

LAW, RULES & ETHICS COMMITTEE

DATE: Monday, May 8, 2023

A recording of this meeting is available at:

<https://youtu.be/ac-mcGMovRI>

Minutes

1. Meeting called to order at 7:06pm

2. Attendance:

Present (5): Sylvia Alexander, Steve Froot, David Gellman, Dan Padernacht, Martin Wolpoff (Chair)

Absent (0):

Guests: (4): Laura Spalter (Board Chair), Camelia Tepelus, Omar Murray, Resident(?)

3. The vote to approve March minutes, as amended, was approved unanimously. Arising from the minutes: Ms. Tepelus questioned the statement in the minutes attributed to the chair (Item 3.B *“Conflict of Interests Board – Chair reiterated his position concerning real or potential conflicts of interest. As he has stated in the past, any Board member thinking there may be a conflict needs to direct the question to COIB. Any advice that this chair, or any other Board member, may offer has no weight and is purely a suggestion.”*) and the item in the Ethical Guidance Manual (EGM) Part VI *An abstention “ineligible to vote,” is acceptable if the cause or reason for abstention is permissible as a recognized conflict of interest, the appearance of a conflict of interest or the position of the member is based on statute or a decision of the Conflict of Interest Board (COIB). Absent a specific response to a question adjudicated by the COIB, the chair of the Law, Rules and Ethics Committee shall determine whether the basis of an abstention, ineligible to vote meets the standards provided by the COIB.* The Chair of the board will offer a decision, which may be challenged by a vote of the board. The chair indicated, while he did not immediately see any contradiction, he wanted time to review the issue and would report back at the June LRE meeting.

4. Chair’s report

- A. Correction to EGM – Chair reported that a question arose over two items in the Ethical Guidance manual that were contradictory. The issue concerned whether a Board member could request to be considered for more than one position on the Nominating Committee’s slate. Chair noted that this issue had been raised much earlier and the position taken was that a request could be made for consideration for only one position and that, based on the respective minutes, the item was raised May 10, 2021 LRE meeting and the May 11 full Board meeting that the item permitting multiple slate position requests was to be removed from the copy of the EGM linked to the CB website. To put the item to rest, the chair has so instructed the CB office.
- B. Bronx Times article – 5/3/23 – Chair referred to an article appearing in the named publication reporting on an incident of lack of courtesy and civility at a meeting of a different Community Board. The chair noted that the Board in question had a published Code of Conduct that was read before every meeting. Chair provided the committee with a copy of that Code and asked if such a code should be developed for CB8? The opinion was that we should develop something and that the item should appear on the June LRE agenda. Chair noted that the Code that was shared seemed to focus just on the public’s behavior.

Should we develop a Code, it should also focus on Board members' conduct in that there was discussion indicating that the statement LRE developed on "Civility" was inadequate and that, as a general observation, Board members needed to be more cognizant of the impact of their statements.

- C. **Search Committee- Executive sessions** - Chair reported on concerns raised about the functioning of the DM search committee. It was taken as a given that applicant interviews conducted in closed sessions were appropriate and covered by the OML. The chair sought and received a response from the Committee on Open Government. With reference to OML-AO-o2271, it was noted that one cannot presume that an Executive session will take place. The public noticed agenda should indicate that a motion to go into Exec Session will be made. At the meeting, the body needs to conduct a vote to do so. It was also noted that on the public notice the following item was included:

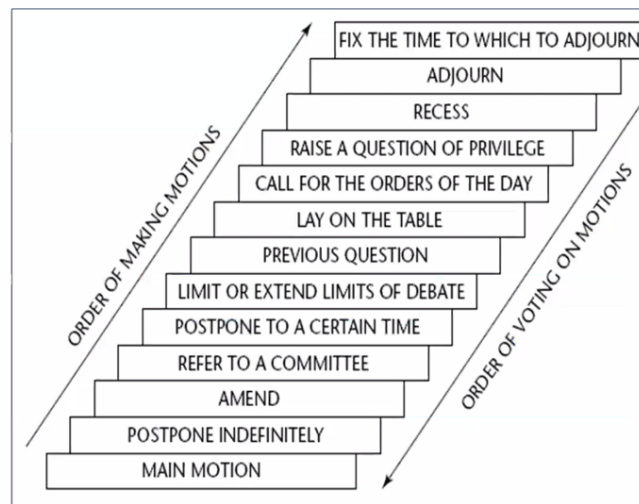
"Please see the attached and below notice for a meeting of the BxCB8 District Manager Search Committee. Kindly note that after the committee roll call is taken, a motion to go into executive session will be made. It is anticipated that the motion will pass. In that event the interview will be conducted in executive session and there will be no participation by members of the public or anyone other than the members of the committee."

Various committee members offered suggestions for improved language. The chair asked those committee members to contact him, and he would suggest alternates at the June meeting.

- D. **City email addresses for Community Board Members** – This concern has not received a favorable response from any City agency. Ms. Spalter noted that a revised request to the Borough President's office went out today.
- E. **Robert's Rules on Parliamentary procedures** – The Chair noted that he and three other Board members attended the first City-wide session on Parliamentary procedures. He attended a second session. For him there were five immediate takeaways.
- i. For many of the attendees this was a needed introduction
 - ii. Robert's Rules is a Business with the newest edition being recently published.
 - iii. There is the concept of Precedence – Which document /laws takes priority:
Federal/State/City Charter/Robert's Rules
(e.g., Roberts allows for super majorities, the City Charter does not.)
 - iv. Precedence within Robert's Rules

Precedence of Motions

• (say pre-SEED-ence)



iv. Robert's Rules v. regular flow – e.g., Friendly amendments

4. Discussion of item raised by Dan Padernacht at March meeting – CB 3M’s Office Guidelines –

At the last meeting, Mr. Padernacht shared the CB 3M’s document and asked committee members to discern whether there was any merit in CB 8 adopting or modifying such a document. In ceding the floor to Mr. Padernacht, chair raised issues he had with the document:

Chair’s questions

- A. Can this wait until a District Manager and soon to be elected new Board chair are in place and can participate?
- B. I do not know what motivated CB3M to engage in their opus. What were their objectives? What prompted the Board to compile such a heavy-handed litany of possible malfeasance? Was there a history?
- C. Need definitions for terms like General counsel, supervisor.
- D. The code of conduct is addressed to fellow employees and supervisors and the public. What about toward Board members? Where is a code of conduct for Board members?
- E. While there is a value to having all these items in one place, many of these items are already in place either in the Bylaws, the Ethical Guidance Manual, City administrative policies and procedures, City regulations, union contracts and procedures, etc.?
- F. Unless there is a specific area that needs to be addressed, does replicating what already exists offer a productive use of our time?
- G. If we believe this effort should move forward, after designation of new Board chair and DM, a subcommittee should be set up to ensure BD 8-specific references, correct typos and vocabulary issues, eliminate extraneous material, change tone.

The general tenor of the conversation was that that the document was dated and overbearing when considering that much of it was already available in other CB 8 sources and the opus, while a credit to CB 3M for their efforts, reinventing the document for CB 8 would be unnecessarily time consuming. A suggestion that a small subcommittee begin to initiate such an effort had only one volunteer. At several times there were allusions to an effort begun years ago, a reminder of which was emailed to committee members from Lisa Daub on 3/19/23 (reprinted below as well as the portion of the 11/7/18 Executive Committee minutes.)

All,

Rosemary indeed kicked off the cb8 procedures manual when she was chair. I went back and confirmed that the original table of contents and a few chairperson procedures were presented to the Exec committee at the November 2018 meeting: You can find the reference here: [executive committee minutes 11 18.pdf \(cityofnewyork.us\)](#), (see below). We followed up on requests for comments in subsequent meetings and also reviewed the procurement guide that Roz drafted. The Chairperson section is posted on the website for members' reference.

I used the table of contents as a working document to add and change sections and make notes on things to remember, etc., I last updated it in May 2020. The updated working document is attached with all of my side notes. Hope it is helpful.

I understand that Ciara and staff worked on the office section for their internal use. I agree that the chair should ensure that the DM, with input from staff, develops and updates the necessary procedures needed for a well-functioning office. The details of these internal procedures, i.e., desk references, flow charts, or calendars, contacts, etc., do not need to be public (my 2 cents). As part of onboarding, the [new] DM needs to know the scope of work and tasks, legal requirements, key contacts and access to procedures currently in place. It is the DM's role to document and update the actual internal procedures.

The 70+ page document is not a procedures manual. It is an employment manual with related employment procedures (e.g., vacation accrual and time-off requests). If cb8 goes in this direction, someone needs to ensure that there are no conflicts with the staff's other employment documents, employment law (and is respectful) and that it is updated on a timely basis.

Have fun,
Lisa

EXECUTIVE COMMITTEE MINUTES HELD ON NOVEMBER 7, 2018

- Procedures manual – Documenting processes will support the office staff and chairs in facilitating training and fulfilling responsibilities. Secretary drafted contents for a guide and reviewed sample checklist for minutes. Requesting chairs to submit suggestions and comments.

5. Discussion of procedures for first meeting dates for the nominating Committee - There have been concerns expressed this year that the prescribed dates for the initial meetings were too restrictive and presented serious calendar issues. Items raised included discussion centered on the history of the inclusion of dates and concerns that emerged this year. The dates were set up as placeholders to ensure that the committee had dates for which there was public notice so they could begin the necessary organizational work needed to ensure that their tasks can be completed in the designated time. The dates could easily be cancelled if unneeded. A review of this year’s calendar was reviewed. However, it was noted that cancelling the date immediately following the Board meeting could never be distributed in a timely manner, this year, the Jewish holidays impacted the Board’s meeting calendar, we have a policy of never scheduling conflicting Board meetings, the date selected by the NY Philharmonic enabled us to delay the date of the June Board meeting giving the NC more time. It was suggested that the Board office, in February or March should anticipate the April election of the NC and plan out the calendar giving primacy to the NC. The chair suggested that this item be tabled until the NC is prepared to offer its final report and suggestion.

Mon	Tues	Wed	Thurs	Fri
	18 Apr Board Mtg Org mtg	19	20	21
		1 Proposed Mtg	2	3
24 4	25 5	26 6 Proposed Mtg	27 7 Proposed Mtg	28
May 1	2	3	4	5
8	9 Board Mtg	10	11	12
15	16	17 Actual	18	19
22 Actual	23 Normal Date Report Due	24	25	26
29	30	31	June 1 Actual	2
5	6 Actual	7	8 Actual	9
12	13 NYC Phil	14	15 2023 Report Due	16
19	20	21	22	23
26	27	28	29 Board Mtg	

6. Settlements from COIB. There was no time to review these items. Thus, they are presented here as summarized by COIB. Access to the full reports can be forwarded on request.

Prohibited Appearances, Misuse of City Time & City Resources. In May 2021, a Senior Director of Business Centers for the New York City Department of Finance (“DOF”) became co-owner of a car wash business in Brooklyn. In or about August 2021, the New York

City Department of Consumer and Worker Protection (“DCWP”) shut down the car wash business for operating without a license. **To address a pending license application for his business, the Senior Director sent 12 emails to DCWP using his DOF email account and made 17 phone calls to DCWP using his DOF telephone; he made many of these communications at times when he was required to be performing work for DOF.** The City’s conflicts of interest law prohibits a public servant from communicating with the City on behalf of their private business and from using City time and City resources for that business. **To resolve these violations, the Senior Director agreed to a three-way settlement with the Board and DOF in which he paid a \$1,500 fine to the Board and served a DOF-imposed 18-month probationary period. The disposition is attached as “COIB-DOF Disposition.”**

Prohibited Appearances by an Attorney Against the City. In January 2022, an Agency Attorney for DCWP filed lawsuit in New York State Supreme Court on behalf of a Manhattan comedy club against a New York City Council Member alleging that the Council Member defamed the comedy club through a tweet she posted on her official City Council Twitter account and a letter she published on official City Council letterhead. The New York City Law Department represented the Council Member and filed a motion to dismiss, which was granted. The City’s conflicts of interest law prohibits a public servant from acting as an attorney against the interests of the City in litigation to which the City is a party. In choosing to resolve this violation with a public warning letter rather than imposing a fine, **the Board considered that the now-former Agency Attorney was not compensated for his representation of the comedy club and that the case he filed was dismissed.** The public warning letter is attached as “DCWP Public Warning Letter.”

Misuse of City Resources. In 2018, a Supervising Special Officer at the New York City Department of Citywide Administrative Services (“DCAS”) was given a parking placard by the Queens Borough President’s Office (“QBPO”) to park her personal vehicle near Queens Borough Hall, where she was assigned to work. In January 2020, the Supervising Special Officer was assigned to work at 1 Centre Street in Manhattan, and on at least two occasions she used the QBPO parking placard to park her personal vehicle near 1 Centre Street to avoid incurring parking fees. **To resolve her misuse of a City resource, the Supervising Special Officer agreed to a three-way settlement with the Board and DCAS in which she would serve a DCAS-imposed eight-day suspension, valued at approximately \$1,975. The disposition is attached as “COIB-DCAS Disposition.”**

Misuse of City Time. An Associate Housing Inspector for the New York City Department of Housing Preservation and Development (“HPD”) moonlights as an Uber driver. **In March 2020, the Associate Housing Inspector completed two Uber rides at times he was required to be performing work for HPD. To resolve his misuse of City time, the Associate Housing Inspector agreed to a three-way settlement with the Board and HPD in which he would pay a \$250 fine to the Board and serve an HPD-imposed one-day suspension, valued at approximately \$269. The disposition is attached as “COIB-HPD Disposition.”**

7. Discussion of New York City Council Legislative Calendar – Chair reminded the committee that he had separated out those items that had already been enacted.

8. Old business – Ms. Tepelus sought to again raise the issue of LRE declaring on its own whether a Board member had a conflict of interest. Chair reiterated that COIB is the only legally authorized body to make that determination. He also expressed his opinion that, despite the excellent job Bob Bender had done in chairing the meeting with Tishman-Speyer, the Board lost out by not having the LU chair, who is exceedingly knowledgeable, conduct that meeting. Ms. Spalter noted that representatives of COIB who have appeared at LRE meetings have been clear that COIB has the legal authority to adjudicate whether there is a conflict of interest.

9. New business - None

10. Adjournment- Meeting Adjourned 8:45 - Next meeting June 12, 2023

**Respectfully Submitted,
Martin Wolpoff, Chair
Law, Rules and Ethics Committee**