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**THE COUNCIL**

# **BRIEFING PAPER OF THE GOVERNMENTAL AFFAIRS Division**

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**COMMITTEE ON GOVERNMENTAL OPERATIONS**

Hon. Sandra Ung, *Chair*

#### December 13, 2022

**Oversight:** **New York City’s Campaign Finance Program in the 2021 Citywide Elections**

**Preconsidered Int. 855:** By Council Members Brooks-Powers, Farías and Cabán

**Title:** A local law to amend the New York city charter, in relation to requiring disclosure of the identity of contributors to entities making independent expenditures in support of or in opposition to any municipal ballot proposal or referendum.

# **Introduction**

# On December 13, 2022, the Committee on Governmental Operations, chaired by Council Member Sandra Ung, will hold an oversight hearing on the operation of the City’s campaign finance program in the 2021 citywide elections. In addition, the Committee will hear the Preconsidered Int., sponsored by Council Members Brooks-Powers, Farías and Cabán, in relation to requiring disclosure of the identity of contributors to entities making independent expenditures in support of or in opposition to any municipal ballot proposal or referendum. Among those invited to testify are representatives from the New York City Campaign Finance Board (“CFB”), advocacy organizations, and other members of the public

# **Background**

# **Campaign Finance Board and the Campaign Finance Act**

# The Campaign Finance Board is an independent, nonpartisan agency.[[1]](#footnote-2) The CFB is headed by a board consisting of five members, two of which are appointed by the Speaker, two of which are appointed by the Mayor, and one of which—the Chairperson—is appointed by the Mayor in consultation with the Speaker.[[2]](#footnote-3)

The Campaign Finance Act (“the CFA”), which the CFB is charged with administering and enforcing, regulates spending in local elections and provides participating candidates with public funds to help finance their campaigns. Candidates who choose to participate in the public financing program are eligible to receive $8 in public funds for every matchable dollar raised. In exchange, participating candidates must abide by certain expenditure limits and other requirements.[[3]](#footnote-4) Regardless of their participation in the program, all candidates for local office must abide by certain contribution limits.[[4]](#footnote-5)

In order to be eligible for matching funds, campaigns must raise a minimum amount of money and receive contributions of $10 or more from a minimum number of individual donors. This ensures that candidates have a sufficient amount of public support before they can receive public funds.

The intent of the CFA is, among other things, “to improve popular understanding of local issues, to increase participation in local elections by voters and candidates, to reduce improper influence of local officers by large campaign contributors and to enhance public confidence in local government.”[[5]](#footnote-6) The program has been credited with improving the democratic process by increasing the diversity of representation of elected officials,[[6]](#footnote-7) limiting the potential impact of special-interest money, establishing greater engagement between voters and elected officials, and amplifying the value of small contributions.[[7]](#footnote-8)

# **Campaign Finance Reforms**

The City Council has been at the forefront of campaign finance reforms since the enactment of Local Law 8 of 1988, which established publicly financed campaigns in New York City.[[8]](#footnote-9) When the program was initially enacted, the City provided a dollar-for-dollar match for the first $1,000 of each contribution. The program has since been amended multiple times, and there is a long history of improvements to the law under the Council’s stewardship. Among the many examples, in 1999, the Council passed a law to introduce a four-to-one match on the first $250 of eligible contributions. And, prior to the 2009 election, the Campaign Finance Act was amended to increase candidates’ access to public money by providing a six-to-one match for the first $175 of eligible contributions.[[9]](#footnote-10)

In November 2018, voters approved the latest changes to the City’s campaign finance system. The first change lowered campaign contribution limits, the second increased the City’s matching rate to eight-to-one for up to the first $250 of eligible contributions for citywide offices and the first $175 for borough president and city council races, and the third raised the cap on the amount of public matching funds candidates are eligible to receive. The last change made public funds available to candidates earlier in the election cycle.[[10]](#footnote-11)

# **2021 CFB Matching Funds Program**

The amount of matching funds distributed by the Campaign Finance Board in the 2021 election cycle, $129.6 million, was by far the highest in any election cycle to date.[[11]](#footnote-12) One reason for the substantial growth in payouts was the increase in the participation rate by candidates in both the primary and general elections. In 2021, 94% of primary candidates participated in the program compared to only 84% in 2017. The difference was even more significant in the general election. In 2021, 81% of general election candidates participated, while in 2017, only 64% of general election candidates participated.[[12]](#footnote-13)

By only matching funds from New York City residents, the program incentivizes participating campaigns to raise funds from within of the City. In 2021, almost 71% of the individual contributions made to participating candidates came from New York City residents.[[13]](#footnote-14)

Another effect of the matching funds program is to amplify the power of small-dollar donors. In 2021 small-dollar donors were the biggest source of funds for city campaigns. Matching funds participants received over 96% of their funding from individual donations and even non-participants got 86% of their funds from individual contributions.[[14]](#footnote-15) The average contribution for all races was only $143.[[15]](#footnote-16)

Small contributions also increased in 2021, with contributions under $250 making up 85% of contributions in the primaries and 79% in the general election, compared to 65% in the primaries and 62% in the general in 2013, the last year without incumbents running for most of the citywide positions. “Doing Business As” contributions, which includes lobbyists and individuals owning and running a business that have contracts with the city, made up only 2.2% of contributions, while only 0.5% of contributions came from organizations, a category that includes labor unions, political committees and other permitted organizations.[[16]](#footnote-17) Both of those numbers are significantly lower than 2013, which had a similar number of open seats.[[17]](#footnote-18)

Part of the mission of the CFB is to reduce barriers to running for office. In 2021 election cycle first-time candidates were able to raise almost the same amount of individual contributions as program veterans.[[18]](#footnote-19) However, the amount of matching funds paid out by the Board differed significantly, with the average primary payout for first time participants being $136,846 versus $150,865 for program veterans.[[19]](#footnote-20) In addition to first-time candidates, women also appeared to have benefitted from the higher public matching, raising on average, 4% more than their male counterparts.[[20]](#footnote-21)

Public financing also appears to have played a part in reducing barriers for previously underrepresented groups as well. The 2021 elections resulted in the most diverse council in the City’s history.[[21]](#footnote-22) For the first time ever, women made up a majority of the Council’s members.[[22]](#footnote-23) While it is difficult to determine how much of this diversity can be attributed to the matching funds program and how much can be attributed to the use of other newly adopted election reforms like ranked-choice voting or the large number of incumbents who were term limited, experts generally agree that the increase in matching funds played at least some part in increasing the diversity of the current City Council Members.[[23]](#footnote-24)

# **2021 Independent Expenditures**

An independent expenditure is an election-related expenditure made by an outside organization or person that no candidate has authorized, requested, or cooperated in.[[24]](#footnote-25) The United States Supreme Court has long held that independent expenditures are protected speech and cannot be restricted.[[25]](#footnote-26) However, organizations and individuals that make independent expenditures (“independent spenders”) can be required to disclose information about their funding sources and spending.[[26]](#footnote-27) Pursuant to a ballot measure passed in 2010 and strengthened by a 2016 local law, independent spenders who spend at least $1,000 in aggregate are required to disclose their spending to the CFB.[[27]](#footnote-28) In addition, entities that spend at least $5,000 in aggregate are required to disclose certain information about their governance structures and funding sources.[[28]](#footnote-29) CFB publishes the reported information on its “Follow the Money” portal.[[29]](#footnote-30)

The Charter and CFB rules also require certain communications from independent spenders to include “paid for by” notices.[[30]](#footnote-31) The required wording of such notice depends on the type of communication, but in general, “paid for by” notices must identify the individual or entity who funded the communication, and, for communications funded by an entity, such entity’s top three donors.

The 2021 election cycle was the third since the implementation of independent expenditure disclosure requirements and it featured a dramatic increase in independent spending when compared to the previous two cycles.[[31]](#footnote-32) Independent spenders spent $40.7 million on the 2021 primary and general election, compared to only $1.5 million in 2017 and $15.9 million in 2013.[[32]](#footnote-33) More than three-quarters of the independent spending in 2021 was on the mayoral race.[[33]](#footnote-34) A majority of this spending was done by newly created single-candidate entities, with most of the money being spent in support of a candidate, with very little being directed towards negative advertising.[[34]](#footnote-35) This was in direct contrast to 2017 when almost 94% of independent spending was used for advertising opposing the then-incumbent Mayor.[[35]](#footnote-36)

Most of the independent spending in 2021 was done by just a few entities. Ten single-candidate entities made up 77% of independent spending in the mayoral race, and 60% of the total spending for the entire election cycle.[[36]](#footnote-37) Independent spending did not play as much of a role in the council races. Only two single-candidate entities supported non-mayoral candidates.[[37]](#footnote-38) $6.6 million, or 16% of all independent spending, was spent on council races.[[38]](#footnote-39) This was a steep decline from 2017 when 68% of independent expenditures were spent on council races, and even 2013, the last year with an open mayoral race, when 39% of independent expenditures were for council races.[[39]](#footnote-40)

# **Audits**

To ensure compliance with the Campaign Finance Act and CFB rules, the CFB performs audits of every New York City campaign. For campaigns that receive matching funds the audits also look at whether the campaign expenditures were allowable or “qualified.”[[40]](#footnote-41) These audits take time. It took the CFB more than three years to complete all of the audits for the 2017 election cycle.[[41]](#footnote-42)

The post-election audit consists of four parts: (1) document request; (2) draft audit report; (3) enforcement notice; and (4) final board determination. The document request is just that – a request for documents that haven’t been previously provided to the Board. The second part of the audit, the draft audit report, is produced by the Board and details its preliminary findings of violations of campaign finance rules and any fines or re-payment obligations that the CFB believes the campaign may incur.[[42]](#footnote-43) At this point, campaigns are given an opportunity to correct any mistakes or omissions in their disclosures. If the campaign is unable to resolve the violations in the draft audit, they are issued an enforcement notice detailing the recommended penalties and/or public funds repayments. Here, the campaigns have yet another opportunity to address or correct any remaining violations or repayment issues. If any issues remain unresolved at this point the campaigns then have the option to appear before the Board or before an administrative law judge at the Office of Administrative Trials and Hearings to adjudicate any remaining violations. Once a decision has been rendered, the Board then votes on a penalty and issues a Final Board Determination.[[43]](#footnote-44) Lastly, the Board sends every campaign, whether they have received a violation or not, a Final Audit Report which is published on the CFB’s website.[[44]](#footnote-45)

In the 2017 campaign cycle, more than 60% of candidates who completed the post-election audit did not receive any penalties.[[45]](#footnote-46) Most of the penalties that the Board levied were under $5,000.[[46]](#footnote-47)

1. **Legislative Analysis**

**Preconsidered Int.**

Unlike independent spenders that spend money in support of or opposition to local *candidates*, those that spend money in support of or opposition to local *ballot proposals* are not required to report their funding sources to the CFB or include “paid for by” notices on their communications. Preconsidered Int. (Brooks-Powers, Farías and Cabán) would eliminate this discrepancy by ensuring that individuals and entities that spend on local ballot proposals are subject to the same disclosure and notice requirements as those that spend on local candidates.

The bill achieves this by amending two provisions of the Charter related to independent expenditures. The first is section 1052(a)(15)(b). Currently, this provision provides that any entity that makes independent expenditures of $5,000 or more with respect to a candidate for local office must report certain information regarding its funding sources to the CFB. Specifically, such entity (hereinafter, the “reporting entity”) must report: (i) the identity of any entity that contributed to the reporting entity on or after January 1 of the year before the election; (ii) the identity of any individual or entity that, in the 12 months leading up to the election, contributed $25,000 or more to an entity that, during that same period, contributed $50,000 or more to the reporting entity; and (iii) the identity of any individual that contributed $1,000 or more to the reporting entity in the 12 months leading up to the election. Preconsidered Int. would require this same information to be reported by any entity that makes independent expenditures of $5,000 or more with respect to a municipal ballot proposal.

The second provision that Preconsidered Int. would expand is section 1052(a)(15)(c) of the Charter. This provision currently requires “paid for by” notices to be included on any communication with respect to a candidate for local office that was funded by an individual or entity making $1,000 or more in aggregate independent expenditures. Such notices must include the words “paid for by” followed by the name of the individual or entity who funded the communication. For communications funded by an entity, such notices must also include the words “Top Three Donors,” followed by a list of the three largest aggregate donors to such entity in the 12 months leading up to the election. Preconsidered Int. would require these same “paid for by” notices to be included on communications regarding municipal ballot proposals (provided such communications were funded by an individual or entity making $1,000 or more in independent expenditures).

This bill would take effect on January 1, 2024.

Preconsidered Int. No.

By Council Members Brooks-Powers, Farías and Cabán

..Title

A Local Law to amend the New York city charter, in relation to requiring disclosure of the identity of contributors to entities making independent expenditures in support of or in opposition to any municipal ballot proposal or referendum

..Body

Be it enacted by the Council as follows:

Section 1. Subparagraphs (b) and (c) of paragraph 15 of subdivision a of section 1052 of the New York city charter, as amended by local law number 41 for the year 2014, are amended to read as follows:

(b) Every individual and entity that makes independent expenditures aggregating one thousand dollars or more [in support of or in opposition] with respect to any candidate [in any covered election,] or [in support of or in opposition to] any municipal ballot proposal or referendum, shall be required to disclose such expenditure to the board. In addition, every entity that, in the twelve months preceding a covered election, makes independent expenditures aggregating five thousand dollars or more [in support of or in opposition] with respect to any candidate [in any covered election] or any municipal ballot proposal or referendum shall disclose the following: (i) the identity of any entity that, on or after the first day of the calendar year preceding the covered election, contributed to the entity reporting the expenditure, and the owners, partners, board members, and officers, or their equivalents, of such contributing entity, or, if no individuals exist in any such roles, the name of at least one individual who exercises control over the activities of such contributing entity; (ii) the identity of any entity or individual who, in the twelve months preceding the covered election, contributed twenty-five thousand dollars or more to any entity that, in the twelve months preceding the covered election, contributed fifty thousand dollars or more to the entity reporting the expenditure; and (iii) the identity of any individual who, in the twelve months preceding the covered election, contributed one thousand dollars or more to the entity reporting the expenditure.

(c) Any literature, advertisement or other communication in support of or in opposition to any candidate in any covered election, or in support of or in opposition to any municipal ballot proposal or referendum, that is paid for by an individual or entity making independent expenditures aggregating one thousand dollars or more shall, in addition to any applicable disclosure requirements in state law, disclose information as follows:

§ 2. This local law takes effect January 1, 2024; provided that the Campaign Finance Board shall take all action necessary for the timely implementation of this law, including the promulgation of rules, prior to such date.

Session 12

CJM

LS #3515

11/29/2022

Session 11

DFC

LS #12866, 12882, 13101

Int. #1901-2020

1. NYC Charter § 1052 [↑](#footnote-ref-2)
2. NYC Charter § 1052 (a)(1) [↑](#footnote-ref-3)
3. *See generally* New York City Charter §1052(19) and New York City Administrative Code §§ 3-703—3-706. [↑](#footnote-ref-4)
4. *See generally* New York City Administrative Code § 3-703. [↑](#footnote-ref-5)
5. New York City Local Law 8 of 1988, § 1. [↑](#footnote-ref-6)
6. Gregory Clark, Hazel Milard and Mariana Paez, *Small Donor Public Financing Plays Role in Electing Most Diverse New York City Council* Brennan Center, November 5, 2021. [↑](#footnote-ref-7)
7. New York City Campaign Finance Board, Benefits at [https://www.nyccfb.info/program/benefits/](https://www.nyccfb.info/program/benefits/%20) [↑](#footnote-ref-8)
8. Friedlander, J. D., Louis, S. E., & Laufer, L. D. (n.d.). *The New York City Campaign Finance Act* (Rep.). Retrieved November 30, 2022, from Hofstra Law Review website: <http://scholarlycommons.law.hofstra.edu/cgi/viewcontent.cgi?article=1617&context=hlr>. [↑](#footnote-ref-9)
9. Liss, S., & Migally, A. (n.d.). Small Donor Matching Funds: The NYC Election Experience. Retrieved November 30, 2022, from <https://www.brennancenter.org/sites/default/files/legacy/Small%20Donor%20Matching%20Funds-The%20NYC%20Election%20Experience.pdf>. [↑](#footnote-ref-10)
10. Final Report of the 2018 New York City Charter Revision Commission available at <https://www1.nyc.gov/assets/charter/downloads/pdf/final-report-20180904.pdf> [↑](#footnote-ref-11)
11. New York City Campaign Finance Board 2021 Post-Election Report available at <http://www.nyccfb.info/PDF/2021_Post-Election_Report.pdf> [↑](#footnote-ref-12)
12. Id. [↑](#footnote-ref-13)
13. Id. [↑](#footnote-ref-14)
14. Id. [↑](#footnote-ref-15)
15. Id. [↑](#footnote-ref-16)
16. Id. [↑](#footnote-ref-17)
17. Id. [↑](#footnote-ref-18)
18. Id. [↑](#footnote-ref-19)
19. This could be due to the fact that first time payees gave twice as much to their own campaigns as program veterans, or that they received more contributions from family members which both have higher limits than regular contributions. [↑](#footnote-ref-20)
20. Gregory Clark, Hazel Millard and Mariana Paez ”Small Donor Public Financing Plays Role In Electing Most Diverse New York City Council.” *Brennan Center*, November 5, 2021. [↑](#footnote-ref-21)
21. Id.. [↑](#footnote-ref-22)
22. Id. [↑](#footnote-ref-23)
23. Ese Olumhense ”How Small-Dollar Public Financing Heled NYC Elect Its Most Diverse City Council Ever.” *City Limits,* November 16, 2021. [↑](#footnote-ref-24)
24. New York City Campaign Finance Board, *Independent Expenditures Guide,* available at <https://www.nyccfb.info/independent-expenditures/independent-expenditures-guide/> [↑](#footnote-ref-25)
25. See, e.g., *Buckley v. Valeo*, 424 U.S. 1 (1976); *Citizen’s United v. Federal Election Commission* 588 U.S. 310 (2010). [↑](#footnote-ref-26)
26. See id.; see also New York City Campaign Finance Board, *Independent Expenditures Guide,* available at <https://www.nyccfb.info/independent-expenditures/independent-expenditures-guide/> [↑](#footnote-ref-27)
27. SeeCharter § 1052(a)(15)(b); CFB Rules § 14-02(b). [↑](#footnote-ref-28)
28. SeeCharter § 1052(a)(15)(b); CFB Rules § 14-02(d). [↑](#footnote-ref-29)
29. New York City Campaign Finance Board, Follow the Money, Independent Expenditures Portal, <https://www.nyccfb.info/follow-the-money/follow-the-money/> (last accessed December 8, 2022). [↑](#footnote-ref-30)
30. Specifically, any communication referring to a candidate in a local election that was funded by an individual or entity making at least $1,000 in aggregate independent expenditures must include a paid-for-by notice. SeeCharter § 1052(a)(15)(c); CFB Rules § 14-04. [↑](#footnote-ref-31)
31. New York City Campaign Finance Board 2021 Post-Election Report available at <http://www.nyccfb.info/PDF/2021_Post-Election_Report.pdf> [↑](#footnote-ref-32)
32. Id. [↑](#footnote-ref-33)
33. Id. [↑](#footnote-ref-34)
34. Id. [↑](#footnote-ref-35)
35. Id. [↑](#footnote-ref-36)
36. Id. [↑](#footnote-ref-37)
37. Id. [↑](#footnote-ref-38)
38. Id. [↑](#footnote-ref-39)
39. Id. [↑](#footnote-ref-40)
40. Id. [↑](#footnote-ref-41)
41. Id. [↑](#footnote-ref-42)
42. Id. [↑](#footnote-ref-43)
43. New York City Administrative Code [§ 3-710(5](https://nyccfb.info/law/act/examinations-and-audits-repayments/)); see also New York City Campaign Finance Board 2021 Post-Election Report Supra. [↑](#footnote-ref-44)
44. New York City Campaign Finance Board 2021 Post-Election Report available at <http://www.nyccfb.info/PDF/2021_Post-Election_Report.pdf> [↑](#footnote-ref-45)
45. Id. [↑](#footnote-ref-46)
46. Id. [↑](#footnote-ref-47)