



ALBANY LAW SCHOOL

Institute of Legal Studies

**COUNTY ATTORNEYS'  
ASSOCIATION OF THE  
STATE OF NEW YORK**

**2019 WINTER MEETING**

December 9, 2019

80 NEW SCOTLAND AVENUE  
ALBANY, NEW YORK 12208-3494  
TEL: 518-472-5888 FAX: 518-445-2303  
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**CAASNY Winter Meeting  
Gideon Putnam Resort, Saratoga Springs, NY  
Monday, December 9, 2019**

**Agenda**

10:30am – 11:45am	<b>Networking Brunch</b>
11:15am – 11:35am	<b>Roundtable Discussion Hot Topics for County Attorneys</b>
11:45am – 12:00pm	<b>Registration</b>
12:00pm – 12:05pm	<b>Welcoming Remarks</b> Ellen Leary Coccoma, CAASNY President Otsego County Attorney's Office
12:05pm – 12:55pm	<b>The Nature Conservancy and Working Woodlands: A Climate Solution and A Revenue Opportunity for County Forests</b> Shauna McMillen DeSantis, Esq. The Nature Conservancy, New York  Troy Weldy, Director of Lands The Nature Conservancy, New York (1 Hour Professional Practice)
12:55pm – 1:05pm	<b>Break</b>
1:05pm – 1:55pm	<b>Conflict of Interests and Ethics – GML Article 18 and Case Law</b> Mark R. Stevens Esq. Office of the State Comptroller (1 Hour Ethics)
1:55pm – 2:05pm	<b>Break</b>
2:05pm – 2:55pm	<b>Measles and Other Public Health Crises – Lessons Learned</b> Thomas Humbach, Esq. Rockland County Attorney  Sheryl Neufeld, Esq. Chief, Administrative Law and Regulatory Litigation Division NYC Law Department (1 Hour Professional Practice)
2:55pm – 3:05pm	<b>Break</b>
3:05pm – 3:55pm	<b>Legislative Update</b> Stephen J. Acquario, Esq., Executive Director New York State Association of Counties  Patrick R. Cummings, Esq., Counsel New York State Association of Counties (1 Hour Professional Practice)

## 2019 CAASNY Winter Meeting December 9, 2019

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### SPEAKER BIOGRAPHIES

**STEPHEN J. ACQUARIO, ESQ.**, is Executive Director and General Counsel of the New York State Association of Counties (NYSAC). In this capacity, Mr. Acquario presents a single voice for the county governments of New York State. He is responsible for the overall direction of the association, and oversees the association's agendas to ensure a cohesive and coherent legal and legislative strategy on behalf of New York's 62 county governments. Mr. Acquario graduated magna cum laude from Albany Law School of Union University. He holds a bachelor's degree in Industrial and Labor Relations from the State University of New York College at Potsdam. In addition, he earned a graduate certificate in Industrial and Labor Relations from Cornell University.

**PATRICK R. CUMMINGS, ESQ.**, is Counsel for the New York State Association of Counties (NYSAC). In this capacity he works with the New York State legislature regarding pending legislation in order to help county government run more efficiently. Mr. Cummings also provides support, when requested, to county attorneys regarding laws, policies, and cases that impact counties. Prior to joining NYSAC in 2011, he was an Assistant County Attorney for Schenectady County.

**SHAUNA DE SANTIS, ESQ.**, is a Senior Attorney with The Nature Conservancy having worked for the Conservancy since 2000. Ms. De Santis works primarily for the New York Division but also supports the Conservancy's Global Marketing team and its Corporate Engagement team. She is responsible for advising the New York Division on a wide variety of legal matters, including corporate governance, ethics and compliance, conservation land transactions and stewardship, government grants, contracts, policy and lobbying, HR, philanthropy, and marketing. Ms. De Santis was lead attorney for the Conservancy's acquisition of the Heart of the Adirondacks (161,000 acres of forest lands previously owned by the Finch Pruyn paper mill in Glens Falls, NY) and the Conservancy's first conservation land acquisition in Argentina, Estancia Fortin Chacabuco. She supports the work of all of the Priority Conservation teams in New York (Science, Lands, Water, Stewardship, Policy, Climate Adaptation/Mitigation, Oceans and Fisheries, and Cities). Ms. De Santis is a native of Tucson, AZ, and a graduate of University of Colorado and Albany Law School.

**THOMAS E. HUMBACH, ESQ.**, has been the County Attorney for the County of Rockland since his appointment in 2014. He is a graduate of the Pennsylvania State University and the Pace University School of Law. Prior to taking office as County Attorney, Mr. Humbach was in private practice. From 1994 to 2013 he litigated and tried cases in State and Federal courts throughout New York City, the Hudson Valley, the Capital District, and Long Island. Mr. Humbach was nominated as a candidate for New York State Attorney General in 2018.

His greatest reward in his position is serving the taxpayers and residents of Rockland County by ensuring that government is conducted in a fair and just manner, and in accordance with the laws and rules it has set for itself.

**SHERYL NEUFELD, ESQ.**, is the Chief of the Administrative Law and Regulatory Litigation Division at the New York City Law Department. Ms. Neufeld began her career at the Law Department upon her graduation from Boston University School of Law in 1999, and has served in the role of Division Chief for the last five years. The Administrative Law and Regulatory Litigation Division handles court proceedings brought by and against numerous City agencies that are responsible for administering and enforcing numerous laws and regulations to enhance the quality of life for its citizens and visitors, including laws relating to protecting public health.

**MARK R. STEVENS, ESQ.**, is an Associate Attorney with the Office of the New York State Comptroller, Division of Legal Services. Mr. Stevens works in the Municipal Law and Finance Unit, which is responsible for, among other functions, providing legal counsel to the Comptroller's Division of Local Government and School District Accountability (LGSA) and technical assistance to certain municipal officials of the State on a variety of issues relating to municipal finances. He has given many presentations to groups of local government officials on the legal requirements of competitive bidding and on conflicts of interest under Article 18 of the General Municipal Law. Mr. Stevens has also helped author the memorandum entitled "New 'Piggybacking' Law – Exceptions to Competitive Bidding" and the research paper "Conflicts of Interest: Municipal Officers and Employees, The Fundamentals of Article 18 of the General Municipal Law." Prior to joining the Municipal Law and Finance Unit, he worked in the Ethics Unit of the Division of Legal Services. While working in that Unit, he was responsible for rendering advisory legal opinions and guidance to employees of the Office of the State Comptroller, regarding ethics laws, rules, and regulations deriving from the Public Officers Law, the Executive Law, and other relevant sources. Mr. Stevens earned a BA from the State University College at Geneseo, an MA from the State University at Albany, and a JD from Syracuse University.

**TROY WELDY** is the Director of Lands for The Nature Conservancy in New York, guiding a team of trusted conservation staff to implement strategies around Natural Climate Solutions, Climate-Adapted Forests, and Conserving a Resilient and Connected Landscape. He has the lead role of linking eligible landowners to existing carbon markets as a means to achieve shared conservation goals identified by the landowner and Conservancy. Mr. Weldy has authored more than 75 articles, book chapters, and other publications including the *New York Flora Atlas*. His previous roles include North American Director of Forest Health for The Nature Conservancy, Director of US Network Operations for NatureServe, and Research Associate for both the New York State Museum and Vassar College. In his free time, Mr. Weldy is a football official working at both the collegiate and high school levels.

# **The Nature Conservancy and Working Woodlands: A Climate Solution and A Revenue Opportunity for County Forests**

**Shauna DeSantis, Esq.  
Troy Weldy**



**Working Woodlands Agreement (with Exhibit C only)**  
**between**  
**The Nature Conservancy**  
**And LANDOWNER**

This Working Woodlands Agreement ("the "Agreement") is effective as of \_\_\_\_\_, 2019 (the "Effective Date"), and is by and between The Nature Conservancy, a District of Columbia, non-profit corporation with its principal place of business at 4245 Fairfax Drive, Suite 100, Arlington, Virginia, 22203 and authorized to do business in New York as The Nature Conservancy, Inc., maintaining a New York Office at 195 New Karner Road, Albany, NY 12205 ("Conservancy"), and [LANDOWNER], a \_\_\_\_\_ with a mailing address at \_\_\_\_\_ (hereinafter "Landowner") (individually a "Party" or collectively the "Parties").

**RECITALS**

WHEREAS, the Conservancy has as its mission the conservation of the lands and waters on which all life depends; and

WHEREAS, the Landowner is the owner in fee of certain real property (the "Property") which has not been subject to development or exploitation and which has ecological, scientific, educational and aesthetic value in its present condition as forest land being protected for the purposes of maintaining high water quality. The Property, approximately xxx acres more or less, is located in the Towns of xxx, xxx County, New York, and is more particularly described in Exhibit "A" (Legal Description) and shown in Exhibit "B" (Sketch Map) attached hereto and incorporated herein by this reference; and

WHEREAS, the goal and objective of the Landowner is... ; and

WHEREAS, the Landowner has protected and managed the Property throughout its ownership and seeks to maintain the Property in its current condition and/or improve the overall quality of the forest and its water resources, and

WHEREAS, The Conservancy has a Working Woodlands Program which is designed to: i) provide third-party forest certification for improved forest health and conditions, ii) provide options for long-term land protection, iii) share restoration and management practices of exceptional ecological features, and iv) generate revenue from carbon credit sales; and

WHEREAS, the Landowner has an interest in optimizing the conservation benefits of the Property for its purposes and for xxx and to that end the Landowner wishes to enter into this Working Woodlands Agreement; and

WHEREAS, the Landowner has entered into a certain "Carbon Development and Marketing Agreement" with the Conservancy of even date herewith to develop and market Forest Carbon Credits, as defined in Exhibit "C" of said Agreement (the "Carbon Agreement"); and

WHEREAS, the Conservancy has experience working to develop forest carbon projects and has established partnerships with others to develop Forest Carbon Credits including annual monitoring to ensure compliance with the Carbon Agreement; and

WHEREAS, the Parties are committed to protecting, conserving and maintaining the natural resources on the Property, including but not limited to a healthy and diverse forest and high-quality headwater streams and to managing the forest in an environmentally sensitive manner, and to creating an economic return from forest products, including but not limited to solid wood, wood biomass and Forest Carbon Credits; and

WHEREAS, the Parties wish to enter into this Agreement to provide for the management of the forest lands of the Property for the purposes of maintaining and enhancing forest quality, freshwater resources, wildlife habitat and carbon sequestration which shall be mutually beneficial to the respective missions and goals of the Parties (the "Forest Carbon Project").

NOW THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, and the mutual obligations and undertakings set forth herein, the Parties covenant and agree as follows:

## **AGREEMENT**

### **I. PURPOSE**

Through this Agreement, the Parties objective is to formalize a mutual collaboration, with the purpose of completing a Forest Carbon Project on the Property. In this sense, the Agreement seeks to set forth the terms and conditions of the collaboration, the communication mechanisms, and the methods for the implementation of activities.

### **II. RESPONSIBILITIES OF THE NATURE CONSERVANCY**

The Conservancy shall be responsible for the following activities at its sole cost and expense:

1. Complying with all terms and conditions of the Carbon Agreement;
2. Providing inventory, design, statistical guidance, quantification and modeling services related to the development of carbon credits for the voluntary carbon market;
3. Within twelve (12) months after entering into this Agreement, conducting a forest and carbon inventory and preparing an initial ten (10) year forest management plan for the Property which shall comply with the standards set forth by the Forest Stewardship Council or alternative natural resource management plan (the "Management Plan") and, if Landowner request, enroll the Property in the Conservancy's FSC Certified Forest Manager Certificate, as appropriate. The Conservancy will, at the Conservancy's sole cost, provide the Landowner with FSC-US certification for the Property for the initial ten (10) year period of this Agreement;
4. Working with the Landowner and third party auditors to provide necessary access within reasonable time frames to ensure compliance with the Carbon Agreement and the Management Plan;
5. Selling carbon credits developed through the Carbon Agreement via the voluntary credit

market; (For clarification purposes, the Conservancy shall have no obligation to sell carbon credits until the Landowner has entered into the Working Forest Conservation Easement referenced in Section IV below);

6. Creating a Property Documentation Report for the Property that specifies the extent of the forest and other natural resources on the Property (including descriptions, maps, photographs and other documentation) thereby establishing the baseline condition of the Property at the time of the signing of this Agreement or as soon as practicable thereafter (the "Property Documentation Report");
7. Annual monitoring on the Property to ensure compliance with the Management Plan and Carbon Agreement and sharing the results of said monitoring with the Landowner;
8. Conducting a forest health assessment of the Property at the end of the first 10-year Management Plan, and providing the Landowner with a summary that includes recommendations related to natural resources management;
9. Providing advice on forest/natural resource management planning, implementation and other conservation related issues upon request; and
10. Assisting with the development, negotiation and other aspects of the Working Forest Conservation Easement for the Property.
11. Potentially enter into a Working Forest Conservation Easement with the Landowner under mutually agreeable terms.

### **III. RESPONSIBILITIES OF THE LANDOWNER**

The Landowner shall be responsible for the following activities at its sole cost and expense:

1. Complying with all terms and conditions of the Carbon Agreement;
2. Entering into an acceptable Working Forest Conservation Easement with a qualified conservation organization accredited by the Land Trust Alliance, or another qualified conservation entity agreed upon by both the Conservancy and Landowner, including, but not limited to, the inclusion of reserve rights for the Landowner as set forth in Section IV below;
3. Stewarding the Property in a sustainable and environmentally responsible manner so as not to harm the water quality or forest health (i.e. maintain existing forest and water quality conditions as documented in the Property Documentation Report);
4. Limiting development of the Property that would result in a Material Reduction as defined in the Carbon Agreement to the overall forest cover and which would adversely impact the Management Plan and/or the Carbon Agreement to the extent legally permissible;
5. Maintaining clearly posted boundaries for the entire Property, checking these boundaries at least once each year and replacing boundary signs where needed [standard requirement from carbon registry];

6. Providing the Conservancy and any third-party auditors necessary access within a reasonable timeframe to complete the responsibilities associated with this Agreement and the Carbon Agreement;
7. Actively participating in the development and approval of the initial 10-year Management Plan completed by the Conservancy by reviewing documents and providing input;
8. Ensuring that the Property is managed in accordance with the Management Plan;
9. Reviewing the updated Management Plan as prepared by the Conservancy, if applicable, or updating the Management Plan every ten years, as may be required; and
10. During the initial 10-year Management Plan, preparing timber harvest plans in advance of any timber operation and providing a copy of the harvest plan to the Conservancy at least 60 days prior to any cutting to allow the Conservancy to ensure that there shall be no potential violation of or adverse impact to the Carbon Agreement. The Landowner shall not be required to enter into future Management Plans where the cost for preparation of such plan and implementation is economically infeasible as determined in the sole discretion of the Landowner; provided however that if the Landowner does not enter into future management plans, the Landowner shall be prohibited from conducting commercial forest management activities until such time that an updated Management Plan is in place (i.e. a 10-year plan covering the period of any forest management activities).
11. The Landowner may dispose of any excess or surplus timber in the same manner as it is currently authorized under law, and all proceeds shall be payable solely to the Landowner.
12. After completion of the Management Plan and Carbon Inventory by the Conservancy, the Landowner shall work with the Conservancy to determine an estimated overall value of the Carbon Credits anticipated to be generated by the project and the estimated overall costs associated therewith, and determine whether the project is economically feasible. If the Landowner determines, in its sole discretion, that the project is not economically feasible, this Agreement and the Carbon Development and Marketing Agreement may be terminated by the Landowner.

#### **IV. WORKING FOREST CONSERVATION EASEMENT**

Subject to, and upon compliance with, the New York State Public Authorities Law §2896 and the Landowners Disposition Policy, the Landowner shall enter into a Working Forest Conservation Easement (the "Easement"), which shall be approved by the Landowner prior to execution, which shall, at a minimum, comply with the following terms and conditions:

1. The Easement shall be subject to review and approval by the Conservancy;
2. The Easement shall be of perpetual duration;
3. The Easement shall contain the requirement that the Landowner develop a Management Plan for the Property, if they are involved in commercial forest management, which includes third-

party verification and which shall include the following terms, at a minimum:

- i. Mechanisms to ensure compliance with any published state or local Best Management Practices related to forest management including, but not limited to, protection of water quality, harvesting for woody biomass, protection from insect and disease pests, providing for adequate forest regeneration and maintaining wildlife habitat;
  - ii. Descriptions of forest stands, species, stocking, age classes, and volumes based on recent inventories;
  - iii. Descriptions of non-forest habitats, waters, wetlands, and agricultural lands;
  - iv. Descriptions of current and desired future forest conditions and the means by which forest stands shall be managed for and maintained in naturally occurring species;
  - v. Maps of forest stands, roads, and outstanding ecological features;
  - vi. Strategies to identify and protect and maintain threatened and endangered species, habitats, wetlands and riparian buffers and include location maps of these features; and
  - vii. Method(s) to ensure adequate stocking of ecologically and economically desirable tree species following regenerative timber harvesting.
4. The following shall constitute reserved rights of the grantor, and excluded from the terms of any such Easement:
- i. The right, without limitation, to maintain, replace and/or construct structures and facilities that are reasonable, customary, and necessary for the XXX.
  - ii. The right to undertake or continue any activity or use of the Property not prohibited by such Conservation Easement. Prior to making any change in use of the Property, the Grantor shall notify the Grantee, in writing.
  - iii. The right to sell, give, mortgage, lease, or otherwise convey the Property, provided such conveyance is subject to the terms of such Conservation Easement and written notice is provided to Grantee.
  - iv. The right to conduct natural resources management activities on the Property, including commercial activities related to the production of timber and other forest products, together with the right to construct, use and maintain logging roads, and to use motorized vehicles, only as necessary for such operations, provided that such forest management activities are conducted in accordance with the Management Plan, developed initially by Grantee, and approved by Grantor.
  - v. Notwithstanding any other provision to the contrary, the Conservation Easement shall in no way be interpreted to preclude the Grantor's right and ability to xxx.
  - vi. The right to mine sand, gravel and rock solely for infrastructure improvements on the Property, in accordance with all applicable laws and Best Management Practices, provided that the disturbed area for mining does not exceed twenty-five (25) acre(s) in size alone or fifty (50) acres in aggregate for the entire Property over the ten (10) term of this agreement.
  - vii. The right to retain and control public access to the Property including the right to assign hunting and fishing rights either through lease, public access, or other mechanism consistent with the goals of the Management Plan, if any. Recreational motorized vehicle use under a recreational lease scenario will be jointly determined and agreed upon by the Grantor and Grantee and shall only be granted on existing roads and trails, or new roads and trails established for forest management activities

and as specified in the Management Plan.

- viii. The right to operate motorized vehicles as necessary and reasonable for natural resource management activities consistent with the goals of the Management Plan.
- ix. The right to operate motorized boats or fishing on the Property.
- x. OTHERS?

#### **V. PRINCIPAL CONTACTS**

The principal contacts for each of the Parties shall be:

##### **For [Landowner]:**

Name  
Title  
Address  
Phone  
Email

##### **For the Conservancy:**

Troy Weldy  
Director of Lands and Forests  
195 New Karner Road, Albany, NY 12205  
518-690-7841  
[tweldy@tnc.org](mailto:tweldy@tnc.org)

These principal contacts may be changed at any time by means of advance written notice to the other Party.

#### **VI. TERM**

This Agreement shall be in effect for a period of 10 years. It shall commence on the Effective Date set forth above and shall remain in full force and effect until xxx ("Expiration Date"), or until terminated, whichever occurs first. Any extension beyond the Expiration Date must be in writing and signed by the Parties before the Expiration Date.

#### **VII. TERMINATION**

This Agreement may only be terminated upon mutual agreement between the Parties, it being the intention and expectation of the Parties that there shall be no early termination of this Agreement, provided, however, that if the Carbon Agreement is terminated for any reason, this Agreement shall also be terminated.

#### **VIII. TITLE AND USE OF INTELLECTUAL PROPERTY**

1. **INTELLECTUAL PROPERTY.** Under the provisions of this Agreement, the Parties may produce documents, reports, studies, photographs, and maps, as well as documents as well as product-specific documents (collectively "Work(s)"). Unless otherwise agreed to by the Parties in writing, the copyright and other intellectual property rights in any such Work shall belong to the Party that produces the Work.

If a Work is jointly produced by the Parties, the copyright shall be owned jointly by the Parties. In all cases of co-authorship, the Parties are hereby authorized to use the work, without prior authorization from the other, except upon ten days prior written notice to the other, for non-commercial purposes, scientific, educational or public benefit.

2. **DISTRIBUTION.** Neither Party shall publish or otherwise distribute the Work of the other Party without both the previous written consent of the other Party and crediting the other Party in such Work.
3. **NAMES AND LOGOS.** The names and logos of the Parties are trademarks; as such, they may not be used for any purpose without the prior express written permission of their owners.

#### **IX. PUBLICITY**

Public communications such as press releases and public statements/announcements regarding the project undertaken pursuant to this Agreement shall be arrived at and/or conducted jointly as the case may be.

#### **X. CONFIDENTIALITY**

Any and all information and knowledge relating to the Project or ERBs subject to this Agreement and any and all information emanating from the other Party's business in any form that a Party may acquire pursuant to this Agreement (collectively, "**Confidential Information**"), shall be considered confidential and, except as permitted in this Agreement elsewhere in this shall not be used, revealed or divulged to any other Person, or published in any manner whatsoever, without first obtaining the written consent of the other Party.

Notwithstanding the provisions above, a Party may reveal or divulge Confidential Information:

- (1) that is already in the public domain when disclosed to a Party or becomes, after having been disclosed to a Party, generally available to the public through publication or otherwise unless the publication or other disclosure was made directly or indirectly by a Party in breach of this Agreement;
- (2) to its Affiliates and to its and their officers, directors, employees, agents or other representatives on a need to know basis provided such Persons have agreed to maintain such Confidential Information in confidence;
- (3) as required by applicable Laws, including but not limited to FOIA and FOIL, the orders or directions of tribunals having jurisdiction or stock exchange or clearing house requirements, provided that where circumstances permit, and where such disclosure is not made in the ordinary course to such Persons, prior to any disclosure, the other Party shall be notified of any such proposed divulgence and the divulging Party shall at the other Party's request and expense, take reasonable steps to allow the other Party to contest the requirement for disclosure or to obtain an order or ruling to preserve the confidentiality of such Confidential Information;
- (4) to the extent reasonably necessary to sell, resell, use, retire or otherwise obtain the value or benefit from the ERBs subject to this Agreement; or as necessary in connection with any dispute resolution commenced pursuant to this Agreement or any litigation commenced in respect of this Agreement.

#### **XI. INDEMNIFICATION**

The Conservancy shall defend, indemnify, and save harmless the Landowner and its members and officers from and against all claims, damages, losses and expenses arising out of, or in consequence of, any negligent or intentional act or omission of the Conservancy, its employees or agents, to the extent of its

or their responsibility for such claims, damages, losses, and expenses.

The Landowner shall defend, indemnify, and save harmless the Conservancy and its employees, directors and officers from and against all claims, damages, losses and expenses arising out of, or in consequence of, any negligent or intentional act or omission of Landowner, its employees, members or agents, to the extent of its or their responsibility for such claims, damages, losses, and expenses.

## **XII. INSURANCE**

The Conservancy will procure and maintain throughout the term of the Agreement, without any additional cost and/or expense to the Landowner, the following insurance coverage, issued by an insurer which is licensed to do business in the State of New York and which has an A.M. Best rating of not less than "A":

- a. Workers' Compensation and Employer's Liability Insurance: A policy or policies providing protection for employees in the event of job-related injuries.
- b. General Liability Insurance, including but not limited to auto coverage: A policy or policies of comprehensive general liability insurance with limits of not less than \$5,000,000.

Each policy of insurance required shall be in form and content satisfactory to the Landowner, and shall provide that:

- a. The Landowner is named as additional insured.
- b. The insurance policies shall not be changed or cancelled until the expiration of thirty (30) days after written notice to the Landowner.
- c. The insurance policies shall be automatically renewed upon expiration and continued in force unless the Landowner is given sixty (60) days written notice to the contrary.

This Agreement, or any other agreement between the parties contemplated in this Agreement, will not be signed and no services or work shall be commenced or performed pursuant to this Agreement until the Conservancy has delivered to the Landowner or his designee proof of insurance of all policies of insurance required by this Agreement to be procured. If at any time any of said policies shall become unsatisfactory to the Landowner, the Conservancy shall promptly obtain a new policy and submit proof of insurance of the same to the Landowner for approval. Upon failure of the Conservancy to furnish, deliver and maintain such insurance as provided herein, this Agreement, or any other agreement between the parties contemplated in this Agreement, may, at the election of the Landowner, be forthwith declared suspended, discontinued or terminated. Failure of the Conservancy to procure and maintain any required insurance shall not relieve the Conservancy from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with the obligations of the Conservancy concerning indemnification.

Any third party contractor engaged by the Conservancy to perform any work or services on the Property in connection with this Agreement shall, prior to entering onto the Property, procure and provide to the Landowner evidence of insurance in the above amounts naming the Landowner as an additional insured on the policy.

**XIII. NO AGENCY**

No legal partnership or agency is established by this Agreement. Neither Party is authorized or empowered to act as an agent, employee or representative of the other, nor transact business or incur obligations in the name of the other Party or for the account of the other Party. Neither Party shall be bound by any acts, representations, or conduct of the other. Each Party shall be solely responsible for the actions and/or omissions carried out by its own employees, agents, and representatives involved in the implementation of this Agreement.

**XIV. DISPUTE RESOLUTION**

The Parties hereby agree that, in the event of any dispute relating to this Agreement, except any dispute regarding compliance with FOIL or FOIA, they shall first seek to resolve the dispute through good faith informal discussions. If a dispute cannot be resolved informally within sixty (60) consecutive working days, the Parties agree to participate in mediation conducted by a professional mediator approved by all Parties and in accordance with generally accepted mediation procedures and standards of the United States. Approval of a mediator shall not be unreasonably withheld or delayed by a Party. The Parties agree to share equally in the costs of the mediation. Should the Parties fail to reach an agreement through mediation, nothing herein shall be construed to prevent a Party from pursuing any legal or equitable remedies.

**XV. ASSIGNMENT**

Neither Party may assign or transfer its rights and obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Nothing in this section shall be construed to prohibit the Conservancy from entering into subcontracts for the performance of any of its obligations hereunder upon thirty (30) days written notice to the Landowner and the Landowner shall have the right to approve or disapprove any and all subcontracts prior to the Conservancy entering to such a relationship.

**XVI. TRANSFER OF OWNERSHIP TO THE PROPERTY**

If the Landowner transfers ownership of the Property during the Term, the Landowner shall ensure that in conjunction with any such transfer or conveyance: (i) Landowner's transferee shall assume all of Landowner's obligations toward the Conservancy or otherwise, which are created pursuant to this Agreement and the Carbon Agreement; and (ii) the Conservancy shall retain all rights afforded to it pursuant to this Agreement and the Carbon Agreement.

**XVII. PROJECT RECORDS**

The Parties shall maintain records related to the Project and shall make such records available for inspection upon reasonable advance notice at reasonable times and places. Such records shall be maintained for six (6) years after the date of the termination of this Agreement, or if extended, for six (6) years after the termination of any extension.

**XVIII. COMPLIANCE WITH LAWS**

This Agreement shall be construed according to the laws of the State of New York. The Parties shall observe all the applicable laws and regulations during the execution of the work implemented under the provisions of this Agreement.

**XIX. SEVERABILITY**

If any provision of this Agreement is held invalid, the other provisions herein shall not be affected thereby.

**XX. ENTIRETY**

This Agreement, including attachments, constitutes the full understanding of the Parties and supersedes all prior understandings of the Parties, both written and oral, and no terms, conditions, understandings or agreements purporting to modify or vary the terms of this document shall be binding unless hereafter made in writing and signed the Parties.

**XXI. COUNTERPARTS/REPRODUCTION.**

1. Counterparts: This Agreement may be executed in one or more counterparts, which, when taken together, shall be deemed to constitute one and the same Agreement.
2. Reproduction of Documents: This Agreement and all certificates and documents relating hereto may be reproduced by each party by electronic digital storage, photographic, photostatic, optical character recognition, or other similar electronic processes, and each party may destroy any original document accurately reproduced for the purposes of this contract. All parties hereto agree and stipulate that any such accurate reproduction shall be admissible in evidence as the original itself in any judicial or other proceeding (whether or not the original is in existence and whether or not such a reproduction was made by a party in the regular course of business) and that any enlargement, facsimile, or other presentation for such reproduction, when satisfactorily identified as accurately reproducing the original, shall likewise be admissible in evidence.

IN WITNESS WHEREOF, the Parties execute this Memorandum of Agreement in duplicate, effective as of the last date written below.

**FOR [LANDOWNER]**

**FOR THE NATURE CONSERVANCY**

\_\_\_\_\_  
Name  
Title

\_\_\_\_\_  
Name  
Title

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Date:

**EXHIBIT A**  
Legal Description of Property

**EXHIBIT B**  
Sketch Map of Property

**EXHIBIT C**  
Carbon Development and Marketing Agreement (w/o exhibits)

This Carbon Development and Marketing Agreement ("the "Agreement") is effective as of \_\_\_\_\_, 2019 (the "Effective Date"), and is by and between The Nature Conservancy, a District of Columbia, non-profit corporation with its principal place of business at 4245 Fairfax Drive, Suite 100, Arlington, Virginia, 22203 and authorized to do business in New York as The Nature Conservancy, Inc., maintaining a New York Office at 195 New Karner Road, Albany, NY 12205 ("TNC"), and [LANDOWNER], a \_\_\_\_\_ with a mailing address at \_\_\_\_\_ (hereinafter "Developer"). Capitalized terms used herein are as defined in this Agreement, including **Exhibit A** attached hereto and made a part hereof.

**1. RECITALS**

WHEREAS, Developer owns and manages approximately \_\_\_\_\_ acres of land located in the Town(s) of \_\_\_\_\_, \_\_\_\_\_ County, New York, as more particularly described in **Exhibit B** and as shown on a certain sketch map in **Exhibit C**, both attached hereto and made a part hereof (the "Property"); and

WHEREAS, Developer, with the assistance of TNC, is developing an improved forest management project for the Property which may result in the creation of certain Greenhouse Gas Emission Reduction Benefits (the "Project"); and

WHEREAS, to that end, Developer and TNC have entered into a certain "Working Woodlands Agreement" attached hereto as **Exhibit D** (the "Working Woodlands Agreement") of even date herewith to ensure the long-term conservation of the Property and to implement enabling activities in furtherance of the Project; and

WHEREAS, Developer desires, to the extent possible, to monetize or to otherwise realize benefits from its forest and forest management activities; and

WHEREAS, TNC, as part of and aligned with its conservation mission, identifies, creates, acquires, aggregates and markets credits, offsets, incentives, and other environmental benefits created by projects such as the Project (all referred to collectively as "Emission Reductions Benefits" or "ERBs"), and then, to the extent available, aggregating such ERBs into a portfolio in order to enhance the marketability and value of such benefits for Developer; and

WHEREAS, Developer wishes to sell ERBs to third parties through TNC, as its agent; and

WHEREAS, TNC wishes to market and sell the ERBs generated by the Property through the Project in accordance with the terms of this Agreement;

NOW THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, and the mutual obligations and undertakings set forth herein, the parties hereby agree as follows:

## **2. AGREEMENT**

1. **PURPOSE OF AGREEMENT.** Developer agrees to sell, transfer, and otherwise convey to TNC (or, at the direction of TNC, to a third-party purchaser) all ERBs generated pursuant to the terms of this Agreement.
2. **WORKING WOODLANDS AGREEMENT.** Developer and TNC shall comply with all terms and conditions of the Working Woodlands Agreement.
3. **APPLICABLE REQUIREMENTS.** Developer shall engage in the Project during the Term and in accordance with all Applicable Requirements providing the basis for the creation of ERBs.
4. **SERVICES PROVIDED BY TNC.** Provided that the ERBs are eligible under the applicable ERB Regime, TNC shall conduct the following activities (the "Services"):
  - a) **Project Development:** TNC shall prepare or engage third parties to prepare such Documentation as it, in its discretion, deems necessary to document the creation of marketable Emission Reduction Benefits as a result of the Project. Such Documentation may include a project design document, a baseline report, a monitoring plan, or one or more additional documents.
  - b) **Validation and Verification:** TNC shall engage a Verifier to Validate the ERB Creation Activities and Verify the creation of marketable Emission Reduction Benefits. Such third-party Validation and Verification may occur at various times throughout the ERB creation process as determined appropriate by TNC and the Verifier.
  - c) **Registration.** TNC shall make commercially reasonable efforts to Register the Emission Reduction Benefits arising out of the Project with the ERB Regime at the appropriate times at TNC's sole discretion to maximize the monetary benefits to Developer.
  - d) **Marketing and Monetization.** TNC shall make commercially reasonable efforts to market and monetize ERBs arising out of the Project.
5. **TITLE AND RIGHT TO MARKET.** Developer hereby grants to TNC the right to market all ERBs created from the Project during the Term, including but not limited to ERBs created prior to the Effective Date of this Agreement by the existing standing timber on the Property. Developer

hereby grants and agrees that it shall take all necessary actions to convey the ERBs and all rights related to such ERBs, including the right to sell such ERBs, to TNC on the Delivery Date.

- a) TNC shall have the discretion to determine which ERBs (including what Vintage and which Operating Periods) will produce sufficient magnitude and quality to be pursued for Verification and sale or transfer in accordance with the terms of this Agreement and maximize the monetary benefits to Developer.
- b) TNC may aggregate and market Developer's ERBs with ERBs created by other suppliers of either similar or unrelated credits, as TNC deems appropriate in its sole discretion as a function of TNC's portfolio management to maximize the monetary benefits to Developer.

**6. PRICE AND PAYMENT TERMS.** TNC shall pay Developer sixty percent (60%) of the Net Proceeds received from TNC's sale of each ERB, and TNC shall retain forty (40%) percent of the Net Proceeds from each sale of ERBs subject to the following conditions:

- a) TNC shall pay Developer's Share of the Net Proceeds within forty-five (45) days of TNC's receipt of Proceeds from TNC's sale of each Emission Reduction Benefit.
- b) TNC will make further distributions of TNC's Share of the Net Proceeds to:
  - (i) Fund an easement endowment or reserve to ensure long-term costs of the easement holder are largely covered;
  - (ii) Create a fund (e.g. endowment or restricted reserve) to cover future carbon monitoring costs so these costs are not the responsibility of Developer; and
  - (iii) Provide payments to carbon developer for their support of the project.
- c) For clarification purposes, TNC shall have the right to market and sell any ERBs from any Project for which TNC initiates Verification and/or Registration during the Term, even if the crediting period for any or all of such ERBs extends beyond the end of the Term, until the Expiration Date. This Agreement shall continue to apply to any ERBs subject to a Sales Agreement executed prior to the Expiration Date until such ERBs have been transferred to a third party and all Net Proceeds have been distributed.
- d) Developer shall have the right to audit, at its cost and expense, all Proceeds received by TNC and Net Proceeds paid to Developer. TNC shall cooperate with such audit and make available all documents requested by Developer or its accountant to complete the audit. Failure of TNC to cooperate and produce all such documentation shall constitute a material breach of this Agreement.

- e) Developer shall have no obligation to pay, or reimburse, TNC for any Expenses it incurs in providing the Services.
7. **MUTUAL REPRESENTATIONS AND WARRANTIES.** As of the Effective Date and on each Delivery Date, each party, as applicable where the context so requires, hereby makes the following representations and warranties to the other party:
- a) TNC is a corporation duly organized validly existing and in good standing under the laws of its jurisdiction of incorporation, with full corporate power and authority to make, execute, deliver and perform this Agreement and the transactions contemplated hereby. Developer is a \_\_\_\_\_ corporation with full corporate power and authority to make, execute, deliver and perform this Agreement and the transactions contemplated hereby.
  - b) The execution, delivery and performance of this Agreement has been duly authorized by all necessary actions and this Agreement constitutes a valid obligation enforceable in accordance with its terms.
8. **DEVELOPER'S WARRANTIES.** As of the Effective Date and on each the Delivery Date, Developer represents and warrants that:
- a) To the best of its knowledge, it has good and marketable title to all ERBs arising out of the Project and such ERBs are free and clear of all encumbrances of any kind.
  - b) To the best of its knowledge, data and information provided to TNC or its authorized representatives is and shall be accurate.
  - c) Unless otherwise required by law, Developer shall not conduct any activities that will result in a Material Reduction of ERBs.
  - d) During the Term and through the Expiration Date, ERBs available for sale by TNC pursuant to this Agreement shall not be sold, transferred or made available for use by Developer to any other person or entity for any other purpose. Developer shall not claim any of the ERBs developed or delivered and/or sold to TNC under this Agreement as part of its own carbon inventory, carbon footprint, or other carbon statement or declaration.
  - e) During the Term, Developer shall provide in a timely manner all available and relevant information within Developer's possession necessary to allow TNC to perform its Services.
  - f) Throughout the Term, the Property and the Project are and shall be in compliance with all existing Applicable Requirements and Applicable Laws.
  - g) If a Developer member transfers ownership of its portion of the Property during the

Term, the Developer shall ensure that in conjunction with any such transfer: (i) the Developer member's transferee shall assume all of the Developer member's obligations toward TNC or otherwise, which are created pursuant to the Working Woodlands Agreement and this Agreement; and (ii) TNC shall retain all rights afforded to it pursuant to the Working Woodlands Agreement and this Agreement including, but not limited to, all rights to collect and market all ERBs generated by the Project throughout the Term.

9. TNC'S WARRANTIES. TNC represents and warrants that:

- a) TNC shall use commercially reasonable efforts to perform its Services and maximize the monetary benefits to Developer.
- b) TNC shall use commercially reasonable efforts to market and sell the ERBs through the Expiration Date, which may include the pre-selling of certain ERBs.

10. FURTHER ASSURANCES. Upon TNC's reasonable request, Developer shall execute such documents and take such further actions from time to time as may be necessary to Validate, Verify, or Register ERBs or to sell or transfer the ERBs pursuant to a Sales Agreement, provided that the costs or expenditures related to any such actions, if any, shall be financed or reimbursed by TNC or its agent.

11. ACCESS TO INFORMATION; MAINTENANCE OF RECORDS; FURTHER ACTION

- a) Due Diligence. Developer shall provide TNC and its representatives with access to the Property and to all Emission Reduction Benefit-related documents, records, reports, and data reasonably necessary to Document, Verify, Validate, Register or sell the quantity, quality, validity, or acceptability of the ERBs of the Project. Verifiers as well as prospective final buyers of ERBs created pursuant to this Agreement shall have the right to visit the Property for purposes of conducting such Verification upon reasonable notice to Developer. Such due diligence may be undertaken at any time during the term of this Agreement during regular business hours upon reasonable advance notice. Access to water and water related infrastructure shall be restricted by the Developer in its sole discretion.
- b) Developer's Records Regarding Project Performance. Developer shall maintain records reasonably necessary to establish the validity of the ERBs sold pursuant to this Agreement, including but not limited to records regarding thinning and harvesting on the Property, title to the Property, and any deeds applicable to the Property. Developer shall make such records available for inspection upon reasonable advance notice from TNC and TNC's transferees at reasonable times and places. Developer shall also make such records available to any ERB Regime or governmental or regulatory body with competent jurisdiction over the ERBs being sold. Such records shall be maintained for six (6) years after the date of transfer of the ERBs from Developer to TNC or from

Developer to a third party or such other period as may be required by an applicable ERB Regime or a third-party sale agreement, whichever is longer.

- c) TNC's Records Regarding Transactions. TNC shall keep and maintain records of all sales terms, deal valuations, and documentation necessary for TNC to complete the sale and transfer of ERBs transferred to TNC by Developer and by TNC to any third party. These records shall be kept for a period of six (6) years after the date of transfer or such other period as may be required by an applicable ERB Regime or a third-party sale agreement, whichever is longer, and shall be sent to Developer for inspection during regular business hours upon reasonable advance notice.

## 12. LIMITATION OF LIABILITY.

- a) Except with respect to its willful misconduct, reckless acts or reckless misrepresentations and subject to Section 13 of this Agreement, TNC's liability hereunder to the Developer, SIG, VLT or any Development member shall not exceed TNC's Share of the Net Proceeds received. Except with respect to willful misconduct, reckless acts or reckless misrepresentations, and subject to Section 13 of this Agreement, Developer's liability to TNC hereunder shall not exceed Developer's Share of the Net Proceeds. Neither party shall be liable to the other for any indirect or consequential damages. The limitation of liability in this Section shall survive cancellation, termination, expiration of this Agreement and shall survive through the Expiration Period.
- b) TNC shall have no liability as a result of, or in relation to, the acts or omissions of Landowner in connection with the operation of the Project, including with respect to compliance with current or future environmental laws, unless any plan prepared by the Conservancy is in violation of any current law.

## 13. INDEMNITY

- a) By Developer. Developer shall defend, indemnify, and save harmless TNC and its employees, directors/trustees and officers from and against all claims, damages, losses and expenses arising out of, or in consequence of, any negligent or intentional act or omission of Developer, its employees or agents, to the extent of its or their responsibility for such claims, damages, losses, and expenses.
- b) By TNC. TNC shall defend, indemnify, and save harmless Developer and its employees, directors and officers from and against all claims, damages, losses and expenses arising out of, or in consequence of, any negligent or intentional act or omission of TNC, its employees or agents, to the extent of its or their responsibility for such claims, damages, losses, and expenses.

14. RESERVATIONS REGARDING PROJECT DEVELOPMENT. The parties mutually acknowledge that:
- a) DEVELOPER MAKES NO REPRESENTATION OR WARRANTY AS TO THE NUMBER OF ERBS WHICH HAVE OR MAY BE GENERATED AS A RESULT OF THE PROJECT; AND
  - b) TNC MAKES NO REPRESENTATION OR WARRANTY AS TO THE CREATION OF ERBS IN CONNECTION WITH THE PROJECT OR THE MARKETABILITY OR VALUE TO BE REALIZED AS A RESULT OF TNC'S SALE OF THE SAME.
15. TERM. This Agreement will be in effect for a period of 10 years (the "Term"). It will commence on the Effective Date set forth above and shall remain in full force and effect through the Expiration Date, subject to termination pursuant to Section 16. This Agreement may be extended by written amendment signed by both parties.
16. TERMINATION. In addition to any other termination rights provided under this Agreement, the following terms shall apply:
- a) Termination Due to Economic Unfeasibility. If, prior to the sale or commitment for sale of ERBs to a third party, TNC or Developer, in their sole discretion, determine the Project or any part of the Project is economically unfeasible, they may terminate this Agreement upon thirty (30) written notice to the other. Each Party shall be responsible for all their Expenses incurred, and neither party shall have any further obligation to proceed under this Agreement. TNC shall transfer to Developer all ERBs arising from the Project that have not otherwise been sold committed to be sold, transferred, retired or otherwise conveyed, to TNC or to another third party.
  - b) Termination Due to Breach. As set forth in Section 17 below, a non-breaching party shall have the right to terminate this Agreement unless otherwise extended by mutual agreement of the parties.
  - c) Termination Due to Insolvency. This Agreement may be terminated immediately upon notice by one party to the other party if:
    - (i) a receiver or trustee in bankruptcy has been appointed to take charge of all or any substantial part of the other party's business or property, unless the receivership order or the appointment of the trustee in bankruptcy is vacated within thirty (30) days;
    - (ii) the other party has become insolvent or committed an act of bankruptcy as defined under the bankruptcy laws of the United States;
    - (iii) a petition has been filed or any other action has been taken with respect to the other party under any provision of the bankruptcy laws of the United States; or
    - (iv) any application or petition or certificate or order has been made or granted for the winding up or dissolution of the other party, voluntarily or otherwise.

17. BREACH.

- a) In the event any party fails to perform any covenant in this Agreement or breaches any material representation or warranty during the term of this Agreement, the non-breaching party shall notify the other party in writing of the failure of such covenant or the conditions of the breach and the breaching party will have 45 days to correct any such breach or perform such covenant, commencing on the date notice is sent to the breaching party. The non-breaching party shall have the right to terminate this Agreement in accordance with this Section 16 if the breach has not been corrected or the covenant not performed before the end of the 45-day period, unless the parties mutually agree to extend the cure period.
- b) Remedies for Developer's Breach. If TNC terminates this Agreement due to breach of this Agreement by Developer:

(i) Within ten days of said termination

1. Developer shall pay TNC for all Expenses TNC has incurred prior to termination and for which TNC has not been reimbursed from the Proceeds of a sale of ERBs from the Project prior to termination, if any. TNC shall include a detailed accounting of all Expenses believed to be owed to TNC, and failure to so provide such accounting shall relieve Developer of the obligation to make such payment. Developer shall have the right to review TNC's accounting and conduct its own accounting. TNC and its agents shall provide full cooperation with any accounting performed by Developer. If TNC fails to cooperate, Developer shall not be obligated to make any payments to TNC pursuant to this Section.
2. Developer shall transfer any ERBs that have been Registered prior to termination and which have been sold, committed for sale, transferred or otherwise conveyed by TNC to TNC (or, at the direction of TNC, to a third party purchaser) prior to termination. TNC shall pay Developer's Share of Net Proceeds arising from these ERBs.

(ii) For any ERBs that TNC has sold, committed for sale, transferred or otherwise conveyed to a third party prior to TNC's termination, subject to Section 12 of this Agreement, TNC shall be entitled to compensation and Developer shall pay TNC such compensation, as follows:

1. If the Sales Agreement(s) permit replacement of such ERBs and such ERBs can be replaced with other similar ERBs at a same price or at a similar price acceptable to TNC, then Developer shall be required to replace said ERBs.
2. If the Sales Agreement(s) do not allow for replacement of such ERBs or the ERBs cannot be replaced with other similar ERBs, Developer shall pay TNC any damages

resulting from the breach of the Sales Agreement(s), including TNC expenses incurred prior to termination.

(iii) Developer shall not create or transfer to anyone other than TNC any ERBs arising from the Project, whether in the form of rights or benefits related to emission reductions of Greenhouse Gases, during the Term and/or until Developer has satisfied all of the conditions of this Section.

(iv) The Developer reserves and retains any and all legal rights, remedies, objections, obligations and defenses to any claim of breach of this Agreement in general, including specifically this paragraph, and for any claim of damages that may be made by TNC pursuant thereto.

c) Remedies for TNC's Breach. If Developer terminates this Agreement pursuant to this Section, TNC shall cease all Services for Developer and transfer all ERBs arising from the Project to the Developer, except for any ERBs from the Project that have been sold, committed for sale, transferred, retired or otherwise conveyed to TNC or a third party and such remaining ERBs are to be delivered after termination. At the time of termination:

(i) TNC shall continue to act in accordance with this Agreement with respect to any ERBs sold, committed to be sold, transferred, retired or otherwise conveyed, to TNC or a third party pursuant to a Sales Agreement and TNC shall pay Developer's percentage of any Net Proceeds for any such ERBs in accordance with this Agreement following TNC's receipt of Proceeds and shall transfer all other ERBs arising from the Project to Developer.

(ii) If the third party to a Sales Agreement approves, Developer may either agree to accept assignment or substitute another party acceptable to the third party of the Sales Agreement from TNC to Developer and TNC shall cease all Services for Developer and shall transfer all of the ERBs arising from the Project to Developer.

(iii) TNC reserves and retains any and all legal rights, remedies, objections, obligations and defenses to any claim of breach of this Agreement in general, including specifically this paragraph, and for any claim of damages that may be made by the Developer pursuant thereto.

18. **DISPUTE RESOLUTION.** In the event of any dispute relating to this Agreement, the parties shall first seek to resolve the dispute through good faith discussions. If a dispute cannot be resolved informally within sixty (60) days, the parties agree to participate in mediation conducted by a professional mediator approved by the parties and in accordance with generally accepted mediation procedures and standards of the United States. Approval of a mediator shall not be unreasonably withheld or delayed by a party. The parties agree to share equally in the costs of the mediation. Should the parties fail to reach an agreement through mediation, nothing herein shall be construed to prevent a party from pursuing any available legal or equitable remedies

under applicable law.

19. **CONFIDENTIAL INFORMATION.** Any and all information relating to the Project or ERBs subject to this Agreement, and any and all information emanating from one party's business in any form that the other party may acquire pursuant to this Agreement (collectively, "**Confidential Information**"), shall be considered confidential and, except as otherwise provided herein, shall not be used, revealed or divulged to any other Person, or published in any manner whatsoever, without first obtaining the written consent of the other party.

Notwithstanding the provisions above, a party may reveal or divulge Confidential Information:

- (a) that is already in the public domain when disclosed to a party or becomes, after having been disclosed to a party, generally available to the public through publication or otherwise unless the publication or other disclosure was made directly or indirectly by a party in breach of this Agreement;
- (b) to its Affiliates and to its and their officers, directors, employees, agents or other representatives on a need to know basis provided such Persons have agreed to maintain such Confidential Information in confidence;
- (c) as required by Applicable Laws, including but not limited to FOIA and FOIL, the orders or directions of tribunals having jurisdiction or stock exchange or clearing house requirements, provided that where circumstances permit, and where such disclosure is not made in the ordinary course to such Persons, prior to any disclosure, the other party shall be notified of any such proposed divulgence and the divulging party shall at the other party's request and expense, take reasonable steps to allow the other party to contest the requirement for disclosure or to obtain an order or ruling to preserve the confidentiality of such Confidential Information;
- (d) to the extent reasonably necessary to sell, resell, use, retire or otherwise obtain the value or benefit from the ERBs subject to this Agreement; or
- (e) as necessary in connection with any dispute resolution commenced pursuant to this Agreement or any litigation commenced in respect of this Agreement.

20. **PUBLICITY.** Unless otherwise agreed to by the parties, public communications such as press releases and public statements or announcements regarding the Project shall be arrived at and/or conducted jointly as the case may be.

21. **FORCE MAJEURE.** In the event either party is prevented from performing or is unable to perform any of its obligations under this Agreement due to any Act of God, fire, casualty, flood, earthquake, war, strike, lockout, epidemic, infestation, riot, insurrection, or any other cause beyond the reasonable control of the party ("Force Majeure") invoking this Section, and if such party shall have used commercially reasonable efforts to mitigate the effects of such

occurrence(s), such party shall give prompt written notice to the other party, its performance shall be excused, and the time for the performance shall be extended for the period of delay or inability to perform due to such occurrence(s). Regardless of the excuse of Force Majeure, if such party is not able to perform within one hundred eighty (180) days after such event, the other party may terminate the Agreement. Termination of this Agreement shall not affect the obligations of either party that exist as of the date of termination. Neither party shall be required to settle a labor dispute, strike or lockout in order to mitigate or remedy a condition of Force Majeure.

22. **INSURANCE:** TNC will procure and maintain throughout the term of the Agreement, without any additional cost and/or expense to Developer, the following insurance coverage, issued by an insurer which is licensed to do business in the State of New York and which has an A.M. Best rating of not less than "A":

(a) Workers' Compensation and Employer's Liability Insurance: A policy or policies providing protection for employees in the event of job-related injuries.

(b) General Liability Insurance, including but not limited to auto coverage: A policy or policies of comprehensive general liability insurance with limits of not less than \$5,000,000.

Each policy of insurance required shall be in form and content satisfactory to Developer, and shall provide that:

(a) Developer is named as additional insured.

(b) The insurance policies shall not be changed or cancelled until the expiration of thirty (30) days after written notice to Developer.

This Agreement, or any other agreement between the parties contemplated in this Agreement, will not be signed and no services or work shall be commenced or performed pursuant to this Agreement, until TNC has delivered to Developer proof of insurance of all policies of insurance required by this Agreement.

23. **GOVERNING LAW.** This Agreement shall be interpreted according to the laws of the State of New York, without regard to any conflict of laws provisions which would compel the application of the law of any other forum.
24. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon and inure to the benefit of the Developer and TNC and their respective successors and permitted assigns. Neither party may assign this Agreement without the other party's prior written consent, not to be unreasonably withheld.
25. **NOTICES.** Any notice or other communication which any party is required or wishes to make to any other party pursuant to this Agreement shall be effective and valid only if in writing and delivered personally, by mail or by facsimile transmission to the other party at the address, fax

number set out below or at such other address, fax number as such party may from time to time designate by notice delivered in accordance with this Section:

**If to TNC:**

The Nature Conservancy  
195 New Karner Road  
Albany, NY 12205  
Attn: Legal Department  
Phone: 518-690-7850  
Email: [nyso\\_legal\\_contracts@tnc.org](mailto:nyso_legal_contracts@tnc.org)

**If to Developer:**

[Developer name]

\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

Any notice delivered in accordance with the foregoing will be deemed to have been received by the addressee on the date it is sent if delivered personally, by facsimile transmission or overnight receipted mailing upon delivery (and provided that in the case of a notice sent by facsimile transmission the party sending the notice has received a confirmation of transmission indicating that the entire facsimile transmission has been sent).

26. PROVISIONS SURVIVING EXPIRATION AND TERMINATION. Notwithstanding the termination or expiration of this Agreement, these General terms and Conditions and the provisions of Sections 8, 9, 12, 13, 15, 16 and 17 shall survive for a period of one year following the end of the Expiration Period or through the term of any Sales Agreement, whichever is longer.
27. COSTS. Each party shall be responsible for and pay its own legal and other costs associated with the negotiation and execution of this Agreement.
28. COUNTERPARTS/REPRODUCTION.
  - a) Counterparts: This Agreement may be executed in one or more counterparts, which, when taken together, shall be deemed to constitute one and the same Agreement.
  - b) Reproduction of Documents: This Agreement and all certificates and documents relating hereto may be reproduced by each party by electronic digital storage, photographic, photostatic, optical character recognition, or other similar electronic processes, and each party may destroy any original document accurately reproduced for the purposes of this contract. All parties hereto agree and stipulate that any such accurate reproduction shall be admissible in evidence as the original itself in any judicial or other proceeding (whether or not the original is in existence and whether or not such a reproduction was made by a party in the regular course of business) and that any enlargement, facsimile, or other presentation

for such reproduction, when satisfactorily identified as accurately reproducing the original, shall likewise be admissible in evidence.

29. HEADINGS. The headings set forth in this Agreement are for reference purposes only and will not be considered in the interpretation or enforcement of the provisions of this Agreement.
30. ENTIRETY. This Agreement, including attachments, constitutes the full understanding of the parties and supersedes all prior understandings of the parties, both written and oral, and no terms, conditions, understandings or agreements purporting to modify or vary the terms of this document shall be binding unless hereafter made in writing and signed the parties.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto effective as of the date first above written.

**FOR [DEVELOPER]**

**FOR THE NATURE CONSERVANCY**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Date:



# **Conflict of Interests and Ethics – GML Article 18 and Case Law**

**Mark R. Stevens, Esq.**





STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER  
Division of Legal Services  
110 STATE STREET  
ALBANY, NEW YORK 12236

**Conflicts of Interest: Municipal Officers and Employees**  
**The Fundamentals of Article 18 of the General Municipal Law**

**Introduction**

Article 18 of the General Municipal Law (§ 800 *et seq.*) (article 18) is the principal State statute governing conflicts of interest on the part of municipal officers and employees. An understanding of article 18 is important because violations of the statute can result in civil and criminal sanctions, undermine public confidence in local government administration and damage reputations. Thus, the purpose of this document is to describe and explain the provisions of article 18.

**History of Article 18**

Article 18 was enacted in 1964,<sup>1</sup> in what can be described fairly as nothing less than an effort to bring order out of chaos. Prior to the enactment of article 18, conflicts of interest on the part of local government officials were governed by the common law, at least a dozen state statutes and several dozen city charter provisions (which to one degree or another codified the common law), and by a large number of administrative and judicial decisions interpreting both the common law and these various statutes and charter provisions.<sup>2</sup> Indeed, when enacting article 18, the Legislature found that "[e]xisting law is too complex, too inconsistent, too overgrown with exceptions ...," and that "[b]asic concepts must be retained, but something more than recodification is needed."<sup>3</sup> The Legislature further noted that "[r]eal conflict must be rooted out, without condemning the inconsequential."<sup>4</sup>

Thus, the legislation enacting article 18 was an effort to clarify, harmonize and rationalize the law relating to conflicts of interest on the part of municipal officers and employees, but only as means of achieving a "trinity" of larger purposes: "to protect the public from municipal contracts influenced by avaricious officers, to protect innocent public officers from unwarranted assaults on their integrity and to encourage each community to adopt an appropriate code of ethics to supplement this chapter."<sup>5</sup> Consistent with these goals, the legislation was intended to be "the

<sup>1</sup> L 1964, ch 946.

<sup>2</sup> See Municipal Officials and Conflicts of Interest: An Analysis of the State of the Law and a Proposed Statute, Department of Audit and Control, December 1, 1957.

<sup>3</sup> L 1964, ch 946, § 1.

<sup>4</sup> Id.

<sup>5</sup> Id.

generic law in relation to conflicts of interest in municipal transactions, not to be superseded by local law of any municipality subject to its provisions.”<sup>6</sup>

### Scope and Structure

The phrase “conflict of interest” refers to a concept that has very broad application. It comes into play virtually any time an individual confronts some form of divided loyalty. Article 18, however, does not address every circumstance that might be characterized as a “conflict of interest.” For example, article 18 does not address the issue of whether, or under what circumstances, a person may simultaneously hold more than one public position, commonly referred to as “incompatibility.”<sup>7</sup>

In general, article 18 approaches conflicts of interest in two ways. It establishes state-wide rules dealing with a number of issues. It also provides broad authority, and in many cases a mandate, for the state-wide rules to be supplemented through the adoption of local codes of ethics.

The most important of the state-wide rules relate to the question of whether, and under what circumstances, a municipal officer or employee can do business with the municipality for which he or she serves.<sup>8</sup> The state-wide rules also address the solicitation and receipt of gifts, disclosure and use of confidential information, receipt of compensation for services in relation to matters before municipal agencies, disclosure in certain land use matters, and annual financial disclosure.<sup>9</sup>

Local codes of ethics are intended to provide standards of conduct with respect to matters that are not covered by the state-wide rules in article 18.<sup>10</sup> Every municipality is authorized or required to adopt its own code of ethics because the “diversity in size of and situations faced by different municipalities in the State, [makes it] inadvisable to formulate a comprehensive set of rules to apply to all municipalities which would be appropriate and workable in all cases.”<sup>11</sup> Further, “[s]ufficient flexibility is provided so that each municipality can adapt its Code to its particular needs or circumstances.”<sup>12</sup>

### Application of Article 18

Article 18 applies to municipalities. The term “municipality” is defined very broadly to include most of the State’s local government entities.<sup>13</sup> The term encompasses counties, cities (except

<sup>6</sup> Id.

<sup>7</sup> See General Municipal Law § 801, referring to “any municipal officer or employee in one or more positions of public employment, the holding of which is not prohibited by law” (emphasis supplied); cf. e.g. People ex rel. Ryan v Green, 58 NY 295 (1874); 2006 Ops Atty Gen No. 2006-3, at 1015; compare Village Law § 3-300 (3); Town Law §§ 20 (4), 23 (1), 174 (4); County Law § 411.

<sup>8</sup> See General Municipal Law §§ 801-805.

<sup>9</sup> See General Municipal Law §§ 805-a, 809, 810-812.

<sup>10</sup> See General Municipal Law § 806 (1).

<sup>11</sup> Report of the Governor’s Special Commission on Ethical Standards in Public Service, December 12, 1969, at 2.

<sup>12</sup> Id. at 5.

<sup>13</sup> See General Municipal Law § 800 (4).

the City of New York), towns and villages.<sup>14</sup> In addition to these general purpose units of local government, the definition also includes a wide array of other local government entities such as school districts, boards of cooperative educational services (BOCES), district corporations (e.g. fire districts),<sup>15</sup> industrial development agencies, urban renewal agencies, public libraries, town or county improvement districts, consolidated health districts, county vocational education and extension boards, certain joint water works systems, and other districts and joint services established for the purpose of carrying on, performing or financing one or more improvements or services intended to benefit the health, welfare, safety or convenience of the inhabitants of such governmental units or to benefit the real property within such units.<sup>16</sup> The State Comptroller's Office has also concluded that article 18 applies to a community college because the college is an agency of its local sponsor.<sup>17</sup>

Although the term "municipality" is defined to include industrial development agencies, the definition does not include other types of "public benefit corporations,"<sup>18</sup> many of which are commonly known as "public authorities." Consequently, except in the case of industrial development agencies, article 18 does not apply to a public benefit corporation or a public authority unless another statute renders it applicable.<sup>19</sup> In fact, most public benefit corporations and public authorities are not subject to article 18, but may be subject to separate conflict of interest provisions set forth in their enabling legislation.<sup>20</sup> For example, article 18 does not apply to public housing authorities,<sup>21</sup> but housing authorities are subject to a conflict of interest provision in the Public Housing Law.<sup>22</sup>

Article 18 also applies to municipal officers and employees. The term "municipal officer or employee" is defined as a paid or unpaid officer or employee of a municipality, including members of any administrative board, commission or other agency of the municipality.<sup>23</sup> In the case of a county, the definition includes any officer or employee paid from county funds.<sup>24</sup> A fire chief or assistant fire chief is also a "municipal officer or employee," but the definition does not include a person solely by reason of being a volunteer firefighter or civil defense volunteer.<sup>25</sup>

### Prohibition on Interests in Contracts

Under certain circumstances, article 18 prohibits municipal officers and employees from having interests in contracts with the municipality for which they serve. More specifically, unless a statutory exception applies, a municipal officer or employee is prohibited from having an interest in a contract with the municipality for which he or she serves when the person has the power or

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Id.

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Town Law § 174 (7); cf. General Construction Law §§ 65 (b), 66 (1), (3).

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See General Municipal Law § 800 (4); see also General Municipal Law § 883.

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See e.g. 1987 Ops St Comp No. 87-75, at 111; cf. People v Wendel, 116 Misc 2d 91 (1982).

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See General Municipal Law § 856 (2); compare General Construction Law §§ 65 (b), 66 (1), (4).

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See e.g. Public Authorities Law §§ 1954-a, 2309.

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See e.g. Public Authorities Law §§ 1120-q, 2046-p, 2658.

21

See e.g. 1997 Ops St Comp No. 97-11, at 20.

22

See Public Housing Law § 36; 1994 Ops St Comp No. 94-6, at 9.

23

See General Municipal Law § 800 (5).

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Id.

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Id.

duty – either individually or as a member of a board – to negotiate, prepare, authorize, or approve the contract; to authorize or approve payment under the contract; to audit bills or claims under the contract; or to appoint an officer or employee with any of those powers or duties.<sup>26</sup>

Therefore, in order for a municipal officer or employee to have a prohibited interest in a contract, four factors must be present. First, there must be a “contract” with the municipality. Second, the individual must have an “interest” in the contract. Third, the individual, in his or her official capacity, must have one or more of the powers or duties that can give rise to a prohibited interest. Finally, the situation must not fit within any of the statutory exceptions. If a municipal officer or employee has an interest in a contract, and does not have any of the powers or duties that could cause the interest to be prohibited, or if any of the statutory exceptions applies, then the interest is not prohibited, but in most cases must be disclosed.<sup>27</sup>

### What is a “Contract”?

Article 18 defines a “contract” as including any “claim, account or demand against or agreement with a municipality, express or implied....”<sup>28</sup> Thus, almost any business relationship with a municipality will result in a contract. Examples of contracts include purchase agreements,<sup>29</sup> sale agreements,<sup>30</sup> leases,<sup>31</sup> construction agreements,<sup>32</sup> and service contracts.<sup>33</sup> Even a voucher can be a contract because it is a “claim, account or demand” against a municipality.<sup>34</sup> Under article 18, the definition of a “contract” also includes the designation of a depository of public funds, as well as the designation of an official newspaper or a newspaper for the publication of any notice, resolution, ordinance or other proceeding required or authorized by law.<sup>35</sup>

In some cases, the existence of a “contract” may not be obvious. The Court of Appeals has held that a town supervisor had a prohibited interest in a contract with his town when he acquired real property located in the town at a county tax sale.<sup>36</sup> In reaching this conclusion, the Court rejected the argument that there was no contract between the supervisor and his town noting that “[a]lthough on the surface this argument appears dispositive, there is much more to the matter.”<sup>37</sup> The Court then went on to analyze the roles of both the town and county in the imposition and collection of the property taxes leading up to the tax sale. Based on that analysis, the Court concluded that “[i]n the greater scheme of things, the two municipalities have an overlap, if not identity, of interest” and “[t]he contract of sale, though in form concerning only the county, by implication also involves the town, and as such is within the statutory contemplation.”<sup>38</sup>

<sup>26</sup> General Municipal Law § 801 (1).

<sup>27</sup> General Municipal Law § 803, discussed *infra*.

<sup>28</sup> General Municipal Law § 800 (2).

<sup>29</sup> See e.g. 1996 Ops St Comp No. 96-14, at 31.

<sup>30</sup> See e.g. 1984 Ops St Comp No. 84-12, at 14.

<sup>31</sup> See e.g. 1989 Ops St Comp No. 89-32, at 74.

<sup>32</sup> See e.g. 1988 Ops St Comp No. 88-23, at 41.

<sup>33</sup> See e.g. 1988 Ops St Comp No. 88-44, at 86.

<sup>34</sup> See e.g. 1998 Ops St Comp No. 98-5, at 12.

<sup>35</sup> General Municipal Law § 800 (2).

<sup>36</sup> *Rose v Eichhorst*, 42 NY2d 92 (1977).

<sup>37</sup> *Id.* at 94.

<sup>38</sup> *Id.* at 97, see also 1988 Ops St Comp No. 88-29, at 54, concerning the purchase of property by the village mayor from the village industrial development agency, the members of which are appointed by the village

Another issue is whether issuance or granting of building permits, licenses, zoning changes, variances, site plan or subdivision approvals, and the like constitute “contracts” under article 18. The State Comptroller’s Office has long expressed the view that these types of land use actions do not give rise to a “contract” within the meaning of article 18.<sup>39</sup> The most recent court case to consider the issue similarly concluded that the grant of a variance does not result in a “contract.”<sup>40</sup> Moreover, at least one court apparently assumed, without expressly addressing the question, that subdivision approval was not a “contract.”<sup>41</sup> Nonetheless, it should be noted that there is some precedent to the contrary. The first case to consider the issue held that issuance of a building permit resulted in a “contract.”<sup>42</sup> Moreover, another court, without discussion, treated site plan and subdivision approvals as “contracts” and applied article 18.<sup>43</sup>

The State Comptroller’s Office has also considered whether a variety of other types of transactions result in a “contract” within the meaning of article 18. The State Comptroller’s Office has concluded that an agreement between two or more municipalities does not constitute a contract because, notwithstanding the literal language of the statute, the Legislature did not intend to include inter-municipal agreements within the definition of that term.<sup>44</sup> The State Comptroller’s Office has also expressed the view that gifts to a municipality generally do not fall within the statutory definition of a contract because a gift is a voluntary transfer of property from one party to another without consideration.<sup>45</sup> In addition, the State Comptroller’s Office has concluded that an appointment to a municipal office, by itself, does not give rise to a contract within the meaning of article 18.<sup>46</sup>

### What is an “Interest” in a Contract?

The second factor that must be present in order for a municipal officer or employee to have a prohibited interest in a contract is that the individual must have an “interest” in the contract. Article 18 defines the term “interest” as “a direct or indirect pecuniary or material benefit accruing to a municipal officer or employee as the result of a contract with the municipality which such officer or employee serves.”<sup>47</sup>

Whether a municipal officer or employee receives a benefit “as a result of” a municipal contract is a factual determination. For example, ordinarily, a municipal officer or employee who receives payment under a contract with his or her municipality would have an interest in the contract because the payment is a direct financial benefit resulting from the contract.<sup>48</sup> A municipal officer or employee, however, does not have to be a party to a contract in order to

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board of trustees.

<sup>39</sup> See e.g. 1991 Ops St Comp No. 91-48, at 132; 1988 Ops St Comp No. 88-68, at 135; 1985 Ops St Comp No. 85-60, at 84; 1983 Ops St Comp No. 83-108, at 252.

<sup>40</sup> Friedhaber v Town Bd. of Town of Sheldon, 16 Misc 3d 1140[A], 2007 NY Slip Op 51772[U] (2007), aff’d 59 AD3d 1006 (4<sup>th</sup> Dept 2009).

<sup>41</sup> Matter of Cahn v Planning Bd. of Town of Gardiner, 157 AD2d 252 (3<sup>rd</sup> Dept 1990).

<sup>42</sup> People v Pinto, 88 Misc 2d 303 (1976).

<sup>43</sup> Matter of DePaolo v Town of Ithaca, 258 AD2d 68 (3<sup>rd</sup> Dept 1999), lv denied 94 NY2d 751 (1999).

<sup>44</sup> See e.g. 2001 Ops St Comp No. 2001-14, at 28.

<sup>45</sup> 2008 Ops St Comp No. 2008-1.

<sup>46</sup> 1998 Ops St Comp No. 1998-3, at 6.

<sup>47</sup> General Municipal Law § 800 (3).

<sup>48</sup> See e.g. 2008 Ops St Comp No. 2008-2.

have an interest in the contract.<sup>49</sup> To illustrate, when a municipality contracts with a person who resides with a municipal officer or employee, and the proceeds from the contract are used to defray common household expenses, the municipal officer or employee would have an interest in the contract because he or she receives an indirect financial benefit as a result of the municipal contract.<sup>50</sup>

Under article 18, a municipal officer or employee is also “deemed” to have an interest in the contracts of certain individuals and business entities with which he or she has a relationship.<sup>51</sup> In these instances, the law presumes that a municipal officer or employee receives a benefit as a result of the contract. In other words, once it is established that there is a municipal contract with one of these individuals or business entities, the municipal officer or employee is considered to have an interest in the contract, without any separate or additional factual showing that the municipal officer or employee receives a benefit as a result of the contract.

A municipal officer or employee is deemed to have an interest in the contracts of his or her spouse, minor children and dependents, except their contracts of employment with the municipality.<sup>52</sup> Thus, for example, if the spouse of a municipal officer or employee is retained by the municipality as an independent contractor, the municipal officer or employee is deemed to have an interest in the contract.<sup>53</sup> On the other hand, if the spouse is hired by the municipality as a municipal employee, the municipal officer or employee is not deemed to have an interest in the spouse’s employment contract with the municipality.<sup>54</sup>

A municipal officer or employee is not deemed to have an interest in the contracts of any person other than his or her spouse, minor children and dependents.<sup>55</sup> Thus, for example, a municipal officer or employee is not deemed to have an interest in the contracts of his or her parents,<sup>56</sup> siblings,<sup>57</sup> emancipated children<sup>58</sup> or other relatives.<sup>59</sup> Nonetheless, a municipal officer or employee would still have an interest in such a contract if, as a factual matter, he or she were to receive a direct or indirect pecuniary or material benefit as a result of the contract.<sup>60</sup>

Article 18 also deems a municipal officer or employee to have an interest in the contracts of certain business entities with which he or she is affiliated. In this regard, a municipal officer or employee is deemed to have an interest in the contracts of a firm, partnership or association of which he or she is a member or employee.<sup>61</sup> Thus, for example, a municipal attorney is deemed to have an interest in a contract between the municipality and the attorney’s firm or

<sup>49</sup> See e.g. 2004 Ops St Comp No. 2004-2, at 4.

<sup>50</sup> See e.g. 1991 Ops St Comp No. 91-63, at 167.

<sup>51</sup> General Municipal Law § 800 (3) (a)-(d).

<sup>52</sup> General Municipal Law § 800 (3) (a).

<sup>53</sup> See e.g. 1998 Ops St Comp No. 98-6, at 14.

<sup>54</sup> See e.g. 1991 Ops St Comp No. 91-18, at 61; 1986 Ops St Comp No. 86-5, at 6.

<sup>55</sup> See General Municipal Law § 800 (3) (a).

<sup>56</sup> See e.g. 30 Ops St Comp No. 74-20 (1974).

<sup>57</sup> See e.g. 1982 Ops St Comp No. 82-365, at 461.

<sup>58</sup> See e.g. 1983 Ops St Comp No. 83-40, at 46.

<sup>59</sup> See e.g. 1987 Ops St Comp No. 87-23, at 37 (father-in-law); 31 Ops St Comp No. 75-648 (1975) (brother-in-law).

<sup>60</sup> See e.g. 1983 Ops St Comp No. 83-40, at 46, *supra*; see also 1991 Ops St Comp No. 91-63, at 167, *supra*.

<sup>61</sup> General Municipal Law § 800 (3) (b).

partnership.<sup>62</sup> A municipal officer or employee is also deemed to have an interest in the contracts of a corporation of which he or she is an officer, director or employee, or directly or indirectly owns or controls any stock.<sup>63</sup> For this purpose, "indirect" ownership of stock includes beneficial ownership of stock held in a blind trust.<sup>64</sup>

Just because a municipal officer or employee has an interest in a contract does not necessarily mean that the interest is prohibited. In order for the interest to be prohibited, the municipal officer or employee must have certain powers or duties with respect to the contract, and the interest must not be covered by any other statutory exceptions.

### **What Powers and Duties Can Give Rise to a Prohibited Interest?**

If a municipal officer or employee has an interest in a contract, the interest is not prohibited under article 18 unless a third factor is present – the individual must have certain official powers or duties with respect to the contract. Under article 18, an interest in a contract is prohibited only if the municipal officer or employee, either individually or as a member of a board, has the power or duty to: (1) negotiate, prepare, authorize or approve the contract; (2) authorize or approve payment under the contract; (3) audit bills or claims under the contract; or (4) appoint an officer or employee who has any of these powers or duties.<sup>65</sup> The enumeration of these powers and duties makes clear that the basic purpose of the statute is to prevent an individual from being able to influence the municipal procurement and payment processes from both sides of a transaction. Thus, in general, the powers and duties that can give rise to a prohibited interest in a contract do not include purely ministerial functions, such as executing a properly authorized contract or issuing a check to pay a properly audited and lawful claim.<sup>66</sup>

In most instances, a member of the governing board of a municipality will have at least one of the powers or duties that can give rise to a prohibited interest in a contract.<sup>67</sup> To confirm the existence of these powers and duties, or to determine whether any other municipal officer or employee has them, the State statute or local enactment which establishes the position should be reviewed. More often than not, the powers and duties of the position will be set forth in that statute or enactment. Other sources of relevant information may include written job descriptions and employment contracts, as well as an examination of the actual functions of the position.

It is also important to understand that if a municipal officer or employee has one or more of the powers or duties that can give rise to a prohibited interest in a contract, it is the existence of these powers and duties, not whether they are exercised, that causes an interest in a contract to be prohibited.<sup>68</sup> As a result, recusal or abstention does not cure a prohibited interest in a contract.<sup>69</sup>

<sup>62</sup> See e.g. 2000 Ops St Comp No. 2000-22, at 56.

<sup>63</sup> General Municipal Law § 800 (3) (c), (d).

<sup>64</sup> 1980 Ops St Comp No. 80-151, at 38.

<sup>65</sup> General Municipal Law § 801 (1) (a)-(c).

<sup>66</sup> See 1991 Ops St Comp No. 91-8, at 18; compare 1986 Ops St Comp No. 86-7, at 11.

<sup>67</sup> See e.g. County Law §§ 215 (3), 224, 369 (2), 625; Education Law §§ 1604 (31), 1709 (20-a), 1724, 2523 (2), 2525; Town Law §§ 20 (3) (b), (c), 64 (1)-(4), (6), 118, 176 (4-a), (9); Village Law §§ 4-412 (1), 5-524 (2).

<sup>68</sup> See e.g. 1988 Ops St Comp No. 88-8, at 13.

<sup>69</sup> See e.g. 2000 Ops St Comp No. 2000-7, at 20.

In summary, it is permissible for a municipal officer or employee to have an interest in a contract, if he or she does not possess any of the powers or duties that can cause the interest to be prohibited; however, in most cases that interest must be disclosed.<sup>70</sup> On the other hand, if the municipal officer or employee has any of these powers or duties, the interest in the contract is prohibited unless a statutory exception applies to the interest.

### **Statutory Exceptions**

If a municipal officer or employee has an interest in a contract, and the municipal officer or employee has one or more powers or duties which can give rise to a prohibited interest, the interest will not be prohibited unless a fourth factor is present – none of the statutory exceptions apply to the interest. There are seventeen statutory exceptions.<sup>71</sup> In general, the exceptions apply when a municipal officer or employee does not have a material financial stake in the transaction, or an opportunity to exert improper influence, or when the transaction is otherwise in the public interest; however, there are no statutory exceptions for contracts that are competitively bid,<sup>72</sup> contracts entered in emergency situations,<sup>73</sup> or for abstention and recusal.<sup>74</sup> The following is a discussion of the more frequently encountered statutory exceptions.<sup>75</sup>

#### Compensation and expenses

Article 18 provides in what is in effect a statutory exception for the payment of lawful compensation and necessary expenses of any municipal officer or employee in one or more positions of public employment, the holding of which is not prohibited by law.<sup>76</sup> Therefore, to the extent that an individual's compensation from municipal employment results in an interest in a contract, the interest is permissible.<sup>77</sup> Similarly, to the extent that an interest in a contract results from a municipal officer or employee submitting a voucher for reimbursement of actual and necessary expenses, the interest is permissible.

#### Duties and remuneration exception

Another commonly encountered statutory exception, sometimes referred to as the “duties and remuneration” exception, applies to contracts with a person, firm, corporation or association in which a municipal officer or employee has an interest which is prohibited solely by reason of employment as an officer or employee thereof, if the remuneration of the employment will not be directly affected as a result of the contract, and the duties of the employment do not directly

<sup>70</sup> See General Municipal Law § 803, discussed *infra*.

<sup>71</sup> General Municipal Law §§ 801 (last sentence), 802.

<sup>72</sup> See e.g. 2000 Ops St Comp No. 2000-7, at 20, *supra*.

<sup>73</sup> See e.g. 1988 Ops St Comp No. 88-23, at 41, *supra*.

<sup>74</sup> See e.g. 2000 Ops St Comp No. 2000-7, at 20; *supra*.

<sup>75</sup> The exceptions not discussed relate to designation of a newspaper for official publications, certain private sales of bonds and notes, employment of a school physician, certain contracts for public utility service, certain contracts for use of private rooms or employees and certain contracts in connection with a private industry council. See General Municipal Law §§ 802 (1) (c), (g), (i), (2) (b)-(d), (f).

<sup>76</sup> General Municipal Law § 801.

<sup>77</sup> See e.g. 2001 Ops St Comp No. 2001-14, at 28, *supra*; compare 1998 Ops St Comp No. 1998-3, at 6, *supra*.

involve the procurement, preparation or performance of any part of the contract.<sup>78</sup> Thus, this exception applies only if three conditions are met. First, the interest in the contract must be prohibited solely because of the individual's status as an officer or employee of the non-municipal employer.<sup>79</sup> Second, the individual's compensation from the non-municipal employer must not be directly affected as the result of the municipal contract. Third, the individual's duties for the non-municipal employer must not directly involve the procurement, preparation or performance of the municipal contract.

The duties and remuneration exception will not apply to an interest in a contract arising from any circumstance other than the individual's status as an "officer or employee" of the non-municipal employer. Therefore, the exception does not apply to interests arising from an individual's status as a corporate director<sup>80</sup> or stockholder.<sup>81</sup> Whether the individual's compensation from the non-municipal employer is directly affected as a result of the municipal contract is a question of fact.<sup>82</sup> For example, if a municipal officer or employee receives a commission on sales made to his or her municipality, the individual's compensation would be directly affected as a result of the municipal contract and the exception would not apply.<sup>83</sup> Similarly, whether the individual's duties for the non-municipal employer directly involve the procurement, preparation or performance of any part of the municipal contract is also a question of fact.<sup>84</sup>

#### Pre-existing contracts

There is also a statutory exception applicable to a contract in which a municipal officer or employee has an interest if the contract was entered prior to the time that the individual was elected or appointed to his or her municipal position.<sup>85</sup> The exception, however, does not apply to renewal contracts.<sup>86</sup> Thus, for example, the exception applies to a contract for the delivery of road salt between a town and a town board member entered into prior to the individual's election to office, but not to any renewal or subsequent contracts.<sup>87</sup> The exception also applies to a month-to-month tenancy commencing prior to a municipal officer's election because the tenancy is regarded as a continuing contract pre-dating the election.<sup>88</sup>

#### Minimal stockholdings

Another important statutory exception applies to contracts with a corporation in which a municipal officer or employee has an interest by reason of owning or controlling, either directly or indirectly, less than 5% of the corporation's outstanding stock.<sup>89</sup> The exception, however,

<sup>78</sup> General Municipal Law § 802 (1) (b).

<sup>79</sup> Compare General Municipal Law § 800 (3) (b), (c).

<sup>80</sup> See e.g. 1985 Ops St Comp No. 85-34, at 47.

<sup>81</sup> See e.g. 2000 Ops St Comp No. 2000-7, at 20, supra.

<sup>82</sup> See e.g. 1989 Ops St Comp No. 89-39, at 91.

<sup>83</sup> See e.g. 2006 Ops St Comp No. 2006-11, at 29.

<sup>84</sup> Id.

<sup>85</sup> General Municipal Law § 802 (1) (h).

<sup>86</sup> Id.

<sup>87</sup> See 2008 Ops St Comp No. 2008-2, supra.

<sup>88</sup> 1980 Ops St Comp No. 80-250, at 68.

<sup>89</sup> General Municipal Law § 802 (2) (a); compare General Municipal Law § 800 (3) (d).

does not apply to interests in such contracts arising from circumstances other than ownership or control of corporate stock, such as interests arising from an individual's status as a corporate officer, director or employee.<sup>90</sup>

#### Contracts with not-for-profits

There is also a frequently encountered statutory exception that applies to contracts with a membership corporation or other voluntary non-profit corporation or association including, but not limited to, a "rural electric cooperative."<sup>91</sup> For example, the Court of Appeals has held that the exception applies to a collective bargaining agreement between a municipality and a voluntary non-profit association representing the employees of the municipality.<sup>92</sup> The State Comptroller's Office has concluded that the exception applies to a contract for fire protection between a municipality and a volunteer fire company.<sup>93</sup>

#### Small value contracts

Another statutory exception applies to a contract in which a municipal officer or employee has an interest if the total consideration payable under the contract, when added to the total amount of all consideration payable under contracts in which the individual had an interest during the fiscal year, does not exceed \$750.<sup>94</sup> One example of when this exception might apply is when a municipality makes small purchases from a local hardware store owned by a municipal officer or employee.<sup>95</sup>

#### Rural municipality exception

There is also a statutory exception, sometimes referred to as the "rural municipalities" exception, which applies only to purchase and public work contracts of municipalities (other than counties) that are located wholly or partly within a county with a population of two hundred thousand or less.<sup>96</sup> The exception only applies when a member of the governing body or board has a prohibited interest and when the following other conditions are met: (1) the individual must be elected; (2) the individual must serve without salary; (3) the contracts, in the aggregate, must be less than \$5,000 during the fiscal year; (4) the governing body or board must follow its procurement policies and procedures adopted pursuant to section 104-b of the General Municipal Law; (5) the procurement process must indicate that the contract is with the lowest dollar offeror; and (6) the contract must be approved by resolution of the governing body or board by the affirmative vote of each member of the body or board except the interested member who must abstain.<sup>97</sup>

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<sup>90</sup> 1988 Ops St Comp No. 88-75, at 143.

<sup>91</sup> General Municipal Law § 802 (1) (f), as amended by L 2009, ch 249.

<sup>92</sup> *Stettine v County of Suffolk*, 66 NY2d 354 (1985).

<sup>93</sup> See e.g. 1986 Ops St Comp No. 86-78, at 124.

<sup>94</sup> General Municipal Law § 802 (2) (e).

<sup>95</sup> See 1996 Ops St Comp No. 96-14, at 31, *supra*.

<sup>96</sup> General Municipal Law § 802 (1) (j).

<sup>97</sup> *Id.*

### Real property

There are two statutory exceptions relating to the purchase and acquisition of real property by a municipality. Both involve judicial proceedings.

One of these statutory exceptions applies to the acquisition of real property through condemnation proceedings.<sup>98</sup> The other applies to the purchase by a municipality of real property or an interest therein, but only if the purchase and the consideration provided by the municipality are approved by order of the Supreme Court upon petition of the municipality's governing board.<sup>99</sup> Thus, for example, if a town negotiates a contract to purchase a leasehold interest from the town supervisor, the exception would apply, and the town supervisor would not have a prohibited interest in the contract, if the purchase and the purchase price are approved by a State Supreme Court Justice.<sup>100</sup> The exception, however, does not apply to sales of municipal real property.

### Designation of a bank or trust company

There is also a statutory exception that applies specifically to the designation of a bank or trust company as a depository, paying agent, registration agent or for the investment of funds.<sup>101</sup> This exception would apply, for example, where a school district designates as a depository a bank for which a member of the board of education serves as an officer and employee.<sup>102</sup> The exception, discussed below, however, does not always apply when the chief fiscal officer, treasurer, or his or her staff has an interest in a bank or trust company so designated.

To recapitulate, if (1) there is a "contract" with the municipality, (2) the municipal officer or employee has an "interest" in the contract, (3) the individual has one or more of the powers and duties that can cause the interest to be prohibited, and (4) none of the statutory exceptions apply, then the interest is prohibited. Alternatively, if any of the statutory exceptions apply to the interest, then the interest is not prohibited, but in most cases must be disclosed.<sup>103</sup>

### **Additional Prohibition for Chief Fiscal Officers, Treasurers and their Staff**

Article 18 contains an additional prohibition applicable only to municipal chief fiscal officers, treasurers and their deputies and employees.<sup>104</sup> For this purpose, the term "chief fiscal officer" is defined as a comptroller, commissioner of finance, director of finance or other officer possessing similar powers and duties, but does not include a member of a board of education or trustee in a school district.<sup>105</sup> The term "treasurer" means the treasurer of a county, city, village, school district, fire district, BOCES, county vocational and extension board and public general hospital,

<sup>98</sup> General Municipal Law § 802 (1) (c).

<sup>99</sup> General Municipal Law § 802 (1) (d).

<sup>100</sup> See e.g. 1989 Ops St Comp No. 89-32, at 74, *supra*.

<sup>101</sup> General Municipal Law § 802 (1) (a).

<sup>102</sup> See 33 Ops St Comp No. 77-504, at 106 (1977).

<sup>103</sup> See General Municipal Law § 803, discussed *infra*.

<sup>104</sup> General Municipal Law § 801 (2).

<sup>105</sup> General Municipal Law § 800 (1).

a town supervisor, the president of a board of health of a consolidated health district, and any other officer possessing similar powers and duties.<sup>106</sup>

Unless a statutory exception applies, no chief fiscal officer, treasurer, or his deputy or employee may have an interest in a bank or trust company designated as a depository, paying agent, registration agent or for investment of funds of the municipality of which he is an officer or employee.<sup>107</sup> Therefore, for example, when a town supervisor is a director and stockholder of a bank designated as a depository of town funds, the supervisor's interests in the bank are prohibited, unless a statutory exception applies to each of the interests.<sup>108</sup>

As previously discussed, article 18 contains a statutory exception that applies specifically to the designation of a bank or trust company as a depository, paying agent, registration agent or for the investment of funds.<sup>109</sup> This exception, however, does not apply to a chief fiscal officer, treasurer or their deputies or employees unless the municipality would otherwise be required to designate a bank or trust company located outside the municipality.<sup>110</sup> For example, in the event there is only one bank or trust company within the municipality, the exception would apply.<sup>111</sup> In that case, any interest in the bank or trust company on the part of the chief fiscal officer, treasurer or their deputies or employees would not be prohibited. If, however, there is more than one bank or trust company located within the municipality, this exception would not apply.<sup>112</sup> In such case, any interest in the bank on the part of the chief fiscal officer, treasurer or his or her staff would be prohibited unless some other exception applied to the interest.<sup>113</sup>

### Disclosure of Interests in Contracts

With certain limited exceptions, article 18 requires municipal officers and employees to disclose interests in contracts with the municipality for which they serve.<sup>114</sup> As a rule, if a municipal officer or employee, or his or her spouse, has, will have, or later acquires an interest in any actual or proposed contract, purchase agreement, lease agreement or other agreement (including oral agreements), the municipal officer or employee must disclose the nature and extent of the interest in writing.<sup>115</sup> The disclosure must be made as soon as the municipal officer or employee becomes aware of the actual or prospective interest.<sup>116</sup> The disclosure must be made publicly to the individual's immediate supervisor, and to the governing body of the municipality, which must include the disclosure in the official record of its proceedings.<sup>117</sup>

<sup>106</sup> General Municipal Law § 800 (6).

<sup>107</sup> General Municipal Law § 801 (2).

<sup>108</sup> See 1989 Ops St Comp No. 89-4, at 10.

<sup>109</sup> General Municipal Law § 802 (1) (a).

<sup>110</sup> Id.

<sup>111</sup> Cf. 1992 Ops St Comp No. 92-54, at 129.

<sup>112</sup> See e.g. 1989 Ops St Comp No. 89-4, at 10, supra.

<sup>113</sup> Id.

<sup>114</sup> General Municipal Law § 803.

<sup>115</sup> General Municipal Law § 803 (1).

<sup>116</sup> Id.

<sup>117</sup> Id.

Disclosure, however, is not required with respect to an interest in a contract described in section 802 (2) of the General Municipal Law.<sup>118</sup> For example, disclosure is not required where a municipal officer's or employee's interest in a contract results from ownership of less than 5% of the outstanding stock of a corporation which contracts with the municipality,<sup>119</sup> or where a municipal officer or employee has an interest in a contract, but the total amount paid under the contract(s) during the course of a fiscal year does not exceed \$750.<sup>120</sup>

The Court of Appeals has held that a knowing failure to disclose a contractual interest in violation of article 18 is grounds for a municipality to refuse to perform the contract.<sup>121</sup> On the other hand, in several instances, courts have excused a failure to disclose when a municipal officer or employee's interest in a contract was otherwise a matter of public knowledge.<sup>122</sup>

### Violations

Article 18 provides that any contract willfully entered into by or with a municipality in which there is an interest prohibited by article 18 is null, void and wholly unenforceable.<sup>123</sup> The Court of Appeals has referred to this provision as "[working] a statutory nullification, thereby providing for municipal taxpayers the protection of a bar to any waiver of the prohibited conflicts of interest through consent of the governing body or authority of the municipality."<sup>124</sup>

Article 18 also provides that any municipal officer or employee who willfully and knowingly violates the previously discussed provisions of article 18 is guilty of a misdemeanor.<sup>125</sup> A conviction can serve as a basis for removal from office.<sup>126</sup>

### Other Prohibited Conduct

In addition to prohibiting interests in contracts under certain circumstances, article 18 prohibits municipal officers and employees from engaging in several other types of conduct. The other types of conduct prohibited by article 18 relate to soliciting and receiving gifts, the disclosure and use of confidential information, and the performance of compensated services for private clients in relation to matters before municipal agencies.<sup>127</sup> Knowing and intentional violations of these provisions are punishable by fine, suspension or removal from office or employment in the manner provided by law.<sup>128</sup>

<sup>118</sup> General Municipal Law § 803 (2).

<sup>119</sup> See e.g. 1994 Ops St Comp No. 94-16, at 28.

<sup>120</sup> See e.g. 1998 Ops St Comp No. 98-6, at 14, *supra*.

<sup>121</sup> See *Landau v Percacciolo*, 50 NY2d 430 (1980).

<sup>122</sup> See *Stettine v County of Suffolk*, 105 AD2d 109 (2<sup>nd</sup> Dept 1984); *affd* 66 NY2d 354 (1985); cf. *D.E.P. Resources v Village of Monroe*, 131 AD2d 719 (2<sup>nd</sup> Dept 1987).

<sup>123</sup> General Municipal Law § 804.

<sup>124</sup> *Landau v Percacciolo*, 50 NY2d 430, 434 (1980), *supra*; but see *Rose v Eichhorst*, 42 NY2d 92, 98 (1977), *supra*.

<sup>125</sup> General Municipal Law § 805.

<sup>126</sup> See *Matter of West v Grant*, 243 AD2d 815 (3<sup>rd</sup> Dept 1997).

<sup>127</sup> General Municipal Law § 805-a (1).

<sup>128</sup> General Municipal Law § 805-a (2).

## Gifts

Article 18 flatly prohibits a municipal officer or employee from, directly or indirectly, soliciting a gift.<sup>129</sup> The statute also prohibits a municipal officer or employee, either directly or indirectly, from accepting or receiving any gift having a value of \$75 or more under circumstances in which it can be reasonably inferred that the gift was intended to, or can be reasonably be expected to, influence him or her in the performance of official duties, or that the gift is intended as a reward for official action.<sup>130</sup>

Under article 18, a gift can take virtually any form -- money, service, loan, travel, entertainment, hospitality, or any other thing or promise.<sup>131</sup> To illustrate, donations to pay a municipal officer's legal fees constitute gifts when the donations are made to defray the costs of litigation brought by the municipal officer in his or her individual capacity, rather than in his or her official capacity, even when the litigation is brought against another municipal official.<sup>132</sup>

In order for a municipal officer or employee to violate the statute, he or she must accept or receive a gift having a value of at least \$75 "under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties ...."<sup>133</sup> The quoted language was held by a county court to be unconstitutionally vague for purposes of a criminal prosecution.<sup>134</sup> Several years later, however, an Appellate Division decision sustained the imposition of criminal sanctions on a State employee on the basis of identical language in section 73 (5) of the Public Officers Law, but the court in that case did not specifically consider the constitutionality of the statute there at issue.<sup>135</sup> More recently, another Appellate Division decision sustained civil sanctions imposed under section 73 (5) of the Public Officers Law, although the court in that case did not specifically address the constitutionality of the statute.<sup>136</sup>

Notwithstanding any statute, law or rule to the contrary, article 18 expressly permits a public officer to accept a gift or benefit having a value of \$100 or less for solemnizing a marriage at a time or place other than the public officer's normal public place of business, during normal hours of business.<sup>137</sup> For this purpose, a town or village justice's normal hours of business are the hours officially scheduled by the court for the performance of the judicial function.<sup>138</sup>

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<sup>129</sup> General Municipal Law § 805-a (1) (a).

<sup>130</sup> Id.

<sup>131</sup> Id.

<sup>132</sup> 2005 Ops Atty Gen No. 2005-10, at 1036.

<sup>133</sup> General Municipal Law § 805-a (1) (a).

<sup>134</sup> People v Moore, 85 Misc 2d 4 (Fulton County Ct 1975).

<sup>135</sup> People v Zambuto, 73 AD2d 828 (4<sup>th</sup> Dept 1979).

<sup>136</sup> Matter of Rubinfeld v New York State Ethics Commn., 43 AD3d 1195 (3<sup>rd</sup> Dept 2007).

<sup>137</sup> General Municipal Law § 805-b.

<sup>138</sup> Id.

### Confidential information

Article 18 prohibits a municipal officer or employee from disclosing confidential information acquired in the course of his or her official duties.<sup>139</sup> The statute also prohibits a municipal officer or employee from using confidential information to further his or her personal interests.<sup>140</sup>

### Compensated services before municipal agencies

Article 18 prohibits a municipal officer or employee from receiving, or entering into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any municipal agency of which he or she is an officer, member or employee, or of any municipal agency over which he or she has jurisdiction, or to which he or she has the power to appoint any member, officer or employee.<sup>141</sup> Thus, for example, the statute prohibits a town attorney from performing compensated services for private clients in relation to any matter before any town agency for which he or she serves as attorney.<sup>142</sup> Article 18 may also prohibit a town attorney's law firm from performing such services, depending on whether the attorney would share in the compensation earned by the firm from the rendition of the services.<sup>143</sup>

The primary purpose of this provision is to prohibit municipal officers and employees from being paid to represent private clients before municipal agencies on which they serve, or over which they exercise jurisdiction or appointment power.<sup>144</sup> The statute, however, bars a municipal officer or employee from performing compensated services for private clients in connection with a matter pending before such an agency, even if the services do not involve a personal appearance before the agency.<sup>145</sup> Moreover, although it is clear that the statute applies to compensated services for private clients rendered in connection with applications and other matters actually pending before a municipal agency, the statute also prohibits compensated services rendered with respect to matters which must be reviewed, passed upon or otherwise brought to the attention of a municipal agency, even if the services are rendered before the matter is formally submitted to the agency.<sup>146</sup>

Article 18 also prohibits a municipal officer or employee from receiving, or entering into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any agency of his or her municipality, whereby his or her compensation is to be dependent or contingent upon any action by the agency with respect to the matter.<sup>147</sup> This

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<sup>139</sup> General Municipal Law § 805-a (1) (b).

<sup>140</sup> Id.

<sup>141</sup> General Municipal Law § 805-a (1) (c).

<sup>142</sup> 2000 Ops St Comp No. 2000-22, at 56, *supra*; see also Matter of Lake Anne Realty Corp. v Planning Bd. of Town of Blooming Grove, 172 Misc 2d 972 (Sup Ct, Orange County 1997).

<sup>143</sup> Id.

<sup>144</sup> See e.g. 1990 Ops St Comp No. 90-28, at 65.

<sup>145</sup> Id.

<sup>146</sup> Id.

<sup>147</sup> General Municipal Law § 805-a (1) (d).

provision, however, does not bar fees based upon the reasonable value of the services rendered.<sup>148</sup>

### Disclosure of Interests in Certain Land Use Matters

Article 18 imposes a disclosure requirement in connection with every application, petition or request for a variance, amendment, change of zoning, approval of a plat, exemption from a plat or official map, license or permit submitted pursuant to any ordinance, local law, rule or regulation constituting the zoning and planning regulations of a municipality.<sup>149</sup> Every such application, petition or request must state the name, residence, and nature and extent of any interest in the applicant held by any state officer, or any officer or employee of the municipality, or any officer or employee of a municipality of which such municipality is a part, to the extent known by the applicant.<sup>150</sup>

Unlike the previously mentioned provisions of article 18 which require municipal officers and employees to disclose interests in contracts, the obligation to disclose interests in land use matters is imposed on the applicant seeking official action.<sup>151</sup> Moreover, the circumstances under which a municipal officer or employee is deemed to have an interest in an applicant are broader than the circumstances under which a municipal officer or employee is deemed to have an interest in a contract.<sup>152</sup> For example, a municipal officer or employee is deemed to have an interest in an applicant when the applicant is a parent, sibling or grandchild, but is not deemed to have an interest in the contracts of a parent, sibling or grandchild.<sup>153</sup> A knowing and intentional failure to comply with the statute is a misdemeanor.<sup>154</sup>

### Local Codes of Ethics

In addition to providing state-wide rules relating to conflicts of interest on the part of municipal officers and employees, article 18 also provides for supplementation of the state-wide rules through the adoption of local codes of ethics. The statute requires the governing body of each county, city, town, village, school district and fire district to adopt a code of ethics setting forth standards of conduct reasonably expected of their officers and employees and, in the case of a fire district, the volunteer members of its fire department.<sup>155</sup> Article 18 authorizes other municipalities to adopt a code of ethics, but does not require them to do so.<sup>156</sup> The State Comptroller's Office has prepared a model code of ethics for municipalities, other than fire districts, and a separate model code for fire districts, both of which are available on the State Comptroller's website.<sup>157</sup>

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Id.

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General Municipal Law § 809.

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General Municipal Law § 809 (1).

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See General Municipal Law § 809 (1); compare General Municipal Law § 803 (1).

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See General Municipal Law § 809 (2), (3); compare General Municipal Law § 800 (3).

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Id.

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General Municipal Law § 809 (5).

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General Municipal Law § 806 (1) (a).

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Id.

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See Office of State Comptroller, Model Code of Ethics for Local Governments, available at <http://www.osc.state.ny.us/localgov/pubs/codeofethics.pdf>; Model Code of Ethics for Fire Districts,

Article 18 requires a code of ethics to address certain issues: disclosure of interests in legislation before the local governing body; holding of investments in conflict with official duties; private employment in conflict with official duties; and future employment.<sup>158</sup> A code of ethics may also include such other standards relating to the conduct of officers and employees as may be deemed advisable.<sup>159</sup> A code of ethics may regulate or prescribe conduct which is not expressly prohibited by article 18, and may also provide for the prohibition of conduct or disclosure of information and the classification of employees or officers.<sup>160</sup> Thus, for example, a code of ethics may require town board members to abstain from voting on resolutions fixing the salaries of relatives,<sup>161</sup> and may prohibit town officers, employees and board members from holding office in a political party.<sup>162</sup>

A code of ethics, however, may not authorize conduct otherwise prohibited by article 18.<sup>163</sup> Thus, a code of ethics, for example, can not render permissible an interest in a contract that is prohibited by article 18. Moreover, because a code of ethics may not be inconsistent with article 18, a code of ethics may not prohibit conduct expressly permitted by article 18.<sup>164</sup> To illustrate, a code of ethics may not negate a statutory exception that renders an interest in a contract permissible.<sup>165</sup>

Article 18 requires the chief executive officer of a municipality adopting a code of ethics to cause a copy of the code to be distributed to every officer and employee of his or her municipality.<sup>166</sup> A failure to distribute a code of ethics, or the failure of a municipal officer or employee to receive a copy of the code, however, does not affect the duty to comply with the code or the code's enforceability.<sup>167</sup>

## Boards of Ethics

Article 18 authorizes counties and other municipalities to establish a board of ethics and to fund the operations of the board.<sup>168</sup> The functions of a board of ethics are to provide advisory opinions to municipal officers and employees with respect to the provisions of article 18 and local codes of ethics,<sup>169</sup> to provide recommendations with respect to the drafting and adoption of codes of ethics and amendments thereto,<sup>170</sup> and to administer a municipality's system of annual

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available at <http://www.osc.state.ny.us/localgov/firedist/modelcoe.pdf>.

<sup>158</sup> General Municipal Law § 806 (1) (a).

<sup>159</sup> Id.

<sup>160</sup> Id.

<sup>161</sup> 2000 Ops St Comp No. 2000-12, at 33; but see Appeal of Behuniak, 30 Ed Dept Rep 236 (Decision No. 12,447).

<sup>162</sup> Belle v Town Bd. of Town of Onondaga, 61 AD2d 352 (4<sup>th</sup> Dept 1978).

<sup>163</sup> General Municipal Law § 806 (1) (a).

<sup>164</sup> 1992 Ops St Comp No. 92-30, at 78.

<sup>165</sup> Id.

<sup>166</sup> General Municipal Law § 806 (2).

<sup>167</sup> Id.

<sup>168</sup> General Municipal Law § 808 (1), (3).

<sup>169</sup> See General Municipal Law § 808 (2).

<sup>170</sup> Id.

financial disclosure.<sup>171</sup> The State Comptroller's Office has concluded that these functions may not be supplemented by local law.<sup>172</sup>

Under article 18, the power to establish a county board of ethics is vested in the governing body of the county.<sup>173</sup> The county governing body also appoints the members of the board of ethics, unless the county operates under an optional or alternative form of county government or county charter, in which case the members are appointed by the county executive or county manager, as the case may be, subject to confirmation by the governing body.<sup>174</sup> A county board of ethics must consist of at least three members, the majority of whom may not be officers or employees of the county or any municipality within the county, but at least one member must be an officer or employee of the county or a municipality within the county.<sup>175</sup> Members of a board of ethics receive no salary or compensation for their service on the board, and serve at the pleasure of the appointing authority.<sup>176</sup>

A county board of ethics may render advisory opinions to the officers and employees of any municipality wholly or partly within the county, but only upon the written request of a municipal officer or employee under such rules and regulations as the board may prescribe.<sup>177</sup> In performing this function the board may obtain advice from counsel employed by the board, or if none, from the county attorney.<sup>178</sup> A county board of ethics may make recommendations with respect to codes of ethics, but only upon the request of the governing body of a municipality in the county.<sup>179</sup>

The governing body of a municipality other than a county may also establish a local board of ethics.<sup>180</sup> In such case, the local board of ethics has the same powers and duties, and is governed by the same conditions as a county board of ethics, except that the local board may act only with respect to the officers and employees of the municipality that established the local board.<sup>181</sup> Where a municipality has established a local board of ethics, the county board of ethics may not act with respect to the officers and employees of that municipality, unless the local board has referred a matter to the county board.<sup>182</sup>

### Annual Financial Disclosure

Article 18 requires "political subdivisions," defined as counties, cities, towns and villages with a population of 50,000 or more, to impose on certain individuals an obligation to file an annual

<sup>171</sup> See General Municipal Law §§ 810 (9) (a), 811 (d), 812 (1) (c), (3) (a); L 1987, ch 813, § 26 (b).

<sup>172</sup> See e.g. 30 Ops St Comp No. 74-1119 (1974); but see 1991 Ops Atty Gen No. 91-68, at 1135.

<sup>173</sup> General Municipal Law § 808 (1).

<sup>174</sup> Id.

<sup>175</sup> Id., see also 1981 Ops St Comp No. 81-216, at 230; but see 1986 Ops Atty Gen No. 86-44, at 1065.

<sup>176</sup> General Municipal Law § 808 (1).

<sup>177</sup> General Municipal Law § 808 (2), (4); but see 1991 Ops Atty Gen No. 91-68, at 1135, supra.

<sup>178</sup> General Municipal Law § 808 (2).

<sup>179</sup> Id.

<sup>180</sup> General Municipal Law § 808 (3).

<sup>181</sup> Id.

<sup>182</sup> General Municipal Law § 808 (4).

financial disclosure statement.<sup>183</sup> Other municipalities are authorized to adopt an annual financial disclosure system, but are not required to do so.<sup>184</sup>

Under article 18, political subdivisions have broad discretion to design their own annual financial disclosure form and filing system.<sup>185</sup> If a political subdivision fails to promulgate its own form, it must utilize a form and filing system prescribed by article 18.<sup>186</sup> Other municipalities may either design their own form and filing system or use the statutorily prescribed form and filing system.<sup>187</sup>

Article 18 also requires political subdivisions and other municipalities that promulgate their own annual financial disclosure form to identify by name of office, or by title or classification, those individuals who must file the disclosure form.<sup>188</sup> The former Temporary State Commission on Local Government Ethics,<sup>189</sup> which had various functions with respect to annual financial disclosure, concluded that these jurisdictions, as minimum, must require the disclosure form to be filed by "local elected officials," "local officers and employees," and those officers and employees whose duties involve the negotiation, authorization or approval of certain matters (e.g. negotiation of contracts).<sup>190</sup> Counties, cities, towns and villages also have the option of requiring annual financial disclosure from "local political party officials."<sup>191</sup> Political subdivisions and other municipalities that utilize the statutorily prescribed disclosure form and filing system must require the form to be filed by "local elected officials," "local officers and employees," each "local political party official," and each candidate for "local elected official."<sup>192</sup>

Currently, annual financial disclosure forms must be filed with a political subdivision's or other municipality's board of ethics or, if the jurisdiction does not have a board of ethics, with the governing body of the jurisdiction.<sup>193</sup> Where a political subdivision or other municipality promulgates its own annual disclosure form and requires the form to be filed with its board of ethics, the jurisdiction, by local enactment, must provide the board of ethics with appropriate authority to enforce the filing requirement.<sup>194</sup> In all other cases, the power to enforce the filing requirement is provided by State statute.<sup>195</sup>

<sup>183</sup> See General Municipal Law §§ 810 (1), 811 (1) (a), (2), 812 (1) (a), (2).

<sup>184</sup> General Municipal Law §§ 811 (1) (a), 812 (2).

<sup>185</sup> General Municipal Law § 811 (1) (a).

<sup>186</sup> General Municipal Law §§ 811 (2), 812.

<sup>187</sup> General Municipal Law §§ 811 (1) (a), (e), 812 (2).

<sup>188</sup> General Municipal Law § 811 (1) (a).

<sup>189</sup> See General Municipal Law § 813; L 1987, ch 813, § 26 (b).

<sup>190</sup> 1987 Ethics in Government Act: Financial Disclosure Provisions for Local Government Officials, Temporary State Commission on Local Government Ethics, at 9 (September 1990); see also General Municipal Law §§ 810 (2), (3), 813 (9) (k) (i)-(iv).

<sup>191</sup> General Municipal Law § 811 (1) (b); see also General Municipal Law § 810 (6).

<sup>192</sup> General Municipal Law § 812 (1) (a); see also General Municipal Law § 810 (2), (3), (6).

<sup>193</sup> General Municipal Law §§ 811 (1) (d), 812 (1) (c); L 1987, ch 813, § 26 (b).

<sup>194</sup> General Municipal Law § 811 (1) (d).

<sup>195</sup> See General Municipal Law §§ 811 (1) (d), 812 (6); L 1987, ch 813, § 26 (b); see also General Municipal Law § 813 (10), (11), (13).

## Posting of Statute

Article 18 requires the chief executive officer of every municipality to cause a copy of sections eight hundred through eight hundred nine of the General Municipal Law to be kept posted in each public building under the jurisdiction of his or her municipality, in a place conspicuous to its officers and employees.<sup>196</sup> This posting requirement encompasses all of the provisions of article 18 except those relating to annual financial disclosure and the former temporary state commission on local government ethics. To facilitate compliance with the posting requirement, the State Comptroller's Office has prepared a poster of these sections and is available on the State Comptroller's website.<sup>197</sup> A failure to comply with this posting requirement, however, does not affect the duty to comply with article 18 or the statute's enforceability.<sup>198</sup>

Please feel free to contact the Division of Legal Services at (518) 474-5586 should you have legal questions.

April 1, 2010

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<sup>196</sup> General Municipal Law § 807.

<sup>197</sup> See Office of State Comptroller, New York State General Municipal Law, Sections 800-809: Conflicts of Interest of Municipal Officers and Employees (Part 1 and 2), available at <http://www.osc.state.ny.us/localgov/pubs/gmlposter.pdf>.

<sup>198</sup> General Municipal Law § 807.

## **Model Code of Ethics for Local Governments**

WHEREAS, article 18 of the General Municipal Law prohibits the officers and employees of a municipality from having certain conflicts of interest, and

WHEREAS section 806 of the General Municipal Law requires the governing body of each county, city (other than the City of New York), town, village, school district and fire district<sup>1</sup> to adopt a code of ethics that sets forth for the guidance of its officers and employees standards of conduct reasonably expected of them, and

WHEREAS section 806 of the General Municipal Law also authorizes the governing body of any other municipality to adopt such a code of ethics, and

WHEREAS, a code of ethics adopted by the governing body of a municipality must set forth standards of conduct for the guidance of the officers and employees of the municipality with respect to disclosure of interests in legislation before the local governing body, holding of investments in conflict with official duties, private employment in conflict with official duties, future employment, and such other standards as may be deemed advisable.

NOW, THEREFORE, be it resolved that the [insert name of governing body] of the [insert name of municipality] hereby adopts a code of ethics to read as follows:

### **Code of Ethics of the [insert name of municipality]**

#### **Section 1. Purpose.**

Officers and employees of the [insert name of municipality] hold their positions to serve and benefit the public, and not for obtaining unwarranted personal or private gain in the exercise and performance of their official powers and duties. The [insert name of municipal governing body] recognizes that, in furtherance of this fundamental principle, there is a need for clear and reasonable standards of ethical conduct. This code of ethics establishes those standards.

#### **Section 2. Definitions.**

(a) "Board" means the governing board of a municipality and any municipal administrative board (e.g. planning board, zoning of board of appeals), commission, or other agency or body comprised of two or more municipal officers or employees.

(b) "Code" means this code of ethics.

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<sup>1</sup> This model code of ethics is for use by municipalities other than fire districts. The State Comptroller has promulgated a separate model code of ethics for fire districts.

(c) "Interest" means a direct or indirect financial or material benefit, but does not include any benefit arising from the provision or receipt of any services generally available to the residents or taxpayers of the municipality or an area of the municipality, or a lawful class of such residents or taxpayers. A municipal officer or employee is deemed to have an interest in any private organization when he or she, his or her spouse, or a member of his or her household, is an owner, partner, member, director, officer, employee, or directly or indirectly owns or controls more than 5% of the organization's outstanding stock.

(d) "Municipality" means [insert name of municipality]. The word "municipal" refers to the municipality.

(e) "Municipal officer or employee" means a paid or unpaid officer or employee of the [insert name of municipality], including, but not limited to, the members of any municipal board.

(f) "Relative" means a spouse, parent, step-parent, sibling, step-sibling, sibling's spouse, child, step-child, uncle, aunt, nephew, niece, first cousin, or household member of a municipal officer or employee, and individuals having any of these relationships to the spouse of the officer or employee.

### **Section 3. Applicability.**

This code of ethics applies to the officers and employees of the [insert name of municipality], and shall supersede any prior municipal code of ethics. The provisions of this code of ethics shall apply in addition to all applicable State and local laws relating to conflicts of interest and ethics including, but not limited to, article 18 of the General Municipal Law and all rules, regulations, policies and procedures of the [insert name of municipality].

### **Section 4. Prohibition on use of municipal position for personal or private gain.**

No municipal officer or employee shall use his or her municipal position or official powers and duties to secure a financial or material benefit for himself or herself, a relative, or any private organization in which he or she is deemed to have an interest.

### **Section 5. Disclosure of interest in legislation and other matters.**

(a) Whenever a matter requiring the exercise of discretion comes before a municipal officer or employee, either individually or as a member of a board, and disposition of the matter could result in a direct or indirect financial or material benefit to himself or herself, a relative, or any private organization in which he or she is deemed to have an interest, the municipal officer or employee shall disclose in writing the nature of the interest.

(b) The disclosure shall be made when the matter requiring disclosure first comes before the municipal officer or employee, or when the municipal officer or employee first acquires knowledge of the interest requiring disclosure, whichever is earlier.

(c) In the case of a person serving in an elective office, the disclosure shall be filed with the governing board of the municipality. In all other cases, the disclosure shall be filed with the person's supervisor or, if the person does not have a supervisor, the disclosure shall be filed with the municipal officer, employee or board having the power to appoint to the person's position. In addition, in the case of a person serving on a municipal board, a copy of the disclosure shall be filed with the board. Any disclosure made to a board shall be made publicly at a meeting of the board and must be included in the minutes of the meeting.

#### **Section 6. Recusal and abstention.**

(a) No municipal officer or employee may participate in any decision or take any official action with respect to any matter requiring the exercise of discretion, including discussing the matter and voting on it, when he or she knows or has reason to know that the action could confer a direct or indirect financial or material benefit on himself or herself, a relative, or any private organization in which he or she is deemed to have an interest.

(b) In the event that this section prohibits a municipal officer or employee from exercising or performing a power or duty:

(1) if the power or duty is vested in a municipal officer as a member of a board, then the power or duty shall be exercised or performed by the other members of the board; or

(2) if the power or duty that is vested in a municipal officer individually, then the power or duty shall be exercised or performed by his or her deputy or, if the officer does not have a deputy, the power or duty shall be performed by another person to whom the officer may lawfully delegate the function.

(3) if the power or duty is vested in a municipal employee, he or she must refer the matter to his or her immediate supervisor, and the immediate supervisor shall designate another person to exercise or perform the power or duty.

#### **Section 7. Prohibition inapplicable; disclosure, recusal and abstention not required.**

(a) This code's prohibition on use of a municipal position (section 4), disclosure requirements (section 5), and requirements relating to recusal and abstention (section 6), shall not apply with respect to the following matters:

(1) adoption of the municipality's annual budget;

(2) any matter requiring the exercise of discretion that directly affects any of the following groups of people or a lawful class of such groups:

(i) all municipal officers or employees;

(ii) all residents or taxpayers of the municipality or an area of the municipality; or

(iii) the general public; or

(3) any matter that does not require the exercise of discretion.

(b) Recusal and abstention shall not be required with respect to any matter:

(1) which comes before a board when a majority of the board's total membership would otherwise be prohibited from acting by section 6 of this code;

(2) which comes before a municipal officer when the officer would be prohibited from acting by section 6 of this code and the matter cannot be lawfully delegated to another person.

#### **Section 8. Investments in conflict with official duties.**

(a) No municipal officer or employee may acquire the following investments:

(1) investments that can be reasonably expected to require more than sporadic recusal and abstention under section 6 of this code; or

(2) investments that would otherwise impair the person's independence of judgment in the exercise or performance of his or her official powers and duties.

(b) This section does not prohibit a municipal officer or employee from acquiring any other investments or the following assets:

(1) real property located within the municipality and used as his or her personal residence;

(2) less than five percent of the stock of a publicly traded corporation; or

(3) bonds or notes issued by the municipality and acquired more than one year after the date on which the bonds or notes were originally issued.

#### **Section 9. Private employment in conflict with official duties.**

No municipal officer or employee, during his or her tenure as a municipal officer or employee, may engage in any private employment, including the rendition of any business, commercial, professional or other types of services, when the employment:

(a) can be reasonably expected to require more than sporadic recusal and abstention pursuant to section 6 of this code;

(b) can be reasonably expected to require disclosure or use of confidential information gained by reason of serving as a municipal officer or employee;

(c) violates section 805-a(1)(c) or (d) of the General Municipal Law; or

(d) requires representation of a person or organization other than the municipality in connection with litigation, negotiations or any other matter to which the municipality is a party.

#### **Section 10. Future employment.**

(a) No municipal officer or employee may ask for, pursue or accept a private post-government employment opportunity with any person or organization that has a matter requiring the exercise of discretion pending before the municipal officer or employee, either individually or as a member of a board, while the matter is pending or within the 30 days following final disposition of the matter.

(b) No municipal officer or employee, for the two-year period after serving as a municipal officer or employee, may represent or render services to a private person or organization in connection with any matter involving the exercise of discretion before the municipal office, board, department or comparable organizational unit for which he or she serves.

(c) No municipal officer or employee, at any time after serving as a municipal officer or employee, may represent or render services to a private person or organization in connection with any particular transaction in which he or she personally and substantially participated while serving as a municipal officer or employee.

#### **Section 11. Personal representations and claims permitted.**

This code shall not be construed as prohibiting a municipal officer or employee from:

(a) representing himself or herself, or his or her spouse or minor children before the municipality; or

(b) asserting a claim against the municipality on his or her own behalf, or on behalf of his or her spouse or minor children.

#### **Section 12. Use of municipal resources**

(a) Municipal resources shall be used for lawful municipal purposes. Municipal resources include, but are not limited to, municipal personnel, and the municipality's money, vehicles, equipment, materials, supplies or other property.

(b) No municipal officer or employee may use or permit the use of municipal resources for personal or private purposes, but this provision shall not be construed as prohibiting:

(1) any use of municipal resources authorized by law or municipal policy;

(2) the use of municipal resources for personal or private purposes when provided to a municipal officer or employee as part of his or her compensation; or

- (3) the occasional and incidental use during the business day of municipal telephones and computers for necessary personal matters such as family care and changes in work schedule.
- (c) No municipal officer or employee shall cause the municipality to spend more than is reasonably necessary for transportation, meals or lodging in connection with official travel.

### **Section 13. Interests in Contracts.**

- (a) No municipal officer or employee may have an interest in a contract that is prohibited by section 801 of the General Municipal Law.
- (b) Every municipal officer and employee shall disclose interests in contracts with the municipality at the time and in the manner required by section 803 of the General Municipal Law.

### **Section 14. Nepotism.**

Except as otherwise required by law:

- (a) No municipal officer or employee, either individually or as a member of a board, may participate in any decision specifically to appoint, hire, promote, discipline or discharge a relative for any position at, for or within the municipality or a municipal board.
- (b) No municipal officer or employee may supervise a relative in the performance of the relative's official powers or duties.

### **Section 15. Political Solicitations.**

- (a) No municipal officer or employee shall directly or indirectly to compel or induce a subordinate municipal officer or employee to make, or promise to make, any political contribution, whether by gift of money, service or other thing of value.
- (b) No municipal officer or employee may act or decline to act in relation to appointing, hiring or promoting, discharging, disciplining, or in any manner changing the official rank, status or compensation of any municipal officer or employee, or an applicant for a position as a municipal officer or employee, on the basis of the giving or withholding or neglecting to make any contribution of money or service or any other valuable thing for any political purpose.

### **Section 16. Confidential Information.**

No municipal officer or employee who acquires confidential information in the course of exercising or performing his or her official powers or duties may disclose or use such information unless the disclosure or use is required by law or in the course of exercising or performing his or her official powers and duties.

## **Section 17. Gifts.**

(a) No municipal officer or employee shall solicit, accept or receive a gift in violation of section 805-a(1)(a) of the General Municipal Law as interpreted in this section.

(b) No municipal officer or employee may directly or indirectly solicit any gift.

(c) No municipal officer or employee may accept or receive any gift, or multiple gifts from the same donor, having an annual aggregate value of seventy-five dollars or more when:

(1) the gift reasonably appears to be intended to influence the officer or employee in the exercise or performance of his or her official powers or duties;

(2) the gift could reasonably be expected to influence the officer or employee in the exercise or performance of his or her official powers or duties; or

(3) the gift is intended as a reward for any official action on the part of the officer or employee.

(d) For purposes of this section, a "gift" includes anything of value, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form. The value of a gift is the gift's fair market value, determined by the retail cost of the item or a comparable item. The fair market value of a ticket entitling the holder to food, refreshments, entertainment, or any other benefit is the face value of the ticket, or the actual cost to the donor, whichever is greater. Determination of whether multiple gifts from a single donor exceed seventy-five dollars must be made by adding together the value of all gifts received from the donor by an officer or employee during the twelve-month period preceding the receipt of the most recent gift.

(e) (1) A gift to a municipal officer or employee is presumed to be intended to influence the exercise or performance of his or her official powers or duties when the gift is from a private person or organization that seeks municipal action involving the exercise of discretion by or with the participation of the officer or employee.

(2) A gift to a municipal officer or employee is presumed to be intended as a reward for official action when the gift is from a private person or organization that has obtained municipal action involving the exercise of discretion by or with the participation of the officer or employee during the preceding twelve months.

(f) This section does not prohibit any other gift, including:

(1) gifts made to the municipality;

(2) gifts from a person with a family or personal relationship with the officer or employee when the circumstances make it clear that the personal relationship, rather than the recipient's status as a municipal officer or employee, is the primary motivating factor for the gift;

(3) gifts given on special occasions, such as marriage, illness, or retirement, which are modest, reasonable and customary;

(4) unsolicited advertising or promotional material of little intrinsic value, such as pens, pencils, note pads, and calendars;

(5) awards and plaques having a value of seventy-five dollars or less which are publicly presented in recognition of service as a municipal officer or employee, or other service to the community; or

(6) meals and refreshments provided when a municipal officer or employee is a speaker or participant at a job-related professional or educational conference or program and the meals and refreshments are made available to all participants.

#### **Section 18. Board of Ethics.**

(a) There is hereby established a board of ethics for the municipality. The board of ethics shall consist of [insert three, five ...] members, a majority of whom shall not be officers or employees of the municipality, but at least one of whom must be a municipal officer or employee. The members of such board of ethics shall be appointed by the [insert name of municipal governing body<sup>2</sup>], serve at the pleasure of the appointing authority, and receive no salary or compensation for their services as members of the board of ethics.

(b) The board of ethics shall render advisory opinions to the officers and employees of the [insert name of municipality] with respect to article 18 of the General Municipal Law and this code. Such advisory opinions must be rendered pursuant to the written request of any such officer or employee under such rules and regulations as the board of ethics may prescribe. The board of ethics shall have the advice of legal counsel employed by the board, or if none, the municipality's legal counsel. In addition, the board of ethics may make recommendations with respect to the drafting and adoption of a code of ethics, or amendments thereto, upon the request of the [insert name of municipal governing body].

#### **Section 19. Posting and distribution.**

(a) The [insert title of municipal chief executive officer] must promptly cause a copy of this code, and a copy of any amendment to this code, to be posted publicly and conspicuously in each building under the municipality's control. The code must be posted within ten days following the date on which the code takes effect. An amendment to the code must be posted within ten days following the date on which the amendment takes effect.

<sup>2</sup>In the case of a county operating under an optional or alternative form of county government or county charter, insert the "county executive" or "county manager," as the case may be, "subject to confirmation by the [insert name of county governing body]."

(b) The [insert title of municipal chief executive officer] must promptly cause a copy of this code, including any amendments to the code, to be distributed to every person who is or becomes an officer and employee of the [insert name of municipality].

(c) Every municipal officer or employee who receives a copy of this code or an amendment to the code must acknowledge such receipt in writing. Such acknowledgments must be filed with the [insert "clerk of the municipality" or, if there is no clerk, insert "secretary"] who must maintain such acknowledgments as a public record.

(d) The failure to post this code or an amendment to the code does not affect either the applicability or enforceability of the code or the amendment. The failure of a municipal officer or employee to receive a copy of this code of ethics or an amendment to the code, or to acknowledge receipt thereof in writing, does not affect either the applicability or enforceability of the code or amendment to the code.

#### **Section 20. Enforcement.**

Any municipal officer or employee who violates this code may be censured, fined, suspended or removed from office or employment in the manner provided by law.

#### **Section 21. Effective date.**

This code takes effect on [insert date on which code of ethics takes effect].



# Measles and Other Public Health Crises – Lessons Learned

Thomas Humbach, Esq.  
Sheryl Neufeld, Esq.



# Measles and Other Public Health Crises – Lessons Learned

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County of Rockland

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# Measles 101

- Characterized by fever and rash
- Highly contagious
  - Airborne and droplet transmission
  - Remains active for up to two hours
  - Infectious four days prior to rash
  - 90 percent of non-immune contacts will be infected
- Incubation period is 7-21 days
- Can be serious and even fatal
  - Complications include pneumonia and encephalitis
  - 1 to 2 child deaths per 1,000 children infected
- Had been declared eliminated in the U.S. in 2000
- Since then, there have been periodic outbreaks as a result of importation of the virus by people infected while traveling outside of the U.S. This outbreak was the largest since 1992.

## Authority for Constitutionality of State regulation of public health matters

- Case Law –

- Jacobson v. Mass., 197 U.S. 11 (1905) (The State has a police power interest in protecting the public health. The state interest in protecting public health supersedes 1<sup>st</sup> Amendment right of freedom of expression of religion.)
- Prince v. Mass., 321 U.S. 158 (1944) (“The right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death.”)
- Leebaert v. Harrington, 332 F.3d 134 (2d Cir. 2003) (Parental claims of violations of free exercise of religion are governed by rational basis test.)
- Phillips v. City of New York, 775 F.3d 538 (2d Cir. 2015) (following *Jacobson*. Mandatory vaccination is not a breach of substantive right of due process. There is no substantive due process right to education in New York. Also, following reasoning that individual right to freedom of expression does not trump public health concerns. In *dicta* – temporary exclusion from school – contributes to rational basis.)

## Statutory and Regulatory Authority – State/Municipal

- Public Health is largely a matter of State and Local police power functions. (Tenth Amendment; CDC provides resources, but not regulation)
- New York State public health governed by State Public Health Law. (NYCRR Title 10)
- New York State Law Article 13 governs control and abatement of nuisances.
- Laws concerning the mitigation of communicable disease are found at PHL Art. 21, with the infamous school age mandatory vaccination at § 2164.
- Regulations for mitigation of communicable diseases are found at 10 NYCRR Part 2.
- PHL § § 308 and 348 permit county health authorities to enact local, regulatory sanitary codes. These have the force of law and can be quite broad in scope. (for limitations cf. *Boreali v. Axelrod*, 71 N.Y.2d 1 [1987]).

## Statutory and Regulatory Authority - NYC

- Much of the Public Health Law does not apply in New York City, including the control and abatement of nuisances. (see PHL § 1309)
- NYC Administrative Code Section 17-142 defines a nuisance as “whatever is dangerous to human life or detrimental to health.”
- NYC Charter Section 556(c)(2) gives DOHMH the authority to “supervise the abatement of nuisances affecting or likely to affect the public health.”
- NYC Health Code Section 3.01 allows Commissioner to act “where urgent public health action is necessary to protect the public health against an imminent or existing threat.”
- Order of Commissioner is effective until next meeting of BOH which must be held within 5 business days or as soon as reasonably practicable.

## 2018/2019 Measles Outbreak

- **Rockland County:**
  - Began in October 2018, reached 312 known infections through August 2019.
  - Primarily affected two zip codes, each with a large private school population.
  - After outreach, free vaccine clinics, and communications about raising vaccination rates, orders were issued excluding minors from attendance at school. Over 29,000 vaccinations were administered during the course of the outbreak.
- **NYC:**
  - Began early October 2018 in several zip codes in Williamsburg and Borough Park, Brooklyn.
  - Initial response by DOHMH included extensive community outreach to encourage MMR vaccination.

## Rockland County's Response to 2018/2019 Measles Outbreak – Excluding Unvaccinated Children

- While at the time New York State recognized religious exemptions to school vaccination requirements, local health departments had the authority to order schools to exclude children with religious and/or medical exemptions during an outbreak (PHL § § 2100 and 2164)
- Rockland County:
  - The County received a designation from the State Commissioner of Health to act, pursuant to 10 NYCRR 66-1.10 to take steps as necessary to protect students at schools in the County.
  - At the outset 60 schools were affected by the orders. These schools had vaccination rates under 95%. Over time, vaccinations rates brought 52 schools into compliance.
  - 10 schools failed to comply and were fined in the RCDOH's administrative court. 9 of 10 settled and one was fined by the County Commissioner of Health.
  - Over the course of the outbreak, the County audited many schools vaccination records and found that several had children with no vaccine and no exemption from vaccination.
  - Camp exclusions over the summer of 2019.

## State of Emergency Declared in Rockland Co

- On March 26, 2019, after months of increasing infection rates, the County Executive declared a state of emergency, pursuant to NYS Executive Law § 24.
- This was in addition to the public health orders issued by the County Commissioner of Health.
- Key features of the declaration included:
  - a declaration of “disaster”, whose definition under § 21 includes an “epidemic”.
  - a local emergency order barring all persons under 18 years old, not medically unable to be vaccinated, from places of public assembly during the outbreak.
  - The declaration of emergency was renewed through July 2019.
  - The order was revised and refined twice to address practical matters.
- The strongest effect of the State of Emergency was bringing national and international attention to the crisis.

## Legal Challenge in Rockland Co

- *M.A. et al. v. Rockland County*, SDNY Docket No. 19-cv-02066. Seeking an injunction against the Health Orders (excluding unvaccinated children from schools in two affected zip codes – pre-emergency declaration).
  - Causes of action, Fourteenth Amendment Due Process and Substantive Due Process and Article 78.
  - TRO denied. Article 78 dismissed. 14<sup>th</sup> Amendment causes still being litigated.
  - Standing issue – initial (but not final) indication that we cannot challenge the standing of the plaintiffs based upon testing their “sincere religious beliefs”.
- *W.D. v. County of Rockland and Jane Doe v. County of Rockland*, Sup. Ct. Rockland Cty., Index Nos. 031783/2019 and 031784/2019 (primarily challenging the declaration of a state of emergency, with a brief mention of the health orders).
  - Article 78 only.
  - TRO granted, affected the health orders despite the prior Federal court ruling.
  - All dismissed, declared moot by the change in PHL § 2164
- *New York Section American Camping Assoc. v. Ruppert*, SDNY, Docket No. 19-cv-06135. (Art. 78, Const., settled)
- *J.S. et al. v. County of Rockland*, Sup. Ct. Rockland Cty., Index No. 032678. (Art. 78, moot, undecided)

## Individual orders in Rockland County

- Based upon the objections and concerns raised to the prior health orders, a change of tactics was made.
- In every case of a known infection, a tracking investigation was held.
  - In cases of non-cooperation, subpoenas and summons for administrative inquiry were issued.
  - Each exposed person was issued an order excluding them from places of public accommodation for the period of incubation (21 days) to ensure no infection arose.
  - Penalty for violations, but none were issued.
  - Expectations were met and the orders were effective.

## Response to 2018/2019 Measles Outbreak – Excluding Unvaccinated Children cont'd

- NYC:
  - Beginning in December, NYC DOHMH began advising yeshivas and day cares to exclude unvaccinated children.
  - In April, 102 schools and daycares in Williamsburg were served with official NYC DOHMH Orders directing them to exclude children.
  - Copy of Order provided in materials.
  - NOVs issued for not complying or not cooperating with audits.
  - Five schools closed and required to submit Corrective Action Plans.
  - Orders and audits led to better compliance .

## Public Health Emergency Declared in NYC

- DOHMH Commissioner announced publicly on April 9, 2019 that the ongoing measles outbreak in Williamsburg was an existing threat to the public health in the city of New York.
- Commissioner determined that the presence of any person in Williamsburg lacking the MMR vaccine created an unnecessary and avoidable risk of continuing the outbreak.
- NYC Health Code Section 3.07—No person “shall do or assist in any act which is or may be detrimental to the public health or the life or health of any individual . . . or . . . shall fail to do any act or take any necessary precaution to protect human life and health.”
- Ordered every adult and child over six months of age who lives, works or resides in four zip codes in Williamsburg and has not received the MMR vaccine must be vaccinated within 48 hours.
  - Exception: People who demonstrate they are immune from measles or have a valid medical exemption.
- Remained in effect until Board of Health meeting on April 17<sup>th</sup>.

## NYC Board of Health Resolution (4/17/19)

- Declared the outbreak in four zip codes in Williamsburg to be a public health nuisance.
- Continued the requirement that residents/students/workers in these affected ZIP codes be vaccinated (or have proof of immunity or be able to demonstrate medical exemption).
- Per Administrative Code §17-148, Order was served by publication in City Record and in local media.
- Violations of the Order punishable by a \$1000 fine.
- Violations were daily and continuing.

## Legal Challenge to NYC Comm'r Vaccination Order and BOH Resolution

- Five parents challenged the vaccination order.
- Challenged as irrational and lacking a sufficient factual predicate.
  - Provided affidavits asserting that vaccination was more dangerous than the natural disease.
- Challenged as violating religious freedom.
- Argued instead that City should have required quarantine and isolation once infectious.
  - Quarantine is authorized by Health Code Section 11.23 when there is "clear and convincing evidence that the health of others is or may be endangered by a . . . contact . . . of a contagious disease that, in the opinion of the Commissioner, may pose an imminent and significant threat to the public health resulting in severe morbidity or high mortality . . ."
  - Orders issued in NYC during 2014 Ebola outbreak.
  - However, it would have had challenges and was not likely to be as effective.
- Argued threat of criminal sanction too harsh.
  - Order states failure to comply is a misdemeanor. City intended to punish only with civil violations carrying a monetary penalty.

## Legal Challenge to NYC Comm'r Vaccination Order and BOH Resolution, cont'd

- On April 18, 2019, Justice Knipel denied motion for an injunction and dismissed their challenge finding:
  - Williamsburg at “the epicenter” of “the most significant spike in incidences in the United States in many years”
    - Court disagreed with the rationale of Rockland County court – that court looked to the percentage of overall population affected to determine whether there is an epidemic.
    - Kings Co court looked to dictionary definition of epidemic – “commonly defined as an outbreak of disease that spreads quickly and affects many individuals at the same time.”
    - At the time of the submission of papers, there were 267 cases in Williamsburg alone.
  - Petitioners unable to offer better and less restrictive alternative.
  - Medical objections not supported by science.
- Appellate Division denied TRO on April 30, 2019.
- Appellate Division denied Motion for Preliminary Injunction on May 13, 2019.
- Outbreak declared over and BOH Resolution Rescinded on September 3, 2019.
- Petitioners continuing their appeal; filed brief in support of appeal in October 2019.

## Summary of Violations Issued in NYC

- 122 summonses issued to 52 day cares/schools.
- 232 potential violations issued for violating vaccine mandate.
  - 15 were not able to be served.
  - 118 were retracted before filing.
  - 55 were withdrawn because vaccinated or immune.
  - 42 were adjudicated at OATH.
    - 35 sustained (20 on default).
    - 7 dismissed.
    - Decisions issued in September, to date no CPLR Art 78 challenge to those decisions.

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Date

Via Hand Delivery and Postal

School  
Address

RE: Measles Outbreak

Dear School Administrator/Principal:

As you may know, there have been dozens of confirmed cases of measles in your area, with many cases in close geographic proximity to your school/day care and/or with some cases in your actual school/day care.

The law authorizes the Commissioner of the New York State Department of Health (NYSDOH) or his or her designee to require unvaccinated or partially vaccinated students/children to stay home during a disease outbreak, which includes measles.<sup>1</sup> As the Commissioner's designee, and pursuant to my own authority in the law to control disease with the County,<sup>2</sup> I have issued a Commissioner's Order dated \_\_\_\_\_, requiring you to take certain measures and precautions to help stop measles from spreading in Rockland County.

**PLEASE NOTE: If you fail to comply with my Commissioner's Order, we will need to take enforcement action against your school/day care. Specifically, should you not comply with my Commissioner's Order, the County and the State will file an action in the Supreme Court to restrain your violation of the Commissioner's Order and mandate you to exclude students/children, and/or the County will proceed with an administrative hearing under the Rockland County Sanitary Code. In addition to court mandated exclusions, these proceedings may result in civil penalties.**

#### Measles Outbreak Generally

As you are aware, measles is a highly contagious disease that in some cases may cause serious health complications and death. Children, immunocompromised individuals, and pregnant women are at an increased risk for death and severe complications resulting from this disease. Further, measles can live up to two hours in the air where an infected person coughed or sneezed, and 90% of non-immune individuals close to an infected person will also become infected. Individuals with a measles infection can spread it to others up to four days before developing a rash.

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<sup>1</sup> New York Public Health Law § 2164; 10 NYCRR § 66-1.10; 10 NYCRR § 2.2(d).

<sup>2</sup> New York Public Health Law § 2100.

As of the date of this letter, there are a total of 105 confirmed cases of measles in Rockland County, 80% of which include individuals age 18 and under. Notably, this is the largest outbreak of measles in New York State in recent years, exceeding the 2013 measles outbreak.

Therefore, to protect the health and safety of all New York State residents, it is imperative that we work together to control the spread of this disease. A critical component to controlling this outbreak, particularly given the impact it is having on the pediatric population, is your adherence to my Commissioner's Order issued pursuant to the Public Health Law. RCDOH remains committed to helping you comply with my Commissioner's Order.

At this time, my Commissioner's Order is being applied to those schools/day cares which:

- *had a confirmed case of measles within the school/day care;*
- *are located near a school or day care with a confirmed case; or*
- *are located in zip codes                      and                      and which maintain a vaccination rate less than 95%.*

Depending upon the circumstances and the progression of the outbreak, these criteria may change in the future.

These above criteria were applied and will continue to be applied to all affected schools/day cares, both public and private, secular and religious.

In schools/day cares affected by the exclusion requirements, if students/children arrive at school/day care without the required documentation demonstrating immunization or serologic immunity, you must take steps to ensure these students/children are not allowed to return until the required documentation is provided or until 21 days after the last case of measles is identified either in your school/day care or in close geographic proximity to your school/day care.

For further information and guidance, please consult the enclosed temporary exclusion algorithms, which were prepared by NYSDOH.

**Additionally, we encourage you to take appropriate steps to ensure that unvaccinated or partially vaccinated students/children can continue with coursework from home until they are able to return to school. Absences for students/children required to stay home as part of my Commissioner's Order must be recorded in accordance with your attendance policy.**

Schools outside of the geographic area of concern should contact their local county health department for guidance if they have concerns about measles exposure among their students.

#### **Steps That Must Be Taken if the Measles Outbreak Continues**

If additional cases of measles occur in your school/day care or if cases continue to occur at other schools or day cares or areas in close geographic proximity to your school/day care, students/children who have not received their first dose of MMR vaccine (and do not have evidence of serologic immunity) will need to remain home for an additional 21 days after the date of last exposure in the community. Previously unvaccinated or partially vaccinated students/children who receive the first dose of MMR vaccine can return to school/day care. If the outbreak persists, K-12 students must get a 2<sup>nd</sup> dose 28 days after they received the 1<sup>st</sup> dose or they will need to remain home.

Due to the ongoing nature of the outbreak, it is not yet known when the last case will occur, but RCDOH as well as NYSDOH will continue to provide guidance and updates to schools/day cares throughout this outbreak. After there are no additional confirmed cases in schools or day cares or within close geographic proximity to schools or day cares, updated guidance will be provided notifying you when excluded unvaccinated or partially vaccinated students/children who have not yet been eligible for return to school/day care can return to regular attendance.

Lastly, we understand that there is incorrect information circulating about the MMR vaccine. While vaccine effectiveness rates can vary, the MMR vaccine is very effective at preventing measles infection. Two doses of MMR vaccine are about 97% effective against the measles, meaning that only about 3 out of 100 people who get two doses of MMR vaccine could get the measles if exposed to the virus. However, they are more likely to have a milder illness and are also less likely to spread the disease to other people. One dose of MMR vaccine is about 93% effective against the measles.

If you have any questions, please contact \_\_\_\_\_ at \_\_\_\_\_. If you are receiving questions or concerns from parents seeking clarifications, please feel free to distribute this letter to them and direct them to contact \_\_\_\_\_ as well.

Very truly yours,

Patricia Schnabel Ruppert, DO, MPH, CPE, DABFM, FAAFP  
Commissioner of Health

Enclosure - Temporary Exclusion Algorithms

STATE OF NEW YORK  
COUNTY OF ROCKLAND: DEPARTMENT OF HEALTH

**In the Matter of the Complaint**

**Against**

**Respondent**

Under and Pursuant to the Public Health Law of the State of New York and the Rockland County Sanitary Code

**COMMISSIONER'S  
ORDER**

WHEREAS, As of the date of this Commissioner's Order, there are a total of 105 confirmed cases of measles in Rockland County, 80% of which include individuals age 18 and under; and

WHEREAS, This is the largest outbreak of measles in New York State in recent years, exceeding the 2013 measles outbreak; and

WHEREAS, There have been dozens of confirmed cases of measles in your area, with many cases in other schools/day cares in close geographic proximity to your school/day care and

WHEREAS, Pursuant to New York Public Health Law § 2164, 10 NYCRR § 2.2(d) and 10 NYCRR § 66-1.10, the Commissioner of the New York State Department of Health (NYSDOH) or his or her designee is permitted to issue an order requiring unvaccinated or partially vaccinated students/children to stay home during a disease outbreak, which includes measles; and

WHEREAS, The NYSDOH Commissioner has designated the Commissioner of the Rockland County Department of Health (RCDOH) with the authority to temporarily require unvaccinated or partially vaccinated students/children to stay home during the current measles outbreak, where there has been one or more recently confirmed cases of measles in their schools/day cares or their schools/day cares are in close geographic proximity to other schools/day cares with a confirmed case of measles; and

WHEREAS, Pursuant to New York Public Health Law § 2100, the RCDOH Commissioner also has authority to exclude students/children in schools/daycares based on other criteria, including but not limited to, the diagnosis of a confirmed case that is in close proximity to any school with the County;

BY virtue of the authority vested in me by the Public Health Law of the State of New York and the Rockland County Sanitary Code, as Commissioner, I do hereby

ORDER, that \_\_\_\_\_, located at \_\_\_\_\_, \_\_\_\_\_, New York, Town of Ramapo, and with a mailing address of \_\_\_\_\_, \_\_\_\_\_, New York \_\_\_\_\_, must take measures and precautions to help stop measles from spreading in Rockland County; and be it further

ORDERED, that \_\_\_\_\_, located at \_\_\_\_\_, \_\_\_\_\_, New York, Town of Ramapo, and with a mailing address of \_\_\_\_\_, \_\_\_\_\_, New York, must require all unvaccinated or partially vaccinated students/children within its school/day care to stay home and not return to your school/day care for the periods set forth in the vaccination schedule attached hereto as Schedule A; and be it further

ORDERED, \_\_\_\_\_, located at \_\_\_\_\_, \_\_\_\_\_, New York, Town of Ramapo, and with a mailing address of \_\_\_\_\_, \_\_\_\_\_, New York, must submit to RCDOH: (a) a list of all students/children who attend the school/day care, their dates of birth and the dates they received the Measles-Mumps-Rubella (MMR) vaccine (the "List") and (b) a notarized affidavit sworn under the penalties of perjury or, if unable to take a religious oath, a notarized affirmation affirmed under the penalties of perjury, containing the names of the unvaccinated or partially vaccinated students/children which have been excluded from the school/day care and the earliest dates of their return (the "Affidavit/Affirmation," a sample of which is attached hereto as Schedule B)<sup>1</sup>; and be it further

ORDERED, that \_\_\_\_\_, located at \_\_\_\_\_, \_\_\_\_\_, New York, Town of Ramapo, and with a mailing address of \_\_\_\_\_, \_\_\_\_\_, New York, is required to submit the List and Affidavit/Affirmation to RCDOH, attention Tatiana DeLuna-Evans, on a weekly basis by the close of business on Fridays until this Commissioner's Order is lifted; and be it further

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<sup>1</sup> If your entity receives funds under programs administered by the U.S. Secretary of Education and is therefore subject to the federal Family Educational Rights and Privacy Act ("FERPA"), guidance from the U.S. Department of Education's Family Policy Compliance Office states that disclosure of this information is covered under FERPA's "health and safety exception" (<https://www2.ed.gov/policy/gen/guid/fpco/ferpa/library/albippaa.html>). Please see the U.S. Department of Education's website for more information on the record-keeping requirements related to the release of this information (<https://studentprivacy.ed.gov/faq/does-school-have-record-disclosures-made-under-ferpa%E2%80%99s-health-or-safety-emergency-exception>).

ORDERED, that this Commissioner's Order shall not be lifted until , located at , New York, Town of Ramapo, and with a mailing address of , New York, has achieved a 95% vaccination rate, which has been validated by NYSDOH, or NYSDOH and I have determined that the measles outbreak no longer is a threat to the public health; and be it further

ORDERED, Failure to comply with this Commissioner's Order shall result in civil penalties; and be it further

ORDERED, That each day of violation constitutes a separate and distinct violation subject to a civil penalty not to exceed the sum of two thousand dollars (\$2,000.00) per violation per day, as prescribed in Article I of the Sanitary Code of Rockland County and Section 309 of the Public Health Law of the State of New York; and be it further

ORDERED, that a true copy of this Commissioner's Order made on the 7<sup>th</sup> day of January 2019 be posted upon the school or day care located at , New York, Town of Ramapo no later than the 8<sup>th</sup> day of January 2019.

DATED: POMONA, NEW YORK  
January 7, 2019

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PATRICIA S. RUPPERT, DO, MPH, CPE, DABFM, FAAFP  
COMMISSIONER OF HEALTH  
COUNTY OF ROCKLAND

## SCHEDULE A

### Vaccination Requirements

- Students/children are considered protected against measles if they have received the MMR vaccine according to the guidelines below or they have serologic evidence of immunity.
- *Students who have not received their first dose of MMR vaccine as of January 7, 2019:* Any student who has not received their first dose of MMR vaccine cannot be allowed to attend school for 21 days after the last case of measles is identified in the community.
- *Schools with confirmed cases:* In schools with a confirmed case of measles, unvaccinated or partially vaccinated students/children must remain at home for 21 days after the last date of exposure in the school, even if they receive their first dose of MMR during this time period.
- *Schools which are located in zip codes 10952 and 10977 and which maintain a vaccination rate less than 95%:*
  - In schools that do not yet have a confirmed case of measles, a student who receives one dose of MMR can return to school, however, such student must get a second dose 28 days after the first dose, if the outbreak continues.
  - If a confirmed case of measles is identified in one of these schools, all students/children who have received only one dose of MMR will be excluded.
  - K-12 students with 1 dose of MMR vaccine as January 7, 2019: Students in kindergarten through twelfth grade, with 1 dose of MMR vaccine must remain home until 21 days after the last case of measles in the community is identified, unless they receive their second dose of MMR vaccine. These students may return at any time after receiving this second dose.
  - Prekindergarten students and children in day care with 1 dose of MMR as of January 7, 2019: Students/children in pre-kindergarten and day care, who are older than 12 months of age and have 1 dose of MMR are up-to-date for age and do not have to remain home from school/day care. However, it is highly recommended that they receive a second dose of MMR vaccine.
- *Infants who are in day cares with confirmed cases and/or day cares which are located in zip codes 10952 and 10977 and which maintain a vaccination rate less than 95%:* Infants less than 6 months of age are too young to receive a dose of MMR and will be excluded from day care. Infants ages 6 to 11 months must receive one dose of MMR vaccine to remain in day care. This dose does not count towards the two dose MMR requirement.
- Any student/child with serologic evidence of immunity to measles (which means a positive blood test) may continue to attend school/day care.
- Please keep in mind that 10 NYCRR § 66-1.10(c) requires schools to keep a current list of susceptible students for use during disease outbreaks. Please use this list to assist with identifying the students that must remain home.

### Sample Affidavit/Affirmation

**AFFIDAVIT or AFFIRMATION**

8



# Rockland County

Ed Day, Rockland County Executive

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**DEPARTMENT OF HEALTH**  
Dr. Robert L. Yeager Health Center  
50 Sanatorium Road, Building D  
Pomona, New York 10970  
Phone: (845) 364-2512 Fax: (845) 364-2628



**Patricia Schnabel Ruppert, D.O., M.P.H., CPE, DABFM, FAAFP**  
*Commissioner of Health*

Via Hand Delivery

Date

School Name  
Street Address  
City, NY 109XX

RE: School Immunization Attendance Requirements

Dear School Administrator/Principal:

As you are aware, due to the current measles outbreak, your school/daycare was previously subject to a Commissioner's Order to temporarily exclude any student/child who did not have an adequate dose or doses of the measles, mumps and rubella (MMR) vaccine, based upon such student's or child's age and grade.

While the Order was in effect, the New York State Department of Health (NYSDOH) and/or the Rockland County Department of Health (RCDOH) audited the immunizations records of your school/daycare to ensure that the temporary exclusions were being implemented in accordance with the Order. As part of the audit, NYSDOH and/or RCDOH identified students/children within your school/daycare who are not in compliance with New York State (NYS) school immunization attendance requirements with regard to the MMR vaccine.

As you know, New York State Public Health Law (PHL) § 2164 and its implementing regulations at 10 NYCRR Subpart 66-1 require a principal or person in a charge of a school, within 14 calendar days of attendance at such school, or within 30 days where a student transfers to such school from out of state or from another country, to exclude any student/child that does not have (1) a valid certificate of immunization or (2) a valid religious or medical exemption on file with the school/daycare. As set forth in 10 NYCRR § 66-1.6, a valid certificate of immunization can include either (a) documentation of required vaccinations against certain diseases (i.e., measles, mumps, and rubella) or (b) laboratory evidence of immunity of specified diseases, including measles, mumps and rubella.

The audit conducted by NYSDOH and/or RCDOH identified students/children within your school/daycare who, in excess of the timeframes set forth above, have neither a valid certificate of

immunization for MMR, nor a valid medical or religious exemption on file with your school/daycare.

Accordingly, pursuant to my authority in PHL § 2100 and a designation by the New York State Commissioner of Health under 10 NYCRR § 66-1.10 to enforce the school immunization attendance requirements set forth in PHL § 2164 and 10 NYCRR Subpart 66-1, I have issued a new Commissioner's Order, attached, requiring your school/daycare to immediately exclude certain students/children until they come into compliance with the school immunization attendance requirements. Specifically, as outlined in the Order, you must exclude the students/children identified in the Order in accordance with the following criteria:

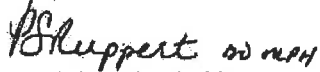
- As of the date of the Order, students in kindergarten through grade 12 with 1 dose of MMR vaccine received greater than 28 days prior must be excluded from school or daycare until they submit: (1) a valid certificate of immunization, documenting (a) a second dose of MMR vaccine or (b) laboratory evidence of immunity to measles, mumps and rubella; or (2) a valid medical or religious exemption to MMR vaccine. Students in kindergarten through grade 12 who receive the first dose of MMR vaccine must receive the second dose 28 days later in order to remain in school.
- As of the date of the Order, students greater than 15 months of age with 0 doses of MMR vaccine must be excluded from school or daycare until they submit: (1) a valid certificate of immunization, documenting (a) their first dose of MMR vaccine or (b) laboratory evidence of immunity to measles, mumps and rubella; or (2) a valid medical or religious exemption to MMR vaccine.
- With regard to the above bullet points, where submitting laboratory evidence of immunity, students must demonstrate immunity to all three diseases: measles, mumps, and rubella. For example, students with a positive measles titer, but negative mumps and/or rubella titer(s) still must submit either (1) a valid certificate of immunization demonstrating receipt of the MMR vaccine; or (2) a valid medical or religious exemption to MMR vaccine.

**PLEASE NOTE:** If you fail to comply with my Commissioner's Order, we will take enforcement action against your school/day care. Specifically, the County will file an action in the Supreme Court to restrain your violation of the Commissioner's Order and mandate you to exclude students/children, and/or the County will proceed with an administrative hearing under the Rockland County Sanitary Code. In addition to court mandated exclusions, these proceedings may result in civil penalties.

If you have any questions, please contact Tatiana DeLuna-Evans at 845-364-2997. If you are receiving questions or concerns from parents seeking clarifications, please feel free to distribute this letter to them and direct them to contact Tatiana DeLuna-Evans as well. Please fax all required documentation to 845-364-3658.

Lastly, although the Commissioner's Order described in and attached to this letter only applies to measles, mumps, and rubella, the school immunization attendance requirements apply to all diseases set forth in PHL § 2164. Accordingly, I strongly advise that you review your immunization records to ensure that all students/children attending your school/daycare are in compliance with the school immunization attendance requirements required for every disease listed in PHL § 2164.

Very truly yours,

Handwritten signature of Patricia Schnabel Ruppert in cursive script.

Patricia Schnabel Ruppert, DO, MPH, CPE, DABFM, FAAFP  
Commissioner of Health

Enclosure:

Commissioner's Order for School Immunization Attendance Requirements

STATE OF NEW YORK  
COUNTY OF ROCKLAND: DEPARTMENT OF HEALTH

In the Matter of the Complaint

Against

\_\_\_\_\_  
Respondent

Under and Pursuant to the Public Health Law of the State of New York and the Rockland County Sanitary Code

**COMMISSIONER'S  
ORDER**

WHEREAS, As of the date of this Commissioner's Order, there are a total of 186 confirmed cases of measles in Rockland County, 84% of which include individuals age 18 and under; and

WHEREAS, This is the largest outbreak of measles in New York State since 1989; and

WHEREAS, Pursuant to New York Public Health Law § 2100 and a designation by the New York State Commissioner of Health under 10 NYCRR § 66-1.10, the Rockland County Department of Health (RCDOH) Commissioner has the authority to enforce New York Public Health Law § 2164, and associated regulations at 10 NYCRR Subpart 66-1, which require a principal or person in charge of a school, within 14 calendar days of attendance at such school, or within 30 calendar days where a student transfers to such school from out of state or from another country, to exclude all students that do not have (1) a valid certificate of immunization on file in accordance with 10 NYCRR § 66-1.6, which includes (a) documentation of required vaccinations against certain diseases, including measles, mumps, and rubella, or (b) laboratory evidence of immunity specified diseases, including, measles, mumps, and rubella, or (2) a valid medical or religious exemption on file with their school/daycare; and

WHEREAS, Pursuant to an audit conducted by the New York State Department of Health (NYSDOH) and/or RCDOH on **Date**, in excess of the timeframes set forth above, certain students have been identified as having neither a valid certificate of immunization on file with **Insert name**

**of school/day care** for MMR vaccine or laboratory evidence of immunity against measles, mumps, and rubella; nor a valid medical or religious exemption on file with **Insert name of school/day care**.

BY virtue of the authority vested in me by the Public Health Law of the State of New York and the Rockland County Sanitary Code, as Commissioner, I do hereby

ORDER, that **Insert name of school/day care**, with offices located at address, and schools/day cares located at address, must exclude the students identified in Schedule A until documentation is presented to RCDOH that such students are in compliance with the school immunization attendance requirements attached hereto as Schedule B<sup>1</sup>; and be it further

ORDERED, that **Insert name of school/day care**, with offices located at address, and schools/day cares located at address, must submit a notarized affidavit sworn under penalty of perjury, or if unable to take a religious oath, a notarized affirmation affirmed under the penalties of perjury, identifying the students/children who have been excluded from the school/day care in accordance with Schedules A and B of this Order (the “Affidavit/Affirmation,” a sample of which is attached hereto as Schedule C); and be it further

ORDERED, that failure to comply with this Commissioner’s Order shall result in legal actions that may include an administrative hearing, civil penalties, a court order and/or an injunction; and be it further

ORDERED, that that each day of violation constitutes a separate and distinct violation subject to a civil penalty not to exceed the sum of two thousand dollars (\$2,000.00) per violation

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<sup>1</sup> If your entity receives funds under programs administered by the U.S. Secretary of Education and is therefore subject to the federal Family Educational Rights and Privacy Act (“FERPA”), guidance from the U.S. Department of Education’s Family Policy Compliance Office states that disclosure of this information is covered under FERPA’s “health and safety exception” (<https://www2.ed.gov/policy/gen/guid/fpco/ferpa/library/alhippaa.html>). Please see the U.S. Department of Education’s website for more information on the record-keeping requirements related to the release of this information (<https://studentprivacy.ed.gov/faq/does-school-have-record-disclosures-made-under-ferpa%E2%80%99s-health-or-safety-emergency-exception>).

per day, as prescribed in Article I of the Sanitary Code of Rockland County and consistent with Section 309 of the Public Health Law of the State of New York; and be it further

ORDERED, that a true copy of this Commissioner's Order made on the 16<sup>th</sup> day of April 2019 be posted upon the school or day care located at address, New York, Town of Name of Town no later than the 17<sup>th</sup> day of April, 2019.

DATED: POMONA, NEW YORK  
April 16, 2019



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PATRICIA S. RUPPERT, DO, MPH, CPE, DABFM, FAAFP  
COMMISSIONER OF HEALTH  
COUNTY OF ROCKLAND

**SCHEDULE A**

**School Name**  
**Street Address**  
**City, NY 109XX**

<b>LAST NAME</b>	<b>FIRST NAME</b>	<b>DOB</b>	<b>GRADE</b>	<b>1ST MMR DATE</b>	<b>REQUIRED DOCUMENTATION</b>

## **SCHEDULE B**

### **School Immunization Attendance Requirements**

- As of the date of this Order, students in kindergarten through grade 12 with 1 dose of MMR vaccine received greater than 28 days prior must be excluded from school or daycare until they submit: (1) a valid certificate of immunization, documenting (a) a second dose of MMR vaccine or (b) laboratory evidence of immunity to measles, mumps, and rubella; or (2) a valid medical or religious exemption to MMR vaccine. Students in kindergarten through grade 12 who receive the first dose of MMR vaccine must receive the second dose 28 days later in order to remain in school.
- As of the date of this Order, students greater than 15 months of age with 0 doses of MMR vaccine must be excluded from school or daycare until they submit: (1) a valid certificate of immunization, documenting (a) their first dose of MMR vaccine or (b) laboratory evidence of immunity to measles, mumps, and rubella; or (2) a valid medical or religious exemption to MMR vaccine.
- With regard to the above bullet points, where submitting laboratory evidence of immunity, students must demonstrate immunity to all three diseases: measles, mumps, and rubella. For example, students with a positive measles titer, but negative mumps and/or rubella titer(s) still must submit either (1) a valid certificate of immunization demonstrating receipt of the MMR vaccine; or (2) a valid medical or religious exemption to MMR vaccine.

**SCHEDULE C**

**Affidavit/Affirmation**

STATE OF NEW YORK  
COUNTY OF ROCKLAND: DEPARTMENT OF HEALTH

-----X  
IN THE MATTER

OF

**AFFIDAVIT or AFFIRMATION**

**COMPLIANCE WITH NEW YORK STATE SCHOOL IMMUNIZATION ATTENDANCE REQUIREMENTS**

Under and Pursuant to the Public Health Law of the State  
of New York and the Rockland County Sanitary Code.

-----X

STATE OF NEW YORK        )  
                                      ) ss  
COUNTY OF ROCKLAND    )

\_\_\_\_\_ [Affiant's name], being duly sworn deposes and says:

[OR]

\_\_\_\_\_ [Affirmant's name], whose religion prohibits the taking of an oath, hereby affirms the  
following under the penalty of perjury:

1. I am a \_\_\_\_\_ at \_\_\_\_\_ School/Day Care, and I am responsible for the administration  
and management of the \_\_\_\_\_ School/Day Care.

2. I make this Affirmation based upon my personal knowledge and my review of the attendance records  
of \_\_\_\_\_ School/Day Care which are in my possession or subject to my control.

3. I hereby affirm that the following students/children, as set forth in Schedule A of the Commissioner's  
Order, are excluded from \_\_\_\_\_ School/Day Care and that they will not be permitted to return to \_\_\_\_\_  
School/Day Care until the School/Daycare is in receipt of the required school immunization attendance  
documentation, as set forth in Schedule B of the Commissioner's Order:

- a. \_\_\_\_\_ [name of student]
- b. \_\_\_\_\_ [name of student]
- c. \_\_\_\_\_ [name of student]

Dated: \_\_\_\_\_, 2019  
\_\_\_\_\_ [city], New York

\_\_\_\_\_  
[Signature]

Affirmed this \_\_\_\_ day  
of \_\_\_\_, 2019.

\_\_\_\_\_  
[Notary's Signature]  
[Notary's Stamp]

**DECLARATION OF A LOCAL STATE OF EMERGENCY  
FOR ROCKLAND COUNTY**  
Dated: March 26, 2019

There exists in this County a State of Emergency related to the outbreak of measles that has been plaguing us since October 2018. It has been found that a meaningful portion of the County's residents are not vaccinated against the measles, which permits the outbreak to continue.

This emergency directive is necessary because the County is experiencing an outbreak larger in size and duration than any outbreak of that disease in this County in many years. Those jeopardized include infants and those with immune compromised systems, including those already suffering from cancer, the elderly and the infirm.

I find that I must take this step to protect the public safety of the residents and visitors to Rockland County. I must take this step to protect the infants, infirm, and ill of this County who are unable to be vaccinated against the measles or who are immunocompromised. I must make every effort to protect them.

Therefore, in an effort to control this outbreak, and keep the residents and visitors to the County healthy, I declare a State of Emergency and enact this directive pursuant to the powers vested in me by the laws of this State.

Pursuant to the powers vested in me, by virtue of New York State Executive Law § 24, I hereby direct as follows:

## **Measles Outbreak Emergency Directive**

### **I. *Prohibitions***

From 12:01am March 27, 2019 to 11:59 p.m. on April 25, 2019, no parent or guardian of a minor or infant under the age of 18, shall cause, allow, permit, or suffer a minor or infant under their supervision, to enter any place of public assembly in Rockland County, if that minor or infant is not vaccinated against measles for any reason other than being serologically immune to measles as documented by a physician, or prevented from receiving a measles vaccination for a medical reason documented by a physician, or because the infant is under the age of 6 months.

### **II. *Definitions***

#### **Vaccinated/Unvaccinated**

For the purpose of this emergency directive, a person is vaccinated if that person has, at any time, received at least one dose of a medically recognized vaccine against the measles (for example, the MMR vaccine), and four days has passed since receipt of that dose. All other persons are deemed unvaccinated for the purposes of the enforcement of this directive.

#### **Place of Public Assembly**

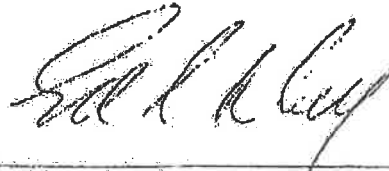
A. A place of public assembly shall be a place where more than 10 persons are intended to congregate for purposes such as civic, governmental, social, or religious functions, or for recreation or shopping, or for food or drink consumption, or awaiting transportation, or for daycare or educational purposes, or for medical treatment. A place of public assembly shall also include public transportation vehicles, including but not limited to, publicly or privately owned buses or trains, but does not include taxi or livery vehicles.

B. Places of public assembly do not include private residences, unless that private residence, or a portion of it, is permitted by a Certificate of Occupancy, or other governmental license or authorization to carry on one or more of the defining functions of a place of public assembly.

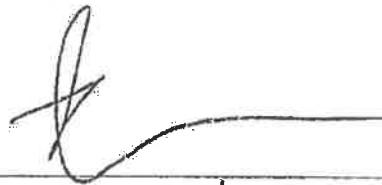
C. With respect to the offices of physicians, hospitals, or other medical facilities, no restriction shall apply where the minor or infant is present for the purpose of medical care, treatment, or immunization. However, except in emergency situations, a parent or guardian must call ahead to advise the office or facility that an unvaccinated minor or infant will be coming to the facility or office.

D. With respect to minors or infants required by law to be at a place of public assembly, for example attendance at family court or the like, the prohibition shall not apply. However, a parent, guardian, or other responsible person or representative, must call ahead to advise the office or facility that an unvaccinated minor or infant will be coming to the facility or office.

Dated: March 26, 2019



Edwin J. Day  
County Executive  
County of Rockland



Witness:  
[Print name]

Thomas Estlinbach

STATE OF NEW YORK  
COUNTY OF ROCKLAND: DEPARTMENT OF HEALTH

**In the Matter of the Measles Outbreak of 2018-2019**

Under and Pursuant to the Public Health Law of the State of New York and the Rockland County Sanitary Code

**COMMISSIONER'S  
ORDER**

WHEREAS, There has been a measles outbreak in Rockland County since October 2018; and

WHEREAS, This outbreak is a public health emergency; and

WHEREAS, To date, there are a total of 184 confirmed cases of measles in Rockland County, 84.2% of which include individuals age 18 and under, which cases continue to grow as new cases are still occurring; and

WHEREAS, This is the largest outbreak of measles in New York State since 1989 and the largest outbreak of measles since the measles was declared eradicated in the United States in 2000 by the Centers for Disease Control and Prevention; and

WHEREAS, On February 22, 2019, the Commissioner of the New York State Department of Health (NYSDOH) determined that an Imminent Threat to Public Health (ITPH) exists in Rockland County, pursuant to Public Health Law § 621; and

WHEREAS, Measles is a highly contagious viral disease that can result in serious health complications, such as pneumonia, encephalitis (swelling of the brain) and visual and hearing deficits that could lead to blindness and deafness. A long-term complication, subacute sclerosing panencephalitis (SSPE), is a very rare but fatal disease of the central nervous system that results from a measles virus infection acquired earlier in life. About one-third of reported measles cases have at least one complication and in some cases, measles can cause death. Measles can be serious in all age groups. However, infants, young children, pregnant women and people whose immune systems are weak are more likely to suffer from measles complications. In particular, measles illness during pregnancy may result in spontaneous abortion or cause a pregnant woman to give birth prematurely or have a low birthweight baby; and

WHEREAS, To date, in Rockland, two adults have been admitted into the Intensive Care Unit (ICU), two babies have been admitted to the Pediatric Intensive Care Unit (PICU), and one infant has been admitted to the Neonatal Intensive Care Unit (NICU) due to measles complications. In addition, a pregnant woman who contracted measles gave birth prematurely to an infant positive for measles; and

WHEREAS, With a 90% transmission rate to exposed, non-immune persons, measles is easily transmitted from a sickened person to others who lack immunity to the disease. The virus can live for up to two hours in the air and on surfaces where an infected person coughed or sneezed, and people who lack immunity are highly likely to become sick if they are in contact with an infectious person or near where an infectious person recently has been; and

WHEREAS, The incubation period of measles is up to 21 days; and

WHEREAS, Although measles is highly contagious, the Measles, Mumps, and Rubella (MMR) vaccine is an effective and safe vaccine that will prevent its transmission; and

WHEREAS, The measles outbreak persists in Rockland County despite the other efforts taken by the Rockland County Department of Health (RCDOH), in consultation and coordination with the NYSDOH, including education and outreach, free vaccinations and temporary orders of exclusion requiring unvaccinated and partially vaccinated students and children to remain home from school and day care; and

WHEREAS, Pursuant to 10 NYCRR § 2.1(a), measles is a communicable disease; and

WHEREAS, Pursuant to New York Public Health Law § 324(e), the Rockland County Charter, the Rockland County Administrative Code and the Rockland County Sanitary Code, the Commissioner of Health of the Rockland County Health District and the Commissioner of RCDOH (the "Commissioner") has the authority to enforce the New York Public Health Law and its associated regulations; and

WHEREAS, Pursuant to New York Public Health Law § 2100, the Commissioner is required to exercise proper and vigilant medical inspection and control of all persons and things infected with or exposed to communicable diseases, provide for the care and isolation of cases of communicable disease, and has the authority to separate persons from other persons to prevent transmission of the infectious agent

of persons known to be ill or suspected of being infected to prohibit and prevent intercourse and communication with or use of infected premises, places and things; and

WHEREAS, Pursuant to 10 NYCRR §§ 2.16 and/or 2.6, upon receipt of a report of a case of communicable disease, the Commissioner is required to conduct an investigation to verify the diagnosis, ascertain the source of infection, discover contacts and unreported cases, instruct a responsible member of the household of the means to be taken to prevent further spread of the disease and to put into effect other recognized measures which tend to reduce morbidity and mortality; and

WHEREAS, Pursuant to the New York Public Health Law § 1300 et seq., the New York State Sanitary Code, 10 NYCRR Part 8, and Article 1.17.0 of the Rockland County Sanitary Code, the Commissioner shall investigate and order the suppression, removal and abatement of all nuisances and conditions detrimental to life and health found to exist in the health district; and

WHEREAS, The Commissioner of Health has determined that persons who have been diagnosed with the measles or exposed to a person diagnosed with the measles, based upon laboratory evidence or a measles tracing investigation conducted by RCDOH, pose an imminent and significant threat to the public health and, therefore, must be excluded from all indoor and outdoor places of public assembly for a period of up to 21 days, which is the incubation period for measles from the date of diagnosis or exposure, to prevent the further transmission of this communicable disease;

BY virtue of the authority vested in me by the Public Health Law of the State of New York and the Rockland County Sanitary Code, as Commissioner, I do hereby

DECREE, that any person diagnosed with the measles or exposed to a person diagnosed with the measles as evidenced by laboratory evidence or a measles tracing investigation conducted by RCDOH, poses an imminent and significant threat to the public health and safety and is a public health nuisance; and

ORDER, That, any person so diagnosed or exposed must be excluded from indoor and outdoor places of public assembly located in Rockland County, as such places of public assembly are defined in this Order, for a period of up to 21 days, with such duration to be determined solely by the Commissioner or

her designee, to prevent the further transmission of this communicable disease, remedy this imminent and significant threat to public health, and to suppress and remove said public health nuisance; and be it further

ORDERED, that this Order shall be applied to affected individuals and enforceable against such individuals or the parents or guardians of such individuals when they are minors by hand delivery to such individuals in person or to their residence, an Order in the form attached hereto as Exhibit A, entitled "RCDOH COMMUNICABLE DISEASE & EXPOSURE EXCLUSION ORDER," which shall contain the following terms and conditions promulgated pursuant to my authority as Commissioner of Health for the County of Rockland:

That for the purposes of this Order, a "place of public assembly" shall include: any indoor or outdoor place where 10 or more persons are intended to congregate for purposes such as civic, governmental, social, sports, or religious functions, or for work or employment, or for recreation or shopping, or for food or drink consumption, or awaiting transportation, or for daycare or educational purposes, or for medical treatment, including public transportation vehicles, including but not limited to, publicly and privately owned buses or trains, including taxis and livery vehicles. Places of public assembly shall also include all private residences other than any at which you reside. All dormitories, regardless of intended occupancy, are places of public assembly. A "place of public assembly" shall not include your own private residence. However, during the period of exclusion, you shall prohibit all non-immune, unvaccinated or immunocompromised guests, relatives, visitors, workers, or any other person other than those persons who reside in the residence, from entering your private residence for any reason apart from medical, home care, or pastoral religious purposes. However, all permitted visitors must be notified that you or your child has the measles before entering the premises. With respect to the offices of physicians, hospitals or other medical facilities, no restriction shall apply where you or your child are present for the purpose of medical care, treatment or immunization. However, except in emergency situations, you (or, if you are a minor or infant, your parent or guardian) must call ahead to advise the office or facility that you or your child will be coming to the facility or office. If you are required by law to be at a place of public assembly (e.g., attendance at family

court), this Order shall not apply. However, you (or if you are a minor or infant, your parent or guardian) must call ahead to advise the office or facility that you will be coming to the facility or office.

That you are required to cooperate with RCDOH public health authorities by providing information regarding details of your illness, exposures and contacts.

That each date upon which a person violates any term of this Order constitutes a separate and distinct violation subject to a civil penalty not to exceed the sum of two thousand dollars (\$2,000.00) per violation per day. Parents and guardians subject to this Order on behalf of an exposed or diagnosed minor are responsible for compliance by their child.

That any person subject to this Order has the right to request an expedited formal hearing to be held according to the procedure set forth in the Rockland County Sanitary Code § 1.18.0 except that notice of the hearing, as described in § 1.19.0, may be made by any means that the Commissioner deems to be appropriate under the circumstances. The purpose of any such hearing is limited to contesting the finding that the subject of the Order has been exposed to the measles or the subject's vaccination/immune status. Any such hearing shall be scheduled to take place between one (1) and five (5) business days of your request, with a written determination to be rendered as soon as practicable. There shall be no reconsideration of this determination, as described in § 1.27.0, or any other administrative appeal. To request an expedited formal hearing, please contact RCDOH at (845) 364-2608 or via email at EnvHealth@co.rockland.ny.us or by letter to the Commissioner of Health, Rockland County Department of Health, 50 Sanatorium Road, Building D, Pomona, NY 10970.

That during the pendency of any such hearing and the determination issued thereafter, this Order shall remain in effect.

DATED: POMONA, NEW YORK  
, 2019

PATRICIA S. RUPPERT, DO, MPH, CPE, DABFM, FAAFP  
COMMISSIONER OF HEALTH  
COUNTY OF ROCKLAND

Exhibit A

Order No. 19-\_\_\_\_\_

**RCDOH COMMUNICABLE DISEASE &  
EXPOSURE EXCLUSION ORDER**

Issued to: \_\_\_\_\_, ☐ on behalf of the minor \_\_\_\_\_, residing  
at \_\_\_\_\_, Dated: \_\_\_\_\_

***BE ADVISED:***

THE COMMISSIONER OF THE DEPARTMENT OF HEALTH FOR THE COUNTY OF ROCKLAND (RCDOH) HAS DETERMINED THAT ***YOU OR YOUR CHILD HAVE BEEN EXPOSED TO OR DIAGNOSED WITH THE MEASLES WITHIN THE PAST 21 DAYS, AND YOU ARE NOT IMMUNE TO THE MEASLES.***

***MEASLES IS A DANGEROUS AND HIGHLY COMMUNICABLE DISEASE.***

AS DESCRIBED IN DETAIL IN THE BODY OF THIS ORDER, TO PREVENT THE FURTHER TRANSMISSION OF THE MEASLES, YOU ARE HEREBY PROHIBITED FROM GOING TO OR BEING PRESENT AT ***ANY INDOOR OR OUTDOOR PLACE OF PUBLIC ASSEMBLY.***

***DUE TO THE OUTBREAK OF MEASLES IN THIS COUNTY POSING A PUBLIC HEALTH EMERGENCY, YOU MUST COMPLY WITH THIS ORDER OR FACE CIVIL PENALTIES OF UP TO \$2,000 FOR EACH DATE UPON WHICH YOU VIOLATE THE TERMS OF THIS ORDER.***

WHEREAS, Pursuant to the New York Public Health Law, the New York State Sanitary Code, and the Rockland County Sanitary Code, the Commissioner of Health of the County of Rockland has the duty and responsibility to investigate and order the suppression, removal and abatement of communicable diseases, including the measles, and all other conditions detrimental to life and health found, including taking measures to reduce the morbidity and mortality posed by the measles in Rockland County; and

WHEREAS, The Commissioner of Health has determined that you, or a minor of whom you are the parent or guardian (your child) as named in this Order has been,

- ☐ ***diagnosed with the measles or***
- ☐ ***exposed to a person diagnosed with the measles***

based upon

- ☐ ***laboratory evidence and/or***
- ☐ ***a measles tracing investigation conducted by RCDOH; and***

WHEREAS, The Commissioner of Health has determined that you or your child are not immune to or vaccinated against the measles, or your vaccination status is unverified; and

WHEREAS, The Commissioner of Health has determined that, as a result, you pose an imminent and significant threat to the public health;

BY virtue of the authority vested in the Commissioner by the Public Health Law of the State of New York and the Rockland County Sanitary Code, it is hereby:

**ORDERED, That, upon your receipt of this Order,**

***(1) You or your child, as named in this Order, are excluded from indoor and outdoor places of public assembly located in Rockland County for a period of \_\_\_\_ days from the date of this Order.***

***(2) You are prohibited from going to or being present at any place of public assembly for any period of time, except under those specific circumstances described by this Order.***

For the purposes of this Order, a “place of public assembly” shall include any indoor or outdoor place where 10 or more persons are intended to congregate for purposes such as civic, governmental, social, sports, or religious functions, or for work or employment, or for recreation or shopping, or for food or drink consumption, or awaiting transportation, or for daycare or educational purposes, or for medical treatment, including public transportation vehicles, including but not limited to, publicly and privately owned buses or trains, including taxis and livery vehicles. Places of public assembly shall also include all private residences, regardless of the number of persons present or intended to be present, other than any at which you reside. All dormitories, regardless of intended occupancy, are places of public assembly.

A “place of public assembly” shall not include your own private residence. However, during the period of exclusion, you shall prohibit all non-immune, unvaccinated or immunocompromised guests, relatives, visitors, workers, or any other person other than those persons who reside in the residence, from entering your private residence for any reason apart from medical, home care, or pastoral religious purposes. However, all permitted visitors must be notified that you or your child has the measles before entering the premises.

With respect to the offices of physicians, hospitals or other medical facilities, no restriction shall apply where you or your child are present for the purpose of medical care, treatment or immunization. However, except in emergency situations, you (or, if you are a minor, your parent or guardian) must call ahead to advise the office or facility that you or your child will be coming to the facility or office. If you are required by law to be at a place of public assembly (e.g., attendance at family court), this Order shall not apply. However, you (or if you are a minor, your parent or guardian) must call ahead to advise the office or facility that you will be coming to the facility or office.

***(3) You are required to cooperate with RCDOH public health authorities by providing information regarding details of your illness, exposures and contacts.***

**Be advised that, each date upon which you violate any term of this Order constitutes a separate and distinct violation subject to a civil penalty not to exceed the sum of two thousand dollars (\$2,000.00) per violation per day. PARENTS AND GUARDIANS SERVED WITH THIS ORDER ON BEHALF OF AN EXPOSED MINOR ARE RESPONSIBLE FOR COMPLIANCE BY THEIR CHILD.**

You and/or your child have the right to request an expedited formal hearing to contest the finding that you or your child have the measles or have been exposed to the measles or to contest your or your child’s vaccination/immune status, which hearing shall be scheduled to take place between one (1) and five (5) business days of your request. To request an expedited formal hearing, please contact RCDOH at (845) 364-2608 or via email at EnvHealth@co.rockland.ny.us or by letter to the Commissioner of Health, Rockland County Department of Health, 50 Sanatorium Road, Building D, Pomona, NY 10970. During the pendency of any such hearing and the determination issued thereafter, this Order shall remain in effect.

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PATRICIA S. RUPPERT, DO, MPH, CPE, DABFM, FAAFP  
COMMISSIONER OF HEALTH  
COUNTY OF ROCKLAND

Order No. 19-\_\_\_\_\_

## RCDOH COMMUNICABLE DISEASE & EXPOSURE EXCLUSION ORDER

Issued to: \_\_\_\_\_, ☐ on behalf of the minor \_\_\_\_\_, residing at \_\_\_\_\_, Dated: \_\_\_\_\_

### ***BE ADVISED:***

THE COMMISSIONER OF THE DEPARTMENT OF HEALTH FOR THE COUNTY OF ROCKLAND (RCDOH) HAS DETERMINED THAT ***YOU OR YOUR CHILD HAVE BEEN EXPOSED TO OR DIAGNOSED WITH THE MEASLES WITHIN THE PAST 21 DAYS, AND YOU ARE NOT IMMUNE TO THE MEASLES.***

### ***MEASLES IS A DANGEROUS AND HIGHLY COMMUNICABLE DISEASE.***

AS DESCRIBED IN DETAIL IN THE BODY OF THIS ORDER, TO PREVENT THE FURTHER TRANSMISSION OF THE MEASLES, YOU ARE HEREBY PROHIBITED FROM GOING TO OR BEING PRESENT AT ***ANY INDOOR OR OUTDOOR PLACE OF PUBLIC ASSEMBLY.***

***DUE TO THE OUTBREAK OF MEASLES IN THIS COUNTY POSING A PUBLIC HEALTH EMERGENCY, YOU MUST COMPLY WITH THIS ORDER OR FACE CIVIL PENALTIES OF UP TO \$2,000 FOR EACH DATE UPON WHICH YOU VIOLATE THE TERMS OF THIS ORDER.***

WHEREAS, Pursuant to the New York Public Health Law, the New York State Sanitary Code, and the Rockland County Sanitary Code, the Commissioner of Health of the County of Rockland has the duty and responsibility to investigate and order the suppression, removal and abatement of communicable diseases, including the measles, and all other conditions detrimental to life and health found, including taking measures to reduce the morbidity and mortality posed by the measles in Rockland County; and

WHEREAS, The Commissioner of Health has determined that you, or a minor of whom you are the parent or guardian (your child) as named in this Order has been,

- ☐ ***diagnosed with the measles or***
- ☐ ***exposed to a person diagnosed with the measles***

based upon

- ☐ ***laboratory evidence and/or***
- ☐ ***a measles tracing investigation conducted by RCDOH; and***

WHEREAS, The Commissioner of Health has determined that you or your child are not immune to or vaccinated against the measles, or your vaccination status is unverified; and

WHEREAS, The Commissioner of Health has determined that, as a result, you pose an imminent and significant threat to the public health;

BY virtue of the authority vested in the Commissioner by the Public Health Law of the State of New York and the Rockland County Sanitary Code, it is hereby:

**ORDERED, That, upon your receipt of this Order,**

***(1) You or your child, as named in this Order, are excluded from indoor and outdoor places of public assembly located in Rockland County for a period of \_\_\_\_ days from the date of this Order.***

***(2) You are prohibited from going to or being present at any place of public assembly for any period of time, except under those specific circumstances described by this Order.***

For the purposes of this Order, a “place of public assembly” shall include any indoor or outdoor place where 10 or more persons are intended to congregate for purposes such as civic, governmental, social, sports, or religious functions, or for work or employment, or for recreation or shopping, or for food or drink consumption, or awaiting transportation, or for daycare or educational purposes, or for medical treatment, including public transportation vehicles, including but not limited to, publicly and privately owned buses or trains, including taxis and livery vehicles. Places of public assembly shall also include all private residences, regardless of the number of persons present or intended to be present, other than any at which you reside. All dormitories, regardless of intended occupancy, are places of public assembly.

A “place of public assembly” shall not include your own private residence. However, during the period of exclusion, you shall prohibit all non-immune, unvaccinated or immunocompromised guests, relatives, visitors, workers, or any other person other than those persons who reside in the residence, from entering your private residence for any reason apart from medical, home care, or pastoral religious purposes. However, all permitted visitors must be notified that you or your child has the measles before entering the premises.

With respect to the offices of physicians, hospitals or other medical facilities, no restriction shall apply where you or your child are present for the purpose of medical care, treatment or immunization. However, except in emergency situations, you (or, if you are a minor, your parent or guardian) must call ahead to advise the office or facility that you or your child will be coming to the facility or office. If you are required by law to be at a place of public assembly (e.g., attendance at family court), this Order shall not apply. However, you (or if you are a minor, your parent or guardian) must call ahead to advise the office or facility that you will be coming to the facility or office.

***(3) You are required to cooperate with RCDOH public health authorities by providing information regarding details of your illness, exposures and contacts.***

**Be advised that, each date upon which you violate any term of this Order constitutes a separate and distinct violation subject to a civil penalty not to exceed the sum of two thousand dollars (\$2,000.00) per violation per day. PARENTS AND GUARDIANS SERVED WITH THIS ORDER ON BEHALF OF AN EXPOSED MINOR ARE RESPONSIBLE FOR COMPLIANCE BY THEIR CHILD.**

You and/or your child have the right to request an expedited formal hearing to contest the finding that you or your child have the measles or have been exposed to the measles or to contest your or your child’s vaccination/immune status, which hearing shall be scheduled to take place between one (1) and five (5) business days of your request. To request an expedited formal hearing, please contact RCDOH at (845) 364-2608 or via email at EnvHealth@co.rockland.ny.us or by letter to the Commissioner of Health, Rockland County Department of Health, 50 Sanatorium Road, Building D, Pomona, NY 10970. During the pendency of any such hearing and the determination issued thereafter, this Order shall remain in effect.

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**PATRICIA S. RUPPERT, DO, MPH, CPE, DABFM, FAAFP  
COMMISSIONER OF HEALTH  
COUNTY OF ROCKLAND**

THE STATE OF NEW YORK  
COUNTY OF ROCKLAND: DEPARTMENT OF HEALTH

**In the Matter of the Complaint**  
**Against**

Insert Name  
Insert Address

**SUBPOENA**

Under and Pursuant to the Public Health Law of the State of New York,  
New York Sanitary Code and the Rockland County Sanitary Code

To: Insert Name  
Insert Address

WE COMMAND YOU, that all business and excuses being laid aside, you appear at the date, time and place set forth below to testify under oath before the Rockland County Commissioner of Health of her designee on all matters relevant to this action:

Date: \_\_\_\_\_  
Time: \_\_\_\_\_  
Place: Rockland County Department of Health, 50 Sanatorium Road, Building  
"D," Room 171, Pomona, New York  
Subjects: 1. the name and location of the school in which you teach;  
2. the locations you have visited including, but not limited to, locations in  
Rockland County and New York County from \_\_\_\_ through \_\_\_\_; and  
3. and any other matter deemed necessary for the protection of the public  
health and safety by the Commissioner of Health or her designee.

This subpoena is issued pursuant to Article I of the Rockland County Sanitary Code.

Failure to comply with this subpoena is punishable as contempt and shall make you liable to the person on whose behalf this subpoena was issued for a penalty not to exceed the sum of two thousand dollars (\$2,000.00) per day in accordance with Article 1 of the Rockland County Sanitary Code.

If you require a translator, please contact \_\_\_\_\_.

Dated: \_\_\_\_\_

\_\_\_\_\_  
PATRICIA S. RUPPERT, DO, MPH, CPE, DABFM, FAAFP  
COMMISSIONER OF HEALTH  
COUNTY OF ROCKLAND

STATE OF NEW YORK  
COUNTY OF ROCKLAND: DEPARTMENT OF HEALTH

**In the Matter of the Measles Outbreak of 2018-2019**

**Under and Pursuant to the Public Health Law of the State of  
New York and the Rockland County Sanitary Code**

**COMMISSIONER'S  
ORDER - CAMP STAFF**

WHEREAS, Measles is a highly contagious viral disease that can result in serious health complications. With a 90% transmission rate to exposed, non-immune persons, measles is easily transmitted from a sickened person to others who lack immunity to the disease; and

WHEREAS, Although measles is highly contagious, the Measles, Mumps, and Rubella (MMR) vaccine is an effective and safe vaccine that will prevent its transmission; and

WHEREAS, There has been an active and progressing measles outbreak, as that term is defined in 10 NYCRR § 2.2, in Rockland County since October 2018. This is the largest outbreak of measles in New York State since 1989 and the largest outbreak of measles since the measles was declared eradicated in the United States in 2000 by the Centers for Disease Control and Prevention; and

WHEREAS, The measles outbreak persists in Rockland County despite the efforts taken by the Rockland County Department of Health (RCDOH), in consultation and coordination with the New York State Department of Health (NYSDOH), including education and outreach, free vaccinations and temporary orders of exclusion requiring unvaccinated and partially vaccinated students and children to remain home from school and day care; and

WHEREAS, The measles outbreak in Rockland County is a public health emergency. In fact, on February 22, 2019, the Commissioner of the NYSDOH determined that an Imminent Threat to Public Health (ITPH) exists in Rockland County, pursuant to Public Health Law § 621; and

WHEREAS, To date, there are a total of \_\_\_ confirmed cases of measles in Rockland County, \_\_\_% of which include individuals age 18 and under; and [Fill in blanks.]

WHEREAS, This number has continued to rise exponentially, and there is a significant probability that these numbers will spike over the summer as unvaccinated/non-immune campers and camp staff travel from New York City and internationally to Rockland County to attend summer day camps, traveling summer day camps and children's overnight camps as defined in 10 NYCRR § 7-2 (collectively, "children's camps"); and

WHEREAS, Pursuant to 10 NYCRR § 2.1(a), measles is a communicable disease; and

WHEREAS, Pursuant to New York Public Health Law § 324(e), the Rockland County Charter, the Rockland County Administrative Code and the Rockland County Sanitary Code, the Commissioner of Health of the Rockland County Health District and the Commissioner of RCDOH (the "Commissioner") has the authority to enforce the N.Y. Public Health Law and its associated regulations; and

WHEREAS, Pursuant to N.Y. Public Health Law § 2100, the Commissioner shall guard against the introduction of communicable diseases such as measles by the exercise of proper and vigilant medical inspection

and control of all persons and things infected with or exposed to such diseases, and she may prohibit and prevent all intercourse and communication with or use of infected premises, places and things; and

WHEREAS, Pursuant to N.Y. Public Health Law § 308(d), the Commissioner shall make and publish, from time to time, orders which are not inconsistent with the provisions of the Sanitary Code as she may deem necessary and proper for the preservation of life and health and the execution and enforcement of the Public Health Law in the municipality; and

WHEREAS, Pursuant to the N.Y. Public Health Law §§ 308(e) & 1300 et seq., the N.Y. State Sanitary Code, 10 NYCRR Part 8, and Article 1.17.0 of the Rockland County Sanitary Code, the Commissioner shall investigate and order the suppression, removal and abatement of all nuisances, conditions and all other matters found to exist in the health district which are, in her judgment, detrimental to life and the public health; and

WHEREAS, Pursuant to the N.Y. Public Health Law and the Rockland County Sanitary Code, the Commissioner has the authority to effectuate and enforce the provisions of N.Y. Public Health Law § 2164, which requires, amongst other things, parents to administer certain vaccinations to their children including, but not limited to, the MMR vaccine, and other associated rules and regulations including, but not limited to, those related to communicable diseases, such as the measles, and outbreaks of diseases as defined in 10 NYCRR § 2.2. Pursuant to 10 NYCRR § 2.6, the Commissioner may further put into effect other recognized measures necessary to reduce morbidity and mortality relative to children's camps; and

WHEREAS, Pursuant to 10 NYCRR § 7-2.1, to protect the public health or safety of the occupants of the camp, the Commissioner or her representatives may close and/or issue a civil penalty to a children's camp if she/they determine there is a public health hazard on the property, which includes, but is not limited to, any condition which could be expected to be responsible for illness, physical injury or death; and

By virtue of the authority vested in me by the Public Health Law of the State of New York and the Rockland County Sanitary Code, as Commissioner, I do hereby

DECREE, That camp staff at children's camps who have not received the required doses of the MMR and/or who are not serologically immune to measles, mumps and rubella pose an imminent and significant threat to the public health and safety of the residents of and visitors to the County as well as a public health hazard and that their presence in children's camps creates an unnecessary and avoidable risk of continuing the outbreak in Rockland County and is therefore a public health nuisance; and

ORDER, That, \_\_\_\_\_ [Insert name of children's camp], with an administrative office located at \_\_\_\_\_, which has applied to RCDOH for permit to operate a children's camp in accordance with 10 NYCRR § 7-2 et seq., must, as a condition of receiving a permit, take the following measures and precautions to prevent the further transmission of this communicable disease, remedy this public health hazard and imminent and significant threat to the public health and safety of the residents of and visitors to the County and to suppress and remove said public health nuisance:

**1) Mandatory Vaccinations**

- a. Prior to the start of children's camp, all camp staff born on or after January 1, 1957 must provide documentation that they have received 2 doses of the MMR vaccine, or laboratory evidence of immunity to the measles, mumps and rubella. Documentation of vaccination must be signed by a physician, nurse practitioner, or physician's assistant.
- b. The only exception that will be allowed for this requirement is if a camp staff member is unable to receive a vaccination due to a medical reason that is documented in a signed letter from a physician, nurse practitioner, or physician's assistant.

- c. Although Public Health Law requires religious exemptions to be accepted for schools, there are no such requirements for children's camps, and there will be no allowance for such exemptions under this Commissioner's Order.
- d. Non-immune camp staff who are undervaccinated or unvaccinated due to a medical reason shall be excluded from camp if a measles case is identified at your facility. If a measles case is identified at your facility, you must notify the RCDOH immediately, and a new Commissioner's Order will be issued with further instructions.
- e. Camp staff who have not had both doses of the MMR vaccine must be instructed to begin receiving immunizations immediately. There is a 28-day wait between receiving the first and second doses of the MMR vaccine. Those who intend to work at a children's camp at the beginning of the season could be delayed if they do not start receiving immunizations promptly; and

## **2) Mandatory Inquiries & Screenings**

- a. Prior to entry to the children's camp, the camp operator or health director shall request camp staff to notify the camp operator or health director if such camp staff have had any possible exposures to the measles 21 days prior to working at the camp.
- b. Any camp staff who was exposed to the measles within the 21 days prior to working at the camp or at any time during the camp season shall be monitored for signs and symptoms of the measles while at camp.
- c. Upon arrival to camp, the camp operator, health director or designee shall screen each camp staffer for signs or symptoms of the measles.
- d. The camp operator or health director shall immediately report any such known exposures to the measles to RCDOH.
- e. Records of such inquiries and screenings must be kept onsite and be available for inspection; and

## **3) Mandatory Recordkeeping**

- a. Children's camps must maintain up to date vaccination records including, but not limited to, all documentation for medical exemptions, for all camp staff for the MMR vaccine and all other vaccinations statutorily required under Public Health Law § 2164. Compliance with this requirement must be demonstrated during pre-operational inspections before permits to operate will be granted; and

## **4) Mandatory Reporting of Vaccination Status**

- a. Children's camps must maintain and report a separate and complete list of vaccination status for all camp staff. As enrollment typically changes on a week to week basis, the list must be maintained for each week of children's camp. The list shall include each camp staff member's (i) name, (ii) date of birth, (iii) dates of first and second MMR vaccines, and (iv) telephone number. In lieu of (iii), the list shall indicate there is laboratory evidence of immunity to the measles, mumps and rubella or that there is a medical reason for lack of vaccinations documented by a signed letter from a physician, nurse practitioner or physician's assistant.
- b. The lists must be kept current and available onsite for inspection.
- c. Preliminary lists will be evaluated, and compliance with this requirement must be demonstrated, during pre-operational inspections before permits to operate will be granted.
- d. Thereafter, the lists must be submitted to RCDOH by the close of business on the Tuesday following each week of children's camp.
- e. The lists must be faxed to (845) 364-2567, attention: Jeanne Longo, sent by secure file transfer via the NYS Health Commerce System, or sent by any other method approved in advance by the Commissioner; and be it further

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STATE OF NEW YORK  
COUNTY OF ROCKLAND: DEPARTMENT OF HEALTH

**In the Matter of the Measles Outbreak of 2018-2019**

**Under and Pursuant to the Public Health Law of the State of  
New York and the Rockland County Sanitary Code**

**COMMISSIONER'S  
ORDER - CAMPERS**

WHEREAS, Measles is a highly contagious viral disease that can result in serious health complications. With a 90% transmission rate to exposed, non-immune persons, measles is easily transmitted from a sickened person to others who lack immunity to the disease; and

WHEREAS, Although measles is highly contagious, the Measles, Mumps, and Rubella (MMR) vaccine is an effective and safe vaccine that will prevent its transmission; and

WHEREAS, There has been an active and progressing measles outbreak, as that term is defined in 10 NYCRR § 2.2, in Rockland County since October 2018. This is the largest outbreak of measles in New York State since 1989 and the largest outbreak of measles since the measles was declared eradicated in the United States in 2000 by the Centers for Disease Control and Prevention; and

WHEREAS, The measles outbreak persists in Rockland County despite the efforts taken by the Rockland County Department of Health (RCDOH), in consultation and coordination with the New York State Department of Health (NYSDOH), including education and outreach, free vaccinations and temporary orders of exclusion requiring unvaccinated and partially vaccinated students and children to remain home from school and day care; and

WHEREAS, The measles outbreak in Rockland County is a public health emergency. In fact, on February 22, 2019, the Commissioner of the NYSDOH determined that an Imminent Threat to Public Health (ITPH) exists in Rockland County, pursuant to Public Health Law § 621; and

WHEREAS, To date, there are a total of \_\_ confirmed cases of measles in Rockland County, \_\_% of which include individuals age 18 and under; and [Fill in blanks.]

WHEREAS, This number has continued to rise exponentially, and there is a significant probability that these numbers will spike over the summer as unvaccinated/non-immune campers and camp staff travel from New York City and internationally to Rockland County to attend summer day camps, traveling summer day camps and children's overnight camps as defined in 10 NYCRR § 7-2 (collectively, "children's camps"); and

WHEREAS, Pursuant to 10 NYCRR § 2.1(a), measles is a communicable disease; and

WHEREAS, Pursuant to New York Public Health Law § 324(e), the Rockland County Charter, the Rockland County Administrative Code and the Rockland County Sanitary Code, the Commissioner of Health of the Rockland County Health District and the Commissioner of RCDOH (the "Commissioner") has the authority to enforce the N.Y. Public Health Law and its associated regulations; and

WHEREAS, Pursuant to N.Y. Public Health Law § 2100, the Commissioner shall guard against the introduction of communicable diseases such as measles by the exercise of proper and vigilant medical inspection

and control of all persons and things infected with or exposed to such diseases, and she may prohibit and prevent all intercourse and communication with or use of infected premises, places and things; and

WHEREAS, Pursuant to N.Y. Public Health Law § 308(d), the Commissioner shall make and publish, from time to time, orders which are not inconsistent with the provisions of the Sanitary Code as she may deem necessary and proper for the preservation of life and health and the execution and enforcement of the Public Health Law in the municipality; and

WHEREAS, Pursuant to the N.Y. Public Health Law §§ 308(e) & 1300 et seq., the N.Y. State Sanitary Code, 10 NYCRR Part 8, and Article 1.17.0 of the Rockland County Sanitary Code, the Commissioner shall investigate and order the suppression, removal and abatement of all nuisances, conditions and all other matters found to exist in the health district which are, in her judgment, detrimental to life and the public health; and

WHEREAS, Pursuant to the N.Y. Public Health Law and the Rockland County Sanitary Code, the Commissioner has the authority to effectuate and enforce the provisions of N.Y. Public Health Law § 2164, which requires, amongst other things, parents to administer certain vaccinations to their children including, but not limited to, the MMR vaccine, and other associated rules and regulations including, but not limited to, those related to communicable diseases, such as the measles, and outbreaks of diseases as defined in 10 NYCRR § 2.2. Pursuant to 10 NYCRR § 2.6, the Commissioner may further put into effect other recognized measures necessary to reduce morbidity and mortality relative to children's camps; and

WHEREAS, Pursuant to 10 NYCRR § 7-2.1, to protect the public health or safety of the occupants of the camp, the Commissioner or her representatives may close and/or issue a civil penalty to a children's camp if she/they determine there is a public health hazard on the property, which includes, but is not limited to, any condition which could be expected to be responsible for illness, physical injury or death; and

By virtue of the authority vested in me by the Public Health Law of the State of New York and the Rockland County Sanitary Code, as Commissioner, I do hereby

DECREE, That campers who have not received the required dose(s) of the MMR and/or who are not serologically immune to measles, mumps and rubella pose an imminent and significant threat to the public health and safety of the residents of and visitors to the County as well as a public health hazard and that their presence in children's camps creates an unnecessary and avoidable risk of continuing the outbreak in Rockland County and is therefore a public health nuisance; and

ORDER, That, \_\_\_\_\_ [Insert name of children's camp.], with an administrative office located at \_\_\_\_\_, which has applied to RCDOH for permit to operate a children's camp in accordance with 10 NYCRR § 7-2 et seq., must, as a condition of receiving a permit, take the following measures and precautions to prevent the further transmission of this communicable disease, remedy this public health hazard and imminent and significant threat to the public health and safety of the residents of and visitors to the County and to suppress and remove said public health nuisance:

**1) Mandatory Vaccinations**

- a. Prior to the start of children's camp, all campers age 4 and older must provide documentation that they have received 2 doses of the MMR vaccine, or laboratory evidence of immunity to the measles, mumps and rubella. Children between the ages of 12 months and age 4 must provide documentation that they have received at least 1 dose of the MMR vaccine or laboratory evidence of immunity to the measles, mumps and rubella. Documentation of vaccination must be signed by a physician, nurse practitioner, or physician's assistant.

- b. The only exception that will be allowed for this requirement is if a camper is unable to receive a vaccination due to a medical reason that is documented in a signed letter from a physician, nurse practitioner, or physician's assistant.
- c. Although Public Health Law requires religious exemptions to be accepted for schools, there are no such requirements for children's camps, and there will be no allowance for such exemptions under this Commissioner's Order.
- d. Non-immune children who are undervaccinated or unvaccinated due to a medical reason and non-immune children up to age 4 who are either undervaccinated or unvaccinated shall be excluded from camp if a measles case is identified at your facility. If a measles case is identified at your facility, you must notify the RCDOH immediately, and a new Commissioner's Order will be issued with further instructions.
- e. Campers over age 4 who have not had the required doses of the MMR vaccine must be instructed to begin receiving immunizations immediately. There is a 28-day wait between receiving the first and second dose of the MMR vaccine. Those who intend to attend a children's camp at the beginning of the season could be delayed if they do not start receiving immunizations promptly; and

## **2) Mandatory Inquiries & Screenings**

- a. Prior to entry to the children's camp, the camp operator or health director shall request parents or guardians of campers to notify the camp operator or health director if such camper has had any possible exposures to the measles 21 days prior to attending camp.
- b. Any camper who was exposed to the measles within the 21 days prior to attending camp or at any time during the camp season shall be monitored for signs and symptoms of the measles while at camp.
- c. Upon arrival to camp, the camp operator, health director or designee shall screen each camper, as part of the initial health screening pursuant to the camp's safety plan, for signs or symptoms of the measles.
- d. The camp operator or health director shall immediately report any such known exposures to the measles to RCDOH.
- e. Records of such inquiries and screenings must be kept onsite and be available for inspection; and

## **3) Mandatory Recordkeeping**

- a. Children's camps must maintain up to date vaccination records including, but not limited to, all documentation for medical exemptions, for all campers for the MMR vaccine and all other vaccinations required under Public Health Law § 2164. Compliance with this requirement must be demonstrated during pre-operational inspections before permits to operate will be granted; and

## **4) Mandatory Reporting of Vaccination Status**

- a. Children's camps must maintain and report a separate and complete list of vaccination status for all campers. As enrollment typically changes on a week to week basis, the list must be maintained for each week of children's camp. The list shall include each camper's (i) name, (ii) date of birth, (iii) dates of first and second MMR vaccines and (iv) parent's or guardian's name and telephone number. In lieu of (iii), the list shall indicate there is laboratory evidence of immunity to the measles, mumps and rubella or that there is a medical reason for lack of vaccinations documented by a signed letter from a physician, nurse practitioner or physician's assistant.
- b. The lists must be kept current and available onsite for inspection.
- c. Preliminary lists will be evaluated, and compliance with this requirement must be demonstrated, during pre-operational inspections before permits to operate will be granted.

- d. Thereafter, the lists must be submitted to RCDOH by the close of business on the Tuesday following each week of children's camp.
- e. The lists must be faxed to (845) 364-2567, attention: Jeanne Longo, sent by secure file transfer via the NYS Health Commerce System, or sent by any other method approved in advance by the Commissioner; and be it further

ORDERED, That failure to comply with this Commissioner's Order shall result in the denial of your application for a permit to operate a children's camp in accordance with 10 NYCRR § 7-2; and be it further

ORDERED, That if and when a permit is issued to your children's camp, failure to comply with this Commissioner's Order shall result in the suspension and/or revocation of such permit and the closure of the children's camp until such time as there is compliance with the Commissioner's Order; and be it further

ORDERED, That failure to comply with this Commissioner's Order shall result in civil penalties; and be it further

ORDERED, That each day of violation constitutes a separate and distinct violation subject to a civil penalty not to exceed the sum of two thousand dollars (\$2,000.00) per violation per day, as prescribed in Article I of the Sanitary Code of Rockland County and Section 309 of the Public Health Law of the State of New York; and be it further

ORDERED, that a true copy of this Commissioner's Order made on the \_\_\_\_\_ day of \_\_\_\_\_ 2019 be served upon \_\_\_\_\_ [Insert name of the children's camp.], with an administrative office located at \_\_\_\_\_, no later than the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

DATED: POMONA, NEW YORK  
\_\_\_\_\_, 2019

PATRICIA S. RUPPERT, DO, MPH, CPE, DABFM, FAAFP  
COMMISSIONER OF HEALTH  
COUNTY OF ROCKLAND

STATE OF NEW YORK  
COUNTY OF ROCKLAND: DEPARTMENT OF HEALTH

**In the Matter of the Measles Outbreak of 2018-2019**

**Under and Pursuant to the Public Health Law of the State  
of New York and the Rockland County Sanitary Code**

**COMMISSIONER'S  
ORDER - APPLICATIONS  
FOR A VARIANCE**

WHEREAS, On June 4, 2019, the Commissioner of Health (the "Commissioner") of the Rockland County Department of Health ("RCDOH") issued two (2) sets of Commissioner's Orders, entitled "Commissioner's Order - Campers" and "Commissioner's Order - Camp Staff" (collectively, the "Commissioner's Camp Orders"), to all summer day camps, traveling summer day camps and children's overnight camps as defined in 10 NYCRR § 7-2 (collectively, "children's camps") operating in Rockland County; and

WHEREAS, Pursuant to New York State Department of Health regulations, an operator of a children's camp may submit a written request to RCDOH for a variance from the regulations under certain circumstances; and

WHEREAS, The Commissioner wishes to offer a limited variance procedure with respect to the aforementioned Commissioner's Camp Orders as well;

By virtue of the authority vested in me by the Public Health Law of the State of New York and the Rockland County Sanitary Code, as Commissioner, I do hereby

DECREE, That a limited variance procedure is necessary with respect to the Commissioner's Camp Orders to protect the health and safety of the public; and

ORDER, That RCDOH shall institute a limited variance procedure as follows:

1. The Commissioner shall consider, on a case by case basis, an application by an operator of a children's camp for a variance from Section 1(a) of the Commissioner's Order - Camp Staff, permitting camp staff who have received the first Measles, Mumps, and Rubella (MMR) vaccine prior to the start date of camp to obtain the second MMR vaccine on dates approved by the Commissioner, provided that the operator shows that compliance with Section 1(a) will result in practical difficulties or unnecessary hardships and that the health and safety of the children attending the camp and the public will not be prejudiced by the variance; and
2. In the event that the Commissioner shall determine that this variance procedure may apply to any other sections of the Commissioner's Camp Orders, the





NEW YORK CITY DEPARTMENT OF HEALTH  
AND MENTAL HYGIENE  
Oxiris Barbot, MD  
Commissioner

### ORDER OF THE COMMISSIONER

**TO: Principal/Director Name:** \_\_\_\_\_  
**School Name:** \_\_\_\_\_  
**Facility ID:** \_\_\_\_\_  
**Phone:** \_\_\_\_\_  
**Address:** \_\_\_\_\_

**and other persons managing, or in control of the referenced child care or school.**

**WHEREAS**, "child care" is defined as a program serving young children and regulated pursuant to New York City Health Code Article 43 or Article 47 and "yeshiva" or "school" defined as an institution serving children from kindergarten to grade twelve; and

**WHEREAS**, there is an active outbreak of measles among the Orthodox Jewish communities in Williamsburg and Borough Park, Brooklyn; and

**WHEREAS**, measles is a highly infectious viral disease that causes fever and a rash. Measles is easily spread by contact with an infected person, through coughing and sneezing. A person can spread measles from four days before through four days after the appearance of the rash. About a third of reported measles cases have at least one complication and in some cases, measles can cause death. Measles can be serious in all age groups. However, infants, young children, pregnant women, people whose immune systems are weak and adults are more likely to suffer from measles complications. Measles can be prevented by vaccination with the Measles-Mumps-Rubella (MMR) vaccine.

**WHEREAS**, the Health Department sent letters in December, January, February and March to yeshiva principals and child care directors regarding the measles outbreak. The letters explained that the measles outbreak is continuing, and that children without the required number of doses of measles-mumps-rubella (MMR) vaccine or documented proof of a positive titer must be excluded from school or child care. The letters stated that the exclusion applies whether or not there has been a case of measles in the school or child care and applied to children with existing medical or religious exemptions as well. It listed the applicable zip codes, ages and grades for excludable children. The letters further explained that principals or directors are responsible for enforcing the exclusion and for the compliance with all school-required and child care-required immunizations. The letters alerted the principal or director that every yeshiva or child care covered by the exclusion rule is subject to audit by the Department of Health, and noncompliance can result in Commissioners Orders and civil summons subject to fines. Consistent with the pattern of measles transmission, and in the interest in enabling children to attend school and child care, zip codes, ages and grades subject to exclusion changed and updates were provided in the later letters.

**WHEREAS**, exclusion of children without the required number of doses of MMR vaccine or positive titers from school and child care is critical in preventing further spread of measles; and

**WHEREAS**, the New York City Health Code requires maintaining student teacher ratios and also mandates child care staff to have MMR vaccine, unless the staff person is born on or before December 31, 1956, has laboratory proof of immunity or has documented proof of medical contraindication. Documentation of vaccination or exemption must be maintained by the child care program on site and provided to the Department on request; and exclusion of child care staff without the required MMR vaccine or applicable exemption is critical in preventing further spread of measles; and

**WHEREAS**, the Department finds that, during this measles outbreak, failure to demonstrate that children without the required number of doses of MMR vaccine or positive titers, or child care staff without MMR vaccine or applicable exemption, are being excluded from school or child care creates an unnecessary and avoidable risk of illness from measles among the children attending the above-named school or child care, and endangers the health of such children, and is therefore a nuisance, as defined in New York City Administrative Code §17-142; and

**WHEREAS**, the Department must be able to timely review records regarding immunization and attendance for all children and, in child care, for staff present, in order to determine whether there is a risk of measles transmission, and such records are required to be maintained pursuant to the New York City Health Code for child care programs and applicable laws and regulations governing child care and schools; and

**WHEREAS**, pursuant to New York City Health Code §3.07, no person "shall do or assist in any act which is or may be detrimental to the public health or to the life or health of any individual... or ...shall fail to do any reasonable act or take any necessary precaution to protect human life and health;" and

**IT IS HEREBY ORDERED** that pursuant to NYS Public Health Law §2164, 10 NYCRR §§66-1.3 and 66-1.10, New York City Health Codes §§3.01(c), 43.17(a), and 47.25(a) the above named principal or director shall immediately exclude any child from the above-named child care or school who does not have the required number of doses of MMR vaccine or have laboratory proof of positive titers demonstrating measles immunity ("Excludable Child"). Such child must be excluded in accordance with the chart below; and

Child lives in or child care program or school located in ZIP code	Child is in nursery, Head Start or pre-K program	Child is in grade kindergarten through 12	Child is in grade 9- 12 and school has grades 9-12 only
11204	X		
11205	X	X	X
11206	X	X	X
11211	X	X	X
11218	X		
11219	X	X	
11249	X	X	X

**IT IS FURTHER ORDERED** that the above-named principal or director shall immediately send home any Excludable Child and prevent such child from returning to school or child care until such child provides proof of MMR vaccine or laboratory report of measles immunity, or the Health Department declares the outbreak over; and

**IT IS FURTHER ORDERED** that the above-named director shall immediately send home Excludable Staff and prevent such staff from returning to child care until such staff provides proof of MMR vaccine, laboratory proof of measles immunity, applicable exemption, or the Health Department declares the outbreak over, and must also maintain the student-teacher ratios required by the New York City Health Code; and

**IT IS FURTHER ORDERED** that in accordance with 10 NYCRR §§66-1.3 and 66-1.10, and New York City Health Code §§43.17, 43.19, 43.27, 47.25 the above-named principal or director shall provide the Health Department records regarding immunization and attendance for children in the school building upon request, and for child care, immunization and attendance records for all staff. Pursuant to the New York City Health Code, child care programs must maintain such documents on site and provide them immediately. Schools must provide such documents within one hour of Department request.

If you wish to contest (object to) the order, please write or fax Thomas G. Merrill, General Counsel, New York City Department of Health and Mental Hygiene, 42-09 28th Street (WS 14-38) Long Island City NY 11101-4132; [merrill@health.nyc.gov](mailto:merrill@health.nyc.gov) telephone: 347-396-6116; fax: 347-396-6087, within three business days of receiving the order, and provide a statement of the reasons for your objection to the order. If you have any questions about how to comply with this Order, please telephone Jane R. Zucker, M.D., M.Sc., Assistant Commissioner, Bureau of Immunization at 347-396-2471.

Dated \_\_\_\_\_

*Demetre Daskalakis*  
Demetre Daskalakis, M.D., M.P.H.  
Deputy Commissioner  
Division of Disease Control

#### WARNING

Failure to comply with an Order of the Commissioner is a violation of §3.05 of the New York City Health Code, and a misdemeanor for which you may be subject to civil and/or criminal fines, forfeitures and penalties, including imprisonment.

#### ORDER OF THE COMMISSIONER

TO: Principal/Director Name: \_\_\_\_\_

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

Date Delivered: \_\_\_\_\_

Delivered by: \_\_\_\_\_

Received by: \_\_\_\_\_

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

Title: \_\_\_\_\_



NEW YORK CITY DEPARTMENT OF  
HEALTH AND MENTAL HYGIENE  
Oxiris Barbot, M.D.  
*Commissioner*

## ORDER OF THE COMMISSIONER

**TO: All persons who reside, work or attend school in the neighborhood of Williamsburg, Brooklyn, New York and to the parents and/or guardians of any child who resides, works or attends school in the neighborhood of Williamsburg, Brooklyn, New York**

**WHEREAS**, there is an active outbreak of measles among people residing in the neighborhood of Williamsburg in Brooklyn, New York who live within zip codes 11205, 11206, 11221 and 11249. Since September 2018, more than 250 cases of measles have been documented among people living in Williamsburg and that number continues to grow as new cases are still occurring; and

**WHEREAS**, measles is a highly contagious viral disease that can result in serious health complications, such as pneumonia and swelling of the brain. About a third of reported measles cases have at least one complication and in some cases, measles can cause death. Measles can be serious in all age groups. However, infants, young children, pregnant persons, people whose immune systems are weak and adults are more likely to suffer from measles complications; and

**WHEREAS**, measles is easily transmitted from a sickened person to others who lack immunity to the disease. The virus can live for up to two hours in air or on surfaces where an infected person coughed or sneezed and people who lack immunity are highly likely to become sick if they are in contact with an infectious person or near where an infectious person recently has been; and

**WHEREAS**, although measles is highly contagious, the Measles-Mumps-Rubella (MMR) vaccine is an effective and safe vaccine that will prevent its transmission. While measles remains one of the leading causes of death among young children in parts of the world where the vaccination is not available, the disease until this outbreak was largely eliminated in the United States; and

**WHEREAS**, the measles outbreak persists in Williamsburg despite other efforts taken by the Department of Health and Mental Hygiene to stop it, including orders excluding unvaccinated children from attending preschools and daycare programs, because a high rate of people living within Williamsburg have not been vaccinated against measles; and

**WHEREAS**, pursuant to section 556 of the Charter of the City of New York, the Department is responsible for controlling communicable diseases within the City of New York and for supervising the abatement of nuisances that affect or are likely to affect the public health; and

**WHEREAS**, pursuant to section 3.01 of the New York City Health Code, I am authorized to declare a public health emergency and issue orders and take actions that I deem

necessary for the health and safety of the City and its residents when urgent public health action is necessary to protect the public health against an existing threat; and

**WHEREAS**, I find the ongoing measles outbreak in Williamsburg to be an existing threat to public health in the City of New York; and

**WHEREAS**, I also find that the presence of any person in Williamsburg lacking the MMR vaccine, unless that vaccine is otherwise medically contra-indicated or such person has demonstrated immunity against measles, creates an unnecessary and avoidable risk of continuing the outbreak and is therefore a nuisance, as defined in New York City Administrative Code §17-142; and

**WHEREAS**, pursuant to New York City Health Code §3.07, no person "shall do or assist in any act which is or may be detrimental to the public health or to the life or health of any individual... or ...shall fail to do any reasonable act or take any necessary precaution to protect human life and health."

**IT IS HEREBY ORDERED** that any person who lives, works or resides within the 11205, 11206, 11221 and/or 11237 zip codes and who has not received the MMR vaccine within forty eight (48) hours of this Order being signed by me shall be vaccinated against measles unless such person can demonstrate immunity to the disease or document to the satisfaction of the Department that he or she should be medically exempt from this requirement.

**IT IS FURTHER ORDERED** that the parent or guardian of any child older than six months of age who lives, works or resides within the 11205, 11206, 11221 and/or 11237 zip codes and who has not received the MMR vaccine within forty eight (48) hours of this order being signed by me shall cause such child to be vaccinated against measles unless such parent or guardian can demonstrate that the child has immunity to the disease or document that he or she should be medically exempt from this requirement.

**THIS ORDER** shall remain in effect until the next meeting of the New York City Board of Health scheduled for April 17, 2019 at which time it may be continued or rescinded by the Board.



Dated: April 9, 2019

Oxiris Barbot, M.D.  
Commissioner of Health

### **WARNING**

Failure to comply with this Order is a violation of §3.05 of the New York City Health Code, and a misdemeanor for which you may be subject to civil and/or criminal fines, forfeitures and penalties, including imprisonment.

Anyone wishing to object to the order, please write or fax Thomas G. Merrill, General Counsel, New York City Department of Health and Mental Hygiene, 42-09 28th Street (WS 14-38) Long Island City NY 11101-4132; [tmerrill@health.nyc.gov](mailto:tmerrill@health.nyc.gov) telephone: 347-396-6116; fax: 347-396-6087, providing a statement of the reasons for your objection to the order. If you have any questions about how to comply with this Order, please telephone Jane R. Zucker, M.D., M.Sc., Assistant Commissioner, Bureau of Immunization at 347-396-2471.

The following resolution was adopted by the Board of Health on April 17, 2019 and will be published in accordance with §17-148 of the Administrative Code of the City of New York.

Resolution of the Board of Health of the  
Department of Health and Mental Hygiene  
of the City of New York

At a meeting of the Board of Health of the Department of Health and Mental Hygiene held on April 17, 2019, the following resolution was adopted:

**WHEREAS**, there is an active outbreak of measles among people residing in the neighborhood of Williamsburg in Brooklyn, New York who live within zip codes 11205, 11206, 11211 and 11249 (the “affected zip codes”); and

**WHEREAS**, on April 9, 2019 the Commissioner of the Department of Health and Mental Hygiene determined that an urgent public health action was necessary to protect the public from the measles outbreak occurring in the neighborhood of Williamsburg and declared a public health emergency; and

**WHEREAS**, pursuant to her authority under Health Code §3.01, the Commissioner ordered that anyone who lives, works or resides in the affected zip codes and any child older than six months of age living, residing, or working in any of the affected zip codes be immunized against measles; and

**WHEREAS**, the Order subjects a person to a civil fine , unless such person or, for a child, such person’s parent or guardian, can demonstrate that such person has immunity to the disease or document to the satisfaction of the Department that such person should be medically exempt from this requirement; and

**WHEREAS**, pursuant to Health Code §3.01, the Order issued by the Commissioner is only in effect until the Board of Health convenes and either continues or rescinds the Commissioner’s exercise of authority; and

**WHEREAS**, the Board of Health has taken and filed among its records and reports that since September 2018 more than 300 cases of measles have been documented in the City of New York with the vast majority occurring among people residing in the affected zip codes and that new cases of measles are still occurring at an alarming rate; and

**WHEREAS**, measles is a highly contagious viral disease that can result in serious health complications such as pneumonia, encephalitis (swelling of the brain) and death. About a third of reported measles cases have at least one complication. Measles can be serious in all age groups. However, infants, young children, pregnant persons, people whose immune systems are weak and adults are more likely to suffer from measles complications; and

**WHEREAS**, measles is easily transmitted from a sickened person to others who lack immunity to the disease. The virus can live for up to two hours in the air or on surfaces where an infected person coughed or sneezed and people who lack immunity are highly likely to become sick if they are in contact with an infectious person or near where an infectious person recently has been; and

**WHEREAS**, although measles is highly contagious, the Measles-Mumps-Rubella (MMR) vaccine is a proven safe and effective vaccine that will prevent its transmission. While measles remains one of the leading causes of death among young children in parts of the world where the vaccination is not available, the disease until this outbreak was eliminated in the United States; and

**WHEREAS**, because a high rate of people living within the affected zip codes in Williamsburg have not been vaccinated against measles, the measles outbreak persists in Williamsburg despite other efforts taken by the Department of Health and Mental Hygiene to stop it, including orders excluding unvaccinated children from attending preschools and daycare programs; and

**WHEREAS**, the Board of Health regards the aforesaid reports of over 300 cases of measles as sufficient proof to authorize the declaration that an outbreak of measles is occurring in Williamsburg that threatens the health and safety of New Yorkers and is immediately dangerous to human life and health and constitutes a public nuisance; and

**WHEREAS**, the outbreak is occurring because a large number of people residing in the affected zip codes have not been vaccinated against measles; and

**WHEREAS**, the only way to end the outbreak is to require that people residing, working or attending school in any of the affected zip codes be vaccinated against or otherwise have immunity against measles; and

**WHEREAS**, personal service or service pursuant to subdivisions (a) or (b) of §17-148 of the Administrative Code of the City of New York of orders requiring the abatement of such nuisances and conditions in effect dangerous to life and health upon each of the persons who, pursuant to the provisions of Title 17 of the Administrative Code of the City of New York, has a duty or liability to abate such nuisances and conditions, would result in a delay prejudicial to the public health, welfare, and safety; now, therefore, be it

**RESOLVED**, that the Board of Health hereby declares that an outbreak of measles is ongoing in the neighborhood of Williamsburg and that the outbreak poses a public nuisance because it is immediately dangerous to life and health; and be it further

**RESOLVED**, that the Board of Health hereby declares that any person who lives or works within the affected zip codes shall be vaccinated against measles unless such person can demonstrate immunity to the disease or document to the satisfaction of the

Department that such person should be medically exempt from this requirement; and be it further

**RESOLVED**, that the parent or guardian of any child six months of age or older who lives or attends school, preschool or child care within the affected zip codes and who has not received the MMR vaccine shall cause such child to be vaccinated against measles unless such parent or guardian can demonstrate that the child has immunity to the disease or document to the satisfaction of the Department that such child should be medically exempt from this requirement; and be it further

**RESOLVED**, that any person required by this declaration to be immunized against measles, or any parent or guardian required by it to immunize his or her child, shall be violating this order and be subject to the fines authorized by applicable law, rule and regulations each day that he, she, or such child continues to reside, work or attend school, preschool or child care in any of the affected zip codes without having been vaccinated against measles until such time that this outbreak is declared to be over by the Commissioner of the Department of Health and Mental Hygiene.

**RESOLVED** further, that this resolution shall take effect immediately and publication shall be in accordance with New York City Administrative Code §17-148.

(As adopted by the Board of Health on April 17, 2019)



# Legislative Update

Stephen J. Acquario, Esq.  
Patrick R. Cummings, Esq.



2019 New York State  
Legislative Session Summary:  
The Impact on New York's Counties

*An Interim Report on Bills the Legislature Passed  
November 12, 2019*



**NYSAC**<sup>®</sup>  
NEW YORK STATE  
ASSOCIATION OF COUNTIES

Hon. Scott B. Samuelson, President  
Stephen J. Acquario, Executive Director



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Dear County Official,

The mission of the New York State Association of Counties (NYSAC) is to represent, educate, advocate for, and serve the 62 counties of New York State, including the City of New York. During the 2019 Legislative Session, the Association's legislative staff, together with its membership, worked with the State Legislature and Governor in support or opposition to a number of legislative or budget items.

Some key county priorities in the 2019-20 State Budget include:

- Passing the Internet Tax Conformity Act- leveling the playing field for main street businesses.
- Securing limited restorations in community college funding cuts proposed by the Governor by increasing the base FTE community college rate by \$125 to \$2,972.
- Securing \$24.7 million in additional state aid to fund the early voting reforms
- Approving state funding support for substance abuse services in county jails supported by NYSAC and spearheaded by NYSCLMHD
- Securing an additional \$50 million for indigent defense.
- Securing an additional \$100 million for implementation costs associated with the raise the age legislation that was passed in 2017.
- Beating back proposals to eliminate funding for PINS preventive services, among others.
- Securing \$15 million to address the unmet needs of seniors.

Outside of these budget actions, Lawmakers approved 935 matching bills that have been or will be sent to Governor Cuomo for his signature or veto before the end of 2019. These include several county home rule revenue bills for mortgage recording, hotel occupancy and sales tax, highlighted in the "Local Government Operations & Finance" section of this report.

What follows is a snapshot of the bills that passed both the Senate and Assembly that will have a direct or indirect impact on county governments. Each section provides the bill number (with direct links to the bill text via an electronic document), a brief description, and where it is in the legislative process, including:

- Chapter Number (signed) or Veto Message,
- "Delivered to the Governor" date (the Governor then has 10 days to act not including Sundays),
- "Passed Both Houses" – meaning it has passed the Legislature and is waiting to be delivered to the Governor for action.

It is important for NYSAC to hear from county officials on any bills in this report if there are concerns about these bills being signed (or not) into law. If you have questions, or want to provide input, on any bill listed here (or any other bill), please contact NYSAC at (518) 465-1473.

Sincerely,

Hon. Scott B. Samuelson  
President

## 2019 Legislative Session Overview

The 2019 Legislative Session began on January 9<sup>th</sup> and concluded on the early morning of Friday, June 21. The State Legislature passed a total of 1,719 bills, 935 of which were approved by both houses (and 719 of those passed both houses in the month of June). Those 935 bills must be sent to the Governor by the end of 2019 to be signed into law or vetoed.

### County Highlights in the Final 2019-20 State Budget

The enacted state budget was primarily a fiscally-neutral budget for counties. New revenue sources were provided to counties, but they were somewhat offset by a variety of reimbursement reductions, cost shifts, and new program responsibilities. The budget also included targeted reductions to New York City (Article 6 public health funding and TANF costs), as well as the state using a share of county sales tax to support payments to towns and villages that no longer receive traditional AIM payments.

The enacted budget includes two major revenue changes that will benefit counties by increasing sales tax revenues. One related to internet-based purchases and the second eliminates an existing sales tax exemption the Governor and Legislature deemed to longer be needed.

### **Internet Marketplace Fairness – Statutory & Administrative Modernization**

With NYSAC's support, the Governor's proposal to update New York's sales tax collection process to ensure that sales taxes owed on internet transactions are collected finally passed. The statutory changes became effective June 1, 2019.

The internet fairness proposal requires large internet marketplace providers to collect sales tax on behalf of all vendors that use their platform and remit these sales taxes to the state (if the vendors meet certain transaction thresholds). The state has had economic nexus standard in state law since the early 1990's that determined businesses selling into New York without a physical presence (mostly catalog sales at that time) that sold more than \$300,000 dollars in taxable goods and completed at least 100 separate transactions in the prior year were required to collect and remit sales tax. A Supreme Court ruling from the 1990's prevented enforcement of the state standards. This financial threshold was changed to \$500,000 in one of the last bills to pass the Legislature at the end of session.

The inability to enforce the state nexus standards changed in last year's *Wayfair Decision*, when the Supreme Court overturned their earlier decision that states could not compel sales tax collection on remote vendors. The *Wayfair Decision* allowed New York to enforce its existing economic nexus standards and to also make statutory changes that recognize the retail shift that has occurred related to internet-based transactions. In fact, as of the release of this report 42 of the 45 states that have sales tax have enacted laws to require remote vendors to collect sales tax on internet transactions. The three remaining sales tax states have bills pending.

On a full annual basis, the state estimates that as much as \$280 million in local sales taxes could be collected through this “marketplace” fairness change – DOB estimates \$158 million for all local governments (before any sales tax sharing) and \$122 million for New York City. Additionally, a portion of this new revenue will be withheld by the state for state funding purposes (to replace extinguished AIM payments).

Enforcing the state’s recently modified nexus thresholds was implemented administratively in January of 2019. The administrative provisions are estimated to bring in as much as \$110 million annually in currently uncollected local sales tax – DOB estimates \$62 million for all local governments (before any sales tax sharing) and \$48 million for New York City.

### **Elimination of Sales Tax Exemption for ESCOs**

A second sales tax change was the elimination of the exemption for energy services companies (ESCOs) that has been in place for nearly 20 years. The Division of Budget estimates that repealing this exemption is expected to increase local sales tax collections outside of New York City by up to \$46 million on a full annual basis, with about \$38 million accruing to counties before regular sales tax sharing arrangements. New York City eliminated their local sales tax exemption in 2009.

### **Aid to Municipalities (AIM)**

The enacted State Budget eliminates \$59.2 million in state funding to any municipality where this funding represented less than two percent of their total expenditures, which includes more than 1,250 towns and villages. These cuts are backfilled with new internet-based county sales tax revenues that will be withheld by the Office of the State Comptroller.

Counties will not be required to make direct payments to the towns and villages impacted in their county, but the state will withhold county sales taxes beginning sometime this year in a sufficient amount to fully reimburse the eliminated AIM payments for the impacted towns and villages within each county.

With the new formula change, about 99 percent of all AIM payments will go to cities, up from 90 percent. For cities, AIM assistance can be a significant portion of their total budget and could approach 30 percent of total revenue for some municipalities. For the handful of towns and villages that continue to receive AIM payments, AIM will typically represent somewhere between two percent to five percent of their total expenditures.

- **Cities** (\$647.1 million) – Most cities receive installments in September and December. A handful of cities receive payments in March, June or October as well.
- **Towns** (\$5.2 million – *down from \$47.9 million*). Receive a single payment in September.
- **Villages** (\$3.3 million – *down from \$19.8 million*). Receive a single payment in September.

## **Raising the Age of Criminal Responsibility**

Two years ago, the budget changed state laws to raise the age of criminal responsibility from 16 to 18 over a two-year phase-in which began on October 1, 2018. When fully phased in, the state estimates the program will cost nearly \$400 million on an annual basis with the state supporting most of the costs. Counties will be required to expend some resources up front and seek reimbursement from the state while other costs will be paid directly by the State, mainly detention. State reimbursements to counties are linked to each county staying within their property tax cap, but allowances may be made in circumstances where a county is experiencing fiscal stress.

The enacted budget includes an additional \$100 million for costs associated with implementing Raise the Age of Criminal Responsibility. The total appropriation is \$200 million and \$54 million in re-appropriations. Counties are in the process of submitting their reimbursement plans and, as of the release of this report, 39 counties have approved plans. While 39 counties have approved plans, no county has a reimbursement contract in place (10-12 are in the process of contract negotiations), and four have not yet submitted a plan.

## **Trigger for Potential Sweeping Cuts**

The final budget included language that requires the budget director to develop a plan for submittal to the Legislature if the state financial plan is "...reasonably anticipated..." to end the fiscal year with an imbalance of \$500 million or more. The plan would allow the budget director to cut up to 1 percent in state operating funds (this portion of the budget is \$102 billion). The legislature would have 30 days to enact their own plan. The following types of appropriations would be exempt from reduction in any plan prepared by the budget director and/or any plan adopted by the legislature:

- public assistance payments for families and individuals and payments for eligible aged, blind and disabled persons related to supplemental social security;
- any reductions that would violate federal law;
- payments of debt service and related expenses for which the state is constitutionally or contractually obligated to pay debt service, subject to an appropriation, including where the state has a contingent contractual obligation; and
- payments the state is obligated to make pursuant to court orders or judgments.

## **Bail Reform, Speedy Trial and Discovery**

The enacted budget includes language to reform bail, discovery and speedy trials. The effective date of this legislation is January 1, 2020. Arresting officers must release individuals under non-monetary conditions and issue an appearance ticket unless an individual is charged with a felony, a misdemeanor crime of domestic violence, or if an individual was convicted of a violent felony within the last five years.

The enacted budget **did not** include any funding for counties to implement these changes.

## **PINS Reform**

The enacted budget restores county reimbursement for PINS preventive services. Non-secure detention will no longer be a viable placement option for PINS youth, however, the ability to

place a child in a pre-dispositional foster care placement is preserved. Judges will have the ability to place PINS children into foster care. The new change in law is that the placement into foster care for PINS children is for an initial period of 60 days (this used to be 12 months). The placement may then be extended for one 6-month period. The second permanency hearing can result in an order for one more extension of 4 months. Beyond that, there cannot be any extensions to placement unless requested by the Attorney for the Child on behalf of the child.

There's also an addition of "family support services"—community-based services that would help youth (and their families) who are at risk of being adjudicated PINS. At this time, we are unclear about "who" exactly can get funded to deliver family support services, and how much funding will be available. This change will be effective January 1, 2020. Until then, the current law remains status-quo.

## **Supplemental Capital Appropriations**

On the last day of session, the Legislature passed supplemental capital appropriations that completed work on the 2019-20 state budget.

### S.6615 (Kreuger)/A.8433 (Weinstein) & S.6616 (Kreuger)/A.8434 (Weinstein)

This legislation enacts several clean up pieces of legislation as well as enacting supplemental capital appropriations. Of interest to counties and New York City the supplemental bill:

- Updated STAR Credit conversion language that allows the Commissioner to defer the conversion to the credit for one year if an application to switch comes in after established due dates. The bill also directs the commissioner of Tax and Finance to develop a streamlined approach to making the conversion simpler.
- As discussed, raises the remote vendor economic nexus threshold for internet sales tax collections from \$300,000 to \$500,000
- \$425 million for Penn Station Redevelopment
- \$100 million for Lake Ontario flooding and resiliency projects
- \$20 million for the Niagara Frontier Transportation Authority
- \$20 million for security upgrades at summer residential camps and day camps
- \$385 million in new authority for the State and Municipal Facilities (SAM) grant programs
- Adds \$20 million for library grants, bringing the total to \$251 million for eligible library construction projects – managed by the State Education Department;
- \$30 million for grants to private colleges
- \$100 million for NYC public housing authority for lead abatement
- \$65 million for extreme winter weather funding for counties, cities, towns and villages to be distributed through the CHIP formula
- \$5 million for grants to agricultural or horticultural corporations and county extension service associations
- \$5 million for grants to municipal and not-for-profit animal shelters

## **Non-Budget Legislative Action:** **Legislation that Passed Both Houses of the Legislature**

NYSAC has identified the following pieces of legislation, categorized by issue area, that have or may have an impact on our county governments. These are bills that have passed both the State Senate and State Assembly. Some have already been signed into the Laws of 2019 and others await delivery to and consideration by Governor Cuomo.

### **Aging**

**Requires that residents be fully informed about their health care services, to consent or refuse such services, and be able to choose their own providers for services beyond the facility contract**

A.1084 (Gottfried)/S.874 (Rivera)

This legislation would mandate that every resident of an adult care facility be fully informed of their medical condition, proposed medications, treatment services, and to consent or refuse such medication or treatment services. This bill would indemnify the facility for complying with the refusal of care. This legislation also allows a resident or their caregiver to choose their own health care providers for services not covered by the facility contract.

**Status: Passed Both Houses**

### **Agriculture**

**Relates to vegetation management plans in a manner that is pollinator friendly**

S.2044 (Ritchie)/A.5312 (Lupardo)

The department of agriculture and markets must make available information concerning minimum guidelines for vegetation management plans in a manner that is pollinator friendly.

**Status: Signed by the Governor, Chapter 203 of the Laws of 2019**

**Enacts the farm laborers fair labor practices act, grant collective bargaining rights workers' compensation and unemployment benefits to farm workers**

A.8419 (Nolan)/S.6578 (Ramos)

This legislation grants collective bargaining rights to farm laborers and allows farm laborers one day of rest each week. This legislation also grants farm workers the ability to receive overtime pay at time and a half for any work over 60 hours per week.

**Status: Signed by the Governor, Chapter 105 of the Laws of 2019**

### **Economic Development**

**Requires each industrial development agency to live stream and post video recordings of all open meetings and public hearings and these recordings must be posted for a period of not less than five years**

A.3002 (Solages)/S.88 (Kaminsky)

This legislation provides each locality with immediate and future access to all meetings and public hearings held by industrial development agencies. This bill also requires IDAs to post video recordings of all open meetings and public hearings on their website.

**Status: Signed by the Governor, Chapter 185 of the Laws of 2019**

**Requires notice by affected local taxing jurisdictions prior to approval of projects by industrial development agencies**

A.2947 (Solages)/S.2769 (Comrie)

This legislation requires IDA's to send notifications of proposed financial incentives for a project and any reasons for deviation from their uniform tax exemption policy to affected local taxing jurisdictions.

**Status: Passed Both Houses**

**Directs the department of public service to study the feasibility of a municipal broadband program within the state**

S.6041-A (May)/A.2037-A (Gunther)

This legislation directs the department of public service, in consultation with the urban development corporation and other relevant state entities, to study and evaluate the feasibility of a municipal broadband program.

**Status: Passed Both Houses**

**Relates to studying the implementation of 5G and next gen network technology in New York State**

A.1503 (Vanel)/S.1607 (Parker)

This legislation directs the state Office of Information Technology Services to study and evaluate the implementation of fifth generation (5G) and future generation wireless systems technology in the state.

**Status: Passed Both Houses**

**Relates to MWBE Enterprises**

S.6301 (Sanders)/A.7795 (Bichotte)

This legislation extends the sunset provision from December 31, 2019 to December 31, 2024 and increases the "personal net worth" cap from \$3.5 million to \$15 million to allow for more participation, among other reforms.

**Status: Signed by the Governor, Chapter 97 of the Laws of 2019**

**Enacts the Zombie Property Remediation Act of 2019**

S.5079-A (Skoufis)/A.1859-A (Magnarelli)

This legislation authorizes municipalities to compel mortgagees either to complete a mortgage foreclosure proceeding pursuant to article 13 of the real property actions and proceedings law or to issue a certificate of discharge of the mortgage for any property which has been certified abandoned

**Status: Passed Both Houses**

**Elections**

**Relates to publishing local campaign contribution limits**

A.111 (Buchwald)/S.3140 (Myrie)

This legislation mandates that local boards of election calculate and publish on their websites by April 15<sup>th</sup>, the contribution limits for all county, town, city, and village offices on the ballot in that year. This law takes effect December 15, 2020.

**Status: Signed by the Governor, Chapter 412 of the Laws of 2019**

**Relates to ballot proposals**

A.112A (Buchwald)/S.3145A (Myrie)

This legislation amends section 7-110 of the election law to provide clear instructions to voters if the ballot is two-sided.

**Status: Signed by the Governor, Chapter 409 of the Laws of 2019**

**Relates to voter pre-registration**

A.774 (Lavine)/S.1100 (Carlucci)

This legislation allows 16- and 17-year old the ability to pre-register to vote. This legislation allows a person who is at least 16-years old and is otherwise qualified to register to vote, to pre-register to vote, and makes the registration effective when the person reaches the age of eligibility. This legislation will take effect January 1, 2020.

**Status: Signed by the Governor, Chapter 2 of the Laws of 2019**

**Provides that the board of elections shall transfer a registration and enrollment of a voter to wherever they move in the state**

A.775 (Dinowitz)/S.1099 (Carlucci)

This legislation automatically transfers an individual's registration and enrollment to wherever they move within New York State. The state board of elections must promulgate regulations as to the procedures for transferring a voter from one county to another. This legislation took effect in February 2019.

**Status: Signed by the Governor, Chapter 3 of the Laws of 2019**

**Relates to political contributions by limited liability companies**

A.776 (Simon)/S.1101 (Kavanagh)

This legislation adds Limited Liability Companies (LLC's) to section 13.116 of the election law, so that LLCs are made subject to the existing contribution limits for corporations. This bill would also increase transparency by requiring disclosure of the identity of individuals with membership interests in LLCs and attribute contributions to members of LLCs.

**Status: Signed by the Governor, Chapter 4 of the Laws of 2019**

**Relates to primary elections and amends certain deadlines to facilitate timely transmission of ballots to military voters stationed overseas.**

A.779 (Lavine)/S.1103 (Stewart-Cousins)

The purpose of this legislation is to ensure New York State's election law complies with the federal Military and Overseas Voter Empowerment (MOVE) Act. This legislation amended the date of the primary elections from September to the fourth Tuesday in June. This act shall take effect immediately.

**Status: Signed by the Governor, Chapter 5 of the Laws of 2019**

**Removes ten-day advance voter registration requirement**

S.1048 (Gianaris)/A.777 (Carroll)

Amends the constitution to delete the requirement that registration for purposes of voting be completed at least ten days before election day and provides that laws be made to adequately safeguard against deception in the exercise of the right of suffrage.

**Status: This legislation requires a constitutional amendment and must be voted on during the session beginning January 2020 before going to a referendum vote by the people of the State of New York.**

**Authorizes ballot by mail by removing cause for absentee ballot voting.**

S.1049 (Comrie)/A.1049 (Vanel)

Amends the constitution to allow for no-excuse absentee ballot voting.

**Status: This legislation requires a constitutional amendment and must be voted on during the session beginning January 2020 before going to a referendum vote by the people of the State of New York.**

**Relates to early voting; provides for the early voting period**

S.1102 (Myrie)/A.780 (Lavine)

This legislation amends the election law to allow for an early voting period beginning the tenth day prior to any election and ending on and including the second day prior to the election. This legislation allows anyone who is registered and eligible to vote the ability to vote during a 9-day period prior to the election. This legislation takes effect for the general election in 2019.

**Status: Signed by the Governor, Chapter 6 of the Laws of 2019**

**Relates to the number of signatures for designating petitions for 2019**

A.2570 (Jones)/S.2862 (May)

This legislation amends the election law to reduce the number of signatures required on designating petitions for all public offices to be filled in 2019 with the exception of New York City. This act takes effect immediately and expires on December 31, 2019.

**Status: Signed by the Governor, Chapter 17 of the Laws of 2019**

**Relates to signatures for any party position of member of the ward, town, city or county committee**

A.2693 (Dinowitz)/S.2699 (Bailey)

This legislation reduces the petitions signature requirement on party positions for ward, city, or county committees to three percent of enrolled voters of the party residing within the election district. This act takes effect immediately and expires on December 31, 2020.

**Status: Signed by the Governor, Chapter 18 of the Laws of 2019**

**Changes the date for filing the certificate of nomination for new parties to the first of September proceeding a general election**

A.4081 (D'Urso)/S.4426 (Myrie)

**Status: Signed by the Governor, Chapter 46 of the Laws of 2019**

**Relates to signatures for designating petitions for areas outside of NYC and the counties of Erie and Nassau**

A.5979A (Jones)/S.4350 (Breslin)

This legislation reduces the minimum petition signature requirement for all public offices to be filled in 2019, with the exception of offices in New York City, Nassau and Erie Counties to 3.75% of the enrolled voters of the party residing within the political unit. This legislation takes effect immediately and expires December 31, 2019.

**Status: Signed by the Governor, Chapter 22 of the Laws of 2019**

**Enacts the voter friendly ballot act**

S.2300A (Kavanagh)/A. 2682A (Lavine)

This legislation makes changes to the layout of the ballot to improve clarity and simplicity for the voter. This legislation provides the boards of election with the flexibility to ensure good ballot design, regardless of the particular limits of their voting technology, or the number of contestants and candidates on a ballot. This legislation takes effect immediately and applies to ballots to be used for elections occurring on or after August 1<sup>st</sup>, 2019.

**Status: Signed by the Governor, Chapter 411 of the Laws of 2019**

**Provides that the board of elections will mail special ballots to victims of domestic violence**

A.219A (Paulin)/S.3232A (Savino)

This legislation will give all victims of domestic violence the right to vote by mailing in a ballot, including those who remain in the county where they are registered, regardless of their ability to vote at a polling location. This legislation takes effect immediately.

**Status: Signed by the Governor, Chapter 150 of the Laws of 2019**

**Allows voters to include their email addresses when registering to vote**

A.1565 (Galef)/S. 1718 (Carlucci)

This legislation allows individuals registering to vote to provide their email addresses (at an individual's option) on voter registration forms to allow boards of elections to contact individuals with pertinent election information.

**Status: Passed Both Houses**

**Provides that election workers shall be given special ballots as soon as the ballots are printed**

A.202 (Cahill)/S. 5199 (Metzger)

This legislation allows election employees or individuals who have been appointed to serve as an inspector, poll clerk, or election coordinator at a polling place other than the one at which he/she is registered to vote to submit a special ballot at any time after the ballot has been printed.

**Status: Signed by the Governor, Chapter 257 of the Laws of 2019**

**Relates to voter notification of special elections**

S.211-C (Benjamin)/A.837-A (Rosenthal)

The board of elections shall, as soon as practicable, but not less than two weeks prior to any special election, prominently display on its website the date and hours of the election, the

offices to be voted on in the county, part of a county, or the city of New York, and a link to any poll site information or poll location tools, where available.

**Status: Signed by the Governor, Chapter 413 of the Laws of 2019**

**Authorizes consolidation of voting districts with a small number of eligible voters**  
A.3543 (Carroll)/S.6449 (Comrie)

This legislation states that if an election district contains fewer than ten voters eligible to vote in such election then the normal limitation of 500 maximum voters in a combined district shall not be applicable.

**Status: Signed by the Governor, Chapter 438 of the Laws of 2019**

**Environmental Conversation**

**Relates to installing Lyme and tick-borne disease warning signs at all state-managed parks**

S.4355 (Serino)/A.6752 (Barrett)

This legislation requires an assessment of state parks, including trails, to determine where it is appropriate to install Lyme and tick-borne disease warning signs at all state-managed parks.

**Status: Signed by the Governor, Chapter 206 of the Laws of 2019**

**Prohibits the use of pesticide chlorpyrifos**

S.5343 (Kaminsky)/A.2477B (Englebright)

Prohibits all use of the pesticide chlorpyrifos. The bill initially bans aerial application of chlorpyrifos, beginning January 1, 2020. Beginning January 1, 2021, all applications of chlorpyrifos, other than applied to apple tree trunks, are banned. As of December 1, 2021, all uses of chlorpyrifos are banned.

**Status: Passed Both Houses**

**Climate Leadership and Community Protection Act**

S.6599 (Kaminsky)/A.8429 (Englebright)

This legislation establishes a renewable energy program designed to achieve a minimum of 70 percent of statewide electric generation be secured by renewable energy systems by 2030 and zero emissions from the statewide electrical demand system in 2040. This legislation also provides at least 35% of uncommitted clean energy and energy efficiency funds to disadvantaged communities.

**Status: Signed by the Governor, Chapter 106 of the Laws of 2019**

**PFAS Reduction in Firefighting Activities**

S.439-A (Hoylman)/A.445-A (Steck)

This legislation prohibits local governments use of firefighting foam that contains intentionally added PFAS chemicals. Two years from the effective date, manufacturers may not manufacture, sell or distribute firefighting foam that contains PFAS.

**Status: Passed Both Houses**

### **Paint Stewardship Program**

S.4351 (Kennedy)/A.6373 (Englebright)

This legislation establishes a post-consumer paint collection program to promote the development and implementation of strategies to reduce the generation of paint and to maximize the collection, transportation and process of paint for end of product life management.

**Status: Passed Both Houses**

### **Prohibition of 1,4 Dioxane**

S.4389-B (Kaminsky)/A.6295-A (Englebright)

Prohibits household cleaning products, cosmetic products and personal care products that contain 1,4-dioxane

**Status: Passed Both Houses**

### **Enacts the Flood Mitigation Council Act**

A.7456-A (Otis)/S.2682 (Mayer)

This legislation establishes a flood mitigation and flood prevention task force based within the New York State Department of Environmental Conservation, including representatives of various agencies and local government officials, to identify regions most affected by flooding, prioritize mitigation efforts, identify sources of funding, and support additional research on mitigation efforts.

**Status: Passed Both Houses**

## **Housing**

### **Housing Stability and Tenant Protection Act of 2019**

S.6458 (Stewart-Cousins)/A.8281 (Heastie)

This legislation makes a series of rent reforms and extends provisions and makes certain provisions of law permanent relating to rent control and rent stabilization. Part C of this legislation extends the rent regulation provisions throughout New York State (outside of New York City) so long as the local municipality (town, city, village) chooses to opt-in to this legislation of the housing stock meets the eligibility requirements.

**Status: Signed by the Governor, Chapter 36 of the Laws of 2019.**

### **Authorizes Tompkins County to contract for the development, maintenance and management of affordable housing**

S.6340 (O'Mara)/A.8225 (Lifton)

This bill would authorize Tompkins County to contract with non-profit organizations and other corporations, associations and agencies formed for the purposes of affordable housing development, maintenance, or management.

**Status: Signed by the Governor, Chapter 232 of the Laws of 2019**

## **Human Services**

### **Job and Vocational Skills Training for Juveniles**

S.1191 (Comrie)/A.838 (Hyndman)

This legislation amends a chapter of the laws of 2018 relating to the establishment of a pilot program to provide job and vocational skills training to youth who have been adjudicated juvenile delinquents or juvenile offenders residing in a facility overseen by the office of children and family services. This legislation makes this provision permanent.

**Status: Signed by the Governor, Chapter 193 of the Laws of 2019**

### **An act in relation to the application of a relative to become a foster parent**

S.6405 (Montgomery)/A.8059 (Jaffee)

Currently, applicants are limited to relatives who are within the third degree of either parent. This legislation expands this class to include kin such as step-grandparents.

**Status: Signed by the Governor, Chapter 434 of the Laws of 2019**

### **Relates to exempting income earned by people under the age of 24 from certain workforce development program for the determination of need for public assistance**

A.6753 (Eichensten)/S.6443 (Persaud)

This legislation amends the social services law to exclude income of an individual up to the age of 24 earned from their participation in the summer youth employment program from the calculation of family income for the purposes of public assistance.

**Status: Passed Both Houses**

### **Exempts certain funds from the calculation of household benefits under public assistance programs**

S.5402 (Persaud)/A.7817 (Hevesi)

This legislation exempts funds in a New York Achieving a Better Life Experience (NY ABLE) savings accounts from assets limit tests to qualify or recertify for public assistance.

**Status: Signed by the Governor, Chapter 329 of the Laws of 2019**

### **Relates to the adjustment of juvenile delinquency cases by local departments of probation in family court**

S.6475 (Bailey)/A.7939 (Jaffee)

Requires probation departments to consider the views of the complainant and the impact of the alleged act or acts of juvenile delinquency upon the complainant and upon the community in determining whether adjustment under this section would be suitable.

**Status: Signed by the Governor, Chapter 310 of the Laws of 2019**

### **Relates to proceedings against juvenile and adolescent offenders**

S.6550 (Bailey)/A.8315 (Lentol)

This bill amends the criminal procedure law to provide any accessible magistrate authority to remove any juvenile offender or adolescent offender brought before them, with the consent of the district attorney, to the family court at the initial appearance. This bill is effective immediately.

**Status: Signed by the Governor, Chapter 240 of the Laws of 2019**

## **Judiciary**

### **Relates to the determination of capacity to stand trial in juvenile delinquency proceedings in family court**

S.5516-B (Montgomery)/A.8092 (Jaffee)

This legislation was requested by the Chief Administrative Judge to streamline and clarify the process for determining the competency to stand trial for the accused juvenile.

**Status: Passed Both Houses**

### **Relates to permanency planning in juvenile delinquency and PINS proceedings**

A.7940 (Jaffee)/S.6535 (Montgomery)

This legislation was requested by the Chief Administrative to amend the family court act, in relation to permanency planning in juvenile delinquency and persons in need of supervision proceedings in family court.

**Status: Passed Both Houses**

### **Relates to the state commission on prosecutorial conduct**

S.1190 (Bailey)/A.781 (Perry)

This legislation creates the state commission on prosecutorial conduct and establishes the functions and powers of the commission and its members.

**Status: Signed by the Governor, Chapter 23 of the Laws of 2019.**

### **Relates to the assignment of counsel**

S.3672 (Bailey)/A.748 (Cook)

This legislation provides for appointed counsel on appeal for persons unable to afford representation. This is specific to post-trial motions and provides that appellate counsel's representation may include the preparation and proceedings on such motions.

**Status: Signed by the Governor, Chapter 446 of the Laws of 2019**

## **Local Government Operations & Finance**

### **Extends the authorization for the county of Greene to impose an additional mortgage recording tax until December 1, 2020**

S.712 (Amedore)/A.209 (Tague)

This legislation extends the mortgage recording tax for Greene County until 2020.

**Status: Signed by the Governor, Chapter 13 of the Laws of 2019.**

### **Extends from December 1, 2018 to December 1, 2021, the expiration of the authority of the county of Essex to impose an additional mortgage recording tax**

S.720 (Little)/A.211 (Stec)

This legislation extends the mortgage recording tax for Essex County until 2021.

**Status: Signed by the Governor, Chapter 14 of the Laws of 2019.**

### **Extends Warren county's additional mortgage recording tax authorization until December 1, 2020**

S.721 (Little)/A.210 (Stec)

This legislation extends the mortgage recording tax for Warren County until 2020.

**Status: Signed by the Governor, Chapter 15 of the Laws of 2019.**

**Extends provisions of law relating to authorizing the county of Cattaraugus to impose an additional mortgage recording tax**

S.959 (Young)/A.208 (Giglio)

This legislation extends the mortgage recording tax for Cattaraugus County until 2021.

**Status: Signed by the Governor, Chapter 16 of the Laws of 2019.**

**Relates to the time needed by small businesses and local governments to comply with new regulations**

S.5812 (Kaplan)/A.842 (Simotas)

This legislation requires any state agency to indicate in a rule's regulatory impact statement the estimated period of time necessary to enable regulated persons to achieve compliance. This legislation also requires agencies to assure that small businesses and local governments have been given an opportunity to participate in a rulemaking that could affect them. This bill would require agencies proposing new rules that would impact small businesses and local governments to give due consideration to the practical, legal and economic or fiscal constraints that may affect the ability of these entities to implement new regulatory requirements.

**Status: Passed Both Houses**

**Increases from 4% to 5% the Hotel/Motel Tax for Schenectady County**

A.2198 (Steck)/S.5761 (Amedore)

This legislation increases the Hotel/Motel bed tax for Schenectady County from 4% to 5%.

**Status: Passed Both Houses**

**Relates to the "driver's license access and privacy act" (Green Light NY)**

A.3675-B (Crespo)/S.1747-B (Sepulveda)

This legislation allows for the issuance of a driver's license for undocumented immigrants.

**Status: Signed by the Governor, Chapter 37 of the Laws of 2019.**

**Authorizes Washington County to impose an additional 25 cents per \$100 of debt, mortgage recording tax**

A.4474 (Stec)/S.1960 (Little)

This legislation allows Washington County to impose an additional mortgage recording tax to place the total mortgage recording tax at a rate of 1.25%. These funds are used to pay for all expenses incurred by the county for the support of community colleges.

**Status: Passed Both Houses**

**Authorizes Broome County to impose an additional communications service surcharge to provide for an enhanced 911 emergency telephone system**

A.6546 (Lupardo)/S.4392 (Akshar)

This legislation authorizes Broome County to impose an additional surcharge of \$1.10 per month to fund the county's Public Safety Radio Capital project.

**Status: Signed by the Governor, Chapter 120 of the Laws of 2019**

**Authorizes Chenango County to establish a hotel/motel bed tax**

A.6548 (Crouch)/S.4419 (Seward)

This legislation authorizes Chenango County to establish a 4% hotel/motel bed tax.

**Status: Passed Both Houses**

**Authorizes Essex County to increase the hotel/motel bed tax from 3% to 5%**  
A.7450 (Stec)/S.5451 (Little)

This legislation authorizes Essex County to impose an additional 2% for a total of 5% hotel/motel bed tax.

**Status: Passed Both Houses**

**Authorizes Westchester County to impose an additional 1% of sales and compensating use tax**

A.8088 (Pretlow)/S.6304 (Mayer)

Relates to revising the period of authorization for the county of Westchester's additional one percent rate of sales and compensating use tax and the expiration of the Westchester county spending limitation act, such 1% increase shall expire on November 30, 2020.

**Status: Signed by the Governor, Chapter 43 of the Laws of 2019**

**Authorizes Oneida County to increase their hotel/motel bed tax to 5%**

S.6362 (Griffo)/A.8175 (Buttenschon)

This legislation authorizes Oneida County to change their hotel/motel bed tax rate from 2% to 5% for the promotion of tourism development, economic development and other directly related and supporting activities.

**Status: Passed Both Houses**

**Authorizes Niagara County to impose an additional 1% hotel/motel occupancy tax to benefit the Discover Niagara shuttle**

A.2163 (Morinello)/S.1765 (Ortt)

This legislation imposes an additional 1% bed tax on rooms located within Niagara County and dedicates these funds to the Discover Niagara Shuttle. Startling around Memorial Day 7 days a week the Discover Niagara Shuttle runs between 9am-6pm making stops about every 30-35 minutes and on weekends, roughly every 45-60 minutes from 6pm-midnight. The shuttle currently operates in Niagara Falls, Lewiston and Youngstown. This additional revenue will allow the shuttle to operate more frequently and expand the number of stops it makes, including into Lockport.

**Status: Passed Both Houses**

**Authorizes Essex County to enter into a municipal cooperative agreement for emergency medical services and general ambulance services**

S.1997-B (Little)/A.4676-B (Stec)

This legislation authorizes Essex County to enter into a municipal cooperative agreement for emergency medical services, general ambulance services, or a combination of both.

**Status: Signed by the Governor, Chapter 395 of the Laws of 2019**

**Authorizes Madison County to impose an additional mortgage recording tax of \$.25 per \$100 of debt**

S.5672 (May)/A.7711 (Salka)

This legislation amends the tax law by adding a new section 253-y to authorize Madison County to impose an additional mortgage recording tax on mortgage debt for real property located within the county.

**Status: Signed by the Governor, Chapter 332 of the Laws of 2019**

**Authorizes Madison county to increase the 9-1-1 telephone service surcharge**

S.5698-A (May)/A.7715-B (Salka)

This legislation grants the authorization for Madison County to charge a \$.65 per access line per month wireline communication service surcharge to fund an enhanced 911 (E911) emergency telephone system for the county.

**Status: Passed Both Houses**

**Extends Tompkins County's communication service surcharge**

S.5193-A (O'Mara)/A.7417 (Lifton)

This legislation extends the Tompkins County communication surcharge until 2029.

**Status: Signed by the Governor, Chapter 78, of the Laws of 2019**

**Relates to communication service surcharge extenders for Onondaga County**

S.4294 (May)/A.4763 (Magnarelli)

This legislation extends the authorization for Onondaga County to charge a \$.65 per access line per month wireline communication service surcharge to fund the Onondaga County Interoperable Communications System (OCICS) until 2029.

**Status: Signed by the Governor, Chapter 124 of the Laws of 2019**

**Establishes an electronic open auction bond sale pilot program**

S.5886-A (Gaughran)/A.8336-A (Thiele)

This legislation would establish a two-year electronic open auction bond sale pilot program to allow municipalities the option to sell municipal bonds in an open electronic auction format instead of by a closed electronic bid format. This pilot program is limited to counties with a population in excess of 400,000, and cities and towns with a population of 100,000 or more, in addition to other requirements.

**Status: Passed Both Houses**

**Relates to imposing an additional .25% mortgage recording tax for Livingston County**

S.6375 (Gallivan)/A.8006-A (Byrnes)

This legislation grants Livingston County the authorization to impose an additional .25% mortgage recording tax to 1.25%.

**Status: Signed by the Governor, Chapter 373 of the Laws of 2019**

**Residency requirement for special patrol officers in Oswego County**

S.6345 (Ritchie)/A.8155 (Barclay)

Allows Oswego County to hire special patrol officers from a contiguous county.

**Status: Passed Both Houses**

**Relates to net tax collections in Genesee County**

S.4247 (Ranzenhofer)/A.6590 (Hawley)

This legislation allows Genesee County and the City of Batavia to enter into an agreement whereby the County could enter into an agreement as to the division of its sales tax revenue to the City of Batavia for a term not to exceed forty years.

**Status: Signed by the Governor, Chapter 405 of the Laws of 2019**

## **Marijuana and Hemp**

### **Decriminalization of Marijuana**

S.6579-A (Bailey)/A.8420-A (Peoples-Stokes)

This legislation decriminalizes possession of small amounts of marijuana and automatically expunges certain low-level convictions.

- First, the bill amends the penal law to remove criminal penalties for possession of any amount of marijuana under two ounces. Possession of less than one ounce of marijuana is a violation subject to a \$50 fine (previously \$100), and possession of between one and two ounces is a violation subject to a \$200 fine (previously a Class B misdemeanor). Possession of more than two ounces is still a crime.
- The bill also amends the penal law to remove language that makes smoking in public view a misdemeanor offense. Public health law is amended to ban smoking of marijuana anywhere tobacco is prohibited.
- Finally, the legislation provides for the expungement of certain low-level marijuana convictions. The Drug Policy Alliance estimates that the measure will allow for the expungement of criminal records for approximately 900,000 low-level marijuana arrests in the past 20 years.

**Status: Signed by the Governor, Chapter 131 of the Laws of 2019**

### **Provides for vacating records for certain proceedings**

S.6614 (Zebrowski)/A.8432 (Peoples-Stokes)

This bill is a supplement to S.6579-A (Bailey)/A.8420-A (Peoples-Stokes), which decriminalizes possession of small amounts marijuana offenses and provides for the expungement of related records. It specifies that the chief administrator of the courts must notify the heads of all appropriate police departments, district attorney's offices, and other law enforcement agencies of all convictions that have been vacated and dismissed.

**Status: Signed by the Governor, Chapter 132 of the Laws of 2019**

### **Relates to the growth of industrial hemp and the regulation of hemp extract**

S.6184-A (Metzger)/A.7680-A (Lupardo)

This legislation amends the agriculture and markets law, in relation to the growth of industrial hemp and the regulation of hemp extract. It establishes a permitting process under the Department of Agriculture for growers, processors, and marketers and directs the Department to create regulations to address the process and enforcement of licensing provisions. Manufactures and extractors are required to have their products tested for quality. Product packaging must contain warning labels warning about the potential impact on human health, as well as information about serving sizes and potency.

The Commissioner of Agriculture is authorized to collect and publish data and research related to growth, cultivation, production, and processing methods. The Commissioner may also work with Cornell Cooperative Extension to promote best farming practices for industrial hemp that are compatible with state water quality and other environmental objectives.

**Status: Passed Both Houses**

## **Public Employee Relations & Labor**

### **Prohibits discrimination against victims of domestic violence in employment and provides a limited reasonable accommodation**

S.1040 (Persaud)/A.5618 (Weinstein)

This legislation prohibits discrimination in employment on the basis of an employee's status as a victim of domestic violence and requires an employer, unless it would be an undue hardship, to provide a reasonable accommodation to a victim of domestic violence, limited solely to allowing an absence, charged to leave or unpaid, for certain activities. This legislation also requires an employee who must be absent from work to provide reasonable notice, except where such notice is not feasible.

**Status: Signed by the Governor, Chapter 176 of the Laws of 2019**

### **Relates to 55-c eligible jobs**

S.3300 (Brooks)/A.6297 (Barrett)

This legislation requires that employers prominently display that a job is 55-c eligible on such job postings, which are intended to employ disabled veterans.

**Status: Passed Both Houses**

### **Relates to disability retirement benefits for sheriffs, deputy sheriffs, undersheriffs, and correction officers in Nassau County**

S.3946 (Gounardes)/A.5021 (Abbate)

This legislation allows disability benefits for sheriffs, deputy sheriffs, undersheriffs and correction officers in Nassau County when the disability causing injuries are the natural and proximate case of an intentional or reckless act of a civilian.

**Status: Passed Both Houses**

### **Sets limits on severance packages for public at-will employees**

S.4292 (Comrie)/A.2480 (Wallace)

This legislation sets a limit on severance packages equal to three months salary for public at-will employees not subject to a collective bargaining agreement or union contract.

**Status: Passed Both Houses**

### **Provides for disability retirement benefits for various ambulance workers in Nassau County**

S.5133 (Kaplan)/A.5324 (Abbate)

This legislation provides for a ¾ performance of duty retirement for various ambulance technician titles within Nassau County.

**Status: Passed Both Houses**

### **Relates to the residency of correction officers employed by Nassau County**

S.5766 (Gaughran)/A.7825 (Lavine)

This legislation waives the residency requirement for correction officers for Nassau County to allow them to reside within an adjoining county.

**Status: Signed by the Governor, Chapter 333 of the Laws of 2019**

**Increases the amount of money a retiree may earn in a position of public service to \$35,000**

S.1866-B (Breslin)/A.2858-B (McDonald)

Beginning January 1, 2020, public employee retirees may earn up to \$35,000 in a position of public service without impacting their retirement benefits.

**Status: Passed Both Houses**

**Authorizes Assistant District Attorneys and Assistant Public Defenders in Chenango County to reside in an adjoining county**

S.547 (Akshar)/A.1244 (Crouch)

This legislation waives the residency requirement for ADA and APD positions within Chenango County.

**Status: Signed by the Governor, Chapter 292 of the Laws of 2019**

**Authorizes Assistant District Attorneys in Lewis County to reside in an adjoining county**

S.2125 (Griffo)/A.5195 (Blankenbush)

This legislation waives the residency requirement for ADA positions within Lewis County.

**Status: Signed by the Governor, Chapter 396 of the Laws of 2019**

**Authorizes Assistant District Attorneys or Senior Assistant District Attorneys in Cayuga County to reside in an adjoining county**

S.3115 (Helmig)/A.6551 (Finch)

This legislation waives the residency requirement for ADA positions or Senior ADA positions within Cayuga County.

**Status: Signed by the Governor, Chapter 464 of the Laws of 2019**

**Authorizes Assistant District Attorneys in Washington County to reside in an adjoining county**

S.4978 (Little)/A.6737 (Woerner)

This legislation waives the residency requirement for ADA positions within Washington County.

**Status: Signed by the Governor, Chapter 349 of the Laws of 2019**

**Relates to increased protections for protected classes and special protections for employees who have been sexual harassed**

A.8421 (Simotas)/S.6577 (Biaggi)

This legislation enacts comprehensive sexual harassment legislative reform and extends provisions of law set to expire.

**Status: Signed by the Governor, Chapter 160 of the Laws of 2019**

**Relates to full-time status of the district attorney of Hamilton County**

S.4632 (Tedisco)/A.7215 (Smullen)

This legislation amends the County Law to establish a full-time district attorney in Hamilton County.

**Status: Passed Both Houses**

## **Public Health**

### **Increases the age to purchase tobacco products from 18 years old to 21 years old**

A.558A (Rosenthal)/S.2833 (Savino)

An act to amend the public health law and the penal law, in relation to increasing the purchasing age for tobacco products from eighteen to twenty-one. This act shall take effect 180 days after it shall have become law.

**Status: Signed by the Governor, Chapter 100 of the Laws of 2019**

### **Requires hospitals to establish policies/ procedures regarding domestic violence**

A.2850A (Lavine)/S.3962A (Salazar)

This legislation mandates hospitals to develop, maintain, and disseminate written policies for the identification, assessment, treatment and referral of confirmed or suspected cases of domestic violence. This legislation also requires a training program for all current and new employees regarding the domestic violence policies the hospital establishes. Requires hospitals to designate a staff member to coordinate services to victims of domestic violence and requires the coordination of services to victims by utilizing the local victim assistance organization.

**Status: Passed Both Houses**

### **Establishes the office of the advocate for people with disabilities**

A.4737 (Steck)/S.1674 (Skoufis)

This legislation establishes a state office of the advocate for people with disabilities. The purpose of this office is to function as an advocate for the rights of people with disabilities.

**Status: Passed Both Houses**

### **Relates to including electronic cigarettes and liquid nicotine with the tobacco use and prevention program**

A.481-A (Ronsethal)/S.301-A (Hoylman)

This legislation expands the current school-based programs and marketing initiatives aimed at reducing tobacco use, to include electronic cigarette and liquid nicotine use.

**Status: Signed by the Governor, Chapter 256 of the Laws of 2019**

### **Relates to medication assisted treatment for substance use disorders**

S.5935-A (Harckham)/A.7246-B (Rosenthal)

This legislation would allow individuals under Medicaid the ability to access whichever MAT medication is most beneficial to them and their needs, without utilization control mandated prior authorization, or lifetime limits.

**Status: Passed Both Houses**

### **Establishes a temporary commission relating to the office of mental health housing programs**

S.5637-A (Carlucci)/A.7489-A (Gunther)

This bill would establish a temporary commission to investigate and provide policy guidance and recommendations relating to the adequacy of funding levels and need for sufficient staffing in all supportive housing under the auspices of the Office of Mental Health (OMH).

**Status: Passed Both Houses**

## **Public Safety**

### **Establishes an extension of time for national instant background checks**

S.2374 (Gianaris)/A.2690 (Paulin)

This legislation establishes an extension of time of up to 30 days for national instant background checks before the individual is allowed to possess the firearm.

**Status: Signed by the Governor, Chapter 129 of the Laws of 2019**

### **Prohibits the possession, manufacture, transport and disposition of rapid-fire modification devices**

S.2448 (Sepulveda)/A.2684 (Fahy)

This legislation prohibits the possession, manufacture, transportation, shipment and sale of items that accelerate the firing rate of firearms, rifles, or shotguns.

**Status: Signed by the Governor, Chapter 130 of the Laws of 2019**

### **Establishes the municipal gun buyback program and municipal gun buyback program fund**

S.2449 (Mayer)/A.2685 (Rosenthal)

This bill mandates the Division of State Police, in conjunction with the NYS Department of State, provide a statewide standard for the safe removal of illegal, unsecured, abandoned, or unwanted firearms.

**Status: Signed by the Governor, Chapter 139 of the Laws of 2019**

### **Establishes extreme risk protection orders as a court-issued order of protection prohibiting a person from purchasing, possessing, or attempting to purchase or possess a firearm, rifle or shotgun**

S.2451 (Kavanagh)/A.2689 (Simon)

This legislation creates an extreme risk protection order which would prohibit the respondent from purchasing, possessing, or attempting to purchase or possess a firearm, rifle, or shotgun while the order is in effect, and to surrender any firearms, rifles or shotguns to law enforcement pending a court hearing to be held no sooner than three days and no longer than six days after the issuance of a temporary order, unless the respondent requests more time to prepare, to determine whether a final extreme risk protection order will be issued. This legislation allows family members and law enforcement to petition a court to have an individual access to guns temporarily suspended when they are a risk to themselves or others.

**Status: Signed by the Governor, Chapter 19 of the Laws of 2019**

### **School bus safety cameras**

A.4950B (Magnarelli)/S.4524B (Kennedy)

This legislation would amend various portions of law to allow red-light/ stop cameras to be installed on school buses to assist in the enforcement of individuals who fail to stop for a school bus. This legislation creates a demonstration program authorizing counties not wholly contained within a city, cities, towns and villages to enact local laws or ordinances imposing liability on vehicle owners for the failure of motor vehicle operators to comply with VTL § 11 74 (overtaking and passing stopped school buses displaying red visual signals) within parameters established by this section. The demonstration program would empower these municipalities to install and operate school bus photo violation monitoring systems (stationary or mobile), which could be installed on school buses owned or operated by the school district within the

municipality pursuant to an agreement. All costs would be borne by the municipalities subject to the agreements.

**Status: Signed by the Governor, Chapter 145 of the Laws of 2019**

**Permits legislative staff to visit correctional facilities**

A.6849 (Weprin)/S.4566 (Sepulveda)

This bill allows visiting state legislators to bring their staff into correctional facilities.

**Status: Signed by the Governor, Chapter 274 of the Laws of 2019**

**Requires that public buildings with multi-line telephone systems configure their system hardware in order to allow any call placed to 911, to be directly connected to a PSAP**

S.4756 (Brooks)/A.458 (Paulin)

This legislation sets the requirement that all public buildings operating on a multi-line telephone system configure their system hardware to allow any call to 911 on the system to be directly connected to a public service answering point. However, an exception to this requirement would be established for any public building that would be required to upgrade their system hardware in order to comply. If such an exception applies, telephones in such public building would be required to have an instructional sticker on or around the telephone informing users of the phone's inability to directly dial 911 and the procedures to follow to connect to 911 in case of an emergency.

**Status: Passed Both Houses**

**Relates to the detention of individuals in a county jail pending a first court appearance in an off-hour's arraignment part**

A.7647 (Weprin)/S.5593 (May)

This legislation authorizes the county correctional facility to be used for the detention of persons under arrest being held during off-hours arraignment. This measure would address the problem by allowing a county jail facility to accept pre-arraignment prisoners if done in connection with the establishment of an off-hour's arraignment part. The measure does not mandate that the sheriff accept pre-arraignment prisoners and will have no impact on those counties that have already secured legislative authority for pre-arraignment detention of arrested individuals. The measure is designed to relieve a county of the need to individually petition the Legislature for pre-arraignment detention authority when done as part of their approved plan for an off-hour's arraignment part.

**Status: Passed Both Houses**

**Relates to death certificates for persons whose death is caused by an opioid overdose**

S.1668 (Brooks)/A.4915 (Jean-Pierre)

This legislation would require that the death certificate also include the specific opioid that caused the death of the decedent along with any other related information as the Commissioner of Health may require.

**Status: Signed by the Governor, Chapter 443 of the Laws of 2019**

**Expands the Department of Health review of correctional health services**

S.1073-A (Rivera)/A.1130-A (Gottfried)

This legislation directs the department of health to study staffing levels in correctional settings. Witnesses at a 2017 hearing reported nursing vacancy rates of 20% and 25% for physicians in DOCCS facilities. The bill requires biennial reporting by department of health in consultation with DOCCS on staffing adequacy; potential challenges to adequate staffing; and impacts of staffing levels on availability of services.

**Status: Passed Both Houses**

**Relates to law enforcement's access to records of applications for licenses of firearms**

A.7739 (Paulin)/S..6160 (Biaggi)

This legislation allows local and state law enforcement upon request to be granted access to and copies of application information for firearm licenses.

**Status: Signed by the Governor, Chapter 244 of the Laws of 2019**

**Relates to the designation of a substitute jail for programmatic purposes**

S.6154 (Sepulveda)/A.7944 (Weprin)

Allows for a county jail inmate transfer between local correctional facilities for participation in beneficial programming.

**Status: Signed by the Governor, Chapter 305 of the Laws of 2019**

**Real Property**

**Provides a temporary extension for payment of real property taxes owed by a person who has either been furloughed or designated non-pay federal employee due to a shutdown**

A881 (Zebrowski)/S.1675 (Skoufis)

This legislation provides a temporary extension to pay property taxes for furloughed or non-pay federal employees impacted by a federal government shutdown. Local governments have the authority to opt in to provide a temporary local property tax extension. This legislation took effect immediately and expires June 1, 2020.

**Status: Signed by the Governor, Chapter 9 of the Laws of 2019**

**Expands the length of time to pay delinquent taxes in installments to 36 months**

A.4420 (Zebrowski)/S.4585 (Sanders)

This bill allows the length of time to pay delinquent taxes in installments can be up to 36 months (it is currently up to 24 months).

**Status: Signed by the Governor, Chapter 265 of the Laws of 2019**

**Social Services**

**Provides for the examination of the re-entry of incarcerated individuals**

S.3550 (Carlucci)/A.7103 (Cruz)

This legislation directs the NYS Office of Temporary and Disability Assistance (OTDA) and Department of Corrections and Community Supervision (DOCCS) to examine and make recommendation on current sanctions placed by the state and local social service districts on individuals prior to and after their release from incarceration.

**Status: Passed Both Houses**

**Relates to conciliation and non-compliance with public assistance employment**

S.3840A (May)/A.2455A (Hunter)

This legislation enables local social service districts to promote re-engagement of welfare recipients in welfare work activities to either avoid or end sanctions. This bill amends Section 341 of the Social Services Law to require the social service district to determine if there is an exemption, local of child care, transportation or an accommodation for disability before issuing a re-engagement notice.

**Status: Passed Both Houses**

**Enacts the New York State Reuniting Families Act**

S.5024A (Parker)/A.2106A (Kim)

This legislation allows social service districts the flexibility to consider the circumstances and delay the filing of a petition to terminate parental rights if the parent is incarcerated in immigration detention or immigration removal proceedings.

**Status: Signed by the Governor, Chapter 125 of the Laws of 2019**

**Transportation & Public Works**

**Relates to establishing in the city of Buffalo a demonstration program implementing speed violation monitoring systems in school speed zones by a means of photo devices**

A.951 (Peoples-Stokes)/S.231 (Kennedy)

This legislation allows the city of Buffalo to implement a pilot program for a speed violation camera monitoring system in school speed zones. This legislation takes effect 13 days after it becomes law and expires 5 years after the effective date.

**Status: Signed by the Governor, Chapter 148 of the Laws of 2019**

**Relates to wildlife management, authorizes cull permits to certified nuisance wildlife specialists**

S.5849 (May)/A.1599 (Hunter)

This legislation creates a program for wildlife damage management, qualifications for certified nuisance wildlife specialists, and procedures for issuing and using permits for wildlife damage management.

**Status: Passed Both Houses**

**Authorizes the City of New York to use design-build**

S.6293-A (Comrie)/A.7636-B (Braunstein)

This bill expands New York City's express design build authorization to fully include additional departments and agencies. This authorization applies to any public work undertaken pursuant to a project labor agreement that has a cost of no less than \$10 million with the exemption of certain homeland security, cultural, and housing projects.

**Status: Passed Both Houses**

**Relates to bicycles with electronic assist and electric scooters**

S.5294 (Ramos)/A.7431-B (Rozic)

This legislation authorizes e-bikes and e-scooters in New York State. This legislation allows cities, towns and villages to set their own rules for governing dockless scooters, and e-bikes including whether they are allowed on sidewalks and the maximum speed in which they can travel. E-bikes and e-scooters are prohibited from operating on public highways in a county with a population of less than 1,586,000.

**Status: Passed Both Houses**

**Relates to damages to contracts occasioned by delay**

S.5933-A (Comrie)/A.2040-A (Kim)

Requires state agency and authority public works contracts to include a clause authorizing contractors to recover reasonable damages for delay under limited circumstances.

**Status: Passed Both Houses**

**Relates to payment in construction contracts**

S.2394 (Breslin)/A.3552 (Cusick)

This bill would establish a new comprehensive definition of "substantial completion" for public construction projects under State Finance Law and General Municipal Law. This bill would define substantial completion as when the work required by the contractor with the public owner is sufficiently completed so that the public owner may occupy or utilize the work for its intended use. Within 30 days, the public owner shall submit to the contractor a written list describing all remaining items required to be completed by the contractor.

**Status: Passed Both Houses**

**Veterans**

**Relates to the listing of county and city veterans' service agencies**

A.4413 (Stern)/S.2405 (Kaplan)

This legislation requires the NYS Division of Veterans' Affairs to post on their website a listing of the local veterans' service agencies with the name, location, hours of operation and contact information for each county and city veterans' service agency in New York.

**Status: Signed by the Governor, Chapter 453 of the Laws of 2019**



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