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Testimony of Marla G. Simpson, City Chief Procurement Officer and Director, Mayor's Office of Contract Services, Before the City Council Committee on Government Operations: Int. 651 of 2007

December 6, 2007

Good morning. I am Marla Simpson and I am Director of the Mayor's Office of Contract Services ("MOCS") and the City's Chief Procurement Officer. I am joined here by Anthony Crowell, Counselor to the Mayor. We thank you for the opportunity to appear today to discuss the Intro 651, a set of necessary amendments to the City's landmark "Pay to Play" legislation, Local Law 34 of 2007.

Local Law 34 (LL 34), passed by the Council and signed by the Mayor in July of this year, mandates the creation of a *Doing Business Database*, containing the names of entities and people considered to be doing business with the City, for the purpose of enforcing new limitations on campaign contributions. The Mayor's Office of Contract Services (MOCS) was given the primary responsibility to gather and process the information required to be contained in the Database.

LL 34 is to be implemented in three phases, corresponding to different types of transactions that are considered business dealings with the City. At the start of each phase, the Department of Information Technology and Telecommunications (DOITT) and the Campaign Finance Board (CFB) must certify that the database for that phase is "reasonably complete" so that that the law can be enforced.

I'm pleased to report that we are well on our way to completing such a Database for phase one of the Law, commencing on January 3, 2008, which covers current City contracts, franchises and concessions. In order to create the initial Database, MOCS formed and staffed a new unit, the Doing Business Accountability Project. In the past five months the DBA Project:

- Processed more than 300,000 procurements from the 186 City agencies covered by LL 34;
- Identified 3,500 vendors that will be doing business with the City as of January 3rd; and
- Sent mailings to all those vendors to confirm or obtain the names of their principal officers, owners and senior managers.

As of yesterday, we have received replies from 1,759, or 50% of the 3,500 letters mailed. Approximately three-quarters of these vendors were already registered in the City's VENDEX database. The letters we sent those vendors simply asked for confirmation of the officer and owner names in VENDEX, and informed them that in the absence of a reply we would use the VENDEX data. The letters also asked for new information, i.e., the names of senior managers, which we do not have in our VENDEX system. For the 25% of vendors covered by LL 34 that are not already registered in VENDEX, we sent letters requesting that they supply all of the necessary principal information. Throughout December, we will continue to mail and place follow-up calls to all vendors that have not yet responded.

As a result of these efforts, we now have information on principal officers and owners, either from VENDEX or from the mailing, for more than 87% of all vendors. We expect this number to exceed 92% by the end of December. Considering that at this point we have no real enforcement mechanism, because the law has not yet gone into effect, we are very pleased with this result, and believe we will attain the "reasonably complete" standard for most categories of vendors and principals. Regarding the narrow category of "senior managers," who have historically not been listed in VENDEX, we are not likely to meet our target of January 3rd for substantial completeness. Although, let me be clear that we are well underway, thus far our mailings and phone calls have yielded approximately 40% of the needed data, and we are working to secure the remaining 60% of the information for this category as quickly as possible.

As you know, LL 34 was drafted with a phased approach. The inclusion of the names of entities and principals who seek business from the City – i.e., those who propose but may not be awarded contracts – does not occur until July 3rd. The main reason for that delay was the recognition, at the time

LL 34 was drafted, that the City has no pre-existing sources of data, such as VENDEX, on the principals of such unsuccessful proposers. Instead, we must collect those names from scratch. To do that, we need to incorporate a request for such information into our contract solicitation process – so that proposers will have to supply it up front, in order to be considered. The DBA Project, working closely with the Law Department, has already begun modifying City agencies' solicitations for that purpose, so that when July 3rd rolls around, we will be able to supply a "reasonably complete" database on this point, as well.

For the same reasons that LL 34 has a delayed effectiveness on proposer information, Int. 651 is now before you, seeking to amend the requirement for senior manager data. Just as the City has no pre-existing source of data for the names of the principals of unsuccessful proposers, so too, we have no source for the names of senior managers. Although we did not initially recognize how much the process of setting up the database would be hampered by the fact that senior managers are not listed in VENDEX, we now believe that it is important to make this amendment to the LL 34 schedule, so that manager data would be made available in phase two, as of July 3rd, rather than January 3rd. We are nonetheless confident that, even without the senior manager data, the January 3rd version of the database will still contain information plainly sufficient to meet LL 34's ambitious goal of curbing "Pay to Play" practices by those who do business with the City, if for no other reason than that it will contain the names of the entities, officers and owners to whom all of the senior managers report.

During phase one, MOCS will be able to compel all of the entities that are newly awarded contracts, franchises and concessions to provide all of the required information, including the names of their senior managers. Thus, for awards that are made from January 3rd on we anticipate a much higher compliance rate, as no new awards will be processed without obtaining complete data for LL 34. Meanwhile, we will continue to pursue the senior manager information from vendors holding contracts awarded prior to January 3rd, and we are confident that with those added months, we can move the completion rate for those pre-existing vendors to an acceptable level.

Another amendment included in Int. 651 that I'd like to mention this morning, is one that would allow the City Chief Procurement Officer to promulgate rules that would permit, in certain narrow circumstances, compliance with LL 34 to be waived. Before any such waiver, MOCS would have to show that we had made substantial efforts to obtain full compliance with LL 34's required disclosures. But if such efforts prove fruitless, the City must retain a mechanism to allow agencies to make essential purchases. As the amendment provides, a waiver could only be granted upon finding both that the agency had a compelling need for the purchase, and that no reasonable alternative existed. Waiver applications would be reported to Campaign Finance Board (CFB) at least ten days prior to any action to grant or deny them, and any entity receiving a waiver would be listed on both the MOCS and CFB websites so that the public would be aware of the possibility that contributions could continue to be made by such vendors.

The VENDEX statute contains a similar authorization to the Procurement Policy Board (PPB) for a rules-based waiver process. The PPB exercised that authority more than a decade ago, upon notice to the Council as required by the VENDEX statute. From time-to-time, I now grant VENDEX waivers under those rules. These VENDEX waiver provisions are rarely invoked, and the parallel waiver process anticipated for LL 34 data is even more narrowly drawn and more transparent.

An example of a circumstance that might support a waiver could be where an agency needs to make a purchase critical to public safety or health from a sole source vendor, particularly when that entity is privately held and not required to disclose its ownership in any other context. While such an entity may readily supply information on its senior managers or officers, it might resist supplying ownership data, when such information would then become accessible to the public. On occasion, this arises when there is a foreign entity that holds all or partial ownership of a U.S.-based subsidiary, but it should be noted that such citizens from such foreign entities are otherwise barred from making campaign contributions. Another example, specifically listed in Int. 651, would be for entities whose inclusion in the database results from the City's exercise of its eminent domain powers; inasmuch as their status as an entity doing business with the City is not voluntary, they may well not cooperate with our efforts to collect data. That

said, I must emphasize that our vendor contacts to date have not yielded any instances of outright refusal to provide the necessary data. Based on our experience with VENDEX, which requests much more intrusive information on vendors and their principals, while we view the waiver provisions of Int. 651 as essential, we do not expect to invoke them on more than a handful of occasions.

As I noted earlier, we are confident that, with these amendments, the *Doing Business Database* will be certified by January 3rd, and that New York City's model campaign finance law will have been made even stronger.

Thank you. Mr. Crowell and I welcome any questions that you may have at this time.

New York City Campaign Finance Board

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Testimony of Amy Loprest, Executive Director
New York City Campaign Finance Board
on Intro. No. 651

City Council Committee on Governmental Operations
December 6, 2007

Good morning, Chairman Felder and committee members. I am Amy Loprest, Executive Director of the New York City Campaign Finance Board. With me is our newly appointed Deputy Executive Director, Shauna Denkensohn. Ms. Denkensohn has taken over for Carole Campolo, who recently retired. Also with me is General Counsel Sue Ellen Dodell. I am here today to testify on Intro No. 651.

We would like to thank the Council and Council staff for soliciting our participation and feedback throughout the entire legislative process. We believe Intro. No. 651 will largely resolve the technical problems contained in Local Law 34.

Exempt Expenditures

We have, in the past, raised concerns about is Local Law 34's treatment of so-called "exempt expenditures," which Intro. No. 651 will not change.

When candidates join the Campaign Finance Program, they agree to limit their overall spending as a condition of seeking public funds. Limits on the amount each campaign may spend reduce the need for candidates to engage in a never-ending chase for the large contributions that fuel the perception of corruption. The spending limit is one of the chief benefits the public receives for the investment of taxpayer dollars in the political process.

Historically, certain types of spending have not been counted against the spending limits. Over successive elections, however, a growing number of campaigns have claimed growing amounts and proportions of exempt spending. When a campaign's exempt claims have exceeded the law's "safe harbor" of 7.5 percent of total spending, the CFB has always scrutinized its spending closely.

In the interest of providing clarity and simplicity to the law, in its latest post-election report the Board recommended eliminating most of these exemptions—specifically the blanket exemptions for petitioning and compliance. To compensate, and ensure campaigns could continue to make reasonable and necessary expenditures on compliance and other hard-to-predict expenses within the spending limits, we recommended increasing the limit by a modest amount.

The Council agreed with our recommendation in substance, and responded by including provisions in Local Law 34 that we believe narrow these exemptions substantially. At the same time, the law increased the spending limits by roughly 7.5 percent, which is a greater proportion than the typical campaign has claimed as exempt.

The Board believes the language of Local Law 34 regarding the new exemptions does not provide the level of clarity we sought—particularly with regard to expenses for the post-election audit. However, the committee report for Local Law 34 reflects our shared understanding on this point:

> It is not intended that exempting "expenses related to the post-election audit," however, would permit campaigns to continue to include all compliance related expenditures as exempt. Instead campaigns would be permitted to exempt solely those expenditures related directly to a campaign's preparation for a post-election Board audit. (Committee on Governmental Operations Report on Intro. No. 586-2007, p. 14)

To clarify, post-election spending has never counted towards the limit. The post-election audit begins after the election, and expenditures made to prepare the response have therefore been and will continue to be exempt from the spending limits.

As in the past, the Board will construe the exemptions contained in Local Law 34 narrowly to ensure that no participating campaign is allowed to gain an unfair advantage by conducting activities beyond what is allowed under the spending limits. The Board will promulgate rules reflecting our common understanding of the law's intent as well as the need to provide campaigns with clear guidance.

Doing Business

We are pleased to report that much progress has been made towards implementation of those sections of Local Law 34 dealing with persons and entities doing business with the City.

CFB staff is working closely with the Mayor's Office of Contract Services and DoITT to meet the law's deadline for completion of the first phase of the unified doing business database. A meeting of the Board has been scheduled for January 3, 2008, the certification date contemplated in the law, and the Board anticipates issuing its certification report in conjunction with that meeting. Groundwork is also being laid for the subsequent phases of the doing business database.

C-SMART

We are also happy to announce that the CFB staff has completed a redesign of our Candidate Software for Managing and Reporting Transactions (C-SMART) for the 2009 election. Several enhancements to the software were added in response to comments made by candidates after the 2005 election.

The new version of the software allows candidates to synchronize their disclosure and write checks with widely-used bookkeeping applications QuickBooks and Microsoft Money, and gives them the ability to import records from other sources, such as contributions received through a campaign web site. The new software also contains a fundraising module that will help candidates better manage their tracking of contributor information, and can easily produce and print letters to campaign contributors. It has a new, modern look and feel that should be more user-friendly and easier on the eye.

We have initiated a pilot program with seven currently active 2009 campaigns to test the new software for the January 15, 2008 filing. The candidates involved in this testing phase are a true cross-section, including four current members of the Council, as well as large and small campaigns from every borough and every covered office. We look forward to hearing feedback from all those who have agreed to take part so that we may perform any necessary fixes to C-SMART and introduce it to all candidates over the next few months.

Despite the complexity of the new law, we are working very hard to make compliance as simple as possible for all candidates. As you know, the CFB is preparing to expand our staff to meet the new and significant mandates contained in Local Law 34. We are pleased to have the continued support of the Council as we structure our agency to implement these important reforms.

Thank you for the opportunity to testify today, and we look forward to answering any questions you may have.

CITIZENS UNION
OF THE CITY OF NEW YORK

TESTIMONY OF CITIZENS UNION OF THE CITY OF NEW YORK ON REQUIRING ALL CITY AGENCIES ELECTRONCIALLY TRANSMIT COPIES OF PROPOSED RULES IN A TIMELY MANNER

Before the New York City Council Committee on Governmental Operations DECEMBER 6, 2007

Good Morning, Chair Felder, members of the Government Operations Committee, and other members of the City Council. My name is Rachael Fauss, and I am the policy and research associate of Citizens Union of the City of New York, an independent, non-partisan, civic organization of New Yorkers who promote good government and advance political reform in our city and state. For more than a century, Citizens Union has served as a watchdog for the public interest and an advocate for the common good.

In appearing before you today, Citizens Union expresses support for the Intro. 643.

We believe that it will improve communication about, and awareness of, rules proposed by city agencies. It will also increase transparency about new rules that are being proposed and allow possibly for greater comment and input by the citizens of New York before the rules are promulgated. This measure will aid in making the government of the City of New York more effective and accountable to New Yorkers.

We urge the Council to pass the Int. 643.

Chair Felder and other members of the City Council, Citizens Union thanks you for holding this important hearing and for making it possible for us to express our views.

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Oral testimony on Intro 651-2007
City Council Governmental Operations Committee
Simcha Felder, Chair
December 6, 2007

Intro 651 is necessary because Intro 586 was so hastily, and therefore somewhat sloppily, written and too swiftly passed, before anyone had a real chance to understand just what it said and what it meant. Most of 651 is about correcting the resulting flaws. It, too, appears headed for swift passage, and with all due respect to those who put this bill together such swift passage would be a mistake.

Yes, this bill does an excellent job of cleaning up language. If that were all that 651 did, I would heartily recommend swift passage. But this bill has new aspects to it that need careful inspection and serious debate. Specifically, sections 1 and 2 of this bill make significant changes in who does and does not meet the requirements for inclusion in the new "doing business with" databases.

Once again, I stress that the continued attempt to lower the influence of big-money special interests (or at least the "appearance" of influence) is doomed. First, far more money comes in through bundlers who do business with the city than directly from those doing business themselves[1], and neither 586 nor 651 restrict bundling. Second, it doesn't take a topflight lawyer to find loopholes in this system; anyone who bothers to look up the history of campaign finance in this country can find and exploit them.

For example, people in the database can funnel their contributions through lower-level employees in their companies. It happens, and has happened for 100 years, since the passage of the Tillman Act in 1907.

I close by reiterating what I said in June: The real solution lies not in tinkering with the current failed system, but in a "Clean Money, Clean Elections" method of full public funding. It is working now in Maine and Arizona, and is starting up in Connecticut. It is the system Governor Spitzer said should be the "ultimate goal" of campaign finance reform[2]. A Clean Money bill will be introduced into the City Council as soon as possible; I urge you to pass it.

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[1] Interim Report of the NYC Campaign Finance Board on "Doing Business" Contributions, June 19, 2006, available online at http://www.nyccfb.info/PDF/publications/doing_business_white_paper.pdf.

[2] Governor Spitzer's 2007 State of the State address, "One New York," delivered January 3, 2007, available online at http://www.ny.gov/keydocs/NYS-SoS-2007.pdf.

CITIZENS UNION
OF THE CITY OF NEW YORK

TESTIMONY OF
CITIZENS UNION OF THE CITY OF NEW YORK
ON CHANGES TO THE CITY'S CAMPAIGN FINANCE LAW

Before the New York City Council
Committee on Governmental Operations
DECEMBER 6, 2007

Good Morning, Chair Felder, members of the Government Operations Committee, and other members of the City Council. My name is Rachael Fauss, and I am the policy and research associate of Citizens Union of the City of New York, an independent, non-partisan, civic organization of New Yorkers who promote good government and advance political reform in our city and state. For more than a century, Citizens Union has served as a watchdog for the public interest and an advocate for the common good.

In appearing before you today, Citizens Union expresses support for the Intro that makes necessary technical changes to the reform law passed earlier this year that strengthened the campaign finance program, largely by increasing the importance of smaller donors and limiting the influence in elections of those who do business with the city.

We find no problem with the clarification and tightening of the law that these changes represent. In restricting the practice of pay to play, Citizens Union wants to ensure that it is sound and enforceable, and doesn't place undue and unnecessary burdens on the city's oversight role, and unintentionally restrict from those who do business with the city as a matter of obligation through various programs, specifically the development of affordable housing.

We urge the Council to pass this Intro.

Chair Felder and other members of the City Council, Citizens Union thanks you for holding this important hearing and for making it possible for us to express our views.

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TESTIMONY OF
ANTHONY CROWELL, COUNSELOR TO THE MAYOR,
ON INTRO 643, BEFORE THE NEW YORK CITY COUNCIL
COMMITTEE ON GOVERNMENTAL OPERATIONS

DECEMBER 6, 2007

Good morning Chairman Felder and Members of the Committee. My name is Anthony Crowell, Counselor to Mayor Bloomberg, and on behalf of the Administration, I would like to thank you for the opportunity to discuss the bill before you today, Intro. 643. The bill amends and expands City Charter Section 1043 governing certain notice provisions under the City Administrative Procedure Act ("CAPA"). As an initial matter, I would like to say that the Administration is appreciative of the opportunities it has had to work with the Council to ensure transparent, open, efficient and productive government operations. We view the issues raised by this bill as another such opportunity.

In proposing this bill, the Council seeks to expedite an administrative agency's transmittal of proposed rulemakings and emergency rulemakings to the Council and an expanded list of other interested parties to coincide, at the latest, with the transmittal of such information to the City Record for publication. Indeed, the Administration supports the goals of this bill to enhance the transparency and openness of the CAPA process through broader outreach and communication, and I am happy to report that my team in City Hall has been evaluating administrative options to do just that, beginning prior to the introduction of this bill. As part of that review, we are evaluating best practices

nationally, including options for the better use of technology including e-mail and the Internet. Although we have not completed our review and recommendations to the Mayor, I anticipate those recommendations to include the points the bill seeks to address. However, because I also anticipate our recommendations to be broader than just the provisions of this bill, we would like to work with you to ensure your concerns are addressed in any recommendations we set forth, and to see what other opportunities may exist to enhance the program administratively. Accordingly, at this time, we request that the Council allow us time to complete our consultation with it, and our review of the issues. Thank you.