



Discretionary Funding Policies and Procedures

New York City Council

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City Council Discretionary Funding

POLICIES AND PROCEDURES

Preface

Each year, Council Members allocate discretionary funds to not-for-profit organizations to meet local needs and fill gaps in City agency services. Thus, discretionary spending is a critical tool in meeting the needs of our communities.

As with all taxpayer funds, the public deserves to know that discretionary funds are given to organizations with the capacity and integrity to provide quality services. The New York City Council has instituted comprehensive measures to improve transparency and accountability in the use of discretionary funding, including:

- Publishing a complete list of organizations receiving discretionary funds, including the amount, the sponsoring Member(s), and a brief description of how the funds are to be used.
- Collaborating with the Mayor's Office of Contract Services (MOCS) and City agencies, to thoroughly vet each organization allocated discretionary funds. This vetting process assesses integrity, compliance, and a record of providing the services for which they have been selected; and
- Ensuring that recipient organizations and Members comply with the specific rules and guidelines governing discretionary funds, as clarified by the City's Conflicts of Interest Board (COIB). All organizations receiving funds are subject to these rules, and Council Members must provide signed conflicts of interest disclosure forms prior to each vote approving funding.

This guide outlines the discretionary funding policies and procedures of the New York City Council. It is intended for use by not-for-profit organizations seeking Council discretionary funds, Member offices, and the public.

We greatly value community partners and the important work accomplished within their constituencies. Thank you for working with us and our government partners to implement measures critical to sustaining the services you provide.

1. What is Discretionary Funding?

Discretionary funding is a duly appropriated sum of money in the City’s expense budget allocated to eligible not-for-profit organizations by the Council or a Council Member, under section 1-02(e) of the Procurement Policy Board (PPB) rules.

PPB Rule 1-02(e) allows certain elected officials—including Council Members and Borough Presidents (but not the Mayor or City agencies)—to designate specific not-for-profit organizations to receive funding as an alternative to competitive procurement.

Unlike competitively awarded Agency contracts, discretionary funding contracts are awarded for a single fiscal year.

Types of Discretionary Funding

There are several categories of discretionary funding used by the City Council, each serving different purposes. The following categories have evolved through Council practice over the years and are subject to future changes.

Member Local Initiatives: Each Member and Borough Delegation receives and allocates an annual amount of discretionary funds, known as “local initiatives,” to meet the needs of their district and Borough. The allocation amount is determined by various factors including local needs, the Member’s request, and other considerations. Local initiative funding for any purpose or agency, unless otherwise restricted by Council policy, PPB rules, or applicable law.

City Council Local Initiatives: Organizations may apply for funding directly to the Speaker. Members may also request that the Speaker fund an organization whose scope of services exceeds their individual funding capacity or serves a broader geographical area. This commonly known as the “Speaker’s list.”

Member Aging Discretionary Funds: Each Member receives an annual amount to fund senior services in his or her district through the Department for the Aging.

Member Youth Discretionary Funds: Each Member receives an annual amount to fund youth services or programs through the Department of Youth and Community Development.¹

Anti-Poverty Initiative: Council Members receive additional discretionary funding based on the number of residents in their districts who fall below the Federal Poverty Line; as reported by the American Community Survey (ACS). The ACS is a continuous, year-round survey, and its poverty statistics follow standards set forth by the Office of Management and Budget (OMB). Based on these figures, Council Members receive between \$25,000 (Lowest Poverty Figures) and \$100,000 (Highest Poverty Figures) in additional funding, awarded in \$25,000 increments according to district poverty levels.

¹ For youth programs, services may only be provided outside of school hours. In-school programming must be funded through the Department of Education, with the agreement and consent of the principal(s) of the school(s) where services will be provided.

Member Community Safety and Victim Services Initiative: Council Members receive an annual amount to provide programming and services that promote community and public safety, increase awareness, foster community fellowship and civic engagement, and strengthen relations between law enforcement and the community.

Citywide Initiatives: The Council may also initiate programs to address community needs that it feels are not adequately met by existing agency programming, or to extend the reach of agency programs to underserved communities or populations. In most cases, the Council provides funds to specific not-for-profit providers to carry out these initiatives. While typically citywide in scope, some initiatives may focus on high-need communities or populations. The method of allocating funding varies by initiative and is determined at the Council’s discretion.

Council Reporting on Discretionary Funds

At budget adoption, the Council discloses all discretionary funding allocations. Periodic updates reflect any subsequent changes to the adopted budget.

Schedule C

At budget adoption for the upcoming fiscal year, the City Council Finance Division prepares a supporting schedule, known as *Schedule C*, detailing the changes made to the Mayor’s Executive Budget by the Council’s allocation of discretionary funds.² Schedule C lists all discretionary allocations at the time of adoption, including short descriptions of initiative programmatic goals.

Transparency Resolutions

Some initiatives are funded in the Adopted Budget, but specific designations of not-for-profit providers are made later in the year. New designations, alterations, and/or corrections occur via Transparency Resolutions. Transparency Resolutions are approved by the Finance Committee, then voted on by the full Council. All new designations and changes to existing ones, including changes to the purpose or amount of funding, must be approved in a Transparency Resolution before taking effect.

Expense Budget Modifications

The New York City Charter requires an Expense Budget Modifications to make certain midyear changes to the Adopted Budget. Pursuant to section 107(b) of the Charter, an Expense Budget Modification is required when: 1) funding is transferred between agencies, or 2) funding within a unit of appropriation is increased or decreased by more than five percent or fifty thousand dollars, whichever is greater. The mayor submits the modifications to the Council, which then has thirty days from receipt to disapprove them. When the Council makes or changes designations in a Transparency Resolution that requires shifting or moving funding described in one of the above-

² The document is referred to as “Schedule C” because the Mayor’s Office of Management and Budget prints two supporting schedules – A and B – that respectively detail the changes to the budget between the Executive Budget and the Adopted Budget by agency and unit of appropriation. These schedules reflect the changes set forth in Schedule C, as well as negotiated adjustments to the budget and other technical adjustments made by the Administration.

listed categories, such funding shift cannot take effect until approved through an Expense Budget Modification.

On-line Database

The Council's website includes an online database that makes it convenient to search for discretionary allocations, including whether an organization has been designated to receive funding and periodic updates reflecting changes or additions made through approved Transparency Resolutions (note that the database may not be updated immediately). The Council database is available at https://rnd.council.nyc.gov/expense_funding/

What Types of Organizations May Receive Discretionary Funds?

Discretionary funding is allocated only to not-for-profit, community-based social service providers. To be eligible, an organization *must* be incorporated as a not-for-profit, maintain a current registration with the New York State Attorney General's Charities Bureau (unless exempt), have a valid Federal Employer Identification Number (EIN), and **be able to demonstrate that it has the integrity and capacity to deliver the proposed services.**

The IRS recognizes many types of not-for-profit organizations. While 501(c)(3) organizations are the most common recipients of discretionary funding, other 501(c) categories may also qualify. For example, War Veterans' Organizations are classified as 501(c)(19), Civic Leagues and Social Welfare Organizations as 501(c)(4), and Horticulture Associations as 501(c)(5).

Subcontractors and Consultants

An organization that receives discretionary funding must directly deliver the services of the funded program. Subcontractors or consultants may not be the primary service providers for programs funded by discretionary awards. The Council may permit an organization to utilize the services of subcontractors or consultants as an ancillary or supplemental part of the delivery of services, limited to no more than thirty (30) percent of the total allocation. Organizations must also provide justification or rationale for any use of subcontractors or consultants.

Additionally, subcontractors and consultants must be approved by the contracting agency **before** the subcontractor or consultant begins any work or receives any payment. Payments made to subcontractors and consultants prior to receiving the contracting agency's approval may be impermissible by the agency and, in that case, shall not be reimbursed. Although subcontractors and consultants are not required to submit a Council discretionary funding application, they are still subject to conflict-of-interest disclosure requirements (see section 4, Conflicts of Interest).

What Types of Organizations May Not Receive Discretionary Funds?

For-profit entities may *not* receive discretionary funds, except when the primary not-for-profit organization subcontracts or consults with a for-profit entity as part of their delivery of services. Such subcontracts and consultants must be ancillary to the funded program funded, not the primary basis for the discretionary award.

2. Applying for Discretionary Funding

This section provides an overview of the steps involved in applying for discretionary funds. All applications are submitted online via the Council’s website. The application process opens annually in early January and closes in late February. Fiscal years begin on July 1 and end on June 30.

Who Must Apply?

All organizations wishing to receive any of the seven types of discretionary funding directly from the Council (as described above in Section 1) must submit a Council Discretionary Funding Application with all required supporting documentation. The application solicits information about an organization’s experience, qualifications, and integrity, as well as the specific project or service for which the organization is requesting support. The Council’s website provides information on the schedule for submitting applications.

Note: Each organization must have its own Federal Employer Identification Number and Certificate of Incorporation as a not-for-profit prior to applying for discretionary funding.

Organizations must also comply with the procedural requirement of the Mayor’s Office of Contract Services (MOCS). Most New York City contracting agencies process discretionary funding awards through PASSPort (The Procurement And Sourcing Solutions Portal), the City’s end-to-end procurement platform. ALL organizations receiving Council funding must create an account in PASSPort and submit a Prequalification Application. To meet the prequalification requirement, an organization must have an “*Approved*” status at the time of allocation.

For more information on PASSPort, including account creation, please visit:
<https://www.nyc.gov/site/mocs/passport/about-passport.page>

Please note organizations that receive funding solely through the Department for Cultural Affairs may be exempt from creating a from PASSPort.

Department of Cultural Affairs Funding (DCLA)

Not-for-Profit cultural organizations seeking funding and contracting through DCLA must also submit an application to DCLA’s Cultural Development Fund (CDF) (see www.nyc.gov/dcla or <https://www.nyc.gov/site/dcla/cultural-funding/cultural-development-fund-application.page> for details, application period, and the application form). Organizations that DCLA finds eligible for a CDF award may receive discretionary funding and contract through DCLA. (Note that the organization does not actually receive an award from CDF; only that the entity meets eligibility requirements.) Cultural organizations that do not submit a CDF application may receive funding and contract through another agency through the general processes described in this guide.

New York City Council Vetting

All organizations must demonstrate eligibility, integrity, and an ability to provide services to receive discretionary funding. The Council has an extensive vetting process, which includes, but is not limited, to the following:

- Not-For-Profit Business Records Searches
- News article searches
- Review of Social Media
- Potential conflicts of interest
- Tax Warrant database searches
- Not-for-profit entity status
- Compliance with State Charity registration requirements or certification that the organization is exempt from the registration requirements.
- Active Federal Employer Identification Number (EIN) from the IRS
- Current IRS tax exempt status
- Past evaluations of contract performance
- Approved Prequalification Status
- Review of Corrective Action Plans
- Review of organizations' use and public purpose of funds.

*Please Note: Council clearances **do not** reflect clearances made by MOCS.*

3. Restrictions on the Use of Discretionary Funds

The Council has imposed certain restrictions on the awarding and use of discretionary funds, as described below.

Public Purpose

All public funds, however awarded, must serve a public purpose. In general, a public purpose is defined as an activity or service that is open to all members of the public (regardless of race, creed, gender, sexual orientation, religious affiliation, etc.) and does not promote a particular religion. Allocated funds may not support political activities (including, but not limited to, lobbying,

campaigns, or endorsements) and/or private interests. The New York City Council's Public Integrity Unit reviews all applications to ensure funded organizations meet public purpose requirements and other eligibility criteria.

Programs and services provided by religious or religiously affiliated organizations (such as a parochial school) must be able to demonstrate that the program is open to non-members, is not a religious program, and does not promote the religion.

Closed membership groups, those to which membership is restricted or subject to eligibility based upon prohibited factors—may generally not receive funding. However, groups serving a defined population are not considered closed if their programs are open and accessible to all individuals within that population. For example, a program for youth ages 12 to 16 in a particular community is eligible if all youth in that age range can participate. Similarly, tenant organizations in public housing may also receive funding if they provide equal access to all residents of the public housing development they serve.

Fees:

All programs and services are to be free and open to the public. An organization receiving discretionary funds may not charge fees or require payments as a condition of program participation. Should a community-based organization determine that a fee is necessary, it must be set at a level that does not impede or discourage community members from participating.

Newly Created Organizations

Certain restrictions apply to organizations that have been newly formed or incorporated within the past two years. Organizations whose legal existence began within the last two fiscal years may not receive funding more than \$20,000 in total funding, and no more than \$10,000 from a single member or source. This restriction may be waived under certain circumstances, such as an organization that previously operated as a subsidiary to another organization and has only recently an independent entity. All exceptions are determined on a case-by-case basis.

All newly created organizations must submit a Council Supplementary Application form and a Federal Employer Identification Number (EIN) issuance letter from the IRS, and they are **prohibited** from using subcontractors.

***New to New York City Council Organizations
(Organizations That Have Not Previously or Recently Received Council Discretionary Funding)***

Organizations that have not received discretionary funding from the Council within the last three fiscal years may not receive funding more than \$50,000 in total, no more than \$25,000 from a single member or source. This restriction may be waived in exceptional circumstances. All exceptions will be determined on a case-by-case basis.

4. Conflicts of Interest

To prevent abuse or misuse of the Council's discretionary funding authority, strict rules govern conflicts of interest between Members, their staff, family, and associates, and organizations receiving discretionary funds.

The specific rules governing conflicts of interest are in Conflicts of Interest Board (COIB) Opinion no. 2009-2, available at: [AO2 https://www.nyc.gov/assets/coib/downloads/pdf5/aos/2004-2013/AO2009_2.pdf](https://www.nyc.gov/assets/coib/downloads/pdf5/aos/2004-2013/AO2009_2.pdf)

The following are general guidelines. Please direct questions regarding the application of conflicts rules to specific cases to the Council's Office of the General Counsel or COIB.

- Council Members are prohibited from sponsoring discretionary funding for an organization at which the Member serves as an employee, officer, or board member (except *ex officio*).
- Council Members may sponsor funding for an organization where an "associated" person (a family member or other person with whom the Member has a financial or business relationship) is an officer or employee so long as the associated person will not benefit, or appear to benefit, from the funding.
- At the time of voting, Members are required to disclose on the record any potential conflicts of interest with organizations funded by other members.
- Organizations are required to disclose any potential conflicts of interest annually at the time of their application.

Every organization receiving discretionary funding is required to file a disclosure form identifying any relationship between its board members or employees and elected officials. All organizations must submit a conflict-of-interest disclosure form annually, regardless of their pre-qualification status. Applications will not be approved without a complete conflict of interest form. Additionally, any conflicts that arise after submission must be reported immediately to the Council's Office of the General Counsel.

Subcontractors

Like primary contractors, subcontractors and consultants (including independent contractors) of funded organizations are also subject to conflicts of interest rules. During the contracting process, organizations must provide the contracting agency with a list of their subcontractors and consultants, as well as complete conflict-of-interest disclosure forms from the subcontractors and consultants.

5. Contracting

No organization may receive discretionary funding from the Council, and the relevant agency will not begin the contracting process until the organization has been designated funds in Schedule C or in a Transparency Resolution approved by the full Council. Each designation must include the organization's legal name, EIN, sponsoring member (if applicable), funding amount, purpose, and contracting agency.

Additionally, before agencies are authorized to process a discretionary funds contract with an

organization, the organization must appear on the list of cleared organizations maintained and distributed to agencies by MOCS.³ MOCS periodically updates the “cleared list” to include organizations that have met the required criteria: (i) prequalification in PASSPort; (ii) a valid Capacity Building Training Certificate (if applicable); and (iii) confirmation of City Council vetting. Funded organizations may track the clearance status of their award on the MOCS website at:

<https://www.nyc.gov/site/mocs/opportunities/discretionary-award-tracker.page>

All discretionary awards are contracted through City agencies and are subject to the same procedures and requirements of a standard agency contract. While specific procedures may vary by agency, all organizations receiving discretionary awards must submit a detailed scope of services, budget, and other required documentation to the agency before contract can be finalized.

Please note that all community-based organizations must also carry the insurance appropriate for their entity and the program and/or service being provided. These insurance requirements cannot be waived and are part of contracting agency’s qualification procedure.

All requirements must be met to the satisfaction of the contracting agency, and no Council Member, officer, or official of the Council may waive any requirement that is a normal and standard part of the agency’s contracting process. In almost all instances, contract funds are not released until services have been delivered or have begun. Agencies typically require verifiable documentation of expenses before issuing payment.

In sum, recipient organizations must complete the following steps before disbursement of Council-awarded funds:

- 1) City Council designation.
- 2) City Council vetting and clearance.
- 3) PASSPort registration and/or DCLA approval.
- 4) MOCS clearance.
- 5) Executed contract with a city agency or grant with DCLA, and
- 6) Registration by the Comptroller.

Council Members are prohibited from directing or controlling how discretionary funds are disbursed and spent once those funds have been allocated and approved as part of the budget process or included in Schedule C or subsequent Transparency Resolution. Council Members and their staff may not be involved in planning how an organization procures or delivers services or how it pays its vendors. Organizations should contact Francesca DellaVecchia, Director of Public Integrity Unit at fdellavecchia@council.nyc.gov or Pearl Moore, Chief Ethics

³ The Council’s Finance Division provides MOCS with a list of approved organizations, which is then incorporated into the list MOCS provides to contracting agencies, which includes both the organizations pre-qualified by MOCS and those cleared by the Council. No approvals made by the Council are communicated directly to agencies.

and Compliance Counsel at PMoore@council.nyc.gov if a Council Member or his/her staff instructs or makes recommendations on how or where to use discretionary funds.

Please note that the Council reserves the right to increase, decrease, or rescind funding at any time before an organization enters a valid contract with the City.

Changes to Contracts

Any change to the purpose or scope of services from that described in the organization's application for funding or reported in Schedule C or a Transparency Resolution must be made in a subsequent Transparency Resolution. Agencies will not process contracts where the scope of services or purpose of funds submitted by the funded organization appears to differ from the published and approved purpose.

6. Capacity Building Training

Certain organizations receiving discretionary funding are required to complete training on topics relevant to not-for-profits that receive City funds, including legal compliance, board development, internal controls, and contract management.

Organizations subject to the training requirement are those that receive less than \$750,000 in discretionary funds (per fiscal year). Organizations that receive \$750,000 or more in cumulative discretionary funding (per fiscal year) are exempt from completing MOCS Capacity Building Training.

To satisfy the requirement, the training must be completed by an officer, executive, or board member of the funded organization. Additional employees may also participate in the training.

Upon completion, a certificate is issued to each participant. This certificate is valid for three fiscal years, following the year in which the training is completed. The certification is conferred on the individual completing the training, not the organization. Organizations should maintain actively certified parties to avoid delays in contract registration. Please contact MOCS to discuss transferring certification to a different organization.

Organizations can learn more and enroll at <https://www.nyc.gov/site/mocs/opportunities/capacity-building-training.page>

7. Prohibitions

As indicated in the preceding sections, all types of community-based organizations are encouraged to apply for discretionary funding. However, some types of not-for-profit contracting and funding requests are prohibited, including, but not limited to, the following:

Fiscal Sponsorship

A fiscal sponsor is a unique type of not-for-profit organization that shares its 501(c)(3) status with unincorporated not-for-profit groups. Through a fiscal sponsorship agreement, these unincorporated groups gain the 501(c)(3) "status" needed to receive grants and tax-exempt donations from

government entities, foundations, and individuals. In exchange for fees, the *fiscal sponsor* provides fiduciary oversight, financial management, and other administrative services.

Fiscal Conduits

A Fiscal conduit is type of fiscal sponsorship arrangement in which the tax-exempt organization sponsoring organization has no discretion or control over funds it receives on behalf of an unincorporated group. The sponsoring organization provides no administrative support, oversight, or management, and acts as a “mere conduit” or pass-through in a transfer between the donor or grantor and the unincorporated group (see <https://www.irs.gov/pub/irs-tege/eotopick94.pdf>).

The City Council does NOT allow the use of fiscal sponsorships or fiscal conduits.

Reminder: Each organization must have the capacity and ability to administer its own contract, scope of service, and contract administration, and maintain its own EIN.
