

## September 17, 2019, Agenda – Open Meeting Matter

To: The Board

From: Christopher M. Hammer *cmh*

Date: September 6, 2019

Re: Board Rules Chapter 3: Affiliated Not-for-Profit Organizations

On July 23, 2019, the City Council passed Intro. 1272-A, amending Chapter 9 of Title 3 of the New York City Administrative Code (“Chapter 9”), which regulates donations to not-for-profit organizations affiliated with elected officials. These amendments, which were deemed adopted as Local Law No. 153 of 2019 on August 23, 2019,<sup>1</sup> do three things: (1) clarify that a donor’s donations are aggregated throughout the calendar year for purposes of triggering the donation reporting thresholds; (2) relax the reporting requirements on unrestricted organizations, that is, affiliated organizations that do not spend or expect to spend at least 10% of their annual expenditures on elected official communications; and (3) permit donors to unrestricted organizations to request anonymity from the organization in its reporting the donation to the Board.

Staff presents technical amendments to Board Rules Chapter 3 in light of these legislative changes and to remove language redundant with the Administrative Code. Specifically, the proposed amendments would:

- Remove Board Rules §§ 3-04(a)(2)(i) to (ii) and (iv) to (vii); these requirements are expressly articulated in Administrative Code § 3-902(a) and thus unnecessary for the Board to rearticulate in the Board Rules. See Exhibit 2 at 3.
- Remove Board Rules § 3-04(b)(2), which imposes the requirement that an unrestricted organization check the names of its donor, as well as the

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<sup>1</sup> Pursuant to City Charter § 37, a law passed by the City Council is presented to the Mayor for approval. If the Mayor neither signs nor vetoes the law within 30 days, the law is deemed to have been adopted.

household members of its donors as reflected in the organization's records, against the City's Doing Business Database. Pursuant to the new Administrative Code § 3-902(b), an unrestricted organization is no longer required to report donations from the household of a person in the City's Doing Business Database. See Exhibit 2 at 3-4.

- Remove Board Rules § 3-04(b)(3), which interprets Chapter 9 as aggregating donations from an individual or entity over the course of the calendar year for purposes of the reporting threshold. The new Administrative Code § 3-902(b)(6) specifically adopts this principle of aggregation by referring to donations over the course of the calendar year “with an aggregate reasonable value of \$5,000 or more.” See Exhibit 2 at 4.
- Remove Board Rules § 3-02(b)(4) and (5), which impose additional reporting requirements on unrestricted organizations. These requirements were predicated on the Board's authority to require an affiliated organization to report “any other information required to be included by the [Board]”; this authority now applies only with respect to restricted organizations. See Administrative Code § 3-902(a)(9) (**Exhibit 2** at 3).
- Apply the privacy, safety, and security request procedure to apply only to restricted organizations. See Board Rules § 3-04(c)(1) (**Exhibit 4** at 5). The new Administrative Code § 3-902(a)(7) allows an organization to report donations with anonymizing information at the request of the donor, thus for all practical purposes limiting the scope of the procedure to restricted organizations. See Exhibit 2 at 4. The Board retains the ability, on its own initiative, to grant privacy as to any information submitted by an affiliated organization, whether restricted or unrestricted. See Board Rules § 3-04(c)(2) (**Exhibit 3** at 8).

These proposed amendments have been informally reviewed by the New York City Law Department; with the Board's approval, Staff will formally submit these proposed amendments to the Law Department and the Mayor's Office of Operations, as required by the City Administrative Procedure Act. See Charter Section 1043(d).

Attached are the following:

1. Local Law 153 of 2019 (**Exhibit 1**);
2. Chapter 9, as amended (**Exhibit 2**);
3. Board Rules Chapter 3 (**Exhibit 3**); and
4. Staff's Proposed Notice of Public Hearing and Opportunity to Comment (**Exhibit 4**).



Legislation Text

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File #: Int 1272-2018, Version: A

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Int. No. 1272-A

By Council Members Grodenchik, Levine, Lander, Brannan and Cohen

A Local Law to amend the administrative code of the city of New York, in relation to amending reporting and donor disclosure requirements for organizations affiliated with elected officials

Be it enacted by the Council as follows:

Section 1. Section 3-902 of the administrative code of the city of New York, as amended by local law number 181 for the year 2016, is amended to read as follows:

§ 3-902 Reporting and donor disclosure for organizations affiliated with elected officials.

a. All 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 submit a 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] list:

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,] persons who made a donation to the organization during the previous calendar year, if any, who were persons with business dealings with the city on the date of such donation or became persons with business dealings with the city within 180 days of the receipt of such donation, and the city and state of residence, dates of donation, and value of donation of any such [people] persons;

7. the names of any other individuals who, or any entity that, made a donation or donations with [a] an aggregate 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; and

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. All organizations affiliated with an elected official that did not spend or do not reasonably expect to spend at least 10% of their expenditures in the previous or current calendar year on the production or dissemination of elected official communications shall submit a 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 list:

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. except for donations covered by paragraph 7 of this subdivision, the names of any persons who, or any entities that, made a donation or donations with an aggregate reasonable value of \$5,000 or more to such 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 persons or entities:

7. for any donation or donations with an aggregate reasonable value of \$5,000 or more made to such organization during the previous calendar year from a donor who does not wish to have their identity made public, the date or dates of donation and the amount of each such donation, provided that the name of any such donor, or any other identifying information, may be substituted with anonymizing language: and

8. a certification that the organization did not spend or does not reasonably expect to spend at least 10% of its expenditures in the previous or current calendar year on the production or dissemination of elected official communications.

c. The conflicts of interest board shall maintain and regularly update a list on its website, in a machine readable format that permits automated processing, 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] 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.] d. 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.

§ 2. This local law takes effect on January 1, 2019, provided that if this local law becomes law after January 1, 2019, it is retroactive to and deemed to have been in effect as of January 1, 2019.

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## Affiliated Not-for-Profits

### § 3-901 - § 3-907 of the New York City Administrative Code

#### § 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 Reporting and donor disclosure for organizations affiliated with elected officials.**

(a) All 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 submit a 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 list:

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 persons who made a donation to the organization during the previous calendar year, if any, who were persons with business dealings with the city on the date of such donation or became persons with business dealings with the city within 180 days of the receipt of such donation, and the city and state of residence, dates of donation, and value of donation of any such persons;
7. the names of any other individuals who, or any entity that, made a donation or donations with an aggregate 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; and
9. any other information required to be included by the conflicts of interest board.

(b) All organizations affiliated with an elected official that did not spend or do not reasonably expect to spend at least 10% of their expenditures in the previous or current calendar year on the production or dissemination of elected official communications shall submit a report to the conflicts of interest board by rule. Such report shall list:

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. except for donations covered by paragraph 7 of this subdivision, the names of any persons who, or any entities that, made a donation or donations with an aggregate reasonable value of \$5,000 or more to such 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 persons or entities;
  7. for any donation or donations with an aggregate reasonable value of \$5,000 or more made to such organization during the previous calendar year from a donor who does not wish to have their identity made public, the date or dates of donation and the amount of each such donation, provided that the name of any such donor, or any other identifying information, may be substituted with anonymizing language; and
  8. a certification that the organization did not spend or does not reasonably expect to spend at least 10% of its expenditures in the previous or current calendar year on the production or dissemination of elected official communications.
- (c) The conflicts of interest board shall maintain and regularly update a list on its website, in a machine readable format that permits automated processing, 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.
- (d) 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.

**§ 3-903 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

§ 3-905 Enforcement.

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) 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

§ 3-907 Rulemaking.

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.

- (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.

### Chapter 3: Organizations Affiliated with Elected Officials

#### §3-01. Definitions.

For purposes of this chapter, the following terms have these meanings:

- (a) *Doing Business Database*. “Doing Business Database” means the Doing Business Database as defined in Administrative Code § 3-702.
- (b) *Donation*. “Donation” means any contribution from a non-governmental source, including in-kind donations, gifts, loans, advances or deposits of money, or anything of value.
- (c) *Elected official*. “Elected official” means a person holding office as Mayor, Comptroller, Public Advocate, Borough President or member of the Council.
- (d) *Elected official communication*.
  - (1) An “elected official communication” means a communication that includes the name, voice, or likeness of the elected official with whom the entity making such communication is affiliated and that is 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.
  - (2) An elected official communication does 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 of 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.
- (e) *Household member*. “Household member” means a person’s spouse or domestic partner and unemancipated children.
- (f) *In-kind donation*. “In-kind donation” to an organization affiliated with an elected official in this Chapter means: (1) any gift, loan, advance of, or payment for, anything of value,

other than money, made to or for the organization by a non-governmental source; or (2) the payment by any non-governmental source for the personal services of another person that is provided to an organization affiliated with an elected official without charge to the organization. "In-kind donation" does not include personal services provided without compensation by individuals volunteering their time on behalf of the organization on matters outside of their professional expertise.

(g) *Organization affiliated with an elected official.* "Organization affiliated with an elected official" means:

- (1) a non-profit entity other than an agency, public authority, public benefit corporation, or local development corporation;
- (2) which has received at least one donation in the previous or current calendar year; and
- (3) 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. Principal committees and political committees, as those terms are defined in Administrative Code § 3-702, are not organizations affiliated with an elected official.

(h) *Principal officers.* "Principal officer" means an organization's executive director, chief financial officer, and chief development officer, or the organization's three executive staff members who perform equivalent duties.

(i) *Restricted organization.* "Restricted organization" means an organization affiliated with an elected official that accepted a donation and either:

- (1) spent at least 10% of its expenditures on elected official communications in the calendar year it accepted the donation; or
- (2) reasonably expects to spend at least 10% of its expenditures on elected official communications in the calendar year after it accepted the donation.

(j) *Spend.* "Spend" means to spend or to cause to be spent.

(k) *Unrestricted organization.* "Unrestricted organization" means an organization affiliated with an elected official that accepted a donation and satisfies both of the following conditions:

- (1) the organization did not spend at least 10% of its expenditures on elected official communications in the calendar year it accepted the donation and
- (2) the organization does not reasonably expect to spend at least 10% of its expenditures on elected official communications in the calendar year after it accepted the donation.

**§3-02. Procedures for Obtaining a Determination by the Board that an Elected Official or an Agent of an Elected Official Does Not Exercise Control over an Entity.**

For purposes of Administrative Code § 3-904(c), a non-profit entity may apply to the Board for a formal determination that an elected official or an agent of an elected official does not exercise control over the entity. Such an application must be in writing, signed by an agent of the not-for-profit entity, and provide a detailed explanation of the underlying facts that show why, consistent with the considerations included in the definition of “organization affiliated with an elected official” set forth in Administrative Code § 3-901 and Board Rules § 3-03, the entity should not be considered an “organization affiliated with an elected official.”

**§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 by weighing each of the following individual factors:

- (a) whether the organization was created by a person currently holding office as Mayor, Comptroller, Public Advocate, Borough President, or member of the Council, or 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*

- (1) A restricted organization must submit the information listed in Administrative Code §§ 3-902(a)(1) to 3-902(a)(8).
- (2) To comply with the reporting requirement of Administrative Code §§ 3-902(a)(6) and 3-902(a)(7), a restricted organization must report for each donation received during the previous calendar year:
  - (i) the name of any donor who, as of the date of such donation, was either listed in the City's Doing Business Database or who was a household member of a person listed in the City's Doing Business Database;
  - (ii) the name of any donor who was added to the City's Doing Business Database within 180 days after the receipt of such donation or who was a household member of a person added to the City's Doing Business Database within 180 days after the receipt of such donation;
  - (iii) if the donor was the household member of a person listed in the City's Doing Business Database as of the date of such donation, or added to the City's Doing Business Database within 180 days after the receipt of such donation, the name of the person listed in the City's Doing Business Database;
  - (iv) the name of any donor who made a donation with a reasonable value of \$1,000 or more;
  - (v) the city and state of residence of the donor;

- (vi) the date of each donation;
  - (vii) the value of each donation;
  - (viii) the value of any excess donation refunded pursuant to Administrative Code §§ 3-903(a) or 3-903(b); and
  - (ix) the date of any excess donation refunded pursuant to Administrative Code §§ 3-903(a) or 3-903(b).
- (3) Multiple donations made by a person listed in the City's Doing Business Database and that person's household members in the same calendar year are considered in the aggregate for purposes of Administrative Code §§ 3-903(a), and 3-903(b). Multiple donations made by an individual in the same calendar year are considered in the aggregate for purposes of Administrative Code § 3-902(a)(7) and for purposes of obtaining the individual donor's written submission pursuant to Administrative Code § 3-903(d).
- (4) In determining whether and when a donation must be returned pursuant to Administrative Code § 3-903(b), where a person is added to the City's Doing Business Database in a calendar year and the donor or household members of the donor make multiple donations to the organization that in the aggregate exceed \$400 in that calendar year, the date of receipt will be deemed to be the date that the aggregate donations for the calendar year among the donor and household members of the donor exceed \$400.
- (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 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).

(5) To comply with the reporting requirement of Administrative Code § 3-902(a)(8), a restricted organization must submit to the Board a list of each elected official communication created or distributed, which list must include a description, the date, and the total cost of each such communication. In calculating the total cost of an elected official communication, a restricted organization must include the value of all goods and services paid by the organization to create and distribute the elected official communication, including without limitation the value of the time of its employees and the value of all goods and services donated by a non-governmental source for the communication's creation or distribution.

*(b) Reporting Requirements for Unrestricted Organizations*

(1) An unrestricted organization must submit the information listed in Administrative Code §§ 3-902(a)(1) to (a)(9).

(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;
  - (iii) if an organization 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).
- (3) To comply with the reporting requirement of Administrative Code § 3-902(a)(7), an unrestricted organization must submit to the Board the names of any individuals who or entities that made a donation with a reasonable value of \$1,000 or more, whether in a single donation or in multiple donations. If an unrestricted organization receives multiple donations from the same individual or entity, the aggregate value of which has a reasonable value of \$1,000 or more, the organization must report the date and value of every donation from that individual or entity.
- (4) To comply with the reporting requirement of Administrative Code § 3-902(a)(8), an unrestricted organization must submit to the Board a list of each elected official communication created or distributed, which list must include a description, the date, and the total cost of each such communication. In calculating the total cost of an elected official communication, an unrestricted organization must include the value of all goods and services paid by the organization to create and distribute the elected official communication, including without limitation the value of the time of its employees and the value of all goods and services donated by a non-governmental source for the communication's creation or distribution.
- (5) To comply with the reporting requirement of Administrative Code § 3-902(a)(9), an unrestricted organization must report its total expenditures for the previous calendar year and, for the current calendar year, both total budgeted expenditures and budgeted expenditures for elected official communications.

*(c) Privacy, Safety, and Security Requests*

- (1) Pursuant to Administrative Code § 3-902(b), an organization affiliated with an elected official may submit a request to the Board that disclosure of one or more of its donors and/or the amount of donation not be made public. The organization must make such a request in writing no later than April 1 for the previous calendar year and must explain why the release of such information to the public may cause

harm, threats, harassment, or reprisals to the donor, or to individuals or property affiliated with the donor.

- (2) Whether or not a reporting entity has submitted a request pursuant to this subdivision, the Board may upon its own initiative grant privacy as to any information submitted by an organization affiliated with an elected official, upon a finding by the Board that the release of such information would constitute a risk to the safety or security of any person.

**§ 3-05. Record Retention.**

- (a) *Records to be Retained.* An organization affiliated with an elected official must retain all documents that enable the Board to verify the accuracy of the reporting required pursuant to Administrative Code § 3-902. Organizations must maintain clear and accurate records sufficient to demonstrate compliance with Administrative Code §§ 3-901 to 3-907.
- (b) *Retention Period.* An organization affiliated with an elected official must retain all records and documents required to be kept pursuant to this rule for at least 6 years after filing the report pursuant to Administrative Code § 3-902 to which the records or documents relate.
- (c) *Custodian of Records.* An organization affiliated with an elected official must designate a custodian of the organization's records or documents that substantiate the reporting required pursuant to Administrative Code § 3-902 and must submit, at the time of each reporting pursuant to Administrative Code § 3-902, the name, address, e-mail address, and telephone number of the custodian of the organization's records. If an organization is no longer subject to the annual reporting requirement pursuant to Administrative Code § 3-902, the organization must, for 6 years after the date of its last filing required by Administrative Code § 3-902, notify the Board, in writing, of any change of custodian, or of the custodian's address, e-mail address, or telephone number, no later than 30 days after such change.

## 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 to reflect recent legislative changes to the New York City Administrative Code.

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

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

**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](mailto: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 [date]. You can speak for up to three minutes.

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

**Do you need assistance to participate in the hearing?** You must tell 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 [date].

**Can I review the comments made on the proposed rules?** You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. 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 changing 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**

Chapter 9 of Title 3 of the New York City Administrative Code ("Chapter 9") regulates not-for-profit organizations affiliated with elected officials by, among other things, requiring such organizations to report certain of their donations. Local Law 153 of 2019 amended Chapter 9 in three ways: (1) by clarifying that a donor's donations are aggregated throughout the calendar year for purposes of triggering the donation reporting thresholds; (2) by relaxing the reporting requirements on unrestricted organizations (as defined in Board Rules § 3-01(k)); and (3) by permitting donors to unrestricted organizations to request anonymity from the organizations themselves instead of the unrestricted organizations requesting permission from the Conflicts of Interest Board to offer their donors anonymity when reporting their donations. The proposed amendments to Board Rules § 3-04 would implement these legislative changes and omit duplicative rule language that is now contained in Chapter 9.

**Text of the Proposed Rule**

New material is underlined.

[Deleted material is in brackets.]

Section 3-04 of Title 53 of the Rules of the City of New York is amended to read as follows:

***§ 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***

\* \* \*

(2) [To comply with] In addition to the reporting requirements of Administrative Code §§ 3-902(a)(6) and 3-902(a)(7), a restricted organization must report for each donation received during the previous calendar year:

[(i) the name of any donor who, as of the date of such donation, was either listed in the City's Doing Business Database or who was a household member of a person listed in the City's Doing Business Database;

(ii) the name of any donor who was added to the City's Doing Business Database within 180 days after the receipt of such donation or who was a household member of a person added to the City's Doing Business Database within 180 days after receipt of such donation;

(iii) (i) if the donor was the household member of a person listed in the City's Doing Business Database as of the date of such donation, or added to the City's Doing Business Database within 180 days after the receipt of such donation, the name of the person listed in the City's Doing Business Database;

[(iv) the name of any donor who made a donation with a reasonable value of \$1,000 or more;

(v) the city and state of residence of the donor;

(vi) the date of each donation;

(vii) the value of each donation;

**EXHIBIT 4**



(viii)] (ii) the value of any excess donation refunded pursuant to Administrative Code §§ 3-903(a) or 3-903(b); and

[(ix)](iii) the date of any excess donation refunded pursuant to Administrative Code §§ 3-903(a) or 3-903(b).

- (3) Multiple donations made by a person listed in the City's Doing Business Database and that person's household members in the same calendar year are considered in the aggregate for purposes of Administrative Code §§ 3-903(a), and 3-903(b). Multiple donations made by an individual in the same calendar year are considered in the aggregate [for purposes of Administrative Code § 3-902(a)(7) and] for purposes of obtaining the individual donor's written submission pursuant to Administrative Code § 3-903(d).

\* \* \*

*(b) Reporting Requirements for Unrestricted Organizations.*

[(1)] An unrestricted organization must submit the information listed in Administrative Code §§ 3-902[(a)(1) to (a)(9)] (b)(1) to (b)(8).

[(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) if an organization 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).

## EXHIBIT 4

- (3) To comply with the reporting requirement of Administrative Code § 3-902(a)(7), an unrestricted organization must submit to the Board the names of any individuals who or entities that made a donation with a reasonable value of \$1,000 or more, whether in a single donation or in multiple donations. If an unrestricted organization receives multiple donations from the same individual or entity, the aggregate value of which has a reasonable value of \$1,000 or more, the organization must report the date and value of every donation from that individual or entity.
- (4) To comply with the reporting requirement of Administrative Code § 3-902(a)(8), an unrestricted organization must submit to the Board a list of each elected official communication created or distributed, which list must include a description, the date, and the total cost of each such communication. In calculating the total cost of an elected official communication, an unrestricted organization must include the value of all goods and services paid by the organization to create and distribute the elected official communication, including without limitation the value of the time of its employees and the value of all goods and services donated by a non-governmental source for the communication's creation or distribution.
- (5) To comply with the reporting requirement of Administrative Code § 3-902(a)(9), an unrestricted organization must report its total expenditures for the previous calendar year and, for the current calendar year, both total budgeted expenditures and budgeted expenditures for elected official communications.]

(c) *Privacy, Safety, and Security Requests*

- (1) Pursuant to Administrative Code § 3-902[(b)](c), [an] a restricted organization [affiliated with an elected official] may submit a request to the Board that disclosure of one or more of its donors and/or the amount of donation not be made public. The organization must make such a request in writing no later than April 1 for the previous calendar year and must explain why the release of such information to the public may cause harm, threats, harassment, or reprisals to the donor, or to individuals or property affiliated with the donor.

\* \* \*