

CITY OF BUFFALO  
DEPARTMENT OF AUDIT AND CONTROL

---

AUDIT REPORT ON THE  
COMMON COUNCIL  
DISCRETIONARY FUNDS

---

MARK J.F. SCHROEDER  
COMPTROLLER



ANNE FORTI-SCIARRINO  
DEPUTY COMPTROLLER

KEVIN J. KAUFMAN, CPA  
CITY AUDITOR

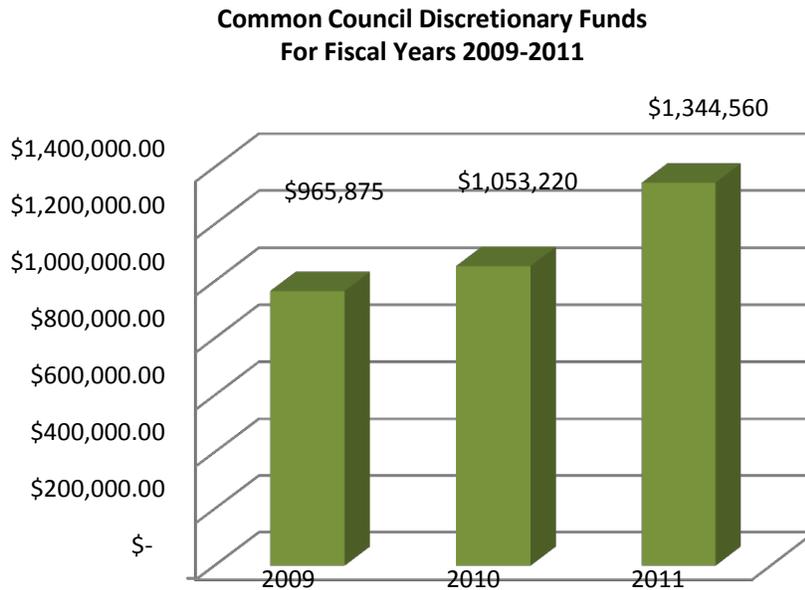
FEBRUARY 2013

**Background**

Discretionary funds are appropriated from the City of Buffalo (the “City”) general fund and expended at the discretion of the Common Council Members. The funds are designated to benefit the community in various ways including community outreach, civic participation, recreational youth services and senior services. The funds are divided among the Council Members and distributed through contracts between the City Clerk and the recipients. Discretionary funds are contained in the City Clerk’s Budget line, “other contractual services.”

Prior to July 2012, there were no guidelines or polices regarding distribution of these funds. Due to the inadequate controls over these funds the Comptroller temporarily suspended payments to agencies until a policy for distribution of funds was adopted. On July 31, 2012 the Common Council adopted Common Council Discretionary Fund Policy – General Guidelines (See Exhibit A). The guidelines are based on rules used in the New York Assembly for a similar program and were recommended by the Comptroller as a template for the Common Council Discretionary Fund Policy – General Guidelines (the “guidelines”). Upon passage of the guidelines, the Comptroller lifted the suspension pending the results of this audit.

Over the past three fiscal years 2009-2011, Discretionary Funding was \$3,363,655. In fiscal year 2011 a total of \$1,344,560 was expended.



The chart below shows the distribution of discretionary funds by district for fiscal year 2011.

<u>District</u>	<u>Amount</u>	<u>% of total</u>
Delaware	\$ 132,960	10%
Ellicott	152,900	11%
Fillmore	147,000	11%
Lovejoy	149,900	11%
Masten	155,300	11%
Niagara	142,000	11%
North	161,500	12%
South	144,000	11%
University	<u>159,000</u>	12%
Total	<u>\$ 1,344,560</u>	100%

### **Audit Objectives**

The audit objectives are to determine if the discretionary funds have been spent in accordance with the guidelines adopted by the Common Council, to determine possible conflicts of interest between the Common Council and the entities receiving funds and to determine the percentage of funding the entities received from the discretionary funds.

The entities are being examined for the period July 1, 2010 to June 30, 2011. The period under audit is prior to the Common Council enacting guidelines on how the discretionary funds can be spent. Therefore it is possible that several of the audit findings have been corrected by the enactment of the guidelines on July 31, 2012.

### **Audit Procedures**

The Division of Audit and Control selected for testing 15 of 59 entities receiving discretionary funding in fiscal year 2011. Entities from each district and entities funded by each council member were selected. The total amount received by the 15 entities selected was \$954,520 or 70% of total Discretionary Funds. It was requested that each selected entity provide cash receipt and expenditure information, a list of board members and a copy of Form 990 for the period of the contract.

To ascertain if discretionary funds were expended in accordance with the guidelines a review of each entity's expenditures was performed. To determine if any conflicts of interest exist between entity's receiving funds and the Common Council a list of board members was reviewed. To determine the amount of total funding the entities received from the Discretionary Fund, Form 990 listing total revenues of the entity was compared to the Discretionary Fund Contract(s).

## **Audit Findings**

Using the guidelines as a minimally acceptable standard the audit findings are as follows:

1. The agencies receiving discretionary funds distributed 43% of the total received to other agencies (a sub-recipient). Once the funds are redistributed the end use is unknown, therefore the benefit to the community cannot be determined.
2. Discretionary funds are not specifically identified in the City of Buffalo Budget Detail, they are included under “other contractual services” in the budget. Therefore taxpayers cannot determine the amount of funds available nor the total spent.
3. Several agencies did not use the discretionary funds for the purpose stated in the grant contract. Therefore discretionary funds were being used for unintended purposes that may not be beneficial to the City of Buffalo and its taxpayers.
4. Several grant contracts were overly vague as to the purpose, allowing the discretionary funds to be used for nearly anything without violating the contract. This could lead to misuse of the discretionary funds.
5. It was found that six of the organizations relied on the discretionary funding for over half of their revenue. If their discretionary funding was reduced or eliminated it appears it would be difficult for the entities to continue operations.
6. Sales tax was paid on purchases by several agencies. All agencies reviewed are exempt from paying sales tax. Discretionary funds spent on sales tax reduce the benefits that can be given to the community.
7. Allentown Associates did not comply with repeated requests to submit all records and receipts therefore we could not verify their expenditures.

## **Audit Recommendations**

In order to improve the process of disbursing Discretionary Funds, we recommend the following enhancements:

1. A separate line item should be created in the City Clerk’s budget for Discretionary Funds. This would create greater transparency and increase accountability over the Discretionary Funds (Exhibit B).
2. The process of disbursing Discretionary Funds should start with a standardized grant application from the agency requesting funding (Exhibit C). The application would be approved by a Council Member. A contract would then be entered into between the City and the agency. Then the agency would submit a request for reimbursement of expenses related to the contract (Exhibit D). All expenses allowable under the terms of the contract, the guidelines and City Code would then be reimbursed.

A standardized grant application form would include, agency name, location, contact person, current list of board members, Tax identification number, a copy of most recently

filed Form 990, detailed purpose for grant, amount requested and Council Member approval. The approved forms should be listed on the City of Buffalo website. This would create greater transparency over the Discretionary Funds.

A contract would be entered into between the City and the agency. The contract should be specific as to purpose. Additionally the rules for receiving discretionary funds should be clearly communicated to the agency in the contract, including that discretionary funds will be used only to reimburse agencies for allowable expenses.

After the contract has been approved and executed a request for reimbursement form could be processed from the agency. The form would be a summary of costs incurred by the agency that are allowable under the terms of the contract, the guidelines and the City Charter and Code. Attached to the request for reimbursement form would be documentation (including invoices and cancelled checks) for all expenditures listed on the form. The same degree of documentation would be required of any sub-recipient of discretionary funds. After a review of the documentation submitted by the agency, allowable reimbursements would be paid. It is anticipated there may be a learning curve as to proper documentation that needs to be submitted to receive Discretionary Funds. A training class should be offered to all agencies approved to receive Discretionary Funds that would illustrate the new process of disbursing Discretionary Funds.

Adopting this change in processing of discretionary funds where there would be verification of the validity of agency expenditures prior to expending discretionary funds could eliminate many of our audit findings. It could eliminate using discretionary funds for the payment of sales taxes. It could eliminate discretionary funding being used for purposes not agreed to in the contract, in addition to eliminating inappropriate use of discretionary funds. Requiring sub-recipients to follow the same procedures as the agency awarded the contract could eliminate distributing discretionary funds for unknown uses.

3. All officers of agencies receiving Discretionary Funds should file conflict of interest forms indicating any relationship that would be considered a conflict of interest. This form is required to be filed in accordance with City of Buffalo Code of Ethics (Exhibit E).



**Common Council**  
CITY OF BUFFALO  
OFFICE OF THE COUNCIL PRESIDENT

**RICHARD A. FONTANA**  
COUNCIL PRESIDENT  
LOVEJOY DISTRICT COUNCIL MEMBER  
65 NIAGARA SQUARE, 1315 City Hall  
BUFFALO, NY 14202-3318  
PHONE: (716) 851-5151 ♦ FAX: (716) 851-5141

**CHAIRMAN**  
RULES COMMITTEE  
**SENIOR LEGISLATIVE ASSISTANT**  
BRYAN J. BOLLMAN  
**LEGISLATIVE AIDE**  
THOMAS J. OLEJNICZAK

## Common Council Discretionary Fund Policy

### General Guidelines

- 1.) Grants are to be designated for purposes that have a public benefit. The programs funded must be open and available to all individuals on a nonsectarian basis.
- 2.) Grants are to be provided in support of services and activities that have a benefit to the city.
- 3.) Grants are only to be designated for Not-For-Profit Organizations, Municipalities, or their affiliated departments/agencies, or School Districts.
- 4.) Grants are available solely for activities and programs conducted for residents of the City of Buffalo.
- 5.) Grants are not to be redistributed unless the end recipient is identified and the grant to the end recipient complies with these guidelines.
- 6.) Grants are to be used only for the purpose stated in the funding request.
- 7.) Grants are not to be used to fund Loan Programs or Scholarships.
- 8.) Funds cannot go to organizations that employ or otherwise compensate a member of the Council Member's family, or a member of the Council Member's Staff for services or labor rendered.
- 9.) Council Members are not to designate grants to an organization if the Council Member, a member of the Council Member's Family or a member of the Council Member's Staff is involved with the operations of the organization in a decision-making capacity including, but not limited to working on an unpaid, volunteer basis.
- 10.) Grants are not to be the only significant source of funding for the organization. Organizations must have all required permits and licenses necessary to operate any program funded by the grant.
- 11.) Grants are subject to review by the City Comptroller. At the end of the Fiscal Year, upon request, the pass through agency shall submit a report to the Comptroller's Office with a detailed accounting of the funds distributed. This shall include bank statements, receipts, and proof of the projects being completed.
- 12.) Procurement of goods shall include an informal (bidding) process to ensure the taxpayers are paying a fair cost for goods. If reasonable, preference can be given to City of Buffalo or Western New York Companies.
- 13.) Requests for funding shall be in writing to the pass through agency.
- 14.) Provisions of this policy may be amended pending the outcome of the Comptroller Audit regarding discretionary funds.

**ADOPTED**

**EXHIBIT A**

<b>Current Budget</b>		
CITY OF BUFFALO		2012-2013
CITY OF BUFFALO GENERAL FUND		ADOPTED
2012 - 2013 ADOPTED BUDGET		BUDGET
10220006	CITY CLERK ADMIN SV	
432004	ENGINEER & TECHNICAL SERVICE	44,875.00
434000	OTHER CONTRACTUAL SERVICES	1,035,000.00
434002	CREDIT CARD & BANK CHARGES	5,500.00
443301	MACHINERY & EQUIPMENT REPAIRS	700.00
443302	VEHICLE BODY REPAIRS	-
443303	VEHICLE DRIVETRAIN REPAIRS	-
443400	EQUIP MAINTENANCE CONTRACTS	8,830.00
444101	RENTAL LAND & BUILDINGS	49,000.00
444201	RENTAL EQUIPMENT & VEHICLES	5,000.00
454000	ADVERTISING	25,000.00
455000	PRINTING & BINDING	13,024.00
480000	OTHER SERVICES	35,500.00
	TOTAL 10220006 CITY CLERK ADMIN SV	1,222,429.00
<b>Proposed Change</b>		
10220006	CITY CLERK ADMIN SV	
432004	ENGINEER & TECHNICAL SERVICE	44,875.00
434000	OTHER CONTRACTUAL SERVICES	-
434001	COMMON COUNCIL DISCRETIONARY FUNDS	1,035,000.00
434002	CREDIT CARD & BANK CHARGES	5,500.00
443301	MACHINERY & EQUIPMENT REPAIRS	700.00
443302	VEHICLE BODY REPAIRS	-
443303	VEHICLE DRIVETRAIN REPAIRS	-
443400	EQUIP MAINTENANCE CONTRACTS	8,830.00
444101	RENTAL LAND & BUILDINGS	49,000.00
444201	RENTAL EQUIPMENT & VEHICLES	5,000.00
454000	ADVERTISING	25,000.00
455000	PRINTING & BINDING	13,024.00
480000	OTHER SERVICES	35,500.00
	TOTAL 10220006 CITY CLERK ADMIN SV	1,222,429.00

**EXHIBIT B**



**Common Council**  
**Discretionary Funding Approval Form**

Applicant Name

Address

Federal Tax Identification Number

Contact Person

Contact Number

Contact Email

Amount Requested

Detail Plan for Use of Fund

Approved By

Amount Approved

Date

Please Attached a current list of Board Members and a copy of the most recently filed Form 990





Name: \_\_\_\_\_

**3. Interest in Contracts.**

Describe any interest of you or a close relative in any contract involving the City or any municipal corporation located within the City of Buffalo.

Name of Family Member Contract Description

---

---

---

**4. Political Parties.**

List any position you held within the last five (5) years as an officer of any political committee or political organization. The term "political organization" includes any independent body or any organization that is affiliated with or a subsidiary of a political party.

---

---

**5. Gifts and Honorariums.**

List the source of all gifts received in the past year from the same or affiliated source aggregating in excess of \$100.00 received during the last year by you or a close relative, from any person or organization having had a regulatory or financial relationship with the City within the past two (2) years or expecting to have such a relationship within the next two (2) years, excluding gifts from a relative. The term "gifts" includes gifts of cash, property, personal items, services, payments to third parties on your behalf, loans, forgiveness of debt, honorariums, travel, entertainment, hospitality, tickets, any financial transaction on terms not available to the general public, and any other payments that are not reportable as income. The term "gifts" shall not include normal hospitality or promotional materials received within the past year if such hospitality or materials which when aggregated by source, do not exceed \$100.00 in value and are not received in circumstances in which it might reasonably be inferred that they were given with the intention to influence or reward you in relation to the performance of your duties.

---

---

Name: \_\_\_\_\_

**6. Real Estate.**

Real Estate: List the address of each piece of real property you or a close relative own or have a financial interest in (including an interest through a family trust or business organization). List only real estate that is in the City of Buffalo or within five (5) miles of the boundary of the City of Buffalo.

<b>Name of Family Member</b>	<b>Relationship to You</b>	<b>Address of Real Estate</b>	<b>Type of Investment</b>
------------------------------	----------------------------	-------------------------------	---------------------------

*[E.g.: John Jones Father 1 Main Street, Buffalo Owns]*

---

---

---

---

**7. Your Employment or Business**

List the name of any employer or business from which you receive compensation for services rendered or goods sold or produced or of which you are a member, officer, or employee.

<b>Name of Employer Or Business</b>	<b>Nature of Business</b>	<b>Type of Business</b>
-------------------------------------	---------------------------	-------------------------

*E.g.: Monument Realty      Real Estate Agency      Partnership*

---

---

---

---

Name: \_\_\_\_\_

**8. Your Spouse's Employment or Business**

List the information in question 7. for your spouse

<b>Name of Employer Business</b>	<b>Nature of Business</b>	<b>Type of Business</b>	<b>Spouse's Relationship</b>
--------------------------------------	---------------------------	-------------------------	----------------------------------

<i>E.g.: Pottery Ltd.</i>	<i>Pottery Manufacturer Corporation</i>		<i>Treasurer</i>
---------------------------	---	--	------------------

---

---

---

---

**9. Investments**

List your interest in business entities or trusts in which you or a close relative has had financial or regulatory activity with either the City or City Development Agency within the last year or is expected to have such activity in the next year, except for a publicly traded corporation of which you own less than five percent (5%) of the outstanding stock and except for personal savings and retirement accounts.

<b>Name of Family Member</b>	<b>Relationship to You</b>	<b>Name of Business Entity</b>	<b>Involvement with City</b>
----------------------------------	--------------------------------	------------------------------------	----------------------------------

<i>E.g.: John Jones</i>	<i>Father</i>	<i>Acme Corp.</i>	<i>Supply Contractor</i>
-------------------------	---------------	-------------------	--------------------------

---

---

---

---

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

After completion, remove the original of this statement (or, if applicable, the Transaction Disclosure Statement) from the disclosure booklet, make and retain a copy for your records, and place the original and receipt form in the envelope provided marked "Confidential," and return to the City Clerk on or before the due date. If mailed, an acknowledgement of receipt will be sent to you for your records. If you hand deliver the statement, request a date and time stamped receipt. Please keep this booklet, the copy of your completed statement and receipt for your records.

Name: \_\_\_\_\_

**For City Employees Only**

**10. Other Financial Interests.**

A. Outside Employment. Describe any outside occupation, employment, trade, business or profession providing more than \$1,000/year for you or a close relative, if any, and indicate whether such activities are regulated by any state or local agency.

Name of Family Member	Position	Name, Address and Description of Organization	State or Local Agency
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

B. Future Employment. Describe any contract, promise or other agreement between you and anyone else with respect to your employment after leaving your City office or position.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

C. Past Employment. Identify the source and nature of any income in excess of \$1,000 per year from any prior employer, including deferred income, contributions to a pension or retirement fund, profit sharing plan, severance pay or payments under a buyout agreement.

Name and Address	Description of Income Source (i.e., pension, deferred, etc.)
_____	_____
_____	_____
_____	_____

Name: \_\_\_\_\_

**For City Employees Only**

**11. Third-Party Reimbursements**

Identify and describe the source of any third-party payment or reimbursement for City of Buffalo travel-related expenditures in excess of \$250.00 for any matter that relates to your official duties. The term "reimbursement" includes any travel-related expenses provided by anyone other than the City for speaking engagements, conferences or fact-finding events that relate to your official duties.

Source	Description
_____	_____
_____	_____
_____	_____

**12. Loans and Debts**

Describe all loans and debts of you or a close relative in excess of \$5,000 (excluding retail accommodations such as primary mortgages, home equity loans, charge accounts, lines of credit, and credit cards extended in the normal course of business which are ordinarily available to the general public by financial institutions (for example, banks) and/or merchants and which are not extended in circumstances in which it might be reasonably inferred that they were extended with the intention to influence or reward you in relation to the performance of your duties):

Name of Family Member	Name and Address of Creditor
_____	_____
_____	_____
_____	_____

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

After completion, remove the original of this statement (or, if applicable, the Transaction Disclosure Statement) from the disclosure booklet, make and retain a copy for your records, and place the original and receipt form in the envelope provided marked "Confidential," and return to the City Clerk on or before the due date. If mailed, an acknowledgement of receipt will be sent to you for your records. If you hand deliver the statement, request a date and time stamped receipt. Please keep this booklet, the copy of your completed statement and receipt for your records.