

## AGENCY RULES

### CONFLICTS OF INTEREST BOARD

#### ■ NOTICE

#### 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 certain not-for-profit organizations affiliated with City 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 has adopted the following rules, with certain revisions to the commentary to Section 3-03 reflecting such testimony and comments.

#### Statement of Basis and Purpose

Local Law No. 181 of 2016 amended the New York City Administrative Code to regulate donations to certain not-for-profit organizations affiliated with City elected officials. This law, codified as 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 as 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)** create and define 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 analyzing "control" through subdivision (a), the Board will consider the relationship between a former employee or political consultant of an elected official and that 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 evidenced in 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 individual's relationship to the elected official 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 will consider 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 will 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 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 gives 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 assists 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 enables 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 Rules § 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 (b) of § 3-05 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, email 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, email address, or telephone number, no later than 30 days after such change.

**Section 2.** This rule takes effect immediately, except that Sections 3-04(a)(1), 3-04(a)(2), 3-04(a)(6), 3-04(b), and 3-04(c) take effect on January 1, 2019.

• f14

**CONSUMER AFFAIRS**

■ NOTICE

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

**What are we proposing?** The Department of Consumer Affairs is proposing the repeal of rules, which have been identified by an inter-agency review, to reduce regulatory burdens, increase equity, support small businesses, and simplify and update content to help support public understanding and compliance. The rules proposed for repeal relate to open air street markets, home heating oil credits, and theatre tickets.

**When and where is the hearing?** No public hearing will be held because DCA has determined that a hearing would serve no public purpose.

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

- **Website.** You can submit comments to DCA through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to [Rulecomments@dca.nyc.gov](mailto:Rulecomments@dca.nyc.gov).
- **Mail.** You can mail comments to Casey Adams, Deputy Director of City Legislative Affairs, New York City Department of Consumer Affairs, 42 Broadway, 8th Floor, New York, NY 10004.
- **Fax.** You can fax written comments to the Department of Consumer Affairs, (646) 500-5962.

**Is there a deadline to submit comments?** Yes. You must submit any comments to the proposed rule on or before 5:00 P.M., on Friday, March 16, 2018.

**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, all comments received by DCA on the proposed rule will be made available to the public online at <http://www1.nyc.gov/site/dca/about/public-hearings-comments.page>.

**What authorizes DCA to make this rule?** Sections 1043, 2203(f) and 2203(h)(1) of the New York City Charter authorize DCA to make these proposed rules. These proposed rules were not included in the regulatory agenda of the Department of Consumer Affairs for this Fiscal Year because they were not contemplated when the Department published the agenda.

**Where can I find DCA's rules?** The Department's rules are in Title 6 of the Rules of the City of New York.

**What laws govern the rulemaking process?** DCA 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**

The Department of Consumer Affairs is proposing the repeal of the following subsections: 6 RCNY § 3-111 *et seq.*, regarding open air street markets; 6 RCNY § 5-62, regarding the home heating oil credit; and 6 RCNY § 5-211 *et seq.*, regarding theatre tickets. These rules are being repealed because DCA no longer licenses the businesses contained in the provisions or enforces the provisions contained in these rules.

Working with the City's rulemaking agencies, the Law Department, the Office of Management and Budget, and the Office of Operations conducted a retrospective rules review of the City's existing rules, identifying those rules that will be repealed or modified to reduce regulatory burdens, increase equity, support small businesses, and simplify and update content to help support public understanding and compliance. Components of this proposed rule repeal was identified through this initiative.

Specifically:

- Regarding the open air street markets rules, "open air street markets" have not existed in NYC for decades and are no longer recognized in the New York State Agriculture and Markets Law, thereby making these rules obsolete.
- Regarding the home heating oil credit rule, it references the 1978 to 1979 heating season and this is outdated and obsolete.
- Regarding the theatre tickets rules, these were promulgated under Article 10-C of the NYS General Business Law, which was repealed in 1983, and are thereby obsolete.

Sections 1043, 2203(f) and 2203(h)(1) of the New York City Charter authorize the Department of Consumer Affairs to make these proposed rules.

New material is underlined.

[Deleted material is in brackets.]

"Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

**Proposed Rule Amendments**

Sections 3-111 through 3-131 of Subchapter F of Chapter 3 of Title 6 of the Rules of the City of New York, relating to open air street markets, are REPEALED.

Section 5-62 of Subchapter A of Chapter 5 of Title 6 of the Rules of the City of New York, relating to the home heating oil credit, is REPEALED.

Sections 5-211 through 5-216 of Subchapter K of Chapter 5 of Title 6 of the Rules of the City of New York, relating to theatre tickets, are REPEALED.