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Title:	A Local Law to amend the charter and the administrative code of the city of New York, in relation to application of contribution limits of the New York City Campaign Finance Program to all candidates for the offices of mayor, public advocate, comptroller, borough president, and member of the city council, and prohibiting candidates from accepting contributions, loans or security for such loans from corporations.				
Sponsors:	Bill Perkins, Charles Barron, Sara M. Gonzalez, Kendall Stewart				
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5/19/2004	*	City Council	Introduced by Council	
5/19/2004	*	City Council	Referred to Comm by Council	
9/29/2004	*	Committee on Governmental Operations	Hearing Held by Committee	
9/29/2004	*	Committee on Governmental Operations	Laid Over by Committee	
10/26/2004	*	Committee on Governmental Operations	Hearing Held by Committee	
10/26/2004	*	Committee on Governmental Operations	Amendment Proposed by Comm	
10/26/2004	*	Committee on Governmental Operations	Amended by Committee	
10/26/2004	A	Committee on Governmental Operations	Approved by Committee	Pass
10/27/2004	A	City Council	Approved by Council	Pass
10/27/2004	A	City Council	Sent to Mayor by Council	
11/24/2004	A	Mayor	Vetoed by Mayor	
12/15/2004	A	Committee on Governmental Operations	Hearing Held by Committee	
12/15/2004	A	Committee on Governmental Operations	Approved by Committee	Pass
12/15/2004	A	City Council	Overridden by Council	Pass

Int. No. 371-A

By Council Members Perkins, Barron, Gonzalez and Stewart

A Local Law to amend the charter and the administrative code of the city of New York, in relation to application of contribution limits of the New York City Campaign Finance Program to all candidates for the offices of mayor, public advocate, comptroller, borough president, and member of the city council, and prohibiting candidates from accepting contributions, loans or security for such loans from corporations.

Be it enacted by the Council as follows:

Section 1. Declaration of Legislative Intent and Findings.

The New York City Campaign Finance Act, adopted by the New York City Council in 1988, has succeeded in enhancing competition for elective municipal offices, limiting campaign contributions and expenditures to reasonable levels, and vastly increasing public information about the sources and uses of campaign funds.

The Council finds that amendments to the New York City Campaign Finance Act and the charter of the City of New York, will further the goals of this landmark legislation. By imposing the same contribution provisions of the Campaign Finance Act to those candidates for municipal office who elect not to participate in the Campaign Finance Program, without extending to such candidates the public financing provisions or the provisions limiting expenditures, the Council seeks to further strengthen the reform program that has been recognized as a national model. By ending the disparity in contribution limits faced by participating candidates opposed by non-participating candidates, these amendments further reduce the opportunity for wealthy special interests to exercise or appear to exercise undue influence over local elected officials in New York City.

This local law will also extend the existing ban on contributions from corporations to non-participating candidates, thus eliminating further disparities between participating and non-participating candidates and promoting a governmental interest in emphasizing contributions from individuals.

§2. Subdivision 8 of section 3-702 of the administrative code of the city of New York is amended and new subdivisions 13 and 14 are added to such section to read as follows:

8. The term "contribution" shall mean: (a) any gift, subscription, advance, or deposit of money or any

thing of value, made in connection with the nomination for election, or election, of any candidate; (b) any funds received by a political committee from another political committee to the extent such funds do not constitute a transfer; (c) any payment, by any person other than a candidate or a political committee authorized by the candidate, made in connection with the nomination for election, or election, of any candidate, including but not limited to compensation for the personal services of any individual which are rendered in connection with a candidate's election or nomination without charge; provided however, that none of the foregoing shall be deemed a contribution if it is made, taken or performed by a person or a political committee independent of the candidate or his or her agents or political committees authorized by such candidate pursuant to section 14-112 of the New York state election law. For purposes of this subdivision, the term "independent of the candidate or his or her agents or political committees authorized by such candidate pursuant to section 14-112 of the New York state election law" shall mean that the candidate or his or her agents or political committees so authorized by such candidate did not authorize, request, suggest, foster or cooperate in any such activity; and provided further, that the term "contribution" shall not include:

- (i) the value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a candidate or political committee,
- (ii) the use of real or personal property and the cost of invitations, food and beverages voluntarily provided by an individual to a candidate or political committee on the individual's residential premises for candidate-related activities to the extent such services do not exceed five hundred dollars in value, and
- (iii) the travel expenses of any individual who on his or her own behalf volunteers his or her personal services to any candidate or political committee to the extent such expenses are unreimbursed and do not exceed five hundred dollars in value.

A loan made to a participating candidate or his or her principal committee, or a non-participating candidate or his or her authorized committees other than in the regular course of the lender's business shall be

deemed, to the extent not repaid by the date of the first covered election in which such [the participating] candidate is governed by this chapter [is a participant] following the date of the loan, a contribution by the lender. A loan made to a participating candidate or his or her principal committee, or a non-participating candidate or his or her authorized committees in the regular course of the lender's business shall be deemed, to the extent not repaid by the date of the first covered election in which the [participating] candidate is governed by this chapter [a participant] following the date of the loan, a contribution by the obligor on the loan and by any other person endorsing, cosigning, guaranteeing, collateralizing or otherwise providing security for the loan.

13. The term “limited participating candidate” shall mean a candidate who meets the requirements of paragraph (a) of subdivision one of section 3-718 of this chapter.

14. The term “non-participating candidate” shall mean any candidate for nomination for election, or election, to the office of mayor, public advocate, comptroller, borough president or member of the city council who does not file a written certification pursuant to section 3-703 or meet the requirements of paragraph (a) of subdivision one of section 3-718 of this chapter, or who has, or the authorized committees of such candidate have, made expenditures in furtherance of the nomination for election or election to an office covered by this chapter.

§3. Paragraphs (f) and (l) of subdivision 1 of section 3-703 of the administrative code of the city of New York are amended to read as follows:

(f) not accept and his or her principal committee or authorized committees must not accept, either directly or by transfer, any contribution or contributions from any one individual, partnership, political committee, employee organization or other entity for all covered elections held in the same calendar year in which he or she is a participating candidate or a non-participating candidate which in the aggregate: (i) for the office of mayor, public advocate or comptroller shall exceed four thousand five hundred dollars, or (ii) for

borough president, shall exceed three thousand five hundred dollars, or (iii) for member of the city council, shall exceed two thousand five hundred dollars; provided that a participating candidate and his or her principal committee or a non-participating candidate and his or her authorized committees may accept additional contributions which do not exceed one half the amount of the applicable limitation for any run-off primary election, additional day for voting held pursuant to section 3-108 of the New York state election law, special election to fill a vacancy, run-off special election to fill a vacancy, delayed or otherwise postponed election, or election held pursuant to court order which is a covered election and in which the candidate seeks nomination for election or election; and provided further that if state law prescribes a contribution limitation of a lesser amount, this paragraph shall not be deemed to authorize acceptance of a contribution in excess of such lesser amount. The maximum contributions set forth in this paragraph shall be adjusted in accordance with subdivision seven of this section;

(l) not accept and his or her principal committee or authorized committees must not accept, either directly or by transfer, any contribution, loan, guarantee, or other security for such loan from any corporation, other than a corporation that is a political committee as defined in subdivision eleven of section 3-702 of this chapter, for all covered elections held in the same calendar year in which he or she is a participating or non-participating candidate;

§4. Subdivisions 9 and 10 of section 3-703 of the administrative code of the city of New York are amended to read as follows:

9. No political committee authorized by a participating, limited participating or non-participating candidate for a covered election may be authorized to aid or take part in the elections of more than one candidate.

10. All receipts accepted by a participating or limited participating candidate and his or her principal committee shall be deposited in an account of the principal committee. All receipts accepted by a non-

participating candidate and his or her authorized committees shall be deposited in an account of the authorized committees. The treasurer of the principal committee or authorized committee shall be responsible for making such deposits. All deposits shall be made within ten business days of receipt; provided, however, that deposits of contributions made in the form of checks received by a participating, limited participating or non-participating candidate [candidates] and his or her committees for the office of city council more than one year before the first covered election for which such candidate is seeking nomination or election may be made within twenty business days of receipt. Each disclosure report filed pursuant to subdivision six of this section shall include the date of receipt of each contribution accepted.

§5. Subdivisions 3, 7, and 8 of section 3-708 of the administrative code of the city of New York are amended to read as follows:

3. The board may employ necessary staff, including an executive director and a counsel, and make necessary expenditures subject to appropriation. The board may employ such staff, including legal and accounting staff, as are necessary for providing technical assistance to candidates and prospective [and participating] candidates in covered elections, for the purpose of promoting understanding of, participation in, and compliance with the requirements of the [campaign finance program created by] provisions of this chapter.

7. (a) The board shall render advisory opinions with respect to questions arising under this chapter upon the written request of a candidate, an officer of a political committee or member of the public, or upon its own initiative. The board shall promulgate rules regarding reasonable times to respond to such requests. The board shall make public the questions of interpretation for which advisory opinions will be considered by the board and its advisory opinions, including by publication on its internet website.

(b) The board shall develop a program for informing candidates and the public as to the purpose and effect of the provisions of this chapter. The board shall prepare and make available educational materials, including compliance manuals and summaries and explanations of the purposes and provisions of this chapter.

These materials shall be prepared in plain language. The board shall prepare and make available materials, including, to the extent feasible, computer software, to facilitate the task of compliance with the disclosure and record-keeping requirements of this chapter. When disclosure reports are generated by use of the board's disclosure software, the board shall provide an opportunity for [participating] candidates to test their electronic filings on any of the three business days prior to the deadline for the filing of such disclosure reports.

8. The board shall have the authority to promulgate such rules and regulations and provide such forms as it deems necessary for the administration of this chapter. The board shall promulgate regulations concerning the form in which contributions and expenditures are to be reported, the periods during which such reports must be filed and the verification required. The board shall require the filing of reports of contributions and expenditures for purposes of determining compliance with paragraph (f) of subdivision one of section 3-703 [and], section 3-706, section 3-718, and section 3-719, in accordance with the schedule specified by the state board of elections for the filing of campaign receipt and expenditure statements.

§6. Subdivision 1 of section 3-710 of the administrative code of the city of New York is amended to read as follows:

1. The campaign finance board is hereby empowered to audit and examine all matters relating to the performance of its functions and any other matter relating to the proper administration of this chapter and of chapter 8 of title 3 of this code. These audit and examination powers extend to all participating candidates, limited participating candidates, and non-participating candidates, and the principal and authorized committees of all participating, limited participating, and non-participating candidates.

§7. Section 3-710.5 of the administrative code of the city of New York is amended to read as follows:

§3-710.5 Findings of violation or infraction. The board shall determine whether a participating, limited participating or non-participating candidate, his or her principal committee, authorized committee,

[principal] committee treasurer or any other agent of [a participating] such candidate has committed a violation or infraction of any provision of this chapter or the rules promulgated hereunder, for which the board may assess a civil penalty pursuant to section 3-711 of this chapter. The board shall promulgate rules defining infractions, and such definitions shall include, but not be limited to, failures to comply with the provisions of this chapter or the rules promulgated hereunder that are limited and non-repetitive. The board shall give written notice and the opportunity to appear before the board to any participating, limited participating or non-participating candidate, his or her principal committee, authorized committee, [principal] committee treasurer or any other agent of [a participating] such candidate, if the board has reason to believe that such has committed a violation or infraction, before assessing any penalty for such action.

§8. Subdivision 1 of section 3-711 of the administrative code of the city of New York is amended to read as follows:

§3-711 Penalties. 1. Any participating or limited participating candidate and his or her principal committee or any non-participating candidate and his or her authorized committees that [whose principal committee fails] fail to file in a timely manner a statement or record required to be filed by this chapter or the rules [] of the board in implementation thereof or [who violates] that violate any other provision of this chapter or rule promulgated thereunder, and any [principal] committee treasurer or any other agent of a participating, limited participating or non-participating candidate who commits such a violation or infraction, shall be subject to a civil penalty in an amount not in excess of ten thousand dollars.

The board shall publish a schedule of civil penalties for common infractions and violations, including examples of aggravating and mitigating circumstances that may be taken into account by the board in assessing such penalties. This schedule shall reflect that infractions are less serious failures to comply with the provisions of this chapter.

§9. Section 3-712 of the administrative code of the city of New York is amended to read as follows:

§3-712. Campaigns for office not subject to this chapter. Contributions, loans, guarantees and other security for such loans used and expenditures made toward the payment of liabilities incurred by a candidate in an election held prior to the effective date of this section [or in which he or she did not choose to participate in the public funding provisions of this chapter] or in a campaign for public office other than one covered by this chapter, shall not be subject to the requirements and limitations of this chapter.

§10. Subdivision 1 of section 3-713 of the administrative code of the city of New York is amended to read as follows:

1. The campaign finance board shall review and evaluate the effect of this chapter upon the conduct of election campaigns in the city and shall submit a report to the mayor and the city council on or before September first, nineteen hundred ninety, and every fourth year thereafter, and at any other time upon the request of the mayor or the city council and at such other times as the board deems appropriate, containing:

(a) the number and names of candidates qualifying for and choosing to receive public funds pursuant to this chapter, and of candidates failing to qualify or otherwise not choosing to receive such funds, in each election during the four preceding calendar years;

(b) the amount of public funds provided to the principal committee of each candidate pursuant to this chapter and the contributions received and expenditures made by each such candidate and the principal committee of such candidate, in each election during the four preceding calendar years;

(c) the number and names of candidates filing a certification pursuant to section 3-718 of this chapter in each election during the four preceding calendar years, together with the expenditures made by each such candidate and the principal committee of such candidate in each such election;

(d) the number and names of non-participating candidates in each election during the four preceding calendar years, together with the expenditures made by each such candidate and the authorized committees of

such candidate in each such election;

[(c)](e) recommendations as to whether the provisions of this chapter governing maximum contribution amounts, thresholds for eligibility and expenditure limitations should be amended and setting forth the amount of, and reasons for, any amendments it recommends;

[(d)](f) analysis of the effect of this chapter on political campaigns, including its effect on the sources and amounts of private financing, the level of campaign expenditures, voter participation, the number of candidates and the candidates' ability to campaign effectively for public office;

[(e)](g) a review of the procedures utilized in providing public funds to candidates; and

[(f)](h) such recommendations for changes in this chapter as it deems appropriate.

§11. Paragraphs 2 and 3 of section 3-716 of the administrative code of the city of New York are amended to read as follows:

2. The following activities in support of other candidates by a participating, limited participating or non-participating candidate or his or her principal committee shall not be considered contributions to or expenditures by such participating, limited participating or non-participating candidate or his or her principal committee, except to the extent such activities are paid for by such [the participating] candidate or his or her principal committee for a covered election:

(a) The act alone of endorsing or appearing with another candidate for public office, party nomination or party position.

(b) The insubstantial communication of such endorsement or appearance described in paragraph (a), such as where the participating, limited participating or non-participating candidate's name is one of several names appearing on the communication and is of equivalent prominence as the other names.

(c) Fundraising assistance to another candidate in the form of written communications that do not promote the participating, limited participating or non-participating candidate, such as the appearance of the

participating, limited participating or non-participating candidate's name or signature on a letter soliciting funds for another candidate or the appearance of such [the] participating, limited participating or non-participating candidate's name on fundraising material where such [the] participating, limited participating or non-participating candidate's name appears alone or with other names and is of equivalent prominence as the other names.

(d) A typical communication by a political club to its members, which includes the name of a participating, limited participating or non-participating candidate, provided that such [the participating] candidate is already a member of the political club, the political club has fewer than 500 members, and the communication does not solicit funds on behalf of or otherwise promote [the participating] such candidate's campaign for a covered election.

3. The communication of an endorsement or appearance which is not insubstantial under paragraph (b) of subdivision two, fundraising assistance which is promotional under paragraph (c) of subdivision two and a political club communication which does not meet the requirements of paragraph (d) of subdivision two, shall be contributions to and expenditures by the participating, limited participating or non-participating candidate. Among the factors the board shall consider in determining the value of the contribution to and expenditure by the participating, limited participating or non-participating candidate are the following factors:

- (a) the focus of the communication;
- (b) the geographical distribution or location of the communication;
- (c) the subject matter of the communication;
- (d) the references to the participating, limited participating or non-participating candidate or the participating, limited participating or non-participating candidate's appearances in the communication;
- (e) the relative prominence of a participating, limited participating or non-participating candidate's references or appearances in the communication, including the size and location of such references and any photographs of the participating, limited participating or non-participating candidate; and

(f) the timing of the communication.

§12. Chapter 3 of title 3 of the administrative code of the city of New York is amended by adding a new section 3-718, to read as follows:

§3-718. Limited Participation.

1. Requirements. (a) To be a limited participating candidate, a candidate for nomination for election or election must:

(i) be a candidate for mayor, public advocate, comptroller, borough president or member of the city council in a primary, special, or general election;

(ii) not have filed a certification pursuant to section 3-703 for the election or elections for which he or she seeks to file a certification pursuant hereto;

(iii) (A) file a written certification in such form as may be prescribed by the campaign finance board, which sets forth his or her acceptance of and agreement to comply with the terms and conditions of this section and the rules promulgated hereby, which includes an affirmation that the candidate has a sufficient amount of personal funds to fund his or her campaign; and

(B) the deadline for filing such certification for a primary, general, or special election shall be the deadline date for filing written certifications pursuant to section 3-703(1)(c) by candidates seeking nomination for election or election to the same office in the same calendar year as candidates seeking to file a certification pursuant to this subparagraph, and the provisions of such section 3-703(1)(c) relating to the occurrence of an “extraordinary circumstance” shall apply to limited participating candidates; and

(iv) notify the board in the candidate's written certification as to: (1) the existence of each authorized committee authorized by such candidate that has not been terminated, (2) whether any such committee also has been authorized by any other candidate, and (3) if the candidate has authorized more than one authorized committee, which authorized committee has been designated by the candidate as the candidate's principal

committee for the election(s) covered by the candidate's certification; provided, that such principal committee (a) shall be the only committee authorized by such candidate to aid or otherwise take part in the election(s) covered by the candidate's certification, (b) shall not be an authorized committee of any other candidate, and (c) shall not have been authorized or otherwise active for any election prior to the election(s) covered by the candidate's certification. The use of an entity other than the designated principal committee to aid or otherwise take part in the election(s) covered by the candidate's certification shall be a violation of this section and shall trigger the application to such entity of all provisions of this chapter governing principal committees.

(b) A limited participating candidate and his or her principal committee shall comply with the provisions of paragraphs (d), (e), (g), and (i) of subdivision one, and subdivisions six, six-a, eight, nine, ten, and twelve of section 3-703 of this chapter.

(c) A limited participating candidate and his or her principal committee shall not accept, at any time before or after the filing of a certification pursuant to paragraph (a) of this subdivision, either directly or by transfer, any monetary or in-kind contribution, or any loan, guarantee, or other security for such loan made in connection with such candidate's nomination for election or election, except for monetary contributions from the candidate to his or her principal committee made out of the candidate's personal funds, in-kind contributions made by the candidate to his or her principal committee, and advances received pursuant to subparagraph (d) of this paragraph.

(d) A limited participating candidate and his or her principal committee shall make expenditures in furtherance of the election(s) for which the candidate has filed a certification pursuant to paragraph (a) of this subdivision, whether before or after the filing of such certification, only with contributions received pursuant to subparagraph (c) of this paragraph and, to the extent permitted by rule promulgated by the board pursuant hereto, advances by the limited participating candidate.

(e) A limited participating candidate, together with his or her principal committee, shall not make expenditures which in the aggregate exceed the applicable expenditure limitations set forth in section 3-706.

(f) Neither a limited participating candidate nor an authorized committee of a limited participating candidate shall be eligible to receive public funds pursuant to section 3-705.

(g) If a limited participating candidate is a candidate for the same office for which he or she filed a certification pursuant to paragraph (a) of this subdivision in any other election held in the same calendar year as the election for which such candidate filed such certification, other than a special election to fill a vacancy, he or she shall be bound in each such other election by the provisions of this section.

(h) A candidate who files a certification pursuant to paragraph (a) of this subsection shall not be eligible to file a certification pursuant to section 3-703.

(i) Notwithstanding any limitations in this chapter, a limited participating candidate may contribute to his or her own nomination for election or election with his or her personal funds or property, in-kind contributions made by the candidate to his or her authorized committees with the candidate's personal funds or property, and advances made by the limited participating candidate with the candidate's personal funds or property. A candidate's personal funds or property shall include his or her funds or property jointly held with his or her spouse, domestic partner, or unemancipated children, but shall not include other personal funds or property of his or her spouse, domestic partner or unemancipated children.

§13. Chapter 3 of title 3 of the administrative code of the city of New York is amended by adding a new section 3-719, to read as follows:

§3-719. Obligations of non-participating candidates.

2. Contribution limitations of non-participating candidates. (a) A non-participating candidate shall notify the board in such form as may be prescribed by the board as to: (i) the existence of each committee authorized by such candidate that has not been terminated, and (ii) whether any such committee also has been authorized by any other candidate.

(b) A non-participating candidate, and the authorized committees of such a non-participating candidate,

shall only accept contributions as limited by the provisions of paragraphs (f) and (l) of subdivision one of section 3-703, and subdivision ten of section 3-703 of this chapter. Notwithstanding any contribution limitations in paragraphs (f) and (h) of subdivision one of section 3-703, a non-participating candidate may contribute to his or her own nomination for election or election with his or her personal funds or property, in-kind contributions made by the candidate to his or her authorized committees with the candidate's personal funds or property, and advances or loans made by the non-participating candidate with the candidate's personal funds or property. A candidate's personal funds or property shall include his or her funds or property jointly held with his or her spouse, domestic partner, or unemancipated children.

(c) Neither a non-participating candidate nor an authorized committee of a non-participating candidate shall be eligible to receive public funds pursuant to section 3-705.

§14. Paragraph 12 of subdivision a of section 1052 of the charter of the city of New York is amended, and a new subdivision d is added to such section, to read as follows:

12. Notwithstanding any other provision of law, the board shall prohibit candidates [participating in] for offices covered by the voluntary system of campaign finance reform from accepting, either directly or indirectly, a campaign contribution, loan, guarantee or other security for such loan, from any corporation. The board shall promulgate such rules as it deems necessary to implement and administer this provision.

d. The board may take such other actions as are necessary and proper to carry out any other authority the city council shall give to the board in any local law, including the promulgation of any rules and the provision of any forms.

§15. If any provision of this bill or any other provision of this local law, or any amendments thereto, shall be held invalid or ineffective in whole or in part or inapplicable to any person or situation, such holding shall not affect, impair or invalidate any portion of or the remainder of this local law, and all other provisions

thereof shall nevertheless be separately and fully effective and the application of any such provision to other persons or situations shall not be affected.

§16. Sections 3 of this local law shall not have any effect on any adjustments made prior to the effective date of this law pursuant to subdivision 7 of section 3-703 of the administrative code.

§17. This local law shall become effective immediately.

MT
LS# 895
4/29/04