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TO: AGENCY HEADS AND GENERAL COUNSELS

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SUBJECT: SUMMARY OF PROVISIONS OF LAW GOVERNING
PARTICIPATION IN POLITICAL ACTIVITIES BY CITY OFFICERS
AND EMPLOYEES

As a general rule, City officers and employees, like other residents of the City, are permitted to participate in partisan and non-partisan political activities, including supporting and making contributions to candidates, soliciting contributions and running for public or party office, provided, of course, that these activities occur on their own time and involve no use of City resources, such as copiers, postage or email. There are, however, certain significant exceptions to and limitations upon this general rule with which City officers and employees should be familiar.

- A. Limitations on Specific Types of Political Activities
 - 1. Making Contributions to Political Funds

In general, City officers and employees are permitted to make contributions to political parties and candidates. However, City officers and employees are prohibited from paying or promising to pay anything of value, including a political contribution, for the purpose

of being nominated or appointed to, or retaining, a public position, or securing advantage in rank, compensation or their job-related status. Charter §§ 2604(b)(10), 2604(b)(11)(b); Election Law §§ 17-158(3), (4). Depending on the circumstances, a violation may be a misdemeanor or a felony. Violation of the Charter provision may result in forfeiture of the office or employment and further disqualification from election, appointment or employment in the City service. Charter § 2606(c).

2. Soliciting or Receiving Contributions.

There are a number of significant restrictions on political fund-raising activities by City officers and employees:

a. Officials With Substantial Policy Discretion. No deputy mayor, agency head or other non-elected City official or employee who is charged with “substantial policy discretion” may directly or indirectly request any person to make a contribution to any candidate for City elective office or to any City elective office holder who is a candidate for any elective office, even a non-City office. Charter § 2604(b)(12). Such officials are not barred from merely speaking on behalf of any such candidate or elected official at a fund-raising event. Id.

Public servants with “substantial policy discretion” include, but are not limited to, agency heads, deputy agency heads, assistant agency heads, members of boards and commissions, and public servants in charge of any major office, division, bureau or unit of an agency. See Conflicts of Interest Board Rule § 1-02. Agency heads were requested to file a list with the Conflicts of Interest Board designating by title or position the public servants in their agencies who have substantial policy discretion and to notify public servants serving in such titles or position. Id.

For a discussion of what constitutes “political fundraising,” see Conflicts of Interest Board Advisory Opinion No. 93-6, in which the Board held that the mere inclusion of a public servant’s name, in a list of contributors contained in an invitation to a fundraising event, did not, without further evidence of solicitation, constitute fundraising.

b. Solicitation in City Buildings. No City officer or employee who is in charge of or controls any building, room or office occupied for City purposes may consent to any person entering it for the purpose of making, receiving, collecting or giving notice of any political contribution. Furthermore, no person may enter or remain in any such building, room or office, or direct any writing to it, for the purpose of giving notice of, demanding, collecting or receiving any such contribution. State Civil Service Law § 107(3). Any person violating this provision shall be guilty of a misdemeanor. Id.

c. Use of Authority or Influence. No City officer or employee may use his or her authority or official influence, either directly or indirectly, to compel or induce any other officer or employee to pay or promise to pay any political contribution. Any person violating either of these provisions shall be guilty of a misdemeanor. Election Law § 17-156; Civil Service Law § 107(3).

d. Solicitation of Subordinates. No City officer or employee may compel, induce or request any subordinate officer or employee to make a political contribution. Charter § 2604 (b)(11)(c).

e. Changing Rank or Compensation. No officer or employee of the City may discharge, promote, or in any way change the rank or compensation of any other person in the civil service for making or refusing to make any contribution for political purposes, nor make a threat or promise to do so. Civil Service Law § 107(1); Charter § 2604(b)(11)(a).

f. Solicitation from Persons Receiving Government Aid. No person may solicit or receive any contribution for any political purpose from any person known to him or her to be receiving or entitled to any compensation, employment or benefits provided for or made possible by any Federal or State statute appropriating or authorizing the appropriation of funds for work relief or relief purposes. Election Law § 17-154(4). Any person violating this provision shall be guilty of a misdemeanor. Id.

3. Soliciting Political Participation.

The following restrictions apply to solicitation of support for political candidates, organizations and causes by City officers and employees:

a. Subordinates. No City officer or employee may request any subordinate to participate in a political campaign. Charter § 2604(b)(9)(b). This does not bar a City officer or employee from requesting a subordinate to speak on behalf of a candidate, or provide information or perform other similar acts, if such acts are related to matters within the officer's or employee's duties or responsibilities. Id.

b. Coercion. No officer or employee of the City may coerce or attempt to coerce any officer or employee of the City or any City agency to engage in political activities. Charter § 2604(b)(9)(a).

4. Seeking Elective Office.

a. Mayoral Directive 91-7. Mayoral Directive 91-7 directs all agency and department heads "to require non-tenured city employees who are candidates for elective office to use all accrued annual leave, and, if no such leave is available, to take a leave of absence without pay, if available, during his or her candidacy." "Non-tenured city employees" include all employees in the exempt class, provisional appointees with less than two years of service in

the same or similar title or related occupational group in the same agency, and all employees in the non-competitive class, except those who may not be removed without a hearing pursuant to section 75(c) of the Civil Service Law. An employee becomes a “candidate” for purposes of this directive when: (1) he or she declares “his or her intent to seek elective public office and authorizes a political committee to aid or take part in his or her campaign”; or (2) he or she is designated to run in a primary election or is nominated to run in a special election or general election. An employee covered by this directive “may be exempted from the requirement to take a leave of absence if: (a) the head of the agency in which such employee works determines that such employee’s taking a leave during the period of his or her candidacy will not be in the best interest of the agency; and (b) the Mayor or the Mayor’s designee, upon the recommendation of the Corporation Counsel and the [Commissioner of the Department of Citywide Administrative Services], determines that, in view of the nature of elective office for which the employee is a candidate and the nature of the city position he or she holds, there is not a substantial likelihood of an appearance of impropriety arising from the employee’s involvement in matters at issue in the election if such employee continues on active duty during the period of his or her candidacy.”

b. Special Restrictions to Public Servants in Particular Agencies. The City Charter contains a number of special restrictions on the political activities of police officers, fire fighters, and members and employees of the Civil Service Commission and designated employees of the Department of Citywide Administrative Services.

(i) Police Department. Section 1129 of the Charter provides that the Police Commissioner or a member of the uniformed force who is nominated for elective office, except for a position on a Board of Education outside of New York City, and who does not

decline such nomination within ten days of receiving it, shall be deemed to have resigned his or her position.

(ii) Fire Department. Section 1130 of the Charter provides that the Fire Commissioner or a member of the uniformed force of the Fire Department may be elected to public office; however, if the Fire Commissioner determines that such service would interfere with the performance of the member's duties, the Commissioner may require that the member take a leave of absence without pay for the term of the member's service in such public office.

(iii) Civil Service Commission/Department of City Administrative Services. Members of the Civil Service Commission and designated employees of the Department of Citywide Administrative Services are prohibited from holding office or serving as members of any committee in any political convention. Charter § 1126; Civil Service Law § 27. Members of the Civil Service Commission are prohibited from serving as officers of any political party. Civil Service Law § 27(2).

c. Publicly Funded Advertisements or Commercials.

City officers or employees who are candidates for nomination or election to elective city office are prohibited from (1) appearing or participating in advertisements or commercials funded in whole or in part by government resources from January 1 in a year in which an election for such office is held through the date of the election, (2) using government funds or resources for mass mailings within ninety days prior to such election, and (3) using government funds or resources for a public communication containing "an electioneering message urging the public to elect or defeat a certain candidate for an elective city office, or support or oppose a particular political party, or support or oppose a particular referendum question". Charter § 1136.1(2)(a)-(c). Advertisements and commercials include television,

radio, print ads and electronic media. Charter § 1136.1(2)(a). Communications exempt from this provision include those required by law; necessary to safeguard public health and safety; standard communications in response to inquiries; ordinary communications with the public or constituents of elective officials; bona fide news coverage; and candidate debates. Charter § 1136.1(3)(a). Violation of this provision constitutes a misdemeanor. Charter § 1136.1(4).

State law also prohibits elected government officials or candidates for elected local, state or federal office from knowingly appearing in any advertisement or promotion, including public service announcements, published or broadcast through any print or electronic media by any private or commercial entity or other entity that publishes advertisements for a fee, if the advertisement or promotion is paid for or produced in whole or in part with funds of the state or a political subdivision of the state or a public authority. N.Y. Civil Service Law § 73-b.

d. Hatch Act. The Hatch Act (5 U.S.C. §§ 1501-1508), as amended in 1974, is best known for the substantial limitations it imposes upon partisan political activity by federal employees, including a ban on circulating nominating petitions and collecting contributions. While these provisions of the Hatch Act do not apply to City employees, the Act does prohibit a “State or local officer or employee” whose principal employment is in connection with an activity financed, in whole or in part, by loans or grants made by the federal government from being a candidate for elective office. 5 U.S.C. § 1502(a). The term “State or local officer or employee” is defined in § 1501(4) of Title 5, which states:

‘State or local officer or employee’ means an individual employed by a State or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency, but does not include—

(A) an individual who exercises no functions in connection with that activity; or

(B) an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by a State or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization.

The regulations issued pursuant to the Hatch Act by the United States Civil Service Commission, which are found in 5 Code of the Federal Regulations, part 151, define the term “election” as including primaries, special and general elections. 5 C.F.R. § 151.101(f). Mayors, elected heads of executive departments and other individuals holding elective office are exempted from the prohibition against running for office contained in the Hatch Act. 5 U.S.C. §1502(c)(2)-(4); 5 C.F.R. § 151.122(b)-(d).

The Hatch Act does not prohibit State or local officers or employees from running for office in a political party. 5 C.F.R. § 151.111(a). Nor does it prohibit running for public office in a nonpartisan election. 5 U.S.C. § 1503; 5 C.F.R. § 151.122(e).

5. Holding Political Party Office.

No deputy mayor, agency head or other non-elected officer or employee who is charged with “substantial policy discretion”, as defined by the Conflicts of Interest Board, shall be a member of a national or state committee of a political party, serve as an assembly district leader of a political party, or serve as the chair or officer of the county committee or county executive committee of a political party. Charter § 2604(b)(15). Public servants with “substantial policy discretion” include, but are not limited to, agency heads, deputy agency heads, assistant agency heads, members of boards and commissions, and public servants in charge of any major office, division, bureau or unit of an agency. See Conflicts of Interest Board Rule § 1-02. Agency heads were requested to file a list with the Conflicts of Interest Board

designating by title or position the public servants in their agencies who have substantial policy discretion and to notify public servants in such titles or positions. Id.

In addition, Personnel Order 88/5 of April 28, 1988 bars certain management employees from holding political party positions. It reads in pertinent part:

3.0 Management employees in mayoral agencies serving in unclassified, exempt or non-competitive titles or serving provisionally in competitive titles are not permitted to serve as officers of any political party or political organization or serve as members of any political party committee, including political party district leader (however designated).

B. Limitations on Political Activities Generally.

City officers and employees should be aware of three provisions contained in Chapter 68 of the City Charter which apply to all outside activities of public servants – whether business related, political, charitable or otherwise.

These provisions are:

Charter Section 2604(b)(2) – which prohibits a public servant from engaging in any business, transaction or other private interest, direct or indirect, which would conflict with the proper discharge of his or her duties;

Charter Section 2604(b)(3) – which prohibits a public servant from using, or attempting to use, his or her official position to obtain any financial gain or other private or personal advantage, direct or indirect, or for any person or firm “associated” with the public servant; and

Charter Section 2604(b)(4) – which prohibits a public servant from disclosing any confidential information concerning the City obtain as the result of his or her official duties, or

using any such information to advance any direct or indirect financial or other private interest of the public servant, or of any person or firm “associated” with the public servant.

For the purposes of Chapter 68, a person or firm “associated” with a public servant includes a spouse, child, parent or sibling; a person with whom the public servant has a business or other financial relationship; and any firm in which the public servant has a present or potential interest. Charter § 2601(5).

These provisions apply to political activities which a public servant engages in. As an example, a public servant working on a campaign for a Citywide elective office could not use his or her official position to help secure a favorable lease for campaign headquarters (*e.g.*, through an express or implied promise that the landlord would receive favorable consideration in certain dealings with the public servant’s agency). Such conduct would violate Charter § 2604(b)(3).