

**January 29, 2018 Agenda – Open Meeting Matter**  
December 19, 2017 – Public Hearing  
November 8, 2017 Agenda – Open Meeting Matter  
July 19, 2017 Agenda – Open Meeting Matter  
June 8, 2017 Agenda – Open Meeting Matter

To: The Board  
From: Christopher M. Hammer *cmlh*  
Date: January 18, 2018  
Re: Proposed Board Rules to Implement Local Law No. 181 of 2016

As discussed in the three previous open meetings, Local Law No. 181 of 2016 (**Exhibit 1**) requires reporting and public disclosure of donations to not-for-profit organizations controlled by City elected officials or their agents. Local Law 181 limits permissible donations to what the proposed Board Rules call “restricted organizations,” that is, an entity that spends or expects to spend at least 10% of its expenditures on communications featuring the name, voice, or likeness of the affiliated elected official. By contrast, “unrestricted organizations” are subject only to reporting requirements.

At its November 8, 2017, open meeting, the Board authorized the submission, to the City’s Law Department and the Mayor’s Office of Operations, of proposed Board Rules to implement Local Law 181. See Exhibit 2. Shortly thereafter, the Board received certifications from Law Department and Office of Operations, allowing the Board to publish the proposed Board Rules for comment in the City Record. See City Record, November 17, 2017, at pp. 7043-7049.

In accordance with the City’s Administrative Procedures Act, the Board held a public hearing on December 19, 2017, to receive comments on the proposed Board Rules. The Board received one written comment in advance of the public hearing, submitted by Laura Abel on

behalf of Lawyers Alliance for New York, Human Services Council, and Nonprofit Coordinating Committee of New York (the “Comment,” attached as **Exhibit 3**). Ms. Abel also testified in person at the public hearing.

Staff recommends that the Board adopt the text of the Board Rules as published in November. In light of the comment received by the Board, Staff also recommends minor changes to the commentary to clarify the intended effect of the proposed Board Rules. These changes are reflected in the tracked changes to **Exhibit 4**.

Upon adopting the Board Rules, the Board must publish a Notice of Adoption in the City Record. Ordinarily, Board Rules take effect 30 days after publication in the City Record, unless the Board makes a finding of a substantial need for earlier implementation and the Mayor approves this earlier implementation. See Charter Section 1043(f)(1). Because Council intended Local Law 181 to take effect beginning on January 1, 2018, Staff proposes that the Board request a waiver of the 30-day waiting period. See **Exhibit 6**.

Attached are the following:

- 1) Introduced Bill No. (“Int. No”) 1345-A, passed as Local Law 181 by the New York City Council on December 15, 2016, and approved by the Mayor on December 22, 2016 (**Exhibit 1**);
- 2) Proposed Board Rules and Commentary, as submitted for publication in the City Record on November 14, 2017 (**Exhibit 2**);
- 3) Comment on Proposed Board Rules by Lawyers Alliance for New York, Human Services Council, and Nonprofit Coordinating Committee of New York, submitted by Laura Abel on December 18, 2017 (**Exhibit 3**);
- 4) Proposed Notice of Adoption (Tracked Version) (**Exhibit 4**);
- 5) Proposed Notice of Adoption (Clean Version) (**Exhibit 5**); and
- 6) Proposed Waiver of the Board Rules’ 30-Day Waiting Period (**Exhibit 6**).

## Analysis & Discussion

The Comment asks the Board to make four changes to the proposed Board Rules: (1) establish a new rebuttable presumption that a nonprofit is not controlled by an elected official who neither appoints a majority of voting board members nor serves as a principal officer; (2) clarify that an elected official's ability to appoint a non-voting ex officio board member does not count towards an elected official's control over the nonprofit; (3) clarify that an "agent of an elected official" excludes uncompensated appointees and City employees who are neither appointed by nor report to the Mayor; and (4) revise the factors by which the Board determines whether an entity is controlled by an elected official or his or her agent.

Staff recommends the Board adopt the Board Rules as originally proposed and the commentary with minor revisions described below. See Proposed Notice of Adoption, **Exhibit 4** (tracked) and **Exhibit 5** (clean). Staff further recommends the Board find a substantial need for earlier implementation of the proposed Board Rules and approve the application to the Mayor for a waiver pursuant to Charter Section 1043(f)(1) of the 30-day waiting period. See **Exhibit 6**.

### *1. New Rebuttable Presumption*

Administrative Code § 3-903(c) requires the Board to establish a procedure, proposed in Board Rules Section 3-02, "whereby 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." See Administrative Code § 3-903(c) (**Exhibit 1** at 6). See also Proposed Board Rules Section 3-02 (**Exhibit 4** at 11). The Comment proposes what it refers to as a "rebuttable presumption" that would allow an organization to bypass this process if the elected official or agent neither appoints a majority of voting members of the board nor serves as a principal officer

of the organization. See Exhibit 3 at 2-3. Because this proposal is meant to state circumstances by which an organization would not need to apply for the Board’s formal determination under Administrative Code § 3-903(c) and Board Rules Section 3-02, it would, in effect, become an *irrebuttable* presumption. Such a presumption is inconsistent with the purpose of Local Law 181, which creates the scheme whereby the Board is authorized to determine whether a nonprofit entity is controlled by an elected official. Thus, the proposed Notice of Adoption does not incorporate this recommendation.

### *2. Status of Non-Voting Members*

Administrative Code § 3-901 establishes a rebuttable presumption that an organization is controlled by an elected official when the elected official or agent of an elected official “appoints a majority of the board of an entity ... or is a principal officer of the entity.” See Administrative Code § 3-901 (**Exhibit 1** at 3); Proposed Board Rules § 3-01(g) (**Exhibit 4** at 10). The Comment seeks a clarification that, in applying the presumption, a non-voting board member would not count towards this majority threshold. See Exhibit 3 at 3. While the fact that an appointee of an elected official or agent is a nonvoting board member may be relevant to an individual organization’s attempt to rebut the presumption, the Board does not have the authority to alter the presumption contained in Administrative Code § 3-901.

### *3. Scope of “Agent”*

The Comment seeks further clarification on who is an “agent” of an elected official. Specifically, it seeks clarification of whether someone is an agent of the Mayor under two circumstances: (1) an employee of a nonprofit who is appointed by the Mayor to an

uncompensated position on a City board or commission; and (2) a low-level public servant, such as a DOE teacher. See Exhibit 3 at 3-4. Staff recommends adding a sentence to the commentary of proposed Board Rules Section 3-03 to clarify that, “[i]n determining whether a person is an agent of an elected official, the Board will look to whether the scope of the agency relationship encompasses that person’s actions with respect to the organization.” See Exhibit 4 at 3-4. Thus, for example, if the Mayor appoints the Executive Director of ABC, a nonprofit, to an position on the Commission on Gender Equity, the scope of the agency relationship is limited to service on that Commission and does not, by itself, result in the Mayor’s control over ABC. Similarly, a DOE teacher who establishes, in his or her private capacity, an alumni association to benefit his or her private college will not be an agent of the Mayor for purposes of his or her service to this organization.

#### *4. Factors Determining Control by an Elected Official*

Finally, the Comment seeks three changes to the factors, delineated in proposed Board Rules Section 3-03, by which the Board determines whether an entity is controlled by an elected official: (1) the Board only look to the previous 12 months for determining whether an elected official exercises control over an organization through his or her former employees and political consultants; (2) an elected official’s provision of discretionary funding, without more, does not constitute control over an organization; and (3) the Board delete factor (f), which would examine “the degree to which public servants, acting under the authority or direction of the elected official or agent of the elected official, perform duties on behalf of the organization as part of their official City employment,” or revise it to clarify that a nonprofit does not operate under the

control of an elected official merely because it accepts the services of a City employee. See Exhibit 3 at 4-5.

Staff does not recommend changing the text of proposed Board Rules Section 3-03, much of which is taken directly from Administrative Code § 3-901. Nevertheless, Staff proposes two new sentences to clarify the commentary to proposed Board Rules Section 3-03: first, a person's relationship to an elected official as a former employee or former political consultant will be more likely to constitute control by the elected official the more recently the relationship ended; and second, by providing discretionary funding to an organization, an elected official does not, without more, exercise control over the organization. See Exhibit 4 at 3.

#### Recommendation

Staff recommends the Board adopt the Board Rules as originally proposed and the commentary with the minor revisions described herein. See Proposed Notice of Adoption, Exhibit 4 (tracked) and Exhibit 5 (clean). Staff further recommends the Board find a substantial need for earlier implementation of the proposed Board Rules and approve the application to the Mayor for a waiver pursuant to Charter Section 1043(f)(1) of the 30-day waiting period (Exhibit 6).

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

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**No. 181**

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

**A LOCAL LAW**

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

*Be it enacted by the Council as follows:*

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

*Chapter 9. Organizations affiliated with elected officials.*

*§ 3-901 Definitions.*

*§ 3-902 Reserved.*

*§ 3-903 Prohibition of acceptance of certain donations.*

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

*§3-905 Enforcement.*

*§ 3-906 Penalties.*

*§ 3-907 Rulemaking.*

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

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

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

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

*Organization affiliated with an elected official. The term "organization affiliated with an elected official" means:*



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

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

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

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

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

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

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

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

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

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

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

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

*§ 3-902 Reserved.*

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

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

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

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

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

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

*§ 3-904 Advisory opinions, outreach and determination of control. a. The conflicts of interest board shall render advisory opinions with respect to all matters covered by this chapter. An advisory opinion shall be rendered on the request of a person holding office as mayor, comptroller, public advocate, borough president or member of the council, an agent of such officeholder, or any non-profit entity potentially subject to the provisions of this chapter, and shall*

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

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

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

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

*§ 3-906 Penalties. a. Reserved.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CERTIFICATION OF CORPORATION COUNSEL

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

STEPHEN LOUIS, Acting Corporation Counsel



## NEW YORK CITY CONFLICTS OF INTEREST BOARD

### Notice of Public Hearing and Opportunity to Comment on Proposed Rules

**What are we proposing?** The proposed rules would implement Local Law No. 181 of 2016, which amended the New York City Administrative Code to regulate donations to not-for-profit organizations affiliated with elected officials. Specifically, the proposed rules would: (1) establish procedures for obtaining a determination from the Conflicts of Interest Board (the "Board") that an elected official or an agent of an elected official does not exercise control over an entity; (2) delineate factors by which the Board will determine whether an entity is affiliated with an elected official; (3) implement the reporting requirements of Administrative Code § 3-902 for organizations affiliated with an elected official; and (4) establish record retention procedures by which the Board can ensure compliance with the requirements of Local Law 181.

**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 10:00 a.m. on Tuesday, December 19, 2017. The hearing will be in Spector Hall at 22 Reade Street, New York, New York 10007.

**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 Julia Lee at [lee@coib.nyc.gov](mailto:lee@coib.nyc.gov).
- **Mail.** You can mail comments to the 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 rules 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 December 19, 2017. You can speak for up to three minutes.

**Is there a deadline to submit comments?** All written comments must be submitted before Monday, December 18, 2017, at 5:00 p.m.

**What if I need assistance to participate in the hearing?** You must tell us if you need a reasonable accommodation of a disability at the hearing or a sign language interpreter. You can tell us by mail at the address given above, by email at [lee@coib.nyc.gov](mailto:lee@coib.nyc.gov), or by telephone at (212) 437-0730. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by Friday, December 15, 2017, at 5:00 p.m.

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

**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 rules 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 New York City Conflicts of Interest Board to make these rules?** Section 1043 of the City Charter and Administrative Code § 3-907 authorize the New York City Conflicts of Interest Board to make this proposed rule.

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

**What laws govern the rulemaking process?** The New York City 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 Proposed Rule**

Local Law No. 181 of 2016 amended the New York City Administrative Code to regulate donations to not-for-profit organizations affiliated with City elected officials. This law, codified in Administrative Code §§ 3-901 to 3-907, requires reporting and public disclosure of donations to not-for-profit organizations controlled by City elected officials or their agents; limits permissible donations to some of these entities; and provides that violations of its provisions may result in civil fines up to \$30,000 and may constitute a class A misdemeanor. The Conflicts of Interest Board (the "Board") is charged with administering, enforcing, and promulgating "such rules as are necessary" to implement Local Law 181. See Administrative Code § 3-907.

The proposed rules, to be codified in a new Chapter 3 of Title 53 of the Rules of the City of New York (the "Board Rules"), will implement Local Law 181. Specifically, the proposed rules would: (1) establish procedures for obtaining a determination from the Board that an elected official or an agent of an elected official does not exercise control over an entity; (2) delineate factors by which the Board will determine whether an entity is affiliated with an elected official; (3) implement the reporting requirements of Administrative Code § 3-902, which take effect on January 1, 2019 for organizations affiliated with an elected official; and (4) establish record retention procedures by which the Board can ensure compliance with the requirements of Local Law 181.

The New York City Conflicts of Interest Board's authority for these rules is found in section 1043 of the New York City Charter and Section 3-907 of the New York City Administrative Code.

### **Commentary to Proposed Board Rules Chapter 3**

**Section 3-01:** *This proposed section would provide definitions for certain concepts used in Administrative Code §§ 3-901 to 3-907, and would incorporate various other definitions set forth in Administrative Code § 3-901.*

**Section 3-01(a):** *This proposed subdivision would incorporate the definition of "Doing Business Database" set forth in Administrative Code § 3-901.*

**Section 3-01(b):** *This proposed subdivision would incorporate the definition of "donation" set forth in Administrative Code § 3-901.*

**Section 3-01(c):** *This proposed subdivision would define "elected official" consistent with the provisions of Administrative Code § 3-901.*

**Section 3-01(d):** *This proposed subdivision would incorporate the definition of "elected official communication" set forth in Administrative Code § 3-901.*

**Section 3-01(e):** *This proposed subdivision would define "household member" throughout the chapter to include only the relatives identified in the definition of "person doing business with the City" set forth in Administrative Code § 3-901.*

**Section 3-01(f):** *Local Law 181 defines "donation" as "any contribution from a non-governmental source, including in-kind donations, gifts, loans, advances or deposits of money,*

or anything of value.” Administrative Code § 3-901. “In-kind donation” is not defined specifically in Administrative Code § 3-901, although it is included in the broader definition of “donation” in such section. Paragraphs (1) and (2) of this § 3-01(e) definition would adopt the definition of “in-kind contribution” contained in Campaign Finance Board Rule § 1-02 and, in addition, reflect the fact that Administrative Code § 3-901 excludes governmental sources from the definition of donations, whether in-kind or otherwise.

The proposed definition of “in-kind donation” would exclude personal services provided without compensation by individuals who are volunteering their time on behalf of the organizations on matters outside of their professional expertise. There are a few points to note in connection with this proposed exclusion.

- The exclusion would apply only to uncompensated work. If the volunteer were to receive any compensation—whether from the organization or from anyone else—the services provided would be deemed in-kind donations. Therefore, if a company volunteer program were to authorize its employees to volunteer for an organization during work time, then the volunteer work would not satisfy this exclusion and would be considered to be an in-kind donation by the company.

- The exclusion would apply only to work on matters outside of the volunteer’s professional expertise. In other words, the exclusion would not apply to the pro bono legal services of an attorney or to the pro bono graphic design services of a professional graphic designer. This distinction is necessary to enable a rigorous calculation of whether an organization’s expenditures on elected official communications—which are often produced and disseminated through the personal services of professionals—exceed 10% of its total expenditures for purposes of Administrative Code §§ 3-902(a)(9) and 3-903.

**Section 3-01(g):** This proposed subdivision would incorporate the definition of “organization affiliated with an elected official” set forth in Administrative Code § 3-901.

**Section 3-01(h):** This proposed subdivision would define the “principal officers” of an organization as the executive director, chief financial officer and chief development officer. Because organizations may use different terminology to describe these roles, this definition also encompasses the three executive staff members who perform the duties of executive director, chief financial officer and or chief development officer.

**Sections 3-01(i) and (k)** would create and define the terms “restricted organization” and “unrestricted organization” for purposes of the reporting requirements of Administrative Code § 3-902(a) and proposed Board Rules § 3-03. All organizations affiliated with an elected official would be either a “restricted organization” or an “unrestricted organization” for the purposes of this reporting requirement, and the reporting requirement is different for each type of organization. The content of the definitions is derived from Administrative Code § 3-903(a), which prohibits an organization affiliated with an elected official from accepting donations with a reasonable value in excess of \$400 in a single calendar year by a person listed in the Doing Business Database, or by the spouse, domestic partner, or unemancipated children of a person listed in the Doing Business Database, if the organization spends at least 10% of its expenditures in the calendar year the donation is made, or the organization expects to spend at least 10% of its expenditures in the calendar year after the donation is made.

**Section 3-01(j):** This proposed subdivision would incorporate the definition of “spend” set forth in Administrative Code § 3-901.

**Section 3-02:** *This proposed section would implement Administrative Code § 3-904(c) and provide a procedure by which a non-profit entity may apply to the Board for a formal determination of whether an elected official exercises control over the entity.*

**Section 3-03:** *The definition of "organization affiliated with an elected official," as set forth in Administrative Code § 3-901, contains factors that the Board will consider in determining whether an entity is affiliated with an elected official, and authorizes the Board to promulgate by rule additional factors to aid in its determination.*

*This rule section would reiterate certain factors contained in Administrative Code § 3-901 and would establish other additional factors to further define what indicia of control the Board will consider in determining whether a non-profit entity is affiliated with an elected official.*

- *Proposed subdivisions (a) and (b) would mirror the factors contained in Administrative Code § 3-901(i) and (ii).*

- *Proposed subdivision (c) would further explain the factor contained in Administrative Code § 3-901(iii) by looking not only to the appointment of an organization's board members by the elected official, but also to the appointment of an organization's board members by an agent of the elected official.*

- *Proposed subdivision (d) would further explain the factor contained in Administrative Code § 3-901(iii) by looking not only to whether an organization's board members serve for fixed terms but also to whether an elected official or the official's agent can remove the board member at the pleasure of the elected official or the official's agent.*

- *Similarly, proposed subdivision (e) would further explain the factor contained in Administrative Code § 3-901(iv) by looking not only to the elected official's involvement or direction in the entity's policies, operations, and activities, but also to the involvement or direction of an agent of such elected official. The addition of "agent of an elected official" to proposed subdivisions (c), (d), and (e) reflects the belief, as reflected by proposed subdivisions (a) and (b), that an elected official can exercise control of an organization through his or her agent.*

*Proposed subdivisions (f) and (g) contain new factors for the Board's consideration:*

- *Pursuant to proposed subdivision (f), the Board would consider the extent to which public servants act on behalf of the non-profit entity as part of their City employment. Proposed subdivision (f) reflects the view that public servants acting in their official capacities on behalf of an organization will frequently be acting under the authority of an elected official or agent of an elected official.*

- *Pursuant to proposed subdivision (g), the Board would consider the purpose of the entity. While any entity—regardless of its purpose—can be controlled by an elected official, the Board is more likely to determine that an elected official or agent of an elected official controls the organization where the purpose of an entity is connected either to a City purpose or to the political interests of the elected official. By contrast, where an organization has a purpose that is connected neither to a City purpose nor to the political interests of an elected official, such as a university alumni association, the Board may be less likely to determine that an elected official or agent of an elected official controls the organization.*

*In every case, and as directed by Administrative Code § 3-901, the Board will consider the totality of the circumstances regarding the entity at issue.*

**Section 3-04(a)(1):** *This proposed paragraph explains the information required to be submitted by a restricted organization as part of its annual reporting (Administrative Code § 3-902(a)). Paragraph (9) of this subdivision (a) by its express terms applies only to unrestricted organizations.*

**Section 3-04(a)(2):** *This proposed paragraph explains further the requirement for restricted organizations, pursuant to Administrative Code §§ 3-902(a)(6) and 3-902(a)(7), to report to the Board certain detailed information about the organization members' business dealings with the City and their donations to the organization. Because Administrative Code § 3-901 includes in the definition of "person doing business with the City" the spouse, domestic partner, or unemancipated child of an individual listed in the City's Doing Business Database, this paragraph (a)(2) would require a restricted organization to report all donations from such persons, in addition to the individual listed in the City's Doing Business Database. These persons would be the "household members" of a person listed in the City's Doing Business Database, as defined in proposed Board Rules § 3-01(a).*

*In considering the reporting requirements of Administrative Code § 3-902(7) in conjunction with Administrative Code §§ 3-903(a) and 3-903(b), the Board has concluded that a restricted organization must also report the return of any prohibited donations by a person with business dealings with the City, the date and value of the prohibited donation, and the date and value of the refund.*

**Section 3-04(a)(3):** *This proposed paragraph would clarify that, for purposes of Administrative Code §§ 3-903(a) and 3-903(b), the donations of a person listed in the City's Doing Business Database must be aggregated with donations made by the household members of that person over the course of the calendar year. Thus, a restricted organization cannot accept aggregate donations in excess of \$400—whether in a single donation or in a series of donations throughout the calendar year—from a person listed in the City's Doing Business Database and that person's household members. For example, if the spouse of a person listed in the City's Doing Business Database makes a \$400 donation to a restricted organization, that organization cannot accept any additional donations during the same calendar year from the person listed in the City's Doing Business Database or any household member.*

*This proposed subdivision would additionally clarify that Administrative Code § 3-902(a)(7) requires reporting of all donations from an individual that, in the aggregate, total \$1,000 or more. This reporting requirement aggregates multiple donations only on an individual basis and does not require an organization to aggregate an individual's donations with those of the individual's household members, because Administrative Code §§ 3-903 and 3-906 do not restrict an organization's acceptance of donations from people who are neither listed in the City's Doing Business Database themselves nor household members of a person listed in the City's Doing Business Database. Because Administrative Code § 3-902(a)(7) requires the organization to report "dates of donation," all donations to be reported pursuant to this proposed subdivision must be itemized by date and value of each individual donation.*

*This proposed paragraph would also reiterate that Administrative Code § 3-903(d) requires a restricted organization to obtain an individual donor's written submission in a manner*

and form determined by the Board if that individual's donations, in the aggregate, exceed \$400 in a single calendar year.

**Section 3-04(a)(4):** *Administrative Code § 3-903(b) requires a restricted organization to return a prohibited donation from someone who does not have business dealings with the City at the time of the donation, but who is added to the City's Doing Business Database within 180 days of the donation. The refund must be made within 200 days of the donation. Where multiple donations in the aggregate exceed \$400, this proposed paragraph clarifies that the date for calculating when the organization must return any excess donation is the date that the donor's aggregate donations, to include the donations of household members, exceed \$400 for the calendar year. By way of example: a person donates \$250 on January 1 and the person's domestic partner donates \$200 on April 1. The person is added to the City's Doing Business Database on May 1. Under the proposed paragraph, the restricted organization has 200 days from April 1—the date the aggregate donations from the donor and household members of the donor exceed \$400—to return \$50, the amount that exceeds the \$400 limit now that the person is listed in the City's Doing Business Database.*

**Section 3-04(a)(5):** *This paragraph would clarify what it means for a restricted organization to "know" that a person has business dealings with the City within the meaning of Administrative Code §§ 3-902(a)(6) and 3-903(a) and (b), either at the time of the donation or as of 180 days after the date of the donation. As a first step, for every donation an organization receives, the organization must check the name of each 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.*

*Because Administrative Code § 3-901 defines "person doing business with the City" to include the spouse or domestic partner and any unemancipated children of a person listed in the City's Doing Business Database, an organization must do more than search for a donor in the City's Doing Business Database. The organization must also consult its records, including donor written submissions obtained pursuant to Administrative Code § 3-903(d), to determine whether a donor is a household member of a person listed in the City's Doing Business Database.*

*Because Administrative Code § 3-906(a) and (b) provide that the organization's affiliated elected official or agent of an elected official may be held jointly and severally liable for penalties arising out of violations of Administrative Code §§ 3-902 and 3-903(a), (b), or (c), the organization must also consult the organization's affiliated elected official or agent to determine whether each donor is a household member of a person listed in the City's Doing Business Database. This means that, if the organization is controlled by the elected official and not by an agent of the elected official, the organization must consult with the elected official. If the organization is controlled by the agent of an elected official—as is the case with the Fund for Public Schools and the Chancellor, for example—the organization must consult with the agent of the elected official, unless the elected official himself or herself has a higher degree of involvement in or direction of the organization's policies, operations, and activities. As part of this consultation, the organization must then 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 to determine whether the donation may be accepted pursuant to Administrative Code § 3-903 and whether the donation must be reported pursuant to Administrative Code § 3-902(a)(6).*

Because the business of a not-for-profit corporation is managed by its board of directors, the organization must also consult each director, in the manner described above. See Not-For-Profit Corporation Law, § 701. Similarly, because the principal officers of an organization exercise authority on behalf of the organization to the extent authorized in the organization's by-laws or by the organization's board of directors, the organization must also consult each principal officer, as defined in Board Rules § 3-01(h), in the manner described above. See Not-For-Profit Corporation Law § 713.

Finally, the person who made a donation may not, in fact, be either the person listed in the Doing Business Database or the household member of such a person. Therefore, subparagraph (iv) creates a procedure by which the Board can make a factual determination of whether the donation must be reported pursuant to Administrative Code § 3-902(a)(6) and may be accepted pursuant to Administrative Code §§ 3-903(a) and (b).

**Section 3-04(a)(6):** Administrative Code § 3-902(a)(8) requires an organization to provide "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." In order to account for such elected official communications, an organization must provide information regarding each individual elected official communication, including a description, the date, and the total cost of such communication. The proposed paragraph provides further guidance for an organization about how to calculate the cost of an elected official communication, including the value of the time of its employees and the donations of goods and services by non-governmental sources. Because the definition of "donation" in Administrative Code § 3-901 applies only to contributions "from a non-governmental source," the cost of contributions made by governmental sources is not calculated as part of the cost of an elected official communication for purposes of Administrative Code § 3-902(a)(8).

**Section 3-04(b)(1):** This proposed paragraph explains what information Administrative Code § 3-902(a) requires an unrestricted organization to submit as part of its annual reporting requirement.

**Section 3-04(b)(2):** This paragraph would clarify what it means for an unrestricted organization to "know" that a person has business dealings with the City within the meaning of Administrative Code § 3-902(a)(6), either at the time of the donation or as of 180 days after the date of the donation. As a first step, for every donation an organization receives, the organization must 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.

Because Administrative Code § 3-901 defines "person doing business with the City" to include the spouse or domestic partner and any unemancipated children of a person listed in the City's Doing Business Database, an organization must do more than search for the donor in the City's Doing Business Database. The organization must also consult its records, including donor written submissions obtained pursuant to Administrative Code § 3-903(d), if it has any such submissions, to determine whether the donor is a household member of a person listed in the City's Doing Business Database.

Because Administrative Code § 3-906(a) provides that the organization's affiliated elected official or agent of an elected official may be held jointly and severally liable for penalties arising out of violations of Administrative Code §§ 3-902, the organization must also consult the organization's affiliated elected official or agent to determine whether the donor is a household



member of a person listed in the City's Doing Business Database. This means that, if the organization is controlled by the elected official and not by an agent of the elected official, the organization must consult with the elected official. If the organization is controlled by the agent of an elected official—as is the case with the Fund for Public Schools and the Chancellor, for example—the organization must consult with the agent of the elected official, unless the elected official himself or herself has a higher degree of involvement in or direction of the organization's policies, operations, and activities. As part of this consultation, 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 to determine whether the donation must be reported pursuant to Administrative Code § 3-902(a)(6).

Because the business of a not-for-profit corporation is managed by its board of directors, the organization must also consult each director, in the manner described above. See Not-For-Profit Corporation Law, § 701. Similarly, because the principal officers of an organization exercise authority on behalf of the organization to the extent authorized in the organization's by-laws or by the organization's board of directors, the organization must also consult each principal officer, as defined in Board Rules § 3-01(h), in the manner described above. See Not-For-Profit Corporation Law § 713.

Finally, the person who made a donation may not, in fact, be either the person listed in the Doing Business Database or the household member of such a person. Therefore, subparagraph (iv) creates a procedure by which the Board can make a factual determination of whether the donation must be reported pursuant to Administrative Code § 3-902(a)(6).

**Section 3-04(b)(3):** To fulfill the intent of Administrative Code § 3-902(a)(7) that a restricted organization report all donations received from a single source totaling \$1,000 or more in a single calendar year, this paragraph would clarify that Administrative Code § 3-902(a)(7) requires reporting of all donations from an individual or entity that, in the aggregate, total \$1,000 or more. Because Administrative Code § 3-902(a)(7) requires the organization to report "dates of donation," all donations to be reported pursuant to this provision must be itemized by date and value of each individual donation.

**Section 3-04(b)(4):** This paragraph would provide identical guidance to unrestricted organizations that proposed Board Rules § 3-04(a)(6) would provide to restricted organizations.

**Section 3-04(b)(5):** Administrative Code § 3-902(a)(9) requires an unrestricted organization to certify that the organization did not spend in the previous calendar year, or does not reasonably expect to spend in the current calendar year, at least 10% of the organization's expenditures on elected official communications. In order to determine whether an organization has appropriately made such a certification, the Board needs to know four facts: (1) the organization's expenditures on elected official communications for the previous calendar year; (2) the organization's total expenditures for the previous calendar year; (3) the organization's budgeted expenditures on elected official communications for the current calendar year; and (4) the organization's budgeted total expenditures for the current calendar year. Administrative Code § 3-902(a)(8) already requires the organization to report the previous calendar year's expenditures on the production or dissemination of elected official communications. This proposed paragraph would require the organization to provide information about the remaining three factors to allow the Board to determine whether the organization has appropriately certified that it is an unrestricted organization.

**Section 3-04(c)(1):** *This proposed paragraph would implement Administrative Code § 3-902(b), which provides that the Board may make a determination that, based upon a review of the relevant facts presented by the reporting entity, the disclosure of certain donor information may cause harm, threats, harassment, or reprisals to the donor. The proposed paragraph would set an April 1 deadline for reporting due on August 1 because the requesting entity is entitled to appeal the Board's determination to the State Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules, and because the Board is required to "maintain and regularly update a list on its website of all organizations that reported, and all donor information disclosed" pursuant to Administrative Code § 3-902. See Administrative Code § 3-902(b).*

**Section 3-04(c)(2):** *This proposed paragraph would give the Board the authority to grant privacy as to any information that would constitute a risk to the safety and security of any person. This proposed rule is modeled on the Board's authority to take action in response to similar threats to safety and security in the context of the public disclosure of a public servant's financial disclosure report. See Administrative Code § 12-110(e)(1)(e).*

**Section 3-05(a):** *This proposed paragraph would assist the Board in exercising its authority to enforce Local Law 181 of 2016 by establishing a record retention policy that will allow the Board to make a determination about the accuracy of statements made pursuant to the reporting requirement of Administrative Code § 3-902(a). While Administrative Code § 3-902(c) requires an organization to retain donor written submissions pursuant to § 3-903, Administrative Code §§ 3-901 to 3-907 contain no independent requirement that organizations retain any other records confirming the accuracy of the organization's annual reporting requirement. Although the Board could require every organization affiliated with an elected official to submit all supporting documentation at the time such organization must submit its annual reporting, the Board believes that such a requirement would be unduly burdensome for both the organizations and the Board. Instead, the Board proposes a retention policy that would allow it to verify compliance with Administrative Code §§ 3-901 to 3-907. It is modeled on New York City Campaign Finance Board Rule § 4-01, which requires a candidate for public office to maintain records that enable the Campaign Finance Board to verify the accuracy of disclosure statements and compliance with applicable law.*

**Section 3-05(b):** *Pursuant to Board Rule § 1-10, the Board retains a public servant's financial disclosure report for 6 years. See also Administrative Code § 12-110(f). In addition, New York City Campaign Finance Rule § 4-03(a) requires a candidate for political office to retain financial records relating to his or her campaign for 6 years. This proposed subdivision would apply a similar 6-year retention period to records retained pursuant to this proposed rule.*

**Section 3-05(c):** *This proposed subdivision would require an organization to maintain with the Board the name and contact information of its custodian of records. Because the proposed retention period for records required to be kept pursuant to this proposed rule is 6 years after the date that the organization filed the applicable report, see proposed Board Rules § 3-04(b), this proposed rule would require an organization no longer subject to the annual reporting requirement to provide to the Board updated name and contact information of its custodian, as appropriate, for the duration of the retention period. New York City Campaign Finance Board Rule § 4-03(b) contains a similar requirement that a political campaign must notify the Campaign Finance Board of a change in the custodian of records or of the custodian's contact information for the duration of the retention period.*

New material is underlined.

[Deleted material is in brackets.]

Section 1. Title 53 of the Rules of the City of New York is amended by adding a new Chapter 3 to read as follows:

**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.

(i) 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, including:

- (a) whether the organization was created by such an elected official or the official's 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;
- (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) the purpose 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 concludes 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).

(6) 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) 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 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.

**Section 2.** This rule shall take effect on January 1, 2018, with the exception of §§ 3-04(a)(1), 3-04(a)(2), 3-04(a)(6), 3-04(b), and 3-04(c), which shall take effect on January 1, 2019.

**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:** Reporting of Donations to Not-for-Profit Organizations

**REFERENCE NUMBER:** 2017 RG 068

**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: November 8, 2017

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

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

**RULE TITLE: Reporting of Donations to Not-for-Profit Organizations**

**REFERENCE NUMBER: COIB-2**

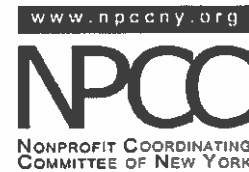
**RULEMAKING AGENCY: COIB**

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/ Brady Hamed  
Mayor's Office of Operations

November 14, 2017  
Date



December 18, 2017

Julia Lee  
Conflicts of Interest Board  
2 Lafayette Street, Suite 1010  
New York, New York 10007  
[lee@coib.nyc.gov](mailto:lee@coib.nyc.gov)

Re: Comments on Proposed Rules – Local Law 181 of 2016

Dear Ms. Lee,

Lawyers Alliance for New York (“Lawyers Alliance”), Human Services Council (“HSC”) and Nonprofit Coordinating Committee of New York (“NPCC”) submit these comments regarding the proposed rules regarding organizations controlled by elected officials, to be codified at Admin. Code § 3-901 et seq.

Lawyers Alliance is the leading provider of business and transactional legal services for nonprofit organizations that are improving the quality of life in New York City neighborhoods. Our network of pro bono lawyers from law firms and corporations and staff of experienced attorneys collaborate to deliver expert corporate, tax, real estate, employment, intellectual property, and other legal services to community organizations. By connecting lawyers, nonprofits, and communities, we help nonprofits to develop affordable housing, stimulate economic development, promote community arts, strengthen urban health, and operate and advocate for vital programs for children and young people, the elderly, and other low-income New Yorkers. Among the services we provide to our clients is help complying with applicable law and rules, including regulations concerning relationships between nonprofit organizations and elected officials.

HSC fosters a diverse network of human service organizations. Together, we discuss ideas and take collective action on issues that impact the entire sector and those they serve. Through advocacy and collaboration, we support member organizations and their leaders in addressing their concerns of public policy, economic trends, and the regulatory environment. The human services workforce encapsulates 200,000+ providers in subsectors including: housing access, childcare, elder care, shelters, food pantries, mental health counseling, and disaster response. As the voice of the human services community, we highlight the struggles of those we serve, and amplify the need for a strong, well invested sector.

With more than 1,450 members, NPCC is the largest and most diverse nonprofit membership organization in New York City. NPCC members operate in all five boroughs of New York City and Westchester, Nassau, and Suffolk counties. NPCC provides capacity building education, resources

and advocacy designed to make 501(c)(3) nonprofit organizations stronger, more strategic and better able to improve the lives of millions of New Yorkers by achieving their missions related to social services, arts and culture, health, the environment and educational opportunities, among many others.

Lawyers Alliance, HSC and NPCC support the effort to increase transparency of donations to organizations controlled by elected officials. However, we are concerned that the proposed rules will unintentionally sweep in organizations with no real connection to an elected official, impinging on those organizations' constitutional rights, creating unnecessary administrative burdens for them, and creating unnecessary work for the Conflicts of Interest Board ("COIB"). Accordingly, we suggest that the rules be amended to more clearly define which organizations are covered because they are controlled by an elected official.

Clarifying the definition in this way is necessary for constitutional reasons, and to avoid unnecessarily increasing COIB's workload. Compelled disclosure of donors infringes on the First Amendment associational rights of both the donor and the nonprofit. *Buckley v. Valeo*, 424 U.S. 1, 64-65 (1976). As a result, statutes and regulations requiring nonprofits to publicly disclose their donors are subject to "exacting scrutiny," which requires a 'substantial relation' between the disclosure requirement and a 'sufficiently important' government interest." *Citizens United*, 558 U.S. 310, 366-67 (2010). See also *Vermont Right to Life Comm., Inc. v. Sorrell*, 758 F.3d 118, 132-33, 137 (2d Cir. 2014); *Independence Inst. v. Williams*, 812 F.3d 787, 789, 792, 798 (10th Cir. 2016). Corruption concerns may constitute a sufficient interest in learning the identity of donors to organizations that really are controlled by an elected official. However, there is no such governmental interest in learning the donors of independent nonprofits with only a tenuous connection to an elected official. For this reason, the rules must exclude such organizations.

In addition, because the proposed rules regulate speech, they must be written with precision in order to provide reasonable notice to regulated parties, and to avoid arbitrary and discriminatory enforcement. Cf. *U.S. v. Williams*, 553 U.S. 285, 304 (2008). The precision must extend both to who is covered by the statute and what covered people must do in order to comply. *Hynes v. Mayor of Oradell*, 425 U.S. 610, 621 (1976). The Supreme Court has said that a speech regulation will fail this test when "men of common intelligence must guess at its meaning," and when it does not "provide explicit standards for those who apply it," *id.* at 622. Thus, a speech restriction will be found to be unconstitutionally vague when government officials are guided only by a set of vague factors such as "public welfare, peace, safety, health, decency, good order, morals or convenience." *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 154-55 (1969). In the following sections, we suggest ways to clarify and narrow the proposed rules, to comport with these constitutional requirements.

#### I. Rebuttable presumption

- A. Create a rebuttable presumption that a nonprofit charitable corporation is not controlled by an elected official who neither appoints a majority of voting seats on the board nor serves as a principal officer.

The proposed rules contain a presumption "of control by an elected official where such official, or such an agent, appoints a majority of 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." COIB Rule 3-01(g). The rules should also contain the opposite

presumption: that a nonprofit corporation is *not* controlled by an elected official who, directly or through an agent, neither appoints a majority of seats on the board nor serves as a principal officer. A nonprofit corporation is controlled by its board or members, and is managed by the board, which may delegate certain powers to the officers. See N.Y. Not-for-Profit Corporation Law (“N-PCL”) § 701. If the board and officers are not controlled by an elected official, neither is the organization.

Moreover, corporate and tax law require the board and officers of a nonprofit charitable corporation to serve the corporation’s purposes, and not to benefit an individual. See N-PCL § 102(a)(5); Internal Revenue Code (“IRC”) 501(c)(3). Directors and officers who allow an elected official to control the corporation are liable for a breach of their fiduciary duty. See Office of the Attorney General, *Right From the Start*, pp. 6-7 (2015) (describing duty of loyalty), <https://www.charitiesnys.com/pdfs/Right%20From%20the%20Start%20Final.pdf>; N-PCL §§ 715, 717(a). They may also risk the organization’s tax exempt status if the organization is run for the benefit of one or more individuals, rather than for the organization’s charitable purposes. 26 C.F.R. § 1.501(c)(3)-1(d)(1)(ii). The ban on benefitting a private individual extends to the organization’s activities, and it covers activities that benefit an individual in nonmonetary ways. *Id.* 1.501(c)(3)-1(d)(1)(iii). These potential personal and organizational liabilities provide another reason to presume that a nonprofit charitable corporation is not controlled by an elected official, particularly if the official neither appoints a majority of board seats nor serves as a principal officer.

The legislative history of Local Law 181 further supports such a presumption. In its bill memo, the City Council’s Committee on Standards and Ethics wrote, “An organization that has four out of ten board members appointed by the Public Advocate, none of whom chairs the board, and which does not otherwise have indicia of control by the Public Advocate, would likely not be considered to be controlled by the Public Advocate.” NYC Council, Committee on Standards and Ethics, Report of the General Counsel on Proposed Int. No. 1345-A, p. 14 (Dec. 14, 2016), <http://legistar.council.nyc.gov/View.ashx?M=F&ID=4842592&GUID=CAA23E43-E3BB-4B05-9067-C18F5B464ED6>. Such an organization should not have to apply to the Conflict of Interest Board for a determination that it is not controlled by an elected official, and should instead be able to rely on a presumption that it is not controlled. This would, of course, also reduce the Board’s workload.

- B. In examining whether a majority of the seats on the board are appointed by an elected official, consider only voting members of the board.

An appointee who is a nonvoting member of the board cannot exercise control over the organization. See N-PCL § 713(d) (ex-officio board members may have voting rights unless the certificate of incorporation or bylaws specify otherwise). For this reason, nonvoting members should not be counted.

- II. Define “agent of an elected official” to exclude appointees serving *without compensation*, and City employees who are not appointed by and do not report to the Mayor.

Under the rules, a nonprofit executive who was appointed to a position by, and serves “at the pleasure” of, an elected official is considered an “agent” through which the official can control the organization. COIB Rules § 3-01(g)(3). The Mayor and other elected officials often invite nonprofit executives to serve on advisory boards and commissions, such as the Archives,

Reference and Research Advisory Board; Commission on Gender Equity; Procurement Policy Board; Advisory Council to Enhance Procurement Opportunities for MWBE's; and Sexual Health Education Task Force, to name just a few. The executives provide concrete information about the lives of the people they serve, as well as expertise regarding particular subject areas. Often, this advisory work is unpaid. It is implausible that a nonprofit would be subject to control by an elected official merely because a single executive lends his or her expertise to the City in this manner, without expectation of compensation. For this reason, the rules should exclude unpaid appointees from the definition of "agent of an elected official."

Clarifying the rule in this way will avoid COIB having to deal with a flood of applications from nonprofits seeking a determination that they are not controlled by an elected official. There are dozens of Mayoral boards and commissions, many of which do not compensate the nonprofit executive directors and others who serve as members. *See* <http://www1.nyc.gov/site/appointments/boards-commissions/all-boards-commissions.page>. The Mayor's Commission on Gender Equity alone includes the chief executive officer or executive director of at least eight nonprofit organizations. *See* <https://www1.nyc.gov/site/genderequity/about/commission-members.page>. Clarifying that a nonprofit executive does not become an "agent of an elected official" merely by accepting an uncompensated seat on these bodies will avoid the need for each organization to apply to the COIB.

The term "agent of" an elected official is vague in another way, too – does it include everyone under the direct or indirect control of that official, or only people who work in that official's office or otherwise directly for that official? The COIB rules should include a definition of "agent," to make clear that the latter is intended. Thus, a top advisor in the Mayor's office would be included, but a schoolteacher working for the Department of Education would not be. This is clearly the intent of the legislation, which was aimed at organizations like the Campaign for One New York. As the City Council noted, that organization "was established by the Mayor to support and promote his policy agenda, was run by his closest advisors, and staffed by personnel and consultants from his 2013 campaign." *See* NYC Council, Committee Report of the General Counsel on Proposed Int. No. 1345-A, p. 8, *supra*.

### III. Sharpen the Factors by which the Board Will Determine Whether an Entity is Controlled by an Elected Official, § 3-03

Proposed rule 3-03(a) takes into account "whether the organization was created by such an elected official or the official's 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." This factor should be narrowed in two ways. First, it should only consider whether it was created by someone who worked for an official *within the past year*, and not by someone who worked for the elected official years earlier. Many elected officials have decades of public service before they enter office. People who worked for them years or decades earlier are extremely unlikely to still be under their control. Additionally, this factor should consider only people who worked closely with the elected official. For instance, as with the definition of "agent" above, it should cover a top staffer in the Mayor's office, but not a school teacher employed by the Department of Education. This is consistent with the legislative history, in which committee counsel wrote that an organization founded by "a former high-ranking staffer of the Comptroller, or the Comptroller's campaign, shortly after leaving that position," would



likely be considered to be controlled, implying that an organization founded by a more remote employee, or someone who had left the position earlier, would not be. *See* NYC Council, Committee Report of the General Counsel on Proposed Int. No. 1345-A, *supra*, p. 13.

Proposed rule 3-03(e) takes into account “the degree of involvement or direction by such an elected official or the official’s agent in such organization’s policies, operations, and activities.” This rule should make clear that merely providing funding through a publicly disclosed process open to other organizations, without more, does not constitute the requisite involvement or direction by an elected official. In fiscal year 2018, members of the New York City Council provided discretionary funding to over 2,100 nonprofit organizations. *See* NYC Council, Discretionary Funding Database, <https://council.nyc.gov/budget/fy2018/>. Many more nonprofits receive discretionary funding from Borough Presidents. *See, e.g.,* Manhattan Borough President’s Office FY 2018 Capital Grant Awards, <http://manhattanbp.nyc.gov/downloads/pdf/MBPO%20FY%2018%20Capital%20Grant%20Awards.pdf> In order to avoid a flood of applications for a COIB determination, the COIB should clarify that the mere provision of such funding does not constitute control.

Proposed rule 3-03(f) takes into account “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.” As the COIB notes, this factor was created by the COIB and is not in the underlying legislation. It makes the illogical assumption that a person “performing duties on behalf of the organization” is in fact in control of the organization, when it is just as likely that the person is controlled by the organization. This factor could require a nonprofit to disclose donors merely because it accepts the services of an employee seconded by the Parks Department, or partners with a Borough President on a street fair. This factor should either be removed entirely, or the COIB should clarify that a nonprofit does not operate under the control of an elected official merely because it accepts the services of a City employee, where the nonprofit supervises or acts as an equal partner with the City employee.

### Conclusion

We recommend that the proposed rules be amended in the following ways:

1) Amend the definition of “organization affiliated with an elected official,” § 3-01(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 for compensation at the pleasure of such person, exercises control.

There shall be a rebuttable presumption that an entity is not controlled by an elected official (or the official's agent) if the official or agent neither appoints a majority of voting members of the board nor serves as a principal officer. There shall be a rebuttable presumption of control by an elected official where such official, or such an agent, appoints a majority of voting members of 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.

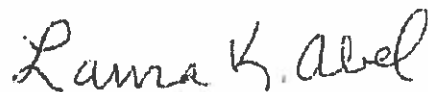
2) Add a new definition of "agent of an elected official" to § 3-01:

*Agent of an elected official.* "Agent of an elected official" means a person who works in that official's office or otherwise directly for that official, or who is an appointee of the elected official serving for compensation at the pleasure of such official. "Agent of an elected official" does not include a person who works for an appointee of the official.

3) Amend the factors by which the Board will determine whether an entity is affiliated with an elected official, § 3-03:

- Factor (a): "whether the organization was created by such an elected official or the official's agent, or by an individual who within the immediately preceding 12 months was ~~previously~~ directly employed by, or was a paid political consultant of, the elected official, and, if so, how recently such organization was created"
- Factor (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, except that merely providing discretionary funding to such organization, without more, shall not be considered involvement or direction in such organization's policies, operations, and activities."
- Factor (f) should be deleted.

Sincerely,



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## 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 to implement Local Law No. 181 of 2016, which amended the New York City Administrative Code to regulate donations to not-for-profit organizations affiliated with elected officials. The proposed rules were published in the City Record on November 17, 2017, and a public hearing was held on December 19, 2017. After consideration of the testimony and written comments received, the Conflicts of Interest Board now adopts the following rules.

### Statement of Basis and Purpose

Local Law No. 181 of 2016 amended the New York City Administrative Code to regulate donations to not-for-profit organizations affiliated with City elected officials. This law, codified in Administrative Code §§ 3-901 to 3-907, requires reporting and public disclosure of donations to not-for-profit organizations controlled by City elected officials or their agents; limits permissible donations to some of these entities; and provides that violations of its provisions may result in civil fines up to \$30,000 and may constitute a class A misdemeanor. The Conflicts of Interest Board (the "Board") is charged with administering, enforcing, and promulgating "such rules as are necessary" to implement Local Law 181. See Administrative Code § 3-907.

The ~~proposed rules, to be codified in a new Chapter 3 of Title 53 of the Rules of the City of New York (the "Board Rules"), will implement Local Law 181. Specifically, the proposed rules would:~~ (1) establish procedures for obtaining a determination from the Board that an elected official or an agent of an elected official does not exercise control over an entity; (2) delineate factors by which the Board will determine whether an entity is affiliated with an elected official; (3) implement the reporting requirements of Administrative Code § 3-902, which take effect on January 1, 2019 for organizations affiliated with an elected official; and (4) establish record retention procedures by which the Board can ensure compliance with the requirements of Local Law 181.

The New York City Conflicts of Interest Board's authority for these rules is found in section 1043 of the New York City Charter and Section 3-907 of the New York City Administrative Code.

### Commentary to Board Rules Chapter 3

~~Section 3-01: This proposed section would provide~~ definitions for certain concepts used in Administrative Code §§ 3-901 to 3-907, and ~~would incorporate~~ various other definitions set forth in Administrative Code § 3-901.

~~Section 3-01(a): This proposed subdivision would incorporate~~ the definition of "Doing Business Database" set forth in Administrative Code § 3-901.

~~Section 3-01(b): This proposed subdivision would incorporate~~ the definition of "donation" set forth in Administrative Code § 3-901.

| **Section 3-01(c):** This ~~proposed~~-subdivision ~~would~~-defines “elected official” consistent with the provisions of Administrative Code § 3-901.

| **Section 3-01(d):** This ~~proposed~~-subdivision ~~would~~-incorporates the definition of “elected official communication” set forth in Administrative Code § 3-901.

| **Section 3-01(e):** This ~~proposed~~-subdivision ~~would~~-defines “household member” throughout the chapter to include only the relatives identified in the definition of “person doing business with the City” set forth in Administrative Code § 3-901.

**Section 3-01(f):** Local Law 181 defines “donation” as “any contribution from a non-governmental source, including in-kind donations, gifts, loans, advances or deposits of money, or anything of value.” Administrative Code § 3-901. “In-kind donation” is not defined specifically in Administrative Code § 3-901, although it is included in the broader definition of “donation” in such section. Paragraphs (1) and (2) of this § 3-01(e) definition ~~would~~-adopt the definition of “in-kind contribution” contained in Campaign Finance Board Rule § 1-02 and, in addition, reflect the fact that Administrative Code § 3-901 excludes governmental sources from the definition of donations, whether in-kind or otherwise.

| The ~~proposed~~-definition of “in-kind donation” ~~would~~-excludes personal services provided without compensation by individuals who are volunteering their time on behalf of the organizations on matters outside of their professional expertise. There are a few points to note in connection with this ~~proposed~~-exclusion.

| • The exclusion ~~would~~-applyes only to uncompensated work. If the volunteer were to receive any compensation—whether from the organization or from anyone else—the services provided would be deemed in-kind donations. Therefore, if a company volunteer program were to authorize its employees to volunteer for an organization during work time, then the volunteer work would not satisfy this exclusion and would be considered to be an in-kind donation by the company.

| • The exclusion ~~would~~-applyes only to work on matters outside of the volunteer’s professional expertise. In other words, the exclusion would not apply to the pro bono legal services of an attorney or to the pro bono graphic design services of a professional graphic designer. This distinction is necessary to enable a rigorous calculation of whether an organization’s expenditures on elected official communications—which are often produced and disseminated through the personal services of professionals—exceed 10% of its total expenditures for purposes of Administrative Code §§ 3-902(a)(9) and 3-903.

| **Section 3-01(g):** This ~~proposed~~-subdivision ~~would~~-incorporates the definition of “organization affiliated with an elected official” set forth in Administrative Code § 3-901.

| **Section 3-01(h):** This ~~proposed~~-subdivision ~~would~~-defines the “principal officers” of an organization as the executive director, chief financial officer and chief development officer. Because organizations may use different terminology to describe these roles, this definition also encompasses the three executive staff members who perform the duties of executive director, chief financial officer and or chief development officer.

| **Sections 3-01(i) and (k)** ~~would~~-creates and defines the terms “restricted organization” and “unrestricted organization” for purposes of the reporting requirements of Administrative Code § 3-902(a) and ~~proposed~~-Board Rules § 3-03. All organizations affiliated with an elected official

~~would be~~ are either a "restricted organization" or an "unrestricted organization" for the purposes of this reporting requirement, and the reporting requirement is different for each type of organization. The content of the definitions is derived from Administrative Code § 3-903(a), which prohibits an organization affiliated with an elected official from accepting donations with a reasonable value in excess of \$400 in a single calendar year by a person listed in the Doing Business Database, or by the spouse, domestic partner, or unemancipated children of a person listed in the Doing Business Database, if the organization spends at least 10% of its expenditures in the calendar year the donation is made, or the organization expects to spend at least 10% of its expenditures in the calendar year after the donation is made.

**Section 3-01(j):** ~~This proposed subdivision would incorporate~~ the definition of "spend" set forth in Administrative Code § 3-901.

**Section 3-02:** ~~This proposed section would implement~~ Administrative Code § 3-904(c) and provides a procedure by which a non-profit entity may apply to the Board for a formal determination of whether an elected official exercises control over the entity.

**Section 3-03:** ~~The definition of "organization affiliated with an elected official," as set forth in Administrative Code § 3-901, contains factors that the Board will consider in determining whether an entity is affiliated with an elected official, and authorizes the Board to promulgate by rule additional factors to aid in its determination.~~

~~This rule-section would reiterate~~ certain factors contained in Administrative Code § 3-901 and would establish other additional factors to further define what indicia of control the Board will consider in determining whether a non-profit entity is affiliated with an elected official.

- ~~Proposed s~~ Subdivisions (a) and (b) would mirror the factors contained in Administrative Code § 3-901(i) and (ii). In reviewing subdivision (a), the Board will consider a former employee or political consultant of an elected official to be more likely to constitute control by the elected official the more recently the relationship ended.

- ~~Proposed s~~ Subdivision (c) would further explain the factor contained in Administrative Code § 3-901(iii) by looking not only to the appointment of an organization's board members by the elected official, but also to the appointment of an organization's board members by an agent of the elected official.

- ~~Proposed s~~ Subdivision (d) would further explain the factor contained in Administrative Code § 3-901(iii) by looking not only to whether an organization's board members serve for fixed terms but also to whether an elected official or the official's agent can remove the board member at the pleasure of the elected official or the official's agent.

- ~~Similarly, proposed subdivision (e) would further explain the factor contained in Administrative Code § 3-901(iv) by looking not only to the elected official's involvement or direction in the entity's policies, operations, and activities, but also to the involvement or direction of an agent of such elected official. By providing discretionary funding to an organization, an elected official does not, without more, exercise control over that organization.~~

~~The addition of "agent of an elected official" to proposed subdivisions (c), (d), and (e) reflects the belief, as reflected by proposed subdivisions (a) and (b), that an elected official can exercise control of an organization through his or her agent. In determining whether a person is~~

an agent of an elected official, the Board will look to whether the scope of the agency relationship encompasses that person's actions with respect to the organization.

~~Proposed~~ sSubdivisions (f) and (g) contain new factors for the Board's consideration:

- Pursuant to ~~proposed~~-subdivision (f), the Board ~~would~~-considers the extent to which public servants act on behalf of the non-profit entity as part of their City employment. ~~Proposed~~ sSubdivision (f) reflects the view that public servants acting in their official capacities on behalf of an organization will frequently be acting under the authority of an elected official or agent of an elected official.

- Pursuant to ~~proposed~~-subdivision (g), the Board ~~would~~-considers the purpose of the entity. While any entity—regardless of its purpose—can be controlled by an elected official, the Board is more likely to determine that an elected official or agent of an elected official controls the organization where the purpose of an entity is connected either to a City purpose or to the political interests of the elected official. By contrast, where an organization has a purpose that is connected neither to a City purpose nor to the political interests of an elected official, such as a university alumni association, the Board may be less likely to determine that an elected official or agent of an elected official controls the organization.

In every case, and as directed by Administrative Code § 3-901, the Board will consider the totality of the circumstances regarding the entity at issue.

**Section 3-04(a)(1):** This ~~proposed~~-paragraph explains the information required to be submitted by a restricted organization as part of its annual reporting (Administrative Code § 3-902(a)). Paragraph (9) of this subdivision (a) by its express terms applies only to unrestricted organizations.

**Section 3-04(a)(2):** This ~~proposed~~-paragraph explains further the requirement for restricted organizations, pursuant to Administrative Code §§ 3-902(a)(6) and 3-902(a)(7), to report to the Board certain detailed information about the organization members' business dealings with the City and their donations to the organization. Because Administrative Code § 3-901 includes in the definition of "person doing business with the City" the spouse, domestic partner, or unemancipated child of an individual listed in the City's Doing Business Database, this paragraph (a)(2) would require a restricted organization to report all donations from such persons, in addition to the individual listed in the City's Doing Business Database. These persons would be the "household members" of a person listed in the City's Doing Business Database, as defined in ~~proposed~~-Board Rules § 3-01(a).

In considering the reporting requirements of Administrative Code § 3-902(7) in conjunction with Administrative Code §§ 3-903(a) and 3-903(b), the Board has concluded that a restricted organization must also report the return of any prohibited donations by a person with business dealings with the City, the date and value of the prohibited donation, and the date and value of the refund.

**Section 3-04(a)(3):** This ~~proposed~~-paragraph ~~would~~-clarify that, for purposes of Administrative Code §§ 3-903(a) and 3-903(b), the donations of a person listed in the City's Doing Business Database must be aggregated with donations made by the household members of that person over the course of the calendar year. Thus, a restricted organization cannot accept aggregate donations in excess of \$400—whether in a single donation or in a series of donations throughout the calendar year—from a person listed in the City's Doing Business

Database and that person's household members. For example, if the spouse of a person listed in the City's Doing Business Database makes a \$400 donation to a restricted organization, that organization cannot accept any additional donations during the same calendar year from the person listed in the City's Doing Business Database or any household member.

~~This paragraph proposed subdivision would additionally clarify~~ that Administrative Code § 3-902(a)(7) requires reporting of all donations from an individual that, in the aggregate, total \$1,000 or more. This reporting requirement aggregates multiple donations only on an individual basis and does not require an organization to aggregate an individual's donations with those of the individual's household members, because Administrative Code §§ 3-903 and 3-906 do not restrict an organization's acceptance of donations from people who are neither listed in the City's Doing Business Database themselves nor household members of a person listed in the City's Doing Business Database. Because Administrative Code § 3-902(a)(7) requires the organization to report "dates of donation," all donations to be reported pursuant to this ~~proposed~~ subdivision must be itemized by date and value of each individual donation.

~~This proposed paragraph would also reiterate~~ that Administrative Code § 3-903(d) requires a restricted organization to obtain an individual donor's written submission in a manner and form determined by the Board if that individual's donations, in the aggregate, exceed \$400 in a single calendar year.

**Section 3-04(a)(4):** Administrative Code § 3-903(b) requires a restricted organization to return a prohibited donation from someone who does not have business dealings with the City at the time of the donation, but who is added to the City's Doing Business Database within 180 days of the donation. The refund must be made within 200 days of the donation. Where multiple donations in the aggregate exceed \$400, this ~~proposed-paragraph~~ clarifies that the date for calculating when the organization must return any excess donation is the date that the donor's aggregate donations, to include the donations of household members, exceed \$400 for the calendar year. By way of example: a person donates \$250 on January 1 and the person's domestic partner donates \$200 on April 1. The person is added to the City's Doing Business Database on May 1. Under the ~~proposed-paragraph~~, the restricted organization has 200 days from April 1—the date the aggregate donations from the donor and household members of the donor exceed \$400—to return \$50, the amount that exceeds the \$400 limit now that the person is listed in the City's Doing Business Database.

**Section 3-04(a)(5):** ~~This paragraph would clarify~~ what it means for a restricted organization to "know" that a person has business dealings with the City within the meaning of Administrative Code §§ 3-902(a)(6) and 3-903(a) and (b), either at the time of the donation or as of 180 days after the date of the donation. As a first step, for every donation an organization receives, the organization must check the name of each 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.

Because Administrative Code § 3-901 defines "person doing business with the City" to include the spouse or domestic partner and any unemancipated children of a person listed in the City's Doing Business Database, an organization must do more than search for a donor in the City's Doing Business Database. The organization must also consult its records, including donor written submissions obtained pursuant to Administrative Code § 3-903(d), to determine whether a donor is a household member of a person listed in the City's Doing Business Database.

Because Administrative Code § 3-906(a) and (b) provide that the organization's affiliated elected official or agent of an elected official may be held jointly and severally liable for penalties arising out of violations of Administrative Code §§ 3-902 and 3-903(a), (b), or (c), the organization must also consult the organization's affiliated elected official or agent to determine whether each donor is a household member of a person listed in the City's Doing Business Database. This means that, if the organization is controlled by the elected official and not by an agent of the elected official, the organization must consult with the elected official. If the organization is controlled by the agent of an elected official—as is the case with the Fund for Public Schools and the Chancellor, for example—the organization must consult with the agent of the elected official, unless the elected official himself or herself has a higher degree of involvement in or direction of the organization's policies, operations, and activities. As part of this consultation, the organization must then 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 to determine whether the donation may be accepted pursuant to Administrative Code § 3-903 and whether the donation must be reported pursuant to Administrative Code § 3-902(a)(6).

Because the business of a not-for-profit corporation is managed by its board of directors, the organization must also consult each director, in the manner described above. See Not-For-Profit Corporation Law, § 701. Similarly, because the principal officers of an organization exercise authority on behalf of the organization to the extent authorized in the organization's by-laws or by the organization's board of directors, the organization must also consult each principal officer, as defined in Board Rules § 3-01(h), in the manner described above. See Not-For-Profit Corporation Law § 713.

Finally, the person who made a donation may not, in fact, be either the person listed in the Doing Business Database or the household member of such a person. Therefore, subparagraph (iv) creates a procedure by which the Board can make a factual determination of whether the donation must be reported pursuant to Administrative Code § 3-902(a)(6) and may be accepted pursuant to Administrative Code §§ 3-903(a) and (b).

**Section 3-04(a)(6):** Administrative Code § 3-902(a)(8) requires an organization to provide “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.” In order to account for such elected official communications, an organization must provide information regarding each individual elected official communication, including a description, the date, and the total cost of such communication. The ~~proposed~~ paragraph provides further guidance for an organization about how to calculate the cost of an elected official communication, including the value of the time of its employees and the donations of goods and services by non-governmental sources. Because the definition of “donation” in Administrative Code § 3-901 applies only to contributions “from a non-governmental source,” the cost of contributions made by governmental sources is not calculated as part of the cost of an elected official communication for purposes of Administrative Code § 3-902(a)(8).

**Section 3-04(b)(1):** This ~~proposed~~ paragraph explains what information Administrative Code § 3-902(a) requires an unrestricted organization to submit as part of its annual reporting requirement.



**Section 3-04(b)(2):** *This paragraph would clarify what it means for an unrestricted organization to “know” that a person has business dealings with the City within the meaning of Administrative Code § 3-902(a)(6), either at the time of the donation or as of 180 days after the date of the donation. As a first step, for every donation an organization receives, the organization must 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.*

*Because Administrative Code § 3-901 defines “person doing business with the City” to include the spouse or domestic partner and any unemancipated children of a person listed in the City’s Doing Business Database, an organization must do more than search for the donor in the City’s Doing Business Database. The organization must also consult its records, including donor written submissions obtained pursuant to Administrative Code § 3-903(d), if it has any such submissions, to determine whether the donor is a household member of a person listed in the City’s Doing Business Database.*

*Because Administrative Code § 3-906(a) provides that the organization’s affiliated elected official or agent of an elected official may be held jointly and severally liable for penalties arising out of violations of Administrative Code §§ 3-902, the organization must also consult the organization’s affiliated elected official or agent to determine whether the donor is a household member of a person listed in the City’s Doing Business Database. This means that, if the organization is controlled by the elected official and not by an agent of the elected official, the organization must consult with the elected official. If the organization is controlled by the agent of an elected official—as is the case with the Fund for Public Schools and the Chancellor, for example—the organization must consult with the agent of the elected official, unless the elected official himself or herself has a higher degree of involvement in or direction of the organization’s policies, operations, and activities. As part of this consultation, 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 to determine whether the donation must be reported pursuant to Administrative Code § 3-902(a)(6).*

*Because the business of a not-for-profit corporation is managed by its board of directors, the organization must also consult each director, in the manner described above. See Not-For-Profit Corporation Law, § 701. Similarly, because the principal officers of an organization exercise authority on behalf of the organization to the extent authorized in the organization’s by-laws or by the organization’s board of directors, the organization must also consult each principal officer, as defined in Board Rules § 3-01(h), in the manner described above. See Not-For-Profit Corporation Law § 713.*

*Finally, the person who made a donation may not, in fact, be either the person listed in the Doing Business Database or the household member of such a person. Therefore, subparagraph (iv) creates a procedure by which the Board can make a factual determination of whether the donation must be reported pursuant to Administrative Code § 3-902(a)(6).*

**Section 3-04(b)(3):** *To fulfill the intent of Administrative Code § 3-902(a)(7) that a restricted organization report all donations received from a single source totaling \$1,000 or more in a single calendar year, this paragraph would clarify that Administrative Code § 3-902(a)(7) requires reporting of all donations from an individual or entity that, in the aggregate, total \$1,000 or more. Because Administrative Code § 3-902(a)(7) requires the organization to report “dates of donation,” all donations to be reported pursuant to this provision must be itemized by date and value of each individual donation.*

**Section 3-04(b)(4):** This paragraph ~~would~~ provides identical guidance to unrestricted organizations that ~~proposed~~ Board Rules § 3-04(a)(6) ~~would~~ provides to restricted organizations.

**Section 3-04(b)(5):** Administrative Code § 3-902(a)(9) requires an unrestricted organization to certify that the organization did not spend in the previous calendar year, or does not reasonably expect to spend in the current calendar year, at least 10% of the organization's expenditures on elected official communications. In order to determine whether an organization has appropriately made such a certification, the Board needs to know four facts: (1) the organization's expenditures on elected official communications for the previous calendar year; (2) the organization's total expenditures for the previous calendar year; (3) the organization's budgeted expenditures on elected official communications for the current calendar year; and (4) the organization's budgeted total expenditures for the current calendar year. Administrative Code § 3-902(a)(8) already requires the organization to report the previous calendar year's expenditures on the production or dissemination of elected official communications. This ~~proposed~~ paragraph would require the organization to provide information about the remaining three factors to allow the Board to determine whether the organization has appropriately certified that it is an unrestricted organization.

**Section 3-04(c)(1):** This ~~proposed~~ paragraph would implement Administrative Code § 3-902(b), which provides that the Board may make a determination that, based upon a review of the relevant facts presented by the reporting entity, the disclosure of certain donor information may cause harm, threats, harassment, or reprisals to the donor. The ~~proposed~~ paragraph would set an April 1 deadline for reporting due on August 1 because the requesting entity is entitled to appeal the Board's determination to the State Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules, and because the Board is required to "maintain and regularly update a list on its website of all organizations that reported, and all donor information disclosed" pursuant to Administrative Code § 3-902. See Administrative Code § 3-902(b).

**Section 3-04(c)(2):** This ~~proposed~~ paragraph would give the Board the authority to grant privacy as to any information that would constitute a risk to the safety and security of any person. This ~~proposed~~ rule is modeled on the Board's authority to take action in response to similar threats to safety and security in the context of the public disclosure of a public servant's financial disclosure report. See Administrative Code § 12-110(e)(1)(e).

**Section 3-05(a):** This ~~proposed~~ paragraph would assist the Board in exercising its authority to enforce Local Law 181 of 2016 by establishing a record retention policy that will allow the Board to make a determination about the accuracy of statements made pursuant to the reporting requirement of Administrative Code § 3-902(a). While Administrative Code § 3-902(c) requires an organization to retain donor written submissions pursuant to § 3-903, Administrative Code §§ 3-901 to 3-907 contain no independent requirement that organizations retain any other records confirming the accuracy of the organization's annual reporting requirement. Although the Board could require every organization affiliated with an elected official to submit all supporting documentation at the time such organization must submit its annual reporting, the Board believes that such a requirement would be unduly burdensome for both the organizations and the Board. Instead, the Board's ~~proposes a~~ retention policy that would allow it to verify compliance with Administrative Code §§ 3-901 to 3-907. It is modeled on New York City Campaign Finance Board Rule § 4-01, which requires a candidate for public office to maintain records that enable the Campaign Finance Board to verify the accuracy of disclosure statements and compliance with applicable law.

**Section 3-05(b):** Pursuant to Board Rule § 1-10, the Board retains a public servant's financial disclosure report for 6 years. See also Administrative Code § 12-110(f). In addition, New York City Campaign Finance Rule § 4-03(a) requires a candidate for political office to retain financial records relating to his or her campaign for 6 years. ~~This proposed subdivision would apply a similar 6-year retention period to records retained pursuant to this proposed-rule.~~

**Section 3-05(c):** ~~This proposed subdivision would require~~ an organization to maintain with the Board the name and contact information of its custodian of records. Because the ~~proposed~~ retention period for records required to be kept pursuant to this ~~proposed-rule~~ is 6 years after the date that the organization filed the applicable report, see proposed Board Rules § 3-04(b), ~~this proposed-rule would require~~ an organization no longer subject to the annual reporting requirement to provide to the Board updated name and contact information of its custodian, as appropriate, for the duration of the retention period. New York City Campaign Finance Board Rule § 4-03(b) contains a similar requirement that a political campaign must notify the Campaign Finance Board of a change in the custodian of records or of the custodian's contact information for the duration of the retention period.

New material is underlined.

[Deleted material is in brackets.]

**Section 1.** Title 53 of the Rules of the City of New York is amended by adding a new Chapter 3 to read as follows:

**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, including:

- (a) whether the organization was created by such an elected official or the official's 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;
- (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) the purpose 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 concludes 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).

(6) 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) 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 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.

Section 2. This rule shall take immediate effect ~~on January 1, 2018~~, with the exception of §§ 3-04(a)(1), 3-04(a)(2), 3-04(a)(6), 3-04(b), and 3-04(c), which shall take effect on January 1, 2019.

## 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 to implement Local Law No. 181 of 2016, which amended the New York City Administrative Code to regulate donations to not-for-profit organizations affiliated with elected officials. The proposed rules were published in the City Record on November 17, 2017, and a public hearing was held on December 19, 2017. After consideration of the testimony and written comments received, the Conflicts of Interest Board now adopts the following rules.

### Statement of Basis and Purpose

Local Law No. 181 of 2016 amended the New York City Administrative Code to regulate donations to not-for-profit organizations affiliated with City elected officials. This law, codified in Administrative Code §§ 3-901 to 3-907, requires reporting and public disclosure of donations to not-for-profit organizations controlled by City elected officials or their agents; limits permissible donations to some of these entities; and provides that violations of its provisions may result in civil fines up to \$30,000 and may constitute a class A misdemeanor. The Conflicts of Interest Board (the "Board") is charged with administering, enforcing, and promulgating "such rules as are necessary" to implement Local Law 181. See Administrative Code § 3-907.

The rules, codified in a new Chapter 3 of Title 53 of the Rules of the City of New York (the "Board Rules"), implement Local Law 181. Specifically, the rules: (1) establish procedures for obtaining a determination from the Board that an elected official or an agent of an elected official does not exercise control over an entity; (2) delineate factors by which the Board will determine whether an entity is affiliated with an elected official; (3) implement the reporting requirements of Administrative Code § 3-902, which take effect on January 1, 2019 for organizations affiliated with an elected official; and (4) establish record retention procedures by which the Board can ensure compliance with the requirements of Local Law 181.

The New York City Conflicts of Interest Board's authority for these rules is found in section 1043 of the New York City Charter and Section 3-907 of the New York City Administrative Code.

### Commentary to Board Rules Chapter 3

**Section 3-01:** *This section provides definitions for certain concepts used in Administrative Code §§ 3-901 to 3-907, and incorporates various other definitions set forth in Administrative Code § 3-901.*

**Section 3-01(a):** *This subdivision incorporates the definition of "Doing Business Database" set forth in Administrative Code § 3-901.*

**Section 3-01(b):** *This subdivision incorporates the definition of "donation" set forth in Administrative Code § 3-901.*

**Section 3-01(c):** *This subdivision defines “elected official” consistent with the provisions of Administrative Code § 3-901.*

**Section 3-01(d):** *This subdivision incorporates the definition of “elected official communication” set forth in Administrative Code § 3-901.*

**Section 3-01(e):** *This subdivision defines “household member” throughout the chapter to include only the relatives identified in the definition of “person doing business with the City” set forth in Administrative Code § 3-901.*

**Section 3-01(f):** *Local Law 181 defines “donation” as “any contribution from a non-governmental source, including in-kind donations, gifts, loans, advances or deposits of money, or anything of value.” Administrative Code § 3-901. “In-kind donation” is not defined specifically in Administrative Code § 3-901, although it is included in the broader definition of “donation” in such section. Paragraphs (1) and (2) of this § 3-01(e) definition adopt the definition of “in-kind contribution” contained in Campaign Finance Board Rule § 1-02 and, in addition, reflect the fact that Administrative Code § 3-901 excludes governmental sources from the definition of donations, whether in-kind or otherwise.*

*The definition of “in-kind donation” excludes personal services provided without compensation by individuals who are volunteering their time on behalf of the organizations on matters outside of their professional expertise. There are a few points to note in connection with this exclusion.*

- *The exclusion applies only to uncompensated work. If the volunteer were to receive any compensation—whether from the organization or from anyone else—the services provided would be deemed in-kind donations. Therefore, if a company volunteer program were to authorize its employees to volunteer for an organization during work time, then the volunteer work would not satisfy this exclusion and would be considered to be an in-kind donation by the company.*

- *The exclusion applies only to work on matters outside of the volunteer’s professional expertise. In other words, the exclusion would not apply to the pro bono legal services of an attorney or to the pro bono graphic design services of a professional graphic designer. This distinction is necessary to enable a rigorous calculation of whether an organization’s expenditures on elected official communications—which are often produced and disseminated through the personal services of professionals—exceed 10% of its total expenditures for purposes of Administrative Code §§ 3-902(a)(9) and 3-903.*

**Section 3-01(g):** *This subdivision incorporates the definition of “organization affiliated with an elected official” set forth in Administrative Code § 3-901.*

**Section 3-01(h):** *This subdivision defines the “principal officers” of an organization as the executive director, chief financial officer and chief development officer. Because organizations may use different terminology to describe these roles, this definition also encompasses the three executive staff members who perform the duties of executive director, chief financial officer and or chief development officer.*

**Sections 3-01(i) and (k)** *creates and defines the terms “restricted organization” and “unrestricted organization” for purposes of the reporting requirements of Administrative Code § 3-902(a) and Board Rules § 3-03. All organizations affiliated with an elected official are either a*

*“restricted organization” or an “unrestricted organization” for the purposes of this reporting requirement, and the reporting requirement is different for each type of organization. The content of the definitions is derived from Administrative Code § 3-903(a), which prohibits an organization affiliated with an elected official from accepting donations with a reasonable value in excess of \$400 in a single calendar year by a person listed in the Doing Business Database, or by the spouse, domestic partner, or unemancipated children of a person listed in the Doing Business Database, if the organization spends at least 10% of its expenditures in the calendar year the donation is made, or the organization expects to spend at least 10% of its expenditures in the calendar year after the donation is made.*

**Section 3-01(j):** *This subdivision incorporates the definition of “spend” set forth in Administrative Code § 3-901.*

**Section 3-02:** *This section implements Administrative Code § 3-904(c) and provides a procedure by which a non-profit entity may apply to the Board for a formal determination of whether an elected official exercises control over the entity.*

**Section 3-03:** *The definition of “organization affiliated with an elected official,” as set forth in Administrative Code § 3-901, contains factors that the Board will consider in determining whether an entity is affiliated with an elected official, and authorizes the Board to promulgate by rule additional factors to aid in its determination.*

*This section reiterates certain factors contained in Administrative Code § 3-901 and establishes other additional factors to further define what indicia of control the Board will consider in determining whether a non-profit entity is affiliated with an elected official.*

- *Subdivisions (a) and (b) mirror the factors contained in Administrative Code § 3-901(i) and (ii). In reviewing subdivision (a), the Board will consider a former employee or political consultant of an elected official to be more likely to constitute control by the elected official the more recently the relationship ended.*

- *Subdivision (c) further explains the factor contained in Administrative Code § 3-901(iii) by looking not only to the appointment of an organization’s board members by the elected official, but also to the appointment of an organization’s board members by an agent of the elected official.*

- *Subdivision (d) further explains the factor contained in Administrative Code § 3-901(iii) by looking not only to whether an organization’s board members serve for fixed terms but also to whether an elected official or the official’s agent can remove the board member at the pleasure of the elected official or the official’s agent.*

- *Similarly, subdivision (e) further explains the factor contained in Administrative Code § 3-901(iv) by looking not only to the elected official’s involvement or direction in the entity’s policies, operations, and activities, but also to the involvement or direction of an agent of such elected official. By providing discretionary funding to an organization, an elected official does not, without more, exercise control over that organization.*

*The addition of “agent of an elected official” to subdivisions (c), (d), and (e) reflects the belief, as reflected by proposed subdivisions (a) and (b), that an elected official can exercise control of an organization through his or her agent. In determining whether a person is an agent*

of an elected official, the Board will look to whether the scope of the agency relationship encompasses that person's actions with respect to the organization.

*Subdivisions (f) and (g) contain new factors for the Board's consideration:*

- Pursuant to subdivision (f), the Board considers the extent to which public servants act on behalf of the non-profit entity as part of their City employment. Subdivision (f) reflects the view that public servants acting in their official capacities on behalf of an organization will frequently be acting under the authority of an elected official or agent of an elected official.

- Pursuant to subdivision (g), the Board considers the purpose of the entity. While any entity—regardless of its purpose—can be controlled by an elected official, the Board is more likely to determine that an elected official or agent of an elected official controls the organization where the purpose of an entity is connected either to a City purpose or to the political interests of the elected official. By contrast, where an organization has a purpose that is connected neither to a City purpose nor to the political interests of an elected official, such as a university alumni association, the Board may be less likely to determine that an elected official or agent of an elected official controls the organization.

*In every case, and as directed by Administrative Code § 3-901, the Board will consider the totality of the circumstances regarding the entity at issue.*

**Section 3-04(a)(1):** *This paragraph explains the information required to be submitted by a restricted organization as part of its annual reporting (Administrative Code § 3-902(a)). Paragraph (9) of this subdivision (a) by its express terms applies only to unrestricted organizations.*

**Section 3-04(a)(2):** *This paragraph explains further the requirement for restricted organizations, pursuant to Administrative Code §§ 3-902(a)(6) and 3-902(a)(7), to report to the Board certain detailed information about the organization members' business dealings with the City and their donations to the organization. Because Administrative Code § 3-901 includes in the definition of "person doing business with the City" the spouse, domestic partner, or unemancipated child of an individual listed in the City's Doing Business Database, this paragraph (a)(2) would require a restricted organization to report all donations from such persons, in addition to the individual listed in the City's Doing Business Database. These persons would be the "household members" of a person listed in the City's Doing Business Database, as defined in Board Rules § 3-01(a).*

*In considering the reporting requirements of Administrative Code § 3-902(7) in conjunction with Administrative Code §§ 3-903(a) and 3-903(b), the Board has concluded that a restricted organization must also report the return of any prohibited donations by a person with business dealings with the City, the date and value of the prohibited donation, and the date and value of the refund.*

**Section 3-04(a)(3):** *This paragraph clarifies that, for purposes of Administrative Code §§ 3-903(a) and 3-903(b), the donations of a person listed in the City's Doing Business Database must be aggregated with donations made by the household members of that person over the course of the calendar year. Thus, a restricted organization cannot accept aggregate donations in excess of \$400—whether in a single donation or in a series of donations throughout the calendar year—from a person listed in the City's Doing Business Database and that person's household members. For example, if the spouse of a person listed in the City's Doing Business*

Database makes a \$400 donation to a restricted organization, that organization cannot accept any additional donations during the same calendar year from the person listed in the City's Doing Business Database or any household member.

This paragraph additionally clarifies that Administrative Code § 3-902(a)(7) requires reporting of all donations from an individual that, in the aggregate, total \$1,000 or more. This reporting requirement aggregates multiple donations only on an individual basis and does not require an organization to aggregate an individual's donations with those of the individual's household members, because Administrative Code §§ 3-903 and 3-906 do not restrict an organization's acceptance of donations from people who are neither listed in the City's Doing Business Database themselves nor household members of a person listed in the City's Doing Business Database. Because Administrative Code § 3-902(a)(7) requires the organization to report "dates of donation," all donations to be reported pursuant to this subdivision must be itemized by date and value of each individual donation.

This paragraph also reiterates that Administrative Code § 3-903(d) requires a restricted organization to obtain an individual donor's written submission in a manner and form determined by the Board if that individual's donations, in the aggregate, exceed \$400 in a single calendar year.

**Section 3-04(a)(4):** Administrative Code § 3-903(b) requires a restricted organization to return a prohibited donation from someone who does not have business dealings with the City at the time of the donation, but who is added to the City's Doing Business Database within 180 days of the donation. The refund must be made within 200 days of the donation. Where multiple donations in the aggregate exceed \$400, this paragraph clarifies that the date for calculating when the organization must return any excess donation is the date that the donor's aggregate donations, to include the donations of household members, exceed \$400 for the calendar year. By way of example: a person donates \$250 on January 1 and the person's domestic partner donates \$200 on April 1. The person is added to the City's Doing Business Database on May 1. Under the paragraph, the restricted organization has 200 days from April 1—the date the aggregate donations from the donor and household members of the donor exceed \$400—to return \$50, the amount that exceeds the \$400 limit now that the person is listed in the City's Doing Business Database.

**Section 3-04(a)(5):** This paragraph clarifies what it means for a restricted organization to "know" that a person has business dealings with the City within the meaning of Administrative Code §§ 3-902(a)(6) and 3-903(a) and (b), either at the time of the donation or as of 180 days after the date of the donation. As a first step, for every donation an organization receives, the organization must check the name of each 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.

Because Administrative Code § 3-901 defines "person doing business with the City" to include the spouse or domestic partner and any unemancipated children of a person listed in the City's Doing Business Database, an organization must do more than search for a donor in the City's Doing Business Database. The organization must also consult its records, including donor written submissions obtained pursuant to Administrative Code § 3-903(d), to determine whether a donor is a household member of a person listed in the City's Doing Business Database.

Because Administrative Code § 3-906(a) and (b) provide that the organization's affiliated elected official or agent of an elected official may be held jointly and severally liable for penalties

arising out of violations of Administrative Code §§ 3-902 and 3-903(a), (b), or (c), the organization must also consult the organization's affiliated elected official or agent to determine whether each donor is a household member of a person listed in the City's Doing Business Database. This means that, if the organization is controlled by the elected official and not by an agent of the elected official, the organization must consult with the elected official. If the organization is controlled by the agent of an elected official—as is the case with the Fund for Public Schools and the Chancellor, for example—the organization must consult with the agent of the elected official, unless the elected official himself or herself has a higher degree of involvement in or direction of the organization's policies, operations, and activities. As part of this consultation, the organization must then 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 to determine whether the donation may be accepted pursuant to Administrative Code § 3-903 and whether the donation must be reported pursuant to Administrative Code § 3-902(a)(6).

Because the business of a not-for-profit corporation is managed by its board of directors, the organization must also consult each director, in the manner described above. See Not-For-Profit Corporation Law, § 701. Similarly, because the principal officers of an organization exercise authority on behalf of the organization to the extent authorized in the organization's by-laws or by the organization's board of directors, the organization must also consult each principal officer, as defined in Board Rules § 3-01(h), in the manner described above. See Not-For-Profit Corporation Law § 713.

Finally, the person who made a donation may not, in fact, be either the person listed in the Doing Business Database or the household member of such a person. Therefore, subparagraph (iv) creates a procedure by which the Board can make a factual determination of whether the donation must be reported pursuant to Administrative Code § 3-902(a)(6) and may be accepted pursuant to Administrative Code §§ 3-903(a) and (b).

**Section 3-04(a)(6):** Administrative Code § 3-902(a)(8) requires an organization to provide “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.” In order to account for such elected official communications, an organization must provide information regarding each individual elected official communication, including a description, the date, and the total cost of such communication. The paragraph provides further guidance for an organization about how to calculate the cost of an elected official communication, including the value of the time of its employees and the donations of goods and services by non-governmental sources. Because the definition of “donation” in Administrative Code § 3-901 applies only to contributions “from a non-governmental source,” the cost of contributions made by governmental sources is not calculated as part of the cost of an elected official communication for purposes of Administrative Code § 3-902(a)(8).

**Section 3-04(b)(1):** This paragraph explains what information Administrative Code § 3-902(a) requires an unrestricted organization to submit as part of its annual reporting requirement.

**Section 3-04(b)(2):** This paragraph clarifies what it means for an unrestricted organization to “know” that a person has business dealings with the City within the meaning of Administrative Code § 3-902(a)(6), either at the time of the donation or as of 180 days after the date of the donation. As a first step, for every donation an organization receives, the organization must



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.

Because Administrative Code § 3-901 defines "person doing business with the City" to include the spouse or domestic partner and any unemancipated children of a person listed in the City's Doing Business Database, an organization must do more than search for the donor in the City's Doing Business Database. The organization must also consult its records, including donor written submissions obtained pursuant to Administrative Code § 3-903(d), if it has any such submissions, to determine whether the donor is a household member of a person listed in the City's Doing Business Database.

Because Administrative Code § 3-906(a) provides that the organization's affiliated elected official or agent of an elected official may be held jointly and severally liable for penalties arising out of violations of Administrative Code §§ 3-902, the organization must also consult the organization's affiliated elected official or agent to determine whether the donor is a household member of a person listed in the City's Doing Business Database. This means that, if the organization is controlled by the elected official and not by an agent of the elected official, the organization must consult with the elected official. If the organization is controlled by the agent of an elected official—as is the case with the Fund for Public Schools and the Chancellor, for example—the organization must consult with the agent of the elected official, unless the elected official himself or herself has a higher degree of involvement in or direction of the organization's policies, operations, and activities. As part of this consultation, 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 to determine whether the donation must be reported pursuant to Administrative Code § 3-902(a)(6).

Because the business of a not-for-profit corporation is managed by its board of directors, the organization must also consult each director, in the manner described above. See Not-For-Profit Corporation Law, § 701. Similarly, because the principal officers of an organization exercise authority on behalf of the organization to the extent authorized in the organization's by-laws or by the organization's board of directors, the organization must also consult each principal officer, as defined in Board Rules § 3-01(h), in the manner described above. See Not-For-Profit Corporation Law § 713.

Finally, the person who made a donation may not, in fact, be either the person listed in the Doing Business Database or the household member of such a person. Therefore, subparagraph (iv) creates a procedure by which the Board can make a factual determination of whether the donation must be reported pursuant to Administrative Code § 3-902(a)(6).

**Section 3-04(b)(3):** To fulfill the intent of Administrative Code § 3-902(a)(7) that a restricted organization report all donations received from a single source totaling \$1,000 or more in a single calendar year, this paragraph clarifies that Administrative Code § 3-902(a)(7) requires reporting of all donations from an individual or entity that, in the aggregate, total \$1,000 or more. Because Administrative Code § 3-902(a)(7) requires the organization to report "dates of donation," all donations to be reported pursuant to this provision must be itemized by date and value of each individual donation.

**Section 3-04(b)(4):** This paragraph provides identical guidance to unrestricted organizations that Board Rules § 3-04(a)(6) provides to restricted organizations.

**Section 3-04(b)(5):** *Administrative Code § 3-902(a)(9) requires an unrestricted organization to certify that the organization did not spend in the previous calendar year, or does not reasonably expect to spend in the current calendar year, at least 10% of the organization's expenditures on elected official communications. In order to determine whether an organization has appropriately made such a certification, the Board needs to know four facts: (1) the organization's expenditures on elected official communications for the previous calendar year; (2) the organization's total expenditures for the previous calendar year; (3) the organization's budgeted expenditures on elected official communications for the current calendar year; and (4) the organization's budgeted total expenditures for the current calendar year. Administrative Code § 3-902(a)(8) already requires the organization to report the previous calendar year's expenditures on the production or dissemination of elected official communications. This paragraph requires the organization to provide information about the remaining three factors to allow the Board to determine whether the organization has appropriately certified that it is an unrestricted organization.*

**Section 3-04(c)(1):** *This paragraph implements Administrative Code § 3-902(b), which provides that the Board may make a determination that, based upon a review of the relevant facts presented by the reporting entity, the disclosure of certain donor information may cause harm, threats, harassment, or reprisals to the donor. The paragraph would set an April 1 deadline for reporting due on August 1 because the requesting entity is entitled to appeal the Board's determination to the State Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules, and because the Board is required to "maintain and regularly update a list on its website of all organizations that reported, and all donor information disclosed" pursuant to Administrative Code § 3-902. See Administrative Code § 3-902(b).*

**Section 3-04(c)(2):** *This paragraph would give the Board the authority to grant privacy as to any information that would constitute a risk to the safety and security of any person. This rule is modeled on the Board's authority to take action in response to similar threats to safety and security in the context of the public disclosure of a public servant's financial disclosure report. See Administrative Code § 12-110(e)(1)(e).*

**Section 3-05(a):** *This paragraph would assist the Board in exercising its authority to enforce Local Law 181 of 2016 by establishing a record retention policy that will allow the Board to make a determination about the accuracy of statements made pursuant to the reporting requirement of Administrative Code § 3-902(a). While Administrative Code § 3-902(c) requires an organization to retain donor written submissions pursuant to § 3-903, Administrative Code §§ 3-901 to 3-907 contain no independent requirement that organizations retain any other records confirming the accuracy of the organization's annual reporting requirement. Although the Board could require every organization affiliated with an elected official to submit all supporting documentation at the time such organization must submit its annual reporting, the Board believes that such a requirement would be unduly burdensome for both the organizations and the Board. Instead, the Board's retention policy that allows it to verify compliance with Administrative Code §§ 3-901 to 3-907. It is modeled on New York City Campaign Finance Board Rule § 4-01, which requires a candidate for public office to maintain records that enable the Campaign Finance Board to verify the accuracy of disclosure statements and compliance with applicable law.*

**Section 3-05(b):** *Pursuant to Board Rule § 1-10, the Board retains a public servant's financial disclosure report for 6 years. See also Administrative Code § 12-110(f). In addition, New York City Campaign Finance Rule § 4-03(a) requires a candidate for political office to retain financial*

records relating to his or her campaign for 6 years. This subdivision applies a similar 6-year retention period to records retained pursuant to this rule.

**Section 3-05(c):** This subdivision requires an organization to maintain with the Board the name and contact information of its custodian of records. Because the retention period for records required to be kept pursuant to this rule is 6 years after the date that the organization filed the applicable report, see Board Rules § 3-04(b), this rule requires an organization no longer subject to the annual reporting requirement to provide to the Board updated name and contact information of its custodian, as appropriate, for the duration of the retention period. New York City Campaign Finance Board Rule § 4-03(b) contains a similar requirement that a political campaign must notify the Campaign Finance Board of a change in the custodian of records or of the custodian's contact information for the duration of the retention period.

New material is underlined.

[Deleted material is in brackets.]

Section 1. Title 53 of the Rules of the City of New York is amended by adding a new Chapter 3 to read as follows:

**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, including:

(a) whether the organization was created by such an elected official or the official's 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;

(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) the purpose 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 concludes 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).

(6) 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) 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 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.

**Section 2.** This rule shall take immediate effect, with the exception of §§ 3-04(a)(1), 3-04(a)(2), 3-04(a)(6), 3-04(b), and 3-04(c), which shall take effect on January 1, 2019.



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CONFLICTS OF INTEREST BOARD

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I hereby find, pursuant to Section 1043(f)(1) of the City Charter, and represent to the mayor, that there is a substantial need for the implementation of the rules governing not-for-profit organizations affiliated with elected officials upon the publication in the City Record of its Notice of Adoption.

Local Law Number 181 of 2016 amended the New York City Administrative Code to regulate donations to not-for-profit organizations controlled by City elected officials or their agents; limits permissible donations to some of these entities; and provides that violations of its provisions may result in civil fines up to \$30,000 and may constitute a class A misdemeanor.

These rules, codified in a new Chapter 3 of Title 53 of the Rules of the City of New York, implement Local Law 181. The first sections of Local Law 181 take effect on January 1, 2018, provided that the Conflicts of Interest Board promulgates rules as are necessary for the Local Law's timely implementation. See Section 4 of Local Law 181. Accordingly, the implementation of these rules upon publication is necessary to ensure that Local Law 181 takes effect in a timely manner.

Richard Briffault  
Chair

APPROVED:

Bill de Blasio  
Mayor

DATE