

# the Ethical Times

## Waivers Part I: Moonlighting

There comes a time in every sensible ethics board's life when it realizes that – whether in the interests of the City or for the sake of its public servants – an exception to the rules must be made. In these cases, after careful consideration, the Conflicts of Interest Board will issue a *waiver* to the employee, which *waives* a particular provision of the law. (Makes sense, right?)

In this and the next *Ethical Times*, we'll be looking at four of the most commonly waived provisions of Chapter 68 of the City Charter, the City's conflicts of interest law. Today, we'll discuss waivers related to second jobs, commonly called "Moonlighting Waivers."

The process to obtain a moonlighting waiver is simple: the public servant fills out [this form](#) on the COIB website ([nyc.gov/ethics](http://nyc.gov/ethics)). The information on that form goes to her agency for agency head approval, and then the whole kit n' caboodle comes to COIB. If both the agency and COIB see no real problem with this particular employee working this particular outside job, the City employee receives a document summarizing the facts as presented and reviewed, and waiving the appropriate provision(s) of the law.

When do you need a moonlighting waiver? In one of two circumstances. **An answer of "yes" to either – or both – of these questions means a waiver is needed.**


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### Question #1: Does the private firm have business dealings with the City?

Public servants are prohibited by City Charter § 2604(a) from having a position with any firm that they know or should know does business with the City (or their agency, if they're part-time City employees). That's the law. It doesn't matter what you do for the firm, where you do it, when you do it, or who you do it with, nor does it matter what your





City position is or even what City agency employs you. This law protects the public trust from questions that might arise should a public servant's official decisions overlap with his duties to a private employer. If I, for example, happened to moonlight for the same vendor whose services I select, oversee, and evaluate at my City position, you might start to wonder just whose interests I'm really serving each time I sign off on their work.

*But maybe* the connection between a particular City position and the City business of an outside firm is not so direct. Let's say I want to work a weekend gig at Macy's as one of Santa's helper elves. Macy's regularly interfaces with the City – every year, they sponsor our official Thanksgiving Day Parade and 4<sup>th</sup> of July fireworks display – so the letter of the law still applies, and the position is just as prohibited as before. But unless I literally work with those specific matters at my City position, the potential for conflicts between the outside position and my City job seems infinitesimally small.

This is precisely the sort of circumstance the waiver provision of Chapter 68 is designed to address; indeed, hundreds of public servants apply for and receive this sort of waiver each year. That is a testament to the fact that a nominal moonlighting conflict is less a cause for panic than an opportunity to make the affirmative disclosures required for a suitably enabling waiver.

So, how can you know if your prospective private employer has business dealings with the City? Ask them! Or see if they show up in the City's [Doing Business Database](#) or [checkbooknyc.com](#).

## **Question #2: Does your private work put you into contact with City agencies?**

Let's say I'm an electrician for a City agency, building and maintaining the electrical systems in that agency's buildings. On the side, I also do private home construction and renovations. So far, so good, but wait – this side hustle will involve me submitting plans to the Department of Buildings, dealing with permits and inspections, and so on – the same sort of work I already do on behalf of the City.

This means I'm violating a different part of the law: City Charter § 2604(b)(6) states that "no public servant shall, for compensation, represent private interests before any city agency or appear directly or indirectly on behalf of private interests in matters involving the city." If I walked into the DOB with a stack of forms, half of which are for my agency's buildings and the other half for my private clients, it could create the impression that I was using my City position for private advantage, or that these clients had hired me specifically to get an "in" with all the functionaries with whom I work in my public capacity.

However, if I can keep my private and public lives sufficiently separate, this becomes yet another occasion for the Board to waive a provision of Chapter 68 in the interest of fairness. In this case, the waiver will permit me to interface with the City in all the ways legally required of any person wishing to work as a private electrician. This sort of waiver is often sought by those in the construction trades, like fire safety inspectors and plumbers, but whatever field I work in, if my second job requires that I interact with any City agency, I'll need a (b)(6) waiver.

## Independent Contractors, Board Orders

Because of the way the law is worded, independent contractor gigs that take a public servant before the City don't receive waivers, but rather "Board Orders." For instance, if I want to be an Uber driver, I'll need a special ride-share license issued by the Taxi & Limousine Commission. This means I'll be working for a firm that does business with the City (in this case, the "firm" is me, not Uber). Additionally, I'll be personally appearing before TLC pretty regularly on behalf of a private interest (again, me).

The good news is that the process is the same on my end: I'll fill out the [moonlighting waiver request form](#) to get approval from my agency head and COIB, and the paper I seek (and, hopefully, receive) will waive both the (a) and (b)(6) provisions. It'll be called a "Board Order," but for the public servant, it functions the same as a moonlighting waiver.

## Common Moonlighting Provisions

Moonlighting waivers and Board orders always include reminders about other parts of the law that have NOT been, and won't be, waived. These three are the most common:

1. Never use any amount of City time or City resources for your side job. This includes phones, computers, email, uniforms, or the time you clock for your City job.
2. Never use your City position to gain a special advantage for your side job (like asking for special treatment while flashing your City ID).
3. Never promote your side job to people you have power over in your City position, like your subordinates or members of the public you deal with in your City capacity.

In the next issue, we'll discuss post-employment waivers and that ultra-rare beast, the "Gratuities" waiver. In the meantime, remember: don't fear the waiver process. For outside jobs, it's very common and pretty painless! And if you have questions,

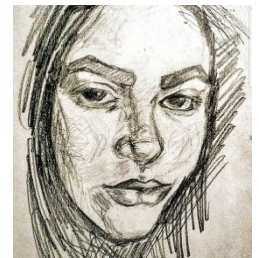


you can always [email us](#) or give us a call at (212) 442-1400 for free, confidential, even anonymous legal advice.

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## THE PUBLIC SERVICE PUZZLER

Congratulations to the winner of our recent Public Service Puzzler, **Melinda Calderon** of OCME, who's got some serious artistic chops!



This month's [contest](#) requires both math and NYC trivia knowledge. Entries are due Friday, March 13<sup>th</sup>.

## Schedule a Chapter 68 Class

COIB's Education & Engagement Unit can arrange a class in Chapter 68 for you and your staff.

Contact Gavin Kendall at [kendall@coib.nyc.gov](mailto:kendall@coib.nyc.gov)



[nyc.gov/ethics](http://nyc.gov/ethics)

Phone: (212) 442-1400

Fax: (212) 437-0705



## Recent Enforcement Cases

**Misuse of City Position.** A NYC Council Member was pulled over by a NYC Police Department (NYPD) Officer; the Officer told the Council Member that she had observed her using her cell phone while driving. The Council Member represents the district where the Officer's precinct is located, and, at the time she was pulled over, the Council Member was the Chair of the Council's Committee on Public Safety, which has oversight over the operations and budget of NYPD. Given these responsibilities, the Council Member interacted regularly with the NYPD Deputy Chief of the Officer's precinct. While the Officer was writing a summons to the Council Member, the Council Member called and told the Deputy Chief that the Officer was issuing a summons to her for using her cell phone while driving, which the Council Member denied doing. In response, the Deputy Chief directed the Officer not to issue the summons. The Officer did not issue a summons to the Council Member. The Council Member paid a \$5,000 fine to the Board.

**Misuse of City Position.** A Payroll Secretary at the NYC Department of Education (DOE) was responsible for entering time and leave records into the DOE Employee Information System (EIS) for all school staff, including for her son who was a DOE Paraprofessional at the school. On three occasions, the Payroll Secretary recorded in EIS that her son took medically certified sick leave without supporting documentation, and, on two occasions, the Payroll Secretary failed to enter her son's absences into EIS. These actions resulted in the Payroll Secretary's son receiving pay to which he was not entitled, which he paid back to DOE. In a joint settlement with the Board and DOE that resolved both her conflicts of interest violations and unrelated agency misconduct, the Payroll Secretary agreed to retire from DOE by June 30, 2020.

**Misuse of Confidential Information.** To perform her work for the NYC Administration for Children's Services (ACS), a Child Protective Specialist Supervisor Level II had access to CONNECTIONS, a confidential database of child abuse and maltreatment investigations. On one occasion, the Child Protective Specialist Supervisor accessed CONNECTIONS to determine the status of an ACS investigation in which she had a personal interest. In a joint disposition with the Board and ACS, the Child Protective Specialist Supervisor agreed to a ten-day suspension, of which she will serve five days, valued at approximately \$1,108.



A [searchable index](#) of all the COIB Enforcement Dispositions and Advisory Opinions is available courtesy of New York Law School.