



Notice of Posting

Code of Conduct and Business Ethics and NYC Conflict of Interest Law

Pursuant to a Certification Agreement that Birch entered into with the New York City Department of Investigation (DOI) on November 19, 2015, a copy of Birch's Code of Conduct and Business Ethics (the Code) and a copy of the New York City Conflict of Interest Law is hereby posted for review by all members of Birch's workforce and visitors at this location.

The Code reflects the core values of Birch Family Services and sets expectations for the conduct of all Directors, Officers, Key Persons, employees and contractors. The Code provides all such individuals and entities with guidance on refraining from, identifying and addressing all issues of non-compliance. The Code includes written policies and procedures that describe Birch's expectations for compliance.

The New York City Conflict of Interest Law outlines the responsibility to protect the integrity of public government and the public trust in the decisions made by public servants who make official decisions. The Conflict of Interest Law provides information on how to avoid engaging in activity that may lead to a conflict of interest, how to report potential conflicts of interest and penalties for violating this Law.

If you have any questions about the Code or the NYC Conflict of Interest Law, please contact:

Eileen Berg
Birch Family Services
Compliance Officer
104 West 29th Street, Third Floor
New York, NY 10001
(212) 616-1802



CODE OF CONDUCT AND BUSINESS ETHICS

REVISED: SEPTEMBER 21, 2016

The Code of Conduct and Business Ethics may be revised by Birch Family Services, at any time, to comply with changes in federal, state and local laws or to comport with guidance provided by regulatory oversight agencies. Changes to the Code will be shared with all members of Birch's workforce within 30 days of approval by the Board of Directors.



CODE OF CONDUCT AND BUSINESS ETHICS

Birch Family Services hereby establishes its standards for business conduct in this Code of Conduct and Business Ethics, hereinafter the “Code,” a document that reflects our core values and sets expectations for the conduct of our Board of Directors, employees and contractors. The Code provides the necessary context within which all members of our organization should function—a context that reflects duties each individual owes to Birch Family Services, its funders, customers and donors, and the children, adults, and families Birch serves. Additionally, the Code provides guidance on addressing compliance issues through clear written policies and procedures that describe compliance expectations.

Throughout the Code, you will find references to Birch’s policies and procedures that provide additional explanation regarding our ethical expectations. The Code is intended to elaborate upon and supplement, but not replace, any obligations that otherwise exist under law or regulation, as well as under the policies and procedures of applicable governmental agencies and Birch Family Services, as provided in Birch Family Services’ employee handbook, compliance policies or other statements.

The Code is designed to be clear, non-technical and easily understood to enhance its effectiveness. It shall be approved by the Board of Directors of Birch Family Services and reviewed annually thereafter to determine what, if any, modifications or changes are necessary to assure its continued effectiveness.

Birch Family Services is committed to preventing the occurrence of unethical or unlawful behavior, stopping such behavior as soon as possible after discovery, and disciplining employees or removing members of the Board of Directors who violate the Code, including those who neglect to report a violation. In addition, Birch will terminate its agreements with any contractor who violates any terms of the Code or fails to report violations of the Code.

All members of the Board of Directors, employees and contractors must comply with the Code, immediately report any alleged violations of wrongdoing, and assist management and compliance personnel in investigating allegations of wrongdoing.

Birch Family Services is committed to conducting all of its affairs in accordance with applicable federal, state and local laws and regulations and complying with the terms of its contracts for the provision of programs and services. To accomplish this, all employees and contractors must obey the laws and regulations that govern their work and always act in the best interest of the people served, their families and Birch.



Members of the Board of Directors, employees and contractors are expected to:

- Document and record all services or transactions accurately;
- Be honest and forthcoming with Birch, regulatory agencies, and internal and external auditors;
- Comply with Birch's policies and procedures, accounting rules and internal controls; and,
- Function with honesty in all work for Birch and with people served by Birch, providers, suppliers and all others with whom Birch does business.

The agency and its personnel access many resources to keep abreast of changing requirements and amendments to laws and regulation that have an impact on service quality, agency functioning, and procedures, including, but not limited to, the following:

- Membership in professional organizations such as:
 - Interagency Council of Developmental Disabilities Agencies (IAC)
 - Day Care Council of New York
 - Health Care Compliance Association (HCCA)
 - American Institute of Certified Public Accountants (AICPA)
 - Financial Management Association (FMA)
 - American Speech-Language and Hearing Association (ASHA)
 - National Association of Social Workers (NASW)
 - Society for Human Resource Management (SHRM)
- Frequent review and analysis of material posted on critical websites, such as:
 - New York State Office of the Medicaid Inspector General
 - New York State Office of the State Comptroller
 - New York State Education Department (Special Education, ACCES-VR, Office of the Professions, and Office of Teaching Initiatives)
 - New York City Department of Education (e.g. Office of Auditor General, Special Education, UPK)
 - New York City Department of Health and Mental Hygiene
 - New York City Office of the Comptroller
 - New York State Office of People with Developmental Disabilities
 - US Department of Health and Human Services (Office of Head Start)
- Participation in meetings and training sessions sponsored or conducted by funding sources and regulatory agencies.
- Thoughtful review of internal and external audit and review findings of both Birch Family Services and, as available, other agencies.
- Consultation with qualified legal and accounting professionals.
- Review of resources provided by independent consultants.
- Attendance at professional conferences and workshops.



Birch Family Services' ability to meet its obligation to embody legality in all of its actions is directly related to our active participation in the community of services providers and our attentiveness to the extensive body of literature and information available. Birch Family

Services views this continual review and analysis of resources and information as the mechanism to remain current as to issues of quality services provision; identify potential risk areas; and continually improve our practices, policies, procedures and internal controls based on a clear and comprehensive understanding of emerging requirements, standards of best practice, and recent trends in the fields of service in which we participate.

Birch will:

- Foster an environment where the Board of Directors, employees and contractors feel comfortable discussing ethics issues;
- Promptly respond to requests for guidance and reports of misconduct, and engage other resources as needed;
- Administer appropriate disciplinary action if misconduct is substantiated; and,
- Ensure that the Board of Directors, employees and contractors receive annual training on the Code.

Members of the Board of Directors, employees and contractors must:

- Commit to being honest, transparent, fair and trustworthy in all work-related activities and relationships;
- Report actual or suspected violations of the Code and all forms of ethical misconduct, including falsification, fraud, waste of resources, abuse of resources, retaliation, conflicts of interest, collusion, bribery and other criminal acts;
- When unclear about what to do, seek advice from the Compliance Officer ("CO");
- Cooperate with Birch's investigations by providing complete and truthful information and related documentation; and,
- Complete initial and periodic certification of compliance with the Code. Certification by the Board of Directors, managerial employees and key personnel must be made annually.

Reporting Misconduct

All suspected or actual violations of the Code must be reported to the:

Compliance Officer, Eileen Berg

Telephone: (212) 616-1802

E-mail: Eileen.Berg@birchfamilyservices.org (must include company name with report "Birch Family Services")



Anonymous Compliance Hotline

- Toll-free Telephone:** (844) 450-0003 – English
(800) 216-1288 – Spanish
(855) 725-0002 – French
- Website:** www.lighthouse-services.com/birchfamilyservices
reports@lighthouse-services.com (must include company name with report “Birch Family Services”)
- E-mail:** reports@lighthouse-services.com (must include company name with report “Birch Family Services”)
- Fax:** (215) 689-3885 (must include company name with report “Birch Family Services”)
- On-site Hotline:** (212) 616-1804

Response to Suspected Violations

A well-articulated process of response to compliance issues is essential to assuring compliance with the applicable policies, laws and rules and regulations, whether such issues are raised by individuals or identified in the course of self-evaluations and audits. Accordingly, Birch Family Services has developed the following policies and procedures to assure that compliance concerns are corrected promptly and thoroughly and that policies and procedures are adjusted and modified to prevent any re-occurrence.

1. Upon receiving a report from any source as to suspected or actual violation of law, regulation or the Plan, the CO shall conduct such investigation as he/she shall deem necessary in order to determine whether the report is accurate or not. The CO may involve the CEO in designing such investigation and/or securing the resources necessary to conduct such investigation, if deemed appropriate by the CO. In the event involvement of the CEO would create or exacerbate any potential or actual conflict of interest in judgment of the CO, the CO may instead seek the involvement of the Chair of the Board.
2. The CO and the CEO (unless the CEO is a subject of the investigation), shall promptly report to and advise the Board about any matter that, if founded, may require disclosure to any government agency.
3. The confidentiality and anonymity of any individual filing a report pursuant to the plan shall be safeguarded to the maximum degree reasonably feasible subject to the obligations imposed by the Plan.
4. At the conclusion of such investigation, the CO shall render a determination in writing as to whether such reported violation has been substantiated or not. Such report shall also include the following information from the CO:
 - a) A statement of any steps required to remediate any consequences of any substantiated violation; and
 - b) A recommendation as to any modifications to Birch Family Services’ policies and/or procedures that should be made to prevent the recurrence of any substantiated violation.
5. The CO shall present such written determination to the CEO (or to the Chair of the Board if the CEO is a subject of the written determination).
6. The CO and the CEO (or Chair of the Board if the CEO is a subject of the investigation) shall



determine whether any further disclosures are warranted, including, but not limited to, disclosures to government agencies.

Conflict of Interest Policy

All Members of the Board of Directors, employees and contractors of Birch have an obligation to conduct business within guidelines that prohibit actual or potential conflicts of interest. The

Agency's conflict of interest policy is established to protect the interests of the Agency when it is contemplating entering into a transaction or arrangement that might benefit the private interest of a member of the Board of Directors, employee or contractor, and to ensure that services and business activities of the Agency are conducted in an objective manner and are not motivated by desire for personal or financial gain. The Agency will not enter into any such transaction or arrangement unless it is determined by the Board in the manner described below to be fair, reasonable and in the best interests of the Agency at the time of such determination.

1. For purposes of this conflict of interest policy, a "Key Employee" is any person, including present or future directors, officers, shareholders of 10% or more of issued stock who is, or has within the last five (5) years, been in a position to exercise substantial influence over the affairs of the Agency. This includes, but is not limited to: (i) voting Members of the Board; (ii) presidents, chief executive Officers, chief operating Officers or employees of any other title with similar responsibilities; (iii) treasurers and chief financial Officers or employees of any other title with similar responsibilities; or (iv) a "highly compensated" employee, within the meaning of section 4958 of the Internal Revenue Code and guidance issued by the Internal Revenue Service, who is in a position to exercise substantial influence over the affairs of the Center.
2. *Conflict of Interest*: Any situation in which financial or other personal considerations may compromise or appear to compromise (1) a member of the Board of Directors, employee or contractor's business judgment; (2) delivery of services; or (3) ability for a member of the Board of Directors, employee or contractor to do his or her job (a "Conflict of Interest"). An actual or potential Conflict of Interest occurs when a member of the Board of Directors, employee or contractor is influenced in his or her decision by, or put in a position to influence a decision that may result in, a personal or financial gain for that Member of the Board of Directors, employee or contractor, or for a Relative as a result of business dealings. For the purpose of this policy, a "Relative" of any person means his or her (i) spouse, ancestors, brothers and sisters (whether whole, half-blood or adopted), children (whether natural or adopted), grandchildren, great-grandchildren, and spouses of brothers, sisters, children, grandchildren, and great-grandchildren, and the children of brothers and sisters, or (ii) domestic partner as defined in section 2994-A of the Public Health Law.
3. Business dealings with outside entities must not result in *unusual gain* for those entities, Birch, members of the Board of Directors, employees or contractors. Unusual gain refers to any payment, gifts, gratuity, bribes, travel, services, accommodations, entertainment, product bonuses, special fringe benefits, unusual price breaks, and other windfalls designed to ultimately benefit the Agency, members of the Board of Directors, employees or contractors, or



that would reasonably be determined to influence the Agency, members of the Board of Directors, employees or contractors.

4. The materials, products, designs, plans, ideas, and data are the property of the Agency and must never be given to an outside firm or individual except through normal channels with appropriate prior authorization. Any improper transfer of material or disclosure of information, even though it is not apparent that any member of the Board of Directors, employee or contractor has personally gained by such action, is prohibited.

Conflict of Interest Procedures

1. The Board of Directors has appointed a Compliance Officer to whom any questions or concerns about a potential or actual Conflict of Interest shall be raised.
2. Any individual with questions or concerns about a potential or actual Conflict of Interest shall promptly address the issue with the appropriate management personnel, human resources staff, and the Compliance Officer and shall complete a Conflict of Interest Disclosure Form (Appendix A to this Conflict of Interest Policy) to report any potential or actual Conflict of Interest.
3. The appropriate management and/or human resources personnel and the Compliance Officer will document the facts pertaining to such potential or actual Conflict of Interest and create an initial evaluation of the potential or actual Conflict of Interest. The Compliance Officer will then make prompt disclosure of the facts and an evaluation of such potential or actual Conflict of Interest to the Board of Directors.
4. If the Compliance Officer is the individual involved in any potential or actual Conflict of Interest, then all of the procedures set forth in this section (“Conflict of Interest Procedures”) shall be handled by the Members of the Audit Committee and references in these Conflict of Interest Procedures to the Compliance Officer in those circumstances shall refer to the Members of the Audit Committee.
5. Upon a determination by the Compliance Officer or the Board of Directors of the existence of a Conflict of Interest, the Board of Directors or relevant Board Committee shall meet to deliberate and vote on the matter giving rise to such Conflict of Interest as well as how to handle such Conflict of Interest. The individual(s) involved in such Conflict of Interest shall be prohibited from being present at, or participating in, any such deliberation or vote on the matter giving rise to such Conflict of Interest. Furthermore, the individual(s) involved in such Conflict of Interest shall be prohibited against any attempt to improperly influence the deliberations, actions or vote on the matter giving rise to such Conflict of Interest. Any attempt to improperly influence deliberations, actions or voting on any matter with which such individual has a Conflict of Interest may be grounds for removal from the Board of Directors or termination from employment by the Agency.
6. Members of the Board of Directors, employees and contractors must disclose any potential Conflict of Interest upon initial hire or appointment and whenever a potential or actual Conflict of Interest arises.
7. Members of management, Key Employees, Officers and Board of Directors are required to complete a Conflict of Interest Disclosure Statement annually. The Compliance Officer will be responsible for ensuring that Members of management and all Key Employees, Officers and Board of Directors will complete a Conflict of Interest Disclosure Statement annually.



8. Members of the Board of Directors, employees and contractors must seek guidance and approval from appropriate management personnel prior to pursuing any business or personal activity that may constitute a Conflict of Interest and must make a disclosure of any potential business or personal activity that may constitute a Conflict of Interest to the Compliance Officer, or other Members of the Finance and Audit Committee in the event that the Compliance Officer is the individual engaging in such potential business or personal activity that may constitute a Conflict of Interest.
9. Outside employment may not interfere with an employee's ability to perform his or her job with Birch. In addition, Agency employees may not engage in any activities that may conflict with Birch or its clients.
10. The Compliance Officer will investigate any violations of this policy and promptly report his or her findings to the Board of Directors.

Related Party Transactions

1. Any transaction, agreement or any other arrangement in which a Related Party has a Financial Interest and in which the Agency or any affiliate of the Agency is a participant, shall be deemed a "Related Party Transaction." Any Related Party Transaction will be considered a conflict of interest for purposes of this Conflict of Interest Policy. Notwithstanding the foregoing, so long as (i) all Directors, Officers and Key Employees who have an interest in the Related Party Transaction promptly disclose all material facts of such interest to the Board of Directors, (ii) such interested Directors, Officers or Key Employees do not participate in the deliberation of, or vote on, the Related Party Transaction (although Related Parties are not prohibited from providing information regarding the transaction to the Independent Directors of the Board prior to such deliberation or voting) and the Board of Directors authorizing such Related Party Transaction can do so by a vote sufficient for such purpose without counting the votes of such interested Directors, Key Employees or Officers who are also a Related Party, and (iii) the Independent Directors of the Board determine that the Related Party Transaction is fair, reasonable and in the Agency's best interest, then a Related Party Transaction will not be a prohibited transaction.
2. If a Related Party Transaction involves a Related Party who has a substantial Financial Interest, in addition to items (i)-(iii) of section 1 above, the Independent Directors of the Board must also (i) consider alternative transactions, to the extent available, prior to entering into such Related Party Transaction, (ii) approve the Related Party Transaction by not less than a majority vote of the Independent Directors, and (iii) contemporaneously with any such vote of approval, document the basis for such approval in writing, including the alternative transactions considered. When considering potential alternative transactions, items to be considered include, but are not limited to: (a) compensation levels paid by similarly situated organizations, both exempt and non-exempt; (b) the availability of similar services within the same geographic area; (c) current compensation surveys compiled by independent firms; and (d) written offers from similar institutions competing for the same person's services. When a Related Party Transaction involves the transfer of real property as consideration, some additional relevant factors may include, but are not limited to (i) current independent appraisals of the property, and (ii) offers received in a competitive bidding process.



3. No Director, Officer or Key Employee shall vote, act, or attempt to influence improperly the deliberations on any matter in which he or she has been determined by the Board to have a Financial Interest. Any attempt to vote, act, or improperly influence deliberations by a Related Party on any matter with which such person has a Financial Interest may be grounds for removal from the Board or termination from the Agency.
4. For purposes of this policy, a “Related Party” includes the following: (i) Directors, Officers, or Key Employees of the Agency or an affiliate of the Agency; (ii) Relatives of Key Employees, Officers of Directors of the Agency or any affiliate of the Agency; (iii) any entity in which a person in (i) or (ii) has a 10% or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of 5%; (iv) founders of the Agency; (v) substantial contributors to the Agency (within the current fiscal year or the past five fiscal years); (vi) persons owning a controlling interest (through votes or value) in the Agency; and (vii) any non-stock entity controlled by one or more Key Employees. A Related Party will be deemed to have a “Financial Interest” if such person would receive an economic benefit, directly or indirectly, from any transaction, agreement, compensation agreement, including direct or indirect remuneration as well as gifts or favors that are not insubstantial or other arrangement involving the Agency.

Delegation of Finance and Audit Committee Review

1. The Board of Directors may delegate the adoption, implementation of and compliance with this Conflict of Interest Policy to the Finance and Audit Committee, which shall be composed solely of Independent Directors. The Board may delegate to the Finance and Audit Committee review and approval of any Conflict of Interest, or any Related Party Transaction involving a Related Party and the Agency, as contained in this Conflict of Interest Policy; provided that if the Conflict of Interest or Related Party Transaction is of a magnitude that would otherwise require full Board approval, the Finance and Audit Committee shall submit the Conflict of Interest or Related Party Transaction to the Board for consideration and to offer its recommendation as to approval or rejection.
2. In the event the Board delegates the review and approval of Conflicts of Interest or Related Party Transactions to the Finance and Audit Committee, all references to Board in this Conflict of Interest Policy shall be deemed to refer to the Finance and Audit Committee and all references to a majority of the Board shall be deemed to refer to a majority of the Finance and Audit Committee.

Records of Proceedings

The minutes of all meetings of the Board of Directors (or all Audit Committee meetings, if applicable) at which any Conflict of Interest or Related Party Transaction is considered shall contain:

- The names of the persons who disclosed or otherwise were determined to have a potential or actual Financial Interest and/or Conflict of Interest, the nature of the potential or actual Financial Interest and/or Conflict of Interest, any action taken to determine whether a Financial Interest or Conflict of Interest exists, and the Board’s (or Finance and Audit



Committee, if applicable) decision as to whether a Financial Interest and/or Conflict of Interest exists.

- The names of the persons who were present for discussions and votes relating to any determinations made about such Related Party Transaction or Conflict of Interest, including whether the Related Party or individual involved in the potential or actual Conflict of Interest, and any Members not considered to be Independent Directors, left the room during any such discussions, the content of such discussions, including discussion of alternative transactions, and whether or not the transaction with the Related Party or Conflict of Interest was approved or cleared by the Board (or Audit Committee, if applicable).
- The minutes of the Board meeting (or Audit Committee meeting, if applicable) shall be documented contemporaneously to the decision and discussion regarding the Financial Interest or Conflict of Interest.

Initial and Annual Written Disclosures

1. Prior to a Director's initial election to the Board, or an Officer or Key Employee's employment at the Agency, and thereafter on an annual basis, all Directors, Officers, and Key Employees shall disclose in writing to the Secretary of the Agency: (i) any entity of which such person or a Relative of such person is an Officer, director, trustee, Member, owner, or employee and with which the Agency has a relationship, (ii) any Financial Interest such person may have in any corporation, organization, partnership or other entity which provides professional or other goods or services to Agency for a fee or other compensation, and (iii) any position or other material relationship such Director, Officer, Key Employee, or Relative of such person, may have with any not-for-profit corporation with which the Agency has a business relationship. A copy of each disclosure statement shall be kept in the Agency's files and made available to any Director, Officer, or Key Employee upon request.
2. Each Director, Officer, and Key Employee shall annually sign and submit to the Secretary of the Agency a statement which affirms such person: (a) has received a copy of this Conflict of Interest Policy, (b) has read and understands the Conflict of Interest Policy, and (c) has agreed to comply with the Conflict of Interest Policy in all material respects.

Zero Tolerance Policy

Birch does not participate in unfair or corrupt business practices and has zero tolerance for fraud, waste of resources, abuse of resources, bribery, collusion or other unethical conduct. Accordingly, Birch prohibits members of the Board of Directors, employees or contractors from:

- Intentionally falsifying or filing, furnishing, or otherwise submitting any business records, statements, or instruments, whether written or oral, to any city, state or federal agency or employee, public authority or private business and from devising or conspiring



with another to devise a scheme to defraud a government agency, in contravention of any federal, state or local laws, regulations or rules.

- Giving, or offering to give money, gratuities, or any other benefit to a labor official, including, but not limited to an official in a labor organization that has represented, represents, or may represent Birch's employees.
- Giving, or offering to give money, gratuities, or any other benefit to any public servant, including, but not limited to a public servant who is a federal, state or local employee or official of a political subdivision or governmental entity with which Birch currently conducts, has conducted, or may conduct business; except that this provision is not intended to infringe upon any person or entity's right to make political contributions.
- Contributing to political campaigns or political parties.
- Using Birch funds, facilities, or assets for political activities.
- Soliciting participation from, exert pressure on, or offer any inducement to other members of Birch's Board of Directors, employees or contractors to participate in political activities or make any political contribution. Members of the Birch's Board of Directors, employees or contractors may participate in political activities only in their individual capacities.
- Directly or indirectly using their participation in political activities or making political contributions as a means to obtain any federal, state, or local government contract or to obtain any benefit on such a contract.
- Soliciting or accepting personal kickbacks, rebates or any form of "under-the-table" payment, either directly or indirectly, including cash payments, services or any item of value which may be intended to influence the actions of any employee of Birch.
- Making, attempting to make, or executing any agreement that seeks, or participate in any scheme, to rig bids, restrain trade by collusion or unfair trade or labor practices, or prevent the lowest responsible bidder from obtaining a contract.
- Knowingly engaging in any conduct that will cause or assist New York City employees to violate the City's Conflict of Interest Laws, which are contained in New York City Charter Chapter 68 and the Rules of the New York City Conflicts of Interest Board.
- Committing any fraud, or filing or making any knowingly false or fraudulent reports, statements, or representations, in connection with their compliance with any federal, state or local law, rule or regulation or contract requirement.

Whistleblower Non-Retaliation Policy

Birch has created a policy of non-intimidation and non-retaliation to protect members of the Board of Directors, employees and contractors who make good faith reports of unethical acts as indicated in the Code. Birch, members of its Board of Directors, employees and contractors are prohibited from intimidating or retaliating in any way against any individual acting in accordance with the Code. Consistent with the provisions of sections 740 and 741 of New York State Labor Law and section 12-113 of the New York City Administrative Code, no member of the Board of Directors, employee or contractors of Birch may take any retaliation action against a member of its Board of Directors, employee or contractor because such individual:



- Discloses or threatens to disclose to a supervisor or a public body an activity, policy or practice of Birch Family Services that is in violation of law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety, which constitutes health care fraud; or which otherwise constitutes improper quality of care;
- Provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into such violation of a law, rule or regulation of such employer; or Objects to or refuses to participate in any such activity, policy or practice which is a violation of a law, rule or regulation or otherwise reasonably believed to constitute improper quality of care.

Maintenance of Records

Members of the Board of Directors, employees and contractors:

- Must timely record and report all Birch, client and financial information fully, accurately, and honestly. Records include, but are not limited to, records of the people we serve, documentation of services, accounting books or records, financial statements, timesheets or records, expense reports, vouchers, bills, payroll, claims payment records, correspondence, and any other method of communication. All actual or suspected fraud or other misconduct must be reported to the Compliance Officer immediately.
- Will not omit or conceal any relevant information including, material financial or nonfinancial information that could impact Birch's internal or external reports and other communication.
- Will not falsify personal credentials, documents or certifications required by Birch and/or regulatory authorities.
- Must always comply with legal and regulatory requirements and Birch policies governing the retention, disposal, or destruction of records of or pertaining to Birch and are prohibited from destroying records pertaining to litigation or government investigations or audit without express written approval of the Compliance Officer.

Confidentiality

The confidentiality of a child's, adult's, or family member's information is a cornerstone of Birch Family Services' organizational ethos. All such information shall be treated with discretion, even internally. All disclosures of such information, even to a child's or adult's parent or guardian or other members of the child's or adult's service or caregiving team, shall be limited to the information necessary to disclose as required by the purpose of the disclosure, and shall at all times be within the limits of applicable laws and regulations, as well as the government's and Birch Family Services' policies and procedures. Accordingly, all employees, directors, officers and agents of Birch Family Services are responsible for ensuring the confidentiality of all personally identifiable information in all program and service records, as defined above, consistent with the provisions of the following federal laws and regulations:



- Family Educational Rights and Privacy Act (FERPA)
- Health Insurance Portability and Accountability Act (HIPAA)
- Confidentiality of Information (in Part 300 of Title 34 Subtitle B, Chapter III—Special Education and Rehabilitative Services)
- US Code, Title 42 (Head Start), Section 9836a (a)(4) “Confidentiality”
- US Code, Title 20 (Education), Section 1232g “Family educational and privacy rights”

and in the following New York State laws and regulations:

- NYS Education Law, Title 1, Article 1, Section 2-d “Unauthorized use of personally identifiable information” and “Parents bill of rights for data privacy and security”
- Part 200 of the New York Code of Rules and Regulations as referenced in the SED Memorandum: “Changes to the New York State Procedural Safeguards Notice: Rights for Parents of Children with Disabilities, Ages 3-21” issued by SED (April, 2014)

and other applicable provisions of law governing the confidentiality of records.

False Claims Act Policy

Birch, members of its Board of Directors, employees and contractors shall not make or submit any false or misleading entries on any bills or claim forms, and no employee shall engage in any arrangement, or participate in such an arrangement at the direction of another employee (including any officer of Birch or a supervisor), that results in such prohibited acts. Any false statement on any bill or claim form or in a student, client or medical record shall subject the employee to disciplinary action by Birch, including possible termination of employment, in accordance with Birch’s Disciplinary Action Policy.

False claims and billing fraud may take a variety of different forms, including, but not limited to, false statements supporting claims for payment, misrepresentation of material facts, concealment of material facts, or theft of benefits or payments from the party entitled to receive them. Birch, its employees or contractors shall specifically refrain from engaging in the following billing practices:

- Making claims for items or services not rendered or not provided as claimed;
- Submitting claims to any payer, including Medicaid, for services or supplies that are not medically necessary or that were not included on the treatment plan;
- Double billings (billing for the same item or service more than once);
- Providing inaccurate or misleading information including but not limited to misrepresenting an individual’s medical condition;
- Paying or receiving anything of financial benefit in exchange for referrals; and,
- Billing individuals for services or supplies that are included in the payment from any other payer.

CONFLICTS OF INTEREST



CHAPTER 68 OF THE NEW YORK CITY CHARTER

REVISED: NOVEMBER 2010

COIB | Conflicts of Interest Board
of The City of New York



NEW YORK CITY CHARTER
CHAPTER 68

Conflicts of Interest

§2600. Preamble.

§2601. Definitions.

§2602. Conflicts of interest board.

§2603. Powers and obligations.

§2604. Prohibited interests and conduct.

§2605. Reporting.

§2606. Penalties.

§2607. Gifts by lobbyists.

§2600. Preamble. Public service is a public trust. These prohibitions on the conduct of public servants are enacted to preserve the trust placed in the public servants of the city, to promote public confidence in government, to protect the integrity of government decision-making and to enhance government efficiency.

§2601. Definitions. As used in this chapter,

1. “Advisory committee” means a committee, council, board or similar entity constituted to provide advice or recommendations to the city and having no authority to take a final action on behalf of the city or take any action which would have the effect of conditioning, limiting or requiring any final action by any other agency, or to take any action which is authorized by law.

2. “Agency” means a city, county, borough or other office, position, administration, department, division, bureau, board, commission, authority, corporation, advisory committee or other agency of government, the expenses of which are paid in whole or in part from the city treasury, and shall include but not be limited to, the council, the offices of each elected official, the board of education, community school boards, community boards, the financial services corporation, the health and hospitals corporation, the public development corporation, and the New York city housing authority, but shall not include any court or any corporation or institution maintaining or operating a public library, museum, botanical garden, arboretum, tomb, memorial building, aquarium, zoological

garden or similar facility.

3. "Agency served by a public servant" means (a) in the case of a paid public servant, the agency employing such public servant or (b) in the case of an unpaid public servant, the agency employing the official who has appointed such unpaid public servant unless the body to which the unpaid public servant has been appointed does not report to, or is not under the control of, the official or the agency of the official that has appointed the unpaid public servant, in which case the agency served by the unpaid public servant is the body to which the unpaid public servant has been appointed.

4. "Appear" means to make any communication, for compensation, other than those involving ministerial matters.

5. A person or firm "associated" with a public servant includes a spouse, domestic partner, child, parent or sibling; a person with whom the public servant has a business or other financial relationship; and each firm in which the public servant has a present or potential interest.

6. "Blind trust" means a trust in which a public servant, or the public servant's spouse, domestic partner, 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, and unemancipated child have no knowledge, and which meets requirements established by rules of the board, which shall include provisions regarding the independent authority and discretion of the trustee, and the trustee's confidential treatment of information regarding the holdings and sources of income of the trust.

7. "Board" means the conflicts of interest board established by this chapter.

8. "Business dealings with the city" means any transaction with the city involving the sale, purchase, rental, disposition or exchange of any goods, services, or property, any license, permit, grant or benefit, and any performance of or litigation with respect to any of the foregoing, but shall not include any transaction involving a public servant's residence or any ministerial matter.

9. "City" means the city of New York and includes an agency of the city.

10. "Elected official" means a person holding office as mayor, comptroller, public advocate, borough president or member of the council.

11. "Firm" means sole proprietorship, joint venture, partnership, corporation and any other form of enterprise, but shall not include a public benefit corporation, local development corporation or other similar entity as defined by rule of the board.

12. "Interest" means an ownership interest in a firm or a position with a firm.

13. "Law" means state and local law, this charter, and rules issued pursuant thereto.
14. "Member" means a member of the board.
15. "Ministerial matter" 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.
16. "Ownership interest" means an interest in a firm held by a public servant, or the public servant's spouse, domestic partner, or unemancipated child, which exceeds five percent of the firm or an investment of twenty-five thousand dollars in cash or other form of commitment, whichever is less, or five percent or twenty-five thousand dollars of the firm's indebtedness, whichever is less, and any lesser interest in a firm when the public servant, or the public servant's spouse, domestic partner, or unemancipated child exercises managerial control or responsibility regarding any such firm, but shall not include interests held in any pension plan, deferred compensation plan or mutual fund, the investments of which are not controlled by the public servant, the public servant's spouse, domestic partner, or unemancipated child, or in any blind trust which holds or acquires an ownership interest. The amount of twenty-five thousand dollars specified herein shall be modified by the board pursuant to subdivision a of section twenty-six hundred three.
17. "Particular matter" means any case, proceeding, application, request for a ruling or benefit, determination, contract limited to the duration of the contract as specified therein, investigation, charge, accusation, arrest, or other similar action which involves a specific party or parties, including actions leading up to the particular matter; provided that a particular matter shall not be construed to include the proposal, consideration, or enactment of local laws or resolutions by the council, or any action on the budget or text of the zoning resolution.
18. "Position" means a position in a firm, such as an officer, director, trustee, employee, or any management position, or as an attorney, agent, broker, or consultant to the firm, which does not constitute an ownership interest in the firm.
19. "Public servant" means all officials, officers and employees of the city, including members of community boards and members of advisory committees, except unpaid members of advisory committees shall not be public servants.
20. "Regular employee" means all elected officials and public servants whose primary employment, as defined by rule of the board, is with the city, but shall not include members of advisory committees or community boards.
21. a. "Spouse" means a husband or wife of a public servant who is not legally separated from such public servant.

b. "Domestic partner" means persons who have a registered domestic partnership pursuant to section 3-240 of the administrative code, a domestic partnership registered in accordance with executive order number 123, dated August 7, 1989, or a domestic partnership registered in accordance with executive order number 48, dated January 7, 1993.

22. "Supervisory official" means any person having the authority to control or direct the work of a public servant.

23. "Unemancipated child" means any son, daughter, step-son or step-daughter who is under the age of eighteen, unmarried and living in the household of the public servant.

§2602. Conflicts of interest board.

a. There shall be a conflicts of interest board consisting of five members, appointed by the mayor with the advice and consent of the council. The mayor shall designate a chair.

b. Members shall be chosen for their independence, integrity, civic commitment and high ethical standards. No person while a member shall hold any public office, seek election to any public office, be a public employee in any jurisdiction, hold any political party office, or appear as a lobbyist before the city.

c. Each member shall serve for a term of six years; provided, however, that of the three members first appointed, one shall be appointed for a term to expire on March thirty-first, nineteen hundred ninety, one shall be appointed for a term to expire on March thirty-first, nineteen hundred ninety-two and one shall be appointed for a term to expire on March thirty-first, nineteen hundred ninety-four, and of the remaining members, one shall be appointed for a term to expire on March thirty-first, nineteen hundred ninety-two and one shall be appointed for a term to expire on March thirty-first, nineteen hundred ninety-four. If the mayor has not submitted to the council a nomination for appointment of a successor at least sixty days prior to the expiration of the term of the member whose term is expiring, the term of the member in office shall be extended for an additional year and the term of the successor to such member shall be shortened by an equal amount of time. If the council fails to act within forty-five days of receipt of such nomination from the mayor, the nomination shall be deemed to be confirmed. No member shall serve for more than two consecutive six-year terms. The three initial nominations by the mayor shall be made by the first day of February, nineteen hundred eighty-nine and both later nominations by the mayor shall be made by the first day of March, nineteen hundred ninety.

d. Members shall receive a per diem compensation, no less than the highest amount paid to an official appointed to a board or commission with the advice and consent of the council and compensated on a per diem basis, for each calendar day when performing the work of the board.

e. Members of the board shall serve until their successors have been confirmed. Any vacancy occurring other than by expiration of a term shall be filled by nomination by the mayor made to the council within sixty days of the creation of the vacancy, for the unexpired portion of the term of the member succeeded. If the council fails to act within forty-five days of receipt of such nomination from the mayor, the nomination shall be deemed to be confirmed.

f. Members may be removed by the mayor for substantial neglect of duty, gross misconduct in office, inability to discharge the powers or duties of office or violation of this section, after written notice and opportunity for a reply.

g. The board shall appoint a counsel to serve at its pleasure and shall employ or retain such other officers, employees and consultants as are necessary to exercise its powers and fulfill its obligations. The authority of the counsel shall be defined in writing, provided that neither the counsel, nor any other officer, employee or consultant of the board shall be authorized to issue advisory opinions, promulgate rules, issue subpoenas, issue final determinations of violations of this chapter, or make final recommendations of or impose penalties. The board may delegate its authority to issue advisory opinions to the chair.

h. The board shall meet at least once a month and at such other times as the chair may deem necessary. Two members of the board shall constitute a quorum and all acts of the board shall be by the affirmative vote of at least two members of the board.

§2603. Powers and obligations.

a. **Rules.** The board shall promulgate rules as are necessary to implement and interpret the provisions of this chapter, consistent with the goal of providing clear guidance regarding prohibited conduct. The board, by rule, shall once every four years adjust the dollar amount established in subdivision sixteen of section twenty-six hundred one of this chapter to reflect changes in the consumer price index for the metropolitan New York-New Jersey region published by the United States bureau of labor statistics.

b. Training and education.

1. The board shall have the responsibility of informing public servants and assisting their understanding of the conflicts of interest provisions of this chapter. In fulfilling this responsibility, the board shall develop educational materials regarding the conflicts of interest provisions and related interpretive rules and shall develop and administer an on-going program for the education of public servants regarding the provisions of this chapter.

2. (a) The board shall make information concerning this chapter available and known to all public servants. On or before the tenth day after an individual becomes a public servant, such public servant shall be provided with a copy of this chapter and shall

sign a written statement, which shall be maintained in his or her personnel file, that such public servant has received and read and shall conform with the provisions of this chapter. [Eff. 11/2/2010]

(b) Each public servant shall undergo training provided by the board in the provisions of this chapter on or before the sixtieth day after he or she becomes a public servant, and periodically as appropriate during the course of his or her city service. Every two years, each agency shall develop and implement an appropriate agency training plan in consultation with the board and the mayor's office of operations. Each agency shall cooperate with the board in order to ensure that all public servants in the agency receive the training required by this subdivision and shall maintain records documenting such training and the dates thereof. The training required by this subdivision may be in person, provided either by the board itself or by agency personnel working in conjunction with the board, or through an automated or online training program developed by the board. [Eff. 11/2/2010]

(c) The failure of a public servant to receive the training required by this paragraph, to receive a copy of this chapter, or to sign the statement required by this paragraph, or the failure of the agency to maintain the required statement on file or record of training completed, shall have no effect on the duty of such public servant to comply with this chapter or on the enforcement of the provisions thereof. [Eff. 11/2/2010]

c. Advisory opinions.

1. The board shall render advisory opinions with respect to all matters covered by this chapter. An advisory opinion shall be rendered on the request of a public servant or a supervisory official of a public servant and shall apply only to such public servant. The request shall be in such form as the board may require and shall be signed by the person making the request. The opinion of the board shall be based on such facts as are presented in the request or subsequently submitted in a written, signed document.

2. Advisory opinions shall be issued only with respect to proposed future conduct or action by a public servant. A public servant whose conduct or action is the subject of an advisory opinion shall not be subject to penalties or sanctions by virtue of acting or failing to act due to a reasonable reliance on the opinion, unless material facts were omitted or misstated in the request for an opinion. The board may amend a previously issued advisory opinion after giving reasonable notice to the public servant that it is reconsidering its opinion; provided that such amended advisory opinion shall apply only to future conduct or action of the public servant.

3. The board shall make public its advisory opinions with such deletions as may be necessary to prevent disclosure of the identity of any public servant or other involved party.

The advisory opinions of the board shall be indexed by subject matter and cross-indexed by charter section and rule number and such index shall be maintained on an annual and cumulative basis.

4. Not later than the first day of September, nineteen hundred ninety the board shall initiate a rulemaking to adopt, as interpretive of the provisions of this chapter, any advisory opinions of the board of ethics constituted pursuant to chapter sixty-eight of the charter heretofore in effect, which the board determines to be consistent with and to have interpretive value in construing the provisions of this chapter.

5. For the purposes of this subdivision, public servant includes a prospective and former public servant, and a supervisory official includes a supervisory official who shall supervise a prospective public servant and a supervisory official who supervised a former public servant.

d. Financial disclosure.

1. All financial disclosure statements required to be completed and filed by public servants pursuant to state or local law shall be filed by such public servants with the board.

2. The board shall cause each statement filed with it to be examined to determine if there has been compliance with the applicable law concerning financial disclosure and to determine if there has been compliance with or violations of the provisions of this chapter.

3. The board shall issue rules concerning the filing of financial disclosure statements for the purpose of ensuring compliance by the city and all public servants with the applicable provisions of financial disclosure law.

e. Complaints.

1. The board shall receive complaints alleging violations of this chapter.

2. Whenever a written complaint is received by the board, it shall:

(a) dismiss the complaint if it determines that no further action is required by the board; or

(b) refer the complaint to the commissioner of investigation if further investigation is required for the board to determine what action is appropriate; or

(c) make an initial determination that there is probable cause to believe that a public servant has violated a provision of this chapter; or

(d) refer an alleged violation of this chapter to the head of the agency served

by the public servant, if the board deems the violation to be minor or if related disciplinary charges are pending against the public servant.

3. For the purposes of this subdivision, a public servant includes a former public servant.

f. Investigations.

1. The board shall have the power to direct the department of investigation to conduct an investigation of any matter related to the board's responsibilities under this chapter. The commissioner of investigation shall, within a reasonable time, investigate any such matter and submit a confidential written report of factual findings to the board.

2. The commissioner of investigation shall make a confidential report to the board concerning the results of all investigations which involve or may involve violations of the provisions of this chapter, whether or not such investigations were made at the request of the board.

g. Referral of matters within the board's jurisdiction.

1. A public servant or supervisory official of such public servant may request the board to review and make a determination regarding a past or ongoing action of such public servant. Such request shall be reviewed and acted upon by the board in the same manner as a complaint received by the board under subdivision e of this section.

2. Whenever an agency receives a complaint alleging a violation of this chapter or determines that a violation of this chapter may have occurred, it shall refer such matter to the board. Such referral shall be reviewed and acted upon by the board in the same manner as a complaint received by the board under subdivision e of this section.

3. For the purposes of this subdivision, public servant includes a former public servant, and a supervisory official includes a supervisory official who supervised a former public servant.

h. Hearings.

1. If the board makes an initial determination, based on a complaint, investigation or other information available to the board, that there is probable cause to believe that the public servant has violated a provision of this chapter, the board shall notify the public servant of its determination in writing. The notice shall contain a statement of the facts upon which the board relied for its determination of probable cause and a statement of the provisions of law allegedly violated. The board shall also inform the public servant of the board's procedural rules. Such public servant shall have a reasonable time to respond, either orally or in writing, and shall have the right to be represented by counsel or any

other person.

2. If, after receipt of the public servant's response, the board determines that there is no probable cause to believe that a violation has occurred, the board shall dismiss the matter and inform the public servant in writing of its decision. If, after the consideration of the response by the public servant, the board determines there remains probable cause to believe that a violation of the provisions of this chapter has occurred, the board shall hold or direct a hearing to be held on the record to determine whether such violation has occurred, or shall refer the matter to the appropriate agency if the public servant is subject to the jurisdiction of any state law or collective bargaining agreement which provides for the conduct of disciplinary proceedings, provided that when such a matter is referred to an agency, the agency shall consult with the board before issuing a final decision.

3. If the board determines, after a hearing or the opportunity for a hearing, that a public servant has violated provisions of this chapter, it shall, after consultation with the head of the agency served or formerly served by the public servant, or in the case of an agency head, with the mayor, issue an order either imposing such penalties provided for by this chapter as it deems appropriate, or recommending such penalties to the head of the agency served or formerly served by the public servant, or in the case of an agency head, to the mayor; provided, however, that the board shall not impose penalties against members of the council, or public servants employed by the council or by members of the council, but may recommend to the council such penalties as it deems appropriate. The order shall include findings of fact and conclusions of law. When a penalty is recommended, the head of the agency or the council shall report to the board what action was taken.

4. Hearings of the board shall not be public unless requested by the public servant. The order and the board's findings and conclusions shall be made public.

5. The board shall maintain an index of all persons found to be in violation of this chapter, by name, office and date of order. The index and the determinations of probable cause and orders in such cases shall be made available for public inspection and copying.

6. Nothing contained in this section shall prohibit the appointing officer of a public servant from terminating or otherwise disciplining such public servant, where such appointing officer is otherwise authorized to do so; provided, however, that such action by the appointing officer shall not preclude the board from exercising its powers and duties under this chapter with respect to the actions of any such public servant.

7. For the purposes of this subdivision, the term public servant shall include a former public servant.

i. Annual report.

The board shall submit an annual report to the mayor and the council in

accordance with section eleven hundred and six of this charter. The report shall include a summary of the proceedings and activities of the board, a description of the education and training conducted pursuant to the requirements of this chapter, a statistical summary and evaluation of complaints and referrals received and their disposition, such legislative and administrative recommendations as the board deems appropriate, the rules of the board, and the index of opinions and orders of that year. The report, which shall be made available to the public, shall not contain information, which, if disclosed, would constitute an unwarranted invasion of the privacy of a public servant.

j. Revision.

The board shall review the provisions of this chapter and shall recommend to the council from time to time such changes or additions as it may consider appropriate or desirable. Such review and recommendation shall be made at least once every five years.

k.

Except as otherwise provided in this chapter, the records, reports, memoranda and files of the board shall be confidential and shall not be subject to public scrutiny.

§2604. Prohibited interests and conduct.

a. Prohibited interests in firms engaged in business dealings with the city.

1. Except as provided in paragraph three below,

(a) no public servant shall have an interest in a firm which such public servant knows is engaged in business dealings with the agency served by such public servant; provided, however, that, subject to paragraph one of subdivision b of this section, an appointed member of a community board shall not be prohibited from having an interest in a firm which may be affected by an action on a matter before the community or borough board, and

(b) no regular employee shall have an interest in a firm which such regular employee knows is engaged in business dealings with the city, except if such interest is in a firm whose shares are publicly traded, as defined by rule of the board.

2. Prior to acquiring or accepting an interest in a firm whose shares are publicly traded, a public servant may submit a written request to the head of the agency served by the public servant for a determination of whether such firm is engaged in business dealings with such agency. Such determination shall be in writing, shall be rendered expeditiously and shall be binding on the city and the public servant with respect to the prohibition of subparagraph a of paragraph one of this subdivision.

3. An individual who, prior to becoming a public servant, has an ownership interest which would be prohibited by paragraph one above; or a public servant who has an ownership interest and did not know of a business dealing which would cause the interest to be one prohibited by paragraph one above, but has subsequently gained knowledge of such business dealing; or a public servant who holds an ownership interest which, subsequent to the public servant's acquisition of the interest, enters into a business dealing which would cause the ownership interest to be one prohibited by paragraph one above; or a public servant who, by operation of law, obtains an ownership interest which would be prohibited by paragraph one above shall, prior to becoming a public servant or, if already a public servant, within ten days of knowing of the business dealing, either:

(a) divest the ownership interest; or

(b) disclose to the board such ownership interest and comply with its order.

4. When an individual or public servant discloses an interest to the board pursuant to paragraph three of this subdivision, the board shall issue an order setting forth its determination as to whether or not such interest, if maintained, would be in conflict with the proper discharge of the public servant's official duties. In making such determination, the board shall take into account the nature of the public servant's official duties, the manner in which the interest may be affected by any action of the city, and the appearance of conflict to the public. If the board determines a conflict exists, the board's order shall require divestiture or such other action as it deems appropriate which may mitigate such a conflict, taking into account the financial burden of any decision on the public servant.

5. For the purposes of this subdivision, the agency served by

(a) an elected official, other than a member of the council, shall be the executive branch of the city government,

(b) a public servant who is a deputy mayor, the director to the office of management and budget, commissioner of citywide administrative services, corporation counsel, commissioner of finance, commissioner of investigation or chair of the city planning commission, or who serves in the executive branch of city government and is charged with substantial policy discretion involving city-wide policy as determined by the board, shall be the executive branch of the city government,

(c) a public servant designated by a member of the board of estimate to act in the place of such member as a member of the board of estimate, shall include the board of estimate, and

(d) a member of the council shall be the legislative branch of the city government.

6. For the purposes of subdivisions a and b of section twenty-six hundred six, a public servant shall be deemed to know of a business dealing with the city if such public servant should have known of such business dealing with the city.

b. Prohibited conduct.

1. A public servant who has an interest in a firm which is not prohibited by subdivision a of this section, shall not take any action as a public servant particularly affecting that interest, except that

(a) in the case of an elected official, such action shall not be prohibited, but the elected official shall disclose the interest to the conflicts of interest board, and on the official records of the council or the board of estimate in the case of matters before those bodies,

(b) in the case of an appointed community board member, such action shall not be prohibited, but no member may vote on any matter before the community or borough board which may result in a personal and direct economic gain to the member or any person with whom the member is associated, and

(c) in the case of all other public servants, if the interest is less than ten thousand dollars, such action shall not be prohibited, but the public servant shall disclose the interest to the board.

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.

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.

4. No public servant shall disclose any confidential information concerning the property, affairs or government of the city which is obtained as a result of the official duties of such public servant and which is not otherwise available to the public, or use any such information to advance any direct or indirect financial or other private interest of the public servant or of any other person or firm associated with the public servant; provided, however, that this shall not prohibit any public servant from disclosing any information concerning conduct which the public servant knows or reasonably believes to involve waste, inefficiency, corruption, criminal activity or conflict of interest.

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.

6. 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. For a public servant who is not a regular employee, this prohibition shall apply only to the agency served by the public servant.

7. No public servant shall appear as attorney or counsel against the interests of the city in any litigation to which the city is a party, or in any action or proceeding in which the city, or any public servant of the city, acting in the course of official duties, is a complainant, provided that this paragraph shall not apply to a public servant employed by an elected official who appears as attorney or counsel for that elected official in any litigation, action or proceeding in which the elected official has standing and authority to participate by virtue of his or her capacity as an elected official, including any part of a litigation, action or proceeding prior to or at which standing or authority to participate is determined. This paragraph shall not in any way be construed to expand or limit the standing or authority of any elected official to participate in any litigation, action or proceeding, nor shall it in any way affect the powers and duties of the corporation counsel. For a public servant who is not a regular employee, this prohibition shall apply only to the agency served by the public servant.

8. No public servant shall give opinion evidence as a paid expert against the interests of the city in any civil litigation brought by or against the city. For a public servant who is not a regular employee, this prohibition shall apply only to the agency served by the public servant.

9. No public servant shall,

(a) coerce or attempt to coerce, by intimidation, threats or otherwise, any public servant to engage in political activities, or

(b) request any subordinate public servant to participate in a political campaign. For purposes of this subparagraph, participation in a political campaign shall include managing or aiding in the management of a campaign, soliciting votes or canvassing voters for a particular candidate or performing any similar acts which are unrelated to the public servant's duties or responsibilities. Nothing contained herein shall prohibit a public servant from requesting a subordinate public servant to speak on behalf of a candidate, or provide information or perform other similar acts, if such acts are related to matters within the public servant's duties or responsibilities.

10. No public servant shall give or promise to give any portion of the public servant's compensation, or any money, or valuable thing to any person in consideration of having been or being nominated, appointed, elected or employed as a public servant.

11. No public servant shall, directly or indirectly,

(a) compel, induce or request any person to pay any political assessment, subscription or contribution, under threat of prejudice to or promise of or to secure advantage in rank, compensation or other job-related status or function.

(b) pay or promise to pay any political assessment, subscription or contribution in consideration of having been or being nominated, elected or employed as such public servant or to secure advantage in rank, compensation or other job-related status or function, or

(c) compel, induce or request any subordinate public servant to pay any political assessment, subscription or contribution.

12. No public servant, other than an elected official, who is a deputy mayor, or head of an agency or who is charged with substantial policy discretion as defined by rule of the board, shall 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; provided that nothing contained in this paragraph shall be construed to prohibit such public servant from speaking on behalf of any such candidate or elected official at an occasion where a request for a political assessment, subscription or contribution may be made by others.

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.

14. No public servant shall enter into any business or financial relationship with another public servant who is a superior or subordinate of such public servant.

15. No elected official, deputy mayor, deputy to a citywide or boroughwide elected official, head of an agency, or other public servant who is charged with substantial policy discretion as defined by rule of the board may 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, except that a member of the council may serve as an assembly district leader or hold any lesser political office as defined by rule of the board.

c. This section shall not prohibit:

1. an elected official from appearing without compensation before any city agency on behalf of constituents or in the performance of public official or civic obligations;

2. a public servant from accepting or receiving any benefit or facility which is provided for or made available to citizens or residents, or classes of citizens or residents, under housing or other general welfare legislation or in the exercise of the police power;

3. a public servant from obtaining a loan from any financial institution upon terms and conditions available to members of the public;

4. any physician, dentist, optometrist, podiatrist, pharmacist, chiropractor or other person who is eligible to provide services or supplies under title eleven of article five of the social services law and is receiving any salary or other compensation from the city treasury, from providing professional services and supplies to persons who are entitled to benefits under such title, provided that, in the case of services or supplies provided by those who perform audit, review or other administrative functions pursuant to the provisions of such title, the New York state department of health reviews and approves payment for such services or supplies and provided further that there is no conflict with their official duties; nothing in this paragraph shall be construed to authorize payment to such persons under such title for services or supplies furnished in the course of their employment by the city;

5. any member of the uniformed force of the police department from being employed in the private security field, provided that such member has received approval from the police commissioner therefor and has complied with all rules and regulations promulgated by the police commissioner relating to such employment;

6. a public servant from acting as attorney, agent, broker, employee, officer, director or consultant for any not-for-profit corporation, or association, or other such entity which operates on a not-for-profit basis, interested in business dealings with the city, provided that:

(a) such public servant takes no direct or indirect part in such business dealings;

(b) such not-for-profit entity has no direct or indirect interest in any business dealings with the city agency in which the public servant is employed and is not subject to supervision, control or regulation by such agency, except where it is determined by the head of an agency, or by the mayor where the public servant is an agency head, that such activity is in furtherance of the purposes and interests of the city;

(c) all such activities by such public servant shall be performed at times during which the public servant is not required to perform services for the city; and

(d) such public servant receives no salary or other compensation in connection with such activities;

7. a public servant, other than elected officials, employees in the office of property

management of the department of housing preservation and development, employees in the department of citywide administrative services who are designated by the commissioner of such department pursuant to this paragraph, and the commissioners, deputy commissioners, assistant commissioners and others of equivalent ranks in such departments, or the successors to such departments, from bidding on and purchasing any city-owned real property at public auction or sealed bid sale, or from purchasing any city-owned residential building containing six or less dwelling units through negotiated sale, provided that such public servant, in the course of city employment, did not participate in decisions or matters affecting the disposition of the city property to be purchased and has no such matters under active consideration. The commissioner of citywide administrative services shall designate all employees of the department of citywide administrative services whose functions relate to citywide real property matters to be subject to this paragraph; or

8. a public servant from participating in collective bargaining or from paying union or shop fees or dues or, if such public servant is a union member, from requesting a subordinate public servant who is a member of such union to contribute to union political action committees or other similar entities.

d. Post-employment restrictions.

1. No public servant shall solicit, negotiate for or accept any position (i) from which, after leaving city service, the public servant would be disqualified under this subdivision, or (ii) with any person or firm who or which is involved in a particular matter with the city, while such public servant is actively considering, or is directly concerned or personally participating in such particular matter on behalf of the city.

2. No former public servant shall, within a period of one year after termination of such person's service with the city, appear before the city agency served by such public servant; provided, however, that nothing contained herein shall be deemed to prohibit a former public servant from making communications with the agency served by the public servant which are incidental to an otherwise permitted appearance in an adjudicative proceeding before another agency or body, or a court, unless the proceeding was pending in the agency served during the period of the public servant's service with that agency. For the purposes of this paragraph, the agency served by a public servant designated by a member of the board of estimate to act in the place of such member as a member of the board of estimate, shall include the board of estimate.

3. No elected official, nor the holder of the position of deputy mayor, director of the office of management and budget, commissioner of citywide administrative services, corporation counsel, commissioner of finance, commissioner of investigation or chair of the city planning commission shall, within a period of one year after termination of such person's employment with the city, appear before any agency in the branch of city government served by such person. For the purposes of this paragraph, the legislative branch of the city consists of the council and the offices of the council, and the executive

branch of the city consists of all other agencies of the city, including the office of the public advocate.

4. No person who has served as a public servant shall appear, whether paid or unpaid, before the city, or receive compensation for any services rendered, in relation to any particular matter involving the same party or parties with respect to which particular matter such person had participated personally and substantially as a public servant through decision, approval, recommendation, investigation or other similar activities.

5. No public servant shall, after leaving city service, disclose or use for private advantage any confidential information gained from public service which is not otherwise made available to the public; provided, however, that this shall not prohibit any public servant from disclosing any information concerning conduct which the public servant knows or reasonably believes to involve waste, inefficiency, corruption, criminal activity or conflict of interest.

6. The prohibitions on negotiating for and having certain positions after leaving city service, shall not apply to positions with or representation on behalf of any local, state or federal agency.

7. Nothing contained in this subdivision shall prohibit a former public servant from being associated with or having a position in a firm which appears before a city agency or from acting in a ministerial matter regarding business dealings with the city.

e. Allowed positions.

A public servant or former public servant may hold or negotiate for a position otherwise prohibited by this section, where the holding of the position would not be in conflict with the purposes and interests of the city, if, after written approval by the head of the agency or agencies involved, the board determines that the position involves no such conflict. Such findings shall be in writing and made public by the board.

§2605. Reporting.

No public servant shall attempt to influence the course of any proposed legislation in the legislative body of the city without publicly disclosing on the official records of the legislative body the nature and extent of any direct or indirect financial or other private interest the public servant may have in such legislation.

§2606. Penalties.

a. Upon a determination by the board that a violation of section twenty-six hundred four or twenty-six hundred five of this chapter, involving a contract work, business, sale or transaction, has occurred, the board shall have the power, after consultation with the head

of the agency involved, or in the case of an agency head, with the mayor, to render forfeit and void the transaction in question.

b. Upon a determination by the board that a violation of section twenty-six hundred four or twenty-six hundred five of this chapter has occurred, the board, after consultation with the head of the agency involved, or in the case of an agency head, with the mayor, shall have the power to impose fines of up to twenty-five thousand dollars, and to recommend to the appointing authority, or person or body charged by law with responsibility for imposing such penalties, suspension or removal from office or employment. [Eff. 11/2/2010]

b-1. In addition to the penalties set forth in subdivisions a and b of this section, the board shall have the power to order payment to the city of the value of any gain or benefit obtained by the respondent as a result of the violation in accordance with rules consistent with subdivision h of section twenty-six hundred three. [Eff. 11/2/2010]

c. Any person who violates section twenty-six hundred four or twenty-six hundred five of this chapter shall be guilty of a misdemeanor and, on conviction thereof, shall forfeit his or her public office or employment. Any person who violates paragraph ten of subdivision b of section twenty-six hundred four, on conviction thereof, shall additionally be forever disqualified from being elected, appointed or employed in the service of the city. A public servant must be found to have had actual knowledge of a business dealing with the city in order to be found guilty under this subdivision, of a violation of subdivision a of section twenty-six hundred four of this chapter.

d. Notwithstanding the provisions of subdivisions a, b and c of this section, no penalties shall be imposed for a violation of paragraph two of subdivision b of section twenty-six hundred four unless such violation involved conduct identified by rule of the board as prohibited by such paragraph.

§2607. Gifts by lobbyists.

Complaints made pursuant to subchapter three of chapter two of title three of the administrative code¹ shall be made, received, investigated and adjudicated in a manner consistent with investigation and adjudication of conflicts of interest pursuant to this chapter and chapter thirty-four.

¹ This subchapter, § 3-224 through § 3-228 of the Administrative Code, is set forth in Appendix A herein.

APPENDIX A

Lobbyist Gift Law

§ 3-224 through § 3-228 of the Administrative Code

§ 3-224. Definitions.

Whenever used in this subchapter, the term “public servant” shall mean a public servant as defined in subdivision nineteen of section two thousand six hundred one of the charter.

§ 3-225. Prohibition of gifts.

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.

§ 3-226. Enforcement.

Complaints alleging violations of this subchapter shall be made, received, investigated and adjudicated in a manner consistent with investigations and adjudications of conflicts of interest pursuant to chapters sixty-eight and thirty-four of the charter.

§ 3-227. Penalties.

Any person required to be listed on the statement of registration pursuant to section 3-213(c)(1) that knowingly and willfully violates any provision of this subchapter shall be subject to a civil penalty, which for the first offense shall be not less than two thousand five hundred dollars and not more than five thousand dollars, for the second offense not less than five thousand dollars and not more than fifteen thousand dollars, and for the third and subsequent offenses not less than fifteen thousand dollars and not more than thirty thousand dollars. In addition to such civil penalties, for the second and subsequent offenses a person required to be listed on the statement of registration pursuant to section 3-213(c)(1) that knowingly and willfully violates the provisions of this subchapter shall also be guilty of a class A misdemeanor.

§ 3-228. Rulemaking.

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 servants 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.