

**THE COUNCIL OF THE CITY OF NEW YORK**

**committee report OF The LEGISLATIVE DIVISION and Oversight & INVESTIGATIONS DIVISION**

**COMMITTEE ON OVERSIGHT & INVESTIGATIONS**

 *Hon. Vanessa L. Gibson, Chair*

**COMMITTEE ON GENERAL WELFARE**

*Hon. Stephen Levin, Chair*

April 30, 2021

Oversight - The City’s Audit of Shelter Providers

|  |  |
| --- | --- |
| **PROPOSED INT. NO. 2056-A:**  | By Council Members Powers, Kallos, Chin and D. Diaz |
| **TITLE:**  | A Local Law to amend the administrative code of the city of New York, in relation to requiring officers and employees of city contractors to report corruption and to cooperate with the department of investigation |

**ADMINISTRATIVE CODE:** Amends paragraph 1 of subdivision a of section 7-805, subdivision a of section 12-113, and paragraphs 2 and 3 of subdivision b of section 12-113

**INT. NO. 2284:** By Council Members Rosenthal, Kallos and Gennaro

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to a survivor-centered response by the department of social services to complaints of

sexual assault or harassment

|  |  |
| --- | --- |
| **INT. NO. 2285:** | By Council Members Rosenthal and Kallos  |
| **TITLE:**  | A Local Law to amend the administrative code of the city of New York, in relation to requiring the establishment of standards and procedures to determine the existence of conflicts of interest and other misconduct concerning city contracts |

**ADMINISTRATIVE CODE:** Adds section 21-145

**ADMINISTRATIVE CODE:** Adds section 6-145

**INT. NO. 2292:** By Council Member Gibson

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to the reporting of information pertaining to allegations of misconduct made under section 12-113 and the development of web applications to track City agency and contractor compliance with certain investigations and recommendations

**ADMINISTRATIVE CODE:**  Adds subdivision k to 12-113 and amends section 33-201

# INTRODUCTION

On April 30, 2021, the New York City Council’s Committee on Oversight and Investigations, chaired by Council Member Vanessa L. Gibson, and the Committee on General Welfare, chaired by Council Member Stephen Levin, will hold a hearing titled, “The City’s Audit of Shelter Providers.” The Committees will also hear several pieces of legislation including: Proposed Int. No. 2056-A in relation to requiring officers and employees of city contractors to report corruption and to cooperate with the department of investigation; Int. No. 2284 in relation to a survivor centered response by the department of social services to complaints of sexual assault or harassment; Int. No. 2285 in relation to requiring the establishment of standards and procedures to determine the existence of conflicts of interest and other misconduct concerning city contracts; and Int. No. 2292 in relation to the reporting of information pertaining to allegations of misconduct made under section 12-113 and the development of web applications to track City agency and contractor compliance with certain investigations and recommendations. The committees expect to receive testimony from representatives of the de Blasio mayoral administration and other interested stakeholders.

# BACKGROUND

**Homeless Shelters**

The Department of Homeless Services (“DHS”), a component of the Department of Social Services (“DSS”), operates separate shelter systems for single adults,[[1]](#footnote-1) families with children[[2]](#footnote-2) and adult families.[[3]](#footnote-3) While the majority of shelters are operated by non-profit providers under contract with DHS, the agency also enters into non-contractual arrangements with private landlords and commercial hotels[[4]](#footnote-4) in order to meet its legal obligation to provide shelter to anyone who requires it.[[5]](#footnote-5)

In Fiscal Year 2021 (“FY21”), DHS awarded $1.8 billion for 288 homeless family service contracts and 143 are for individual homeless service contracts.[[6]](#footnote-6) DHS contracts with 75 providers who carry out these services.[[7]](#footnote-7)

As of April 8, 2021, of the total DHS shelter population of 50,189 persons,[[8]](#footnote-8) there were:

* 9,220 families with children, representing 28,210 individuals (of whom 16,049 were children);[[9]](#footnote-9)
* 1,856 adult families, encompassing 3,916 individuals;[[10]](#footnote-10) and
* 18,063 single adults (13,683 men, 4,380 women).[[11]](#footnote-11)

Since the beginning of the COVID-19 pandemic and the first eviction moratorium, the shelter census has dropped by approximately 7,000 people to 52,000.[[12]](#footnote-12) According to the Mayor’s Preliminary Management Report (“PMMR”), during the first four months of FY21, the average number of families with children and adult families in shelter per day declined by approximately 14 percent compared to the same time period in FY20.[[13]](#footnote-13) While the number of families with children was trending down before the pandemic, the primary cause of this reduction was the COVID-19 eviction moratorium. At the same time, the average number of single adults in shelters per day increased by 8.8 percent, primarily due to increases in length of stay and fewer housing placements during the COVID-19 pandemic.

Contracting Process

DHS classifies shelters in two basic categories: adult shelters (for single adults) and family shelters (for adult couples and families with children under 21).[[14]](#footnote-14) The majority of shelters are run by private providers, both for-profit and non-profit entities, through contracts with DHS. DHS procures shelters through competitive sealed proposals, open-ended Requests for Proposal (“RFPs”) and negotiated acquisitions.[[15]](#footnote-15) Potential providers begin the contracting process through DHS’ online portal, completing packet information, which includes a budget proposal. From there, contracts go through a multi-tiered review process.[[16]](#footnote-16)

In the course of performance of a shelter contract, any DHS homeless shelter provider is subject to audit by the City and State Comptrollers’ Offices, as well as the New York State Office of Temporary and Disability Assistance (“OTDA”).[[17]](#footnote-17) Comptroller audits typically identify areas of expenditure irregularities or insufficient documentation, and recommendations include programmatic improvements and fiscal oversight such as clearer record-keeping and standards of operation, and monitoring of shelter operations where appropriate.[[18]](#footnote-18) Meanwhile, OTDA audits consist of both program inspections and physical inspections at shelters.[[19]](#footnote-19) Once OTDA inspections are complete, the reports typically include findings and recommendations for corrective action, and may require follow-up inspections to ensure compliance.[[20]](#footnote-20)

Model Budget

The City’s FY 2018 adopted budget included $22.7 million to support a model budget process to address, “salary disparities for preventative services, senior centers, services for runaway homeless youth, and adult protective services,” with plans for additional model budget processes for the following two years.[[21]](#footnote-21) According to the Human Services Council (“HSC”), a non-profit watchdog organization, the model budget process provided the City the opportunity to “adjust its human services payment rates to cover real costs and address the disparity between the salaries of City employees and those of non-profit employees who work on City contracts, which made non-profit recruitment and retention difficult.”[[22]](#footnote-22)

During a June 2018 Contracts and General Welfare joint committee hearing, DSS testified that while previous budgets had been a one-size-fits-all approach, DSS created model budgets specific to the population served and the size of the shelter.[[23]](#footnote-23) The model created staff-to-client ratios for direct services staff (e.g. caseworkers, supervisors, housing specialists, social workers, peer specialists, recreation staff and residential aides).[[24]](#footnote-24) Due to cost variations in shelters such as rent, utilities, insurance and security, the model budget allowed for flexibility to adjust specific line items and to ensure that the model budget meets all the requirements for each unique shelter.[[25]](#footnote-25)

**Bronx Parent Housing Network Investigation**

On February 7, 2021, the *New York Times* released an investigative report into dealings of Victor Rivera, the CEO of Bronx Parent Housing Network (“BPHN”), a City-contracted shelter provider.[[26]](#footnote-26) The *Times* found that Mr. Rivera had sexually harassed and assaulted 10 women, including former employees and women staying in shelters. Two employees submitted complaints to the state human rights agency, but BPNH paid them a total of $175,000 to prohibit them from speaking publicly about their allegations. Additionally, the investigation found that Mr. Rivera gave jobs to family members, entangled his for-profit business with his non-profit, awarded contracts to close associates and filled the board of BPHN with friends.[[27]](#footnote-27) In early 2017, DSS held a meeting with Mr. Rivera informing him that he could not share staff between his shelter non-profit and his for-profit business due to a conflict of interest.[[28]](#footnote-28) Since 2017, BPHN has received $274 million to run homeless shelters and provide related services and was allocated an additional $10 million during the pandemic to provide rooms where infected people could isolate and recover.[[29]](#footnote-29)

According to the *Times’s* investigation, City officials knew about Mr. Rivera’s financial irregularities because of a whistleblower complaint about nepotism and conflicts of interest in 2017. As a result of the complaint, the City placed BPNH on a special watch list, known as a corrective action plan.[[30]](#footnote-30) When asked why the City continued to work with BPHN, officials indicated to the *Times* that there are very few organizations able to provide shelter services.[[31]](#footnote-31) Also in 2017, a woman who lived in one of Mr. Rivera’s shelters made a harassment complaint to 311, which alerted DSS. DSS officials sent the complaint back to BPHN to investigate which they determined, “were unfounded due to lack of evidence.”[[32]](#footnote-32) In response to the *Times* investigation, DSS stated that, “the complaint was not appropriately handled and should have been independently investigated.”[[33]](#footnote-33) Two other women also residing in the shelter made a complaint to their caseworkers but asked not to formalize the complaint for fear of losing shelter.

Aftermath of the Investigation

As a result of the *Times* investigation, BPHN said that the members with conflicts of interest had resigned. Mayor de Blasio has ordered an outside entity to audit the City’s $2 billion worth of shelter contracts and stated that any future complaints about sexual misconduct at any of the City’s non-profit contractors would be independently investigated and would not be handled by the non-profit.[[34]](#footnote-34) There has been little detail made public about the scope or timeline of the audit.[[35]](#footnote-35) BPHN placed Mr. Rivera on leave and, at the City’s direction, hired an external investigator to examine the allegations of sexual misconduct.[[36]](#footnote-36) The City has also referred the *Times’s* findings to the Department of Investigation (“DOI”) for review.[[37]](#footnote-37)

On March 3, 2021, Mayor de Blasio signed Executive Order 64, which requires all city agencies with human service contracts to amend those contracts to require that providers collect information about sexual harassment complaints made by an employee, client or other person.[[38]](#footnote-38) In addition, the following information would need to be made available to DOI: (a) Each providers’ sexual harassment policies and their complaint procedures must be uploaded to PASSPort; (b) Any complaint or allegation of sexual harassment or retaliation implicating the Chief Executive Officer or principal of the organization (identifying information must be redacted so DOI can publicize the information within 30 days of receipt); (c) A copy of a final determination or judgement with regard to any complaint covered in (b); and (d) Any additional information that DOI requests in order to conduct its review.[[39]](#footnote-39) Based on DOI’s findings, agencies can determine whether or not to suspend, modify, or terminate a contract. Additionally, according to E.O. 64, providers must still investigate complaints or allegations of sexual harassment, as the new reporting requirements do not release the provider of that duty.[[40]](#footnote-40)

On February 8, 2020, Mr. Rivera was fired from BPHN and the Bronx district attorney opened a criminal investigation into the allegations of sexual assault and harassment.[[41]](#footnote-41) On March 24, 2021, Mr. Rivera was arrested on federal charges alleging that he took thousands of dollars in kickbacks from contractors.[[42]](#footnote-42) The charges allege that Mr. Rivera accepted bribes from contractors doing work for his non-profit, which helped to finance his lifestyle and that Mr. Rivera laundered money through a consulting company owned by one of his relatives.[[43]](#footnote-43) Mr. Rivera has pleaded not guilty to charges including conspiracy, honest services fraud, wire fraud and money laundering.[[44]](#footnote-44)

Ten of the City’s non-profit providers have been flagged for financial mismanagement or financial improprieties, but continue to receive funding.[[45]](#footnote-45) This is not the first time a shelter provider has come under serious scrutiny.[[46]](#footnote-46) In 2019, the Acacia Network, a non-profit shelter provider, was investigated and found to have steered millions of dollars to a security company tied to top members of the non-profit.[[47]](#footnote-47) In 2020, the City sued Children’s Community Services, another shelter provider, after a City investigation found evidence of fraud and bid-rigging.[[48]](#footnote-48) The City requested that Children’s Community Services be put under receivership, while the City would seek other non-profits to run the operations.[[49]](#footnote-49)

**Scope of City Contracts**

The City is one of the largest contracting entities in the U.S.[[50]](#footnote-50) In Fiscal Year 2020 (“FY 2020”), the City purchased $22.5 billion worth of goods and services through almost 114,500 transactions.[[51]](#footnote-51) This monetary amount represents a 10% increase in total dollar value of procurement relative to FY 2019 ($20.5 billion).[[52]](#footnote-52) By contracting with businesses and non-profit organizations, the City is able to provide goods and services to New Yorkers in need and help maintain the City’s infrastructure and its operations of government.

City procurements are typically broken down into six broad categories: architecture/engineering, construction services, goods, human services, professional services, and standardized services.[[53]](#footnote-53) During FY 2020, there were over 54,000 goods procurements,[[54]](#footnote-54) which accounted for nearly half of the total number of procurements in the City. These contracts constituted about 13% of the City’s total procurement expenses. In contrast, the dollar value of just human services contracts – 8,638 in number – represented 37% of the City’s procurement expenses.[[55]](#footnote-55)

During FY 2020, most City agency contracts were under $100,000 in individual contract value.[[56]](#footnote-56) These contracts comprised 93% of all procurements and accounted for $599 million in aggregated dollar value.[[57]](#footnote-57) The remaining 7% of contracts, approximately 7,000 in number, amounted to almost 99% of the total value of City procurements.[[58]](#footnote-58) In fact, even though there were only 131 procurements in excess of $25 million in individual contract value, those contracts accounted for over $10 billion, or nearly half of the City’s total procurement expenses.[[59]](#footnote-59)

**Examples of Conflict of Interest Provisions in Government Contracts**

Federal Contracts

The U.S. Congress has legislated regarding conflicts of interests concerning federal contracts. The Federal Acquisition Regulation (“FAR”) is the set of rules that governs federal procurement in the United States of America (“U.S.”), codified in chapter 1 of title 48 of the Code of Federal Regulations (“C.F.R.”). 48 C.F.R. Part 52 includes standard solicitation provisions and contract clauses, some of which are required to be included in certain solicitations and contracts. Specifically, 48 C.F.R. § 52.203-16 describes personal conflicts of interest and imposes related requirements upon contractors. Importantly, this section provides that personal conflicts exist when a covered employee[[60]](#footnote-60) has a financial interest, personal activity, or relationship that could impair that employee’s ability to act impartially and in the best interest of the U.S. while performing under the U.S. contract.[[61]](#footnote-61)

48 C.F.R. § 3.1106 mandates that the language found in 48 C.F.R. § 52.203-16 be included in certain solicitations and contracts.[[62]](#footnote-62) Thus, contractors that are parties to such solicitations and contracts are required to identify and prevent personal conflicts of interest through the following means, in part:

(1) Having procedures in place to screen covered employees for potential conflicts of interest, including by obtaining financial disclosure statements from such employees when they are initially assigned to the task under contract;

(2) Preventing personal conflicts of interest, including by not assigning a covered employee to perform a task for which the contractor has identified a personal conflict of interest, absent a mitigation plan or waiver (which may be approved only under “exceptional circumstances”);

(3) Prohibiting use of non-public information accessed through performance of a U.S. contract by obtaining signed non-disclosure agreements from covered employees;

(4) Informing covered employees of their obligations to disclose and prevent personal conflicts of interest, not to use non-public information accessed through performance of a U.S. contract, and to avoid even the appearance of personal conflicts of interest;

(5) Maintaining effective oversight to verify compliance with personal conflict-of-interest safeguards;

(6) Taking appropriate disciplinary action against covered employees who fail to comply with conflict of interest policies; and

(7) Reporting any personal conflict-of-interest violation to the contracting officer as soon as it is identified with a description of the violation and proposed actions to be taken by the contractor in response.[[63]](#footnote-63)

*Oregon State Contracts*

 Oregon state is another government that has legislated regarding conflicts of interest and its contracts. Oregon’s statutory framework addresses conflicts of interest in public contracting by “emphasizing the need for open and impartial procurement methods and by prohibiting certain conflicts of interest involving public officials.”[[64]](#footnote-64) Oregon Revised Statute (“ORS”) § 279A.015 encourages public contracting competition that is “impartial and open” to the maximum extent possible. The Oregon legislature has declared that a sound and responsive public contracting system should “instill public confidence through ethical and fair dealing, honesty and good faith on the part of government officials and those who do business with the government.”[[65]](#footnote-65)

 Oregon has a number of statutory provisions concerning conflicts of interest; this paragraph describes a few such provisions. Chapter 244 of the ORS prohibits public officials from having certain conflicts of interest, including prohibitions on a public official, for two years after ceasing to hold the office, having a direct beneficial financial interest in certain public contracts.[[66]](#footnote-66) ORS § 279C.307(1) places limitations on contracting agencies,[[67]](#footnote-67) providing that agencies that procure personal services in order to administer, manage, monitor, inspect, evaluate compliance with or otherwise oversee a public contract may not procure such personal services from a contractor or affiliate that is a party to the government contract that is actually subject to such administration, management, monitoring, inspection, evaluation, or other oversight through such personal services. ORS § 279B.040(1) places solicitation restrictions on agencies that procure personal services for advice or assistance in “developing specifications, a scope or statement of work, an invitation to bid, a request for proposals or other solicitation documents and materials related to a procurement.”[[68]](#footnote-68) Such an agency is prohibited from accepting from the contractor or an affiliate a bid for the goods or services described in such materials if a reasonable person would believe that the contractor or affiliate, giving the advice or assistance, would have or appear to have an advantage in obtaining the public contract that is the subject of the solicitation.[[69]](#footnote-69)

 The Oregon Department of Transportation (“ODOT”), through guidance, places additional requirements on contractors to prevent conflict of interests. A contractor that submits a proposal for ODOT contracts must provide a conflict of interest-related disclosure form prior to performing any services under such contract.[[70]](#footnote-70) In part, a contractor must disclose whether it or any of its associates have any actual, apparent, or potential conflict of interest with regard to any known member of the agency evaluation or selection team for the procurement; whether any associate of the contractor was a former employee of the contracting agency within the last two years and had (or will have) involvement with the procurement; and whether the contractor or any of its associates have any past, present, or currently planned personal or financial interests which are an actual, apparent, or potential conflict of interest with respect to the procurement.[[71]](#footnote-71) These disclosures must also be submitted by a contractor’s subcontractor or “associate” working on the contract, either through a separate disclosure form or through the disclosure form submitted by the contractor in connection with its proposal.[[72]](#footnote-72)

**The City’s Approach to Conflicts of Interest**

 Chapter 68 of the City Charter (“Chapter 68”) provides a comprehensive ethics code for City public servants. This framework was enacted to preserve “both the perception and reality of integrity in City government” and contains bright-line standards to “govern conflicts between the public duties and private interests of… [the City’s] public servants.”[[73]](#footnote-73) Of particular relevance, section 2604(a) of the Charter prohibits public servants from having known business interests in firms engaged in business dealings with the City. This section further details prohibited conduct for public servants. The lengthy list includes a prohibition against engaging in any business or transaction, or having any financial interest, which conflicts with the proper discharge of duties[[74]](#footnote-74) and forbids public servants from using their positions to obtain any financial gain, contract, or privilege for themselves or any person or firm associated with them.[[75]](#footnote-75) Each year, nearly 9,000 City employees and elected officials are required to complete annual reports of their financial affairs, as well as the financial affairs of spouses or domestic partners and dependent children.[[76]](#footnote-76) The purpose of this annual disclosure is to “provide accountability on the part of public servants and to ensure that there are no prohibited conflicts of interest between City employees’ official responsibilities and private interests.”[[77]](#footnote-77)

 While Chapter 68 delineates prohibited conflicts of interest for public servants, it is unclear what the specific conflict of interest standards are for officers and employees of contractors and their subcontractors and independent contractors, all of whom do business with the City in various capacities. There are certainly no uniform local laws that govern conflicts of interest for such entities. The City’s procurement rules are generally silent regarding conflicts of interest, meaning that City agencies may but are not required to include conflict of interest-related provisions in their contracts. There is no standardized conflict of interest language found in all City contracts.

 The City also does not have clear “duty to report” requirements regarding conflicts of interest and other misconduct concerning City contracts. The City’s Whistleblower Law, or section 12-113 of the Administrative Code, prohibits an officer or employee of a contractor (or of a subcontractor) that is a party to a contract with a contracting City agency that is valued in excess of $100,000 from *taking an adverse personnel action* with respect to another officer or employee of the contractor for reporting misconduct such as corruption, criminal activity, a conflict of interest, gross mismanagement, or abuse of authority by any officer or employee of such contractor, concerning the contract, to certain local officials.[[78]](#footnote-78) The report must ultimately be referred to the Commissioner of Investigation unless the conduct is within the jurisdiction of the Special Commissioner of Investigation, in which case it must be referred to such Special Commissioner.[[79]](#footnote-79) However, the existing language does not require an officer or employee of a contractor to actually make such reports to the Commissioner of Investigation or such local officials. In contrast, City employees *are* required to report such misconduct under the provisions of Executive Order 16 of 1978.

Under the Whistleblower Law, DOI is required to prepare an annual report that, in practice, includes the number of City employees and contractors who have filled retaliation complaints and includes limited information about the disposition of these complaints.[[80]](#footnote-80) Local Law 9 of 2021 bolstered this provision by requiring reporting on the number of misconduct allegations, not just retaliation complaints, and aggregate information about how long retaliation complaints remain open.[[81]](#footnote-81) However, DOI is not specifically required to include detailed information related to the nature or disposition of misconduct complaints. Furthermore, DOI and the SCI are not currently required to publicly track City contractor compliance with their investigations and recommendations, whereas they are required to track City agency compliance.

# BILL ANALYSES

**Proposed Int. No. 2056-A**

Proposed Int. No. 2056-A would require officers and employees of City contractors and subcontractors with contracts valued in excess of $100,000 to report conflicts of interest or other wrongdoing that concerns City contracts by any officer or employee of such contractor or subcontractor to the DOI or other City officials. Such officers and employees would be required to cooperate with DOI investigations related to City contracts. Updates have been made to the bill to address changes in local law since introduction; As a general matter, Local Law 9 of 2021 had established the Special Commissioner of Investigation of the City School District (“SCI”) as an official to whom misconduct reports could be made, so the bill now reflects those amendments and otherwise incorporates the scheme created by such local law into section 12-113 of the Administrative Code.

 Bill section one would amend paragraph 1 of subdivision a of section 7-805 of the Administrative Code to conform with City bill drafting conventions (the term “city” is already defined for the entirety of the Administrative Code, avoiding terms referring to gender, and how to reference the Administrative Code). It would also remove the reference to paragraph 1 of subdivision a of section 12-113 of the Administrative Code because this bill is also proposing the removal of paragraph numbers from such subdivision.

 Bill section two would amend subdivision a of section 12-113 of the Administrative Code to conform definition formatting with City bill drafting conventions (no unit designators for definitions, alphabetization of terms, expressing dollar amounts in numerals, and avoiding false imperatives).

 Bill section three would amend paragraphs 2, 3, and 4 of subdivision b of section 12-113. It would split paragraph 2 into subparagraphs (a), (b), and (c). Subparagraph (a) would require officers and employees of covered contractors or covered subcontractors to report, without undue delay, any information about conduct that the officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement, or abuse of authority that concerns a contract with a contracting City agency by any officer or employee of the contractor or subcontractor. This information would have to be reported to the Commissioner of Investigation, a Council Member, the Public Advocate, the Comptroller, the SCI, the City Chief Procurement Officer, the agency chief contracting officer, or the agency head or commissioner of the contracting City agency. Subparagraph (b) would require every officer and employee of a covered contractor or covered subcontractor to fully cooperate with any investigation or inquiry carried out by the Commissioner of Investigation or the SCI that concerns a contract with a City contracting agency. Subdivision (c) would contain the existing language of paragraph 2 and add the word “city” before “chief procurement officer” to accurately identify the relevant City official.

 Bill section three would amend paragraph 3 of subdivision b of section 12-113 to conform with City bill drafting conventions (numerals for dollar amounts and for references to provisions of the Administrative Code). Paragraph 3 would be further amended to provide that if a contracting City agency determines that the misconduct reporting and investigation cooperation requirements set forth in subparagraph (a) and (b) of paragraph 2, respectively, have been violated, the agency would be required to take action based on the remedies available under the relevant contract or subcontract. The previous version of Int. No. 2056 referred to violation of the entirety of paragraph 2.

Bill section three would amend paragraph 4 of subdivision b of section 12-113 to clarify that City officials who receive a report of misconduct pursuant to subdivision b would have to make reasonable efforts to protect the anonymity and confidentiality of the officer or employee making the report. It would identify the City Chief Procurement Officer, agency chief contracting officer, and agency head or commissioner of the contracting City agency as additional officials who may receive a report of misconduct pursuant to subdivision b. The previous version of Int. No. 2056 did not propose amendments to paragraph 4 of subdivision b.

 Bill section four would add a new paragraph 3 to subdivision c of section 12-113, which pertains to permitted reports of adverse personnel actions. This new paragraph would contain the anonymity and confidentiality protection language currently housed in paragraph 4 of subdivision b of section 12-113 (pertaining to permitted reports of adverse personnel action), with only the three officials who may actually receive such reports identified – the Commissioner of Investigation, the SCI, and the Corporation Counsel. The previous version of Int. No. 2056 did not propose this new paragraph 3.

 Bill section five would provide that the misconduct reporting and investigation cooperation requirements imposed by proposed subparagraphs (a) and (b) of paragraph 2 of subdivision b of section 12-113, respectively, do not apply to contracts executed or renewed prior to the effective date of the local law that would add this section. The previous version of Int. No. 2056 provided that the entirety of bill section three would be inapplicable to such contracts. Bill section five would also specify that the terms “contract,” “contracting agency,” “covered contractor,” and “covered subcontractor” used in the section have the meanings set forth in subdivision a of section 12-113.

 Bill section six provides that this local law would take effect 120 days after it becomes law, except that the Commissioner of Investigation, SCI, and the City Chief Procurement Officer may take measures necessary for implementation of the law before such date. The previous version of Int. No. 2056 did not identify the SCI as a potential rulemaking official.

**Int. No. 2284**

Int. No. 2284 would require the Commissioner of Social Services to establish a survivor-centered response to complaints of sexual assault or harassment made by a client or staff of a community-based organization under contract with the DSS or DHS that involve the personnel or agents of such an organization or either department.

 Bill section one would add a new section 21-145 to the Administrative Code. Subdivision a of proposed section 21-145 would define the following terms:

* “Complaint” – a complaint made by a client or staff of a “provider” (see below) and that involves the staff, personnel, or agents of DSS, DHS, or a provider;
* “Harassment” – harassment, as defined under article 240 and consistent with the provisions of article 485 of the New York Penal Law, directed at a victim because of a belief or perception regarding the gender or sexual orientation of the victim;
* “Provider” – a community-based organization under contract or similar agreement with DSS or DHS;
* “Relevant agencies” – the Office to End Domestic and Gender-Based Violence, Commission on Human Rights, and any other agency the Commissioner of Social Services deems relevant;
* “Sexual assault” – conduct defined under article 130 of the New York Penal Law;
* “Survivor” – a person who has experienced sexual assault or harassment; and
* “Survivor assistance organization” – a community-based organization that provides trauma-informed assistance to survivors experiencing homelessness.

 Subdivision b would require the Commissioner of Social Services to establish a survivor-centered response to complaints of sexual assault or harassment (see defined terms above). The Commissioner of Social Services would have to consult with relevant agencies, survivor assistance organizations, and survivors in doing so. The Commissioner of Social Services or the Commissioner’s designee would be required to take the following actions in a culturally appropriate and trauma-informed manner: offer assault and harassment resources identified in collaboration with relevant agencies, survivor assistance organizations, and survivors to each survivor, including but not limited to crisis counseling and a survivor resource guide (paragraph 1); conduct a follow-up call with each survivor regarding these resources (paragraph 2); assess each complaint of sexual assault or harassment in consultation with the survivor and relevant agencies to determine next steps, including but not limited to referral of such a complaint to a provider or an independent investigation (paragraph 3); follow up with each provider who has been referred such a complaint (paragraph 4); and review all such complaints against providers and any settlements entered into by these providers in response to such complaints every six months (paragraph 5).

 Subdivision c would require the Commissioner of Social Services, in consultation with relevant agencies, survivor assistance organizations, and survivors, to develop a resource guide to provide survivors with culturally competent sexual assault and harassment resources. The Commissioner of Social Services would have to post the guide on the DSS and DHS websites and make the guide available in multiple languages (section 23-1101 of the Administrative Code) to survivors, providers, and relevant department offices (including but not limited to the DHS/DSS Office of the Ombudsman and the DSS Office of Constituent Services). This guide would have to provide the following information, along with any other information deemed relevant by the Commissioner of Social Services (paragraph 5): sexual assault and harassment support programs and hotlines (paragraph 1), government benefits available to survivors (paragraph 2), social services (such as physical and mental health programs and low- or no-cost legal assistance) (paragraph 3), and addresses and phone numbers for rape crisis centers and hospitals with sexual assault forensic examiner programs approved by the New York State Department of Health (paragraph 4).

 Subdivision d would require the Commissioner of Social Services to develop and implement a training for staff employed by DSS, DHS, and providers on the survivor-centered response to complaints, in collaboration with relevant agencies, survivor assistance organizations, and survivors. This training would have to be developed and implemented no later than 30 days after the effective date of the local law that would add this bill section.

 Subdivision e would require the Commissioner of Social Services to conduct culturally appropriate outreach in multiple languages (section 23-1101 of the Administrative Code) to alert the clients and staff of providers to this new section 21-145 of the Administrative Code. This outreach would have to be conducted in consultation with relevant agencies and providers and not later than 30 days after the effective date of the local law that would add this bill section. The Commissioner of Social Services would be required to distribute informational flyers to the clients and staff of providers (paragraph 1), as well as to post signage in a conspicuous location in each shelter operated by DSS or DHS in a manner visible to all residents and staff of the shelter and in multiple languages (section 23-1101 of the Administrative Code) (paragraph 2).

 Subdivision f would require the Commissioner of Social Services to take steps to protect survivor privacy, such as by ensuring that any interagency communication is anonymous.

 Subdivision g would require the Commissioner of Social Services to promulgate rules to administer proposed section 21-145.

 Bill section two provides that the local law would take effect 120 days after it becomes law and establish DSS as a mandatory rulemaking entity.

**Int. No. 2285**

Int. No. 2285 would require the establishment of standards and procedures to determine the existence of conflicts of interest and other misconduct concerning City contracts.

 Bill section one would create a new section 6-145 in the Administrative Code.

 Subdivision a of proposed section 6-145 would define the following terms for the entirety of section 6-145:

* “City chief procurement officer”;
* “Contract” – defined in part as involving a monetary commitment by the City, and including a subcontract between a contractor and a subcontractor;
* “Contractor” – defined in part as a person that enters into a contract with a City agency or the Council;
* “Covered contract” – defined in part as a contract with a value in excess of $100,000, by itself or when aggregated with all contracts awarded to the contractor by a City agency or the Council during the immediately preceding 12 months;
* “Mayor’s Office of Contract Services”; and
* “Subcontractor” – defined in part as a person that is a party or a proposed party to a contract with a contractor.

 Subdivision b of proposed section 6-145 would contain three paragraphs. Paragraph 1 of subdivision b of proposed section 6-145 would require the City Chief Procurement Officer to establish standards and procedures, in consultation with the Conflicts of Interest Board and the Department of Investigation (“DOI”), to be used by contractors to determine the existence of any conflict of interest concerning covered contracts.

 Subparagraph (a) of paragraph 1 of subdivision b of proposed section 6-145 would require such standards and procedures to be established to identify conflicts of interest, as set forth in chapter 68 of the City Charter, that may exist between a City employee and any officer or employee of a contractor that concerns a covered contract. Subparagraph (b) of paragraph 1 would require such standards and procedures to be established to identify conflicts of interest, as set forth in chapter 68 of the City Charter, that may exist between a City employee and any officer or employee of a subcontractor of a contractor that concerns a covered contract. Subparagraph (c) of paragraph 1 would require such standards and procedures to be established to identify conflicts of interest that may exist otherwise for any officer or employee of a contractor that concerns a covered contract. Subparagraph (d) of paragraph 1 would require such standards and procedures to be established to identify conflicts of interest that may exist otherwise for any officer or employee of a subcontractor of a contractor that concerns a covered contract.

Paragraph 2 of subdivision b of proposed section 6-145 would require the City Chief Procurement Officer to also establish standards and procedures to be used by a contractor that is a party to a covered contract to determine the existence of any corruption, criminal activity, gross mismanagement, or abuse of authority that concerns the covered contract by any officer or employee of the contractor or any of its subcontractors.

Paragraph 3 of subdivision b of proposed section 6-145 would require the City Chief Procurement Officer to submit copies of the standards and procedures established pursuant to paragraphs 1 and 2 of this subdivision, within seven days of their establishment, to the Mayor and Speaker of the Council.

Subdivision c of proposed section 6-145 would mandate the Mayor’s Office of Contract Services to require any City agency or the Council, when it is a party to a covered contract, to include the standards and procedures established pursuant to paragraphs 1 and 2 of subdivision b in the covered contract.

Subdivision d of proposed section 6-145 would require contractors to submit a certification of compliance with the standards and procedures established pursuant to paragraphs 1 and 2 of subdivision b (and included in the covered contract pursuant to subdivision c) when entering into a covered contract. Further, the contractors would have to certify that no conflict of interest, corruption, criminal activity, gross mismanagement, or abuse of authority that concerns such covered contract exists with respect to its officers and employees and those of its subcontractors.

Subdivision e of proposed section 6-145 would mandate that the City Chief Procurement Officer post publicly online, and provide the Mayor and Speaker of the Council with, an annual report on the certifications submitted by contractors during the preceding 12 months. This report would have to include such information as the parties to and subject matter of the certified covered contracts (along with any other summarizing information concerning the certifications), the number of certifications actually submitted compared to the total number of covered contracts, and a description of any conflict of interest or conduct involving corruption, criminal activity, gross mismanagement or abuse of authority discovered by the Mayor’s Office of Contract Services during the 12-month period in connection with a certified covered contract.

 Bill section two provides that this local law would take effect 120 days after it becomes law, but that it would only apply to contract solicitations that occur on or after its effective date. This section would require the Procurement Policy Board to take measures prior to the effective date of this local law that would be necessary for its implementation.

**Int. No. 2292**

Int. No**.** 2292 would require additional reporting pertaining to allegations of misconduct made under section 12-113 of the Administrative Code. It would also amend section 33-201 of the Administrative Code pertaining to the development of web applications to track City agency and contractor compliance with certain investigations and recommendations.

Bill section one would add a new subdivision k to section 12-113 of the Administrative Code.

Under existing subdivision i of section 12-113, the Commissioner of Investigation must submit an annual report (by October 31), in consultation with the SCI and Corporation Counsel, to the Mayor and the Council concerning certain information for the preceding fiscal year. This report must include the number of misconduct reports submitted under subdivision b of section 12-113. Misconduct reports are reports of information concerning alleged corruption, criminal activity, conflict of interest, gross mismanagement, or abuse of authority involving a City officer or employee, or involving an officer or employee of a contractor or subcontractor who is a party to a City contract valued in excess of $100,000. Misconduct reports are also reports of information concerning conduct allegedly presenting a substantial and specific risk of harm to the health, safety, or educational welfare of a child by a City officer or employee. The Commissioner of Investigation must also include in this report information on adverse personnel action reports and investigations made under subdivisions c and d of section 12-113.

New subdivision k would require this subdivision i report to include certain additional information in a searchable and machine-readable format for each misconduct report submitted under subdivision b of section 12-113. This additional information would only need to be included in the report if the misconduct report was received by the Commissioner of Investigation, SCI, or Corporation Counsel (either directly or upon referral) in the preceding year, or if such report was received by any of these officials in an earlier year and an investigation or inquiry by the official remained open at the end of the preceding year. The Commissioner of Investigation’s report would have to include the year in which the misconduct report was received by the official (paragraph 1); the agency to which the misconduct report relates (paragraph 2); and whether the misconduct report arose under paragraph 1 of subdivision b of section 12-113 (City officer or employee misconduct), paragraph 2 of such subdivision (misconduct by an officer or employee of certain City contractors or subcontractors), or paragraph 5 of such subdivision (conduct presenting a substantial and specific risk of harm by a City officer or employee) (paragraph 3). The report would also have to include whether the official who received the report initiated an investigation or inquiry and, if so, whether at the end of the fiscal year the investigation or inquiry was closed, open for at least 90 but less than 180 days, open for at least 180 but less than 365 days, open for at least 365 but less than 730 days, or open for 730 or more days (paragraph 4). Finally, the report would have to include, for closed investigations, a summary of the outcome of the investigation or inquiry, including any recommended personnel action and recommended changes to agency, contractor, or subcontractor policy or procedure (paragraph 5). Regarding the final requirement, the Commissioner of Investigation would be mandated to redact any personal identifying information relating to recommended personnel action.

Bill section two would amend section 33-201 of the Administrative Code. Subdivision a would be amended to house definitions of the terms “covered contractor” and “covered subcontractor” (referencing subdivision a of section 12-113). The existing subdivision a language would be moved into a new subdivision b, and this new subdivision b would require the Commissioner of Investigation and SCI to also track and assess cooperation and compliance by covered contractors and covered subcontractors with any of their investigations and recommendations through web applications on their respective websites. The web applications would have to set forth, for each covered contractor or covered subcontractor investigated, any recommendation made and relevant context for the recommendation (paragraph 1); whether the recommendation was accepted or rejected (paragraph 2); and for each recommendation accepted, whether the recommendation was implemented (paragraph 3). Existing subdivision b would be designated as a new subdivision c. New subdivision c would require that the web application to be developed by the Commissioner of Investigation include all recommendations issued with respect to covered contractors and covered subcontractors on and after January 1, 2021. This subdivision would separately require that the web application to be developed by the SCI include all recommendations issued with respect to covered contractors and covered subcontractors on and after the effective date of Local Law 9 of 2021. The web applications would need to be updated as necessary to reflect the current status of cooperation and compliance by each covered contractor or subcontractor. Existing subdivision c would be designated as a new subdivision d.

Bill section three provides that this local law would take effect immediately.

|  |
| --- |
| Proposed Int. No. 2056-A By Council Members Powers, Kallos, Chin and D. Diaz A Local Law to amend the administrative code of the city of New York, in relation to requiring officers and employees of city contractors to report corruption and to cooperate with the department of investigation Be it enacted by the Council as follows: Section 1. Paragraph 1 of subdivision a of section 7-805 of the administrative code of the city of New York, as added by local law number 53 for the year 2005, is amended to read as follows:1. Any officer or employee of the city [of New York] who believes that [he or she] such officer or employee has been the subject of an adverse personnel action, as such term is defined in [paragraph one of] subdivision a of section 12-113 [of the administrative code of the city of New York]; or§ 2. Subdivision a of section 12-113 of the administrative code of the city of New York, as amended by local law number 33 for the year 2012, and paragraph 11 of such subdivision, as added by local law number 9 for the year 2021, is amended to read as follows:a. Definitions. For purposes of this section, the following terms have the following meanings:[1. “Adverse personnel action” shall include] Adverse personnel action. The term “adverse personnel action” includes dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space or equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.[2. “Remedial action” means an appropriate action to restore the officer or employee to his or her former status, which may include one or more of the following:(i) reinstatement of the officer or employee to a position the same as or comparable to the position the officer or employee held or would have held if not for the adverse personnel action, or, as appropriate, to an equivalent position;(ii) reinstatement of full seniority rights;(iii) payment of lost compensation; and(iv) other measures necessary to address the effects of the adverse personnel action.3. “Commissioner” shall mean the commissioner of investigation.4. “Child” shall mean] Child. The term “child” means any person under the age of [nineteen] 19, or any person ages [nineteen] 19 through [twenty-one] 21 if such person receives instruction pursuant to an individualized education plan.Commissioner. The term “commissioner” means the commissioner of investigation.[5. “Educational welfare” shall mean any aspect of a child's education or educational environment that significantly impacts upon such child's ability to receive appropriate instruction, as mandated by any relevant law, rule, regulation or sound educational practice.6. “Superior officer” shall mean an agency head, deputy agency head or other person designated by the head of the agency to receive a report pursuant to this section, who is employed in the agency in which the conduct described in such report occurred.7. “Contract” shall mean] Contract. The term “contract” means any written agreement, purchase order or instrument having a value in excess of [one hundred thousand dollars] $100,000 pursuant to which a contracting agency is committed to expend or does expend funds in return for work, labor, services, supplies, equipment, materials, or any combination of the foregoing, and [shall include] includes a subcontract between a covered contractor and a covered subcontractor. Such term [shall] does not include contracts or subcontracts resulting from emergency procurements or that are government-to-government procurements.[8. “Contracting agency” shall mean] Contracting agency. The term “contracting agency” means a city, county, borough, or other office, position, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the city treasury.[9. “Covered contractor” shall mean] Covered contractor. The term “covered contractor” means a person or business entity who is a party or a proposed party to a contract with a contracting agency valued in excess of [one hundred thousand dollars] $100,000, and the term “covered subcontractor” [shall mean] means a person or entity who is a party or a proposed party to a contract with a covered contractor valued in excess of [one hundred thousand dollars] $100,000.Educational welfare. The term “educational welfare” means any aspect of a child’s education or educational environment that significantly impacts upon such child’s ability to receive appropriate instruction, as mandated by any relevant law, rule, regulation or sound educational practice.[10. “Officers or employees of an agency of the city” shall be deemed to include] Officers or employees of an agency of the city. The term “officers or employees of an agency of the city” is deemed to include officers or employees of local development corporations or other not-for-profit corporations that are parties to contracts with contracting agencies and the governing boards of which include city officials acting in their official capacity or appointees of city officials. Such officers and employees [shall not be] are not deemed to be officers or employees of a covered contractor or covered subcontractor.[11. “Special commissioner of investigation” shall mean the position of deputy commissioner of investigation for the city school district of the city of New York, as established by mayoral executive order number 11 for the year 1990, as amended, or any success or to the duties of such officer.]Remedial action. The term “remedial action” means an appropriate action to restore the officer or employee to the former status of such officer or employee, which may include one or more of the following:1. Reinstatement of the officer or employee to a position the same as or comparable to the position the officer or employee held or would have held if not for the adverse personnel action or, as appropriate, to an equivalent position;2. Reinstatement of full seniority rights;3. Payment of lost compensation; and4. Other measures necessary to address the effects of the adverse personnel action.Special commissioner of investigation. The term “special commissioner of investigation” means the position of deputy commissioner of investigation for the city school district of the city of New York, as established by mayoral executive order number 11 for the year 1990, as amended, or any successor to the duties of such officer.Superior officer. The term “superior officer” means an agency head, deputy agency head or other person designated by the head of the agency to receive a report pursuant to this section, who is employed in the agency in which the conduct described in such report occurred.§ 3. Paragraphs 2, 3 and 4 of subdivision b of section 12-113 of the administrative code of the city of New York, as amended by local law number 9 for the year 2021, are amended to read as follows:2. (a) Every officer and employee of a covered contractor or covered subcontractor shall without undue delay report any information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee of such contractor or subcontractor, which concerns a contract with a contracting agency, (i) to the commissioner, (ii) to a council member, the public advocate, the comptroller, the special commissioner of investigation, the city chief procurement officer, the agency chief contracting officer, or the agency head or commissioner of the contracting agency.(b) Every officer and employee of a covered contractor or covered subcontractor shall cooperate fully with any investigation or inquiry conducted by the commissioner or special commissioner of investigation which concerns a contract with a contracting agency.(c) No officer or employee of a covered contractor or covered subcontractor shall take an adverse personnel action with respect to another officer or employee of such contractor or subcontractor in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee of such contractor or subcontractor, which concerns a contract with a contacting agency, to the commissioner, a council member, the public advocate, the comptroller, the special commissioner of investigation, the city chief procurement officer, the agency chief contracting officer, or the agency head or commissioner of the contracting agency. Such report shall be referred to the commissioner unless such conduct is within the jurisdiction of the special commissioner of investigation, in which case such report shall be referred to the special commissioner.3. Every contract or subcontract in excess of [one hundred thousand dollars] $100,000 shall contain a provision detailing the provisions of paragraph [two] 2 of this subdivision and of paragraph [two] 2 of subdivision e of this section. If a contracting agency determines that there has been a violation of subparagraphs (a) and (b) of paragraph 2 of this subdivision, including, but not limited to, the knowing failure to report information or interference with, or obstruction of, an investigation conducted by the commissioner, such contracting agency shall take such action as it deems appropriate and consistent with the remedies available under the contract or subcontract.4. Upon request, the commissioner, council member, public advocate, comptroller, special commissioner of investigation [or], corporation counsel, city chief procurement officer, agency chief contracting officer or agency head or commissioner of the contracting agency receiving the report of [alleged adverse personnel action] information concerning conduct that an officer or employee referenced in this subdivision knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority shall make reasonable efforts to protect the anonymity and confidentiality of the officer or employee making such report.§ 4. Subdivision c of section 12-113 of the administrative code of the city of New York is amended by adding a new paragraph 3 to read as follows:3. Upon request, the commissioner, special commissioner of investigation or corporation counsel receiving the report of alleged adverse personnel action shall make reasonable efforts to protect the anonymity and confidentiality of the officer or employee making such report.                     § 5. The requirements imposed by subparagraphs (a) and (b) of paragraph 2 of subdivision b of section 12-113 of the administrative code of the city of New York do not apply to any contract between a contracting agency and a covered contractor or any subcontract between a covered contractor and a covered subcontractor that is executed or renewed prior to the effective date of the local law that added this section. For purposes of this section, the terms “contract,” “contracting agency,” “covered contractor” and “covered contractor” have the meanings ascribed to such terms in subdivision a of section 12-113 of such code.§ 6. This local law takes effect 120 days after it becomes law, except that the commissioner of investigation, special commissioner of investigation for the city school district and the city chief procurement officer may take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such date.      MHL/JJLS #1355404/16/2021 3:10 PM |

{THIS PAGE WAS INTENTIONALLY LEFT BLANK}

|  |
| --- |
| Int. No. 2284 By Council Members Rosenthal, Kallos and Gennaro A Local Law to amend the administrative code of the city of New York, in relation to a survivor-centered response by the department of social services to complaints of sexual assault or harassment Be it enacted by the Council as follows:Section 1. Chapter 1 of title 21 of the administrative code of the city of New York is amended by adding a new section 21-145 to read as follows:§ 21-145 Response to complaints of sexual assault or harassment. a. Definitions. As used in this section, the following terms have the following meanings:Complaint. The term “complaint” means a complaint made by a client or by staff of a provider, and involving the staff, personnel or agents of the department, the department of homeless services or a provider.Harassment. The term “harassment” means harassment, as defined under article 240 and consistent with the provisions of article 485 of the New York penal law, directed at a victim because of a belief or perception regarding the gender or sexual orientation of such victim, regardless of whether such belief or perception is correct.Provider. The term “provider” means a community-based organization under contract or similar agreement with the department or the department of homeless services.Relevant agencies. The term “relevant agencies” means the office to end domestic and gender-based violence, the commission on human rights and any other agency that the commissioner deems to be a relevant agency.Sexual assault. The term “sexual assault” means conduct defined under article 130 of the New York penal law.Survivor. The term “survivor” means a person who has experienced sexual assault or harassment.Survivor assistance organization. The term “survivor assistance organization” means a community-based organization that provides trauma-informed assistance to survivors who are experiencing homelessness.b. Survivor-centered response. The commissioner, in consultation with relevant agencies, survivor assistance organizations and survivors, shall establish a survivor-centered response to complaints of sexual assault or harassment. The commissioner, or the commissioner’s designee, in a culturally appropriate and trauma-informed manner, shall:1. Offer sexual assault and harassment resources to each survivor, which the commissioner shall identify, in collaboration with relevant agencies, survivor assistance organizations and survivors, and shall include, but not be limited to, crisis counseling and the survivor resource guide, required by subdivision c;2. Conduct a follow-up call with each survivor regarding such resources;3. Assess each complaint of sexual assault or harassment, in consultation with the survivor and relevant agencies, to determine the next steps to take regarding the complaint, including, but not limited to, whether such complaint is referred to a provider or is independently investigated;4. Follow-up with each provider who has been referred a complaint of sexual assault or harassment, if any; and5. Every six months, review all complaints of sexual assault or harassment against providers and any settlements entered into by such providers in response to complaints of sexual assault or harassment, if any.c. Survivor resource guide. In consultation with relevant agencies, survivor assistance organizations and survivors, the commissioner shall develop a resource guide to provide survivors with culturally competent sexual assault and harassment resources. The commissioner shall post such guide on the websites of the department and the department of homeless services and make such guide available, in the designated citywide languages, as defined in section 23-1101, to survivors, as required by subdivision b, providers and relevant department offices, including, but not limited to, the office of the ombudsman and the office of constituent services, established by section 21-142.2. The guide shall provide information on:1. Sexual assault and harassment support programs and hotlines;2. Government benefits available to survivors of sexual assault or harassment;3. Social services, including, but not limited to, physical and mental health programs and low- or no-cost legal assistance;4. Addresses and phone numbers of rape crisis centers and hospitals with sexual assault forensic examiner programs approved by the New York state department of health; and5. Any other information that the commissioner deems relevant.d. Training. No more than 30 days after the effective date of the local law that added this section, the commissioner shall, in collaboration with relevant agencies, survivor assistance organizations and survivors, develop and implement a training for staff employed by the department, the department of homeless services and providers on the survivor-centered response to complaints as required by this section.e. Outreach. No more than 30 days after the effective date of the local law that added this section, the commissioner, in consultation with relevant agencies and providers, shall conduct culturally appropriate outreach in the designated citywide languages, as defined in section 23-1101, to alert the clients and staff of providers to this section. As part of such outreach, the commissioner shall:1. Distribute informational flyers to the clients and staff of the providers; and2. Post signage in each shelter operated by the department or the department of homeless services, which shall be in a conspicuous location, visible to all residents and staff of such shelter and in the designated citywide languages, as defined in section 23-1101.f. The department shall take steps to protect the privacy of a survivor, including, but not limited to, anonymizing any interagency communication.g. The commissioner shall promulgate rules necessary and appropriate to the administration of this section.§ 2. This local law takes effect 120 days after it becomes law, except that the department of social services shall take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such date.   NLBLS #17256                     3/24/21  |

|  |
| --- |
| Int. No. 2285 By Council Members Rosenthal and Kallos A Local Law to amend the administrative code of the city of New York, in relation to requiring the establishment of standards and procedures to determine the existence of conflicts of interest and other misconduct concerning city contracts Be it enacted by the Council as follows: Section 1. Title 6 of the administrative code of the city of New York is amended by adding a new section 6-145 to read as follows:§ 6-145 Conflicts of interest and misconduct concerning city contracts. a. As used in this section, the following terms have the following meanings:City chief procurement officer. The term “city chief procurement officer” means the individual to whom the mayor has delegated authority to coordinate and oversee the procurement activity of mayoral agency staff, including the agency chief contracting officers and any offices that have oversight responsibility for procurement, and who is the head of the mayor’s office of contract services.Contract. The term “contract” means any written agreement, purchase order or instrument by which the city is committed to expend or does expend funds in return for an interest in real property, work, labor, services, supplies, equipment, materials, construction, construction-related service or any combination of the foregoing, and includes a subcontract between a contractor and a subcontractor. Such term does not include a contract or subcontract resulting from an emergency procurement or that is a government-to-government procurement.Contractor. The term “contractor” means a person, including but not limited to any natural person, sole proprietorship, partnership, joint venture or corporation, that enters into a contract with an agency or the council.Covered contract. The term “covered contract” means a contract entered into on or after the effective date of the local law that added this section by a contractor and an agency or the council, that by itself or when aggregated with all contracts awarded to such contractor by any agency or the council during the immediately preceding 12 months has a value in excess of $100,000. Mayor’s office of contract services. The term “mayor’s office of contract services” means the office of contracts established within the office of the mayor by mayoral executive order number 114, dated April 13, 1988, as continued, amended or succeeded by executive order thereafter.Subcontractor. The term “subcontractor” means a person, including but not limited to any natural person, sole proprietorship, partnership, joint venture or corporation, that is a party or a proposed party to a contract with a contractor.b. 1. In consultation with the conflicts of interest board and the department of investigation, the city chief procurement officer shall establish standards and procedures to be used by a contractor that is a party to a covered contract for determining the existence of any conflict of interest:(a) As set forth in chapter 68 of the charter, that may exist between a city employee and any officer or employee of such contractor that concerns such covered contract;(b) As set forth in chapter 68 of the charter, that may exist between a city employee and any officer or employee of a subcontractor of such contractor that concerns such covered contract;(c) That may exist otherwise for any officer or employee of such contractor that concerns such covered contract; and(d) That may exist otherwise for any officer or employee of a subcontractor of such contractor that concerns such covered contract.2. In consultation with the department of investigation, the city chief procurement officer shall also establish standards and procedures to be used by a contractor that is a party to a covered contract for determining the existence of any conduct involving corruption, criminal activity, gross mismanagement or abuse of authority that concerns such covered contract by any officer or employee of such contractor or by any officer or employee of a subcontractor of such contractor.3. Within 7 days after the establishment of the standards and procedures pursuant to paragraphs 1 and 2 of this subdivision, the city chief procurement officer shall submit copies of such standards and procedures to the mayor and the speaker of the council.c. The mayor’s office of contract services shall require an agency that is a party to a covered contract, or the council as a party to a covered contract, to include the standards and procedures established by the city chief procurement officer pursuant to paragraphs 1 and 2 of subdivision b of this section in such covered contract.d. A contractor shall submit a certification to the mayor’s office of contract services when entering into a covered contract that such contractor has complied with the standards and procedures established by the city chief procurement officer pursuant to paragraphs 1 and 2 of subdivision b of this section and included in such contract pursuant to subdivision c of this section, and that no conflict of interest, corruption, criminal activity, gross mismanagement or abuse of authority that concerns such covered contract exists with respect to its officers and employees and to officers and employees of its subcontractors.e. Not later than July 1, 2022, and by July 1 annually thereafter, the city chief procurement officer shall post publicly online and submit to the mayor and the speaker of the council a report on certifications submitted by contractors pursuant to subdivision d of this section during the past 12 months, including but not limited to (i) a summary of all such certifications submitted during such period, including but not limited to the parties to and subject matter of the covered contracts for which such certifications were submitted; (ii) the number of such certifications submitted during such period as compared to the total number of covered contracts that took effect during such period and (iii) a description of any conflict of interest or conduct involving corruption, criminal activity, gross mismanagement or abuse of authority discovered by the mayor’s office of contract services during such period in connection with a covered contract for which a contractor submitted such a certification.§ 2. This local law takes effect 120 days after it becomes law, provided that it only applies to contract solicitations that occur on and after its effective date, and except that the procurement policy board shall take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such date.        JK/JJLS #404/16/2021 1:48 PM |

|  |
| --- |
| Int. No. 2292 By Council Member Gibson A Local Law to amend the administrative code of the city of New York, in relation to the reporting of information pertaining to allegations of misconduct made under section 12-113 and the development of web applications to track City agency and contractor compliance with certain investigations and recommendations Be it enacted by the Council as follows: Section 1. Section 12-113 of the administrative code of the city of New York is amended by adding a new subdivision k to read as follows:k. The report required by subdivision i of this section shall include the following information in a searchable, machine-readable format for each report of information concerning conduct allegedly involving corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority, or conduct allegedly presenting a substantial and specific risk of harm to the health, safety or educational welfare of a child, as described in subdivision b of this section; provided that such information shall only be included if such conduct report was received by the commissioner, special commissioner of investigation or corporation counsel, whether directly or upon referral, (i) in the preceding year or (ii) in an earlier year and an investigation or inquiry by such official with respect to such conduct report remained open at the end of the preceding year:1. The year in which such conduct report was received by the commissioner, special commissioner of investigation or corporation counsel, whether directly or upon referral;2. The agency to which such conduct report relates;3. Whether such conduct report arose under paragraph 1 of subdivision b of this section, paragraph 2 of such subdivision or paragraph 5 of such subdivision;4. Whether an investigation or inquiry has been initiated by the commissioner, special commissioner of investigation or corporation counsel with respect to such conduct report and, if so, whether at the end of such fiscal year, such investigation or inquiry was (i) closed, (ii) open for 90 or more days, but fewer than 180 days, (iii) open for 180 or more days, but fewer than 365 days, (iv) open for 365 or more days, but fewer than 730 days, or (v) open for 730 or more days; and5. If an investigation or inquiry was initiated by such official with respect to such conduct report and closed, a summary of the outcome of such investigation or inquiry, including any recommended personnel action and recommended changes to agency, covered contractor or covered subcontractor policy or procedure resulting from such investigation or inquiry; provided that the commissioner shall redact any personal identifying information, as such term is defined in subdivision a of section 10-501, relating to any recommended personnel action.§ 2. Section 33-201 of the administrative code of the city of New York, as added by local law number 43 for the year 2020, is amended to read as follows:§ 33-201 Website and reporting. a. Definitions. For purposes of this section, the terms “covered contractor” and “covered subcontractor” have the meanings ascribed to such terms in subdivision a of section 12-113.b. The commissioner and the special commissioner of investigation shall develop and maintain web applications on their respective websites for the purposes of tracking and assessing [agency] cooperation and compliance by agencies, covered contractors and covered subcontractors with investigations and recommendations. For each agency, covered contractor or covered subcontractor investigated, the web applications shall set forth:1. Any recommendation made to the agency, covered contractor or covered subcontractor and any relevant context for the recommendation;2. Whether any such recommendation was accepted or rejected by the agency, covered contractor or covered subcontractor to which it was made; and3. For each recommendation accepted by an agency, covered contractor or covered subcontractor, whether such agency, covered contractor or covered subcontractor implemented the recommendation.[b.] c. The web application required by this section to be developed by the commissioner shall include all recommendations issued with respect to agencies on and after January 1, 2014 and all recommendations issued with respect to covered contractors and covered subcontractors on and after January 1, 2021. The web application required by this section to be developed by the special commissioner of investigation shall include all recommendations issued with respect to agencies on and after the effective date of [the] local law [that added this section] number 43 for the year 2020 and all recommendations issued with respect to covered contractors and covered subcontractors on and after the effective date of local law number 9 for the year 2021. Both web applications shall be updated as necessary to reflect the current status of [each agency’s] cooperation and compliance by each agency, covered contractor or covered subcontractor.[c.] d. The web applications required by this section shall be made available to the public no later than July 1, 2020. When such web applications required by this section are available to the public, the web applications maintained by the commissioner and by the special commissioner of investigation shall include a link to each other.§ 3. This local law takes effect immediately.   JJLS #1760104/22/2021 2:54PM |

{THIS PAGE WAS INTENTIONALLY LEFT BLANK}

1. DHS considers a single adult to be any man or woman over the age of 18 who seeks shelter independently, without being accompanied by other adults or minors. See <http://www1.nyc.gov/site/dhs/shelter/singleadults/single-adults.page>. [↑](#footnote-ref-1)
2. DHS considers families with children to be the following households: families with children younger than 21 years of age, pregnant women and families with a pregnant woman. See <http://www1.nyc.gov/site/dhs/shelter/families/families-with-children.page>. [↑](#footnote-ref-2)
3. DHS considers an adult family to be any family without minor children, including the following household compositions: applicants who are a legally married couple and present a valid original marriage certificate; or applicants who are a domestic partners couple and present a valid original domestic partnership certificate; or adults who provide, as part of their application for Temporary Housing Assistance, proof establishing the medical dependence of one applicant upon another; and two or more adults who can provide birth certificates to prove a parent and child or sibling family relationship or share a "caretaking" (emotionally or physically supportive) relationship. See <http://www1.nyc.gov/site/dhs/shelter/families/adult-families.page>. [↑](#footnote-ref-3)
4. Shelter Repair Scorecard: Shelter Building Detail, <https://www1.nyc.gov/site/dhs/about/shelter-repair-scorecard.page> [↑](#footnote-ref-4)
5. The right to shelter in New York State for homeless men was established by the 1981 consent decree in *Callahan v. Carey*, and was extended to homeless women by *Eldredge v. Koch* (1983), and homeless families by *McCain v. Koch* (1983). [↑](#footnote-ref-5)
6. *See* “Agency Indicators Report Fiscal Year 2020: Department of Homeless Services” *available at* <https://www1.nyc.gov/site/mocs/reporting/agency-indicators/agency-indicators-department-of-homeless-services-dhs.page>. [↑](#footnote-ref-6)
7. N.Y.C. Council Committee on General Welfare, Testimony of First Deputy Commissioner Molly Park Department of Homeless Services, (Dec. 16, 2019) *available at* <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4270305&GUID=E2716FA0-DE17-49F6-922A-B94BC59A35D7&Options=&Search=>. [↑](#footnote-ref-7)
8. “DHS Daily Report.” April 9, 2021, *available at* <https://www1.nyc.gov/assets/dhs/downloads/pdf/dailyreport.pdf>. [↑](#footnote-ref-8)
9. *Id.* [↑](#footnote-ref-9)
10. *Id.* [↑](#footnote-ref-10)
11. *Id.* [↑](#footnote-ref-11)
12. N.Y.C. Council Finance Committee Report, Fiscal 2022 Preliminary Plan Department of Homeless Services, (Mar. 17, 2021) *available at* https://legistar.council.nyc.gov/MeetingDetail.aspx?ID=845949&GUID=8F4DDE93-DBD3-4193-B673-FC894745E4FA&Options=&Search=. [↑](#footnote-ref-12)
13. *Id*. [↑](#footnote-ref-13)
14. Office of New York State Comptroller, *Oversight of Selected Fiscal Aspects of Homeless Shelter Services Report 2019-F-54; Letter to Commissioner Banks.* (May 6, 2020); *available at* <https://www.osc.state.ny.us/files/state-agencies/audits/pdf/sga-2020-19f54.pdf> [↑](#footnote-ref-14)
15. *Id*. [↑](#footnote-ref-15)
16. *Id*. [↑](#footnote-ref-16)
17. *See* N.Y. Office of Temporary and Disability Assistance, “OTDA Shelter Inspection Process,” <https://otda.ny.gov/programs/shelter/inspection-process.asp>. [↑](#footnote-ref-17)
18. *See, eg.* Office of the New York State Comptroller, “New York City Department of Social Services

Oversight of Security Expenses in Single Adult and Adult Family Homeless Shelters,” <https://osc.state.ny.us/audits/allaudits/093018/16n6.htm>. [↑](#footnote-ref-18)
19. *See* N.Y. Office of Temporary and Disability Assistance, “OTDA Shelter Inspection Process,” <https://otda.ny.gov/programs/shelter/inspection-process.asp>. [↑](#footnote-ref-19)
20. *Id.* [↑](#footnote-ref-20)
21. Human Services Council “Statement on the Adopted Fiscal Year 2018 New York City Budget” June 8, 2017 *available at* <https://humanservicescouncil.org/wp-content/uploads/Initiatives/SustainOurSanctuary/Statement-on-the-Adopted-FY18-City-Budget.pdf>. [↑](#footnote-ref-21)
22. *Id.*  [↑](#footnote-ref-22)
23. N.Y.C. Council Hearing Committees on General Welfare and Contracts, Testimony of N.Y.C. Department of Social Services, (Jun. 21, 2018), *available at* <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3514426&GUID=937DC473-705E-4674-A875-E1EE1CF3B81B>. [↑](#footnote-ref-23)
24. *Id.* [↑](#footnote-ref-24)
25. *Id.* [↑](#footnote-ref-25)
26. Amy Julia Harris, *‘Nobody Tells Daddy No:’ A Housing Boss’s Many Abuse Cases*. NY Times (Feb. 7, 2021) *available at* <https://www.nytimes.com/2021/02/07/nyregion/victor-rivera-bronx-homeless.html>. [↑](#footnote-ref-26)
27. *Id.* [↑](#footnote-ref-27)
28. *Id*. [↑](#footnote-ref-28)
29. *Id.* [↑](#footnote-ref-29)
30. *Id.* [↑](#footnote-ref-30)
31. *Id*. [↑](#footnote-ref-31)
32. *Id*. [↑](#footnote-ref-32)
33. *Id.* [↑](#footnote-ref-33)
34. Amy Julia Harris, *After Abuse Allegations, $2 Billion Shelter Network Faces Scrutiny*, NY Times, (Feb. 8,2021) *available at* <https://www.nytimes.com/2021/02/07/nyregion/victor-rivera-investigation.html>. [↑](#footnote-ref-34)
35. Amy Julia Harris, *Housing Boss Is Fired and Faces Criminal Inquiry After Reports of Abuse*. NY Times (Feb. 8, 2021) *available at* <https://www.nytimes.com/2021/02/08/nyregion/victor-rivera-homeless-shelter-allegations.html>. [↑](#footnote-ref-35)
36. *Supra note* 26. [↑](#footnote-ref-36)
37. *Supra note* 34. [↑](#footnote-ref-37)
38. N.Y.C. Executive Order 64 of 2021 (Mar. 3, 2021) *available at* <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2021/eo-64.pdf>. [↑](#footnote-ref-38)
39. *Id*. [↑](#footnote-ref-39)
40. *Id*. [↑](#footnote-ref-40)
41. *Supra note* 35. [↑](#footnote-ref-41)
42. U.S. Department of Justice Press Release, “*CEO Of NYC Non-Profit Charged In Bribery And Kickbacks Scheme Involving Publicly Funded Housing And Social Services*” (Mar. 24, 2021) *available at* <https://www.justice.gov/usao-sdny/pr/ceo-nyc-non-profit-charged-bribery-and-kickbacks-scheme-involving-publicly-funded>. [↑](#footnote-ref-42)
43. Amy Julia Harris, *Housing Boss Who Was Accused of Sexual Assault Now Faces Bribery Charges*, NY Times, (Mar. 24, 2021) <https://www.nytimes.com/2021/03/24/nyregion/victor-rivera-arrested-bronx.html>. [↑](#footnote-ref-43)
44. *Id*. [↑](#footnote-ref-44)
45. Supra *note* 26. [↑](#footnote-ref-45)
46. *Supra note* 43. [↑](#footnote-ref-46)
47. Katie Honan, *New York City is Investigating Top Homeless Shelter Operator*, Wall Street Journal (Jul. 18, 2019) *available at* <https://www.wsj.com/articles/new-york-city-is-investigating-top-homeless-shelter-operator-11563471155> [↑](#footnote-ref-47)
48. *Supra note* 43. [↑](#footnote-ref-48)
49. Nikita Stewart, *$500 Million for the Homeless Targeted in Scheme with Bogus Address*, NY Times (Jan. 29, 2020) *available at* <https://www.nytimes.com/2020/01/29/nyregion/homeless-shelters-services-fraud.html>. [↑](#footnote-ref-49)
50. N.Y.C. Mayor’s Office of Contract Services, “How the City Spends its Money,” <https://www1.nyc.gov/site/mocs/reporting/citywide-indicators/how-the-city-spends-its-money.page>. [↑](#footnote-ref-50)
51. *Id*. [↑](#footnote-ref-51)
52. *Id*. [↑](#footnote-ref-52)
53. N.Y.C. Mayor’s Office of Contract Services, Citywide Procurement Indicators Report Fiscal Year 2020, Appendix C, *available at* <https://www1.nyc.gov/site/mocs/reporting/indicators-appendices.page>. [↑](#footnote-ref-53)
54. *Id.* [↑](#footnote-ref-54)
55. *See id*. There were 437 architecture/engineering procurements, totaling $256 million; 12,727 construction services procurements, totaling $2.9 billion; 14,845 professional services procurements, totaling $5.2 billion; and 23,331 standardized services procurements, totaling $2.4 billion. *Id*. [↑](#footnote-ref-55)
56. *See* N.Y.C. Mayor’s Office of Contract Services, Citywide Procurement Indicators Report Fiscal Year 2020, Appendix B, *available at* <https://www1.nyc.gov/site/mocs/reporting/indicators-appendices.page>. [↑](#footnote-ref-56)
57. *Id*. [↑](#footnote-ref-57)
58. *Id*. [↑](#footnote-ref-58)
59. *Id*. [↑](#footnote-ref-59)
60. FAR defines “covered employee” as an individual who performs the acquisition function closely associated with inherently government functions. Such services include (1) supporting or providing advice or recommendations to the U.S. with regards to planning acquisitions; (2) determining what supplies or services are to be acquired by the U.S., including developing statements of work; (3) developing or approving contractual documents, including documents defining requirements, incentive plans, and evaluation criteria; (4) evaluating contract proposals; (5) awarding U.S. contracts; (6) administering contracts (including ordering changes or giving technical direction in contract performance or contract quantities, evaluating contractor performance, and accepting or rejecting contractor products or services); (7) terminating contracts; and (8) determining whether contract costs are reasonable, allocable, and allowable. 48 C.F.R. § 3.1101. [↑](#footnote-ref-60)
61. *Id*. [↑](#footnote-ref-61)
62. *See* Keith R. Szeliga and Franklin C. Turner, *Preventing Personal Conflicts of Interest Among Contractor Employees Performing Acquisition Support Services*,Briefing Papers, Second Series, <https://www.governmentcontractslawblog.com/wp-content/uploads/sites/37/2012/04/Szeliga-link.pdf>. [↑](#footnote-ref-62)
63. 48 C.F.R. § 52.203-16. [↑](#footnote-ref-63)
64. Oregon Department of Transportation, ODOT Conflict of Interest Guidelines for Procurements & Contracts 3, *available at* <https://www.oregon.gov/odot/Business/Procurement/DocsPSK/coiguidelines.pdf> (describing Oregon state standards regarding conflicts of interest in public contracting). [↑](#footnote-ref-64)
65. ORS § 279A.015(2). [↑](#footnote-ref-65)
66. ORS § 244.047(2). [↑](#footnote-ref-66)
67. Such limitations do not apply to the procurement of construction manager/general contractor services. ORS § 279C.307(2). [↑](#footnote-ref-67)
68. ORS § 279B.040(1). [↑](#footnote-ref-68)
69. *Id*. [↑](#footnote-ref-69)
70. Oregon Department of Transportation, ODOT Conflict of Interest Guidelines for Procurements & Contracts, *available at* <https://www.oregon.gov/odot/Business/Procurement/DocsPSK/coiguidelines.pdf>, at 2. [↑](#footnote-ref-70)
71. *Id*. at 1, 2. [↑](#footnote-ref-71)
72. *Id.* at 8-9. [↑](#footnote-ref-72)
73. *See* N.Y.C. Conflicts of Interest Board, The Conflicts of Interest Law, *available at* <https://www1.nyc.gov/site/coib/the-law/the-law.page>. [↑](#footnote-ref-73)
74. N.Y.C. Charter § 2604(b)(2). [↑](#footnote-ref-74)
75. N.Y.C. Charter § 2604(b)(3). [↑](#footnote-ref-75)
76. N.Y.C. Administrative Code § 12-110. [↑](#footnote-ref-76)
77. N.Y.C. Conflicts of Interest Board, Frequently Asked Questions, *available at* <https://www1.nyc.gov/site/coib/annual-disclosure/frequently-asked-questions.page>. [↑](#footnote-ref-77)
78. N.Y.C. Administrative Code § 12-113(b)(2). [↑](#footnote-ref-78)
79. *Id*. [↑](#footnote-ref-79)
80. N.Y.C. Administrative Code § 12-113 (i); N.Y.C. Department of Investigations, DOI’s Annual Whistleblower Letters to the Mayor and City Council Speaker, *available at* <https://www1.nyc.gov/site/doi/report/AnnualWhistleblowerLetters.page> (*last accessed April 26, 2021*). [↑](#footnote-ref-80)
81. Local Law 9 of 2021 [↑](#footnote-ref-81)