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CONFLICT OF INTEREST BOARD

The Conflicts of Interest Board adopted the following rule on May 28, 1992:

Statement of Basis and Purpose of Rule

Pursuant to the authority vested in the Conflicts of Interest Board (the "Board") by Sections 2603(a) and 192(b) New York City Charter, the Board is required to determine by rule when an appearance of a member of the City Planning Commission (the "Commission") before a City agency other than the Department of City Planning (the "Department") or the City Planning Commission creates a conflict of interest with the duties and responsibilities of the member.

Charter Section 192(b) provides that: Members [of the City Planning Commission], 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.)

For the purposes of the conflicts of interest provisions contained in Chapter 68 of the New York City Charter, members of the City Planning Commission are "public servants," a term which includes all officials, officers and employees of the City. See Charter Section 2601(19). As provided in Charter Section 192(b), however, they are not "regular employees," i.e., public servants whose primary employment is with the City, as defined by rule of the Board. See Charter Section 2601(20).

The Board's rule defining "primary employment with the City" excludes, among others, members of the City Planning Commission. The following rule delineates the appropriate scope of appearances by members of the Commission before City agencies, i.e., their compensated communications before such agencies involving non-ministerial matters. See Charter Section 2601(4). It is intended to reconcile important, but quite different, policies. First, it is desirable that the Commission be made up of people knowledgeable and experienced in a variety of disciplines and in civic affairs. As a result, some members of the Commission, may be involved in ongoing projects which may involve City agencies. See Charter Revision Commission, Minutes of Public Meeting, August 1, 1989, at 45-46.

Second, the protective provisions of Chapter 68 must be enforced to avoid conflicts of interest which might affect a Commissioner's judgment or actions and to avoid situations which might create an appearance of such a conflict. See Charter Section 2603(b)(2), which provides that no public servant shall engage in any transaction which is in conflict with the proper discharge of his or her official duties. See also Charter Section 2603(b)(3), which provides that no public servant shall use or attempt to use his or her position as a public servant to obtain any personal advantage.

The Charter Revision Commission headed by Richard Ravitch proposed that members of the Commission could appear before any City agency, except for the Commission itself. This issue was reconsidered by the Charter Revision Commission headed by Frederick A. O. Schwarz, Jr., following public hearings at which deep concern was expressed concerning this issue. The Commission then concluded that a stricter rule was appropriate, which should be fashioned by the Board. See Charter Revision Commission,

An uncompensated communication by a City Planning Commissioner, on behalf of a private interest before a City agency would not be an "appearance," as defined in Charter Section 2601(4), and thus would not be covered by this rule. Under some circumstances, however, such communication could be in violation of Chapter 68. See, i.e., Charter Section 2603(b)(2), which provides that no public servant shall have a private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties.

Commissioners are significant members of the City government, who are involved in the capital planning of every city agency and in the policy and programs of many. As a result, many public servants may feel influenced to act favorably upon matters involving a Commissioner even though these matters do not arise out of his or her official duties. This perception may exist whether or not a Commissioner puts improper pressure upon the City employee.

Minutes of Public Meeting, August 1, 1989 at page 32-33, 42.

The rule set forth below thus seeks to balance the need to attract the best qualified persons to serve on the Commission, including those who have active practices either solo or in large firms, with the need to prevent appearances by Commissioners before City agencies other than the Department and Commission that would either involve real conflicts of interests or have the appearance of involving such conflicts. The rule does not create a blanket prohibition against appearances. Rather, it adopts an agency-by-agency analysis, prohibiting only those appearances before City agencies which have a reasonable likelihood of creating either an actual conflict or the appearance of a conflict.

Rule

SI-92

Prohibited Appearances Before City Agencies by City Planning Commissioners

(a) Definitions.

(1) **Appear.** "Appear," in accordance with Charter Section 2601(4), means to make any communication for compensation other than those involving ministerial matters.

(2) **Indirect Appearances.** A member of the Commission will be deemed to "appear indirectly" before a City agency concerning a particular matter if he or she communicates indirectly with such agency, by, for example, having another person, including but not limited to a member of the Commissioner's firm, represent to the agency orally or in writing what the Commissioner's views are on such matter. An indirect appearance will not include, in and of itself and without more, the presentation of project plans or documents bearing the Commissioner's name or seal.

(3) **Ministerial.** A "ministerial" matter, in accordance with Charter Section 2601(13), means an administrative act, including the issuance of a license, permit or other permission by the City which is carried out in a prescribed manner and which does not involve substantial personal discretion.

(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 Hearing Board to which certain determinations of the Landmarks Preservation Commission may be appealed.

(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.

(iii) before the Department of Consumer Affairs with respect to licenses and permits which involve land use.

(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.

(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, franchise acquisition, use or disposition of City-owned land, application for a zoning change or special permit, or, action before the Commission pursuant to the Uniform Land Use Review Procedure.