



Guide to the Proposed Independent Expenditure Rules for New York City Elections

This guide explains the proposed independent expenditure rules submitted for publication in the City Record. The notice of the proposed rules begins on the 5th page. A public hearing will be held concerning these rules on October 27, 2011. Please see the first page of the notice for information on how to testify or submit written testimony.

When an organization or person not affiliated with a candidate (an **independent spender**) makes payments or provides services to support or oppose a municipal candidate or ballot proposal, it has made an **independent expenditure**. Certain independent expenditures, as well as information about the independent spender and its source of funds, must be reported to the Campaign Finance Board.

What makes an expenditure “independent” of a candidate?

The New York City Charter states that an independent expenditure is one in which no candidate, agent of a candidate or political committee of a candidate has “authorized, requested, suggested, fostered or cooperated.” This means that the candidate cannot cooperate with the independent spender in any way concerning the expenditure. Arranging with the candidate to pose for a picture, discussing where leaflets will be distributed or having someone who has a connection with the candidate plan the expenditure are all examples of what is not independent. Expenditures that are not independent must be reported by the candidate.

What kinds of independent expenditures must be reported?

An independent spender must report an expenditure if it meets the following three criteria:

- 1) It is for the design, production or distribution of a **public communication**. Public communications include printed materials; ads on TV, radio, cable or the internet; more than 500 live or recorded phone calls with a similar script made in a month; or any other form of general political advertising. Public communications do not include individual phone calls, in-person communication or the text of e-mails, but do include email attachments.
- 2) It is either an **express advocacy** communication made at any time during the election cycle, or an **electioneering** communication made within 90 days of an election.
 - Express advocacy means supporting or opposing a candidate or ballot proposal using words like “vote for,” “reject” or other phrases that can have no reasonable meaning other than advocating for or against the candidate or proposal, such as “Candidate X is who we need” or “Proposal Y would be bad for our city.”
 - Electioneering refers to the personal qualities, character, or fitness of a candidate, or supports or condemns that candidate’s public record or position on issues, such as “Tell Candidate X that her position on budget cuts is wrong.”
- 3) The value of the expenditure, combined with all other expenditures made by the independent spender in support of or opposition to that candidate or proposal, exceeds \$1,000. Once this threshold has been met, all future expenditures, regardless of value, must be reported.

Do communications by organizations to their members and stockholders need to be disclosed?

As shown in the chart below, most communications made directly to or between members and stockholders are not reportable, as they are either not public communications or are neither express advocacy nor electioneering. Public communications that are express advocacy or electioneering are covered, regardless of who they are

directed to. However, phone calls and routine newsletters by organizations to their members or stockholders are exempt, even if they contain express advocacy or electioneering, as are communications that relate to internal deliberations to determine an organization’s endorsements. (This exception does not apply to organizations whose primary purpose is to influence elections.) Excluding these routine communications from the disclosure rules recognizes the role that such organizations play in educating and informing members and stockholders more generally about public policy and other issues, while requiring disclosure for communications that are otherwise similar to typical campaign material.

Other than the newsletters noted above, whether a public communication is covered has nothing to do with its audience. Organizations do not have to keep track of where materials are sent or disclose mailing lists. For example, if a membership organization produces 10,000 flyers supporting a candidate, the cost of producing those flyers is an independent expenditure, regardless of how or to whom the flyers are distributed. If the flyers are mailed by themselves, the postage cost is an independent expenditure, regardless of who they are mailed to. However, if the flyers are inserted in an exempt newsletter, the cost of delivering the flyers is also exempted. And if the same material were printed in a routine newsletter, the entire cost of production and delivery would be exempt.

Type of communication to members or stockholders	Example	Is it reportable as an independent expenditure?
Discussions at meetings or among members/shareholders		No. In-person discussions aren’t public communications.
Member activation activities	Recruitment mailing or calls for campaign event.	No. These activities aren’t public communications.
Internal deliberations among members or stockholders	Production of statements advocating for an endorsement.	No. Internal deliberations are exempt.
Dissemination of statements from elected officials	Contract negotiation update or mobilization. Lobby day statement.	No.
Phone calls or routine newsletter or periodical, regardless of content	October newsletter (election edition). GOTV calls to shareholders.	No. These activities are all exempt.
Express advocacy or electioneering material, regardless of delivery method	“Vote for Jane Smith” leaflet; mailed or attached.	Yes. However, delivery costs are not covered if the material is delivered along with a newsletter.
TV/radio/Internet ad targeted at members, or targeted leaflet handed out in public	“Attention all NRA members.”	Yes. The fact that the wording is targeted at members or shareholders doesn’t prevent the message from being received by the public.

Are there any other exceptions?

- Services provided by individuals who volunteer their time.
- Unreimbursed event or travel expenses of \$500 or less provided by an individual.
- Expenditures made by media outlets to cover stories, as long as the outlet is not controlled by any political party, political committee or candidate.

What information does the independent spender need to report to the CFB?

When an organization or person makes more than \$1,000 in cumulative independent expenditures for or against a single candidate or ballot proposal at any time during the election cycle, it must register with the CFB and file periodic disclosure reports for the remainder of the election cycle.

- **Registration:** Independent spenders must disclose the names of their officers, owners and board members, and maintain an up to date list of which candidates or ballot proposals will be supported or opposed.
- **Public Communications:** When a public communication is first distributed or aired, a copy must be submitted to the CFB in the next disclosure report, as well as information about each expenditure made in the course of creating, producing and distributing it. A copy of each invoice must also be submitted. Any future expenditures that relate to the public communication, such as a reprint or re-airing, must be reported as they are incurred. All expenditures must be disclosed at their fair market value, and discounts must be reported. Payments by third parties and in-kind payments and services must also be reported. If a public communication is in support of or opposition to more than one candidate or ballot proposal, expenditures must be apportioned between them.
- **Contributions:** If an independent spender makes more than \$5,000 in independent expenditures for or against a single candidate during the 12 months before the election, it must report the source of certain contributions for the duration of the election cycle. Contributions received from organizations must be reported retroactively to the start of the election cycle; contributions from individuals must be reported only if they total \$1,000 or more, retroactive to 12 months before the election. Contributions that are restricted from being spent on elections covered by the CFB do not have to be reported, and there is no contribution reporting requirement for independent spenders that work solely on ballot proposals.

When do reports need to be filed, and for how long?

The CFB publishes a reporting schedule for independent spenders on its [website](#). Generally, in non-election years, reports are due on January 15 and July 15. In election years, there are approximately eight reporting dates. During the two weeks before each election, expenditures must be reported within 24 hours of being made.

Once the \$1,000 threshold for the reporting of expenditures has been met, all future expenditures must be reported, regardless of amount. Once the \$5,000 threshold for the reporting of contributions has been met, all future contributions from organizations, and all future contributions of \$1,000 or more from individuals, must be reported for the duration of the election cycle. If during a given reporting period no reportable expenditures have been made nor reportable contributions received, no report need be filed for that period.

What are examples of independent expenditures that are and aren't reportable?

Reportable

- Paying someone to create a campaign flyer, whether mailed, handed out, emailed or posted electronically.
- Paying people to hand out literature on the street or door to door.
- Printing a poster, whether in-house or commercially.
- Mailing a flyer (except that mailing costs for a flyer sent to members or shareholders along with a regular newsletter are not covered).

Not reportable

- Rent and other overhead expenses.
- Supervisory staff who spend a portion of their time managing reportable activity.
- The cost of sending out emails, except that the creation of an attached campaign flyer is covered.
- Mailing lists.

What materials require a disclaimer?

Any public communication for or against a candidate must include a “paid for by” disclaimer. The disclaimer must be of a conspicuous size for printed material, must be spoken for radio or telephone communication, and must be both written and spoken for broadcast communication. Pins, pens and similar materials where such a disclaimer would be impractical are exempt. There is no disclaimer requirement for ballot proposal material, although independent spenders are encouraged to include them.

How can an organization or person obtain guidance on whether an expenditure is reportable?

If an organization or person is unsure whether these rules apply to a particular expenditure, it may seek guidance (“pre-clearance”) from the CFB to determine whether it would be reportable. Pre-clearance determinations will be made within seven days; during the two weeks before the election, determinations will be made within 24 hours. Obtaining pre-clearance is voluntary, and applies only to the exact communication submitted to the Board, and distributed exactly as described.

What happens if an expenditure is made in cooperation with a candidate?

If an expenditure is determined to have been made with the cooperation of a candidate, it will be considered to have been made by that candidate and will count against any appropriate expenditure limits or thresholds and subject the candidate to any appropriate penalties for non-reporting or overspending. There are serious consequences to a candidate for not reporting all of the activity in which it was involved.

What are the penalties for non-compliance with these rules?

The City Charter authorizes the Board to assess civil penalties on the independent spender of up to \$10,000 for each violation of these regulations, and intentional or knowing violations may also be punishable as a misdemeanor. The CFB will issue penalty guidelines for various violations that take into account the severity of the behavior. Independent spenders are encouraged to consult with the CFB ahead of time if they are in doubt about the timing and content of reports, or to obtain pre-clearance as noted above.

This guide summarizes and explains the independent expenditure provisions of the [City Charter](#) and the proposed changes to the [Campaign Finance Board Rules](#); it does not replace or supersede them. For assistance, contact Jesse Schaffer, Director of Special Compliance, at jschaffer@nyccfb.info or 212-306-5229.

**NEW YORK CITY CAMPAIGN FINANCE BOARD
NOTICE OF PUBLIC HEARING**

Subject: Opportunity to Comment on Proposed Amendments
to Campaign Finance Board Rules

Date / Time: October 27, 2011 / 11:00 a.m.

Location: Campaign Finance Board
40 Rector Street
Conference Room E, 6th Floor
New York, NY 10006

Contact: Sue Ellen Dodell
212-306-7114; sdodell@nyccfb.info

Instructions:

You may send written comments regarding the proposed rules to the Executive Director of the Campaign Finance Board, 40 Rector Street, 7th Floor, New York, NY 10006 no later than October 27, 2011.

If you want to testify, please notify Sue Ellen Dodell, General Counsel of the Campaign Finance Board, at the foregoing address by close of business on October 26, 2011.

Written comments and a transcript of the hearing will be available for public inspection, within a reasonable time after receipt, at the offices of the Campaign Finance Board on weekdays between 9:00 a.m. and 5:00 p.m.

The Campaign Finance Board (the “Board”) is proposing amendments to the Campaign Finance Board Rules in compliance with Section 1043 of the New York City Charter and under the authority vested in the Board under Chapter 46 of the New York City Charter (including, but not limited to, Section 1052(a)(15) thereof) and under the New York City Campaign Finance Act (including, but not limited to, Section 3-708(8) of the New York City Administrative Code).

The Board rules are codified in Title 52 of the Rules of the City of New York. The subject matter of this rulemaking was described in the Board’s regulatory agenda for fiscal year 2012, published in The City Record on April 18, 2011.

The proposed rules would conform the Board’s Rules to recent amendments to the New York City Charter approved by the voters in a ballot proposal held on November 2, 2010. The Charter amendment added § 1052(a)(15), governing the disclosure and reporting of independent expenditures.

The Board held a hearing on March 10, 2011 at which 13 people testified regarding future rules for independent expenditures. Four people also submitted written testimony. Testimony came from elected officials, civic group representatives, union representatives, and other members of

the public. The Board considered the testimony of these individuals before drafting the proposed rules.

The proposed amendments would create the changes described below and, if adopted after public comment, would take effect thirty days after final publication in The City Record.

The proposed rules are new, and therefore the entire text is underlined.

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this Board, unless otherwise specified or unless the context clearly indicates otherwise.

I. Explanation, Basis, and Purpose

On November 2, 2010, New York City voters approved a ballot referendum to “require public disclosure of expenditures made by entities and individuals independent from candidates to influence the outcome of a city election or referendum.” These proposed rules establish:

- Definitions of key terms,
- What types of communications are required to be reported to the Campaign Finance Board (the “Board”),
- Who needs to file with the Board,
- When reports have to be filed,
- The form and manner of disclaimers required on communications, and
- Other related criteria, processes and requirements needed to implement Charter § 1052(a)(15).

Disclosure of Independent Expenditures

Charter § 1052(a)(15) directs the Board to “promulgate rules concerning the form and manner in which independent expenditures are to be reported and disclosed, the information to be reported and disclosed, the periods during which reports must be filed, and the verification required.” Charter § 1052(a)(15) also directs the Board to “promulgate such additional rules as it deems necessary to implement, administer, interpret and enforce [Charter § 1052(a)(15)] and [to] provide in such rules that information regarding independent expenditures be promptly made accessible to the public during the covered election cycle.”

The proposed rules would be codified in a new Chapter 13 and would provide for:

Scope of Covered Communications [Sections 13-01; 13-02]

Only expenditures by an individual or entity operating independently of a candidate (an “independent spender”) for “public communications” that are “express advocacy communications” or “electioneering communications” will be required to be reported to the Board.

The new rules would define “public communication” broadly to include any printed communication (newspaper, magazine, billboard, or mass mailing), communications by telephone totaling 500 or more calls of a substantially similar nature within any 30-day period, and broadcast communications via the Internet, radio, television, cable or satellite, or any other form of general public political advertising.

Express advocacy communications include public communications that contain a phrase such as “vote for,” “re-elect,” etc., or “vote against,” “defeat,” etc., or words that in context can have no reasonable meaning other than to advocate the election or defeat of a candidate or ballot proposal. Such communications disseminated at any time during the election cycle qualify as express advocacy communications.

Electioneering communications include public communications that clearly identify a candidate and:

- (1) refer to the personal qualities, character, or fitness of that candidate;
- (2) support or condemn that candidate’s position on issues; or
- (3) support or condemn that candidate’s public record.

Such communications only qualify as an electioneering communication if they are disseminated within 90 days of a covered election. Electioneering communications do not apply to communications regarding only ballot proposals.

“Public Communications” would not include: (1) expenditures made in connection with covering or carrying a news story, commentary, or editorial by any broadcasting station, website, newspaper, magazine, or other periodical publication, including any Internet or electronic publication, unless the entity making the expenditure is owned or controlled by any political party, committee, or candidate (“the media exemption”); or (2) expenditures made by an entity for a routine newsletter or periodical, or telephone calls, or communications relating to the internal deliberations of the entity’s endorsements, directed solely to an entity’s own members or stockholders (“membership/stockholder exemption”).

The Board provided the media exemption as such exemption is typically provided in existing independent expenditure rules in other jurisdictions. The Board provided the membership/stockholder exemption to enable groups to educate their members to engage meaningfully and knowledgeably in the political process without disclosure. The proposed rules also focus specifically on disclosure of spending for campaign materials, while providing exemptions for membership-building communications like newsletters and phone calls.

Disclosure Statement Filings [Sections 13-03; 13-04]

Pursuant to § 1052(a)(15)(b), if an independent spender makes independent expenditures of more than \$1,000 in support of or in opposition to a particular candidate or ballot proposal during the election cycle (*e.g.*, for the 2013 election cycle, January 12, 2010 to January 11, 2014), it must report those independent expenditures to the Board. As described in Section 13-03, such reporting shall occur according to the same reporting calendar used by candidates as prescribed in the Board Rules following New York election law and published on the Board’s website. All

reporting will be done via an Internet disclosure system designed for this purpose, and will include a copy of the public communication and all associated invoices.

Once the \$1,000 threshold is met regarding a particular candidate or ballot proposal, all subsequent independent expenditures for that candidate or ballot proposal, regardless of value, must be reported during the remainder of the election cycle. If during a reporting period no independent expenditures are made and no reportable contributions are received, no reporting is required. During the 14 days prior to an election, all qualifying expenditures must be reported within 24 hours.

Section 13-04 requires independent spenders to include in the disclosure statement filing detailed information regarding the public communication and any expenditures related to the design, production, and distribution of a public communication. Section 13-04 also requires detailed information regarding an independent spender's contribution information. Pursuant to § 1052(a)(15)(b), if an independent spender makes independent expenditures of more than \$5,000 in support of or in opposition to a particular candidate during the 12 months before an election, it must report the source of the following contributions for the duration of the election cycle: contributions received from entities must be reported retroactively to the start of the election cycle; and contributions from individuals must be reported only if they total \$1,000 or more, and must be reported retroactively to 12 months before the election.

Disclosure is not required for contributions in which the contributor designated such contribution to be used for a specifically stated non-political purpose, such as a contribution grant to fund a particular non-political project, or for which the contributor designated the contribution for an election other than a covered election. In accordance with Charter § 1052(a)(15)(b), there is no requirement to report contributions received for ballot proposals.

Disclaimer Requirement [Section 13-05]

As provided in Charter § 1052(a)(15)(c), any public communication in support of or opposition to a candidate must include a "paid for by" disclaimer; there is no disclaimer requirement for ballot proposals pursuant to Charter § 1052(a)(15)(c). No disclosure would be required on pens or similar materials where such a disclaimer would be impractical.

Non-Independent Expenditures [Section 13-06]

An expenditure by an individual or entity in support of or in opposition to a candidate that was authorized, requested, suggested, fostered by, or otherwise cooperated in by a candidate is not an independent expenditure. Such an expenditure shall be reported by the candidate and not by the individual or entity making the expenditure.

Pre-clearance [Section 13-07]

Prior to the dissemination of a communication, any individual or entity may seek guidance from the Board to determine whether a given expenditure would be reportable as an independent

expenditure. Pre-clearance determinations will be made within seven days; during the two weeks before the election, determinations will be made within 24 hours.

Document Retention [Section 13-08]

Copies, source files, schedules or scripts of the public communication and all documents that enable the Board to verify the accuracy of disclosure statements must be maintained by the independent spender for three years.

Complaints and Investigations; Board Determinations [Section 13-09]

Complaints and investigations regarding potential violations of Charter § 1052(a)(15) will be conducted like those regarding potential violations by candidates. Board hearings regarding potential violations of Charter § 1052(a)(15) will also be conducted like those regarding potential violations by candidates; however, to ensure that as many matters are dealt with prior to the election as possible, hearings conducted prior to the election will be held before the Board (or its designee) only. Hearings conducted after the election may be heard by either a hearing officer or by the Board (or its designee), at the option of the respondent.

II. Proposed Rules

Section 1. Title 52 of the Rules of the City of New York is amended by adding a new chapter 13, to read as follows:

Chapter 13 **Disclosure of Independent Expenditures**

§ 13-01 Definitions.

For the purposes of this chapter, the following terms shall have the following meanings:

- (a) **Ballot proposal:** Means a municipal ballot proposal or referendum.
- (b) **Clearly identified:** Means (1) the name of the candidate involved appears; (2) a photograph or drawing of the candidate appears; or (3) the identity of the candidate is apparent by unambiguous reference.
- (c) **Contribution:** Means any monetary gift, advance, or deposit made to an entity or individual.
- (d) **Covered election:** Means a covered election as defined in New York City Charter § 1052(a)(15)(a)(iii).
- (e) **Electioneering communication:** Means any public communication disseminated within 90 days of a covered election that clearly identifies a candidate and (1) refers to the

personal qualities, character, or fitness of that candidate; (2) supports or condemns that candidate's position or stance on issues; or (3) supports or condemns that candidate's public record.

(f) **Entity:** Means an entity as defined in New York City Charter § 1052(a)(15)(a)(ii).

(g) **Express advocacy communication:** Means:

(i) A public communication containing a phrase including, but not limited to, "vote for," "re-elect," "support," "cast your ballot for," "[Candidate] for [elected office]," "vote against," "defeat," "reject," or a campaign slogan or words that in context and with limited reference to external events, such as the proximity to the primary or election, can have no reasonable meaning other than to advocate the passage or defeat of a ballot proposal or the election or defeat of one or more clearly identified candidates; or

(ii) When taken as a whole and with limited reference to external events, such as the proximity to the primary or election, a public communication could only be interpreted by a reasonable person as containing advocacy of the passage or defeat of a ballot proposal or the election or defeat of one or more clearly identified candidates because:

(1) The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and

(2) Reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more ballot proposals or clearly identified candidates or encourages some other kind of action.

(h) **Fair market value:** Means:

(i) For goods, the price of those goods, at the time the goods were received, in the market from which they ordinarily would have been purchased, and

(ii) For services, other than those provided by an unpaid volunteer, the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered.

(i) **Independent expenditure:** Means an independent expenditure as defined in New York City Charter § 1052(a)(15)(a)(i).

(j) **Independent spender:** Means an individual or entity that makes, or registers to make, an independent expenditure as defined in subdivision (i) of this section.

(k) **Member:** Means any person who, pursuant to a specific provision of an organization's articles or bylaws, has the right to vote directly or indirectly for the election of a director

or directors or an officer or officers or on a disposition of all or substantially all of the assets of the organization or on a merger or on a dissolution. “Member” also means any person who is designated in the articles or bylaws as a member and, pursuant to a specific provision of an organization's articles or bylaws, has the right to vote on changes to the articles or bylaws, or pays or has paid membership dues in an amount predetermined by the organization so long as the organization is tax exempt under 26 U.S.C. 501, subdivision (c). Members of a local union are considered to be members of any national or international union of which the local union is a part and of any federation with which the local, national, or international union is affiliated. Members of entities organized primarily for the purpose of influencing elections are not covered by this definition.

- (l) **Public communication:** Means a communication by means of a newspaper, magazine, billboard, mass mailing, or other printed material; a telephone communication, Internet advertisement, or a communication by means of any radio, television, cable, satellite, or Internet broadcast; or any other form of communication to the general public.
- (m) **Stockholder:** Means a person who has a vested beneficial interest in stock, has the power to direct how that stock shall be voted, if it is voting stock, and has the right to receive dividends.
- (n) **Telephone communication:** Means 500 or more live or recorded telephone calls of an identical or substantially similar nature within any 30-day period.

§ 13-02 Scope of Regulated Activity.

- (a) **Regulated activity.** An expenditure made by an independent spender is in support of or opposition to a candidate in a covered election, or a ballot proposal, if it is for:
 - (i) an electioneering communication, as defined in section 13-01(e); or
 - (ii) an express advocacy communication, as defined in section 13-01(g).
- (b) **Media exemption.** An expenditure made in connection with covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer, or producer), website, newspaper, magazine, or other periodical publication, including any Internet or electronic publication, shall not be required to be reported unless the entity making the expenditure is owned or controlled by any political party, political committee, or candidate.
- (c) **Member/Stockholder exemption.** An expenditure by an entity for a routine newsletter or periodical, or telephone calls, or communications relating to the internal deliberations of the entity’s endorsements, directed solely to an entity’s own members or stockholders, as defined in section 13-01(k) and (m) respectively, shall not be required to be reported.

§ 13-03 Registration and Filing Requirements.

(a) Generally.

- (i) An individual or entity that makes independent expenditures that aggregate in excess of \$1,000 in support of or opposition to a candidate in a covered election, or a ballot proposal, shall report such expenditures to the Board in a disclosure statement.
- (ii) An entity that makes independent expenditures that aggregate in excess of \$5,000 in support of or opposition to a candidate in the twelve months preceding a covered election shall disclose:
 - (1) All contributions received from other entities during the covered election; and
 - (2) Contributions totaling \$1,000 or more received from individuals in the twelve months preceding the covered election, except as provided in section 13-04(c)(ii).
- (iii) For purposes of this subdivision, there are separate \$1,000 and \$5,000 expenditure thresholds for each candidate/ballot proposal. Once the \$1,000 threshold is attained, the independent spender shall report any additional independent expenditures for that candidate or ballot proposal, regardless of the amount. Once the \$5,000 threshold is attained, the independent spender shall report any additional contributions required to be reported pursuant to paragraph (ii) of this subdivision.
- (iv) All disclosure statements shall be submitted electronically as specified by the Board.

(b) Registration.

- (i) All independent spenders must register online prior to submitting the first applicable disclosure statement.
 - (1) All independent spenders shall provide their:
 - name,
 - address,
 - phone number,
 - email address,
 - authorized liaison, and liaison's name, mailing address, e-mail address, and telephone number,
 - a verification that the registration information is true and complete to the best of the registrant's knowledge and belief,

- the names of any candidates and/or ballot proposals for which they will be reporting independent expenditures, and
 - other similar information that may be required by the Board.
- (2) Entities must also provide:
- website URL,
 - treasurer name,
 - type of organization,
 - political committee type,
 - principal owners, and
 - board members and officers or their equivalents.
- (3) Individuals must also provide: occupation and name of employer.
- (4) All individuals and entities shall notify the Board of any material change to the required registration information no later than the next disclosure statement filing date, or 30 days, whichever comes first.
- (c) **Filing dates.** The Board shall publish a schedule of disclosure statement filing dates and corresponding reporting period dates based on the following:
- (i) Requirements for primary and general elections.
- (1) In the three years preceding the election year, independent spenders shall report independent expenditures to the Board in a disclosure statement on each January 15 and July 15.
- (2) In the election year, independent spenders shall report independent expenditures to the Board in a disclosure statement on: January 15, March 15, May 15, and July 15.
- (3) Additional disclosure statements are due:
- (A) For a general election: 32 and 11 days before the election and 27 days after the election.
- (B) For a primary election: 32 and 11 days before the election and 10 days after the election.
- (C) For a runoff election: 4 days before the election and 10 days after the election.
- (4) In a primary and/or general election, including related runoff elections, an independent spender shall report independent expenditures made in the 14 days before the election to the Board in a disclosure statement, within 24 hours after the expenditure is made.

- (5) A final disclosure statement shall be filed on the first January 15 after the election.
- (ii) Requirements for special elections and runoff special elections.
 - (1) In a special election, the first disclosure statement is due 32 days before the election and the second is due 11 days before the election. Additional disclosure statements are due 27 days after the election and the first January 15 or July 15 following the date of the special election.
 - (2) In a runoff special election, disclosure statements are due 27 days after the runoff special election and the first January 15 or July 15 following the date of the runoff special election.
 - (3) In all special and runoff special elections, an independent spender shall report independent expenditures made in the 14 days before the election to the Board in a disclosure statement, within 24 hours after the expenditure is made.
- (iii) An independent spender that has not made any independent expenditures within a reporting period is not required to file a disclosure statement for that period, unless required to report contributions pursuant to paragraph (ii) of subdivision (a) of this section.
- (iv) The Board's published schedule of disclosure statement filing dates shall reflect that if a disclosure statement is due to be submitted on a Saturday, Sunday, or legal holiday, submission shall be considered timely if made by 5 p.m. on the next business day.
- (d) **Reporting periods.**
 - (i) First disclosure statement of the covered election: The reporting period for the July 15 disclosure statement in the first year of the covered election shall begin on January 12 of that year.
 - (ii) Subsequent disclosure statements: The reporting period for each disclosure statement, except for the first disclosure statement of the covered election, shall:
 - (1) Begin on the third day before the deadline for the submission of the next disclosure statement; and
 - (2) Conclude on and include the fourth day before the deadline for the submission of that disclosure statement.

- (iii) Special elections: In the case of a special election, the reporting period for the first disclosure statement shall begin when the first independent expenditure is made and shall conclude on and include the fourth day before the deadline for the 32-day pre-election disclosure statement. The reporting periods for the other two special election disclosure statements shall be in accordance with paragraph (ii) of this subdivision.
- (iv) The Board's published schedule of reporting period dates shall reflect that if a disclosure statement is due to be submitted on a Saturday, Sunday, or legal holiday, the reporting period will conclude on and include the fourth day before the next business day.

§ 13-04 Expenditure and Contribution Disclosure.

Each disclosure statement shall consist of the following information:

- (a) **Public Communications.** For each public communication published, aired, or otherwise distributed during a reporting period the independent spender shall report:
 - The type of public communication,
 - A description,
 - The names of the candidates and/or ballot proposals for which the public communication is in support of or opposition to,
 - For a printed communication, an electronic or paper copy of the communication, and,
 - For a broadcast or Internet communication, an audio, video, or source file or script.
- (b) **Expenditures.** (i) All expenditures directly related to the design, production, and distribution of a public communication shall be reported. For each expenditure the independent spender shall report:
 - The name of the candidate or ballot proposal for which the expenditure is in support of or opposition to,
 - The name of the vendor,
 - The date, amount, and purpose,
 - The name of the individuals or entities paying for the expenditure, if not the independent spender,
 - An invoice detailing the expenditure, and,
 - Such other similar information as the Board may require.
- (ii) **Valuation.** If no invoice is available, the independent spender shall use a reasonable estimate of fair market value in determining the monetary value of the independent expenditure and shall maintain a written record supporting the estimate.
- (iii) **Apportionment.** For reporting purposes, the total cost of an independent expenditure that is in support of or in opposition to more than one candidate or ballot proposal shall be apportioned among the candidates or ballot proposals based on the following factors:

- (1) The focus of the material or activity;
- (2) The geographic distribution or location of the material activity;
- (3) The subject matter of the communication;
- (4) The references to the candidate or the candidate's appearances therein or to the ballot proposal;
- (5) The relative prominence of a candidate's or ballot proposal's references or appearances in the communication, including the size and location of references to the candidate or ballot proposal and any photographs of the candidate;
- (6) The timing of the communication; and
- (7) Other circumstances surrounding the communication.

(c) **Contributions.**

- (i) An entity that makes independent expenditures in support of or opposition to a candidate aggregating to more than \$5,000 during the twelve months preceding the election shall include the following information about contributions, if any, accepted by the entity since it last reported contributions:
 - (1) For each contribution accepted from another entity during the covered election, the entity's name, address, and type of organization;
 - (2) For contributions totaling \$1,000 or more accepted from an individual during the twelve months preceding the election, the individual's name, residential address, occupation, employer, and business address;
 - (3) The date of receipt and amount of each such contribution accepted or other receipt; and,
 - (4) Such other similar information as the Board may require.
- (ii) Exemption for earmarked contributions. Contributions that are earmarked for either an election that is not a covered election, as defined by section 13-01(d), or an explicitly stated non-political purpose are exempt from the requirements of paragraph (i) of this subdivision. Records of these non-disclosed contributions must be maintained and may be requested by the Board to verify their qualification for exemption.

- (d) **Verification.** Each independent spender filing a disclosure statement shall verify that the reported expenditure(s) in support of or opposition to a candidate were not authorized, requested, suggested, fostered, or made in cooperation with any candidate, or the agent of any candidate. The independent spender shall verify that the disclosure statement is true and complete to the best of the filer’s knowledge, information and belief. The disclosure statement shall contain such signatures or notarizations as may be required by the Board.

§ 13-05 Disclaimers on Public Communications.

- (a) Any public communication in support of or in opposition to any candidate in any covered election that is paid for by an independent spender making independent expenditures aggregating \$1,000 or more shall disclose the name of the independent spender by including the words “paid for by” followed by the name of the independent spender.
- (b) Disclosure shall be in the following form:
- (i) If the expenditure is for printed material or an Internet advertisement, the information shall be in a font of conspicuous size and style;
 - (ii) If the expenditure is for a communication broadcast on radio, the information shall be clearly spoken at the beginning or end of the communication;
 - (iii) If the expenditure is for a communication broadcast on television or the Internet, the information shall be both written and clearly spoken at the beginning or end of the communication; or
 - (iv) If the expenditure is for a telephone communication, the information shall be clearly spoken at the beginning or end of the communication.
- (c) This requirement shall not apply to pins, pens, or other similar items upon which the inclusion of a disclosure would be impractical.

§ 13-06 Non-Independent Expenditures.

An expenditure by an individual or entity in support of or in opposition to a candidate that was authorized, requested, suggested, fostered by, or otherwise cooperated in by a candidate, shall be reported by such candidate and not by the individual or entity making the expenditure. Factors for determining whether an expenditure is independent or non-independent are contained in section 1-08(f).

§ 13-07 Pre-Clearance of Communications.

Prior to the dissemination of a communication, an individual or entity may seek pre-clearance from the Board regarding whether the communication will be subject to the rules of this Chapter by submitting a written request, including the sample communication and a description of the proposed dissemination, to the Board, in the form and manner prescribed by the Board. If the

request is received more than 14 days before the election, the Board shall provide a determination regarding such request within 7 days, and if such request is received during the 14 days prior to the election, the Board shall provide a determination within 24 hours. The Board's pre-clearance determination only applies to the communication exactly as submitted, and disseminated exactly as described to the Board.

§ 13-08 Document Retention.

Independent spenders must maintain for 3 years: (1) records that enable the Board to verify the accuracy of disclosure statements, including bills for goods or services used to produce and disseminate a communication, as well as records of all contributions received; and (2) copies of all advertisements, pamphlets, circulars, flyers, brochures, and other printed communications disseminated and a schedule of all radio or television time purchased or scripts used therein or the audio or video source file.

§ 13-09 Complaints and Investigations; Board Determinations.

- (a) The following procedures shall apply for complaints and investigations regarding potential violations of Charter § 1052(a)(15):
- (i) Initiation of proceeding. A proceeding pursuant to Charter § 1052(a)(15)(e) may be commenced when: (1) the Board receives a written complaint sworn to or affirmed, alleging the commission or omission of acts in violation of the Charter or this Chapter, or (2) the Board, on its own initiative, undertakes an investigation of a possible violation of the Charter or this Chapter.
 - (ii) Service of complaints. A complaint shall be filed by mailing it to, or by personally serving it on, the New York City Campaign Finance Board, 40 Rector Street, 7th Floor, New York, NY 10006.
 - (iii) Contents of complaint. A complaint shall specify times, places, and names of witnesses to the acts charged as violations of the Charter or this Chapter to the extent known. A complaint shall be based on personal knowledge, if possible. If a complaint is based on information and belief, the complainant shall state the source of that information and belief. Copies of all documentary evidence available to the complainant shall be attached to the complaint.
 - (iv) Initial complaint processing. (1) Upon receipt of a complaint, the Board will review the complaint for substantial compliance with the requirements of paragraph (iii), and if the complaint complies with those requirements, the Board shall within 10 days after receipt mail to each respondent notification that the complaint has been filed, and enclose a copy of the complaint;

(2) If a complaint does not comply with the requirements of paragraph (iii), or the Board deems it to be facially lacking in merit, the Board shall dismiss the complaint and shall so notify the complainant.

- (v) Opportunity to respond to complaint. Within 20 days from mailing by the Board of a copy of the complaint to a respondent, or within such lesser time as may be specified by the Board for complaints received less than 40 days before the election, the respondent may submit an answer sworn to or affirmed, which may set forth reasons why the Board should dismiss the complaint. If, based upon its review of the complaint and any answer filed, the Board determines the complaint to be lacking in merit, the Board shall dismiss the complaint.
 - (vi) Investigation. Following receipt of a complaint, or at any time, if acting on its own initiative, the Board may conduct an investigation into possible violations of the Charter or this Chapter. In its investigation, the Board may use its investigative powers pursuant to §§ 3-708(5) and 3-710(1) of the Administrative Code. An investigation may include, but is not limited to, field investigations, desk and field audits, the issuance of subpoenas, the taking of sworn testimony, the issuance of document requests and interrogatories, and other methods of information gathering.
- (b) The following procedures shall apply to determinations regarding potential violations of Charter § 1052(a)(15):
- (i) Determination that complaint lacks merit. Following an investigation, the Board may determine that a complaint is lacking in merit or that violations of the Charter and this Chapter have not been substantiated and dismiss the complaint or terminate the investigation.
 - (ii) Notice and opportunity to contest.
 - (1) If the Board has reason to believe that a violation of Charter § 1052(a)(15) or this Chapter has occurred, the Board shall notify the individual or entity in writing of the alleged violation and proposed civil penalty. Such notice shall:
 - (i) Set forth in detail the legal basis for the Board’s reason to believe there is a violation of Charter § 1052(a)(15) or this Chapter;
 - (ii) Notify the individual or entity of the opportunity to submit information and documentation for the Board’s consideration within a reasonable time period to be specified in such notice;
 - (iii) If sent prior to the election, notify the individual or entity of the opportunity to appear before the Board or its designee at a hearing to contest the alleged violation and proposed civil penalty, and
 - (iv) If sent after the election, notify the individual or entity of the opportunity to appear before the Board or its designee at a hearing.

or to appear before a hearing officer, to contest the alleged violation and proposed civil penalty. Adjudications conducted after an election shall meet the requirements set forth in Charter § 1046 unless such procedures are waived by the individual or entity.

- (2) Unless specifically notified to the contrary by the Board, the opportunity to submit information and documentation described in the notice shall be the only such opportunity, and any information and documentation that is not timely received by the Board may, at the Board's sole discretion, be disregarded.
- (3) Following this opportunity to submit information and documentation, consideration of any information and documentation submitted, and consideration of any appearance before the Board or its designee, the Board may determine the amount of civil penalties for any violations it determines to have occurred, and shall provide notice setting forth in detail the legal basis of the Board's determination. If these amounts, as determined by the Board, are not paid by the payment deadline set forth in the notice, they may be sought through appropriate enforcement action.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-788-1087**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Disclosure of Independent Expenditures

REFERENCE NUMBER: 2011 RG 84

RULEMAKING AGENCY: Campaign Finance Board

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: 9/21/2011

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1526**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Disclosure of Independent Expenditures

REFERENCE NUMBER: CFB-1

RULEMAKING AGENCY: CFB

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco Navarro
Mayor's Office of Operations

September 21, 2011
Date