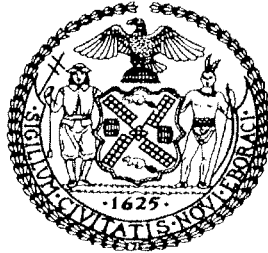


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# THE COUNCIL

**BRIEFING PAPER OF THE  
INFRASTRUCTURE DIVISION**  
Robert Newman, Legislative Director  
Baaba Halm, Deputy Director

## COMMITTEE ON ECONOMIC DEVELOPMENT

Hon. Karen Koslowitz, Chair

**October 30, 2013**

**Proposed Int. No. 1166-A:** By: Council Member Koslowitz, Chin, Comrie, James, Koo and Rose.

**Title:** To amend the New York city charter, the administrative code of the city of New York, and section 13 of local law number 61 for the year 1991, in relation to reporting by certain entities under contract with the department of small business services.

**Charter:** Amends paragraph b and b-1 of subdivision 1 of section 1301 of the New York City Charter

**Administrative Code:** Amends title 22 by adding a new chapter 8.

**Local Law:** Amends section 13 of Local Law Number 61 of 1991.

## INTRODUCTION

The Committee on Economic Development, chaired by Council Member Karen Koslowitz, held an oversight hearing on October 17, 2013 where testimony was received and considered concerning Int. No. 1166, a Local Law to amend the New York City Charter, in relation to certain entities under contract with the Department of Small Business Services (SBS). The Committee, following this hearing and after due deliberation, has amended the legislation and now has Proposed Int. No. 1166-A before it for disposition.

## BACKGROUND

The New York City Economic Development Corporation is a not-for-profit corporation<sup>1</sup>, serving the public objective<sup>2</sup> of facilitating and administering certain economic development operations of the City of New York.

EDC carries out its economic development responsibilities through the development and financing of commercial, industrial, cultural and residential projects designed to increase employment, economic activity and tax revenue within the city.<sup>3</sup> EDC accomplishes these objectives by conveying capital funding, tax benefits, city real estate and other assets to private entities to incentivize businesses to expand or relocate within the city.<sup>4</sup> Before EDC may convey capital funds or city real estate to private entities, authorization by the City Council and other public bodies must occur.<sup>5</sup>

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<sup>1</sup> Originally incorporated in June 27, 1966 as the New York City Public Development Corporation and subsequently merged with the Financial Services Corporation of New York City 1991 to carry out economic development services for the city. See: Bylaws of New York City Economic Development Corporation (effective November 1, 2012) and Audit Report of the Financial and Operating Practices of the New York City Economic Development Corporation and Compliance with its Master and Maritime Contracts, July 1, 2005 – June 30, 2008, FN09-104A, April 27, 2010.

<sup>2</sup> See generally, Not-for-Profit Corporation Law, Section 102(5).

<sup>3</sup> New York City Economic Development Corporation, Annual Investments Project Report, 2011.

<sup>4</sup> Economic Development Corporation, website, <http://www.nyc.gov/edc>.

<sup>5</sup> New York City Charter Section 254 requires adoption of the capital and expense budget by the City Council and Charter Section 197-c and d, referring to the role of the various public bodies, including the Council, city planning

Over the last two decades, EDC has initiated more than 600 economic development projects conferring tax benefits<sup>6</sup> and interests in city-owned land.<sup>7</sup> In fiscal year 2012, EDC provided private businesses more than \$66 million in tax benefits, and conveyed more than \$28 million in city-owned land.<sup>8</sup>

EDC operates pursuant to contracts with the SBS under which EDC is empowered to sell or lease city-owned land<sup>9</sup> and use tax benefits to incentivize economic development projects.<sup>10</sup> There are two annually renewed contracts<sup>11</sup> through which EDC operates: the Master Contract and the Maritime Contract.<sup>12</sup> Among the terms of the Master contract are requirements that EDC (1) devise and oversee projects for commercial and industrial development; (2) stabilize and improve industrial areas within the city; and (3) manage and maintain city-owned properties.<sup>13</sup> The Maritime contract requires EDC to manage and promote the operations of the city's maritime business and waterfront properties which include promoting the city as a center of freight transport, marketing and managing maritime related properties and assets, and the

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commission, borough president, borough board and the community board related to the uniform land use review procedure (ULURP).

<sup>6</sup> The tax benefits conferred by EDC are those authorized by the New York City Industrial Development Authority (NYCIDA), a state entity authorized to grant tax benefits, and include tax-exempt bonds, sales tax waivers, mortgage reporting tax waivers, real property tax exemptions and Payments-In-Lieu-Of-Taxes (PILOTS) – See General Municipal Law, Sections 850-888 and Section 917\*2.

<sup>7</sup> Economic Development Corporation, website, <http://www.nyc.gov/edc>.

<sup>8</sup> New York City Economic Development Corporation, Annual Investment Projects Report Pursuant to Local Law 62 – FY 2012, January 31, 2013, [http://www.nycedc.com/sites/default/files/filemanager/About\\_NYCEDC/Financial\\_and\\_Public\\_Documents/Landing\\_page/LL62/LL62\\_Volume\\_\\_1\\_FY2012\\_horiz.pdf](http://www.nycedc.com/sites/default/files/filemanager/About_NYCEDC/Financial_and_Public_Documents/Landing_page/LL62/LL62_Volume__1_FY2012_horiz.pdf).

<sup>9</sup> This land is often sold to EDC by the City pursuant to Section 384 of the New York City Charter.

<sup>10</sup> Master Contract, City of New York

<sup>11</sup> New York City Comptroller, April 27, 2010, Audit Report of the Financial and Operating Practices of the New York City Economic Development Corporation and Compliance with Its Master and Maritime Contracts, FN09-104A, July 1, 2005 –June 30, 2008.

<sup>12</sup> Economic Development Corporation, website, <http://www.nyc.gov/html/edc/>.

<sup>13</sup> Amended and Restated Contract between the City of New York and New York City Economic Development Corporation, Relating to New York City Economic Development Corporation's performing certain economic development services for The City of New York, dated as of June 30, 2010 – see also New York City Comptroller, April 27, 2010, Audit Report of the Financial and Operating Practices of the New York City Economic Development Corporation and Compliance with Its Master and Maritime Contracts, FN09-104A, July 1, 2005 –June 30, 2008.

negotiation of agreements for permits, franchises and concessions related to maritime commercial opportunities.<sup>14</sup>

### EDC'S Corporate Restructuring

Until November 2012, EDC's not-for-profit corporate status was distinguished by an additional corporate classification as a "special"<sup>15</sup> not-for-profit corporation known as a Local Development Corporation (LDC).<sup>16</sup> LDC's are not-for-profit corporations endowed with 'special' powers not available to other not-for-profit corporations. One such power is the ability of an LDC to purchase or lease city-owned real property without first obtaining an appraisal or conducting public bidding for such city-owned property.<sup>17</sup> Concurrent with unique powers, LDC's have a unique restriction under state law which prohibits them from engaging in activity to "influence legislation by propaganda or otherwise".<sup>18</sup> Instead, LDC's are only permitted to communicate with federal, state and local government representatives concerning development projects where the LDC can only disseminate information, furnish advice and technical assistance.<sup>19</sup>

### Lobbying Activity

Attempts to influence legislation by propaganda or otherwise are generally regarded as lobbying.<sup>20</sup> The New York City Administrative Code recognizes the act of lobbying to include

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<sup>14</sup> Amended and Restated Maritime Contract between the City of New York and New York City Economic Development Corporation, Dated as of June 30, 2010 – see also New York City Comptroller, April 27, 2010, Audit Report of the Financial and Operating Practices of the New York City Economic Development Corporation and Compliance with Its Master and Maritime Contracts, FN09-104A, July 1, 2005 – June 30, 2008.

<sup>15</sup> A local development corporation is a "special" not-for-profit corporation organized under Section 1411 of the Not for Profit Corporation Laws of New York State.

<sup>16</sup> Not-For-Profit Corporation Law, Section 1411.

<sup>17</sup> Not-For-Profit Corporation Law, 1411(d).

<sup>18</sup> Ibid.

<sup>19</sup> Not-For-Profit Corporation Law, Section 1411(c).

<sup>20</sup> See Administrative Code of the City of New York, Section 3-211; State Lobbying Act, Section 1-c(a)(c) and the Internal Revenue Service, "Attempting to Influence Legislation", Part 7, Rulings and Agreements, 7.25.3.17.1., last accessed October 23, 2012: [http://www.irs.gov/irm/part7/irm\\_07-025-003-cont03.html#d0e5223](http://www.irs.gov/irm/part7/irm_07-025-003-cont03.html#d0e5223). In New York

any attempt to influence the passage or defeat of any local law or resolution by the City Council and any determination of a board or commission.<sup>21</sup> This includes budget negotiations and the city's land review process.

The City's lobbying law requires all lobbyists incurring or receiving more than \$2,000 a year in compensation or expenses to file publicly accessible financial and activity reports.<sup>22</sup> These reports include contact information for the lobbyist and client (and sometimes spouses), descriptions about matters upon which lobbying activity is conducted and which city official or agency was lobbied.<sup>23</sup>

The disclosure of lobbying activities is intended to strengthen the transparency and integrity of governmental action and identify those who attempt to influence such action. Currently, certain actors, such as employees of city agencies and EDC, do not register as lobbyist or report on lobbying related activity. Recent events demonstrate the need for more information about certain lobbying efforts taken in furtherance of City economic development projects led by EDC.

## **ATTORNEY GENERAL'S INVESTIGATION**

On July 3, 2012, the New York State Attorney General announced the findings of a three-year investigation that found EDC, along with two other LDCs, lobbied the New York City Council contrary to the state law's prohibition on LDC lobbying [See Attachment A].<sup>24</sup>

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State, lobbying activity with municipalities having a population of more than 50,000 is subject to the reporting requirements of the state's Lobbying Act.

<sup>21</sup> New York City Administrative Code, Section 3-211(c).

<sup>22</sup> New York City Administrative Code, Section 3-213.

<sup>23</sup> New York City Administrative Code, Section 3-213.

<sup>24</sup> Assurance of Discontinuance, 12-068, Investigation of New York City Economic Development Corporation et al, executed July 12, 2012 and Press Release, Office of the Attorney General of the State of New York, July 2, 2012, "*A.G. Schneiderman Ends Illegal Lobbying Of NYC Officials By Three Local Development Corporations*" (on file with the Committee).

The investigation began from complaints that EDC, in connection with a large-scale commercial and residential development project in the Willets Point section of Queens (Willets Point Project), engaged in lobbying activities with an LDC called Flushing-Willets Point-Corona Local Development Corporation (FWPC).<sup>25</sup> The investigation also reviewed EDC actions with a development project for the Coney Island area in Brooklyn which involved the Coney Island Development Corporation (CIDC).<sup>26</sup>

The Attorney General characterized EDC's activities related to these projects as flouting "the law by lobbying elected officials, both directly and through third parties, to win approval of their favored projects" as EDC "played a behind-the-scenes role in the lobbying activities of the other LDCs."<sup>27</sup> EDC acknowledged the AG findings and agreed to a settlement of the investigation. EDC, along with the other LDCs agreed to the following terms:

- Each LDC will not "attempt to influence legislation by propaganda or otherwise, as prohibited in section 1411(c) of the Not-for-Profit Corporation Law.
- Each LDC will not direct or encourage any other entity or person to influence legislation by propaganda or otherwise including employing lobbyists or government relations firms, coach, draft or develop testimony of third parties before the Council, draft letters, op-eds, speeches or other communications to be signed or delivered to third parties, provide transportation to Council hearings or organize petition drives or canvass for signatures.

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<sup>25</sup> Press Release, Office of the Attorney General of the State of New York, July 2, 2012, "*A.G. Schneiderman Ends Illegal Lobbying Of NYC Officials By Three Local Development Corporations*".

<sup>26</sup> Id.

<sup>27</sup> Id.

- Each LDC will develop training materials to educate directors, officers and employees how to comply with section 1411 of the Not-for-Profit Corporation Law.

EDC, separate and apart from the other LDCs, also agreed that:

- Neither EDC nor its successor organization will direct or encourage any LDC to violate section 1411 of the Not-for-Profit Corporation Law.
- EDC and affiliated entities will register with the Office of Attorney General's Charities Bureau.
- EDC and affiliated entities will disclose via website the identity of any LDC to which it provides funding, together with the dates and amount of such funding and the name and title/position of any director, officer or employee who simultaneously holds a position with an LDC and the identity of such LDC.

## **EDC'S RESTRUCTURING AND MERGER**

In response to the AG's investigation, EDC restructured its corporate form, relinquishing its LDC status and created a second entity, the New York City Land Development Corporation (NYCLDC), a not-for-profit Local Development Corporation.<sup>28</sup> The NYCLDC was created to purchase and lease city-owned real property for the benefit of EDC, since EDC (no longer an LDC) is not authorized to make such transactions. This corporate arrangement allows EDC to continue its economic development activities and engage in lobbying activities. In discussing the reasons for this restructuring, EDC's former president said:

*"It is our belief that in order to be most effective in accomplishing our mission we need to be able to have open conversations with the public and elected officials about these projects, conversations in which we are free to advocate in furtherance of these projects, even when legislation is involved. Accordingly, we believe that, while NYCEDC should remain a not-for-profit corporation, it would*

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<sup>28</sup> New York Department of State Website listing for NYCLDC.

*be most effective for us to be organized as a not-for-profit corporation that is not also a local development corporation.”*<sup>29</sup>

EDC’s new corporate status<sup>30</sup> creates peculiar dynamics for good government and transparency. One such dynamic allows EDC to support city-funded projects and transactions<sup>31</sup> which benefit private parties by lobbying the City Council<sup>32</sup> for the approval of such projects<sup>33</sup> and transactions by utilizing lobbying activities,<sup>34</sup> including the use of third parties,<sup>35</sup> to persuade public opinion or influence legislation. The other peculiar dynamic is EDC’s status as a not-for-profit entity in contract with SBS. The majority of EDC’s board is appointed by the Mayor<sup>36</sup> and coupled with its contractual authority to convey city property and funds presents questions as to whether EDC’s new legal status<sup>37</sup> would subject it to the City’s existing lobbying law<sup>38</sup> which requires the disclosure of lobbying, lobbying activities and certain expenditures related to such activities. EDC’s newfound freedom to conduct lobbying activities before the City Council and other public bodies, in conjunction with the uncertainty that the entity would be subject to the disclosure and reporting requirements of the City’s lobbying law requires a legislative response aimed to provide transparency, integrity and accountability.

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<sup>29</sup> EDC Letter from Chairman Ganzi and President Pinsky to Members and Directors, July 3, 2012.

<sup>30</sup> As a type c, not-for-profit corporation, without the distinction of a “special” LDC with a prohibition of engaging in lobbying activities.

<sup>31</sup> City funded by the conveyance of city-owned real property or the abatement or exemption of city tax revenue

<sup>32</sup> Or other public bodies, or influencing public opinion at public hearings and otherwise.

<sup>33</sup> Land dispositions requiring ULURP review and approval are conducted by the City Council.

<sup>34</sup> Concealing the origin of correspondence addressed to Council Members, ghost-writing op-eds, preparing testimony for community members appearing before the Council, coordinating with other economic development entities organized for the benefit of EDC projects – See page 4 of the Assurance of Discontinuance, 12-068, Investigation of New York City Economic Development Corporation et al, executed July 12, 2012.

<sup>35</sup> Other not-for-profit LDC’s facilitating economic development initiatives, such as the Flushing-Willets Point-Corona Local Development Corporation and the Coney Island Development Corporation were found by the AG to have joined EDC to “foster” misleading appearances before the Council.

<sup>36</sup> Economic Development Corporation, website, <http://www.nyc.gov/edc>

<sup>37</sup> Administrative Code of the City of New York, Section 3-211(a) “The term “lobbyist” shall not include any officer or employee of the city of New York, the State of New York, any political subdivision of the State, or any **public corporation, agency** or commission (emphasis added).

<sup>38</sup> Administrative Code of the City of New York, Regulation of Lobbying, Section 3-211 et. seq.



Proposed Int. No. 1166-A is intended to address the issues presented by EDC's restructuring and opportunity to engage in lobbying activity without disclosure.

#### **PROPOSED INTRODUCTION NO. 1166-A**

Proposed Int. No. 1166-A makes certain technical changes to the City Charter and section 13 of Local Law number 61 of 1991 to reflect the restructuring of EDC (the principal entity utilized by the City for economic development initiatives). The bill also amends the Administrative Code to require that certain entities under contract with the Department of Small Business Services (to provide and administer economic development benefits on behalf of the City, currently EDC) submit to the Council quarterly reports detailing certain lobbying activities, expenditures and expenses in connection with such contracted services.

#### **Changes to Int. 1166**

Bill Title. Technical changes were made to note the changes made to the Administrative Code as well as the Charter and section 13 of local law 61 of 1991

Bill section one includes technical changes. The lobbying reporting provisions were moved to another bill section.

No changes were made to bill section two.

Bill section three now amends the Administrative Code of the City of New York, by adding a new chapter eight. New chapter 8 of title 22 would be titled "Reporting by Entities Contracted to Provide Economic Development Benefits on Behalf of the City".

Section 22-801 of the new chapter would include definitions for the terms "Lobbying", "Lobbying activities" and "Person or organization".

Section 22-802, of the new chapter 8 is titled “Reporting of lobbying activities” and would contain four subdivisions, a, b, c and d.

Subdivision a of section 22-802 identifies the entity subject to the requirement of submitting quarterly reports on lobbying activity to the Council and requires the entity to identify the retention or designation of a person or organization to engage in lobbying or lobbying activities. The bill no longer requires the identification of those employed by the entity who engages in such activity.

Paragraph 2 of subdivision a would require the contracted entity to report on the making or incurring of an expenditure to, or on behalf of, a person or organization to engage in lobbying before the Council and other noted public bodies.

Subdivision b of new section 22-802 would exclude from reporting any officer or employee of the city of New York or of the contracted entity. Subdivision b also excludes from the reporting requirement “any person or organization retained or designated by the contracted entity to provide advice and analysis directly applying any urban planning, urban design, engineering, scientific or similar technical discipline, or any legal, accounting or other similar professional discipline”.

Subdivision c new section 22-802 sets forth the details which must be included in these quarterly reports including the name, address and telephone number of each person/organization retained or designated; a description of the subject lobbied on; the person and body lobbied and the dates that this activity occurred; and the compensation paid for such lobbying. Technical changes were made on the list of details to be provided for the purposes of clarity.

Subdivision d of new section 22-802 was revised to reflect that the first report must include activity from November 1, 2012 through November 1, 2013, be submitted by December

31, 2013 and simultaneously made available in a commonly available non-proprietary database format on the website of the contracted entity or the city's website. The bill also provides that all reports must be filed within 30 days after the end of each quarter. The original bill captured November 1, 2012 through September 30, 2013 for the first required report which was due October 31, 2013.

Bill section four now amends section 13 of local law number 61 for the year 1991, updating the reference to the entity with which SBS contracts (EDC) and the text remains unchanged.

Bill section five provides the bill's enactment clause and the text remains unchanged.

#### **UPDATE**

The Committee voted out this matter with the vote count 9 in favor, none opposed.

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Proposed Int. No. 1166-A

By Council Members Koslowitz, Chin, Comrie, James, Koo and Rose

A LOCAL LAW

To amend the New York city charter, the administrative code of the city of New York and section 13 of local law number 61 for the year 1991, in relation to reporting by certain entities under contract with the department of small business services.

Be it enacted by the Council as follows:

Paragraph b of subdivision 1 of section 1301 of the New York city charter, as amended by local law number 37 for the year 2012, is amended to read as follows:

b. to serve as liaison for the city with local development corporations, other not-for-profit corporations and all other entities involved in economic development within the city. In furtherance of this function, the department shall include in any contract with a local development corporation or not-for-profit corporation of which a majority of its members are appointed by the mayor under which such [local development corporation]contracted entity is engaged in providing or administering economic development benefits on behalf of the city and expending city capital appropriations in connection therewith, a requirement that such [local development corporation]contracted entity submit to the mayor, the council, the city comptroller, the public advocate and the borough presidents by January 31 of each year, a report for the prior fiscal year in the form prescribed hereunder with regard to projected and actual jobs created and retained in connection with any project undertaken by such [local development corporation]contracted entity for the purpose of the creation or retention of jobs, whether or not such project involves the expenditure of city capital appropriations, if in connection with such project assistance to a business entity was provided by such [local development corporation]contracted entity in the form of a loan, grant or tax benefit in excess of one hundred

fifty thousand dollars, or a sale or lease of city-owned land where the project is estimated to retain or create not less than twenty-five jobs. The report shall be for the period commencing on the date that the project agreement and any other documents applicable to such project have been executed through the final year that such entity receives assistance for such project, except that, as to projects consisting of a lease or sale of city-owned land, each annual report shall include only (1) a list of each existing lease, regardless of when such lease commenced, and a list of each sale of city-owned land that closed on or after January 1, 2005, and (2) for such leases or sales, any terms or restrictions on the use of the property, including the rent received for each leased property in the prior fiscal year, and for sales, the price for which the property was sold and any terms or restrictions on the resale of the property, and need not include any other information with regard to such lease or sale of a type required for reports for other projects hereunder. Information on any such lease shall be included until the lease terminates and information on sales of city-owned land shall be included for fifteen years following closing. The report, other than for leases or sales of city-owned land, shall contain, for the prior fiscal year, the following information with respect thereto: (i) the project's name; (ii) its location; (iii) the time span over which the project is to receive any such assistance; (iv) the type of such assistance provided, including the name of the program or programs through which assistance is provided; (v) for projects that involve a maximum amount of assistance, a statement of the maximum amount of assistance available to those projects over the duration of the project agreement, and for those projects that do not have a maximum amount, the current estimated amount of assistance over the duration of the project agreement, the amount of tax exempt bonds issued during the current reporting year and the range of potential cost of those bonds; project assistance to be reported shall include, but shall not be limited to, PILOT savings, which shall be defined for the purposes

of this paragraph as the difference between the PILOT payments made and the property tax that would have been paid in the absence of a PILOT agreement, the amount of mortgage recording fees waived, related property tax abatements, sales tax abatements, the dollar value of energy benefits and an estimated range of costs to the city of foregone income tax revenues due to the issuance of tax exempt bonds; (vi) the total number of employees at all sites covered by the project at the time of the project agreement including the number of permanent full-time jobs, the number of permanent part-time jobs, the number of full-time equivalents, and the number of contract employee where contract employees may be included for the purpose of determining compliance with job creation or retention requirements; (vii) the number of jobs that the entity receiving benefits is contractually obligated to retain and create over the life of the project, except that such information shall be reported on an annual basis for project agreements containing annual job retention or creation requirements, and, for each reporting year, the base employment level the entity receiving benefits agrees to retain over the life of the project agreement, any job creation scheduled to take place as a result of the project, and where applicable, any job creation targets for the current reporting year; (viii) the estimated amount, for that year and cumulatively to date, of retained or additional tax revenue derived from the project, excluding real property tax revenue other than revenue generated by property tax improvements; (ix) the amount of assistance received during the year covered by the report, the amount of assistance received since the beginning of the project period, and the present value of the future assistance estimated to be given for the duration of the project period; (x) for the current reporting year, the total actual number of employees at all sites covered by the project, including the number of permanent full-time jobs, the number of permanent part-time jobs, the number of contract jobs, and, for entities receiving benefits that employ two hundred fifty or more persons,

the percentage of total employees within the "exempt" and "non-exempt" categories, respectively, as those terms are defined under the United States fair labor standards act, and for employees within the "non-exempt" category, the percentage of employees earning up to twenty-five thousand dollars per year, the percentage of employees earning more than twenty-five thousand per year up to forty-thousand dollars per year and the percentage of employees earning more than forty thousand dollars per year up to fifty thousand dollars per year; (xi) whether the employer offers health benefits to all full-time employees and to all part-time employees; (xii) for the current reporting year, for employees at each site covered by the project in the categories of industrial jobs, restaurant jobs, retail jobs, and other jobs, including all permanent and temporary full-time employees, permanent and temporary part-time employees, and contract employees, the number and percentage of employees earning less than a living wage, as that term is defined in section 134 of title 6 of the administrative code of the city of [new york] New York. Reports with regard to projects for which assistance was received prior to July 1, 2012 need only contain such information required by this paragraph as is available to the city, can be reasonably derived from available sources, and can be reasonably obtained from the business entity to which assistance was provided; (xiii) for the current reporting year, with respect to the entity or entities receiving assistance and their affiliates, the number and percentage of employees at all sites covered by the project agreement who reside in the city of New York. For the purposes of this subparagraph, "affiliate" shall mean (i) a business entity in which more than fifty percent is owned by, or is subject to a power or right of control of, or is managed by, an entity which is a party to an active project agreement, or (ii) a business entity that owns more than fifty percent of an entity that is party to an active project agreement or that exercises a power or right of control of such entity; (xiv) a projection of the retained or additional tax revenue to be derived from the



project for the remainder of the project period; (xv) a list of all commercial expansion program benefits, industrial and commercial incentive program benefits received through the project agreement and relocation and employment assistance program benefits received and the estimated total value of each for the current reporting year; (xvi) a statement of compliance indicating whether, during the current reporting year, the [local development corporation]contracted entity has reduced, cancelled or recaptured benefits for any company, and, if so, the total amount of the reduction, cancellation or recapture, and any penalty assessed and the reasons therefore; (xvii) for business entities for which project assistance was provided by such [local development corporation]contracted entity in the form of a loan, grant or tax benefit of one hundred fifty thousand dollars or less, the data should be included in such report in the aggregate using the format required for all other loans, grants or tax benefits; and (xviii) an indication of the sources of all data relating to numbers of jobs. For projects in existence prior to the effective date of this local law, information that business entities were not required to report to such [local development corporation]contracted entity at the time that the project agreement and any other documents applicable to such project were executed need not be contained in the report.

The report shall be submitted by the statutory due date and shall bear the actual date that the report was submitted. Such report shall include a statement explaining any delay in its submission past the statutory due date. Upon its submission, the report shall simultaneously be made available in electronic form on the website of the [local development corporation]contracted entity or, if no such website is maintained, on the website of the city of New York, provided that reports submitted in 2012 or after shall simultaneously be made available in a commonly available non-proprietary database format on the website of the [local

development corporation]contracted entity or, if no such website is maintained, on the website of the city of New York, except that any terms and restrictions on the use or resale of city-owned land need not be included in such non-proprietary database format, and provided further that with respect to the report submitted in 2012 in the commonly available non-proprietary database format, the [local development corporation]contracted entity shall include, in such format, the data included in the reports for the period from July 1, 2005 to June 30, 2010. Reports with regard to projects for which assistance was rendered prior to July 1, 2005, need only contain such information required by this subdivision as is available to the [local development corporation]contracted entity, can be reasonably derived from available sources, and can be reasonably obtained from the business entity to which assistance was provided.

§ 2. Paragraph b-1 of subdivision 1 of section 1301 of the New York city charter, as added by local law number 48 for the year 2005, is amended to read as follows:

b-1. By March 1, 2007, and by March 1 every two years thereafter, the [local development corporation]entity under contract with the department to provide or administer economic development benefits on behalf of the city, in consultation with the speaker of the city council and other persons selected jointly by the mayor and the speaker of the city council, who have extensive experience and knowledge in the fields of finance, economics, and public policy analysis, shall evaluate the methodology employed for making the determinations required for this report and generate recommendations, where appropriate, on the methodology by which projects receiving economic development subsidies are evaluated. The department shall present to the [major]mayor and the speaker no later than October 1 of every year in which such evaluation is required, a report containing such recommendations as are presented as a result of this review.

§ 3. Title 22 of the administrative code of the city of New York is amended by adding a new chapter 8 to read as follows:

CHAPTER 8

REPORTING BY ENTITIES CONTRACTED TO PROVIDE ECONOMIC DEVELOPMENT BENEFITS ON BEHALF OF THE CITY

§ 22-801 Definitions.

“Lobbying” or “Lobbying activities” shall mean “lobbying” or “lobbying activities” as defined in section 3-211 of this code.

“Person or organization” shall be construed not to include the not-for-profit corporation under contract with the city to provide or administer economic development benefits on behalf of the city.

§ 22-802 Reporting of lobbying activities.

a. A not-for-profit corporation of which a majority of its members are appointed by the mayor that is under contract with the city to provide or administer economic development benefits on behalf of the city shall be required to submit to the council quarterly reports identifying:

1. the contracted entity's retention or designation of a person or organization to engage in lobbying or lobbying activities before the council or any member thereof, the city planning commission, a borough president, a borough board or a community board and

2. the contracted entity's making or incurring an expenditure to, or on behalf of, a person or organization to engage in lobbying or lobbying activities before the council or any member thereof, the city planning commission, a borough president, a borough board or a community board.

b. Such reports need not identify:

1. any officer or employee of the city of New York or of such contracted entity and
2. any person or organization retained or designated by the contracted entity to provide advice and analysis directly applying any urban planning, urban design, engineering, scientific or similar technical discipline, or any legal, accounting, or other similar professional discipline.

c. Each report shall set forth:

1. the name, address and telephone number of each person or organization so retained or designated;
2. a description of the subject or subjects on which the person or organization lobbied, including identification of the local law, resolution, real property or other matter on which the person or organization lobbied;
3. the person, and where applicable, the body before which the person or organization lobbied and the dates on which such lobbying occurred; and
4. the compensation paid or owed by the contracted entity to a person or organization for the purpose of engaging in lobbying or lobbying activities before the council or any member thereof, the city planning commission, a borough president, a borough board or a community board and any expenses expended, received or incurred by the person or organization for the purpose of lobbying before such bodies.

d. The first such submission shall be provided no later than December 31, 2013 and shall cover the period from November 1, 2012 through November 30, 2013. All reports shall be filed thereafter within thirty days after the end of each quarter and simultaneously made available in a commonly available non-proprietary database format on the website of the contracted entity or, if no such website is maintained, on the website of the city of New York.

§ 4. Section 13 of local law number 61 for the year 1991 is amended to read as follows:

§ 13. Notwithstanding any provision of the charter to the contrary, the commissioner of small business services shall, no later than sixty days prior to entering into any contract with a local development corporation or not-for-profit corporation of which the majority of its members are appointed by the mayor for the provision of services to assist the department in performing any of the functions set forth in subdivision 2 of section 1301 of the charter where such functions were previously performed by the former department of ports and trade, provide the council with a copy of such proposed contract, together with a statement explaining the reasons which justify contracting for such purposes. The commissioner shall be authorized to enter into such contract unless, within such sixty day period, the council enacts a local law prohibiting the commissioner from contracting for such purposes.

§ 5. This local law shall take effect immediately.

10/28/2013 5:39 PM  
TBD

**ATTACHMENT A**

OFFICE OF THE ATTORNEY GENERAL  
OF THE STATE OF NEW YORK

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**In the Matter of the**

**Investigation by Eric T. Schneiderman, Attorney  
General of the State of New York, of**

**New York City Economic Development Corporation,**

**Flushing-Willets Point-Corona Local Development  
Corporation,**

**and**

**Coney Island Development Corporation,**

----- x

**ASSURANCE NO.**

**12-068**

**ASSURANCE OF DISCONTINUANCE**

WHEREAS, the Office of the Attorney General of the State of New York (“OAG”), Eric T. Schneiderman, has conducted an investigation pursuant to the Not-for-Profit Corporations Law (“N-PCL”) and Section 63(12) of the Executive Law into complaints that the New York City Economic Development Corporation (“EDC”) had violated the N-PCL in connection with development projects for the Flushing-Willets Point-Corona area of Queens (the “Willets Point Project”) and the Coney Island area of Brooklyn (“the Coney Island Project”) and that the Flushing-Willets Point-Corona Local Development Corporation (“FWPC”) and the Coney Island Development Corporation (“CIDC”) had violated the N-PCL in connection with the Willets Point Project and the Coney Island Project, respectively.

WHEREAS, Section 1411(c) of the N-PCL provides that no local development corporation “shall attempt to influence legislation by propaganda or otherwise.”

WHEREAS, OAG's investigation revealed that EDC, FWPC, and CIDC attempted to influence legislation by propaganda or otherwise by lobbying the Council of the City of New York ("City Council") in connection with rezoning and other land use applications submitted to the City Council as part of the City of New York's Uniform Land Use Review Procedure ("ULURP").

WHEREAS, after OAG commenced its investigation, the City caused to be formed two new Type C not-for-profit corporations: (1) New York City Economic Growth Corporation ("EGC") and (2) New York City Land Development Corporation ("NYCLDC"). NYCLDC was incorporated pursuant to Section 1411 of the N-PCL. Subject to satisfying the statutory requirements for merger, EDC intends to merge into EGC. It is anticipated that NYCLDC will enter into a contract with EGC for the performance of administrative support services by EGC for NYCLDC. Upon the merger the name of EGC will change to New York City Economic Development Corporation.

WHEREAS, this Assurance contains OAG's Findings in connection with its investigation of EDC, FWPC and CIDC, and the relief to which OAG, EDC, EGC, NYCLDC, FWPC and CIDC (each a "party") have agreed.

WHEREAS, OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest, accepts this Assurance pursuant to Section 63(15) of the Executive Law in lieu of commencing a statutory proceeding, and hereby discontinues its investigation of EDC, FWPC and CIDC.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the parties that:



## FINDINGS

1. EDC, FWPC and CIDC are not-for-profit local development corporations organized under Section 1411 of the N-PCL (“LDCs”). EDC serves as the economic development arm of the City of New York. Section 1411 grants LDCs unique powers to receive real property from municipalities by sale or lease without appraisal or public bidding for “exclusively charitable or public purposes,” including promoting employment and attracting industry. N-PCL § 1411(a)-(d). The statute empowers LDCs “to disseminate information and furnish advice, technical assistance and liaison with federal, state and local authorities with respect” to development projects. *Id.* § 1411(c). The statute also imposes the following prohibition: “no such corporation shall attempt to influence legislation by propaganda or otherwise.” *Id.*

2. The Willets Point Project and the Coney Island Project required rezoning and other land use approvals from the City Council through ULURP. The City Council held hearings and voted on and passed resolutions concerning the rezoning and other land use applications for the Willets Point Project in the fall of 2008 and for the Coney Island Project in the summer of 2009.

3. OAG’s investigation determined that CIDC operated out of EDC’s offices in Manhattan and was staffed entirely by EDC employees and that FWPC took direction from EDC regarding some of its work in support of the Willets Point Project.

4. OAG’s investigation also determined that EDC, FWPC and CIDC conducted campaigns of direct and indirect lobbying of the City Council in connection with the Projects. For example, EDC staff directed FWPC to use its fax machine to transmit a letter drafted by EDC concerning the Willets Point Project to City Council members because, in the

words of an EDC employee, “we felt this letter coming from our fax machine would have been lobbying from EDC.” EDC, FWPC and CIDC took steps to foster the appearance of independent “grassroots” support for the Projects in the local community. Both FWPC and CIDC retained an outside government relations firm to assist in these efforts. The lobbying activities included ghost-writing op-eds, drafting letters to the City Council, and preparing testimony, all for community members who were not officers, directors or employees of EDC, FWPC or CIDC, without disclosing the participation of FWPC or CIDC in generating those communications. FWPC and CIDC also organized transportation to City Council hearings for supporters.

#### **PROSPECTIVE RELIEF**

5. Any party to this Assurance, so long as it is incorporated under Section 1411 of the N-PCL (an “LDC Entity”), agrees to confine its communications and other activities in connection with any development project known or reasonably expected to entail any application to the City Council through the ULURP process or otherwise (a “Rezoning Project”) to the limits of the N-PCL, which authorizes LDCs “to disseminate information and furnish advice, technical assistance and liaison with federal, state and local authorities. . . .” N-PCL § 1411(c). Consistent with the statutory authorization, each LDC Entity may provide information, advice and technical assistance concerning Rezoning Projects to the City Council. Each LDC Entity may advocate or otherwise urge the approval of Rezoning Projects in written or oral testimony or other communications with the City Council only if the communication is both (i) submitted in response to a written request by City Council members, and (ii) made available to all City Council members. Each LDC Entity shall not solicit or attempt to solicit such a written request from the City Council or any subdivision, member or staff thereof.

6. Each LDC Entity agrees that it will not “attempt to influence legislation by propaganda or otherwise.” N-PCL § 1411(c).

7. Each LDC Entity also agrees that it will not direct or encourage any other entity or any individual who is not a director, officer or employee of the LDC Entity itself (“Third Parties”) to attempt to influence legislation by propaganda or otherwise. Consistent with the statutory obligation, in connection with Rezoning Projects, each LDC Entity will not undertake activities including but not limited to the following prohibited activities:

- a. employ outside lobbyists and lobbying firms and government relations consultants and firms;
- b. direct or encourage Third Parties to communicate with the City Council;
- c. coach, draft or otherwise participate in the development of the testimony of Third Parties before the City Council;
- d. draft or otherwise participate in the preparation of letters, op-eds, speeches or other documents or communications to be signed or delivered by Third Parties;
- e. provide or arrange transportation to City Council hearings for Third Parties; or
- f. organize or participate in petition drives or canvassing for signatures.

8. As successor to EDC, EGC agrees that it will not direct or encourage any LDC, or any individual employed by or contracting with any LDC, to attempt to influence legislation by propaganda or otherwise, including without limitation by engaging in any of the prohibited activities set forth in paragraph 7 of this Assurance. Any officer or employee of EGC who is also an officer or employee of NYCLDC or any other LDC whose activities relate to Rezoning Projects will not attempt to influence legislation by propaganda or otherwise and will

not direct or encourage any individual or entity to attempt to influence legislation by propaganda or otherwise.

9. Each of EGC, NYCLDC, CIDC and FWPC agrees to develop training materials, in form and substance acceptable to OAG, to educate its directors, officers and employees on the obligation to comply with Section 1411 of the N-PCL as provided below. Within sixty (60) days of execution of this Assurance, EGC will submit draft training materials to be used by EGC, CIDC and NYCLDC to OAG for review and approval. Within sixty (60) days of the execution of this Assurance, FWPC will submit draft training materials to be used by FWPC to OAG for review and approval. EGC will provide training to all directors, officers and employees of NYCLDC and CIDC and to all officers and employees of EGC who are also officers or employees of NYCLDC by the later of sixty (60) days following OAG's approval of EGC's draft training materials and October 1, 2012 and to all persons who become directors, officers or employees of NYCLDC and CIDC after such training is given, and to all persons who become officers and employees of EGC who serve as officers or employees of NYCLDC after such training is given upon election, appointment or hiring, as the case may be. FWPC will provide training to all directors, officers and employees by the later of sixty (60) days following OAG's approval of FWPC's draft training materials and October 1, 2012 to all persons who become directors, officers and employees of FWPC upon election, appointment or hiring, as the case may be. NYCLDC, CIDC and FWPC will have a continuing obligation to provide training to new directors, officers and employees and will maintain records documenting compliance with these training requirements, and EGC will have a continuing obligation to provide training to new officers and employees of EGC who will also be serving as officers or employees of NYCLDC and to maintain records documenting compliance with these requirements.

10. EGC and NYCLDC each will register with the OAG Charities Bureau.

11. EDC, EGC and NYCLDC each agrees to disclose the following information publicly on their websites, in a format acceptable to OAG, within thirty (30) days of knowledge thereof, and in an addendum to its annual filing submitted to the OAG Charities Bureau, Form CHAR500 (Annual Filing for Charitable Organizations):

- a. the identity of any LDC to which it provides funding and the date(s) and amount(s) of funding; and
- b. the name and title or position of any of its directors, officers or employees who also serve as directors, officers or employees of another LDC and the identity of that LDC.

12. OAG has agreed to the terms of this Assurance based on, among other things, the representations made to OAG by each other party and its counsel and OAG's own factual investigation. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by OAG in its sole discretion.

13. This Assurance constitutes the entire agreement between OAG and each other party, and supersedes all prior agreements and understandings, written or oral, among the parties with respect to the subject matter of this Assurance. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by any party in agreeing to this Assurance.

14. Each party represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized. No party shall take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing the view that this Assurance is without factual basis.

15. This Assurance may not be amended, except by an instrument in writing signed on behalf of all of the parties to this Assurance. This Assurance may be executed in one or more counterparts, and shall become effective when such counterparts have been signed by each of the parties.

16. This Assurance shall be binding on and inure to the benefit of all the parties hereto and their respective successors and assigns, provided that no party, other than OAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of OAG.

17. In the event that any one or more of the provisions in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of OAG such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

18. Each party shall, upon request by OAG, provide all documentation and information necessary for OAG to verify compliance with this Assurance, without the necessity for a subpoena.

19. Acceptance of this Assurance by OAG shall not be deemed approval by OAG of any of the practices or procedures referenced herein, and each other party shall make no representation to the contrary.

20. Pursuant to Section 63(15) of the Executive Law, evidence of a violation of this Assurance shall constitute *prima facie* proof of violation of Section 1411 of the N-PCL and/or Section 63(12) of the Executive Law in any action or proceeding thereafter commenced by the OAG. If any court of competent jurisdiction determines that a party has breached this

Assurance, that party shall pay to OAG the cost, if any, of such determination and of enforcing this Assurance, including without limitation legal fees, expenses and court costs.

21. All notices, reports, requests and other communications to any party pursuant to this Assurance shall be in writing and shall be directed as follows:

If to EDC, EGC, NYCLDC or CIDC, to:

Jeffrey D. Friedlander, Esq.  
First Assistant Corporation Counsel  
New York City Law Department  
100 Church Street  
New York, NY 10007  
Fax: (212) 788-0367

and to:

General Counsel  
New York City Economic Development Corporation  
110 William Street  
New York, NY 10038  
Fax: (212) 312-3912

If to FWPC, to:

Robert J. Bishop, Esq.  
Pitta & GIBLIN LLP  
120 Broadway  
New York, NY 10271  
Fax: (212) 652-3891

If to OAG, to:

Janet Sabel, Esq.  
Executive Deputy Attorney General for Social Justice  
Office of the New York State Attorney General  
120 Broadway, 26th Floor  
New York, NY 10271-0332  
Fax: (212) 416-6007


22. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

23. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

IN WITNESS THEREOF, this Assurance is executed by the parties hereto on the dates set forth below.

Dated: New York, New York  
July 2, 2012

MICHAEL A. CARDOZO  
Corporation Counsel of the City of New York  
Attorney for New York City Economic  
Development Corporation, New York City  
Economic Growth Corporation, New York City  
Land Development Corporation, and Coney Island  
Development Corporation

By:   
Jeffrey D. Friedlander, Esq.  
First Assistant Corporation Counsel  
New York City Law Department

Dated: New York, New York  
July \_\_, 2012

FLUSHING-WILLETTS POINT-CORONA  
LOCAL DEVELOPMENT  
CORPORATION

By: \_\_\_\_\_  
Robert J. Bishop, Esq.  
Pitta & Giblin LLP  
Attorney for Flushing-Willets Point-Corona



23. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

IN WITNESS THEREOF, this Assurance is executed by the parties hereto on the dates set forth below.

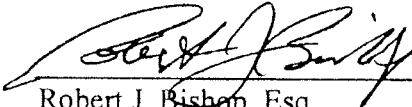
Dated: New York, New York  
July \_\_, 2012

MICHAEL A. CARDOZO  
Corporation Counsel of the City of New York  
Attorney for New York City Economic  
Development Corporation, New York City  
Economic Growth Corporation, New York City  
Land Development Corporation, and Coney Island  
Development Corporation

By: \_\_\_\_\_  
Jeffrey D. Friedlander, Esq.  
First Assistant Corporation Counsel  
New York City Law Department

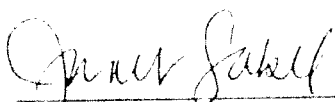
Dated: New York, New York  
July 2, 2012

FLUSHING-WILLETTS POINT-CORONA  
LOCAL DEVELOPMENT  
CORPORATION

By:  \_\_\_\_\_  
Robert J. Bishop, Esq.  
Pitta & Giblin LLP  
Attorney for Flushing-Willets Point-Corona

Dated: New York, New York  
July 2, 2012

ERIC T. SCHNEIDERMAN  
Attorney General of the State of New York

By:   
\_\_\_\_\_  
Janet Sabel, Esq.  
Executive Deputy Attorney General  
for Social Justice