


May 9, 2019, Agenda – Open Meeting
April 24, 2019 – Public Hearing
March 12, 2019, Agenda – Open Meeting
January 30, 2019, Agenda – Open Meeting

To: The Board
From: Christopher M. Hammer 
Date: April 26, 2019
Re: Proposed Amendments to Board Rules on Affiliated Not-for-Profit Organizations

As directed by the Board at its March 2019 meeting, Staff submitted to the New York City Law Department and Mayor's Office of Operations the proposed amendments of Chapter 3 of the Board Rules, which apply to not-for-profit organizations affiliated with elected officials. Pursuant to the City Administrative Procedure Act, the proposed rule was certified by the Law Department and Office of Operations and was noticed in the City Record. The Board held a public hearing on April 24, 2019, to receive oral comments on the proposed rule. The Board received two written comments in advance of the public hearing, and one person commented at the public hearing.

Staff recommends that the Board adopt the text of the amendments with stylistic edits to the commentary to reflect that the rule is no longer a proposal.

Attached are the following:

1. Minutes of the January 30, 2019, Open Meeting (**Exhibit 1**);
2. Minutes of the March 12, 2019, Open Meeting (**Exhibit 2**);
3. Proposed Board Rules and Commentary, as submitted for publication in the City Record on March 13, 2019 (**Exhibit 3**);
4. Comment on Proposed Board Rules by Deborah A. Maher, General Counsel of the Randall's Island Park Alliance, received April 8, 2019 (**Exhibit 4**);

5. Comment on Proposed Board Rules by Stan Reimer, Executive Director of the Honor Emergency Fund, received April 23, 2019 (**Exhibit 5**);
6. Proposed Notice of Adoption (Tracked Version) (**Exhibit 6**); and
7. Proposed Notice of Adoption (Clean Version) (**Exhibit 7**).

Analysis & Discussion

The Board received three comments regarding the proposed rules:

- Stephanie George, Development and Events Coordinator at Friends of Materials for the Arts (“FOMA”), spoke at the public hearing. She explained the origins and purpose of FOMA and stated FOMA’s position that the reporting requirements are overly burdensome and cost-prohibitive. She did not address the specific amendments proposed.¹
- Deborah Maher of the Randall’s Island Park Alliance submitted a letter supporting the proposed amendments, stating her belief that the proposed amendments would benefit both the City and affiliated organizations (**Exhibit 4**).
- Stan Reimer of the Honor Emergency Fund (“HEF”) submitted a letter supporting the amendments and suggesting two additional policies: (1) allowing an organization to accept anonymous donations and (2) establishing a threshold below which donations need not be reported to the Board (**Exhibit 5**).

Mr. Reimer’s proposals require changes to the New York City Administrative Code and therefore cannot be implemented by amending the Board Rules. First, Administrative Code Section 3-902(b) permits an organization to request a donor’s privacy in the reporting requirements but does not provide a donor with anonymity in making the donation. Second, Administrative Code Section 3-902(a)(6) requires an affiliated organization to report any donation, regardless of the amount, made by a person with business dealings with the City, either on the date of the donation or as of 180 days after the receipt of such donation.²

¹ A video of Ms. George’s testimony is posted on the “Open Meetings and Public Hearings” page of the Board’s website.

² Administrative Code Section 3-901 defines “person with business dealings with the City” as any person listed in the City’s Doing Business Database and the domestic partner or spouse and unemancipated children of such a person.

Having received no comments challenging the substance of the proposed amendments, Staff recommends that the Board adopt the text of the amendments with stylistic edits to the commentary to reflect that the rule is no longer a proposal.

Minutes of the Open Meeting of the New York City Conflicts of Interest Board

Date: January 30, 2019

Location: Baker Hostetler, 45 Rockefeller Plaza, 14th Fl., New York, New York

Present:

Board Members: Chair Richard Briffault and Members Fernando A. Bohorquez, Jr., Anthony Crowell, Jeffrey D. Friedlander, and Erika Thomas

Board Staff: Ethan Carrier, Grace Cho, Chad Gholizadeh, Christopher Hammer, Gavin Kendall, Julia Lee, Carolyn Miller, Katherine Miller, Ari Mulgay, Jeff Tremblay, Michele Weinstat, Clare Wiseman, and Juliya Ziskina.

Guests: None

The meeting was called to order by the Chair at approximately 10:12 a.m. The Chair stated that the meeting was being conducted pursuant to the New York State Open Meetings Law and designated the undersigned as the Recording Secretary for purposes of the meeting.

The Chair stated that the meeting was called to discuss: (1) the adoption of Board Rules § 1-13(e); and (2) Staff's proposed amendments to Title 53 of the Rules of the City of New York, Board Rules Chapter 3.

Board Rules § 1-13(e):

After reporting that no comments had been submitted to the Board either before or at the public hearing held on January 18, 2019, the Chair asked for any comments by the Board or Staff. There were no comments.

Upon motion duly made and seconded, the Board unanimously voted to adopt Board Rules § 1-13(e) as the final rule.

Board Rules Chapter 3:

After a brief introduction by a member of Board Staff on the proposed amendments to Board Rules Chapter 3, the Chair asked for any comments by the Board or Staff.

The following comments constitute the changes as agreed upon by the Board and Staff to the proposed amendments to Board Rules Chapter 3:

- Board Rules § 3-03(a): No comments.
- Board Rules § 3-03(g): Include the word "policy" to state: "the political or policy interests of the elected official".
- Board Rules § 3-03(h): No comments.
- Board Rules § 3-04(a)(5)(iii): Reject the proposed amendment.
- Board Rules § 3-04(a)(5)(iv): No comments.
- Board Rules § 3-04(b)(2)(iii) and (iv): No comments.

Upon motion duly made and seconded, the Board unanimously voted to approve the proposed amendments incorporating the changes as discussed.

The open meeting was adjourned at approximately 10:43 a.m.

Respectfully submitted,

Julia Lee
Recording Secretary

Minutes of the Open Meeting of the New York City Conflicts of Interest Board

Date: March 12, 2019

Location: Baker Hostetler, 45 Rockefeller Plaza, 14th Fl., New York, New York

Present:

Board Members: Chair Richard Briffault and Members Fernando A. Bohorquez, Jr., Anthony Crowell, and Jeffrey D. Friedlander.

Board Staff: Ethan Carrier, Chad Gholizadeh, Christopher Hammer, Gavin Kendall, Julia Lee, Carolyn Miller, Katherine Miller, Ari Mulgay, Jeff Tremblay, Michele Weinstat, Clare Wiseman, and Juliya Ziskina.

Guests: None

The meeting was called to order by the Chair at approximately 10:00 a.m. The Chair stated that the meeting was being conducted pursuant to the New York State Open Meetings Law and designated the undersigned as the Recording Secretary for purposes of the meeting.

The Chair stated that the meeting was called to discuss proposed amendments to Title 53 of the Rules of the City of New York, Board Rules Chapter 2, Board Rules Chapter 3, Board Rules § 1-15, and Board Rules § 1-01.

Board Rules Chapter 2:

After a brief introduction on the proposed amendments to Board Rules Chapter 2, the Chair asked for any comments by the Board or Staff.

There were no comments.

Upon motion duly made and seconded, the Board unanimously voted to approve the proposed amendments incorporating the changes as discussed as the final rule.

Board Rules Chapter 3:

After a brief introduction on the proposed amendments to Board Rules Chapter 3, the Chair asked for any comments by the Board or Staff.

The following comment constitutes the change as agreed upon by the Board to the proposed amendments to Board Rules Chapter 3:

- Board § 3-03(h): change “elected officials serve” to “elected official serves”

Upon motion duly made and seconded, the Board unanimously voted to approve the proposed amendments incorporating the changes as discussed as the final rule.

Board Rules § 1-15:

After a brief introduction by a member of Board Staff on the proposed amendments to Board Rules § 1-15, the Chair asked for any comments by the Board or Staff.

In the Statement of Basis and Purpose of the Proposed Rule, the following changes were agreed upon by the Board:

- To include language clarifying the status of all advisory opinions relating to community boards
- On p. 2, first paragraph: to modify language to reflect that, consistent with longstanding Board interpretation, the “catch-all” provision of Charter § 2604(b)(2) applies to City employment.

Upon motion duly made and seconded, the Board unanimously voted to continue discussion at a future Board meeting for Board Rules § 1-15 and § 1-01.

The open meeting was adjourned at approximately 10:45 a.m.

Respectfully submitted,

Julia Lee
Recording Secretary

New York City Conflicts of Interest Board

Notice of Public Hearing and Opportunity to Comment on Proposed Rule Regarding Not-for-Profit Organizations Affiliated with Elected Officials

What are we proposing? The Conflicts of Interest Board proposes to amend its rules regarding not-for-profit organizations affiliated with elected officials.

When and where is the hearing? The Conflicts of Interest Board will hold a public hearing on the proposed rule. The public hearing will take place at 3:30 p.m. on Wednesday, April 24, 2019, at Spector Hall, 22 Reade Street, New York, New York 10007.

This location has the following accessibility option(s) available: Wheelchair Accessible.

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

- **Website.** You can submit comments to the Conflicts of Interest Board through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to rules@coib.nyc.gov.
- **Mail.** You can mail comments to Christopher M. Hammer, Deputy General Counsel, Conflicts of Interest Board, 2 Lafayette Street, Suite 1010, New York, New York 10007.
- **Fax.** You can fax comments to the Conflicts of Interest Board at (212) 437-0705.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 437-0730. You can also sign up in the hearing room before the hearing begins on Wednesday, April 24, 2019. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes; you must submit written comments by Tuesday, April 23, 2019.

Do you need assistance to participate in the hearing? You must tell the Conflicts of Interest Board if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at (212) 437-0730. You must tell us by Monday, April 22, 2019.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available to the public at the Conflicts of Interest Board, 2 Lafayette Street, Suite 1010, New York, New York 10007.

What authorizes the Conflicts of Interest Board to make this rule? Section 1043 of the City Charter and Section 3-907 of the Administrative Code authorize the Conflicts of Interest Board to make this proposed rule. This proposed rule was not included in the Conflicts of Interest Board's regulatory agenda for this Fiscal Year because it was not contemplated when the Conflicts of Interest Board published the agenda.

Where can I find the Conflicts of Interest Board's rules? The Conflicts of Interest Board's rules are in Title 53 of the Rules of the City of New York.

What rules govern the rulemaking process? The Conflicts of Interest Board must meet the requirements of Section 1043 of the City Charter when creating or amending its rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Statement of Basis and Purpose of the Proposed Rule

After the enactment of Local Law 181 of 2016, the Conflicts of Interest Board adopted Board Rules to implement the new Chapter 9 of Title 3 of the Administrative Code ("Chapter 9"), which regulates not-for-profit organizations affiliated with elected officials by, among other things, requiring an affiliated organization to report certain of its donations. The Board has since received substantial feedback about these Rules. First, some not-for-profit organizations have expressed uncertainty about how the Board determines whether an organization is "affiliated with an elected official" and therefore subject to Chapter 9. Second, some affiliated organizations have suggested that the donation reporting process is needlessly complicated. This feedback, as well as the Board's experience in implementing Chapter 9, has led to the decision to clarify and simplify these two aspects of the Board Rules.

The Board therefore proposes to amend Board Rules § 3-03 to clarify the factors by which the Board determines whether an organization is affiliated with an elected official. Because the determination is made based on the totality of the circumstances, this amendment would make clear that the Board must consider each of the individual factors listed in that

section. The amendment would also clarify the meaning of two of the existing seven factors and add an eighth factor, as follows:

- Amended factor (a) would clarify that the Board will look to whether the organization was founded by the person *currently* holding office as Mayor, Comptroller, Public Advocate, Borough President, or member of the Council, or that elected official's agent. An organization founded by a former elected official, or by the agent of a former elected official, does not, without more, suggest control by a *current* elected official or agent of a current elected official.
- Amended factor (g) would clarify that the organization's purpose is relevant to the Board's review insofar as an organization whose purpose advances either the mission of a City agency under the control of the elected official or the elected official's political or policy interests makes it more likely that the elected official or his or her agent controls the organization.
- The addition of factor (h) would permit the Board to consider whether multiple elected officials serve on the board of the organization. Where multiple elected officials serve on the board of an organization, it would be less likely that any one elected official exercises control over that organization.

The Board proposes to amend Board Rules § 3-04(b) to simplify the reporting process for unrestricted organizations. At present, an unrestricted organization (as defined in Board Rules § 3-01(k)) must both review its records and consult with its controlling elected official or agent, board members, and principal officers to determine whether any of its donors is the household member—defined as the spouse, domestic partner, or unemancipated child of the donor—of a person listed in the City's doing business database. In listening to the unrestricted organizations, the Board has learned that this requirement, as a day-to-day matter, will be unduly burdensome. In order to create a regulatory regime that balances the need for transparency with the need for practical administration, the Board now views the unrestricted organization's records as containing information sufficient to make this determination without consulting these organizational leaders.

Text of the Proposed Rule

New material is underlined.

[Deleted material is in brackets.]

Sections 3-03 and 3-04 of Title 53 of the Rules of the City of New York are amended to read as follows:

§ 3-03. Factors by which the Board Will Determine Whether an Entity is Affiliated with an Elected Official.

For purposes of Administrative Code § 3-901, 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 a non-profit entity, the Board will consider the totality of the circumstances[, including] by weighing each of the following individual factors:

- (a) whether the organization was created by [such an elected official] a person currently holding office as Mayor, Comptroller, Public Advocate, Borough President, or member of the Council, or [the official's] an agent of such official, 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;
- (b) whether the board of the organization is chaired by such an elected official or the official's agent;
- (c) whether board members are appointed by such an elected official or the official's agent or only upon nomination of other individuals or entities that are not agents of such elected official;
- (d) whether board members serve for fixed terms or can be removed without cause by an elected official or the official's agent;
- (e) the degree of involvement or direction by such an elected official or the official's agent in such organization's policies, operations, and activities;
- (f) the degree to which public servants, acting under the authority or direction of the elected official or an agent of the elected official, perform duties on behalf of the organization as part of their official City employment; [and]
- (g) whether the purpose of the organization advances either the mission of a City agency under the control of the elected official or the political or policy interests of the elected official; and
- (h) whether more than one elected official serves on the board of the organization.

§ 3-04. Annual Reporting by Organizations Affiliated with an Elected Official.

Pursuant to Administrative Code § 3-902, all organizations affiliated with an elected official must submit the reporting required pursuant to Administrative Code § 3-902(a) on the Board's website, no later than August 1 for the previous calendar year, as follows.

(a) Reporting Requirements for Restricted Organizations

* * *

- (5) To determine whether a donation may be accepted pursuant to Administrative Code §§ 3-903(a) and (b), and to comply with the reporting requirement of Administrative Code § 3-902(a)(6), a restricted organization must take the following steps to determine whether a donor was listed in the City's Doing Business Database or was a household member of a person listed in the City's Doing Business Database, either on the date of the donation or as of 180 days after the date of the donation:
- (i) check the name of the donor against the City's Doing Business Database both at the time of the donation and as of 180 days after the date of the donation;
 - (ii) consult the organization's records, including but not limited to donors' written submissions collected pursuant to Administrative Code § 3-903(d), if any, to determine whether the donor was a household member of a person listed in the City's Doing Business Database;
 - (iii) consult each of the following people: (a) the organization's affiliated elected official or the agent of the organization's affiliated elected official who exercises control over the organization; (b) each board member of the organization; and (c) each principal officer of the organization. The organization must request that each person consulted pursuant to this subparagraph review a list of the organization's most recent donors and inform the organization if such person believes that a donor is the household member of a person listed in the Doing Business Database. The organization must obtain the names of the spouse or domestic partner of any such donor (or, if the donor is an unemancipated child, his or her parent) and check those names against the Doing Business Database; and
 - (iv) if an organization [concludes]believes that a donor, a donor's spouse or domestic partner (or, if a donor is an unemancipated child, his or her parent), is not a person with business dealings with the City, despite such person's name matching the name of an individual in the Doing Business Database, the organization must submit information supporting that conclusion to the Board. The Board will review the submission and determine whether the donation may be accepted pursuant to

Administrative Code §§ 3-903(a) or 3-903(b) and if it must be reported pursuant to Administrative Code § 3-902(a)(6).

* * *

(b) *Reporting Requirements for Unrestricted Organizations*

* * *

(2) To comply with the reporting requirement of Administrative Code § 3-902(a)(6), an unrestricted organization must take the following steps to determine whether a donor was listed in the City's Doing Business Database or was a household member of a person listed in the City's Doing Business Database, either on the date of the donation or within 180 days after the date of the donation:

(i) check the name of the donor against the City's Doing Business Database both at the time of the donation and as of 180 days after the date of the donation;

(ii) consult the organization's records, including but not limited to donors' written submissions collected pursuant to Administrative Code § 3-903(d), to determine whether the donor was a household member of a person listed in the City's Doing Business Database; and

(iii) [consult each of the following people: (a) the organization's affiliated elected official or the agent of the organization's affiliated elected official who exercises control over the organization; (b) each board member of the organization; and (c) each principal officer of the organization. The organization must request that each person consulted pursuant to this subparagraph review a list of the organization's most recent donors and inform the organization if such person believes that a donor is listed in the Doing Business Database, or is the domestic partner, spouse, or unemancipated child of a person listed in the Doing Business Database. The organization must obtain the names of the spouse or domestic partner of any such donor (or, if the donor is an unemancipated child, his or her parent) and check those names against the Doing Business Database; and

(iv)]if an organization [concludes] believes that a donor, a donor's spouse or domestic partner (or, if a donor is an unemancipated child, his or her parent), is not a person with business dealings with the City, despite such person's name matching the name of an individual in the Doing Business Database, the organization must submit information supporting that conclusion to the Board. The Board will review the submission and determine whether the donation must be reported pursuant to Administrative Code § 3-902(a)(6).

* * *

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of Rules Relating to Not-for-Profit Organizations Affiliated with Elected Officials

REFERENCE NUMBER: 2019 RG 006

RULEMAKING AGENCY: Conflicts of Interest Board

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: March 4, 2019

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Amendment of Rules Relating to Not-for-Profit Organizations Affiliated with Elected Officials

REFERENCE NUMBER: COIB-6

RULEMAKING AGENCY: Conflicts of Interest Board

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ James Archer
Mayor's Office of Operations

March 6, 2019
Date

Randall's Island Park Alliance

April 8, 2019

Christopher M. Hammer
Deputy General Counsel
NYC Conflicts of Interest Board
2 Lafayette Street, Suite 1010
New York, NY 10007


Re: COIB Proposed Rule Changes for Not-for-Profit Organizations Affiliated with Elected Officials

Dear Mr: Hammer:

We are in receipt of your notice of public hearing and opportunity to comment on proposed rule regarding not-for-profit organization affiliated with elected officials. While Randall's Island Park Alliance will not be present at the April 24, 2019 public hearing, as an organization we want to convey our support for your amendments to Sections 3-03 and 3-05 of Title 53 of the Rules of the City of New York. We believe the changes that the Conflict of Interest Board are proposing would clarify the rules, provide transparency and benefit both the City as well as not-for-profit organizations that support the City.

We appreciate the time the Conflict of Interest Board spent on this issue and the thoughtfulness put into amending this new law, which is important to non-profits such as ours.

Best,


Deborah A. Maher
Vice President & General Counsel

cc: Aimee Boden, President
Richard J. Davis, Chair Emeritus
John Mascialino, GreenbergTraurig

EXHIBIT 4

Received by
APR 23 2019
Conflicts of Interest Board

To: Christopher Hammer, Deputy General Counsel
Conflict of Interest Board

From: Stan Reimer, Director
Honor Emergency Fund of the Fire Department of New York

Re: Public Hearing on Proposed Rule Regarding Not-for-Profit Organizations Affiliated with Elected Officials – Chapter 9 of Title 3 of the Administrative Code

Dear Mr. Hammer:

There has been on-going verbal communication and correspondence regarding Conflict of Interest Board Case #2018-595, as pertains to the Honor Emergency Fund of the Fire Department of the City of New York. Throughout this time, the Fund Director and its legal counsel have stressed the onerous nature of the original requirements as pertained to our donor base, which is largely comprised of exceedingly small monthly contributions. In addition, we took exception to other aspects of the reporting requirements, notably, but among others, whether our organization is truly affiliated with an elected official in the first place. We are pleased that the proposed amendment to its rules notes that the Conflict of Interest Board will clarify that the Board will look into if the organization was founded by a person currently holding office, or that elected official's agent, and therefore subject to Chapter 9. The Honor Emergency Fund, incidentally, was established in 1921 and incorporated by the State of New York in 1953. So too, as regards the Honor Emergency Fund, amended factor (g) would clarify that the organization advances, in some manner, the mission of a City agency or an elected official's political interests. In this regard as well, we believe that the Honor Emergency Fund which exists to provide financial relief to applicants "for the welfare and relief of want and distress arising from death, injury or serious illness" of members of the FDNY, clearly does not serve a political interest and is ancillary to the purpose and mission of the Fire Department. We are pleased as well by the Board's current view as regards whom it needs to consult as regards its donors.

However, at least two areas remain that, in my view, is unnecessary, needlessly burdensome, or difficult, if not impossible to incorporate into the reporting requirement:

Historically, the Honor Emergency Fund receives several anonymous donations a year; each sum has ranged from \$10 to \$100. Practically speaking, our office has no mechanism to either reject or return anonymous donations, as, ipso facto, they are anonymous. An anonymous donation, cannot, I think, have any political sway, or influence anyone.

So too, as pertains to the intent and purpose of the Conflict of Interest Board rules, which is to ensure the impartiality and integrity of elected officials, the requirement that any donation received needs to be reported on the COIB portal no matter the amount, even, say, \$10, (if the sums do not aggregate exponentially during the course of a year or more), strikes me as curious, to say the least. It is hard to fathom how a small donation of under \$500 or \$1,000, let alone \$10, \$20, \$50, \$100 or \$200, could influence the decision-making apparatus of any not-for-profit or be used as a cudgel by an elected official to secure some favor or outcome. This would certainly hold true in our current day, where "pay-

for-play" reaches into the tens or hundreds of thousands if not more. I strongly implore that your rules reconsider the bottom-line donation sum, so that small donations be excluded from the reporting requirements. I recommend that commonsense rules be established in order that not-for-profits are not placed into jeopardy as to meeting their purpose and mission and/or to force them to expend precious time and resources that would be better put towards meeting, and perhaps even exceeding, their goals and purpose.

Sincerely,

A handwritten signature in black ink that reads "Stan Reimer". The signature is written in a cursive style with a large, prominent "S" and "R".

Stan Reimer, M.P.A., L.C.S.W.

Executive Director

Honor Emergency Fund

New York City Conflicts of Interest Board

Notice of Adoption of Final Rules

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE NEW YORK CITY CONFLICTS OF INTEREST BOARD by Section 1043 of the City Charter and Section 3-907 of the New York City Administrative Code that the Conflicts of Interest Board has adopted Board Rules that clarify the factors by which the Board determines whether an organization is affiliated with an elected official and simplify the reporting process for affiliated organizations.

The proposed Rules were published in the City Record on March 20, 2019, and a public hearing was held on April 24, 2019. After consideration of the testimony and written comments received, the Conflicts of Interest Board now adopts the following Rules.

Statement of Basis and Purpose of the Proposed Rule

After the enactment of Local Law 181 of 2016, the Conflicts of Interest Board adopted Board Rules to implement the new Chapter 9 of Title 3 of the Administrative Code (“Chapter 9”), which regulates not-for-profit organizations affiliated with elected officials by, among other things, requiring an affiliated organization to report certain of its donations. The Board has since received substantial feedback about these Rules. First, some not-for-profit organizations have expressed uncertainty about how the Board determines whether an organization is “affiliated with an elected official” and therefore subject to Chapter 9. Second, some affiliated organizations have suggested that the donation reporting process is needlessly complicated. This feedback, as well as the Board’s experience in implementing Chapter 9, has led to the decision to clarify and simplify these two aspects of the Board Rules.

The Board therefore ~~proposes to amend~~ Board Rules § 3-03 to clarify the factors by which the Board determines whether an organization is affiliated with an elected official. Because the determination is made based on the totality of the circumstances, this amendment ~~would make~~ clear that the Board must consider each of the individual factors listed in that

section. The amendment ~~would also clarify~~sy the meaning of two of the existing seven factors and ~~add~~s an eighth factor, as follows:

- Amended factor (a) ~~would clarify~~sy that the Board will look to whether the organization was founded by the person *currently* holding office as Mayor, Comptroller, Public Advocate, Borough President, or member of the Council, or that elected official's agent. An organization founded by a former elected official, or by the agent of a former elected official, does not, without more, suggest control by a *current* elected official or agent of a current elected official.
- Amended factor (g) ~~would clarify~~sy that the organization's purpose is relevant to the Board's review insofar as an organization whose purpose advances either the mission of a City agency under the control of the elected official or the elected official's political or policy interests makes it more likely that the elected official or his or her agent controls the organization.
- The addition of factor (h) ~~would permit~~s the Board to consider whether multiple elected officials serve on the board of the organization. Where multiple elected officials serve on the board of an organization, it ~~would be~~s less likely that any one elected official exercises control over that organization.

The Board ~~proposes to amend~~s Board Rules § 3-04(b) to simplify the reporting process for unrestricted organizations. ~~At present~~Prior to this amendment, an unrestricted organization (as defined in Board Rules § 3-01(k)) ~~must~~was required both to review its records and to consult with its controlling elected official or agent, board members, and principal officers to determine whether any of its donors is the household member—defined as the spouse, domestic partner, or unemancipated child of the donor—of a person listed in the City's doing business database. In listening to the unrestricted organizations, the Board has learned that this requirement, as a day-to-day matter, ~~will be~~would have been unduly burdensome. In order to create a regulatory regime that balances the need for transparency with the need for practical administration, the Board now views the unrestricted organization's records as containing information sufficient to make this determination without consulting these organizational leaders.

Text of the Proposed Rule

New material is underlined.

[Deleted material is in brackets.]

Sections 3-03 and 3-04 of Title 53 of the Rules of the City of New York are amended to read as follows:

§ 3-03. Factors by which the Board Will Determine Whether an Entity is Affiliated with an Elected Official.

For purposes of Administrative Code § 3-901, 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 a non-profit entity, the Board will consider the totality of the circumstances[, including] by weighing each of the following individual factors:

- (a) whether the organization was created by [such an elected official] a person currently holding office as Mayor, Comptroller, Public Advocate, Borough President, or member of the Council, or [the official's] an agent of such official, 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;
- (b) whether the board of the organization is chaired by such an elected official or the official's agent;
- (c) whether board members are appointed by such an elected official or the official's agent or only upon nomination of other individuals or entities that are not agents of such elected official;
- (d) whether board members serve for fixed terms or can be removed without cause by an elected official or the official's agent;
- (e) the degree of involvement or direction by such an elected official or the official's agent in such organization's policies, operations, and activities;
- (f) the degree to which public servants, acting under the authority or direction of the elected official or an agent of the elected official, perform duties on behalf of the organization as part of their official City employment; [and]
- (g) whether the purpose of the organization advances either the mission of a City agency under the control of the elected official or the political or policy interests of the elected official; and
- (h) whether more than one elected official serves on the board of the organization.

§ 3-04. Annual Reporting by Organizations Affiliated with an Elected Official.

Pursuant to Administrative Code § 3-902, all organizations affiliated with an elected official must submit the reporting required pursuant to Administrative Code § 3-902(a) on the Board's website, no later than August 1 for the previous calendar year, as follows.

(a) Reporting Requirements for Restricted Organizations

* * *

- (5) To determine whether a donation may be accepted pursuant to Administrative Code §§ 3-903(a) and (b), and to comply with the reporting requirement of Administrative Code § 3-902(a)(6), a restricted organization must take the following steps to determine whether a donor was listed in the City's Doing Business Database or was a household member of a person listed in the City's Doing Business Database, either on the date of the donation or as of 180 days after the date of the donation:
- (i) check the name of the donor against the City's Doing Business Database both at the time of the donation and as of 180 days after the date of the donation;
 - (ii) consult the organization's records, including but not limited to donors' written submissions collected pursuant to Administrative Code § 3-903(d), if any, to determine whether the donor was a household member of a person listed in the City's Doing Business Database;
 - (iii) consult each of the following people: (a) the organization's affiliated elected official or the agent of the organization's affiliated elected official who exercises control over the organization; (b) each board member of the organization; and (c) each principal officer of the organization. The organization must request that each person consulted pursuant to this subparagraph review a list of the organization's most recent donors and inform the organization if such person believes that a donor is the household member of a person listed in the Doing Business Database. The organization must obtain the names of the spouse or domestic partner of any such donor (or, if the donor is an unemancipated child, his or her parent) and check those names against the Doing Business Database; and
 - (iv) if an organization [concludes] believes that a donor, a donor's spouse or domestic partner (or, if a donor is an unemancipated child, his or her parent), is not a person with business dealings with the City, despite such person's name matching the name of an individual in the Doing Business Database, the organization must submit information supporting that conclusion to the Board. The Board will review the submission and determine whether the donation may be accepted pursuant to

Administrative Code §§ 3-903(a) or 3-903(b) and if it must be reported pursuant to Administrative Code § 3-902(a)(6).

* * *

(b) Reporting Requirements for Unrestricted Organizations

* * *

(2) To comply with the reporting requirement of Administrative Code § 3-902(a)(6), an unrestricted organization must take the following steps to determine whether a donor was listed in the City's Doing Business Database or was a household member of a person listed in the City's Doing Business Database, either on the date of the donation or within 180 days after the date of the donation:

- (i) check the name of the donor against the City's Doing Business Database both at the time of the donation and as of 180 days after the date of the donation;
- (ii) consult the organization's records, including but not limited to donors' written submissions collected pursuant to Administrative Code § 3-903(d), to determine whether the donor was a household member of a person listed in the City's Doing Business Database; and
- (iii) [consult each of the following people: (a) the organization's affiliated elected official or the agent of the organization's affiliated elected official who exercises control over the organization; (b) each board member of the organization; and (c) each principal officer of the organization. The organization must request that each person consulted pursuant to this subparagraph review a list of the organization's most recent donors and inform the organization if such person believes that a donor is listed in the Doing Business Database, or is the domestic partner, spouse, or unemancipated child of a person listed in the Doing Business Database. The organization must obtain the names of the spouse or domestic partner of any such donor (or, if the donor is an unemancipated child, his or her parent) and check those names against the Doing Business Database; and
- (iv)]if an organization [concludes] believes that a donor, a donor's spouse or domestic partner (or, if a donor is an unemancipated child, his or her parent), is not a person with business dealings with the City, despite such person's name matching the name of an individual in the Doing Business Database, the organization must submit information supporting that conclusion to the Board. The Board will review the submission and determine whether the donation must be reported pursuant to Administrative Code § 3-902(a)(6).

* * *

New York City Conflicts of Interest Board

Notice of Adoption of Final Rules

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE NEW YORK CITY CONFLICTS OF INTEREST BOARD by Section 1043 of the City Charter and Section 3-907 of the New York City Administrative Code that the Conflicts of Interest Board has adopted Board Rules that clarify the factors by which the Board determines whether an organization is affiliated with an elected official and simplify the reporting process for affiliated organizations.

The proposed Rules were published in the City Record on March 20, 2019, and a public hearing was held on April 24, 2019. After consideration of the testimony and written comments received, the Conflicts of Interest Board now adopts the following Rules.

Statement of Basis and Purpose

After the enactment of Local Law 181 of 2016, the Conflicts of Interest Board adopted Board Rules to implement the new Chapter 9 of Title 3 of the Administrative Code (“Chapter 9”), which regulates not-for-profit organizations affiliated with elected officials by, among other things, requiring an affiliated organization to report certain of its donations. The Board has since received substantial feedback about these Rules. First, some not-for-profit organizations have expressed uncertainty about how the Board determines whether an organization is “affiliated with an elected official” and therefore subject to Chapter 9. Second, some affiliated organizations have suggested that the donation reporting process is needlessly complicated. This feedback, as well as the Board’s experience in implementing Chapter 9, has led to the decision to clarify and simplify these two aspects of the Board Rules.

The Board therefore amends Board Rules § 3-03 to clarify the factors by which the Board determines whether an organization is affiliated with an elected official. Because the determination is made based on the totality of the circumstances, this amendment makes clear that the Board must consider each of the individual factors listed in that section. The amendment

also clarifies the meaning of two of the existing seven factors and adds an eighth factor, as follows:

- Amended factor (a) clarifies that the Board will look to whether the organization was founded by the person *currently* holding office as Mayor, Comptroller, Public Advocate, Borough President, or member of the Council, or that elected official's agent. An organization founded by a former elected official, or by the agent of a former elected official, does not, without more, suggest control by a *current* elected official or agent of a current elected official.
- Amended factor (g) clarifies that the organization's purpose is relevant to the Board's review insofar as an organization whose purpose advances either the mission of a City agency under the control of the elected official or the elected official's political or policy interests makes it more likely that the elected official or his or her agent controls the organization.
- The addition of factor (h) permits the Board to consider whether multiple elected officials serve on the board of the organization. Where multiple elected officials serve on the board of an organization, it is less likely that any one elected official exercises control over that organization.

The Board amends Board Rules § 3-04(b) to simplify the reporting process for unrestricted organizations. Prior to this amendment, an unrestricted organization (as defined in Board Rules § 3-01(k)) was required both to review its records and to consult with its controlling elected official or agent, board members, and principal officers to determine whether any of its donors is the household member—defined as the spouse, domestic partner, or unemancipated child of the donor—of a person listed in the City's doing business database. In listening to the unrestricted organizations, the Board has learned that this requirement, as a day-to-day matter, would have been unduly burdensome. In order to create a regulatory regime that balances the need for transparency with the need for practical administration, the Board now views the unrestricted organization's records as containing information sufficient to make this determination without consulting these organizational leaders.

Text of the Proposed Rule

New material is underlined.

[Deleted material is in brackets.]

Sections 3-03 and 3-04 of Title 53 of the Rules of the City of New York are amended to read as follows:

§ 3-03. Factors by which the Board Will Determine Whether an Entity is Affiliated with an Elected Official.

For purposes of Administrative Code § 3-901, 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 a non-profit entity, the Board will consider the totality of the circumstances[, including] by weighing each of the following individual factors:

- (a) whether the organization was created by [such an elected official] a person currently holding office as Mayor, Comptroller, Public Advocate, Borough President, or member of the Council, or [the official's] an agent of such official, 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;
- (b) whether the board of the organization is chaired by such an elected official or the official's agent;
- (c) whether board members are appointed by such an elected official or the official's agent or only upon nomination of other individuals or entities that are not agents of such elected official;
- (d) whether board members serve for fixed terms or can be removed without cause by an elected official or the official's agent;
- (e) the degree of involvement or direction by such an elected official or the official's agent in such organization's policies, operations, and activities;
- (f) the degree to which public servants, acting under the authority or direction of the elected official or an agent of the elected official, perform duties on behalf of the organization as part of their official City employment; [and]
- (g) whether the purpose of the organization advances either the mission of a City agency under the control of the elected official or the political or policy interests of the elected official; and
- (h) whether more than one elected official serves on the board of the organization.

§ 3-04. Annual Reporting by Organizations Affiliated with an Elected Official.

Pursuant to Administrative Code § 3-902, all organizations affiliated with an elected official must submit the reporting required pursuant to Administrative Code § 3-902(a) on the Board's website, no later than August 1 for the previous calendar year, as follows.

(a) Reporting Requirements for Restricted Organizations

* * *

- (5) To determine whether a donation may be accepted pursuant to Administrative Code §§ 3-903(a) and (b), and to comply with the reporting requirement of Administrative Code § 3-902(a)(6), a restricted organization must take the following steps to determine whether a donor was listed in the City's Doing Business Database or was a household member of a person listed in the City's Doing Business Database, either on the date of the donation or as of 180 days after the date of the donation:
- (i) check the name of the donor against the City's Doing Business Database both at the time of the donation and as of 180 days after the date of the donation;
 - (ii) consult the organization's records, including but not limited to donors' written submissions collected pursuant to Administrative Code § 3-903(d), if any, to determine whether the donor was a household member of a person listed in the City's Doing Business Database;
 - (iii) consult each of the following people: (a) the organization's affiliated elected official or the agent of the organization's affiliated elected official who exercises control over the organization; (b) each board member of the organization; and (c) each principal officer of the organization. The organization must request that each person consulted pursuant to this subparagraph review a list of the organization's most recent donors and inform the organization if such person believes that a donor is the household member of a person listed in the Doing Business Database. The organization must obtain the names of the spouse or domestic partner of any such donor (or, if the donor is an unemancipated child, his or her parent) and check those names against the Doing Business Database; and
 - (iv) if an organization [concludes] believes that a donor, a donor's spouse or domestic partner (or, if a donor is an unemancipated child, his or her parent), is not a person with business dealings with the City, despite such person's name matching the name of an individual in the Doing Business Database, the organization must submit information supporting that conclusion to the Board. The Board will review the submission and determine whether the donation may be accepted pursuant to

Administrative Code §§ 3-903(a) or 3-903(b) and if it must be reported pursuant to Administrative Code § 3-902(a)(6).

* * *

(b) *Reporting Requirements for Unrestricted Organizations*

* * *

- (2) To comply with the reporting requirement of Administrative Code § 3-902(a)(6), an unrestricted organization must take the following steps to determine whether a donor was listed in the City's Doing Business Database or was a household member of a person listed in the City's Doing Business Database, either on the date of the donation or within 180 days after the date of the donation:
- (i) check the name of the donor against the City's Doing Business Database both at the time of the donation and as of 180 days after the date of the donation;
 - (ii) consult the organization's records, including but not limited to donors' written submissions collected pursuant to Administrative Code § 3-903(d), to determine whether the donor was a household member of a person listed in the City's Doing Business Database; and
 - (iii) [consult each of the following people: (a) the organization's affiliated elected official or the agent of the organization's affiliated elected official who exercises control over the organization; (b) each board member of the organization; and (c) each principal officer of the organization. The organization must request that each person consulted pursuant to this subparagraph review a list of the organization's most recent donors and inform the organization if such person believes that a donor is listed in the Doing Business Database, or is the domestic partner, spouse, or unemancipated child of a person listed in the Doing Business Database. The organization must obtain the names of the spouse or domestic partner of any such donor (or, if the donor is an unemancipated child, his or her parent) and check those names against the Doing Business Database; and
 - (iv)]if an organization [concludes] believes that a donor, a donor's spouse or domestic partner (or, if a donor is an unemancipated child, his or her parent), is not a person with business dealings with the City, despite such person's name matching the name of an individual in the Doing Business Database, the organization must submit information supporting that conclusion to the Board. The Board will review the submission and determine whether the donation must be reported pursuant to Administrative Code § 3-902(a)(6).

* * *