

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2016**

No. 181

Introduced by The Speaker (Council Member Mark-Viverito) and Council Members Garodnick, Crowley, Lander, Kallos, Menchaca, Richards, Vacca and Greenfield.

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to conflicts of interest and organizations affiliated with elected officials

Be it enacted by the Council as follows:

Section 1. Title 3 of the administrative code of the city of New York is amended by adding a new chapter 9 to read as follows:

Chapter 9. Organizations affiliated with elected officials.

§ 3-901 Definitions.

§ 3-902 Reserved.

§ 3-903 Prohibition of acceptance of certain donations.

§ 3-904 Advisory opinions, outreach and determination of control.

§3-905 Enforcement.

§ 3-906 Penalties.

§ 3-907 Rulemaking.

§ 3-901 Definitions. As used in this chapter, the following terms have the following meanings.

Doing business database. The term “doing business database” means the doing business database as defined in section 3-702 of the administrative code.

Donation. The term “donation” means any contribution from a non-governmental source, including in-kind donations, gifts, loans, advances or deposits of money, or anything of value.

Elected official communications. The term “elected official communications” means a communication in the form of: (i) radio, television, cable or satellite broadcast; (ii) printed material such as advertisements, pamphlets, circulars, flyers, brochures or letters; (iii) telephone communication; or (iv) paid internet advertising; which includes the name, voice or likeness of the person holding office as mayor, comptroller, public advocate, borough president or member of the council with whom the entity making such communication is affiliated. Elected official communications do not include: (i) communications with a professional journalist or newscaster, including an editorial board or editorial or opinion writer of a newspaper, magazine, news agency, press association or wire service; or (ii) a communication that is: (A) directed, sent or distributed by the distributing organization only to individuals who affirmatively consent to be members of the distributing organization, contribute funds to the distributing organization, or, pursuant to the distributing organization’s articles or bylaws, have the right to vote directly or indirectly for the election of directors or officers, or on changes to bylaws, disposition or all or substantially all of the distributing entity’s assets or the merger or dissolution of the distributing entity; or (B) for the purpose of promoting or staging any candidate debate, town hall or similar forum to which at least two candidates seeking the same office, or two proponents of differing positions on a referendum or question submitted to voters, are invited as participants, and which does not promote or advance one candidate or position over another.

Organization affiliated with an elected official. The term “organization affiliated with an elected official” means:

(i) a non-profit entity other than an agency, public authority, public benefit corporation or local development corporation;

(ii) which has received at least one donation in the previous or current calendar year; and

(iii) over which a person holding office as mayor, comptroller, public advocate, borough president or member of the council, or an agent of such a person, which shall include an appointee of such person serving at the pleasure of such person, exercises control. There shall be a rebuttable presumption of control by an elected official where such official, or such an agent, appoints a majority of seats on the board of the entity (not including appointees nominated by another individual or entity that is not such an agent of the elected official), or is a principal officer of the entity.

In determining whether a person holding office as mayor, comptroller, public advocate, borough president or member of the council, or an agent or appointee of such a person, exercises control over such an organization, the conflicts of interest board shall consider the totality of the circumstances, including:

(i) whether the organization was created by such an elected official or their agent, or by an individual who was previously employed by, or was a paid political consultant of, the elected official, and, if so, how recently such organization was created;

(ii) whether the board of the organization is chaired by such an elected official or their agent;

(iii) whether board members appointed by such elected official serve for terms or are appointed only upon nomination of other individuals or entities that are not agents of such elected official;

(iv) the degree of involvement or direction by the elected official in such organization's policies, operations and activities; and

(v) other such factors as the conflicts of interest board shall promulgate by rule.

Principal committees and political committees, as those terms are defined in section 3-702, are not organizations affiliated with an elected official.

Person with business dealings with the city. The term "person with business dealings with the city" means any person who is listed in the doing business database, or any domestic partner, spouse, or unemancipated child of such a person.

Spend. The term "spend" means to spend or to cause to be spent.

§ 3-902 Reserved.

§ 3-903 Prohibition of acceptance of certain donations. a. Organizations affiliated with an elected official that spend or reasonably expect to spend at least 10% of their expenditures in the current or next calendar year on the production or dissemination of elected official communications shall not accept donations with a reasonable value in excess of \$400 in a single calendar year by any person who such organization knows or should know has business dealings with the city on the date of such donation. No violation shall issue and no penalty shall be imposed where any excess donation under this subdivision is refunded within 20 days of receipt by such organization.

b. Organizations affiliated with an elected official that spend or reasonably expect to spend at least 10% of their expenditures in the current or next calendar year on the production or dissemination of elected official communications shall return any donations with a reasonable value in excess of \$400 in a single calendar year by any person who is not a person who such organization knows or should know has business dealings with the city on the date of such

donation, but who is added to the doing business database within 180 days of receipt by the organization. No violation shall issue and no penalty shall be imposed where any excess donation under this subdivision is refunded within 200 days of receipt by such organization.

c. Organizations affiliated with an elected official that spend or reasonably expect to spend at least 10% of their expenditures in the current or next calendar year on the production or dissemination of elected official communications shall not accept donations by any entity or person other than a natural person, or from any person who fails to make the written submission required by subdivision d of this section.

d. Organizations affiliated with an elected official that spend or reasonably expect to spend at least 10% of their expenditures in the current or next calendar year on the production or dissemination of elected official communications shall require a written submission in a manner and form determined by the conflicts of interest board from every individual making a donation with a reasonable value in excess of \$400 in a single calendar year to determine whether such individual is a person with business dealings with the city.

e. Entities that have, as their sole purpose, advocating for New York city as the location for a national or international sporting event, a national political convention, or another event publicly determined by the conflicts of interest board to be similar to such an event are not subject to the requirements or limitations of this section.

§ 3-904 Advisory opinions, outreach and determination of control. a. The conflicts of interest 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 person holding office as mayor, comptroller, public advocate, borough president or member of the council, an agent of such officeholder, or any non-profit entity potentially subject to the provisions of this chapter, and shall

apply only to the particular circumstances of such request. The request shall be in such form as the board may require and shall be signed by the person making the request, or, in the case of a request by a non-profit entity, by a responsible officer or other representative of such entity. 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. Notwithstanding any inconsistent provision of law, opinions rendered by the board pursuant to this section shall be made publicly available.

b. Within thirty days of a person taking office for the first time as mayor, comptroller, public advocate, borough president or member of the council, the conflicts of interest board shall notify each such elected official in writing of the obligations of organizations affiliated with such elected official set forth in this chapter.

c. In addition to the advisory opinion process set forth in subdivision a, the conflicts of interest board shall promulgate rules establishing procedures whereby a non-profit entity may apply for a formal determination that an elected official or an agent of an elected official does not exercise control over such entity, consistent with the considerations included in the definition of “organization affiliated with an elected official” set forth in section 3-901, and may seek to rebut the presumption contained in such definition. To the extent practicable, the board shall make a determination within 60 days of receiving a complete application. The entity may appeal the board’s determination in New York State supreme court pursuant to article 78 of the civil practice law and rules. Where the board has determined that the entity is not controlled by an elected official, such entity shall be exempt from the provisions of this chapter for so long as there is no material change in the circumstances set forth in the application for a formal determination made pursuant to this subdivision.

§ 3-905 Enforcement. Complaints alleging violations of this chapter, or of rules or directives promulgated by the conflicts of interest board pursuant to this chapter, shall be made, received, investigated and adjudicated in a manner consistent with the procedures relating to investigations and adjudications of allegations of conflicts of interest set forth in chapters 34 and 68 of the charter.

§ 3-906 Penalties. a. Reserved.

b. Any organization that violates subdivision a, b or c of section 3-903 shall be required to return any donations with a reasonable value in excess of the applicable donation limit, and shall be subject to a civil penalty, which for the first offense shall be not more than \$5,000, for the second offense not more than \$15,000, and for the third and subsequent offenses not more than \$30,000. The conflicts of interest board may hold the person holding office as mayor, comptroller, public advocate or borough president with whom such organization is affiliated, if any, or their agent who violates any such subdivision, jointly and severally liable for any such penalties, if such person knew or reasonably should have known of the violation. The conflicts of interest board may recommend to the council that the person holding office as member of the council with whom such organization is affiliated, if any, or their agent who violates any such subdivision, be held jointly and severally liable for any such penalties, if such person knew or reasonably should have known of the violation.

c. Any organization that violates subdivision d of section 3-903 shall be subject to a civil penalty, which for the first offense shall be not more than \$1,000, and for the second and subsequent offenses not more than \$10,000.

§ 3-907 Rulemaking. The conflicts of interest board shall promulgate such rules as are necessary to ensure the implementation of this chapter.

§ 2. Section 3-902 of the administrative code of the city of New York is amended to read as follows:

§ 3-902 [Reserved] *Reporting and donor disclosure for organizations affiliated with elected officials.*

a. All organizations affiliated with an elected official shall report to the conflicts of interest board annually by August 1, in a manner determined by the conflicts of interest board by rule.

Such report shall include:

- 1. the name of the organization;*
- 2. the name or names of the elected official, or of any agent of such a person or appointee serving at the pleasure of such elected official, who is affiliated with the organization;*
- 3. the names of the principal officers and board members of the organization;*
- 4. whether the organization has tax-exempt status pursuant to the internal revenue code and, if so, the section of such code that grants such status;*
- 5. the website address of the organization, if any;*
- 6. the names of any people who such organization knows had business dealings with the city on the date of such donation, or who were added to the doing business database within 180 days after the receipt of such donation, who made a donation to the organization during the previous calendar year, if any, and the city and state of residence, dates of donation, and value of donation of any such people;*
- 7. the names of any other individuals who, or any entity that, made a donation with a reasonable value of \$1,000 or more to the organization during the previous calendar year, if any, and the city and state of residence or state of incorporation as applicable, dates of donation, and value of donation of any such individuals or entities;*

8. *an accounting of the expenditures of the organization during the previous calendar year on the production or dissemination of elected official communications, in a manner and form determined by the conflicts of interest board;*

9. *for an organization affiliated with an elected official that did not spend or reasonably expect to spend at least 10% of their expenditures in the previous or current calendar year on elected official communications, a certification that they did not do so; and*

10. *any other information required to be included by the conflicts of interest board.*

b. The conflicts of interest board shall maintain and regularly update a list on its website of all organizations that reported, and all donor information disclosed, to such board pursuant to this section, provided however that the conflicts of interest board may determine that disclosure of donors shall not be made public if, based upon a review of the relevant facts presented by the reporting entity, such disclosure may cause harm, threats, harassment, or reprisals to the donor, or to individuals or property affiliated with the donor. The reporting entity may appeal the board's determination in New York State supreme court pursuant to article 78 of the civil practice law and rules. The conflicts of interest board shall not post the names of donors that are the subject of such appeal pending a final judicial determination.

c. Donor written submissions received pursuant to section 3-903 shall be retained by the inquiring organization for at least three years from the date of receipt.

§ 3. Subdivision a of section 3-906 of the administrative code of the city of New York is amended to read as follows:

a. Any organization that violates any provision of section 3-902 shall be subject to a civil penalty of not more than \$10,000. The conflicts of interest board may hold the person holding office as mayor, comptroller, public advocate or borough president with whom such organization

is affiliated, if any, or their agent who violates such subdivision, jointly and severally liable for any such penalties if such person knew or reasonably should have known of the violation. The conflicts of interest board may recommend to the council that the person holding office as member of the council with whom such organization is affiliated, if any, or their agent who violates such subdivision be held jointly and severally liable for any such penalties if such person knew or reasonably should have known of the violation. In addition to such civil penalties, for the second and subsequent offense any person who knowingly and willfully violates any provision of section 3-902 shall be guilty of a class A misdemeanor.

§ 4. Section 1 of this local law takes effect on January 1, 2018; and sections 2 and 3 of this local law take effect on January 1, 2019; provided that the conflicts of interest board shall promulgate rules prior to such dates as are necessary for the timely implementation of this local law.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on December 15, 2016 and approved by the Mayor on December 22, 2016.

ALISA FUENTES, Acting City Clerk, Acting Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 181 of 2016, Council Int. No. 1345-A of 2016) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council and approved by the Mayor.

STEPHEN LOUIS, Acting Corporation Counsel