


June 8, 2017 Agenda – Open Meeting Matter

To: The Board
cc: Legal Staff
From: Christopher M. Hammer 
Date: June 1, 2017
Re: Proposed Board Rules to Implement Local Law No. 181 of 2016

Local Law No. 181 of 2016 amended the New York City Administrative Code to regulate not-for-profit organizations affiliated with elected officials. Local Law 181, 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 (to include entities controlled by their agents); limits permissible donations to certain of these entities; and provides that violations of its provisions may be subject to 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.

Local Law 181 takes effect in two stages. The first stage, effective January 1, 2018, prohibits certain organizations affiliated with elected officials from accepting donations from any entity or donations exceeding \$400 from any person who does business with the City, or from the spouse, domestic partner, or unemancipated child of such a person. See Administrative Code § 3-903. The second stage, effective January 1, 2019, requires all organizations affiliated with elected officials to report certain donations to the Board for public disclosure. See Administrative Code § 3-902. The first reporting, for donations made during calendar year 2018, must be filed by August 1, 2019.

Staff has proposed draft Board Rules as required by implementation of Local Law 181 for the Board's consideration. With the Board's approval, these proposed rules will be submitted to the City's Law Department and Mayor's Office of Operations, as required by the City Administrative Procedure Act. See Charter Section 1043(d).

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) Analysis of Int. No. 1345, City Council Committee Report, Committee on Standards and Ethics, November 21, 2016 (**Exhibit 2**), cover page and pp. 11-17;
- 3) Testimony on Int. No. 1345, by the Board's Executive Director, Carolyn Lisa Miller, to the City Council Committee on Standards and Ethics, November 21, 2016 (**Exhibit 3**);
- 4) Staff's Proposed Draft Board Rules and Commentary (**Exhibit 4**); and
- 5) Staff's Proposed Draft Board Rules without Commentary (**Exhibit 5**).

Analysis & Discussion

Staff highlights four issues addressed in the proposed draft Board Rules to implement Local Law 181: (1) which organizations are subject to Local Law 181; (2) the distinction between "restricted organizations" and "unrestricted organizations"; (3) harmonizing the donation restrictions with reporting requirements; and (4) record retention.

(1) Organizations Subject to Local Law 181

Organizations affiliated with elected officials must comply with Local Law 181. Administrative Code § 3-901 defines "organization affiliated with an elected official" as a non-profit entity other than an agency, public authority, public benefit corporation or local development corporation that has received at least one donation in the previous or current calendar year, and 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.

Administrative Code § 3-901 requires the Board to consider the totality of the circumstances, including several delineated factors, when determining whether a non-profit entity is affiliated with an elected official. Staff proposes expanding the factors listed in § 3-901 so that the Board will consider three additional factors: (1) the involvement of an elected official's agent in the organization's board, policies, operations, and activities; (2) the degree to which public servants, acting under the authority or direction of the elected official or the elected official's agent, perform duties on behalf of the organization as part of their official City employment; and (3) the purpose of the organization. See Exhibit 4 at 4-6.

Administrative Code § 3-904(c) requires the Board to “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.” **Exhibit 1** at 6. Proposed Board Rules 3-02 sets forth that procedure (**Exhibit 4** at 4).

(2) “Restricted” vs. “Unrestricted” Organizations

Local Law 181 subjects an organization affiliated with an elected official to different donation and reporting requirements depending on the extent of the organization's elected official communications, defined in Administrative Code § 3-901 to include communications that use the name, voice, or likeness of the elected official affiliated with that organization. Specifically, Local Law 181 distinguishes organizations that spend at least 10% of their expenditures on elected official communications in the current or previous calendar year from organizations that do not cross this threshold. For ease of describing such organizations, proposed Board Rules 3-01(3) and 3-01(4) define organizations that reach this 10% threshold as

“restricted organizations,” and organizations that do not reach this 10% threshold as “unrestricted organizations.” See Proposed Board Rules 3-01(3) and 3-01(4) (**Exhibit 4** at 3).

(3) Harmonizing Donation Restrictions with Reporting Requirements

Local Law 181 prohibits restricted organizations from receiving donations of any amount from any entity (i.e., not a natural person). Local Law 181 also prohibits restricted organizations from receiving donations exceeding \$400 in a single calendar year from any person who has business dealings with the City or from the spouse, domestic partner, or unemancipated child of such a person. See Administrative Code § 3-903(a) (**Exhibit 1** at 4). Even if a donor has no business dealings with the City at the time of the donation, a restricted organization must return any donations exceeding \$400 in a single calendar year if the donor has business dealings with the City in the 180 days following the donation. See Administrative Code § 3-903(b) (**Exhibit 1** at 4-5). Unrestricted organizations may receive donations in any amount from any entity or person.

Local Law 181’s reporting requirements apply uniformly to all affiliated organizations regardless of whether they are restricted or unrestricted organizations. See Administrative Code § 3-902(a)(9) (**Exhibit 1** at 9). This uniformity results in insufficient reporting requirements for restricted organizations and overly burdensome reporting requirements for unrestricted organizations. Proposed Board Rules § 3-04 harmonizes Local Law 181’s donation restrictions with its reporting requirements by expanding the reporting requirements of restricted organizations such that they must report donations that are refunded to donors pursuant to the contribution restrictions of Administrative Code §§ 3-903(a) and 3-903(b) (**Exhibit 4** at 7-9). Without requiring restricted organizations to report such returned donations, alongside donations made, in any amount, by persons who have business dealings with the City, the Board would be

unable to ensure that restricted organizations were complying with the donation restrictions in Administrative Code §§ 3-903(a) and (b).

Conversely, as the donation restrictions do not apply to unrestricted organizations, Staff proposes to reduce the burden on unrestricted organizations by exempting them from Local Law 181's requirement to report all donations, regardless of the amount, made by persons doing business with the City. Rather, only donations exceeding \$1,000—as identified pursuant to Administrative Code § 3-902(a)(7)—need to be reported by unrestricted organizations, as explained further in Board Rules § 3-04(b)(2) (**Exhibit 4** at 13).

(4) Record Retention

Local Law 181 does not address an affiliated organization's record retention requirements. To ensure that the Board can carry out its authority to enforce Local Law 181, Staff proposes requiring organizations to retain all records and documents that enable the Board to verify the accuracy of the reporting required by Local Law 181. See proposed Board Rules § 3-05 (**Exhibit 4** at 16-18). The proposed six-year record retention requirement is consistent with the record retention requirement for Annual Disclosure Reports in Board Rules § 1-10 and with the Campaign Finance Board's record retention requirement.

Recommendation

Staff recommends that the Board approve the proposed Board Rules and Commentary for submission to the New York City Law Department and to the Mayor's Office of Operations for review and approval pursuant to Charter Section 1043(d) of the City Administrative Procedure Act.

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

No. 181

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

A LOCAL LAW

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

Be it enacted by the Council as follows:

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

Chapter 9. Organizations affiliated with elected officials.

§ 3-901 Definitions.

§ 3-902 Reserved.

§ 3-903 Prohibition of acceptance of certain donations.

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

§3-905 Enforcement.

§ 3-906 Penalties.

§ 3-907 Rulemaking.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 3-902 Reserved.

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

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

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

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

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

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

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

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

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

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

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

§ 3-906 Penalties. a. Reserved.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

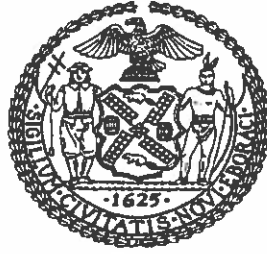
ALISA FUENTES, Acting City Clerk, Acting Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

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

STEPHEN LOUIS, Acting Corporation Counsel

Staff
Committee on Standards and Ethics
Serena Longley, Managing Counsel
Brad J. Reid, Senior Legislative Counsel
David Seitzer, Senior Legislative Counsel



THE COUNCIL OF THE CITY OF NEW YORK

COMMITTEE REPORT OF THE GENERAL COUNSEL

Jason Otaño, General Counsel

COMMITTEE ON STANDARDS AND ETHICS

Hon. Alan Maisel, Chair

November 21, 2016

Int. No. 1345: By The Speaker (Council Member Mark-Viverito) and Council Members Garodnick, Crowley and Lander

Title: 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

Code: Adds a new Chapter 9 to Title 3 of the Administrative Code and amends §§ 3-902 and 3-905 of the Administrative Code

Int. No. 1349: By Council Member Garodnick

Title: A Local Law to amend the administrative code of the city of New York, in relation to the compatibility of campaign finance board disclosure software

According to the CFB's 2013 Post-Election Report²⁵ in September 2014, the winning candidates for Mayor, Public Advocate, Comptroller, all five Borough Presidents, and 46 out of 51 members of the Council participated in the program in 2013.²⁶ Comparing the 2005 and 2013 election cycles, the percentage of contributors giving \$175 or less increased from 68.7% to 76%.²⁷ Over the same period, the number of first-time contributors increased from 28,170 to 44,540, representing more than half of all contributors.²⁸ Contributions from individuals who do business with the City was down to 2% of total contributions, likely due to the "pay-to-play" bills passed by the Council in 2007,²⁹ which have led to a drop of over 90% since 2001 in the impact of the contributions of those who do business with the City.³⁰ In 2013, 38 of 51 City Council districts (75%) had contested or competitive primaries, six more than in 2009.³¹ The State Assembly and Senate, by contrast, only saw a 30% contested rate among their New York City seats in 2012.³² Ensuring that the processes of the public funds program, both before and after elections, are fair and accessible to candidates can enable this progress to continue.

Analysis of Legislation

Int. No. 1345

Int. No. 1345 would create disclosure requirements for certain organizations that are affiliated with local elected officials. It would also limit donations from people who do business

²⁵ New York City Campaign Finance Board, "2013 Post-Election Report – By the People: The New York City Campaign Finance Program in the 2013 Elections" (Sep. 2, 2014) (*available at* http://www.nycfb.info/PDF/per/2013_PER/2013_PER.pdf).

²⁶ *Id.* at 46.

²⁷ *Supra* note 7 at 41.

²⁸ *Supra* note 7 at 41.

²⁹ Local Law 34 of 2007.

³⁰ *Supra* note 7 at 102.

³¹ *Id.*

³² *Supra* note 7 at 48.

with the City, and eliminate donations from corporations and unions for a subset of these elected-official-affiliated organizations.

Disclosure Requirements

The disclosure requirements of Int. No. 1345 would apply to organizations for which a local elected official is the principal owner or officer of the organization, or for which an agent of a local elected official is the principal owner or officer of the organization. For example, if a person acting at the behest of the Mayor is the executive director of an organization, that organization would be covered. In contrast, if a Mayor-appointed commissioner of an agency is merely a board member of an organization, that organization would not be covered due to that fact because, although a commissioner is an agent of the Mayor, they would not be a “principal owner or officer” of the organization. An organization that was created by a local elected official, or their agent, within the previous two years would automatically be covered by the donor disclosure provisions, even if the creation occurred prior to the elected official taking office.

These organizations would be required under Int. No.1345 to make an annual disclosure to the Conflicts of Interest Board (“COIB”), which would be the agency charged with administering the law. This disclosure would contain the following information:

- The organization’s name, website, and IRS tax status (i.e. whether the organization is a tax-exempt non-profit pursuant to section 501(c)(3) or 501(c)(4) of the Internal Revenue Code);
- The affiliation that it has with an elected official or their agent, and the name of the elected official;

- The name of any other principals owners and officers of the organization, and the board members of the organization, if any;
- The names, addresses, donation dates, and donation amounts of donors to the organization in the previous calendar year who donated \$1,000 in money, goods, or services to the organization or, for donors do business with the City, who donated any amount to the organization;
- An accounting of the expenditures of the organization during the previous calendar year;
- For organizations permitted to accept unlimited donations from people who do business with the City (see below description), a certification that they are permitted to do so under this law; and
- Any other information required to be included by COIB

All information disclosed in this annual report would be required to be disclosed in a manner and form designated by COIB. Organizations and their donors, as disclosed pursuant to this law, would be required to be available on COIB's website.

The initial penalty for failure to comply with these disclosure provisions would be not more than \$10,000. For second and subsequent offenses that are knowing and willful, the person in violation would be guilty of a misdemeanor, in addition to the civil penalty.

The disclosure requirement would go into effect on January 1, 2019, with disclosures due that year on the activity of covered organizations in the previous calendar year (2018).

Donation Limits and Restrictions

A subset of the organizations that are required to disclose their donors and other information detailed above would be subject to donation limits from people with business before the City, as well as a prohibition on donations from labor unions and corporations.

The organizations subject to these donation limits and restrictions would be those that spend 10% of their annual budget on public-facing communications that refer to the elected official affiliated with the organization, either by name or by image. Specifically, the following public-facing communications would be included in the 10% calculation:

- Radio and television advertisements;
- Printed communications, including letters, flyers, and billboards; and
- Paid internet advertising

References to the office that the elected official holds, such as a logo identifying a public education message as emanating from “The Office of the Mayor,” would not count towards the 10% threshold unless they were accompanied by the name or image of the officeholder.

Communications with a journalist, including an editorial board or opinion writer, do not count towards the 10% threshold, nor do communications by an organization directed solely at their members or donors, or communications designed to promote a candidate debate, town hall, or similar neutral forum.

Organizations that have as their sole purpose advocating for New York City to be the location for the Olympic Games, or other national or international sporting events, for a national political convention, or for other similar events as publicly determined by COIB, are not subject to donation limits or restrictions under this law, though they are not exempted from the disclosure provisions described above.

Organizations subject to donation limits under Int. No. 1345 would be prohibited from accepting donations from labor unions or corporations, including any limited liability company, limited liability partnership, or partnership. This means that organizations subject to donation limits under this law would be permitted to accept donations from natural persons only, as the definition of corporation or labor union is intended to cover any legal entity.

Donation is defined in the bill to include money, as well as anything else of value, including gifts, loans, and donations of goods and services.

Organizations subject to donation limits under this law would be prohibited from accepting more than \$400 in a calendar year from a person with business dealings with the City. "Person with business dealings with the City" is defined in the bill as anyone who is listed in the doing business database, or any domestic partner, spouse, or unemancipated child of such a person. In summary, the doing business database includes registered lobbyists, as well as the principal officers of entities that contract, engage in real estate transactions, have pending land use applications, have economic development agreements, receive grants from, or have franchises or concessions, with the City, with various additional exemptions and inclusions outlined in section 3-702 of the administrative code.

The \$400 limit would apply to anyone who is listed in the doing business database on the date of the donation, or who is added to the database within six months after the donation. The receiving organization would be required to return the amount of any donation over \$400 within 20 days of the receipt of the donation, or of the end of the six month period after receipt of the donation, respectively. As a result, organizations covered by this provision would need to check the doing business database twice: once when receiving a donation, with a return for amounts

over \$400 if the donor is listed there, and, if they are not, a second check six months after the donation, with a return for amounts over \$400 if the donor is listed at that time.

Spouses, domestic partners, and unemancipated children of people in the doing business database are not listed publicly, so organizations covered by these donation limits would be required to get a written submission from every person making a donation over \$400, affirming whether the person is in the database, or is the spouse, domestic partner, or unemancipated child of a person in the database. Donations from any person who does not submit this required submission to the organization would be prohibited. These written submissions would be required in a manner and form determined by COIB, and would be required to be retained by the organization for at least three years from the date of receipt.

The penalty for accepting a prohibited contribution would be not more than \$5,000 for a first offense, not less than \$5,000 and not more than \$15,000 for a second offense, and not less than \$15,000 and not more than \$30,000 for a third and subsequent offense. For second and subsequent offenses that are knowing and willful, the person in violation would be guilty of a misdemeanor, in addition to the civil penalty.

The penalty for failure to require the written submission attesting to whether the donor is in the doing business database, or is the spouse, domestic partner, or unemancipated child of such a person, would be not more than \$1,000 for a first offense, and not more than \$10,000 for a second a subsequent offense.

The donation limits and restrictions in the bill would take effect on January 1, 2018.

Enforcement of Int. No. 1345 would be performed in the same manner as enforcement of existing conflicts of interest laws—by complaint to COIB, or by directive of COIB, with the ability of COIB to require the Department of Investigation to investigate and report to COIB on

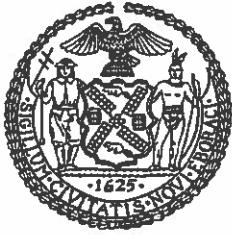
the results. COIB would be empowered by the law to promulgate rules to effectuate its provisions.

Int. No. 1349

Int. No. 1349 would require that candidates, upon request, be provided with an electronic file that meets their disclosure requirements under State law. Currently, campaigns for City offices are required to file disclosures with both the New York City Campaign Finance Board (“CFB”) and the New York State Board of Elections and current law requires that any disclosure software used by the CFB also be capable of being used to help candidates meet their State filing requirements. Int. No. 1349 would require that if such software is unable to meet that requirement, then an electronic file meeting those State disclosure requirements shall be prepared for candidates, upon request, in a timely manner. Further, it would require the reporting of the disclosure software’s incompatibility. It would take effect 120 days after becoming law.

Int. No. 1350

Int. No. 1350 would codify a right for candidates to challenge alleged campaign finance violations in the Office of Administrative Trials and Hearing (“OATH”), prior to the commencement of an adjudicatory hearing before the Campaign Finance Board (“CFB”). Currently, candidates may choose to have a hearing with informal or formal procedures, with candidates who select the latter having their cases docketed with OATH by the CFB. This bill would codify that path. The bill would also establish timelines for the commencement of such a proceeding before OATH and the final determination after an OATH proceeding. It would take effect 120 days after becoming law.



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Testimony before the New York City Council
Committee on Standards and Ethics
Concerning Int. No. 1345-2016

Carolyn Lisa Miller
Executive Director, NYC Conflicts of Interest Board
November 21, 2016

Introduction

I am the Executive Director of the New York City Conflicts of Interest Board, and I am here today with the Board's Deputy Executive Director and General Counsel, Wayne Hawley. We are here on behalf of COIB to offer testimony about Int. No. 1345-2016, "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."

We at COIB support a legislative approach to addressing the management of City-affiliated not-for-profits. We agree with the call made on July 6, 2016, by the New York City Campaign Finance Board in its "Statement on Determination Regarding the Campaign for One New York": "The Board calls on the Council to pass legislation to close this loophole and amend the law to more closely regulate fundraising by elected officials and their agents for non-profit organizations, especially 5-01(c)(4) entities. In addition to placing clear limits on fundraising solicitations, any reform should include comprehensive public disclosure, and audits to ensure the disclosure is complete and accurate."

Background

In the absence of a legislative approach, COIB has for the past 12 years endeavored to provide guidance to public servants about fundraising for City-affiliated not-for-profit organizations, which the Board defined in its Advisory Opinion No. 2003-4 as entities "closely affiliated with the City" where the "funds are raised [to] support the purposes and interests of the City." Advisory Opinion No. 2003-4 at 2. Since the issuance of that Opinion, COIB has received from City agencies biannual disclosures of donations made to those agencies and their affiliated not-for-profit organizations, as provided for in that

Opinion. Of the reports that the Board collects twice each year, approximately twenty come from City-affiliated not-for-profits. Specifically:

As an additional safeguard, all City offices and agencies (including, without limitation, those of all elected officials) will be required to publicly disclose twice a year all donations received by them to either the City or to a not-for-profit entity affiliated with that office or agency, which exceed \$5,000 in aggregate value from a single donor. More particularly, each office or agency must file a public report with the Board by May 15 and November 15 of each year (commencing November 15, 2003), disclosing (a) the name of each person or entity making a donation in the six-month period ending March 31 and September 30 respectively, (b) the type of donation received from each such person or entity (*i.e.*, money, goods, or services), (c) the purpose of the donation (*e.g.*, renovation of Gracie Mansion), (d) the estimated value of all donations received during the reporting period from each such person or entity, and (e) the cumulative total value of gifts received from each such person or entity over the past twenty-four (24) months. If the agency is unable reasonably to estimate the value of a donation of goods or services, then the agency may describe the goods or services with sufficient particularity to enable readers of the disclosure statement to make a judgment as to the value of the gift. Monetary values shall be reported as being within one of the following categories: A if it is \$5000 to under \$20,000, B if it is \$20,000 to under \$60,000, C if it is \$60,000 to under \$100,000, D if it is \$100,000 to under \$250,000, E if it is \$250,000 to under \$500,000, F if it is \$500,000 to under \$1,000,000, and G if it is \$1,000,000 or more.

Advisory Opinion No. 2003-4 at 22-23.

We at COIB commend the Council's effort to codify and expand the limited reporting scheme the Board implemented in Advisory Opinion No. 2003-4. We further support the effort to place some limitation on the types of contributions to City-affiliated not-for-profits, an element that was not part of the Board's Advisory Opinion. Finally, we support the implementation of an administrative enforcement mechanism both for the reporting and the contribution-restriction components of the regulatory plan, something beyond the scope of COIB's authority in its issuance of Advisory Opinion No. 2003-4.

COIB's Concerns about the Proposed Legislation

However, we at COIB have a number of specific and substantial concerns with the proposed legislation as drafted. We will list a number of those concerns individually and with particularity to enable the Council both to most fully appreciate COIB's perspective on this matter and for possible use in any amendments to Int. No. 1345-2016. Although COIB remains

uncertain whether we are the right agency to administer this legislation, we offer this list in the spirit of readiness and willingness to work with the Council and the Administration on making this legislative approach as clear, effective, and successful as it can be.

The list that follows tracks the issues as they arise in the language of the proposed legislation Int. No. 1345-2016:

1. The title of the Chapter is "Chapter 9. Organizations Affiliated with Public Officials." Given the content of the legislation, it should read "Organizations Affiliated with Elected Officials."

This is a small point, but it illustrates a larger issue that concerns COIB with this legislative approach. The legislation appears intended to regulate only a subset of organizations affiliated with public servants, namely, only those affiliated directly with elected officials. Based on our reading of the legislation – and if this is not what is intended by the legislation, the legislation is unclear – the reporting requirements would not apply to organizations affiliated with other high-level public servants, like the Fund for Public Schools or the Fund for Public Health, each of which currently provides biannual reports to the Board pursuant to Advisory Opinion No. 2003-4. If, on the other hand, the bill is intended to apply to all City-affiliated not-for-profits, then the current title should stay, but, as discussed further herein, the definition of affiliated organizations must be modified to plainly include not-for-profits affiliated with any City agency, not just the offices of the electeds.

2. The definition of "donation" includes a "loan." Thus, by the terms of the legislation, an organization affiliated with an elected official that spends or reasonably expects to spend 10% of its expenditures on elected official communications would be prohibited from receiving a loan of \$400 from almost any major financial institution, since most such institutions have business dealings with the city. This seems unduly prohibitive and an unintended result.
3. The definition of "elected official communications" is unworkable for a variety of reasons. It is absolutely critical to clearly define the entities that would be subject to the contribution limits, and the definition in the proposed legislation does not seem to be capable of reasonable interpretation. This would thus leave the responsibility of defining the scope of covered communications and of calculating their costs to the unchecked discretion of an independent administrative body (here, COIB). It may well be that there is a regulatory scheme elsewhere – from tax laws, lobbying laws, or charitable corporation laws – that not only has a more precise standard for distinguishing a subset of not-for-profits from the universe of not-for-profits, but also has a body of standing precedent that could assist in the interpretation of that standard. Such a scheme does not appear to be present here, and, without it, COIB, or any other entity overseeing this regulatory regime as drafted, would be at sea.
4. The definition of "organization affiliated with an elected official" does not include the wide range of City-affiliated not-for-profits that are controlled not by an elected official

but by an appointed official, such as the Schools Chancellor, who has long headed the DOE's Fund for Public Schools.

5. The definition of "organization affiliated with an elected official" fails to define the covered organizations by the purpose of the organization. A covered organization should have as its purpose the furtherance of the official duties of that public servant's City position. Under the current definition, if a Council Member created a local chapter for the alumni of his or her college, that chapter would be covered by this legislation.
6. The definition of "organization affiliated with an elected official" covers organizations created by an elected official during the previous two calendar years. Thus, if a member of the public created an organization for local pet owners, successfully ran for elective office one year later, and then turned full control of that organization over to a fellow pet lover, that organization would still be covered by this legislation.
7. The definition of "organization affiliated with an elected official" covers organizations in which the official is a "principal owner." The legislation is designed to regulate receipt of contributions, which only flow to a not-for-profit organization, of which there is no owner.
8. The definition of "person with business dealings with the city" includes not only those persons listed in the doing business database but also the "domestic partner, spouse, or unemancipated child of such a person." In our view, to extend the definition in this way is bad both as a matter of practice – as will be discussed below – and as a matter of policy, especially as social progress moves forward to an understanding of marriage or domestic partnership in which the partners and spouses are able and expected to function independently of each other, without one's interests or goals subsumed by the other. Furthermore, in light of the prohibition on contributions from corporations, labor organizations, and persons listed in the doing business database, the addition of spouses, domestic partners, and unemancipated children would, as a practical matter, prevent very little in addition – and, in any event, any such contributions would be disclosed.
9. Section 3-903 of the proposed legislation prohibits the acceptance of certain contributions by organizations "that spend or reasonably expect to spend at least 10% of their expenditures in the current or next calendar year on elected official communications." This definition, critical to this legislation, remains unworkably vague, in that it presents great uncertainty about what will be considered an elected official communication, how the cost of that communication will be determined, and how that cost will be attributed to the 10% threshold of expenditures.
10. The timeframe of the 10% threshold determination also seems unworkably uncertain. The contribution prohibition would apply if the organization "spends or reasonably expects to spend" that 10% in the "current or next calendar year." To impose upon relatively small not-for-profit organizations functioning in the City's interest the obligation to assess their expenditures two full years in advance seems unreasonable and unrealistic.

11. The legislation prohibits the acceptance of donations from a person that the organization “knows or should know has business dealings with the city.” Since this category should be defined as being listed in the doing business database, there is no need for the “should know” language.
12. COIB strongly recommends that the requirement for a written submission of “business dealing” status found in § 3-903(4) be removed. To be required to ask every person who seeks to contribute \$400 whether her spouse or domestic partner does business with the city, and, if the answer is no, to put that fact in writing, and then to be required to maintain that written statement for three years is cumbersome and labor-intensive at best, with little added value to the regulatory framework. This administrative burden would no longer be necessary if domestic partners, spouses, and unemancipated children were removed from the definition of “person with business dealings with the city,” as recommended.
13. The legislation does not make clear which “person” is subject to the penalty provisions in § 3-905. In our view, the only person who should be liable for any penalty is the high-level public official controlling the organization – whether that is an elected official or an agency head – and the legislation should so state.
14. The proposed penalties are too high, particularly for offenses with a “not less than” provision. The “not less than” provision is unwise and should be removed.
15. The penalty provision found in § 3-905(3) should be removed once the related requirement for written submissions of “business dealing” status found in § 3-903(4) is removed.
16. The reporting schedule described in § 3-902 is “annually by August 1.” The reporting schedule under Advisory Opinion No. 2003-4 is biannual: May 15 for the six-month period ending March 31 and November 15 for the six-month period ending September 30. We see no reason to diminish the frequency of reporting, and the sunlight goals of the legislation will be amplified if disclosure is closer in time to the contributions and expenditures in question. The requirement to report twice a year would also accommodate the requirement to refund donations over \$400 from persons added to the doing business database within 180 days of the donation in that a donation would be disclosed in the report for the six-month period in which it is received and a return of any such donation would be disclosed in the report for the six-month period in which it is refunded.
17. Under § 3-902(f), all affiliated organizations, whether or not they meet the 10% expenditure threshold, are required to report the name, address, date of donation, and amount of donation for any donation received from a person known to have business dealings with the city. In our view, only those organizations meeting the 10% threshold should be required to report all donations from persons with business dealings with the city, while all organizations should report donations of \$1,000 or more, as described in § 3-902(g).

18. The requirement in § 3-902(4) for affiliated organizations to retain donor inquiry responses for three years should be removed once the related requirement for written submissions of “business dealing” status found in § 3-903(4) is removed.
19. It needs to be made clear in § 3-905(3)(a) that “any person who violates” would be the elected official (or agency head) who controls the affiliated organization.
20. Under Section 4 of the proposed legislation, the contribution restrictions would take effect on January 1, 2018, and the reporting and penalty requirements would take effect on January 1, 2019. In COIB’s view, only the penalty provisions of this legislation should be delayed; the reporting requirements should take effect at the same time as the contribution restrictions.

Conclusion

In conclusion, COIB salutes and supports the Council’s efforts to implement a legislative approach in this arena, but we have a substantial array of concerns about the legislation as currently drafted. We stand ready to work constructively to help craft legislation that effectively advances the goals that we share.

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Chapter 3: Organizations Affiliated with Elected Officials

Board Rules § 3-01. Definitions.

Board Rules § 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.

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

Board Rules § 3-04. Annual Reporting by an Organization Affiliated with an Elected Official.

Board Rules § 3-05. Record Retention.

Board Rules § 3-01. Definitions.

(1) This chapter incorporates the definitions appearing in Administrative Code § 3-901.

Commentary: This chapter applies and implements Administrative Code §§ 3-901 to 3-907, so this proposed subdivision would incorporate the definitions used in those sections of the Administrative Code to apply equally to the regulations implementing those sections of the Administrative Code.

(2) *In-kind donation.* The term “in-kind donation” to an organization affiliated with an elected official in this Chapter and in Administrative Code §§ 3-901 to 3-907 means: (a) 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 (b) the payment by any non-governmental source for the personal services of another person that is rendered to the organization affiliated with an elected official without charge to the organization. “In-kind donation” does not include personal services provided without compensation by

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individuals volunteering their time on behalf of the organization on matters outside of their professional expertise.

Commentary: *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.” See Administrative Code § 3-901. “In-kind donation” is not defined in Local Law 181, even though it is included in the broader definition of “donation” provided in Administrative Code § 3-901. Subdivisions (a) and (b) of this definition apply the definition of “in-kind contribution” contained in Campaign Finance Board Rule § 1-02 and, in addition, recognize 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” 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 couple of points to note with this exclusion. First, this exclusion applies only to uncompensated work. If the volunteer receives any compensation—whether from the organization or from anyone else—the services provided are in-kind donations. Therefore, if a company volunteer program authorizes its employees to volunteer for an organization on company time, then the volunteer work does not satisfy this exclusion and is an in-kind donation by the company. Second, the exclusion applies only to work on matters outside of the volunteer's professional expertise. In other words, the exclusion does 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 provide a rigorous calculation of whether an organization's expenditures on elected official communications—which are often produced and disseminated through the personal services of

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professionals—exceed 10% of its total expenditures for purposes of Administrative Code §§ 3-902(a)(9) and 3-903.

(3) *Restricted organization.* The term “restricted organization” means an organization affiliated with an elected official that either:

(a) spent at least 10% of its expenditures on elected official communications in the previous calendar year; or

(b) reasonably expects to spend at least 10% of its expenditures on elected official communications in the current calendar year.

(4) *Unrestricted organization.* The term “unrestricted organization” means an organization affiliated with an elected official that did not spend in the previous calendar year, and that does not reasonably expect to spend in the current calendar year, at least 10% of its expenditures on elected official communications.

Commentary: *Subdivisions (3) and (4) 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 will 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 from Administrative Code § 3-902(a)(9), which requires 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” to certify that the organization did not do so.*

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Board Rules § 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 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.”

Commentary: *This proposed rule 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.*

Board Rules § 3-03. Factors by which the Board Shall 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 shall 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;

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- (b) whether the board of the organization is chaired by such an elected official or the official's agent;
- (c) whether board members appointed by such an elected official or the official's agent serve for terms or are appointed only upon nomination of other individuals or entities that are not agents of such elected official;
- (d) the degree of involvement or direction by such an elected official or the official's agent in such organization's policies, operations, and activities;
- (e) 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
- (f) the purpose of the organization.

Commentary: The definition of "organization affiliated with an elected official," as set forth in Administrative Code § 3-901, contains factors that the Board considers 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 replicates the factors contained in Administrative Code § 3-901 and establishes additional factors that 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) repeat the factors contained in Administrative Code § 3-901(i) and (ii). Proposed subdivision (c) expands 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. Similarly, proposed subdivision (d) expands the factor contained in Administrative

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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 the elected official. Proposed subdivisions (e) and (f) contain new factors. Pursuant to proposed subdivision (e), the Board will consider the extent to which public servants act on behalf of the entity as part of their City employment. Pursuant to proposed subdivision (f), the Board will consider the purpose of the entity.

The inclusion of an agent of an elected official to proposed subdivisions (c) and (d) reflects the consideration—already existing in proposed subdivisions (a) and (b)—that an elected official can exercise control of an organization through his or her agent. Proposed subdivision (e) reflects the consideration 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. Proposed subdivision (f) reflects the Board's longstanding principle that an organization's purpose determines its relationship to the City. 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.

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

Pursuant to Administrative Code § 3-902, all organizations affiliated with an elected official shall 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

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- (1) A restricted organization shall submit the information listed in Administrative Code §§ 3-902(a)(1) to 3-902(a)(8).

Commentary: This subdivision explains what information Administrative Code § 3-902(a) requires a restricted organization to submit as part of its annual reporting. Administrative Code § 3-902(a)(9), by its express terms, applies only to unrestricted organizations.

- (2) To comply with the reporting requirement of Administrative Code §§ 3-902(a)(6) and 3-902(a)(7), a restricted organization shall report for each donation received during the previous calendar year:

- (i) the name of any donor with business dealings with the City;
- (ii) whether the donor had business dealings with the City on the date of such donation;
- (iii) if not, whether the donor was added to the doing business database within 180 days after the receipt of such donation;
- (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

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

Commentary: *This subdivision 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 “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” and “the names of any other individuals...who made a donation with a reasonable value of \$1,000 or more to the organization during the previous calendar year.” In reading this requirement in conjunction with Administrative Code §§ 3-903(a) and 3-903(b), the Board concludes that a restricted organization must also report the return of any prohibited donations by a person with business dealings with the City—to include that person’s spouse, domestic partner, or unemancipated child as provided in Administrative Code § 3-901—the date and value of the prohibited donation, and the date and value of the refund.*

(3) Multiple donations made by the same person doing business with the City in the same calendar year are considered in the aggregate for purposes of Administrative Code §§ 3-902(a)(7), 3-903(a), and 3-903(b).

Commentary: *This proposed subdivision clarifies that, for purposes of Administrative Code §§ 3-902(a)(7), 3-903(a), and 3-903(b), a person’s donations are aggregated over the course of the calendar year. Thus, a restricted organization cannot accept donations in excess of \$400—whether in a single donation or in a series of donations throughout the calendar year—*

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from a person doing business with the City. Similarly, this subdivision would clarify that § 3-902(a)(7) requires reporting of all donations from an individual 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 subdivision must be itemized by date and value of each individual donation.

- (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 doing business database in a calendar year and makes multiple donations to the organization that in the aggregate exceed \$400 in that calendar year, the date of receipt shall be deemed to be the date that the donor’s aggregate donations for the calendar year exceeds \$400.

Commentary: *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 doing business database within 180 days of the donation. The refund must occur within 200 days of the donation. Where multiple donations in the aggregate exceed \$400, this proposed subdivision clarifies that the date for calculating when the organization must return any excess donation is the date that the donor’s aggregate donations for the calendar year exceed \$400. By way of example: a person donates \$250 on January 1 and \$200 on April 1. That person is added to the doing business database on May 1. Under the proposed subdivision, the restricted organization has 200 days from April 1—the date the donor’s aggregate donations exceed \$400—to return \$50, the amount that exceeds the \$400 limit now that the donor is listed in the doing business database.*

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- (5) To comply with Administrative Code § 3-902(a)(6), a restricted organization shall require a written submission pursuant to Administrative Code § 3-903(d) from every individual making a donation to the organization. This written submission need not be submitted to the Board but must be retained pursuant to Board Rules § 3-05.

Commentary: The Board reads Administrative Code § 3-902(a)(6) in conjunction with Administrative Code § 3-903(d), which requires restricted organizations to obtain a written submission "from every individual making a donation with a reasonable value in excess of \$400 in a single calendar year," so the restricted organization can determine whether the individual is a person with business dealings with the City. The proposed subdivision clarifies that, to comply with the requirement in Administrative Code § 3-902(a)(6) to disclose all donations, regardless of the amount, from individuals having business dealings with the City, a restricted organization must receive the written submission contemplated in Administrative Code § 3-903(d) from all donors, not just donors who are proffering donations in excess of \$400.

- (6) To comply with the reporting requirement of Administrative Code § 3-902(a)(8), a restricted organization shall submit to the Board a list of each elected official communication created or distributed, which list shall 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 shall 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.

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Commentary: *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 subdivision provides further guidance for an organization to calculate the cost of an elected official communication, including the time of its employees and the donations of goods and services by nongovernmental 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 are not calculated into the cost of an elected official communication for purposes of Administrative Code § 3-902(a)(8).*

(b) Reporting Requirements for Unrestricted Organizations

- (1) An unrestricted organization shall submit the information listed in Administrative Code §§ 3-902(a)(1) to (a)(5) and Administrative Code §§ 3-902(a)(7) to (a)(9).

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

The Board proposes that, to give Local Law 181 its intended effect, Administrative Code § 3-902(a)(6) does not apply to unrestricted organizations. Rather, Administrative Code § 3-902(a)(6) requires a restricted organization to report to the Board “the names of any people

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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.”

In proposing this rule, the Board reads this requirement in conjunction with Administrative Code § 3-903(d), which requires only restricted organizations to obtain a written submission by a donor so the restricted organization can determine whether the individual is a person with business dealings with the City. Because Administrative Code § 3-903 does not similarly require unrestricted organizations to determine which of its donors have business dealings with the City, the Board believes that the requirements of Administrative Code § 3-902(a)(6) are not intended to apply to unrestricted organizations.

The Board nevertheless believes that Administrative Code § 3-902(a)(7) applies to unrestricted organizations and requires such organizations to disclose all donations of \$1,000 or more, regardless of whether the donor has business dealings with the City. The disclosure of these donations does not require the organization to obtain a statement regarding whether a donor has business dealings with the City.

- (2) To comply with the reporting requirement of Administrative Code § 3-902(a)(7), an unrestricted organization shall 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

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has a reasonable value of \$1,000 or more, the organization shall report the date and value of every donation from that individual or entity.

Commentary: *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 subdivision 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 subdivision must be itemized by date and value of each individual donation.*

- (3) To comply with the reporting requirement of Administrative Code § 3-902(a)(8), an unrestricted organization shall submit to the Board a list of each elected official communication created or distributed, which list shall 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 shall 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.

Commentary: *This subdivision contains identical guidance to unrestricted organizations that proposed Board Rules § 3-03(a)(2) provides to restricted organizations.*

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- (4) 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.

Commentary: *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 subdivision would require the organization to provide the remaining three facts to allow the Board to determine whether the organization has appropriately certified that it is an unrestricted organization.*

(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 shall not be made public. The organization must make

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such a request in writing no later than April 1 for the previous calendar year and shall 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.

Commentary: *This proposed subdivision 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 proposed subdivision sets an April 1 deadline for reporting due on August 1 because the requesting entity is entitled to appeal the Board's determination in the Supreme Court of the State of New York pursuant to Article 78 of the Civil Practice Law, 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).*

- (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.

Commentary: *This proposed subdivision 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 after the Board's authority to take action in response to*

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similar threats to safety and security in the context of a public servant's financial disclosure report. See Administrative Code § 12-110(e)(1)(e).

Board Rules § 3-05. Record Retention.

- (a) *Records to be Kept.* An organization affiliated with an elected official shall retain all documents that enable the Board to verify the accuracy of the reporting required pursuant to Administrative Code § 3-902. Organizations shall maintain clear and accurate records sufficient to demonstrate compliance with Administrative Code §§ 3-901 to 3-907.

Commentary: *This proposed rule allows the Board to exercise its authority to enforce Local Law 181 of 2016 by implementing a record retention policy that will allow the Board to ensure 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. While the Board could require every organization affiliated with an elected official to submit all supporting documentation at the time the organization must submit its annual reporting, the Board believes that such a requirement would be unduly burdensome on both the organizations and the Board. Instead, the Board proposes a retention policy to allow the Board to verify compliance with Administrative Code §§ 3-901 to 3-907. It is modeled after New York City Campaign Finance Board Rule 4-01, which requires a candidate for office to maintain records that enable the Campaign Finance Board to verify the accuracy of disclosure statements and compliance with applicable law.*

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(b) *Retention Period.* An organization affiliated with an elected official shall 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.

Commentary: *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 proposed subdivision would apply a similar 6-year retention period to records retained pursuant to this proposed rule.*

(c) *Custodian of Records.* An organization affiliated with an elected official shall designate a custodian of the organization's records or documents that substantiate the reporting required pursuant to Administrative Code § 3-902 and shall 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.

Commentary: *This proposed subdivision requires an organization to maintain with the Board the name and contact information of its custodian of records. Because the proposed*

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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 update with the Board the name and contact information of its custodian 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.

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Chapter 3: Organizations Affiliated with Elected Officials

Board Rules § 3-01. Definitions.

Board Rules § 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.

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

Board Rules § 3-04. Annual Reporting by an Organization Affiliated with an Elected Official.

Board Rules § 3-05. Record Retention.

Board Rules § 3-01. Definitions.

- (1) This chapter incorporates the definitions appearing in Administrative Code § 3-901.
- (2) *In-kind donation.* The term “in-kind donation” to an organization affiliated with an elected official in this Chapter and in Administrative Code §§ 3-901 to 3-907 means: (a) 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 (b) the payment by any non-governmental source for the personal services of another person that is rendered to the 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.
- (3) *Restricted organization.* The term “restricted organization” means an organization affiliated with an elected official that either:
 - (a) spent at least 10% of its expenditures on elected official communications in the previous calendar year; or
 - (b) reasonably expects to spend at least 10% of its expenditures on elected official communications in the current calendar year.
- (4) *Unrestricted organization.* The term “unrestricted organization” means an organization affiliated with an elected official that did not spend in the previous calendar year, and that does not reasonably expect to spend in the current calendar year, at least 10% of its expenditures on elected official communications.

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Board Rules § 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 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.”

Board Rules § 3-03. Factors by which the Board Shall 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 shall 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 appointed by such an elected official or the official’s agent serve for terms or are appointed only upon nomination of other individuals or entities that are not agents of such elected official;
- (d) the degree of involvement or direction by such an elected official or the official’s agent in such organization’s policies, operations, and activities;
- (e) 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
- (f) the purpose of the organization.

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

Pursuant to Administrative Code § 3-902, all organizations affiliated with an elected official shall 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 shall 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 shall report for each donation received during the previous calendar year:
 - (i) the name of any donor with business dealings with the City;
 - (ii) whether the donor had business dealings with the City on the date of such donation;
 - (iii) if not, whether the donor was added to the doing business database within 180 days after the receipt of such donation;
 - (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 the same person doing business with the City in the same calendar year are considered in the aggregate for purposes of Administrative Code §§ 3-902(a)(7), 3-903(a), and 3-903(b).
- (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 doing business database in a calendar year and makes multiple donations to the organization that in

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the aggregate exceed \$400 in that calendar year, the date of receipt shall be deemed to be the date that the donor's aggregate donations for the calendar year exceeds \$400.

- (5) To comply with Administrative Code § 3-902(a)(6), a restricted organization shall require a written submission pursuant to Administrative Code § 3-903(d) from every individual making a donation to the organization. This written submission need not be submitted to the Board but must be retained pursuant to Board Rules § 3-05.
- (6) To comply with the reporting requirement of Administrative Code § 3-902(a)(8), a restricted organization shall submit to the Board a list of each elected official communication created or distributed, which list shall 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 shall 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 shall submit the information listed in Administrative Code §§ 3-902(a)(1) to (a)(5) and Administrative Code §§ 3-902(a)(7) to (a)(9).
- (2) To comply with the reporting requirement of Administrative Code § 3-902(a)(7), an unrestricted organization shall 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 shall report the date and value of every donation from that individual or entity.
- (3) To comply with the reporting requirement of Administrative Code § 3-902(a)(8), an unrestricted organization shall submit to the Board a list of each elected official communication created or distributed, which list shall 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 shall 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.
- (4) 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.

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(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 shall not be made public. The organization must make such a request in writing no later than April 1 for the previous calendar year and shall 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.

Board Rules § 3-05. Record Retention.

- (a) *Records to be Kept.* An organization affiliated with an elected official shall retain all documents that enable the Board to verify the accuracy of the reporting required pursuant to Administrative Code § 3-902. Organizations shall 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 shall 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 shall designate a custodian of the organization's records or documents that substantiate the reporting required pursuant to Administrative Code § 3-902 and shall 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.