

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2001**

No. 21

Introduced by The Speaker (Council Member Vallone) and Council Members Pinkett, Carrion, Henry, Marshall, Miller, Moskowitz, Nelson, Perkins, Reed, Warden, White, DiBrienza, Freed, Malave-Dilan, and The Public Advocate (Mr. Green); also Council Members Leffler, Robinson and Rodriguez

A LOCAL LAW

To amend the administrative code of the city of New York in relation to campaign financing.

Be it enacted by the Council as follows:

Section 1. Declaration of Legislative Intent and Findings.

In October 1998, the Council enacted Local Law 48, which, among other provisions, provided that participating candidates in the City's campaign finance program who do not accept corporate contributions receive payment for qualified campaign expenditures of four dollars for every one dollar of matchable contributions. For candidates choosing to take corporate contributions, Local Law 48 provided that they would receive the previous matching rate of one-to-one. Subsequent to the Council passing Local Law 48, amendments to the Charter were approved by the voters through a referendum in the November 1998 election. These amendments included a ban on corporate contributions for all participating candidates, thereby making all participating candidates eligible for matching public funds at a rate of four-to-one pursuant to the unamended provisions of Local Law 48. *See* Charter § 1052(a)(12). Accordingly, during the 1999 election cycle, the Campaign Finance Board distributed matching public funds to participating candidates at a rate of four-to-one. Understandably, participating candidates and prospective participating candidates have anticipated four-to-one matching funds, relying on the unamended provisions of Local Law 48, pronouncements made by the Campaign Finance Board (*See, e.g.* Advisory Opinion No. 1998-2), and the Board's distribution of funds during the 1999 elections.

Recently, however, and notwithstanding Local Law 48 and the Campaign Finance Board's pronouncements and participating candidates' reliance thereon, the Director of Management and Budget and the Commissioner of Finance filed a complaint in Supreme Court, New York County, against the Campaign Finance Board (*City of New York v. New York City Campaign Finance Board*), claiming that the four-to-one provisions of Local Law 48 were invalidated by the Charter prohibition on corporate contributions adopted by the voters in the 1998 referendum. Failing to understand that the ban on corporate

contributions continued to trigger the four-to-one provisions of Local Law 48 for all participating candidates, the complaint alleges that participating candidates are only entitled to a one-to-one match of public funds.

The Council, therefore, enacts this legislation to allay any confusion created by the above lawsuit, as well as by an opinion of the New York City Corporation Counsel's Office, dated December 29, 1998, which concluded that the 1998 Charter amendments required that the matching rate reverts back to the rate that existed prior to the enactment of Local Law 48. The Council finds plaintiffs' position in *City of New York v. New York City Campaign Finance Board* and Corporation Counsel's opinion to be contrary to the clear meaning of the Campaign Finance Act. By generating an atmosphere of confusion, prospective participating candidates in the upcoming election cycle may not have full confidence that they can predict the level of funds available for their campaigns or that they will have the requisite financing to even attempt campaigning for elected office. Any confusion and unpredictability created by the lawsuit and by Corporation Counsel's opinion undermines the integrity of the Campaign Finance Act. Furthermore, Corporation Counsel's opinion runs contrary to Advisory Opinion No. 1998-2 of the Campaign Finance Board, dated October 23, 1998, which held that "the Charter amendment would trigger the 4:1 matching rate for all participating candidates Indeed it would be illogical to conclude that the Charter proposal to mandate the burden of a corporate ban would also effectively withdraw financial incentives and off-sets the Council has devised for promoting Program participation."

The Council enacts these technical amendments to Section 3-703 ("Eligibility and other requirements"), 3-705 ("Optional public financing") and 3-706 ("Expenditure limitations; additional financing and limits") in order to reaffirm the existing legal requirements of Local Law 48 providing matching funds at a rate of four-to-one, thereby maintaining the integrity of the campaign finance program. The four-to-one matching rate set forth in Local Law 48 provides a greater level of matching funds for small contributors, enhances the opportunity for candidates who do not have access to large contributors, and increases the role of New York City residents' contributions and public matching funds on the total financing of candidates. The four-to-one matching rate also assures that candidates who give up the opportunity to accept corporate contributions by joining the campaign finance program will receive financial support sufficient to generate and sustain a robust campaign. In addition, these technical amendments reaffirm that participating candidates campaigning against a candidate who is not a participant in the campaign finance program receive a five-to-one match. The four-to-one and five-to-one rates compensate for the lost funds that participating candidates may have raised from corporate contributions had they not joined the Campaign Finance Program. Such compensation furthers a salient goal of the Campaign Finance Act, which is to encourage participation in a fair and comprehensive program of campaign finance reform.

§ 2. Paragraphs (f), (j) and (k) of subdivision 1 of Section 3-703 of the administrative code of the city of New York are hereby amended and subdivision 1-a of Section 3-703 is hereby amended to read as follows:

§ 3-703 Eligibility and other requirements. 1. To be eligible for optional public financing under this chapter, a candidate for nomination for election or election must:

(f) not accept and his or her principal committee and any other political committee authorized by such candidate must not accept, either directly or by transfer, any contribution or contributions from any one individual, [corporation,] 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 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 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 election law, special election to fill a vacancy, 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;

(j) meet the threshold for eligibility set forth in subdivision two of this section; [and]

(k) not accept and any political committee authorized by such candidate must not accept, either directly or by transfer, any contribution, loan, guarantee, or other security for such loan from any political committee for all covered elections held in the same calendar year in which he or she is a participating candidate, except as is otherwise provided for contributions by political committees pursuant to section 3-707 of this chapter[.]; *and*

[1-a. To be eligible for optional public financing at the higher matching rate set forth in subdivision two of section 3-705 of this chapter, a participating candidate must accept and maintain compliance with the following additional condition: the participating candidate must] *(l)* not accept and any political committee authorized by such candidate 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 candidate. [The participating candidate's acceptance of this additional condition shall be set forth in the certification filed pursuant to paragraph (c) of subdivision one of this section.]

§ 3. Subdivision 11 of Section 3-703 of the administrative code of the city of New York is hereby amended to read as follows:

11. Regardless whether a participating candidate demonstrates eligibility for optional public financing under this chapter, a participating candidate and his or her authorized committees are nonetheless required to abide by [: (a)] the requirements of paragraphs (d), (e), (f), (g), (h), (i), [and] (k) *and (l)* of subdivision one of this section[, and (b) the requirements of subdivision one-a of this section, in the case of a participating candidate who accepts the additional condition set forth in that subdivision].

§ 4. Subdivision 2(a) of Section 3-705 of the administrative code of the city of New York is hereby repealed; subdivision 2(b) is hereby amended to read as follows:

§ 3-705 Optional public financing. 2. If the threshold for eligibility is met, the participating candidate's principal committee shall receive payment for qualified campaign expenditures of [:

(a) one dollar for each one dollar of matchable contributions obtained and reported to the campaign finance board in accordance with the provisions of this chapter, but in no case shall such principal committee receive in public funds an amount exceeding fifty-five percent of the expenditure limitation provided in subdivision one of section 3-706 for the office for which such candidate seeks nomination for election or election, except as otherwise provided in subdivision three of section 3-706.

(b) in the case of participating candidates who accept and are in compliance with the additional condition set forth in subdivision one-a of section 3-703 of this chapter,] four dollars for each one dollar of matchable contributions, up to one thousand dollars in public funds per contributor (or up to five hundred dollars in public funds per contributor in the case of a special election), obtained and reported to the campaign finance board in accordance with the provisions of this chapter, but in no case shall such principal committee receive in public funds an amount exceeding fifty-five percent of the expenditure limitation provided in subdivision one of section 3-706 for the office for which such candidate seeks nomination for election or election, except as otherwise provided in subdivision three of section 3-706.

No funds shall be provided pursuant to this subdivision with respect to any covered election specified in subdivision five of this section.

§ 5. Subdivision 3 of Section 3-706 of the administrative code of the city of New York is hereby amended to read as follows:

§ 3-706 Expenditures limitations; additional financing and limits. 3. If any candidate in any primary or general election for any office for which public funds are available pursuant to the provisions of this chapter chooses not to participate in the public financing provisions of this chapter, and where the campaign finance board has determined that such candidate and his or her authorized committees have spent or contracted or have obligated to spend, or received in loans or contributions, or both, an amount which, in the aggregate exceeds half the applicable expenditure limit for such office fixed by subdivision one of this section for participating candidates, then:

(a) such expenditure limit shall no longer apply to participating candidates in such election for such office; and

(b) the principal committees of such participating candidates shall receive payment for qualified campaign expenditures of [:

(i) two dollars for each one dollar of matchable contributions, up to one thousand dollars in public funds per contributor (or up to five hundred dollars in public funds per contributor in the case of a special election), or

(ii) in the case of participating candidates who accept and are in compliance with the additional condition set forth in subdivision one-a of section 3-703 of this chapter,] five dollars for each one dollar of matchable contributions, up to one thousand two hundred fifty dollars in public funds per contributor (or up to six hundred twenty five dollars in public funds per contributor in the case of a special election), except that in no case shall a principal committee receive in public funds an amount exceeding two-thirds of the expenditure limitation provided for such office in subdivision one of this section.

§ 6. This local law shall be effective as of January 1, 1999.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of the City of New York, passed by the Council on February 27, 2001, and disapproved by the Mayor on March 16, 2001 and repassed by the Council Members on April 25, 2001 and said law is adopted notwithstanding the objection of the Mayor.

CARLOS CUEVAS, City Clerk of the Council.

CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE LAW §27

Pursuant to the provisions of Municipal Home Rule Law §27, I hereby certify that the enclosed Local Law (Local Law 21 of 2001, Council Int. No. 879) contains the correct text and:

Received the following vote at the meeting of the New York City Council on February 27, 2001: 40 for, 4 against, 0 not voting.

Was disapproved by the Mayor on March 16, 2001.

Was returned to the City Clerk on March 16, 2001.

Was reconsidered by the Council on April 25, 2001 and:

Received the following vote of the Council Members at a meeting of the Council on April 25, 2001: 40 for, 6 against, 2 not voting.

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel