

**Council Member Conti introduced the following:**

**Ordinance Number 40.31.10**

**AN ORDINANCE AMENDING CHAPTER 54 OF THE CODE OF THE CITY OF ALBANY IN RELATION TO ETHICS AND FINANCIAL DISCLOSURE**

**The City of Albany, in Common Council convened, does hereby ordain and enact:**

**Section 1. Chapter 54 of the Code of the City of Albany entitled “Financial Disclosure” is hereby repealed in its entirety and a new Chapter 54 entitled “Ethics Law of the City of Albany” is hereby added to read as follows:**

§54-1. Purpose.

The purposes of the Code of Ethics are:

- A. to establish high standards of ethical conduct for City officers and employees and to prohibit acts incompatible with the public interest;
- B. to provide City officers and employees clear guidance on such ethical standards;
- C. to prevent unethical conduct before it occurs by providing education and training;
- D. to promote public confidence in the integrity of the governance and administration of the City, including but not limited to its boards, agencies and administrative offices;
- E. to require reasonable public disclosure of financial interests that may influence or be perceived to influence the actions of City officers and employees, so that consideration of potential ethical problems can be addressed before they arise, so that suspicion by the public of the administration of government is minimized, and so that public accountability is maximized; and
- F. to provide for the fair and effective administration of the Codes of Ethics.

§54-2. Supersession of General Municipal Law § 808; Legislative Intent.

- A. To the extent that this article is inconsistent with the provisions of Section 808 of the General Municipal Law, this article shall supersede such provisions.
- B. The intent of this Article is to supplement the legal requirements of the General Municipal Law and to replace any conflicting provisions to the extent authorized by the supersession set forth in Subsection A.

§54-3. Definitions.

When used in the Code of Ethics, the following terms shall have the following meanings:

- A. “appear” and “appear before” shall mean communicating in any form, including, without limitation, personally, through another person, by letter or other writing, or by telephone.
- B. “Candidate” shall mean an individual who is on the ballot as a candidate for an federal, state or local elective office or who seeks election to any such office as a write-in candidate.”

C. “Candidate for City elective office” shall mean a candidate for the position of Mayor, City Treasurer, City Auditor, Common Council President, or Common Council member.

D. “City” shall mean the City of Albany, but shall not include the Albany City Court.

E. “City officer or employee” shall mean any elected or appointed officer or employee of the City, whether paid or unpaid, and includes, but is not limited to, all members of any office, board, body, advisory board, council, commission, agency, department, bureau, division, or committee of the City. “City officer or employee” shall exclude:

1. a judge, justice, or employee of the unified court system; and

2. a member of an advisory board of the City if, but only if, the advisory board has no authority or power to implement its recommendations or to act on behalf of the City or to restrict the authority of the City to act. No entity established pursuant to the New York State General Municipal Law shall be deemed an advisory board for purposes of the Code of Ethics.

F. “customer or client” means:

1. any person to whom a City officer or employee has supplied goods or services during the previous twelve (12) months having, in the aggregate, a value greater than two thousand five hundred dollars (\$2500.); or

2. any person to whom a City officer’s or employee’s outside employer or business has supplied goods or services during the previous twelve (12) months having, in the aggregate, a value greater than two thousand five hundred dollars (\$2500.), but only if the City officer or employee knows or has reason to know the outside employer or business supplied such goods or services.

G. “Ethics Board” shall mean the Ethics Board of the City of Albany.

H. “ethics violation” shall mean a violation of this Ethics Code or Article 18 of the General Municipal Law.

I. “financial benefit” shall mean any pecuniary or material benefit including but not limited to any money, stock, security, service, license, permit, contract, authorization, loan, travel, entertainment, discount not available to the general public, real or personal property, or anything of value.

J. “gift” shall mean a financial benefit that is given to a person without receipt or promise of any significant consideration or financial benefit in return.

K. “household member” or “member of household” shall mean any person with whom a City officer or employee lives as a single household unit.

L. “interest” shall mean a pecuniary or material benefit accruing to a City officer or employee, or a pecuniary or material benefit accruing to that City officer’s or employee’s:

1. close relatives; or

2. outside employer or business.

M. “ministerial act” means an action performed in a prescribed manner without the exercise of judgment or discretion as to the propriety of the act.

N. “outside employer or business” shall mean:

1. any person from whom or from which a City officer or employee receives a financial benefit for services rendered or goods sold or produced;

2. any business in which the City officer or employee has an ownership interest of five percent (5%) or more;

3. any business in which the City officer or employee has an ownership interest which has a value in excess of fifty thousand dollars (\$50,000.); or

4. any business corporation for which the City officer or employee is an uncompensated member of the board of directors or is an uncompensated corporate officer.

O. “person” shall mean an individual, all forms of business organizations, and all forms of not-for-profit entities. The City and other governmental entities are not persons as defined herein.

P. “political campaign activity” shall mean canvassing, campaigning, gathering petition signatures, distributing campaign literature, fundraising, electioneering, speaking on behalf of a candidate, and any other act or activity intended to cause a candidate to win any election.

Q. “political committee” shall have the meaning set forth in Section 14-100 of the New York State Election Law.

R. “relative” means a spouse, domestic partner, child, step-child, sibling, half-brother, half-sister, parent, step-father, step-mother, mother-in-law, father-in-law, brother-in-law, sister-in-law, grandparent, grandchild, uncle, aunt, niece, and nephew. “Relative” shall also include any person claimed as a dependent on the New York State individual tax return of a City officer or employee. “Close relative” means a spouse, domestic partner, child, step-child, sibling, half-brother, half-sister, parent, step-father, and step-mother.

S. “subordinate” of a City officer or employee shall mean another City officer or employee that he or she has the power to hire, fire or discipline, or over whose activities he or she has the power to direct, supervise or control. Subordinates shall not include those who serve in positions that are classified as “exempt” or “unclassified” under the New York State Civil Service Law for purposes of the Ethics Code.

T. “superior” shall mean a City officer or employee who has the power to hire, fire, discipline, direct, supervise or control a subordinate.

#### §54-4. Exclusions From The Code Of Ethics and From Transactional Disclosure.

The following are not prohibited by the City Code of Ethics, nor shall the following require the recusal of or disclosure by any City officer or employee:

A. an action specifically authorized or mandated by statute, regulation, or rule of the State of New York or the United States;

B. a ministerial act;

C. financial benefits having a value of fifty dollars (\$50) or less that are received by a City officer or employee listed in Section 11 of the New York State Domestic Relations Law for the solemnization of a marriage by that officer or employee at a place other than his or her normal public place of business or at a time other than his or her normal hours of business;

D. public awards from charitable organizations;

E. receipt of City services or benefits or use of City facilities, that are generally available on the same terms and conditions to the general public, residents of the City, or a class of residents in the City;

F. representation of constituents by elected officials without compensation in matters of public advocacy;

G. Appearances by a former City officer or employee before the Albany City Court.

#### §54-5. General Ethics Standards.

A. A City officer or employee shall not use his or her official position or office, or take or fail to take any action, in a manner which he or she knows or has reason to know may result in a financial benefit for:

1. himself or herself;
2. a member of his or her household;
3. his or her relative;
4. his or her outside employer or business, or any owner, director, or office

thereof;

6. his or her customers or clients; or
7. his or her creditors.

B. All City officers and employees shall comply with Sections 801 and 802 of the New York State General Municipal Law.

C. No City officer or employee shall use or permit the use for non-municipal purposes of City property, including but not limited to vehicles, equipment, or materials. Nothing herein shall preclude the incidental use of City property for private purposes if such use is principally for the benefit of the City and is pursuant to a previously established written City policy established by the Mayor or enunciated in a collective bargaining agreement.

D. No City elected official shall enter into any business relationship with any City officer or employee, and no City officer or employee shall enter into any business relationship with that individual's subordinate, if such business relationship would be an outside employer or business as to any one of them.

E. No City officer or employee may appoint a household member or relative to a compensated position under his or her supervision or control or supervise such an individual. Nothing in this subsection shall be construed to prohibit such a household member or close relative from being employed in a position subject to and pursuant to the provisions of a collective bargaining agreement or the New York State Civil Service Law.

#### §54-6. Financial Benefits and Gifts.

A. Except as provided in Subsection B, a City officer or employee shall not accept, or directly or indirectly solicit, a financial benefit or gift:

1. under circumstances from which it could reasonably be inferred that the financial benefit or gift is intended to influence the City officer or employee in the performance of his or her duties;
2. under circumstances which would create an appearance of impropriety; or
3. from any person who received any financial benefit from an action or failure to act by that City officer or employee within the previous twelve (12) months.

B. The following are exceptions to the prohibitions set forth in Subsection A of this section:

1. a gift accepted by a city officer or employee on behalf of the City and transferred to the City.
2. a gift of any amount received by a City officer or employee from his or her close relative under circumstances that make it clear that it is the familial relationship rather than the recipient's office or position that is the primary motivating factor.
3. lawful political campaign contributions to a candidate for any City elective office.

4. a waiver of post-service employment issued pursuant to the provisions of this Chapter.

§54-7. Representation.

A. A City officer or employee shall not represent any other person in any matter before the City, nor represent another person in any matter against the interests of the City.

B. No City officer or employee shall give paid opinion evidence as an expert witness adverse to the position of the City in any civil litigation involving the City.

C. Nothing herein shall prohibit the corporation counsel or any counsel to a City elected official from appearing in litigation on behalf of a City elected official who is a party to litigation in his or her official capacity as a City elected official.

§54-8. Appearances Before City Agencies.

A. A City officer or employee shall not appear before any agency of the City except on his or her own behalf or on behalf of the City.

B. The outside employer or business of a City officer or employee may appear on its own behalf before the City, but shall not appear on behalf of any other person:

1. before the particular agency, board, commission, or other specific part of the City government at which the City officer or employee serves or is employed; or

2. before any agency, board, commission, or other specific part of the City government as to which the City officer or employee has:

a. the authority to appoint any officer, employee or member; or

b. the authority to review, approve, audit or authorize any budget,

bill, payment or claim.

C. Nothing in Subsection B shall:

1. be construed to eliminate the need for transactional disclosure and recusal by any City officer or employee;

2. be applicable to a ministerial act; or

3. be applicable to receipt of a City service or benefit, or use of a City facility, which is generally available to the public on the same terms and conditions as available to residents or a class of residents in the City

§54-9. Post Service Or Employment Activities.

A. Except as otherwise provided in this section, a City officer or employee shall not appear before the City on behalf of another person for a period of one (1) year after the completion of his or her City service or employment. This Subsection shall not prohibit a City officer or employee from being elected to a City office, being appointed to any City board or commission, being hired as a City officer or employee, or being paid by the City to appear as a witness in any proceeding on behalf of the City.

B. The prohibition set forth in Subsection A shall be permanent as to particular matters on which the City officer or employee personally worked while a City officer or employee. A City officer or employee personally works on a matter when that City officer or

employee is substantially involved with the matter or personally supervises or directs how the matter is to be handled.

C. No City officer or employee shall solicit or accept a position of employment after termination of City service, from any person who received any financial benefit from an action or failure to act by that City officer or employee within the prior one (1) year.

D. Nothing herein shall prevent a City officer or employee from working for a federal, state or local government body or agency and, in that capacity, appearing before the City at any time after the completion of City service.

E. Any City officer or employee may request a waiver of the provisions of this section from the Ethics Board, as provided in this Chapter.

#### §54-10. Avoidance of Conflicts.

A City officer or employee shall not knowingly acquire, solicit, negotiate for, or accept any financial benefit or gift that would constitute an ethics violation.

#### §54-11. Confidential Information.

Current and former City officers and employees shall not disclose any confidential information or use it to further his or her own, or any person's interests.

#### §54-12. Interests in Contracts with the City.

A. No City officer or employee shall have an interest in a contract with the City, or an interest in a bank or trust company, that is prohibited by Section 801 of the New York State General Municipal Law. Any contract willfully entered into by or with the City in which there is an interest prohibited by that section shall be null, void and wholly unenforceable, to the extent provided by Section 804 of the General Municipal Law.

B. Any City officer or employee who has, will have, or later acquires an interest in any actual or potential contract with the City, shall publicly disclose the nature and extent of that interest in accordance with Section 803 of the General Municipal Law. The disclosure shall be filed with the Ethics Board and the City Clerk.

C. Any City officer or employee who willfully and knowingly violates the provisions of this section shall be guilty of a misdemeanor, to the extent provided by Section 805 of the General Municipal Law.

#### §54-13. Political Activity; Public Disclosure.

A. No candidate for any elected office of the City and no City officer or employee shall knowingly request, or knowingly authorize any person to request, that any of the following persons participate in any political campaign activity in connection with any campaign for City elected office:

1. a City officer or employee; or
2. any person who has received a financial benefit from the City within the prior twelve (12) months, including but not limited to persons that have contracts to supply goods or services to the City.

Nothing in this subsection shall require that individual names of City officers and employees be deleted from general mailing lists soliciting campaign contributions from City residents, generally, or by geographic area.

B. Public disclosure is required when a person, who has made campaign contributions to a City officer or employee in the prior twelve (12) months that exceed in the aggregate a total of five thousand dollars (\$5,000.), requests that such City officer or employee act or refrain from acting in a manner that would cause the person to receive a financial benefit. Both the person making the request and the City officer or employee shall publicly disclose the fact that such campaign contributions had been made. The disclosure shall be made in writing and shall be retained in the official records of the body, official or employee to whom the request has been made, as well as in the records of the Ethics Board. Nothing herein shall require recusal by the City officer or employee, solely disclosure. The requirements of this subsection shall be applicable whether or not the City official or employee was a victorious or defeated candidate and whether the City officer or employee was a candidate for City elected office or for another elected office.

C. No City officer or employee shall engage in any political campaign activity during times when that person is working on City business.

D. No City officer or employee shall solicit any subordinate to engage in political campaign activity on behalf of any candidate for any elected office, including but not limited to City elected office.

E. No City officer or employee shall wear any City of Albany uniform or insignia when engaged in any political campaign activity. Nothing herein shall prevent a City officer or employee from wearing a City of Albany uniform or insignia when performing official duties on behalf of the City in conjunction with any election. Nothing herein shall prevent an incumbent City elected official from identifying himself or herself by any official Albany insignia designating that official's elected office.

F. Nothing herein shall prevent any City officer or employee from voluntarily: engaging in any political campaign activity, voting, making a campaign contribution, engaging in free speech, assembling for political purposes, or engaging in other acts not prohibited by this section.

#### §54-14. Mandatory Resignation for Certain Officers and Employees.

A. Any City officer or employee in the unclassified or exempt classes under the New York Civil Service Law shall automatically be deemed to have resigned from his or her position as a City officer or employee as of the date that he or she accepts the appointment, either by taking the oath of office or assuming the duties, as a member of any one of the following boards or commissions: the City Ethics Board, Zoning Board of Appeals, Planning Commission, or any other appointed City Board or Commission other than an advisory board.

B. The automatic resignation required in Subsection A shall not apply to:

1. a City officer or employee who is authorized in any statute, the Albany City Charter, or the City Code to be appointed as a member of a City board or commission; including but not limited to the Board of Contract and Supply; or

2. any individual who is serving on a City board or commission as of the effective date of this Article and who resigns from the City board or commission within thirty (30) days after the effective date of this Article.

§54-15. Inducement of Violations of the Code of Ethics.

No person shall induce any other person to violate, attempt to induce any other person to violate, or aid any other person in violating, any provision of the Code of Ethics.

§54-16. Whistleblower Protection.

A. No City officer or employee shall retaliate against any City officer or employee or other person for submitting a complaint to the Ethics Board or for acting, or refusing to act, as required by the Ethics Code and Article 18 of the General Municipal Law.

B. Any City officer or employee who violates Subsection A has committed an ethics violation.

C. In resolving a complaint that a City officer or employee has violated this section, the Ethics Board may recommend that a retaliatory personnel action be reversed.

§54-17. Recusal and Transactional Disclosure.

A. A City officer or employee shall immediately recuse himself or herself from formally or informally acting on a matter before the City when acting on the matter, or failing to act on the matter, may financially benefit any of the persons listed in Section 54-5(A).

B. A City officer or employee that has recused himself or herself shall not participate in any aspect of the matter, including but not limited to discussions or debate, rendering advice, voting, deciding to take action or deciding not to act, and attempting to influence others to act or not to act.

C. A City officer or employee that has recused himself or herself shall:

1. promptly inform his or her superior, if any; and
2. execute a signed statement disclosing the reason for recusal, which shall be filed both with the Ethics Board and in the records of the matter; or, if a member of a board, commission, or similar entity, state such information upon the public record of the board and cause the minutes of the meeting to include such disclosure.

§54-18. Applicant Disclosure.

A. When a person requests that the City or a City officer or employee act or refrain from acting, in any capacity other than a ministerial act, then the person making such a request shall disclose the name of any City officer, employee, or any person listed in Section 54-5(A) who could financially benefit if the request is granted and who is reasonably known at the time the request is made or that becomes known thereafter.

B. The disclosure shall be made in writing and shall be retained in the official records of the body, official or employee to whom the request has been made, as well as in the records of the Ethics Board.

C. No disclosure shall be required pursuant to this Section, if a disclosure statement has been filed with respect to the same matter pursuant to Section 54-19.

§54-19. Applicant Disclosure, Land Use Applications.

A. Every application, petition, or request submitted for a change of zoning; zoning amendment; subdivision approval; site plan approval; special permit; variance; waiver or modification any land use law or regulation; exemption from a plat or official map, license or permit; or other approval or action of any type pursuant to the provisions of any ordinance, local law, rule or regulation constituting the zoning, planning and land use regulations of the City, shall state the information required, to the extent required, by Section 809 of the New York State General Municipal Law.

B. Any person who willfully and knowingly violates the provisions of this section shall be guilty of a misdemeanor, to the extent provided by Section 809 of the General Municipal Law.

§54-20. Disclosure of Interest in Legislation.

If a City officer or employee issues an official opinion or participates in the public discussion or public hearing on any proposed legislation, then the City officer or employee shall publicly disclose on the official record the nature and extent of any interest the City officer or employee has in the proposed legislation. Such disclosure shall be filed in the office of the City Clerk and with the Ethics Board.

§54-21. Annual Disclosure.

A. The following City officers and employees holding the following job titles or descriptions shall be required to file a signed annual disclosure statement:

1. the Mayor, City Treasurer, City Auditor, Common Council President, and Common Council members;
2. deputy mayor;
3. commissioners, department, and bureau heads, as well as their principal deputies;
4. inspection personnel;
5. members of appointed boards, except advisory boards; and
6. all other City officers and employees who exercise substantial discretionary authority, as designated by either the Mayor or by rule of the Ethics Board.

B. The City Clerk shall cause the annual disclosure statement form to be distributed to all City officers and employees who must file the statement not later than April 1<sup>st</sup>.

C. Annual disclosure statements shall be filed with the Ethics Board not later than May 15<sup>th</sup> of each year. If an individual receives an automatic extension of time to his or her federal income tax return, then the individual shall so indicate on their annual disclosure statement and may, within ten (10) days after the expiration of the extension, supplement the annual disclosure statement without any penalty for late filing. If a board, commission, or similar appointed entity comes into existence after May 15<sup>th</sup>, then the first annual statement shall be filed by its members within fifteen (15) days of its first meeting. If a City officer or employee

who must file an annual disclosure is newly hired or appointed after May 15<sup>th</sup>, then the first annual statement shall be filed within fifteen (15) days of that individual commencing City service. Any material changes to the information reported in the annual disclosure statement shall be reported to the Ethics Board in a written amendment to the disclosure statement by the filer within thirty (30) days of the change.

D. The Ethics Board shall review the filed annual disclosure statements to assure that they comply with the Ethics Code and the General Municipal Law.

E. The annual disclosure statements shall be kept confidential to the maximum extent allowed by law. If the annual disclosure statement of any City officer or employee is requested via a properly submitted request under the freedom of information law, then the City officer or employee shall be given sufficient opportunity to request the Ethics Board or the City's Records Access Officer to redact whatever information is not subject to public access under the law. Nothing herein shall be deemed to be a waiver of the Freedom of Information Law or the privacy and confidentiality protections set forth therein.

F. If a City officer or employee has not filed an annual disclosure statement on time, then the Ethics Board shall notify that individual and direct that the individual file an annual disclosure within seven (7) days. If the annual disclosure statement is filed within that seven (7) day period, then there shall be no penalty for late filing. Otherwise, failure to timely file an annual disclosure statement shall be an ethics violation.

G. The Ethics Board shall promulgate an annual disclosure form that shall require the following information from the disclosing City officer or employee to be submitted in writing and signed under oath:

1. the disclosing City officer or employee's name, home address, and home telephone.
2. that disclosing City officer or employee's position with the City.
3. the names of that disclosing City officer or employee's :
  - a. spouse;
  - b. relatives (as defined in Section 54-3); and
  - c. household members (as defined in Section 54-3).
4. the name, address and telephone number of any outside employer or business (as defined in Section 54-3) of:
  - a. the disclosing City officer or employee;
  - b. each close relative of the disclosing City officer or employee; and
  - c. each household member of the disclosing City officer or employee.
5. whether each outside employer or business disclosed in response to Paragraph 4 of this subsection has within the prior year received or solicited a financial benefit from the City, or appeared before the City on behalf of another person, and, if so, the nature of such activities or matters.
6. whether the disclosing City officer or employee has entered into an agreement or made a promise concerning future employment after leaving City service or employment, and, if so, the complete details thereof.
7. identification of all real estate in the City of Albany owned by the disclosing City officer or employee or that individual spouse, household members, or children.
8. identification of all loans in excess of one thousand dollars (\$1,000.) made to the disclosing City officer or employee or that individual's spouse, household members, or children.

9. identification of an interest in excess of one thousand dollars (\$1,000.) of the disclosing City officer or employee in any trust or estate;
10. identification of gifts in excess of two hundred dollars (\$200.) received by the disclosing City officer or employee within the prior year, except for those gifts enumerated in Section 54-6(B).
11. identification of any interest in any contract involving the City held by the disclosing City officer or employee or that individual's spouse, household members, or children.
12. identification of any positions held by the disclosing City officer or employee within the prior five years as an officer of any political party or political committee.
13. identification of any relative of the disclosing City officer or employee who is a City officer or employee and the department within which he or she is employed.
14. identification of any customer or client of the disclosing City officer or employee or that individual's outside employer or business, who is known to have received or solicited a financial benefit from the City within the prior year or appeared before the City on behalf of another person within the prior year.

§54-22. Ethics Board: Establishment; Qualifications of Members; Appointment of Members; Term of Office; Limitation on Activities.

A. There is hereby established an Ethics Board that shall consist of seven (7) members. Any prior Ethics Board shall cease to function as of January 1, 2010 and all records and files of the prior Ethics Board shall be transferred to the Ethics Board established herein.

B. The following are the composition of the Ethics Board, the members' terms of office, and their qualifications:

1. There shall be a chairperson who shall be appointed for a term of five years. The other six members of the Ethics Board shall be appointed for a term of three years. In order to stagger the terms, the initial appointments made following the effective date of this Article shall be as follows: two members shall be appointed for a three year term, two members shall be appointed for a two year term, and two members shall be appointed for a one year term. The terms of office of the Ethics Board chairperson and all members shall commence on January 1st and expire on December 31<sup>st</sup>.

2. All members of the Ethics Board must be qualified electors and residents of the City of Albany.

3. No member of the Ethics Board may be an employee of the City.

4. No more than three members of the Ethics Board shall be registered as members of the same political party. No individual who holds an office in any political party shall be appointed to the Ethics Board.

5. No individual shall be appointed to the Ethics Board who, within the prior one (1) year, has:

- a. been employed by the City in a position classified as exempt or unclassified under the New York Civil Service Law; or

- b. held any elective office in the City of Albany.

C. All members of the Ethics Board shall be appointed by the Ethics Board Appointing Committee which shall consist of: the Mayor, the Senior Judge of the Albany City Court, and the Common Council President. A vote by a majority of all of the members of the

Ethics Board Appointing Committee shall be necessary to appoint an individual to the Ethics Board. Initial appointments to the Ethics Board shall be made prior to December 31, 2009.

D. The members of the Ethics Board shall not receive compensation but shall be reimbursed for reasonable expenses incurred in the performance of their official duties.

E. No person while a member of the Ethics Board shall:

1. hold a public office;
2. be a candidate for any City elected office;
3. participate, other than to vote or make a lawful campaign contribution, in any political campaign for any candidate for City elected office, including but not limited to hold any political party office; or
4. appear before the City on behalf of any other person.

§54-23. Vacancies; Removal of Ethics Board Members.

A. A member of the Ethics Board shall be deemed to have automatically resigned, and his or her office as a member of the Ethics Board shall automatically be deemed vacant, if that member:

1. ceases to maintain the qualifications enumerated including but not limited to City residency; or
2. has unexcused absences for three consecutive meetings of the Ethics Board or three out of any five consecutive meetings of the Ethics Board. Absences may be excused only by a vote of four of the other six members of the Ethics Board.

B. An Ethics Board member may be removed from office for cause, including substantial neglect of duty, misconduct in office, inability to discharge the powers or duties of office, or violation of this Article. Removal shall be by vote of a majority of all of the members of the Ethics Board Appointing Committee, after written notice to the Ethics Board member and an opportunity to be heard.

C. The Ethics Board Appointing Committee shall fill any vacancy on the Ethics Board within thirty (30) days by appointing an individual to fill the unexpired term of office.

§54-24. Ethics Board; Meetings and Voting.

A. The Ethics Board shall meet no less than once every three (3) months and more often, as necessary.

B. A majority of all of the members of the Ethics Board shall constitute a quorum.

C. A majority vote by all of the members of the Ethics Board shall required for actions other than simple procedural motions, such as a motion to adjourn a meeting, or to table a matter. An affirmative vote by a majority of all of the members of the Ethics Board shall be necessary to adopt a rule; issue an advisory opinion; commence an investigation; issue a subpoena; conduct a hearing; commence an administrative enforcement proceeding; assess a penalty; recommend appropriate enforcement action regarding violations of the Ethics Code; appoint special counsel; or grant a waiver of compliance with the Ethics Code.

§54-25. Ethics Board: Jurisdiction, Powers, and Duties.

A. The Ethics Board may only act with respect to matters that are covered by the Ethics Code and Article 18 of the General Municipal Law.

B. The termination of a City officer's or employee's term of office or employment with the City shall not deprive the Ethics Board of the power to act with respect to any matter covered by the Ethics Code or Article 18 of the GML.

C. The Ethics Board shall have the following powers and duties:

1. to prescribe and promulgate rules and regulations governing its own procedures and to further the purposes of this Article and Article 18 of the General Municipal law.

2. to review, evaluate, index, and maintain on file:

a. lists of City officers and employees who are required to file annual disclosure statements; and

b. all disclosure statements.

3. to undertake investigations of complaints of ethics violations and to review, evaluate, index, and maintain on file all such complaints and all documents, records and other evidence relating to such complaints.

4. to conduct hearings, subpoena witnesses and documents, recommend disciplinary action, assess penalties, make referrals, and recommend appropriate enforcement actions and proceedings regarding ethics violations.

5. to grant waivers of compliance with the Ethics Code to the extent authorized in this Chapter.

6. to render advisory opinions concerning compliance with the Ethics Code and Article 18 of the General Municipal Law, whether upon request to the Ethics Board or upon the Ethics Board's own motion, and to index, maintain and disseminate such advisory opinions.

7. to provide training and education to City officers and employees, including dissemination of the Ethics Code and any related explanatory material prepared by or on behalf of the Ethics Board to maximize knowledge and awareness of the Ethics Code by all City officers and employees, including but not limited to:

a. annual training for all City officers and employees;

b. distribution of a plain English summary of the Ethics Code and Article 18 of the General Municipal Law; and

c. such other training and educational programs as will maximize awareness and compliance.

8. to comprehensively review the Ethics Code and, not less than once every five years, recommend revisions to the Ethics Code to the Mayor and the City Council.

9. to maintain records of all of the matters before it, including but not limited to complaints, investigations, advisory opinions, hearings, and actions to enforce the Ethics Code.

D. The office of the Corporation Counsel shall function as staff to the Ethics Board and shall assist the Ethics Board in:

1. providing training to City officers and employees regarding compliance with the Ethics Code and Article 18 of the General Municipal Law;

2. reviewing and analyzing disclosure statements; and

3. providing such additional assistance as may be required by the Ethics Board.

E. The Corporation Counsel shall be counsel to the Ethics Board and shall assist the Board in issuance of advisory opinions, interpretation of the Ethics Code and Article 18 of the General Municipal Law, conducting any administrative hearing, as well as issuing process in relation thereto. In addition, the Corporation Counsel shall provide assistance to the Ethics Board in drafting of documents, administration of oaths or affirmations, preparation of subpoenas, and process needed to compel compliance with subpoenas.

F. If the Ethics Board determines an ethics related matter before it requires investigation, then it may undertake such investigation itself or may direct the Corporation Counsel to undertake such investigation.

§54-26. Distribution and Posting of Ethics Code and State Laws.

A. Within thirty (30) days of the effective date of this Article, the Mayor shall cause a copy of the Albany Ethics Code and the applicable sections of Article 18 of the General Municipal Law to be distributed to every City officer and employee by e-mail or such other means as the Mayor reasonably chooses. Within thirty (30) days of the effective date of any significant amendment to this Article or the applicable sections of Article 18 of the General Municipal Law, the Mayor shall cause a copy of the amendment to be distributed to every City officer and employee by e-mail or such other means as the Mayor reasonably chooses.

B. At the time that a new City officer or employee takes office or commences employment, that individual shall be given a copy of the Albany Ethics Code and the applicable sections of Article 18 of the General Municipal Law.

C. Within 30 days of receipt of the Ethics Code or an amendment thereto pursuant to Subsections A or B, the City officer or employee shall file a written statement with the Ethics Board stating that he or she has read and understands the Ethics Code.

D. A current and accurate copy of the Ethics Code and article 18 of the General Municipal Law shall be posted on the City's internet web site and a hard copy shall be maintained on file and be available for use by any City officers and employees in the office of the Mayor, the Common Council President, and every department head.

E. The City Clerk shall provide at no charge to any person a copy of the Ethics Code and the applicable sections of Article 18 of the General Municipal Law.

F. A notice containing substantially the following statements shall be posted in the office of the Mayor, the Common Council President, and every department head in a conspicuous location visible to members of the general public as well as City officers and employees:

**“EVERYONE MUST COMPLY WITH THE CITY OF ALBANY  
ETHICS CODE AND THE NEW YORK STATE ETHICS LAWS**

You can obtain your own free copy of the Albany  
Ethics Code and the state ethics laws from the City Clerk.

A copy of the Albany Ethics Code and state ethics laws  
is also maintained on file in this office for your convenience.

If you are unsure how to comply with the Albany Ethics

Code and state ethics laws, please contact the Albany Ethics Board.  
They can assist you and provide an advisory opinion.

If you believe a person has violated the Albany Ethics Code  
or state ethics law, file a complaint with the City Ethics Board.

**GOOD GOVERNMENT IN ALBANY DEPENDS ON YOU!!”**

§54-27. Ethics Board; Disclosure Statements.

A. The Ethics Board shall review the lists of officers and employees, prepared pursuant to Section 54-21 to assure that the lists are complete and accurate. The Ethics Board shall add the title of any other officer or employee who the Ethics Board determines should appear on the list.

B. The Ethics Board shall review the filing of annual disclosure statements to assure that all City officers and employees required to file such a statement have done so.

C. The Ethics Board shall maintain indexed records of all disclosure statements to assure that such records are available for use in respect of any alleged violation of the Ethics Code or in respect of any advisory opinion.

D. If the Ethics Board determines that any disclosure statement is deficient, then the Ethics Board shall issue a notice in writing requiring correction of the deficient disclosure statement. Failure to comply with the notice shall be an ethics violation.

§54-28. Advisory Opinions.

A. On its own initiative or upon the request of any person whose conduct is governed by this Article, including but not limited to a City officer or employee, the Ethics Board may issue an advisory opinion concerning compliance with the Ethics Code and the provisions of Article 18 of the General Municipal Law. Advisory opinions are intended to prevent violations of the Ethics Code by identifying potential violations before they occur. A request for an advisory opinion shall be made in writing and shall include the facts that are relevant to the request.

B. If an advisory opinion requires a legal interpretation of the Ethics Code, then the Ethics Board shall obtain the advice of the Corporation Counsel, or special counsel upon recusal by the Corporation Counsel, who shall advise the Ethics Board on the proper legal interpretation of the Ethics Code. All advisory opinions regarding the Ethics Code shall be issued by the Ethics Board.

C. A City officer or employee who faithfully and accurately follows the guidance of an advisory opinion issued by the Ethics Board, shall not be deemed to have committed an ethics violation as to the specific matters addressed in the advisory opinion.

D. The Ethics Board shall cause its advisory opinions to be maintained in indexed records for future reference. Advisory opinions shall be public documents, subject to necessary redactions to protect confidentiality.

§54-29. Complaints and Investigations.

A. Upon its own initiative concerning a potential ethics violation or upon receipt of a written complaint by any person alleging an ethics violation, the Ethics Board shall investigate the matter. If the Ethics Board elects to commence an investigation of a possible ethics violation on its own motion in the absence of any complaint, then it shall notify the person being investigated in writing within five days of the commencement of the investigation. If the Ethics Board determines at any time that an ethics violation may have occurred, then in addition to its other powers, the Ethics Board may solicit the assistance of the Corporation Counsel in undertaking an investigation or may request that the Corporation Counsel undertake an independent investigation.

B. All complaints of ethics violations shall be filed in writing with the Ethics Board. Within five (5) days of its receipt of a complaint, the Ethics Board shall notify in writing the complainant and the person(s) alleged to have committed the ethics violations that the Ethics Board is in receipt of the complaint and is investigating the matter.

C. The Ethics Board shall complete a preliminary investigation of the complaint within thirty (30) days from the date the complaint is received. In the event that the Ethics Board finds no merit to the complaint, then it shall be dismissed and the complainant and the person alleged to have committed the ethics violation shall be promptly notified in writing.

D. In the event that the Ethics Board determines that the complaint may have merit, then the Ethics Board shall cause a full investigation to be conducted, including interviewing the person who is the subject of the complaint and interviewing other witnesses, and requesting and reviewing documents.

E. The Ethics Board shall maintain complete records of its investigations and shall document in writing the results of every investigation it conducts, including the disposition of the matter being investigated. Within five (5) days of the completion of each investigation, the Ethics Board shall give notice to the complainant, if any, and the person who was the subject of the investigation.

F. After a complaint has been filed and during any investigation undertaken of a complaint before the Ethics Board, no member of the Ethics Board or any of the Ethics Board's authorized agents, may communicate privately with any party or other person about any issue of fact or law regarding the complaint, except as authorized by the Ethics Board.

G. Upon completion of its investigation, the Ethics Board shall take one or more of the following actions:

1. dismiss the complaint or Ethics Board investigation if:
  - a. there has been no ethics violation;
  - b. the Ethics Board has no jurisdiction over the matter;
  - c. if the complainant fails to cooperate with the Ethics Board's investigation; or
  - d. for other good grounds;
2. refer the complaint to the appropriate authorities for criminal investigation and prosecution;
3. refer the matter to the Mayor or appropriate administration officers for disciplinary personnel action;
4. conduct an administrative enforcement hearing; or
5. settle the matter with the person who is the object of the complaint or Ethics Board investigation.

§54-30. Hearings; Administrative Enforcement.

A. The Ethics Board shall adopt rules governing the conduct of all hearings. Such rules shall contain appropriate due process procedural mechanisms, as well as take into account any applicable provisions of law and collective bargaining agreements. The Ethics Board shall conduct and complete each hearing with reasonable promptness.

B. If the Ethics Board elects to conduct a hearing on a possible ethics violation, then the person who is the subject of the hearing has the right to be represented by counsel. A copy of the transcript of the testimony provided by the person who is the subject of the complaint shall be provided at no cost to such person.

C. If after hearing all of the testimony and reviewing the relevant documents, the Ethics Board determines that an ethics violation has been committed, then the Ethics Board shall impose one or more appropriate sanctions, as follows:

1. impose a civil penalty in an amount not less than two hundred fifty dollars (\$250.) nor more than ten thousand dollars (\$10,000.);

2. refer the matter to the district attorney for criminal prosecution;

3. refer the matter to the Corporation Counsel or special counsel (if previously appointed) for civil action seeking injunction; debarment; voiding of a transaction; permanent bar from appointment, employment or election as a City officer or employee; civil forfeiture, or other relief; or

4. refer the matter to the appointing authority of a City employee, or officer or the person empowered to discipline that City officer or employee;

D. Nothing in this section shall be construed to permit the Ethics Board to take any action with respect to any alleged ethics violation by the Ethics Board or one of its members. Such a violation shall be referred to the District Attorney for criminal prosecution.

§54-31. Subpoenas.

The Ethics Board may issue subpoenas to compel the attendance of necessary witnesses and the production of documents and other materials pertinent to an investigation or hearing.

§54-32. Prohibition on Influence of the Ethics Board.

A. No City officer or employee or any other person shall attempt to privately influence or communicate with an Ethics Board member concerning a pending Ethics Board complaint or investigation. All communications shall be to the Ethics Board itself or the Chairperson of the Ethics Board as authorized by Ethics Board rule.

B. Any improper communication to an Ethics Board member shall be disclosed by the Ethics Board member to the Ethics Board and shall, itself, constitute an ethics violation.

§54-33. Appointment of Special Counsel.

A. In the event that the subject of an ethics violation, complaint, investigation, or advisory opinion is the Mayor, a Deputy Mayor, or the Corporation Counsel, then the Corporation Counsel shall recuse himself or herself, as well as the entire office of the Corporation Counsel, and special counsel shall be appointed to advise the Ethics Board, assist in

rendering an advisory opinion, assist in conducting an investigation, and assist the Ethics Board regarding administrative enforcement, hearing, and other matters relating to ethics violation enforcement.

B. When special counsel is needed, the Council President, the President Pro-Tempore and the Majority Leader shall each provide the Ethics Board with the name of one (1) proposed special counsel and the Ethics Board shall appoint one (1) special counsel from the names so provided.

C. The City shall bear the expense of reasonable attorney's fees, costs and disbursements incurred by special counsel in assisting the Ethics Board with such ethics violation, complaint, or investigation. Special counsel shall have the same powers and duties as does Corporation Counsel under this Article.

#### §54-34. Confidentiality.

Complaints, investigations, records and other material related to ethics violations, advisory opinions, and other matters before the Ethics Board shall be confidential until final action is taken by the Ethics Board. Prior to release, personal information shall be redacted to the extent authorized by the Freedom of Information Law.

#### §54-35. Waivers.

A. The Ethics Board is empowered to grant waivers from certain provisions of the Ethics Code, as provided herein.

B. The Ethics Board may grant a waiver of the prohibitions set forth in Section 54-9 upon the affirmative supermajority vote of five members of the Ethics Board. Such a waiver may include, but is not limited to, authorizing former City officers or employees to appear before the City on behalf of another person concerning a matter that was before the City officer or employee prior during his or her employment by or service to the City.

C. An application for a waiver must be made in writing setting forth in detail the reasons for the requested waiver. The application must be signed by the applicant with a statement, under oath, that the contents of the application are true and correct. The Ethics Board may grant a waiver if there is no substantial prejudice to the City and upon such conditions as are appropriate to assure that public interest in high ethical conduct is maintained. The applicant shall provide such additional information as is necessary and the Ethics Board may investigate the application as it sees fit.

D. All waivers shall be issued in writing by the Ethics Board and the contents of any waiver shall be a public record.

#### §54-36. Penalties.

Any ethics violation shall be punishable by:

A. a civil penalty to be imposed by the Ethics Board of at least two hundred fifty dollars (\$250.) for a first ethics violation, of at least five hundred dollars (\$500.) for a second ethics violation, and of at least one thousand dollars (\$1,000.) for a third ethics violation. A person need not commit the same ethics violation to be considered a repeat ethics violator. The maximum civil penalty for any ethics violation is ten thousand dollars (\$10,000.).

B. a criminal penalty as a Class I offense of up to one year imprisonment or a fine of one thousand dollars (\$1,000.), or both.

C. upon the recommendation of the Ethics Board, suspension or dismissal from office, or other personnel disciplinary action by the City officer or employee empowered to take such disciplinary action.

D. upon recommendation of the Ethics Board, a court of competent jurisdiction may order the permanent debarment from doing business with the City of any person; disqualification from appointment, employment or election as a City officer or employee; or voiding of any contract.

**Section 2. This ordinance shall take effect immediately.**

**APPROVED AS TO FORM  
February 19, 2010**

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**Corporation Counsel**

## **ANALYSIS OF ETHICS LAWS**

This analysis reviews provisions of state law, the existing city charter and code, and Ordinance 47.52.09.

### CONFLICT OF INTEREST

**State law -** Prohibits all officers and employees from having an interest in any contracts with the municipality if the person has discretionary powers with regard to the contract; provides numerous exceptions. *General Municipal Law §§801-803.*  
Mandatory applicant disclosure of interest in zoning and planning applications. *General Municipal Law §809.*

**City of Albany –** Repeats GML provisions. *City Code of Conduct.*<sup>i</sup>  
All officers and employees who participate in the discussion or give official opinion to the Common Council on any legislation before the Common Council must publicly disclose any direct or indirect financial benefit or other private interest in such legislation. *City Code of Conduct.*

**Ord. 47.52.09 –** Prohibits all officers and employees from using official position in a manner that may result in a financial benefit to himself, members of household, relatives, outside employers, customer or clients or creditors. Also allows applicant disclosure of conflicts.  
All officers and employees who participate in the discussion or give official opinion to the Common Council on any legislation before the Common Council must publicly disclose any direct or indirect financial benefit or other private interest in such legislation.

### GIFTS

**State law -** No gifts over \$75 intended to influence action. *General Municipal Law §805-a.*

**City of Albany -** Repeats GML provisions. *City Code of Conduct.*

**Ord. 47.52.09 –** Prohibits all gifts intended to influence official action, gifts which cause appearance of impropriety, or gifts from any person who received a financial benefit from the city within preceding 12 months. Exception for gifts of under \$200 in 12 month period, campaign contributions and gifts from family members.

### CONFIDENTIAL INFORMATION

**State law –** Cannot disclose confidential information to further personal interests.  
*General Municipal*

*Law §805-a.*

**City of Albany -** Repeats GML provisions. *City Code of Conduct.*

**Ord. 47.52.09 –** Includes former employees and officers in prohibition.

#### REPRESENTATION BEFORE CITY AGENCIES

**State law –** Officers and employees cannot be paid to appear before an agency he or she is an officer or employee of or has the power to appoint to. *General Municipal Law §805-a.*

Officers and employees cannot appear before any agency of the municipality on a contingency basis. *General Municipal Law §805-a.*

**City of Albany -** Repeats GML provisions. *City Code of Conduct.*

**Ord. 47.52.09 –** Prohibits appearance before all agencies of the city, except on own behalf. Prohibits outside employer of officer or employee from appearing before agency or board in which the officer or employee serves, has the power to appoint to, or the authority to review or approve the budget of the agency or payments to.

#### PRIVATE EMPLOYMENT

**City of Albany -** Officers and employees shall not engage in, solicit, negotiate for or promise to accept private employment or render services for private interests when such employment or service creates a conflict with or impairs the proper discharge of official duties. *City Code of Conduct.*

**Ord. 47.52.09 –** No elected official shall enter into any private business contract with another city officer or employee. No city officer or employee can enter into any business relationship with a subordinate.

#### NEPOTISM

**Ord. 47.52.09 –** No officer or employee can appoint a relative to a paid position under his or her supervision or control.

#### FUTURE EMPLOYMENT

**City of Albany -** Officers and employees cannot appear before any board or agency in relation to any case or application in which he or she personally participated during the period of service. *City Code of Conduct.*

**Ord. 47.52.09 -** Officers or employees cannot appear for 1 year before city or permanently as to particular matters worked on while an officer or employee. Cannot

accept employment for 1 year from employer who received financial benefit from action by city officer or employee.

#### POSTING AND DISTRIBUTION

**State law -** Requires distribution and posting of code of ethics. *General Municipal Law §806-807.*

**Ord. 47.52.09 -** Requires posting and distribution to all officers and employees.

#### LOCAL BOARD OF ETHICS

**State law -** County may establish board of ethics to render advisory opinions to officers and employees of municipalities within county. Each municipality may establish their own Board of ethics. *General Municipal Law §808.*

**Ord. 47.52.09 -** Creates ethics board appointed by mayor, city court judge, and council president. Ethics board can conduct hearings, render advisory opinions, recommend disciplinary action and investigate with subpoena authority.

#### FINANCIAL DISCLOSURE

**State law -** Requires municipalities over 50,000 to adopt a local law providing for financial disclosure. If not, the municipality will be subject to the one contained in GML 812. May also require disclosure by local political party officials. *General Municipal Law §811.*

**City of Albany -** Requires financial disclosure from all elected officials, corporation counsel, budget director, department heads and deputies. The form provides very vague categories for dollar amounts and not specific amounts in the following areas: primary employer, other employment, interest income, real estate holdings and offices or positions held with matters pending or licensed before the city. It is optional to provide information for the spouse or domestic partner. Debts over \$10,000 are reported but this excludes most personal debt. Forms are filed with the "Committee on Ethical Standards and Conduct."

**Ord. 47.52.09 -** Also requires inspection personnel, members of appointed board, anyone with discretionary authority as designated by the mayor or ethics board. Requires information of all household members not just spouse and in some cases relatives. Disclose exact amount, not categories, few exclusions from categories.

#### USE OF MUNICIPAL PROPERTY

**Ord. 47.52.09 -** Cannot use municipal property for private purposes.

### POLITICAL ACTIVITY

**State law -** Prohibits political actions based on political affiliation, activities or contributions, compelling or inducement of political contributions, solicitation or receipt of political contributions in government offices, promise of influence. *Civil Service Law §107.*  
Prohibits compelling or inducing officer or employee to make political contribution. *Election Law §17-156.*

**Ord. 47.52.09 -** No candidate, current officer or employee shall request that any city officers, employees, or persons who have received a financial benefit from the city in the past 12 months participate in any political campaign activity.  
Disclosure is required when a campaign donor of over \$5,000 deals with a city officer that they made a contribution to for a financial benefit from the city.  
Cannot work on campaign while on city time or campaign wearing city insignia or uniform.  
Cannot solicit subordinate to work on campaign.

### INCOMPATIBILITY OF OFFICE

**State law -** Prohibits common council member from holding office paid for with city funds. *General City Law §3.*  
Prohibits any person from holding more than one city office. *Second Class Cities Law §19.*

**Ord. 47.52.09 -** City officer or employees in the unclassified or exempt class cannot serve on the board of education, ethics board, zba, planning board, charter revision commission or any board or commission except purely advisory.

### WHISTLEBLOWER

**Ord. 47.52.09 -** Protects whistleblowers from retaliation for submitting ethics complaint.

### PENALTIES FOR VIOLATIONS

**State law -** Provides for misdemeanor criminal penalty for violations of the General Municipal Law. *General Municipal Law §805.*  
Allows taxpayers to bring action seeking injunction or damages against municipal officers for illegal official acts. *General Municipal Law §51.*

Provides additional penalties for official misconduct, obstructing governmental administration, defrauding the government. *Penal Law Article 195.*

Provides various penalties for bribery; giving and receiving unlawful gratuities. *Penal Law Article 200.*

Authorizes the common council to punish or expel its members for official misconduct. *Second Class Cities Law §34.*

Provides that unlawful actions by a common council member is a misdemeanor; allows common council members to be sued by taxpayer for unlawful actions. *Second Class Cities Law §44.*

**City of Albany -** Violators may be fined, suspended or removed as provided in state law.  
*City Code of Conduct.*

**Ord. 47.52.09 -** Provides for civil fines up to \$10,000, criminal prosecution as a misdemeanor, or suspension or dismissal from employment. In addition, a court may order permanent debarment and disqualification from future appointment or election.

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<sup>i</sup> I found a document called the “Standards and Conduct for Officers and Employees of the City of Albany” which states that it was adopted by resolution in 1995. However, I can’t find the resolution in the minutes.