

New York City Conflicts of Interest Board

Notice of Public Hearing and Opportunity to Comment on Proposed Rules Regarding Contract Filers

What are we proposing? The Conflicts of Interest Board is proposing to amend its rule concerning annual disclosure filers whose duties involve the negotiation, authorization, or approval of contracts, leases, franchises, revocable consents, concessions and applications for zoning changes, variances and special permits.

When and where is the hearing? The Conflicts of Interest Board will hold a public hearing on the proposed rule. The public hearing will take place at [time] on [date]. The hearing will be at [TBD].

This location has the following accessibility option(s) available: [TBD].

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the Conflicts of Interest Board through the NYC Rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to rules@coib.nyc.gov.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by contacting the Conflicts of Interest Board by telephone at [phone number] or by email at [email]. You can also sign up in the hearing room before the hearing begins on [date]. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes, you must submit written comments by [date].

Do you need assistance to participate in the hearing? You must tell us if you need a reasonable accommodation of a disability at the hearing, including if you need a sign language interpreter. You can advise us by telephone at [phone number] or by email at [email]. You must tell us by [date].

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. Copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available to the public on the Conflicts of Interest Board's website (<https://www1.nyc.gov/site/coib/public-documents/open-meetings-and-public-hearings.page>) as soon as practicable.

1 **What authorizes the Conflicts of Interest Board to make this rule?** Sections 1043
2 and 2603 of the City Charter and Section 12-110(b)(3)(a)(4) of the Administrative Code
3 authorize the Conflicts of Interest Board to make this proposed rule. This proposed rule
4 was included in the Conflicts of Interest Board’s regulatory agenda for this Fiscal Year.

5 **Where can I find the Conflicts of Interest Board rules?** The Conflicts of Interest
6 Board Rules are in title 53 of the Rules of the City of New York.

7 **What rules govern the rulemaking process?** The Conflicts of Interest Board must
8 meet the requirements of Section 1043 of the City Charter when creating or changing
9 rules. This notice is made according to the requirements of Section 1043 of the City
10 Charter.

11 **Statement of Basis and Purpose**

12 The City’s Annual Disclosure Law, found in New York City Administrative Code
13 § 12-110, requires certain public servants to file publicly available annual disclosure
14 reports with the Board, in which they must disclose their private financial interests. One
15 such group of public servants is described in Admin. Code § 12-110(b)(3)(a)(4), which
16 requires the filing of an annual disclosure report by:

17 Each officer or employee of the city whose duties at any time during the
18 preceding calendar year involved the negotiation, authorization or
19 approval of contracts, leases, franchises, revocable consents,
20 concessions and applications for zoning changes, variances and special
21 permits, as defined by rule of the board and as annually determined by his
22 or her agency head, subject to review by the board.

23 In 2004, the Board adopted a rule to define this category of filers, commonly
24 known as “contract filers.” In the 20 years since, the Board has found that the rule has
25 not provided enough clarity to facilitate the identification of public servants whose City
26 job duties make them sufficiently involved in the City matters identified in the

1 Administrative Code such that they should be required to make their private financial
2 interests available for public inspection in an annual disclosure report.

3 The Board proposes to repeal Board Rules § 4-04 and replace it with a new rule
4 to define “contract filers” with more particularity. In drafting the proposed rule, the Board
5 sought to accomplish two goals. First, the proposed rule seeks to limit the category of
6 “contract filers” to public servants who have worked on the City matters enumerated in
7 Admin. Code § 12-110(b)(3)(a)(4). To this end, proposed paragraph (a) references the
8 City laws, policies, and rules that apply specifically to those City matters. Paragraph (b)
9 excludes matters that may fall under the legal term “contracts” but are not sufficiently
10 similar to the City matters enumerated in the Administrative Code. For example, the
11 proposed rule excludes certain as-of-right development certifications, the acceptance of
12 gifts to the City, and the settlement of legal claims against the City. Proposed paragraph
13 (b) also excludes procurements under the City’s micropurchase limit, such as items
14 purchased with a City-issued credit card. It is the Board’s view that, on balance, the
15 relatively small amount of City funds spent by a public servant on a micropurchase does
16 not merit by itself the disclosure of the public servant’s private financial interests in a
17 publicly available report, especially given the number of public servants who have
18 authority to use City-issued credit cards or otherwise make micropurchases. As such,
19 public servants who have worked only on matters listed in proposed paragraph (b)
20 would not be a “contract filer.”

21 Second, the proposed rule seeks to tailor the conduct that requires a public
22 servant to file more closely to the “negotiation, authorization, or approval” standard in
23 Admin. Code § 12-110(b)(3)(a)(4). In addition to identifying specific City titles where the

1 job duties inexorably include the “negotiation, authorization, or approval” of contracts,
2 proposed paragraph (a) describes conduct where public servants make significant
3 decisions in accordance with the processes governing the “negotiation, authorization, or
4 approval” of the enumerated City matters. By contrast, proposed paragraph (c) excludes
5 conduct that does not rise to the threshold of “negotiation, authorization, or approval,”
6 such that public servants would not be required to publicly disclose their private financial
7 interests for performing that work. In particular, the proposed rule excludes from the
8 category of “contract filers” those who solely develop general policies, provide legal
9 advice, make recommendations, or perform clerical tasks.

10 In proposing changes to this rule, the Board recognizes that some City agencies
11 have designated public servants as “contract filers” with a concern that the designated
12 public servant could potentially engage in conduct that violates the City’s conflicts of
13 interest law, such as by accepting a kickback from a vendor from whom a
14 micropurchase is made. However, the possibility that a public servant could engage in
15 conduct that violates the City’s conflicts of interest law is not a sufficient threshold for
16 requiring the filing of an annual disclosure report; otherwise, every public servant, all of
17 whom are subject to the City’s conflicts of interest law, should be required to file.
18 Instead, the Administrative Code designates specific, defined categories of public
19 servants who are required to file, such as elected officials, policymakers, and high-level
20 managers. The “contract filer” designation should be similarly targeted to capture only
21 those public servants whose City duties warrant the type of public incursion into their
22 private finances that the filing of an annual disclosure report necessitates.

23

1 **Text of Proposed Rule**

2 New material is underlined.

3 Section 4-04 of Chapter 4 of Title 53 of the Rules of the City of New York is
4 REPEALED and new Section 4-04 is added to read as follows:

5 **§ 4-04 Contract Filers.**

6 (a) Public servants required to file an annual disclosure report pursuant to
7 Administrative Code § 12-110(b)(3)(a)(4) include, but are not limited to, those
8 who during the preceding calendar year held the title of agency chief contracting
9 officer, deputy agency chief contracting officer, chief financial officer, or chief
10 operations officer or who, except as provided in paragraphs (b) or (c), did one or
11 more of the following:

12 (1) Procurement or Concessions. Pursuant to Procurement Policy Board
13 Rules, Franchise and Concession Review Committee Rules, or other similar
14 City or State law, policy, or rule:

15 (i) Conducted a presolicitation review to define the existing market for the
16 goods, services, or construction required, estimate the expected cost, or
17 determine the most appropriate method of procurement;

18 (ii) Was substantially involved in determining the material specifications of an
19 invitation for bids, request for proposals, or other similar solicitation
20 method for goods, services, construction, or a concession;

21 (iii) Approved an invitation for bids, request for proposals, or other similar
22 solicitation method for goods, services, construction, or a concession;

23 (iv) Evaluated a bid or proposal, including but not limited to serving on a

1 selection committee; or

2 (v) Negotiated or approved: a contract, including its material terms; contract
3 amendment; change order; task order; modification; renewal; or buy-
4 against contract.

5 (2) **Franchises.** Pursuant to Charter § 363, or other similar City or State law,
6 policy, or rule, approved a franchise authorizing resolution or agreement.

7 (3) **Real Property Leases.** Pursuant to Charter § 381 or § 384 or other similar
8 City or State law, policy, or rule, negotiated or approved the purchase, lease,
9 or sale of real property.

10 (4) **Revocable Consents.** Pursuant to Charter § 364 or other City or State law,
11 policy, or rule:

12 (i) Determined that a petition for a revocable consent could proceed in
13 compliance with applicable requirements; or

14 (ii) Approved a revocable consent plan or agreement.

15 (5) **Zoning.** Pursuant to the Uniform Land Use Review Procedure, approved an
16 application for a change to the zoning resolution, a variance, or a special
17 permit.

18 (b) The following matters shall not be considered “contracts, leases, franchises,
19 revocable consents, concessions” or “applications for zoning changes, variances
20 and special permits” within the meaning of Administrative Code § 12-
21 110(b)(3)(a)(4):

22 (1) Procurements under the micropurchase limit, such as retail goods purchased
23 with a City-issued Purchasing Card;

- 1 (2) Certification that an as-of-right development satisfies zoning regulations;
- 2 (3) Acceptance of gifts to the City; or
- 3 (4) Settlement of legal claims against the City.
- 4 (c) Public servants, other than those identified by title in paragraph (a), are not
- 5 required to file an annual disclosure report pursuant to Administrative Code § 12-
- 6 110(b)(3)(a)(4) if the only work they performed on contracts, procurement,
- 7 concessions, franchises, real property leases, revocable consents, or zoning
- 8 during the preceding calendar year was that they:
- 9 (1) Developed general policies, rules, or regulations;
- 10 (2) Provided legal advice without negotiating or determining a contract's
- 11 substantive content, including by ensuring that the content of the contract is
- 12 implemented in a valid legal agreement or by incorporating an agency's
- 13 standard contract terms and conditions;
- 14 (3) Recommended a contract be awarded without any involvement in the conduct
- 15 identified in paragraph (a); or
- 16 (4) Performed ministerial tasks, including clerical tasks such as typing, filing, or
- 17 distributing materials.