

This meeting is being held in accordance to Governor Cuomo’s Executive Order and other Federal and State Orders that impact in-person attendance at public meetings, if applicable orders expire or are revoked before **March 16, 2021**, this will be an in-person meeting in City Hall, please check our website and Facebook for updates. Please submit your public comment via email [commoncouncil@albanyny.gov](mailto:commoncouncil@albanyny.gov) or on our [website](#) by **March 16, 2021 12pm**. These comments will be shared with members and/ or read for the record at the meeting. The meeting will be held using Zoom and streamed through the Albany Common Council’s Facebook. To stream this video please visit: <https://www.facebook.com/albany.commoncouncil>. If we experience any technical difficulties on Facebook, the video will be streamed to [YouTube](#).



## **COMMON COUNCIL MEETING**

### **COUNCIL OPERATIONS AND ETHICS COMMITTEE**

**Richard Conti, Chair**

**DATE: Tuesday, March 16, 2021**

**TIME: 5:30 p.m.**

**TOPIC(S) OF DISCUSSION/CONSIDERATION:**

**LOCAL LAW L – 2020**

**A LOCAL LAW AMENDING THE CHARTER OF THE CITY OF ALBANY IN REGARD TO RESIDENCY REQUIREMENTS OF COMMON COUNCIL MEMBERS**

**LOCAL LAW A – 2021**

**A LOCAL LAW AMENDING SECTION 202 (CONTINUOUS TERMS) OF ARTICLE 2 (ELECTIVE OFFICERS) OF THE CHARTER OF THE CITY OF ALBANY TO PROVIDE FOR NONPARTISAN ELECTIONS**

**PUBLIC COMMENT PERIOD: YES**

**Council Member Love introduced the following:**

**LOCAL LAW L OF 2020**

**A LOCAL LAW AMENDING THE CHARTER OF THE CITY OF ALBANY IN REGARD TO RESIDENCY REQUIREMENTS OF COMMON COUNCIL MEMBERS**

**BE IT ENACTED by the Common Council of the City of Albany as follows:**

**Section 1.** Section 402 (Members) of Article IV (Legislative Branch) of the Charter of the City of Albany is amended to read as follows:

Section 402. Members.

The Common Council shall be an elective body comprised of a President of the Common Council and not more than one "Council member" duly elected from each ward within the City. Each "Council member" shall be a resident of the ward from which he or she is elected. There shall not be more than 15 wards within the City. All Common Council Members shall be electors of the ward and have been residents continuously in the ward represented for at least three hundred sixty-five (365) days prior to taking office. Each Common Council Member shall reside in the ward from which that Common Council Member seeks election at the time of nomination for office, and continue to be a resident of the ward for which he or she represents for his or her entire term of office, subject, however, to the following exception: in the case of an election immediately following the reapportionment of Common Council wards, the incumbent Common Council Member representing a ward redrawn in such reapportionment shall be eligible for nomination for election in either the ward of residence, or any newly drawn district which is contiguous to the ward of residence, provided that the Common Council Member shall become a resident of the ward represented prior to taking office. Common Council Members shall be nominated at the primary election in the same manner other city officers are nominated pursuant to the provisions of the Election Law.

**Section 2.** This local law shall take effect upon final passage, public hearing, mandatory referendum, and filing with the Secretary of State.

**APPROVED AS TO FORM  
THIS 7<sup>th</sup> DAY OF AUGUST, 2020**

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**Corporation Counsel**

**TO:** Danielle Gillespie, City Clerk  
**FROM:** John-Raphael Pichardo, Esq., Research Counsel  
**RE:** Request for Common Council Legislation  
Supporting Memorandum  
**DATE:** February 12, 2021

**SPONSOR:** Council Member Love

**LOCAL LAW L of 2020**

**TITLE:**

A LOCAL LAW AMENDING THE CHARTER OF THE CITY OF ALBANY IN REGARD TO RESIDENCY REQUIREMENTS OF COMMON COUNCIL MEMBERS

**GENERAL PURPOSE OF LEGISLATION:**

This local law amends a provision of the Charter to place a requirement that candidates for Common Council be an elector and resident of the ward for a minimum of 365 days before taking office.

**NECESSITY FOR LEGISLATION AND ANY CHANGE TO EXISTING LAW:**

Clarifies that a candidate for Common Council Member must be a resident of the ward for 365 days prior to taking office.

**FISCAL IMPACT:**

None.

**Council Member Conti introduced the following:**

**LOCAL LAW A -2021**

**A LOCAL LAW AMENDING SECTION 202 (CONTINUOUS TERMS) OF ARTICLE 2 (ELECTIVE OFFICERS) OF THE CHARTER OF THE CITY OF ALBANY TO PROVIDE FOR NONPARTISAN ELECTIONS**

*Be it enacted by the Common Council of the City of Albany as follows:*

**Section 1.** Section 202 of the Charter of the City of Albany is hereby amended to read as follows:

**SECTION 202. ~~CONTINUOUS TERMS.~~ NONPARTISAN ELECTION OF CITY OFFICERS.**

~~Except where otherwise stated in this Charter, the regular election of the Mayor, Comptroller, Treasurer, President of the Common Council and each "Council member" shall be held every four years; existing terms shall continue uninterrupted by this Charter.~~

Elections for city offices shall be nonpartisan. Candidates for office shall not be nominated by political parties but shall obtain access to the ballot at the general election through the process outlined in Article 6 of the NYS Election Law for independent nominating petitions. All ballots for the election of city officers shall not contain a party mark or designation.

City elections shall be conducted in the same manner as provided by the NYS Election Law except as herein otherwise provided and all provisions of law relating to the conduct of general elections not inconsistent with the provisions of this section shall apply. At the close of each election the election officers shall proceed to count and canvass the votes cast in the manner provided by the Election Law.

**Section 2.** This section is enacted pursuant to the Municipal Home Rule Law. This section shall supersede the provisions of Election Law to the extent it is inconsistent with the same, and to the extent permitted by the New York State Constitution, the Municipal Home Rule Law, or any other applicable statute.

**Section 3.** This local law shall take effect upon final passage, public hearing and approval of the electors at a general election of state or local government officers held not less than sixty days after the adoption of this local law. It shall apply to the next succeeding election of city officers after adoption.

**APPROVED AS TO FORM THIS  
6<sup>TH</sup> DAY OF JANUARY, 2020**

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**Corporation Counsel**

**To:** Danielle Gillespie, City Clerk  
**From:** Council Member Conti  
**Re:** Request for Common Council Legislation  
Supporting Memorandum  
**Date:** January 6, 2021

**LOCAL LAW A-2021**

**SPONSOR(S):** Council Member Conti

**TITLE**

A LOCAL LAW AMENDING SECTION 202 (CONTINUOUS TERMS) OF ARTICLE 2 (ELECTIVE OFFICERS) OF THE CHARTER OF THE CITY OF ALBANY TO PROVIDE FOR NONPARTISAN ELECTIONS

**GENERAL PURPOSE OF LEGISLATION**

To provide that elections for city elective office shall be held on a nonpartisan basis.

This local law amends Sec. 202 of the city charter to provide that city elections shall be nonpartisan. Candidates for all city offices would obtain access to the ballot by an independent nominating petition. All candidates would be elected at the general election in November and partisan primaries would no longer be held for city office.

**NECESSITY FOR LEGISLATION AND ANY CHANGE TO EXISTING LAW**

Nonpartisan elections benefits voters and allows citizens increased access to the ballot. There's been a decline in the number of voters registering with political parties, especially among younger voters, immigrants and mobile populations. Primaries within political parties reduce their opportunity to choose candidates. In Albany, many Democratic candidates win the primary with a small percentage of the vote and in many cases winning the primary results in winning the general election or running unopposed. Nonpartisan elections can bring citizens more of an opportunity to participate in the electoral process and elect the candidate of their choosing.

According to the National League of Cities over three-quarters of all municipalities in the United States have nonpartisan elections including 41 of the 50 largest cities. Among those with nonpartisan elections are: Los Angeles, Chicago, Phoenix, San Antonio, Dallas, San Diego, San Jose, Detroit, San Francisco, Jacksonville, Austin, Columbus, Fort Worth, Memphis, Boston, El Paso, Milwaukee, Denver, Seattle, Nashville, Las Vegas, and Portland (OR). New York City holds nonpartisan elections for special elections to fill vacancies in city elective offices.

This amendment would expand voter enfranchisement by expanding the electoral base to include the growing number of non-affiliated voters as well as voters enrolled in other parties.

In 2003, a legal analysis of the authority of municipalities in New York State was conducted for

the New York City Charter Review Commission. An excerpt of that analysis follows here:

### **State Law Issues**

The City’s authority to enact local legislation creating nonpartisan elections for local offices derives from Article IX of the New York State Constitution and Section 10 of the Municipal Home Rule Law (“MHRL”).<sup>1</sup> In Bareham v. City of Rochester, 246 N.Y. 140 (1927), the Court of Appeals considered whether Rochester had the authority, under the State’s home rule provisions, to adopt nonpartisan elections in light of the inconsistent provisions of the Election Law. Although the Court struck down the Rochester law at issue because of its technical failure to cite the Election Law provisions that were being superseded, it nonetheless held that cities in New York State possess the authority to establish nonpartisan election systems.<sup>2</sup>

As discussed more fully below, several cities in New York State continued to use nonpartisan election schemes for some time after the decision in Bareham, including the cities of Sherrill and Watertown. The existence of these schemes strengthens the argument that New York City has the authority to create nonpartisan elections. Furthermore, although the Election Law has been recodified since the decision in Bareham, the Bareham analysis applies to the current Election Law. Election Law § 1-102 specifically states that “[w]here a specific provision of law exists in any other law which is inconsistent with the provisions of this chapter, such provision shall apply unless a provision of [the Election Law] specifies that such provision of [the Election Law] shall apply notwithstanding any other provision of law.” There is no existing provision of the Election Law that mandates partisan elections “notwithstanding any other provision of law.”

In 1991, New York City’s authority to adopt nonpartisan elections in its Charter was explicitly recognized in City of New York v. New York City Board of Elections, Index No.41450/91 (Sup. Ct., New York Co.), aff’d, \_\_ A.D. 2d \_\_, (1st Dept.), lv. app.den., 77 N.Y.2d 938 (1991). That case concerned the validity of Charter § 25(b)(7), the nonpartisan special election provision for City Council vacancies that was added by the 1988

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<sup>1</sup> Under MHRL § 10(1), cities have the power to adopt local laws relating to the “powers, duties, qualifications, number, [and] mode of selection . . . of its officers and employees,” provided that such local law is not inconsistent with the State Constitution or any general State law, and provided that the State Legislature has not restricted the adoption of such a local law on a matter of State concern. See MHRL §10(1)(ii)(a)(1) (emphasis added). This provision derives directly from Article IX, § 2(c), of the State Constitution.

<sup>2</sup> The Court in Bareham acknowledged that Rochester would not have had the authority to pass a local law inconsistent with the Election Law had that State law been a “general” law, see MHRL §2(5) (general law is one that “in terms and in effect applies alike” to, for example, all cities within the State), but noted that, on its face, the Election Law was instead a “special” law, with which a properly enacted local law could be inconsistent. See MHRL §2(12) (special law is one which “in terms and in effect” applies to, for example, one or more, but not all cities within the State).

Commission. In that case, the Board of Elections, despite the new Charter amendment, accepted the party nomination of a candidate and attempted to place that candidate's name and party affiliation on the ballot in a special election to fill a Council vacancy. The Board of Elections claimed that Election Law § 6-114, which provides that party nominations for an office to be filled at a special election be made in accordance with party rules, preempted the Charter. Relying on Bareham, MHRL § 10, and Election Law § 1-102, the Court ruled that New York City had the right to adopt nonpartisan elections in its Charter, notwithstanding the Election Law. Specifically, the Court held that although the Election Law allowed party labels in elections, "the Election Law gives way to inconsistent local law provisions." This decision was affirmed unanimously by the Appellate Division, First Department.

Indeed, local authority to implement nonpartisan elections for local offices, as identified in Bareham, has never been compromised by the Legislature's enactment of a general law or an explicitly restrictive special law. Thus, the Election Law may be reasonably construed only to set forth the framework for governing partisan elections for those cities that choose to use them. New York City has held numerous special elections for City Council vacancies. In fact, the entire Council leadership – its Speaker, Majority Leader and Minority Leader, were all elected initially to the Council in a nonpartisan election.

In light of Bareham and City of New York, it appears clear that cities in New York State possess the home rule authority to adopt nonpartisan elections by amending their charters. See also Steinberg v. Meisser, 291 N.Y. 685 (1943) (upholding the denial of an injunction against the City of Long Beach placing before the voters a proposed local law amending its charter to provide, inter alia, for nonpartisan elections for City Council).

### **Nonpartisan Elections in New York State**

Nonpartisan election systems have existed in New York State for over 80 years. For example, in addition to Rochester, the cities of Sherrill and Watertown have had nonpartisan elections since 1916 and 1920, respectively.<sup>3</sup>

As discussed above, Rochester attempted to institute nonpartisan elections for its citywide officers by local law, but its legislation was struck down in Bareham because of the law's failure to cite the provisions of the Election Law that were to be superseded. Following the decision in Bareham, in 1929, Rochester again instituted nonpartisan elections by local law, but this time the law contained the required list of superseded Election Law sections.<sup>4</sup>

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<sup>3</sup> 19 Other cities in New York that have had nonpartisan primary elections at some point in their history include Buffalo, Saratoga Springs, Long Beach, Jamestown, Mechanicville, Auburn, New Rochelle, Rome, and Batavia.

<sup>4</sup> The sections of the then-existing Election Law superseded by Rochester's law were: 83 (lists of nominations); 84 (publication by Board of Election of nomination lists); 89 (poll-books); 102 (placing names on ballot); 103 (order of names on ballot); 104, 105, 108, 119, 249, 268 (official ballots); 131 (party nominations); 135, 136 (designating petitions); 137 (independent nominations); 138 (declination of designation or nomination); 139 (filling vacancies in designations and nominations); 140 (times for filing

The City of Sherrill's nonpartisan primary system was instituted by the State Legislature in 1916.<sup>5</sup> In creating this scheme, the Legislature effectively superseded various provisions of the then-applicable Election Law as it applied to Sherrill.<sup>6</sup> At its most basic, Sherrill's system of nonpartisan elections modified the method by which a candidate qualified for the general election. While the Election Law at that time provided that the candidate who received the most votes in each party's primary proceeded to the general election, see then-effective Election Law § 89, Sherrill's nonpartisan system mandated that the two candidates who received the most votes at the nonpartisan primary would run in the general election, regardless of party.<sup>7</sup>

The City of Watertown's nonpartisan primary system was instituted by the State Legislature in 1920.<sup>8</sup> Like for Sherrill, the Legislature effectively superseded various provisions of the Election Law as it applied to Watertown.<sup>9</sup>

The Legislature amended Watertown's nonpartisan election system in 1993,<sup>10</sup> but the basic structure of nonpartisan primary elections remained the same. The amendments merely conformed Watertown's system to certain administrative requirements of the Election Law and addressed certain administrative details.<sup>11</sup> As amended in 1993, Watertown's

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petitions and certificates for holding conventions); 156 (additional meetings for registration); 157 (registration for other than general elections); 204 (challenges at primary elections); 212 (proceedings of inspectors at close of polls); 213, 270 (canvassing vote); 217 (tallying votes); 233 (proclamation of results).

<sup>5</sup> Laws of 1916, Chapter 172.

<sup>6</sup> In 1985, the Election Law was reenacted into its current form.

<sup>7</sup> Sherrill's legislation varied from numerous sections of the 1916 Election Law. *See, e.g.,* Sections 3 (definition of a primary election); 48 (process to choose candidates for primary election); 49 (filing declaration of candidacy); 58 (party affiliation on ballot); and 79 (when election supplies are to be delivered).

<sup>8</sup> Laws of 1920, Chapter 276.

<sup>9</sup> Watertown's 1920 legislation varied from numerous sections of the then-applicable Election Law. *See, e.g.,* 3 (defining primary as a party-based election); 74 (designation of polling places in accordance with political parties); 79 (number of ballots to be provided at election); 89 (two candidates receiving most votes at primary proceed to general election); and 122 (independent nominating petitions).

<sup>10</sup> Laws of 1993, Chapter 247.

<sup>11</sup> These administrative requirements addressed issues such as the filing and sufficiency of petitions; primary dates; revision and correction of registers of voters; the quality, weight, size, etc., of ballots; and the general conduct and canvassing of elections. The amendments also addressed details regarding the binding of petitions, the equipment to be furnished to the polling locations, the movement of voters between election districts, write-in candidates, and the conduct of general elections.



legislation effectively superseded various provisions of the modern Election Law.<sup>12</sup>

**EFFECTIVE DATE:** Adoption of this local law is subject to permissive referendum at the next general election. If adopted by the voters it would apply to the 2025 Albany city elections at the earliest.

**FISCAL IMPACT:** None.

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<sup>12</sup> Watertown's legislation varies from the following sections of the Election Law as it existed in 1993: 1-104 (defining a primary as a party-based election); 2-120 (statement of party positions to be filled at primary); 4-118 (party designation on notices of primary election); 6-119 and 6-132 (designating petition to include party); 6-128 (first nominations for new party); 6-136