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Title: A Local Law to amend the New York city charter and the administrative code of the city of New York, in relation to transferring the functions, powers and duties of the commissioner of investigation to the public advocate

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Int. No. 1518

By Council Members Borelli, Brannan, Gjonaj, Holden, Salamanca and Ulrich

A Local Law to amend the New York city charter and the administrative code of the city of New York, in relation to transferring the functions, powers and duties of the commissioner of investigation to the public advocate

Be it enacted by the Council as follows:

Section 1. Subdivisions i, j and k of section 24 of the New York city charter, as added by a vote of the electors on November 7, 1989, are amended to read as follows:

i. The public advocate shall serve as the commissioner of investigation pursuant to chapter 34. In the role of commissioner of investigation, the public advocate is authorized to make such rules as are necessary to carry out the powers and duties of the department of investigation. Except for those matters which involve conduct which may constitute [a violation of criminal law or] a conflict of interest, the public advocate may, on

the request of a resident, taxpayer, community board, council member or borough president, or on his or her own motion, inquire into any alleged failure of a city officer or agency to comply with any provision of the charter. If as a result of such inquiry, the public advocate concludes that there is any substantial failure to comply with any provision of the charter, he or she shall submit a preliminary report documenting the conclusions of the inquiry to the officer or officers and the head of each agency involved. Within a reasonable time after submitting such preliminary report, the public advocate shall issue a final report to the council, mayor, and agency documenting the conclusions of the inquiry.

j. The public advocate shall have timely access to those records and documents of city agencies which the public advocate deems necessary to complete the investigations, inquiries and reviews required by this section. If a city agency does not comply with the public advocate's request for such records and documents, the public advocate may request an appropriate committee of the council to require the production of such records and documents pursuant to section twenty-nine of the charter. The provisions of this subdivision shall not apply to those records and documents of city agencies for which a claim of privilege may properly be raised [or which are prepared or maintained by the department of investigation for use in any investigation authorized by chapter thirty-four of the charter].

k. If the public advocate receives a complaint alleging conduct which may constitute a violation of criminal law or a conflict of interest, he or she shall promptly [refer] address the complaint regarding criminal conduct [to] through the department of investigation or, as applicable, refer such complaint to the appropriate prosecuting attorney or other law enforcement agency and shall refer the complaint regarding conflict of interest to the conflicts of interest board. If during the conduct of any investigation, inquiry, or review authorized by this section, the public advocate discovers that the matter involves conduct which may constitute a violation of criminal law or a conflict of interest, he or she [shall take no further action but] shall promptly [refer] address the matter regarding criminal conduct [to] through the department of investigation or, as applicable, refer such matter to the appropriate prosecuting attorney or other law enforcement agency and shall

promptly refer the matter regarding conflict of interest to the conflicts of interest board. Unless otherwise provided by law, all complaints received and any investigative file prepared or maintained by the public advocate regarding matters covered by this subdivision, shall be confidential.

1. Before making public any portion of any draft, preliminary or final report relating to the operations or activities of a city officer or agency, the public advocate shall send a copy of the draft report to any such officer, and to the head of any agency, discussed in such report and provide the officer and agency, in writing, with a reasonable deadline for their review and response. The public advocate shall include in any report, or portion thereof, which is made public a copy of all such officer and agency responses. This subdivision shall not apply to any report prepared by the department of investigation or the public advocate in the role of commissioner of investigation pursuant to chapter 34.

§ 2. Section 31 of the New York city charter, as amended by local law number 96 for the year 2016, is amended to read as follows:

§ 31. Power of advice and consent. Appointment by the mayor of [the commissioner of investigation and of] the members of the art commission, board of health (other than the chair), board of standards and appeals, city planning commission (other than the chair), civil service commission, landmarks preservation commission, tax commission, taxi and limousine commission and the public members of the environmental control board shall be made with the advice and consent of the council after a public hearing. Within 30 days after the first stated meeting of the council after receipt of a nomination, the council shall hold a hearing and act upon such nomination and in the event it does not act within such period, the nomination shall be deemed to be confirmed.

§ 3. Section 801 of the New York city charter, as amended by local law number 59 for the year 1996, is amended to read as follows:

§ 801. Department; commissioner. There shall be a department of investigation the head of which shall be the commissioner of investigation. [The commissioner shall be a member of the bar of the state of New York

in good standing and shall have had at least five years of law enforcement experience. The mayor may remove the commissioner upon filing in the office of the commissioner of citywide administrative services and serving upon the commissioner of investigation the reasons therefor and allowing such officer an opportunity of making a public explanation.] The public advocate shall serve as the commissioner of investigation.

§ 4. Subdivision a of section 803 of the New York city charter, as amended by a vote of the electors on November 4, 1975, is amended to read as follows:

a. The commissioner shall make any investigation directed by [the mayor or] the council and, pursuant to section 335, any determination of whether an entity or any individual affiliated with an entity has been subject to an investigation by the department.

§ 5. Paragraph 3 of subdivision c of section 803 of the New York city charter, as added by local law number 70 for the year 2013, is amended to read as follows:

3. The [Mayor] commissioner, in consultation with the [department and the new york city police department] police commissioner, shall have the discretion to determine how sensitive information provided to the department in connection with any investigation, review, study, or audit undertaken pursuant to this section shall be treated. The [Mayor] commissioner shall provide the Council with any guidelines, procedures, protocols or similar measures related to the treatment of sensitive information that he or she puts in place. Sensitive information shall mean information concerning (a) ongoing civil or criminal investigations or proceedings; (b) undercover operations; (c) the identity of confidential sources, including protected witnesses; (d) intelligence or counterintelligence matters; or (e) other matters the disclosure of which would constitute a serious threat to national security or to the safety of the people of the city of New York.

§ 6. Section 1109 of the New York city charter, as amended by local law number 68 for the year 1993, is amended to read as follows:

§ 1109. Summary inquiry. A summary inquiry into any alleged violation or neglect of duty in relation to the property, government or affairs of the city may be conducted under an order to be made by any justice of

the supreme court in the first, second or eleventh judicial district on application of the mayor, the comptroller, the public advocate, any five council members[, the commissioner of investigation] or any five citizens who are taxpayers, supported by affidavit to the effect that one or more officers, employees or other persons therein named have knowledge or information concerning such alleged violation or neglect of duty. Such inquiry shall be conducted before and shall be controlled by the justice making the order or any other justice of the supreme court in the same district. Such justice may require any officer or employee or any other person to attend and be examined in relation to the subject of the inquiry. Any answers given by a witness in such inquiry shall not be used against such witness in any criminal proceeding, except that for all false answers on material points such witness shall be subject to prosecution for perjury. The examination shall be reduced to writing and shall be filed in the office of the clerk of such county within the first, second or eleventh judicial district as the justice may direct, and shall be a public record.

§ 7. Subdivision a of section 2100 of the New York city charter, as amended by local law number 34 for the year 2002, is amended to read as follows:

a. There shall be a business integrity commission, which shall consist of a full-time chairperson appointed by the mayor, of the public advocate and of the commissioners of the department of small business services, the department of consumer affairs, [the department of investigation,] the police department and the department of sanitation, or their designees.

§ 8. Subparagraph (b) of paragraph 5 of subdivision a of section 2604 of the New York city charter, as amended by local law number 59 for the year 1996, is amended to read as follows:

(b) a public servant who is a deputy mayor, the director of the office of management and budget, commissioner of citywide administrative services, corporation counsel, commissioner of finance[, commissioner of investigation] or chair of the city planning commission, or who serves in the executive branch of city government and is charged with substantial policy discretion involving city-wide policy as determined by the board, shall be the executive branch of the city government,

§ 9. 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 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

§ 10. Section 12-113 of the administrative code of the city of New York, as amended by local law number 33 for the year 2012, is amended to read as follows:

§ 12-113 Protection of sources of information. a. Definitions. For purposes of this section, the following terms have the following meanings:

[1. “[Adverse personnel action[”]. [shall include] The term “adverse personnel action” means 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[”]. The term “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)] 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;

[(ii)] 2. reinstatement of full seniority rights;

[(iii)] 3. payment of lost compensation; and

[(iv)] 4. other measures necessary to address the effects of the adverse personnel action.

[3. “Commissioner” shall mean the commissioner of investigation.]

[4. “[Child[”]. [shall mean] The term “child” means any person under the age of nineteen, or any person ages nineteen through twenty-one if such person receives instruction pursuant to an individualized education

plan.

[5. “[]Educational welfare[”]. [shall mean] 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.

[6. “[]Superior officer[”]. [shall mean] 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.

[7. “[]Contract[”]. [shall mean] The term “contract” means any written agreement, purchase order or instrument having a value in excess of one hundred thousand dollars 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 a subcontract between a covered contractor and a covered subcontractor. Such term shall not include contracts or subcontracts resulting from emergency procurements or that are government-to-government procurements.

[8. “[]Contracting agency[”]. [shall mean] 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] 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, and “covered subcontractor” shall mean 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.

[10. “[]Officers or employees of an agency of the city[”]. [shall be] 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 deemed to be officers or employees of a covered contractor or covered subcontractor.

b. 1. No officer or employee of an agency of the city shall take an adverse personnel action with respect to another officer or employee in retaliation for his or her making a report of information concerning conduct which he or she knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by another city officer or employee, which concerns his or her office or employment, or by persons dealing with the city, which concerns their dealings with the city, (i) to the [commissioner] public advocate, or (ii) to a council member[, the public advocate] or the comptroller, who shall refer such report to the [commissioner] public advocate. For purposes of this subdivision, an agency of the city shall be deemed to include, but not be limited to, an agency the head or members of which are appointed by one or more city officers, and the offices of elected city officers.

2. 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 contracting agency, (i) to the [commissioner] public advocate, (ii) to a council member[, the public advocate] or the comptroller, who shall refer such report to the [commissioner] public advocate, or (iii) to the city chief procurement officer, agency chief contracting officer, or agency head or commissioner of the contracting agency, who shall refer such report to the [commissioner] public advocate.

3. Every contract or subcontract in excess of one hundred thousand dollars shall contain a provision detailing the provisions of paragraph two of this subdivision and of paragraph two of subdivision e of this section.

4. Upon request, the [commissioner,] council member, public advocate or comptroller 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. No officer or employee of an agency of the city shall take an adverse personnel action with respect to another officer or employee in retaliation for his or her making a report of information concerning conduct which he or she knows or reasonably believes to present a substantial and specific risk of harm to the health, safety or educational welfare of a child by another city officer or employee, which concerns his or her office or employment, or by persons dealing with the city, which concerns their dealings with the city, (i) to the [commissioner] public advocate, (ii) to a council member, [the public advocate,] the comptroller or the mayor, or (iii) to any superior officer.

c. An officer or employee (i) of an agency of the city, or (ii) of a public agency or public entity subject to the jurisdiction of the [commissioner] public advocate pursuant to chapter [thirty-four] 34 of the charter who believes that another officer or employee has taken an adverse personnel action in violation of subdivision b of this section may report such action to the [commissioner] public advocate.

d. 1. Upon receipt of a report made pursuant to subdivision c of this section, the [commissioner] public advocate shall conduct an inquiry to determine whether retaliatory adverse personnel action has been taken.

2. Within fifteen days after receipt of an allegation pursuant to subdivision c of this section of a prohibited adverse personnel action, the [commissioner] public advocate shall provide written notice to the officer or employee making the allegation that the allegation has been received by the [commissioner] public advocate. Such notice shall include the name of the person in the department of investigation who shall serve as a contact with the officer or employee making the allegation.

3. Upon the completion of an investigation initiated under subdivision c of this section, the [commissioner] public advocate shall provide a written statement of the final determination to the officer or employee who complained of the retaliatory adverse personnel action. The statement shall include the [commissioner's] public advocate's recommendations, if any, for remedial action, or shall state the [commissioner] public advocate has determined to dismiss the complaint and terminate the investigation.

e. 1. Upon a determination that a retaliatory adverse personnel action has been taken with respect to an officer or employee of an agency of the city in violation of paragraph one or five of subdivision b of this section, the [commissioner] public advocate shall without undue delay report his or her findings and, if appropriate, recommendations to the head of the appropriate agency or entity, who (i) shall determine whether to take remedial action and (ii) shall report such determination to the [commissioner] public advocate in writing. Upon a determination that the agency or entity head has failed to take appropriate remedial action, the [commissioner] public advocate shall consult with the agency or entity head and afford the agency or entity head reasonable opportunity to take such action. If such action is not taken, the [commissioner] public advocate shall report his or her findings and the response of the agency or entity head (i) if the complainant was employed by an agency the head or members of which are appointed by the mayor, to the mayor, (ii) if the complainant was employed by a non-mayoral agency of the city, to the city officer or officers who appointed the agency head, or (iii) if the complainant was employed by a public agency or other public entity not covered by the preceding categories but subject to the jurisdiction of the [commissioner] public advocate pursuant to chapter [thirty-four] 34 of the charter, to the officer or officers who appointed the head of the public agency or public entity, who shall take such action as is deemed appropriate.

2. Any officer or employee of a covered contractor or covered subcontractor who believes that he or she has been the subject of an adverse personnel action in violation of paragraph two of subdivision b shall be entitled to bring a cause of action against such covered contractor or covered subcontractor to recover all relief necessary to make him or her whole. Such relief may include but shall not be limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorneys' fees. An officer or employee described in this paragraph may bring an action in any court of competent jurisdiction for such relief. An officer

or employee who brings a cause of action pursuant to this paragraph shall notify the agency chief contracting officer or agency head or commissioner of the contracting agency of such action; provided, however, that failure to provide such notice shall not be a jurisdictional defect, and shall not be a defense to an action brought pursuant to this paragraph. This paragraph shall not be deemed to create a right of action against the city, any public agency or other public entity, or local development corporations or not-for-profit corporations the governing boards of which include city officials acting in their official capacity or appointees of city officials, nor shall any such public agency, entity or corporation be made a party to an action brought pursuant to this subdivision.

f. Nothing in this section shall be construed to limit the rights of any officer or employee with regard to any administrative procedure or judicial review, nor shall anything in this section be construed to diminish or impair the rights of a public employee or employer under any law, rule, regulation or collective bargaining agreement or to prohibit any personnel action which otherwise would have been taken regardless of any report of information made pursuant to this section.

g. Violation of this section may constitute cause for administrative penalties.

h. The [commissioner] public advocate shall conduct ongoing public education efforts as necessary to inform employees and officers of covered agencies and contractors of their rights and responsibilities under this section.

i. Not later than October thirty-first of each year, the [commissioner] public advocate shall prepare and forward to the mayor and the council a report on the complaints governed by this section during the preceding fiscal year. The report shall include, but not be limited to, the number of complaints received pursuant to this section, and the disposition of such complaints.

§ 11. Section 16-502 of the administrative code of the city of New York, as added by local law number 42 for the year 1996, is amended to read as follows:

§ 16-502 New York city trade waste commission. There is hereby created a New York city trade waste

commission. Such commission shall consist of the [commissioner of investigation] public advocate, the commissioner of business services, the commissioner of consumer affairs, the commissioner of sanitation, and one member who shall be appointed by the mayor and shall serve as chair with compensation therefor; provided that if the chair holds other city office or employment, no additional compensation shall be received. The chair shall have charge of the organization of the commission and have authority to employ, assign and superintend the duties of such officers and employees as may be necessary to carry out the provisions of this chapter.

§ 12. Any rule promulgated by the commissioner of investigation and in force on the effective date of this local law shall continue in force as a rule of the department of investigation within the office of the public advocate, except insofar as it may be duly amended or repealed after such date.

§ 13. All records, property and equipment relating to the functions, powers and duties of the commissioner of investigation shall be transferred and delivered to the public advocate within 90 days of the effective date of this local law.

§ 14. No civil or criminal action or proceeding pending when this local law takes effect shall be affected or abated by the adoption of this local law. All such actions and proceedings may be continued notwithstanding that functions, powers and duties of the commissioner of investigation have been transferred to the public advocate by this local law.

§ 15. No right or remedy accruing to the city of New York shall be lost or impaired by reason of the adoption of this local law.

§ 16. This local law takes effect immediately after it is submitted for the approval of the qualified electors of the city at the next general election held after its enactment and is approved by a majority of such electors voting thereon.

NAB
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2/28/19