



OFFICE OF THE BROOKLYN BOROUGH PRESIDENT

**Testimony of Brooklyn Borough President Eric L. Adams  
New York City Council Committee on Standards and Ethics  
November 21, 2016**

Thank you Chair Maisel and the members of the New York City Council Committee on Standards and Ethics for this opportunity to testify on Intro 1345, 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.

I understand, appreciate, and support the spirit by which this legislation is being introduced, though I have concerns that the bill, in its current form, will have a marked impact on the ability to leverage public-private partnerships to support legitimate City purposes.

Attempts to regulate non-profit organizations that are affiliated with City officials must seriously consider the impact that such reforms may have on the ability of those organizations to raise private support in furtherance of bona fide City purposes. The reform measures, as outlined, would create barriers that could make it impossible for private entities to charitably support City programs and initiatives. This is especially troubling in the face of budgetary constraints that may affect the ability of City officials and agencies to provide these programs and initiatives.

For example, charitable giving has catalyzed economic development through my office's "Dine in Brooklyn" initiative, which engaged more than 135 small businesses in the borough and generated thousands of dollars in local spending. It has also educated thousands of Brooklynites on issues to strengthen their financial literacy, especially important for a borough that, according to the Federal Reserve of New York, far surpasses the rest of New York City, New York State, and the entire country in serious delinquent credit card debt and mortgage delinquency.

Advisory Opinion 2003-4 of the New York City Conflicts of Interest Board (COIB) is particularly instructive on this point. It spells out the importance of private support for City initiatives, provided that appropriate steps are taken to prevent donors from even appearing to receive preferential treatment from the City. To that end, Advisory Opinion 2003-4 specifies that only certain, pre-approved non-profit organizations will be qualified to receive charitable donations on behalf of the City, and that very exacting restrictions will be in place to prevent the direct solicitation of entities or individuals that do business with the City agency or office.

Organizations that seek to be pre-approved by the COIB to receive donations in support of City initiatives must satisfy a robust seven-factor analysis. These seven factors are:

- (1) Whether there is any appearance of favoritism toward particular non-for-profit entities created by such fundraising on behalf of the City
- (2) The impact on the beneficiary organization's competitors, if any
- (3) The relationship between the mission of the beneficiary organization and City programs
- (4) The importance to the City of the organization's activities
- (5) The extent to which the fundraising is undertaken, or appears to be taken, in an 'official' capacity
- (6) The elected official's personal interest in or relations to the beneficiary organization
- (7) Whether fundraising for the organization is consistent with the public servant's official duties or appears to further only personal or political interests

This seven-factor analysis is incredibly important because it sets a high bar for which type of organizations may raise charitable support in furtherance of City initiatives. Organizations that do not meet this test are not considered to be operating for bona fide City purposes, which makes the appearance of elected officials fundraising for those organizations more suspect. As a practical matter, it is helpful to look at the Internal Revenue Code for guidance on how different types of non-profit organizations are organized to determine whether they will meet COIB's seven-part test. For example, organizations recognized as charitable under section 501(c)(3) of the Internal Revenue Code would be more likely to meet the COIB standard than organizations that are recognized under section 501(c)(4) of the Code, which operates to advocate and educate on specific policy issues and initiatives, and not provide charitable support for specific programs and initiatives.

Once an organization is determined by COIB to be operating in furtherance of City initiatives, the organization must adhere to strict guidelines on who can be solicited for charitable donations. As Advisory Opinion 2003-4 methodically explains, there is great concern that individuals or entities might seek to make donations to the City in the hopes of receiving a favorable determination on any business matter they have pending with the donee City official or agency. This is a legitimate concern and donors should not try to masquerade a *quid pro quo* arrangement under the guise of a charitable donation to the City. COIB's guidelines offer protections against this possibility by preventing a City employee or official from soliciting a donation from any individual or entity with business pending or about to be pending before that City official or agency. In this way, there is very little likelihood that an individual or entity making a charitable donation to the City would be doing so in the hopes of receiving any preferential treatment from the recipient of that donation.

Intro. 1345 seeks to upend the carefully constructed regulatory scheme crafted by the City's ethics experts, the COIB, and replace it with a set of unclearly defined and broadly worded prohibitions against fundraising from individuals or entities doing business with the City as well as regulating how City-affiliated non-profit organizations can spend their charitable dollars in support of bona fide City purposes.

As currently drafted, the bill would prohibit a City-affiliated organization that spends more than 10 percent of its expenses on any type of official communication that includes the name or

likeness of an elected official from receiving more than four-hundred dollars from any individual who is doing business with the City, and would prohibit all donations from any corporate entity or labor union. Violations of these prohibitions would result in escalating fines that begin at \$5,000 and go up to \$30,000, and include criminal misdemeanor charges.

The language as currently written is unclear and could significantly hinder work of the affiliated non-profit organizations in several ways.

- First, this legislation is overly broad in its prohibition against receiving donations from any individual or entity doing business with the City, even if the City official who is affiliated with the organization has no ability or power to determine the outcome of a donor's pending City business.
- Second, this legislation seeks to unfairly prevent non-profit organizations that are operating for the purpose of supporting City agency programs and initiatives from using the name or likeness of a City official in even a *de minimis* manner.
- Third, this legislation will have a significant impact on the ability of City-affiliated non-profit organizations to leverage public-private partnerships in furtherance of legitimate City purposes.

The prohibition on receiving no more than \$400 from any individual or entity doing business with the City is overly broad. Under our City Charter, different elected officials are entrusted with different powers and responsibilities to effectuate the administration of city government. For example, borough presidents have no authority or power to take any official actions outside of what is prescribed by the charter. As noted by COIB in its determination that my affiliated non-profit organization is pre-approved under Advisory Opinion 2003-4, those actions are limited to applications for appointments, capital funding, land use items, and procurements. My office has no ability to affect the disposition of a land use application for a location in the Bronx, nor can my office award a city contract from an agency other than my own to a favored donor. To restrict one borough president's office's ability to support their programs and initiatives because an individual or entity has business in another borough is patently unfair and overly broad.

This legislation should be amended to keep with the existing standard set out in Advisory Opinion 2003-4: only entities with business before the City official or agency should be restricted from making charitable donations to support the programs and initiatives of that official or agency's office. Furthermore, I urge the Council to consider the standard set out in federal bribery statutes and recently adjudicated by the Supreme Court in *McDonnell v. United States* as it attempts to address the real or perceived danger of a *quid pro quo* between a donor and a City official. That unanimous Court decision explained that the mere setting up of meetings, calling other public officials, or hosting an event does not constitute an official government action.

The prohibition on a City-affiliated organization from spending more than 10 percent on official communications that include the City official's name or likeness overly burdens the ability of

these organizations to operate in furtherance of official City business. While I understand there is a concern that the use of charitable funds to pay for official communications can be interpreted as nothing more than a tool of self-promotion for the City official there is a large difference between using a City official's name or likeness for a blatantly self-promotional or even quasi-political purpose, and using a name or likeness in a *de minimis* manner just to identify the source or sponsor of an event or initiative.

Elected officials need to communicate with their constituents in a manner and style that will most effectively reach those who need to hear that message. The programs and initiatives that my affiliated non-profit organization supports are forward-thinking, innovative, and incredibly important for my constituents, many of whom are the most at-risk residents in our city and often the target of unscrupulous actors looking to prey on their vulnerability. The ability to effectively communicate the importance of, for example, preventative health resources to my constituents who need these services is made more legitimate to these constituents if it comes from a clear, identifiable, and trusted source. Taking down barriers to information and engaging the populace in a constructive manner is integral to ensuring that the benefits and resources of City government are appropriately allocated to those most in need.

Furthermore, the practical impact of this provision will adversely affect City officials who do not receive budgetary allocations to otherwise communicate with their constituents directly. Each member of the Council receives a specific allocation to send mail and communications to their constituents, as do members of Congress, the State Senate, and the State Assembly. Borough presidents receive no such allocation. At a time when more than 10 percent of college students believe that Judge Judy is a member of the Supreme Court, our city residents deserve to know who their democratically elected city officials are so they can better access their government. In the absence of dedicated means of constituent communications, the only way to reach constituents is through the use of charitable funds raised to support the programs and initiatives of the office.

This legislation should be amended to allow for a *de minimis* use of a City official's name or likeness in an official communication. Creating a *de minimis* exception will not affect the ability of City officials to continue the routine and ordinary use of their name and likeness in the furtherance of their agency's work and will also curb the excessive abuses of self-promotion and quasi-political purposes that seems to be animating the Council's concerns in this legislation.

The donation restrictions imposed by this legislation will have a significant impact on the ability of City officials to leverage public-private partnerships to support City initiatives. As explained above, only non-profit organizations that operate in furtherance of legitimate and bona fide City purposes are eligible for approval by COIB. As long as there are strong protections in place to guard against *quid pro quos*, the Council should not undertake any efforts to hamper the ability to raise charitable funds on behalf of the City. Imposing a donation limit of \$400 from any entity that does business with the City, and a blanket prohibition from any corporate entity or labor union, will severely restrict the ability to charitably support City programs. Unless the shortfall of charitable donations will be compensated for with increased budgetary allocations, the Council should reconsider these donation limits and find a better balance between regulating and restricting charity.

If the Council will continue to keep the broader restriction limiting donations from individuals or entities doing business with the City instead of the existing COIB restriction prohibiting all donations from entities doing business before the City official's agency, then this legislation should be amended to raise the \$400 threshold to a higher amount. Furthermore, the total prohibition against any corporate donation should be revised because many non-profit foundations and organizations are registered as corporate entities. Under this legislation, an affiliated non-profit organization would be prohibited from receiving any donation from another non-profit or private foundation. Not only does this unintended consequence severely restrict fundraising on behalf of the City, it also sends a message to large foundations and charitable ventures that New York City simply does not want their support.

In conclusion, while I fully understand and support the spirit with which these reforms are being proposed, I have apprehensions about the real-life consequences that these reforms will have on residents who depend on the services that affiliated non-profits provide. I believe that this legislation should be amended to codify the existing protocols issued by the COIB and to further refine what types of donations and expenditures are appropriate for City-affiliated non-profit organizations in a time of transparency and integrity.

## **Addendum A: Technical Questions on Intro 1345**

*In addition to our testimony today, Brooklyn Borough President Eric L. Adams asks the following questions of a technical nature that should be clarified either in the bill or in the legislative record before the adoption of Intro.1345.*

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### As to documentation:

1. When itemizing expenditures, which is the correct reporting period: the period during which it was incurred or the period in which it was paid?
2. Do in-kind donations of time count in calculating the 10 percent threshold? Does the answer change if it is the time of the elected official's employee (as permitted by COIB rules for City affiliated charities)?
3. As to the term "otherwise exercises control": How is this defined? Actual authority? Friendship? Political alliance? Common purpose?
4. As to the term "telephone communication": Is this meant to capture a single call or are we talking about phone campaigns and robo calls?

### As to penalties:

1. Who is liable for violation penalties? The elected? The organization? The treasurer? The donors?
2. Can you be guilty of multiple offenses in a single period, subjecting you to the minimum fine of \$15,000 in the same or first filing period?
3. Why isn't there an opportunity to cure provision?

### As to reporting:

1. What is the definition of the time frame? Does this represent a calendar year and, if so, does the bill intend to give seven months for reporting at the end of a year (or, if fiscal year, just one month)?
2. If reporting is by fiscal year, does this not conflict with the earlier calendar year used for determining the 10 percent threshold (3-903)?
3. If this is by fiscal year, allowing only one month, does that mean that every time a donor is added to the doing business database after the donation, if during the period following August 1<sup>st</sup> but within the catchment period of the law, that an amended report will have to be made?

4. Were expenditures deliberately omitted from the website posting requirement of COIB?
5. On the website, will donor information include addresses (unlike CFB)? What about donors who wish to remain anonymous but are not doing business with the City and willing to so certify? (These are charities after all, and not political campaigns.)
6. With respect to a 501 (3) or (4) that the elected official “controlled” prior to the elected’s election to the covered office: Will this now be covered and will it be covered “retroactively”? (For example, will a donation made within the six months before the elected takes office have to be returned if that donor was in the City doing business registry?)