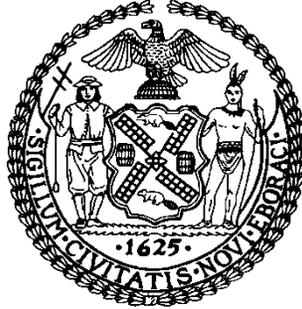


Committee on Contracts
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THE COUNCIL

COMMITTEE REPORT OF THE GOVERNMENTAL AFFAIRS DIVISION

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COMMITTEE ON CONTRACTS

Hon. Helen Rosenthal, Chair

September 25th, 2015

INT. NO. 288-A:

By Council Members Crowley, Johnson, Koo, Mealy, Rose, Vacca, Lancman, Miller, and Vallone

TITLE:

A Local Law to amend the New York city charter, in relation to conflict of interest disclosures from executives of city-funded not-for-profit organizations.

I. INTRODUCTION

On September 25, 2015, the Committee on Contracts, chaired by Council Member Helen Rosenthal, will hold a hearing on Proposed Introductory Bill Number 288-A (Int. No. 288-A), a local law to amend the New York city charter to require conflict of interest disclosures from executives of city-funded not-for-profit organizations. Those invited to testify include the Mayor's Office of Contract Services ("MOCS"), the Office of the New York City Comptroller (the "Comptroller") and other interested parties.

II. BACKGROUND

Every year, millions of New York City taxpayer dollars are awarded to help fund not-for-profit organizations that administer goods and services to New Yorkers. While the majority of organizations comply with the legal expectations of being awarded a city contract or funding, some have been known to use not-for-profits as an instrument for fraud and theft.¹ The New York City Department of Investigations ("DOI") established the Not-For-Profit Fraud Unit in 2007, which focuses on curtailing fraud in not-for-profit organizations that are funded by the city. Since its inception, the unit's investigations have resulted in nearly 50 fraud-related arrests, with many resulting in convictions.²

Generally, DOI's investigations have revealed issues such as a lack of board oversight, weak internal controls, and misuse of city funds.³ "East New York Urban Youth Corporation," "Alianza Dominicana" and "Bronx Community Pride in 2012" are examples of organizations

¹ The City of New York. Department of Investigation, "City's Corruption Watchdog Releases Year-End Stats Close Out 2013 With Significant Impacts," December 31, 2013, p. 4, available at <http://www.nyc.gov/html/doi/downloads/pdf/2013/dec%2013/42yearend12-31-2013.pdf> (last visited September 16, 2015).

² *Id.* at 4.

³ The City of New York. Department of Investigation, "DOI Closes Fiscal Year 2012 With 806 Arrests, Marking Another Record Year." July 5, 2012, available at <http://www.nyc.gov/html/doi/downloads/pdf/jul12/17FYend07-052012.pdf> (last visited September 16, 2015).

that have engaged in such conduct.⁴ In 2013, Lisa Winters (“Winters”), former Executive Director of the Bronx Community Pride Center, a not-for-profit organization that served thousands of LGBT youth,⁵ was found guilty of stealing more than \$140,000 in charitable assets.⁶ According to DOI, Winters used taxpayer dollars to make personal purchases such as a trip to Africa, dog-walking services, and credit card purchases, all of which ultimately led to the organization closing due to a financial crisis.⁷

Similarly, in December 2013, Dorothy N. Ogundu (“Ogundu”), former founder and CEO of Angeldocs, Inc., was indicted and arrested for allegedly stealing approximately \$373,000 in public funds. The indictment alleged that Ogundu stole a portion of each of the twelve New York City, New York State, and United States-issued government grants by filing fraudulent requests for reimbursement and making false statements to the agencies that administered the grants.⁸ It was alleged that Ogundu used the stolen taxpayer dollars to make improvements on a commercial property she owned to increase its property value, pay the mortgage and utilities, and purchase and ship vehicles to Nigeria.⁹ It was further alleged that she used taxpayer dollars to make various other purchases for her personal gain and benefit.¹⁰

Another example of mismanagement of city funds occurred in 2014 when DOI found that the Institute for Puerto Rican/Hispanic Elderly (“IPRHE”), a not-for-profit organization that provides services to senior citizens, had nearly one million dollars in city contracts frozen by

⁴ *Id.*

⁵ Bolcer, Julie. "Bronx Community Pride Center to Close Following Former Leaders' Fraud Arrest," June 28, 2012, available at <http://www.advocate.com/crime/2012/06/28/bronx-community-pride-center-close> (last visited September 16, 2015).

⁶ *Supra* note 1.

⁷ *Supra* note 1.

⁸ The State of New York. Office of the New York State Attorney General. “State Comptroller DiNapoli, A.G. Schneiderman & DOI Commissioner Gill Hearn Announce Arrest Of Not-For-Profit Executive In Six-Year Theft Scheme. Office of State Comptroller,” December 5, 2013, available at <https://www.osc.state.ny.us/press/releases/dec13/120513a.htm> (last visited September 16, 2015).

⁹ *Id.*

¹⁰ *Id.*

DOI after an investigation revealed that its executive director, Donna Carrado, had mismanaged their financial books.¹¹ According to DOI's investigation, from December 2009 to October 2013, IPRHE's credit card was used to pay parking fines that were not approved by IPRHE's board of directors and to purchase beauty supplies and services, alcoholic beverages, groceries and airplane tickets.¹² Additionally, DOI found that IPRHE had poor record-keeping, including illegible receipts that at times omitted dates and purchase descriptions, and at other times were dated months before or after the actual expenses.¹³

More recently, in June 2015 the Office of the Comptroller of the City of New York investigated the misconduct by the Queens Public Library's ("the library") senior management.¹⁴ The Comptroller's review of the library's books for fiscal years 2012 through 2014 revealed that the library's former chief executive officer, Thomas Galante ("Galante"), and the chief operating officer both used the library's credit cards to make purchases exceeding \$310,000 in prohibited expenses.¹⁵ The report alleges Galante made several fraudulent purchases including \$88,500 in potentially taxable food and beverages, over \$23,000 in non-business fuel expenses, and over \$5,900 in other personal purchases such as concert tickets, theme park admissions, entertainment electronics, and smoke paraphernalia.¹⁶ In addition to these purchases not being included in the library's W-2 Forms, the value of these personal purchases were not reported on the Library's

¹¹ Goldenburg, Sally. "City Suspends Close to \$1M in Funding for Troubled Nonprofit," December 16, 2014, available at <http://www.capitalnewyork.com/article/city-hall/2014/12/8558584/city-suspends-close-1m-funding-troubled-nonprofit> (last visited September 16, 2015).

¹² *Id.*

¹³ *Id.*

¹⁴ Stringer, Scott et. al. City of New York. Office of the Comptroller. "Report of the Comptroller's Investigation Into Possible Misconduct Revealed by the Audit of Queens Borough Public Library" July 7, 2015, available at http://comptroller.nyc.gov/wp-content/uploads/documents/QBPL_Investigative_Report_Final.pdf (last visited September 16, 2015).

¹⁵ *Id.* at 13.

¹⁶ *Id.*

990 tax forms.¹⁷ Collectively, these actions misled the public and donors regarding the library's executive compensation packages.¹⁸

The Comptroller calculated a total of \$101,453.66 in potentially taxable income on the CEO's credit card and \$16,088.79 on the COO's credit card, for which the library never obtained reimbursement.¹⁹ Additionally, the CEO's records of time spent performing part-time consulting services for another employer, the Elmont Union Free School District, conflicted with his library work schedule. It was found that this suggested that either the records were inaccurate or that he performed his outside consulting work while on library time. The Comptroller also found that the CEO failed to disclose other outside businesses, as well as a federal tax lien on his VENDEX form.

Overall, investigations over time have demonstrated a need for more oversight over the utilization of taxpayer dollars by executives of city-funded not-for-profit organizations. Int. No. 288-A is a legislative effort to address one component of what might have gone wrong in instances where individuals in leadership positions engaged in wrongdoing. In this case, the bill would address the disclosure of conflicts of interest that could interfere with the organization's mission and benefit the wrongdoer, all at the expense of taxpayer dollars.

III. INT. NO. 288-A

Int. No. 288-A would require all not-for-profit organizations²⁰ that receive funding from the city to pass and implement bylaws instructing all persons in leadership positions at such organizations to submit financial disclosures to the agency from which the organization receives

¹⁷ *Id.* at 20.

¹⁸ *Id.*

¹⁹ *Id.* at 6.

²⁰ Int. No. 288-A and Section 111 of the New York City Charter refers to not-for-profit organizations as "charitable institutions."

its funding. Int. No. 288-A would define “persons in leadership positions” to include any person who is a member on a governing board, the president or the chief executive officer of a not-for-profit organization. Currently, members of boards of not-for-profit organizations that receive funding from the city are already required to submit financial disclosures. Int. No. 288-A would expand the requirement to require such disclosures from executives such as CEOs and presidents, in addition to members of the boards.²¹

Int. No. 288-A would require that the financial disclosure statement include the disclosing party’s name, home address, principal occupation and business interests from which such person, or such person’s spouse or domestic partner, received income equal to or greater than ten percent (10%) of their gross income for the previous year.

Int. No. 288-A would also require that the financial disclosures include the material terms of any transaction, direct or indirect, between such person and any institution, any partnership of which such person is a member, or any corporation in which such person holds ten percent (10%) or more of outstanding common stock. Int. No. 288-A would further require the agency that receives the financial transactions to approve of the information submitted by the persons in leadership positions.

Int. No. 288-A would also make it unlawful for a person in a leadership position at a not-for-profit to share, participate or benefit, directly or indirectly, in or from any contract or transaction between the not-for-profit and any third-party unless: (1) such participation or benefit has been approved by the agency granting the city funds; and (2) the governing board of the not-for-profit approves the transaction by a two-thirds majority, excluding the person who would benefit from the transaction. Int. No. 288-A would permit a funding agency to withhold payment

²¹ See NYC Charter § 111.

or a portion of payment from not-for-profit organizations that do not pass and implement such bylaws.

Int. No. 288-A would be effective immediately upon enactment.

Proposed Int. No. 288-A

By Council Members Crowley, Johnson, Koo, Mealy, Rose, Vacca, Lancman, Miller and Vallone

A Local Law to amend the New York city charter, in relation to conflict of interest disclosures from executives of city-funded not-for-profit organizations.

Be it enacted by the Council as follows:

Section 1. Section 111 of the New York city charter is amended to read as follows:

§ 111. Self-dealing among [members of the governing boards of] persons in leadership positions at charitable institutions. a. Any charitable institution which receives any payment from the New York city charitable institutions budget shall pass and implement by-laws which will:

1. Require disclosure to the agency responsible for the administration of charitable institutions budget and approval by such agency of the material terms of any contract or transaction, direct or indirect, between an institution and any [member of its governing board] person in a leadership position at such institution, any partnership of which [he or she] such person is a member or any corporation in which [he or she] such person holds ten per cent or more of the outstanding common stock.

2. Preclude any [member of the governing board of] person in a leadership position at any institution from sharing, participating or benefiting, directly or indirectly, in the proceeds from any contract or transaction entered into between the institution and any third party unless such participation or benefit has been approved in advance by the agency and the governing board of the institution has approved the transaction by a two-thirds majority excluding the vote of [member] any such person to be benefited.

3. Require each [member of its governing board] person in a leadership position to submit to the agency each year a disclosure statement including such [member's] person's name,

home address, principal occupation and business interests from which such [member] person or such [member's] person's spouse or domestic partner received income equal to or greater than ten per cent of their aggregate gross income during the previous year.

b. For purposes of this section a person in a leadership position means a person who is a member on a governing board, the president or the chief executive officer of a charitable institution.

c. At the discretion of the agency, any payment or any portion of any payment may be withheld from any institution which has failed to pass and implement such by-laws.

§2. This local law shall take effect immediately.

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