

**Testimony to the City Council Standards and Ethics Committee
on Amended Reporting and Donor Disclosure Requirements for
City-Affiliated Nonprofits**

December 3, 2018

Good morning Chair Matteo and members of the Standards and Ethics committee. My name is Alex Camarda, and I am the Senior Policy Advisor for Reinvent Albany. Reinvent Albany is a government watchdog organization which advocates for open and accountable government. Thank you for holding this important hearing today.

Reinvent Albany is troubled by the proliferation of government-affiliated nonprofits in New York State and New York City, a shadow government which we believe is less transparent and accountable than government agencies. We believe there are well over a hundred city-affiliated nonprofits, but this is only an informed estimate because there is no definition of a city-affiliated nonprofit in law nor is there a public listing of all city-affiliated nonprofits.

Many government-affiliated nonprofits in New York State have a history of ignoring the Open Meetings Law and Freedom of Information Law (FOIL), and not fully reporting their revenues or expenditures. Importantly, government-affiliated nonprofits are not typically covered by agency procurement and conflict of interest rules.

State-affiliated nonprofits were recently embroiled in a one billion dollar bid rigging scandal that resulted in the criminal convictions of top state government officials. The state-affiliated nonprofit at the center of the scandal, Ft. Schuyler Management, rigged bids that were not subject to agency procurement rules requiring comptroller review of contracts. Ft. Schuyler did not follow the Open Meetings Law or FOIL, preventing scrutiny which may have stopped the corruption before it occurred.

Problems with government-affiliated nonprofits are not unique to New York. Economic development entities across the country have been the subject of lawsuits for failing to follow Open Meetings and Freedom of Information Laws. In November, the Mayor's

appointee to the Mayor's Fund in Philadelphia was criminally charged for using the city-affiliated nonprofit's funds for personal use.¹

Reinvent Albany Recommendations on City-Affiliated Nonprofits

[Reinvent Albany provided comprehensive solutions to the 2018 and 2019 Charter Revision Commissions to identify the many city-affiliated nonprofits, and make them more accountable and transparent.](#)² These recommendations are provided below.

We think city-affiliated nonprofits should be codified in the charter. A new section of the city charter on city-affiliated profits should:

- 1. Provide an online listing of all city-affiliated nonprofits and their associated city agency;**
- 2. Create procedures for creating, dissolving and providing Council oversight of city-affiliated nonprofits.** We believe the Council should have to approve the creation of a city-affiliated nonprofit following a public hearing and a statement by the agency as to why the nonprofit is needed;
- 3. Require city-affiliated nonprofits follow the Freedom of Information Law (FOIL) and the Open Meetings Law;**
- 4. Mandate city-affiliated nonprofits follow procurement procedures of city agencies** with rare exception;
- 5. Report revenues and expenditures of city-affiliated nonprofits** to the public, City Council and City Comptroller; and
- 6. Establish clear ethics requirements for board members, staff, and fundraising:**
 - a. Limit contributions to all nonprofits affiliated with elected officials.** Under [Local Law 181 of 2016](#), donations to nonprofits affiliated with elected officials are limited to \$400, but only if the nonprofits spends 10 percent or more of their annual budget on public-facing communications featuring the elected official. The NYC Conflicts of Interest Board (COIB) has issued rules identifying factors that may indicate affiliation of nonprofits with elected officials (Title 53 Chapter

¹ Holden, Joe. "Former Philadelphia City Representative Charged With Using Mayor's Fund To Book Posh Vacations, Flights," CBS Philly. November 13, 2018. Available at: <https://philadelphia.cbslocal.com/2018/11/13/desiree-peterkin-bell-former-philadelphia-city-representative-charged-using-mayors-fund-book-vacations-flights/>

² See:

<https://reinventalbany.org/2018/05/reinvent-albany-calls-on-charter-revision-commission-to-increase-transparency-of-and-limit-donations-to-city-affiliated-nonprofits/>

3-03).³ We believe donations should be limited by donors doing business even if the public facing communications do not feature the elected official. However, we believe the limit could be higher than the \$400 doing business limit, but we do not have a specific number to recommend. We also believe donations should be restricted to the lower limit for 180 days after a donor has ceased doing business with the city and is removed from the doing business database.

- b. Limit donations by donors doing business with the city to city agencies, public authorities, public benefit corporations and local development corporations.** Local Law 181 of 2016 limits contributions to nonprofits affiliated with elected officials who spend 10 percent of their budgets on name or image of the elected official. It does not restrict donors doing business with the city from making contributions directly to government entities. A donor can give unlimited sums to an agency even while bidding on a contract or seeking a favorable determination on a matter before the agency.
- c. Publish as open data the exact amount of all donations by donors doing business with the city to nonprofits affiliated with elected officials, and to all government entities (city agencies, public authorities, public benefit corporations and local development corporations).** Donations should be made known to the public in a machine readable, tabular dataset in the city's Open Data Portal. Currently, [donations to government entities](#) and [nonprofits](#) are made available to the public in a 500-plus page PDF every six months in

³ "Affiliated" is defined in COIB Rules, Title 53, Chapter 3-03.

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

For purposes of Administrative Code § 3-901, in determining whether a person holding office as Mayor, Comptroller, Public Advocate, Borough President or member of the Council, or an agent or appointee of such a person, exercises control over a non-profit entity, the Board will consider the totality of the circumstances, including:

- (a) whether the organization was created by such an elected official or the official's agent, or by an individual who was previously employed by, or was a paid political consultant of, the elected official, and, if so, how recently such organization was created;
- (b) whether the board of the organization is chaired by such an elected official or the official's agent;
- (c) whether board members are appointed by such an elected official or the official's agent or only upon nomination of other individuals or entities that are not agents of such elected official;
- (d) whether board members serve for fixed terms or can be removed without cause by an elected official or the official's agent;
- (e) the degree of involvement or direction by such an elected official or the official's agent in such organization's policies, operations, and activities;
- (f) the degree to which public servants, acting under the authority or direction of the elected official or an agent of the elected official, perform duties on behalf of the organization as part of their official City employment; and
- (g) the purpose of the organization.

broad ranges showing the dollar amount. Local Law 181 of 2016 requires the exact dollar amount of contributions to nonprofits affiliated with elected officials, along with additional identifying information, be made public beginning in January 2019. However, Local Law 181 does not require disclosure of the exact dollar value of contributions to city agencies, public authorities, public benefit corporations, local development corporations, and city-affiliated nonprofits not affiliated with elected officials.

- d. Require “volunteers” doing major policy work or senior level appointments for the city follow city ethics laws.** The city has, in some instances, utilized people who are not on the city payroll to do policy work or assist in choosing senior officials while they are also fundraising for nonprofits affiliated with elected officials. We do not oppose per diem or unpaid volunteers serving on city boards, task forces and commissions. But they should not also be fundraising simultaneously for nonprofits affiliated with elected officials. If they do, they should follow city ethics laws in some form.

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Reinvent Albany thanks the Council for previously passing legislation to regulate nonprofits affiliated with an elected officials. Local Law 181 of 2016 requires donor disclosure of all nonprofits affiliated with elected officials and limits donations when they are spending 10 percent of their expenditures annually on elected official communications.⁴

The bill before the committee today provides additional transparency by requiring donor disclosure in a machine readable format and makes other clarifications to the law. Currently, donations to government entities and nonprofits are only made available to the public in a 500-plus page PDF every six months in broad ranges showing the dollar amount. Requiring donor disclosure in a machine readable format will enable third parties like government watchdog groups and journalists to analyze donations thereby making donor donations more visible to the public.

Reinvent Albany supports this bill as we are major supporters of open data, particularly when the release of data will assist in ensuring government integrity. We would like to see the Council further consider our recommendations on city-affiliated nonprofits enumerated above. One reform most related to this bill is to require donor disclosure in

⁴ See Local Law 181 of 2016

a machine readable format for donations to all city-affiliated nonprofits, city agencies, public benefit corporations, and public authorities. These donations are already disclosed by COIB in the 500-plus page PDF on their website. This recommendation would simply require all donations be disclosed in a machine readable format rather than just those to city-affiliated nonprofits.