

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 1998**

No. 40

Introduced by The Speaker (Council Member Vallone), the Public Advocate (Mr. Green) and Council Members Pinkett, Clarke, Eldridge, Freed, Henry, Koslowitz, Leffler, Michels and Miller; also Council Members Cruz, Reed, Robinson, Sabini and Duane.

A LOCAL LAW

To amend the New York City Charter in relation to prohibiting an officer or employee of the city or of any city agency who is a candidate for an elective city office or the spouse of such officer or employee to appear or otherwise participate in any television, radio or printed advertisement or commercial or by electronic means on the Internet which is funded, in whole or in part, by governmental funds or resources on or after January first in the year an election for such office shall be held.

Be it enacted by the Council as follows:

Section 1. Chapter 49 of the New York City Charter is hereby amended by adding a new section 1136.1 to read as follows:

§ 1136.1. 1. *It shall be a violation of this section for an officer or employee of the city or of any city agency who is a candidate for nomination or election to any elective city office or the spouse of such officer or employee:*

- (i) to appear or otherwise participate in any television, radio or printed advertisement or commercial or by electronic means on the Internet which is funded, in whole or part, by governmental funds or resources from January first in the year an election for such elective city office shall be held through the day of the last election that year for that office, in which the candidate seeks nomination or election;*
- (ii) to use governmental funds or resources for a mass mailing that is placed in the mail less than thirty days prior to any primary or general election for any elective city office for which office such person is a candidate for nomination or election; and*

- (iii) *to use governmental funds or resources for a public communication that contains an electioneering message urging the public to elect or defeat a certain candidate for an elective city office, or support or oppose a particular political party, or support or oppose a particular referendum question, including but not limited to information placed by electronic means on the Internet.*

In the case of a candidate in a special election to fill a vacancy in an elective city office, the prohibitions set forth in subparagraphs (i) and (ii) of this paragraph shall apply from the day the special election is declared through the day of the special election.

2. Nothing in this section shall prohibit appearances or participation by officers and employees of the city or of any city agency in or the use of governmental funds or resources for:

- (i) *advertisements and other communications required by law;*
- (ii) *communications necessary to safeguard public health and safety;*
- (iii) *standard communications in response to inquiries or requests;*
- (iv) *ordinary communications between officers and employees of the city or any city agency and the public;*
- (v) *ordinary communications between elected officials and their constituents;*
- (vi) *bona fide news coverage in print and electronic media; or*
- (vii) *debates among opposing candidates or other public education forums.*

Nothing in this section shall be construed to prohibit the public funding of candidates pursuant to any voluntary system of campaign finance reform established by local law or the lawful use of such public funds by such candidates.

3. For purposes of this subdivision:

- (i) *"appear" means to communicate by live and/or recorded, visual and/or audio images of the candidate, or to use the name of the candidate, or both, or in a manner which makes the identity of the candidate otherwise apparent by unambiguous reference;*
- (ii) *"candidate" means an individual who seeks nomination for election, or election, to any elective city office to be voted for at a primary, general or special election whether or not the office has been specifically identified at such time and whether or not such individual is nominated or elected; an individual shall be deemed to seek nomination for election, or election, to an elective office, if he or she has (1) taken the action necessary to qualify himself or herself for nomination for election, or election, or (2) received contributions or made expenditures, given his or her consent for any other person to receive contributions or make expenditures, with a view to bringing about his or her nomination for election, or election, to any elective city office at any time whether in the year in which such contributions or expenditures are made or at any other time;*
- (iii) *"electioneering message" means a statement designed to urge the public to elect or defeat a certain candidate for elective city office, or*

support or oppose a particular political party, or support or oppose a particular referendum question;

- (iv) *"mass mailing" means the identical or nearly identical pieces of mail totaling more than one hundred pieces, including but not limited to newsletters, pamphlets, and informational materials, which are mailed to residents or voters, or any group or classification thereof, other than in response to inquiries or requests previously made by the recipients of the mailing;*
- (v) *"participate" means to authorize, request, suggest, foster, or cooperate in, and encompasses actions and omissions of both the candidate for elective city office and any agent acting on behalf of the candidate, including a political committee authorized by the candidate.*

4. *Any officer or employee of the city or of any city agency or the spouse of such officer or employee who knowingly violates this section shall be guilty of a misdemeanor.*

§ 2. If any provision of this local law, or any amendments thereto, shall be held invalid or ineffective in whole or in part or inapplicable to any person or situation, each holding shall not affect, impair or invalidate the remainder of this local law, and all other provisions thereof shall nevertheless be separately and fully effective and the application of any such provision to other persons or situations shall not be affected.

§ 3. This local law shall take effect immediately.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on August 27, 1998, and approved by the Mayor on September 25, 1998.

CARLOS CUEVAS, City Clerk, Clerk of the Council

CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE LAW § 27

Pursuant to the provisions of Municipal Home Rule Law § 27, I hereby certify that the enclosed local law (Local Law 40 of 1998, Council Int. No. 346-A) contains the correct text and:

Received the following vote at the meeting of the New York City Council on August 27, 1998: 42 FOR, 5 AGAINST, 0 NOT VOTING.

Was returned signed by the Mayor on September 25, 1998.

Was returned to the City Clerk on September 25, 1998.

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel