring organization;
- (iii) be a guest at ceremonies or functions sponsored or encouraged by the City as a matter of City policy, such as, for example, those involving housing, education, legislation or government administration;
- (iv) attend an annual public affair of an organization composed of representatives of business, labor, professions, news media or organizations of a civic, charitable or community nature, when invited by the sponsoring organization, provided that this exception does not apply when the invitation is from a civic, charitable or community organization which has a contract or contracts with the public servant's agency;
- (v) be a guest at any function or occasion where the attendance of the public servant has been approved in writing as in the interests of the City, in advance where practicable or within a reasonable time thereafter, by the employee's agency head or by a deputy mayor if the public servant is an agency head.

6. For the purposes of Charter Section 2604(b)(5), a public servant who is an elected official or a member of the elected official's staff authorized by the elected official may attend a function given by an organization composed of representatives of business, labor, professions, news media or organizations of a civic, charitable or community nature, when invited by the sponsoring organization.

7. (a) For the purposes of Charter Section 2604(b)(5), a public servant's acceptance of travel-related expenses from a private entity can be considered a gift to the City rather than to the public servant, when:

- (i) the trip is for a City purpose and therefore could properly be paid for with City funds;
- (ii) the travel arrangements are appropriate to that purpose; and
- (iii) the trip is no longer than reasonably necessary to accomplish the business which is its purpose.

(b) To avoid an appearance of impropriety, it is recommended that for public servants who are not elected officials, each such trip and the acceptance of payment therefor be approved in advance and in writing by the head of the appropriate agency, or if the public servant is an agency head, by a deputy mayor.

8. A public servant should not accept a "valuable gift" as defined herein from a person or entity engaged in business dealings with the City. If the public servant receives a 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 disposition of the gift.

9. City agencies are encouraged to establish rules concerning gifts for their own employees which may not be less restrictive than as set forth in Charter Section 2604(b)(5) as interpreted by these rules.

Statement of Basis and Purpose of Regulation:

Pursuant to the authority vested in the Conflicts of Interest Board by Section 2604(b)(5) of the New York City Charter and in accordance with the requirements of Section 1043 of the New York City Charter, the Conflicts of Interest Board is authorized to promulgate a rule concerning the definition of a valuable gift, for the purpose of ensuring compliance by the City and all public servants with the applicable provisions of the conflicts of interest law. New York City Charter Section 2604(b)(5) provides that no public servant shall accept any valuable gift from any person or firm which such public servant knows is or intends to become engaged in business dealings with the City.

Dated: June 29, 1990 Merrell E. Clark, Jr., Chair

The Conflicts of Interest Board adopted the following rule at its meeting on June 14, 1990:

Section 10. Definition of a Public Servant Charged with Substantial Policy Discretion.

For purposes of Charter Sections 2604(b)(12) and 2604(b)(15), a public servant is deemed to have substantial policy discretion if he or she has major responsibilities and exercises independent judgment in connection with determining important agency matters. 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. Agency heads are requested to: (1) designate by title or position the public servants in their agencies who have substantial policy discretion as defined by this rule; (2) file a list of such titles or positions with the Conflicts of Interest Board no later than September 30, 1990; and (3) notify these public servants in writing of the restrictions set forth in Charter Sections 2604(b)(12) and 2604(b)(15) to which they are subject. Agency heads shall update the filing within 30 days of the creation or elimination of any title or position which involves the exercise of substantial policy discretion.

Statement of Basis and Purpose of Regulation:

Pursuant to the authority vested in the Conflicts of Interest Board by Sections 2604(b)(12) and 2604(b)(15) of the New York City Charter and in accordance with the requirements of Section 1043 of the New York City Charter, the Conflicts of Interest Board is authorized to promulgate a rule concerning the definition of a public servant charged with substantial policy discretion, for the purpose of

ensuring compliance by the City and all public servants with the applicable provisions of the conflicts of interest law. New York City Charter Section 2604(b)(12) provides that a public servant who is charged with substantial policy discretion shall not directly or indirectly request any person to make or pay any political assessment, subscription or contribution for any candidate for an elective office of the City or for any elected official who is a candidate for any elective office. New York City Charter Section 2604(b)(15) provides that a public servant charged with substantial policy discretion may not be a member of the national or state committee of a political party, serve as an assembly district leader of a political party or serve as the chair or as an officer of the county committee or county executive committee of a political party.

Dated: June 29, 1990

Merrell E. Clark, Jr., Chair

July 13

AGENCY RULES

CONFLICTS OF INTEREST BOARD

NOTICE

CITY OF NEW YORK CONFLICTS OF INTEREST BOARD

Notice of Adoption of Amendment to Rule on Valuable Gifts

NOTICE IS HEREBY GIVEN THAT, 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, the Conflicts of Interest Board has adopted an amendment to its rule on valuable gifts, Section 1-01 of Title 53 of the Rules of the City of New York, (1) making explicit that, for purposes of the Charter's prohibition on receipt of valuable gifts from persons doing business with the City, individual gifts from a single donor or related donors shall be aggregated; (2) deleting the requirement that recipients of certain gifts disclose them to the recipient's agency head; and (3) recharacterizing the year-long period for determining a "single gift" as "twelve-month period," rather than "calendar year." Pursuant to a notice published on August 22, 1997, in The City Record, a public hearing was held on September 25, 1997, at 2 Lafayette Street, Suite 1010, New York, New York. The Board received no comments on the proposed amendment and adopted the proposed amendment as final. The text of the amendment is set out below.

SECTION 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. [When a public servant has received two or more gifts from any one source within a calendar year which individually are worth less than \$50.00 but in the aggregate exceed a value of \$50.00, the public servant shall disclose the gifts in writing to his or her agency head.] 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.

(b) As used in subdivision (a) of this section, (1) "relative" shall mean a spouse, child, grandchild, parent, sibling, and grandparent; a parent, domestic partner, child, or sibling of a spouse or domestic partner; and a spouse or domestic partner of a parent, child, or sibling; (2) firms are "affiliated" if one is a subsidiary of the other or if they have a parent firm in common or if they have a stockholder in common that owns at least 25 percent of the shares of each firm; (3) "firm," "spouse," and "ownership interest" shall have the meaning ascribed to those terms in section 2601 of the Charter; (4) "domestic partner" means a domestic partner registered pursuant to Title 51, Chapter 4, of the Rules of the City of New York.

(Subdivisions (b) through (i) are relettered as (c) through (j) but are otherwise unchanged)

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 Board's current gift rule defines "valuable gift" to mean any gift to a public servant, in whatever form, that has a value of \$50 or more. Board Rules § 1-01(a). The rule also requires that the public servant must report to his or her agency head gifts from a single source within a calendar year which individually are less than \$50 but which together exceed \$50. Id.

The Board has consistently interpreted this rule to mean that individual gifts from a single donor within a twelve-month period must be aggregated for purposes of determining whether the threshold amount was exceeded. However, the Board believes that this interpretation should be made explicit in the text of the rule itself to prevent any misunderstandings by public servants or by persons or firms doing business with the City. In addition, the Board has determined that the disclosure requirement in the rule should be eliminated because it has proven ineffective. Agencies may, if they wish, impose more stringent requirements. For example, some agencies prohibit their employees from accepting gifts of any size from persons doing business with the City.

Accordingly, the amendment (1) makes explicit that, for purposes of the Charter's prohibition on receipt of valuable gifts from persons doing business with the City, individual gifts from a single donor or related donors within a twelve month period shall be aggregated, and (2) deletes the requirement that recipients of gifts disclose them to their agency head, and (3) recharacterizes the year-long period for determining a "single gift" as "twelve-month period," rather than "calendar year." Related donors include the immediate family of the donor (spouse, children, grandchildren, parents, grandparents, brothers, sisters, and in-laws) and officials or employees of the same firm or of firms that stand in a parent-

subsidiary relationship or that are subsidiaries of the same parent or that have a controlling shareholder in common. However, gifts of related donors are only aggregated if the public servant-recipient knows or should know of the relationship. This requirement will avoid inadvertent violations of the rule. The amendment employs the phrase "twelve month period" rather than "calendar year" to prevent, for example, the acceptance of a \$49 gift on December 31 and another on January 1.

(If signature block)

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CITY OF NEW YORK
CONFLICTS OF INTEREST BOARD

Notice of Adoption of Amendment to Rule on
Valuable Gifts

NOTICE IS HEREBY GIVEN THAT, 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, the Conflicts of Interest Board has adopted an amendment to its rule on valuable gifts, Section 1-01 of Title 53 of the Rules of the City of New York, (1) making explicit that, for purposes of the Charter's prohibition on receipt of valuable gifts from persons doing business with the City, individual gifts from a single donor or related donors shall be aggregated; (2) deleting the requirement that recipients of certain gifts disclose them to the recipient's agency head; and (3) recharacterizing the year-long period for determining a "single gift" as "twelve-month period," rather than "calendar year." Pursuant to a notice published on August 22, 1997, in The City Record, a public hearing was held on September 25, 1997, at 2 Lafayette Street, Suite 1010, New York, New York. The Board received no comments on the proposed amendment and adopted the proposed amendment as final. The text of the amendment is set out below.

SECTION 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. [When a public servant has received two or more gifts from any one source within a calendar year which individually are worth less than \$50.00 but in the aggregate exceed a value of \$50.00, the public servant shall disclose the gifts in writing to his or her agency head.] 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.

(b) As used in subdivision (a) of this section, (1) "relative" shall mean a spouse, child, grandchild, parent, sibling, and grandparent; a parent, domestic partner, child, or sibling of a spouse or domestic partner; and a spouse or domestic partner of a parent, child, or sibling; (2) firms are "affiliated" if one is a subsidiary of the other or if they have a parent firm in common or if they have a stockholder in common that owns at least 25 percent of the shares of each firm; (3) "firm," "spouse," and "ownership

interest" shall have the meaning ascribed to those terms in section 2601 of the Charter; (4) "domestic partner" means a domestic partner registered pursuant to Title 51, Chapter 4, of the Rules of the City of New York.

[Subdivisions (b) through (i) are relettered as (c) through (j) but are otherwise unchanged]

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 Board's current gift rule defines "valuable gift" to mean any gift to a public servant, in whatever form, that has a value of \$50 or more. Board Rules § 1-01(a). The rule also requires that the public servant must report to his or her agency head gifts from a single source within a calendar year which individually are less than \$50 but which together exceed \$50. Id.

The Board has consistently interpreted this rule to mean that individual gifts from a single donor within a twelve-month period must be aggregated for purposes of determining whether the threshold amount was exceeded. However, the Board believes that this interpretation should be made explicit in the text of the rule itself to prevent any misunderstandings by public servants or by persons or firms doing business with the City. In addition, the Board has determined that the disclosure requirement in the rule should be eliminated because it has proven ineffective. Agencies may, if they wish, impose more stringent requirements. For example, some agencies prohibit their employees from accepting gifts of any size from persons doing business with the City.

Accordingly, the amendment (1) makes explicit that, for purposes of the Charter's prohibition on receipt of valuable gifts from persons doing business with the City, individual gifts from a single donor or related donors within a twelve month period shall be aggregated, and (2) deletes the requirement that recipients of gifts disclose them to their agency head, and (3) recharacterizes the year-long period for determining a "single gift" as "twelve-month period," rather than "calendar year." Related donors include the immediate family of the donor (spouse, children, grandchildren, parents, grandparents, brothers, sisters, and in-laws) and officials or employees of the same firm or of firms that stand in a parent-

subsidiary relationship or that are subsidiaries of the same parent or that have a controlling shareholder in common. However, gifts of related donors are only aggregated if the public servant-recipient knows or should know of the relationship. This requirement will avoid inadvertent violations of the rule. The amendment employs the phrase "twelve month period" rather than "calendar year" to prevent, for example, the acceptance of a \$49 gift on December 31 and another on January 1.

[COB24: giftulc.7]

CITY OF NEW YORK
CONFLICTS OF INTEREST BOARD

Notice of Adoption of Amendments to Valuable
Gift and Blind Trust Rules to Conform Them to
Local Law No. 27 of 1998 (Domestic Partnership
Law)

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE Conflicts of Interest Board by Sections 2601(6), 2603(a), and 2604(b)(5) of the New York City Charter, and in accordance with Section 1043 of the Charter, that the Conflicts of Interest Board has adopted an amendment to its rules on Valuable Gifts and Definition of Blind Trust, Sections 1-01 and 1-05, respectively, of Title 53 of the Rules of the City of New York, in order to conform those rules to Local Law No. 27 of 1998, which extended to domestic partners the various provisions applicable to spouses in the New York City Charter and the Administrative Code of the City of New York, and specifically to add to those rules domestic partners, as defined in New York City Administrative Code Section 1-112(21). The text of the amendments is set forth below.

Section 1. Paragraph (4) of subdivision (b) of section 1-01 of chapter 1 of title 53 of the Rules of the City of New York is amended to read as follows:

(4) “domestic partner” means a domestic partner [registered pursuant to Title 51, Chapter 4, of the Rules of the City of New York] as defined in New York City Administrative Code § 1-112(21).

§ 2. The introductory paragraph of subdivision (a) of section 1-05 of chapter 1 of title 53 of the Rules of the City of New York is amended to read as follows:

For purposes of Charter § 2601(6), the term “blind trust” means a trust in which a public servant, or the public servant’s spouse, domestic partner, as defined in New York City Administrative Code § 1-112(21), or unemancipated child, has a beneficial interest, the holdings and sources of income of which the public servant, the public servant’s spouse, domestic partner, as defined in New York City Administrative Code § 1-112(21), and unemancipated child have no knowledge, and which meets the following requirements:

§ 3. Paragraph (3) of subdivision (a) of section 1-05 of chapter 1 of title 53 of the Rules of the City of New York is amended to read as follows:

(3) For purposes of this subdivision, the term “interested party” means a public

servant, or the public servant's spouse, domestic partner, as defined in New York City Administrative Code § 1-112(21), or unemancipated child.

STATUTORY AUTHORITY: Sections 2601(6), 2603(a), and 2604(b)(5) of the New York City Charter.

STATEMENT OF BASIS AND PURPOSE OF AMENDMENTS:

The amendments are required in order to bring the Board's rules into conformity with Local Law No. 27 of 1998, which extended to domestic partners the various provisions applicable to spouses in the New York City Charter and the Administrative Code of the City of New York.

[RulesAmendments_Adopted]

REQUEST FOR PUBLICATION
of all material *except procurement notices* in
THE CITY RECORD

No. _____

NOTE: copy for publication in THE CITY RECORD must be received by the City Record Office at least FIVE business days before the date requested for printing

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)
- Special Materials (all notices not included above)

Additional Info:

Requested By: Joan R. Salzman
Name

Phone Number: (212) 442-1434

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

DO NOT USE THIS FORM FOR NOTICES RELATED TO THE PROCUREMENT OF GOODS, SERVICES OR CONSTRUCTION

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]

**CITY OF NEW YORK
CONFLICTS OF INTEREST BOARD**

Notice of Adoption of Amendment
To Rule on Valuable 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(f)(4). This provision concerns when public servants may accept gifts of invitations to annual public events of certain organizations.

Pursuant to a notice published on May 17, 2000, in The City Record, a public hearing was held on June 19, 2000, at 2 Lafayette Street, Suite 1010, New York, New York. The Board received one comment, from the City Council, on the proposed amendment and, in response to that comment, added clarifying language to the statement of basis and purposes and to the text of the amendment itself. The text of the amendment is set out below.

SECTION 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 (e) remain unchanged.]

(f) For the purposes of Charter §2604(b)(5), a public servant may:

(1) accept meals or refreshments when participating as a panelist or speaker in a professional or educational program and the meals or refreshments are provided to all panelists;

(2) be present at a professional or educational program as a guest of the sponsoring organization;

(3) be a guest at ceremonies or functions sponsored or encouraged by the City as a matter of City policy, such as, for example, those involving housing, education, legislation or government administration;

(4) attend an annual public affair of an organization composed of representatives of business, labor, professions, news media or organizations of a civic, charitable or community nature, when invited by the sponsoring organization, provided that this exception does not apply when the invitation is from a civic, charitable or community organization which has [a contract or contracts] business dealings, as defined in Charter Section 2601(8), with, or a matter before, the public servant's agency;

(5) be a guest at any function or occasion where the attendance of the public servant has been approved in writing as in the interests of the City, in advance where practicable or within a reasonable time thereafter, by the employee's agency head or by a deputy mayor if the public servant is an agency head.

(g) For the purposes of Charter §2604(b)(5), a public servant who is an elected official or a member of the elected official's staff authorized by the elected official may attend a function given by an organization composed of representatives of business, labor, professions, news media or organizations of a civic, charitable or community nature, when invited by the sponsoring organization. For the purpose of this subdivision, the authorizing elected official for the central staff of the council is the speaker of the council.

[Subdivisions (h) through (j) remain unchanged.]

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

STATEMENT OF BASIS AND PURPOSE OF THE PROPOSED AMENDMENT:

Charter Section 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.

As provided for by Charter Section 2604(b)(5), the Board has promulgated Rules Section 1-01, which, inter alia, delineates circumstances under which the receipt of gifts by public servants will and will not violate Chapter 68. Section 1-01(f) is, in the main, particularly concerned with ceremonies, functions, programs, and other occasions for which an admission fee is charged, and addresses when a public servant may accept a "ticket" at no charge. Section 1-01(f)(4) addresses the annual public affair of a business association or a charitable organization, and permits the attendance at such event when the free ticket comes from the sponsoring organization, unless the sponsoring organization is a charitable organization which has a contract with the public servant's agency.

By this amendment to section 1-01(f)(4), the Board intends to narrow the range of permitted gifts, because a public servant's agency may have many dealings with a private organization beyond a contractual relationship. For example, a community board may well have highly controversial matters before it involving for-profit and not-for-profit applicants; or the Finance Department may be considering the application from a charitable organization for an exemption from a real property tax. For a public servant at the involved community board, or at the Finance Department, to accept a free ticket to the annual affair of such an organization raises the appearance of impropriety. To limit the rule's proviso simply to the case of a contractual relationship is, the Board believes, insufficient.

The amended rule therefore would prohibit the acceptance of such free tickets from an organization which has dealings with the public servant's agency, not merely from those organizations with a contract with his or her agency. The language chosen to define those dealings, namely, "business dealings ...with, or a matter before," are terms contained in Chapter 68. "Business dealing" is indeed defined in Charter Section 2601(8). "Matter before" is a term used in Charter Sections 2604(a)(1)(a), 2604(b)(1)(a), and 2604(b)(1)(b).

Finally, it should be noted that the amendment would not change the substance of Rules Sections 1-01(f)(5) and 1-01(g), whose texts are also set forth above. Those sections permit, respectively, attendance at functions when the public servant's agency head so approves in writing and attendance by elected officials at the annual public events of certain organizations, when invited by the sponsoring organization. Thus, if the application of the amendment to a particular case would not permit acceptance of the gift

ticket, these provisions would, in all likelihood, permit attendance in those instances when the attendance is indeed in the interests of the City.

In response to the notice of opportunity to comment on the proposed rule, the City Council asked two related questions: the Board's interpretation, as applied to the activities of the Council, of the terms "business dealings" and "matters before"; and, for attendance no longer permitted under the proposed amendment to Section 1-01(f)(4), the identity, for the central staff of the Council, of the "authorizing" elected official within the meaning of Section 1-01(g). With respect to the first, the Board means no change in its historic interpretation of the Charter phrases "business dealings" and "matters before." In that regard, it should be noted that individuals who, and organizations which, merely lobby or advocate positions before the Council do not have "business dealings with" or "matters before" the Council. In contrast, individuals and organizations with Council business dealings or with matters before the Council include vendors to the Council; owners of property which is before the Council pursuant to the Charter's land use review process (see Charter Section 197-d); and organizations which receive direct appropriations from the Council (e.g., line item appropriations or discretionary funding as described in Title 9, Rules of the City of New York, Section 1-01(e)).

With regard to the identity of the authorizing official, for the central staff of the Council the proper authorizing elected official for the purpose of Section 1-01(g) is the Speaker, and the Board adds a sentence to the rule to that effect. For the aides to the individual Council members, the authorizing official is that Council member.

REASON THE PROPOSED RULE WAS NOT ANTICIPATED AND INCLUDED IN the regulatory agenda:

The Board did not consider this matter until well into the current fiscal year.

AGENCY RULES

CONFLICTS OF INTEREST BOARD

■ NOTICE

Notice of Adoption of Rule Defining Prohibited Gifts From Lobbyists and Amendments to the "Valuable Gifts" Rule

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 and Section 3-228 of the New York City Administrative Code that the Conflicts of Interest Board has adopted a new rule, Section 1-16 of Title 53 of the Rules of the City of New York, defining prohibited gifts by lobbyists, and has adopted certain corresponding amendments to its existing rule on valuable gifts, Section 1-01 of Title 53. Pursuant to a notice published on October 27, 2006, in The City Record, a public hearing was held on the proposed rule on December 8, 2006, at 22 Reade Street, New York, New York. The Board received comments from the City Council and from Citizens Union, as well as a joint comment from the Human Services Council of New York, Lawyers Alliance for New York, and the Nonprofit Coordinating Committee of New York.

The text of the new rule and of the amendments is set forth below.

[New matter is underscored and deleted matter is bracketed.]

§ 1. Section 1-01 of chapter 1 of Title 53 of the rules of the city of New York is amended to read as follows:

SECTION 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 to the same person; and/or (2) they are given by persons who the public servant knows or should know are (i) relatives of domestic partners of one another; or (ii) are directors, trustees, or employees of the same firm or affiliated firm.

(b) As used in subdivision (a) of this section: (1) "relative" shall mean a spouse, child, grandchild, parent, sibling, and grandparent; a parent, domestic partner, child or sibling of a spouse or domestic partner; and a spouse or domestic partner of a parent, child, or sibling; (2) firms are "affiliated" if one is a subsidiary of the other or if they have a parent firm in common or if they have a stockholder in common who owns at least 25 percent of the shares of each firm; (3) "firm," "spouse," and "ownership interest" shall have the meaning ascribed to those terms in section 2601 of the Charter; (4) "domestic partner" means a domestic partner as defined in New York City Administrative Code §1-112(21).

(c) For the purposes of Charter §2604(b)(5), a public servant may accept gifts that are customary on family or social occasions from a family member or close personal friend who the public servant knows is or intends to become engaged in business dealings with the City, when:

(1) it can be shown under all relevant circumstances that it is the family or personal relationship rather than the business dealings that is the controlling factor; and

(2) the public servant's receipt of the gift would not result in or create the appearance of:

- (i) using his or her office for private gain;
- (ii) giving preferential treatment to any person or entity;
- (iii) losing independence or impartiality; or
- (iv) accepting gifts or favors for performing official duties.

(d) For the purposes of Charter §2604(b)(5), a public servant may accept awards, [and] plaques [valued at less than \$150.00] and other similar items which are publicly presented in recognition of public service, provided that the item or items have no substantial resale value.

(e) For the purposes of Charter §2604(b)(5), a public servant may accept free meals or refreshments in the course of and for the purpose of conducting City business under the following circumstances:

(1) when offered during a meeting which the public servant is attending for official reasons;

(2) when offered at a company cafeteria, club or other setting where there is no public price structure and individual payment is impractical;

(3) when a meeting the public servant is attending for official reasons begins in a business setting but continues through normal meal hours in a restaurant, and a refusal to participate and/or individual payment would be impractical.

(4) when the free meals or refreshments are provided by the host entity at a meeting held at an out-of-the-way location, alternative facilities are not available and individual payment would be impractical; and

(5) [when it is customary business practice to hold a meeting over meals or refreshments and customary business practice for one party to make payment for the other and payment by the public servant would be inappropriate, provided:

- (i) that the selection of the restaurant and the selection of the meal also conform to customary business practice; and
(ii) the public servant, except in the case of an elected official, reports acceptance of such meals or refreshments to his or her agency head on a monthly basis or to a deputy mayor if the public servant is an agency head; and

(6) when the public servant would not have otherwise purchased food and refreshments had he or she not been placed in such a situation while representing the interests of the City.

(f) For the purposes of Charter §2604(b)(5), a public servant may:

(1) accept meals or refreshments when participating as a panelist or speaker in a professional or educational program and the meals or refreshments are provided to all panelists;

(2) be present at a professional or educational program as a guest of the sponsoring organization;

(3) be a guest at ceremonies or functions sponsored or encouraged by the City as a matter of City policy, such as, for example, those involving housing, education, legislation or government administration;

(4) attend [an annual] a public affair of an organization composed of representatives of business, labor, professions, news media or organizations of a civic, charitable or community nature, when invited by the sponsoring organization, provided that this exception does not apply when the invitation is from [a civic, charitable or community] an organization which has business dealings, as defined in Charter Section 2601(8), with, or a matter before, the public servant's agency;

(5) be a guest at any function or occasion where the attendance of the public servant has been approved in writing as in the interests of the City, in advance where practicable or within a reasonable time thereafter, by the employee's agency head or by a deputy mayor if the public servant is an agency head.

(g) For the purposes of Charter § 2604(b)(5), a public servant who is an elected official or a member of the elected official's staff authorized by the elected official may attend a function given by an organization composed of representatives of business, labor, professions, news media or organizations of a civic, charitable or community nature, when invited by the sponsoring organization. For the purpose of this subdivision, the authorizing elected official for the central staff of the council is the speaker of the council.

(h) (1) For the purposes of Charter § 2604(b)(5), a public servant's acceptance of travel-related expenses from a private entity can be considered a gift to the City rather than to the public servant, when:

- (i) the trip is for a City purpose and therefore could properly be paid for with City funds;
(ii) the travel arrangements are appropriate to that purpose; and
(iii) the trip is no longer than reasonably necessary to accomplish the business which is its purpose.

(2) To avoid an appearance of impropriety, it is recommended that for public servants who are not elected officials, each such trip and the acceptance of payment therefore be approved in advance and in writing by the head of the appropriate agency, or if the public servant is an agency head, by a deputy mayor.

* * *

§ 2. Chapter 1 of Title 53 of the rules of the city of New York is amended by adding a new section 1-16, to read as follows:

Section 1-16: Prohibited Gifts From Lobbyists and Exceptions Thereto

(a) Pursuant to Administrative Code § 3-225, no person required to be listed on a statement of registration pursuant to § 3-213(c)(1) of the Administrative Code shall offer or give a gift to any public servant.

(b) For purposes of this section:

(1) the persons required to be listed on a statement of registration pursuant to § 3-213(c)(1) of the Administrative Code include (i) the lobbyist, (ii) the spouse or domestic partner of the lobbyist, (iii) the unemancipated children of the lobbyist, and (iv) if the lobbyist is an organization, the officers or employees of such lobbyist who engage in any lobbying activities or who are employed in such lobbyist's division that engages in lobbying activities and the spouse or domestic partner and unemancipated children of such officers or employees;

(2) the term "lobbyist" shall have the same meaning as used in § 3-211 of the Administrative Code;

(3) the term "offer" shall include every (i) attempt or offer to

give a gift, or (ii) attempt or offer to arrange for the making of a gift;

(4) the term "give" shall include every (i) tender of a gift, or (ii) action as an agent in the making of a gift, or (iii) arrangement for the making of a gift;

(5) the term "gift" shall include any gift which has any value whatsoever, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form.

(c) For purposes of Administrative Code § 3-225 and this section, the following gifts shall not be prohibited:

(1) de minimis promotional items having no substantial resale value such as pens, mugs, calendars, hats, and t-shirts which bear an organization's name, logo, or message in a manner which promotes the organization's cause;

(2) gifts that are customary on family or social occasions from a family member or close personal friend, when it can be shown under all relevant circumstances that it is the family or personal relationship rather than the lobbying activity that is the controlling factor and the public servant's receipt of the gift would not result in or create the appearance of:

- (i) using his or her office for private gain;
(ii) giving preferential treatment to any person or entity;
(iii) losing independence or impartiality; or
(iv) accepting gifts or favors for performing official duties;

(3) awards, plaques, and other similar items which are publicly presented in recognition of public service, provided that the item or items have no substantial resale value;

(4) free meals or refreshments in the course of and for the purpose of conducting City business under the following circumstances:

- (i) when offered during a meeting which the public servant is attending for official reasons;
(ii) when offered at a company cafeteria, club or other setting where there is no public price structure and individual payment is impractical;
(iii) when a meeting the public servant is attending for official reasons begins in a business setting but continues through normal meal hours in a restaurant, and refusal to participate and/or individual payment would be impractical;
(iv) when the free meals or refreshments are provided by the host entity at a meeting held at an out-of-the-way location, alternative facilities are not available and individual payment would be impractical; or
(v) when the public servant would not have otherwise purchased food and refreshments had he or she not been placed in such a situation while representing the interests of the City.

(5) meals or refreshments when participating as a panelist or speaker in a professional or educational program and the meals or refreshments are provided to all panelists;

(6) invitation to attendance at professional or educational programs as a guest of the sponsoring organization;

(7) invitation to attendance at ceremonies or functions sponsored or encouraged by the City as a matter of City policy, such as, for example, those involving housing, education, legislation or government administration;

(8) invitation to attendance at a public affair of an organization composed of representatives of business, labor, professions, news media or organizations of a civic, charitable or community nature, when invited by the sponsoring organization;

(9) invitation to attendance by a public servant who is an elected official, a member of the elected official's staff authorized by the elected official, or a member of the central staff for the council authorized by the speaker of the council at a function given by an organization composed of representatives of business, labor, professions, news media or organizations of a civic, charitable or community nature, when invited by the sponsoring organization;

(10) travel-related expenses from a private entity which is offered or given as a gift to the City rather than to the public servant, so long as: (i) the trip is for a City purpose and therefore could properly be paid for with City funds; (ii) the travel arrangements are appropriate for that purpose; and (iii) the trip is no longer than reasonably necessary to accomplish the business which is its purpose;

(d) Nothing in this section shall be deemed to authorize a person required to be listed on a statement of registration pursuant to § 3-213(c)(1) of the Administrative Code to offer or give a gift to any public servant in violation of any other applicable federal, state or local law, rule or regulation, including but not limited to the New York State Lobbying Act.

STATEMENT OF BASIS AND PURPOSE

On June 13, 2006, Mayor Michael Bloomberg signed into law Local Law No. 16 of 2006. This law amends the New York City Administrative Code in relation to gifts by lobbyists. See Ad. Code § 3-225, as added by Local Law No. 16 of 2006,

effective December 10, 2006. The newly added Section 3-225 of the Administrative Code provides that "No person required to be listed on a statement of registration pursuant to section 3-213(c)(1) of subchapter 2 of this chapter shall offer or give a gift to any public servant." Id.

Section 3-228 of the Code further provides that:

The conflicts of interest board, in consultation with the clerk, shall adopt such rules as necessary to ensure the implementation of this subchapter, including rules defining prohibited gifts and exceptions including de minimis gifts, such as pens and mugs, gifts that public servant may accept as gifts to the city and gifts from family members and close personal friends on family or social occasions, and to the extent practicable, such rules shall be promulgated in a manner consistent with the rules and advisory opinions of such board governing the receipt of valuable gifts by public servants.

Ad. Code § 3-228, as added by Local Law No. 16 of 2006, effective December 10, 2006.

The Board was, therefore, required to adopt rules defining prohibited gifts from lobbyists and exceptions including de minimis gifts, gifts that public servants may accept as gifts to the City, and gifts from family members and close personal friends on family or social occasions within the meaning of Section 3-225 of the Administrative Code.

In addition, Section 3-228, quoted above, directed that, to the extent practicable, these rules be consistent with the Board's rules and opinions concerning the receipt of gifts by public servants. In its consideration of the new rules for gifts from lobbyists, the Board accordingly examined its existing rule on gifts to public servants, its Valuable Gift Rule, Section 1-01 of Chapter 1 of Title 53 of the Rules of the City of New York. In examining Section 1-01, the Board identified a few provisions which the Board concluded should be amended. The instant rulemaking therefore includes both these few amendments to Section 1-01, the existing Valuable Gift Rule governing receipt of gifts by public servants, and the new Section 1-16 governing the giving of gifts by lobbyists, and, as mandated by Local Law 16, aims to conform these provisions to the extent practicable.

Amendments To Existing Board Rule § 1-01

The Board adopts four amendments to Section 1-01:

- Section 1-01(d) currently permits the acceptance of publicly presented awards and plaques for public service when the award or plaque is valued at less than \$150.00. This subdivision is amended by dropping any reference to dollar amount and instead providing that the award, plaque, or other similar item has no substantial resale value. This amendment is intended to make clear that, for example, an engraved item costing a few hundred dollars would typically be permissible, while a cash gift of \$100.00 would not fall within the exception.
The prior Section 1-01(e)(5) is repealed. That paragraph provided, in summary, that when it is customary business practice to hold a meeting over a meal, and customary business practice for one party to pay for the other, and payment by the public servant would be "inappropriate," the acceptance of the meal by the public servant is permissible. In reviewing this provision, the Board concluded that it is difficult to identify circumstances where payment by the public servant would be inappropriate, and indeed can much more readily contemplate circumstances where payment by a City vendor, for example, would not be appropriate. The Board has no record of having approved the acceptance of a meal pursuant to this provision and concluded that retaining the paragraph does not serve a City purpose.
Section 1-01(f)(4) is amended by deleting the word "annual" from the description of the public events or functions for which, under the described conditions, a public servant might accept free admission. Over the years the Board has observed that some organizations have significant public events more frequently than annually and that not infrequently these are events where attendance by certain public servants would advance the interests of the City.
Section 1-01(f)(4) is further amended by correcting what appears to have been a small, unintended drafting error. That provision, as previously written, permitted the attendance at annual public events of an organization composed of representatives of "business, labor, professions, news media or organizations of a civic, charitable or community nature," when the public servant is invited by the sponsoring organization, except when the invitation was from a "civic, charitable or community" organization that has business with or matters before the public servant's agency. There does not appear to be any reason for this limiting proviso to have included only "civic, charitable or community" organizations, and not, for example, to have included the other types of inviting organizations, which also might have business with a public servant's agency. The amendment accordingly makes clear that the exception which this subdivision offers is not available when the inviting organization is any organization with dealings with the public servant's agency.

Section 1-16

The remainder of this rulemaking consists of the Board's response to Local Law 16 of 2006, that is, to give clear guidance regarding the prohibition of gifts by lobbyists to public servants and the exceptions to that prohibition. This is embodied in a new Rule 1-16 of Chapter 1 of Title 53 of the

Rules of the City of New York, whose text is set forth above, and which in summary provides the following:

Section 1-16(a): This subdivision incorporates provisions of the newly enacted prohibition against persons required by Ad. Code Section 3-213(c) to be listed on a lobbying registration statement offering or giving a gift to a public servant.

Section 1-16(b)(1): This paragraph reiterates the categories of individuals required by Ad. Code Section 3-213(c) to be listed on a lobbyist registration statement.

Section 1-16(b)(2): This paragraph defines "lobbyist" to have the same meaning as used in Ad. Code Section 3-211, the definitions section of the City's lobbying law.

Section 1-16(b)(3): This paragraph defines the term "offer" to mean the attempt or offer to give a gift, or the attempt or offer to arrange for the making of a gift.

Section 1-16(b)(4): This paragraph defines "give" to mean the tender of a gift, acting as an agent in the making of a gift, or arranging the making of a gift. This language tracks the lobbyist gift ban set forth in California Government Code Section 86203. This explicit prohibition against acting as an agent in the making of a gift would, for example, make clear that it would not be a successful defense to a charge of making an impermissible gift that a lobbyist was being reimbursed by his or her firm or client and therefore was not the true gift giver.

Section 1-16(b)(5): This paragraph defines "gift." It repeats the language of Board Rules Section 1-01(a), but replaces that provision's reference to a value of \$50.00 or more with a prohibition against gifts of "any value whatsoever."

Section 1-16(c): This subdivision identifies those gifts that will not violate the prohibition of Section 3-225. In particular, as required by Section 3-228, it lists the exceptions for *de minimis* gifts, for gifts from family and close friends, and for gifts to the City, in each case attempting whenever practicable to be consistent with Board Rules Section 1-01 governing what gifts public servants may receive.

Section 1-16(c)(1): This paragraph defines permissible *de minimis* gifts to be promotional items, including mugs, t-shirts, and similar items, with no substantial resale value and bearing an organization's name, logo, or message. Section 1102(22)(a) of Title 42 of the Louisiana Revised Statutes provides a similar exception for "promotional items having no substantial resale value."

Section 1-16(c)(2): This paragraph on permissible gifts from a family member or a close personal friend takes its language from Board Rules Section 1-01(c) and is intended to be consistent with that rule.

Section 1-16(c)(3): This paragraph, regarding acceptable awards, plaques, and other similar items, mirrors the above proposed amended Board Rules Section 1-01(d).

Section 1-16(c)(4): This paragraph on gifts to a public servant of free meals and refreshment when the public servant is conducting City business mirrors the above amended Board Rules Section 1-01(e).

Section 1-16(c)(5): This paragraph mirrors the language of Board Rules Section 1-01(f)(1).

Section 1-16(c)(6): This paragraph tracks the language of Board Rules Section 1-01(f)(2).

Section 1-16(c)(7): This paragraph tracks Board Rules Section 1-01(f)(3).

Section 1-16(c)(8): This paragraph, concerning attendance at annual event of various types of organizations at the invitation of the sponsoring organization, tracks — with one significant exception — the above amendment to Board Rules Section 1-01(f)(4). This provision differs from Section 1-01(f)(4) in that it does not include the limiting condition that the sponsoring organization may not have business with the public servant's agency. The Board deletes this limiting condition from Section 1-16(c)(8) because many not-for-profit organizations, for example, wish to invite leadership of the City agency supporting their work to their annual fundraising event, and agency leadership may in general permissibly attend such public events pursuant to the provisions of Board Rules Section 1-01(f)(5), which permits such attendance on the written certification of an agency head or deputy mayor that the attendance is in the interests of the City.

To forbid lobbyists to extend such invitations may, however, in some cases severely restrict, if not effectively prevent, any such invitation, because in some smaller organizations in particular many if not most of the organization's executive staff are named in the organization's lobbyist registration statement. Thus, to say that the invitation must, as Section 1-01(f)(4) provides, come from the sponsoring organization but to forbid the leadership of the organization to extend such invitations appears contrary to the legislation's directive that, whenever practicable, the "receiving" provisions of Chapter 68 and the "giving" provisions of this newly enacted legislation be synchronized.

Section 1-16(c)(9): This paragraph, regarding the attendance by elected officials and their designated staff at certain public events when invited by the sponsoring organization, tracks the language Board Rules Section 1-01(g). The Board notes that, with the above described deletion from Section 1-16(c)(8) of the limiting condition against gifts from those with matters before a public servant's agency, Section 1-16(c)(9) might appear redundant. The Board indeed does not suggest any substantial difference exists between the affairs or functions described in these two provisions, but nevertheless has determined to retain both provisions in deference to the legislative directive that to the extent practicable these restrictions on gift giving synchronize with the Board's existing rules on receipt of gifts by public servants.

Section 1-16(c)(10): This paragraph, regarding permissible gifts of travel related expenses for City business purposes, tracks Board Rules Section 1-01(h) (1).

Section 1-16(d): This subdivision is simply a caution

that conduct not prohibited by Local Law 16 of 2006 may nevertheless be prohibited by other legislation, most notably by the New York State Lobbying Act.

It should be noted that the Board has not included in Rule 1-16 an analog to Board Rules Section 1-01(f)(5), which permits attendance at events or functions where the agency head or deputy mayor provides written certification that attendance is in the interests of the City. The Board does not view the extension to lobbyists of that exception to the gift ban to be consistent with the legislative intent to restrict gifts from lobbyists. Moreover, as a practical matter, the agency head certification of Section 1-01(f)(5) would provide little aid to the lobbyist/donor, since the prospective donor typically could not know whether the agency head would indeed certify that the public servant's attendance would be in the City's interests.

The Board conducted a public hearing on December 8, 2006, at which time it heard testimony from the Executive Director of Citizens Union and from the Ethics and Employment Counsel to the City Council. Their testimony, which tracked written submissions they also presented, were generally supportive of the Board's proposal. Citizens Union noted a concern that these rules be interpreted to permit the continued presence of elected and appointed officials at annual events, receptions, educational breakfasts, and the like hosted by civic groups and non-profits that are registered as lobbyists, stating that such events, where food and beverages are often served, provide an important venue for the exchange of ideas and information among those committed to making New York a better city. It is the Board's view that Rules Sections 1-16(c)(4) through (c)(9) will permit the offer of invitations to such events in all appropriate cases and that the analogs to these provisions in Rules Section 1-01 will permit public servants to receive these invitations in all appropriate cases.

The Board also received a joint written comment from the Human Services Council of New York, the Lawyers Alliance for New York, and the Nonprofit Coordinating Committee of New York. That comment makes two specific requests: first, that the Board clarify precisely who is covered by the gift ban, and, second, that the gift ban permit the offer of "goody bags" or "gift bags" at charitable events in cases where the bags contain more than the promotional items permitted under Rules Section 1-16(c)(1). In each case the Board appreciates the concerns raised, but believes that in each case the question is better dealt with through advisory opinion than through rulemaking. In the case of further identifying those persons required to be listed in a registration statement, an advisory opinion might be sought from the Office of the Clerk, or from the Board, and in either case these agencies will likely consult with each other in any response. In the case of the offer of "goody bags," the Board notes that it addressed the question of a public servant's receipt of gift bags by advisory opinion (see Board Opinion No. 2006-2).

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