

City of Albany, NY
Friday, July 24, 2015

Chapter 48. Equal Opportunity Protections

[HISTORY: Adopted by the Common Council of the City of Albany as indicated in article histories. Amendments noted where applicable.]

Article I. Office of Equal Employment Opportunity and Affirmative Action Program

[Adopted 7-18-1983 by L.L. No. 2-1983 as Ch. I, Art. XI, of the 1983 Code]

§ 48-1. Establishment.

It is hereby ordained and directed that the City of Albany by this article adopts and establishes an Office of Equal Employment Opportunity and establishes an affirmative action program. The purpose, policy, duties and procedures to be followed by the City of Albany under this Affirmative Action Ordinance are set forth below.

§ 48-2. Policy and purpose.

[Amended 6-1-1998 by Ord. No. 26.41.98; 12-17-2001 by Ord. No. 37.91.00^[1]]

A. It is the policy of the City to prohibit discrimination because of race, color, religion, sex, national origin, sexual orientation, gender, age, disability, marital or domestic partner status in all aspects of its personnel policies, programs, practices and operations. The purposes of this article are those in accord with Title VII of the Civil Rights Act of 1964, the Human Rights Law of the State of New York as pertaining to equal employment opportunity in City government, and Article III of this chapter.

[Amended 4-7-2004 by Ord. No. 18.61.03]

B. It shall be the policy of the City that, to the extent not inconsistent with law, the City shall make benefits available to the domestic partners of City employees on the same basis as the City makes benefits available to the spouses of City employees.

[1] *Editor's Note: This ordinance provided that it take effect 1-1-2003 and that Subsection B shall only apply to active employees as of that effective date. The applicability of Subsection B to employees covered by collective bargaining agreements shall be subject to mutually agreeable revisions to such agreements in accordance with applicable federal and state statutes.*

§ 48-3. Definitions.

[Amended 6-1-1998 by Ord. No. 26.41.98]

All such definitions of the Human Rights Law of the State of New York (as amended)^[1] as pertain to equal opportunity in employment in City government or as contained in Article III of this chapter are hereby

restated by the City as the provisions of this article.

[1] *Editor's Note: See Article 15 of the New York State Executive Law.*

§ 48-4. Unlawful discriminatory practices.

[Amended 6-1-1998 by Ord. No. 26.41.98]

All such unlawful discriminatory practices contained in the Human Rights Law of the State of New York, as amended, § 296,^[1] as apply to equal opportunity in employment in City government and contained in Article III of this chapter are hereby restated by the City of Albany as the provisions of this article.

[1] *Editor's Note: See § 296 of the Executive Law.*

§ 48-5. Establishment and head of Office.

There is hereby established an Office of Equal Employment Opportunity which is designated to administer this article. The head of that Office shall be appointed by the Mayor of the City of Albany and shall hereafter be called the "Equal Opportunity Officer of the City of Albany."

§ 48-6. Powers and duties of Office.

- A. The Equal Employment Opportunity Office, by and through the Equal Opportunity Officer, shall have the following functions, powers and duties as pertaining to equal employment in City government:
- (1) To establish and maintain an office within the City of Albany.
 - (2) To employ such personnel as may be necessary.
 - (3) Upon request, to obtain and utilize the services of all City agencies and departments.
 - (4) To formulate policies to effectuate the purposes of this article and to make recommendations to agencies and offices of the City of Albany in aid of such policies and purposes.
 - (5) To render each year to the Mayor and to the Common Council a written report of all of its activities and of its recommendations.
 - (6) To furnish any person with such technical assistance that the Office deems appropriate to further comply with the purposes or provisions of this article.
 - (7) To provide such reports as may be necessary from time to time.
 - (8) To review and approve, prior to publication, any form, brochure, application or publication issued or utilized by any City agency or department which contains a statement on nondiscriminatory practices in personnel policies, programs, services or operations of the City of Albany to assure that such statement is in conformance with the provisions of this chapter.
[Added 6-1-1998 by Ord. No. 26.41.98]
- B. All complaints of alleged discrimination made in connection with § 48-4 of this article shall be filed with the Equal Opportunity Officer. The Office shall endeavor to eliminate such discrimination. Every complainant shall be informed of other avenues of resolution.

§ 48-7. Affirmative action program.

In order to assure nondiscriminatory recruiting and promotion by the City of Albany, the City of Albany

does hereby adopt the following programs and policies:

A. Recruitment and selection.

- (1) It is the policy of this City to recruit as many qualified candidates as possible for each available position.
- (2) Job announcements shall include a complete description of duties, minimum experience and educational requirements and salary range, if established. Job announcements shall carry the statement "An Equal Opportunity Employer."
- (3) Selection procedures will be objectively established to measure relevant job qualification requirements.
- (4) All job opportunities will be registered with the New York State Employment Service. In addition, the City will utilize public and private organizations, including but not limited to the following:
 - (a) Albany Municipal Civil Service.
 - (b) Albany County Civil Service.
 - (c) Albany Department of Human Resources.
 - (d) High school and college placement services.
 - (e) Public and private agencies involved in training the veteran, the disadvantaged or the handicapped for employment.
 - (f) Minority groups and women organizations.
 - (g) Professional organizations.
- (5) Job announcements shall be posted in the City Hall for the benefit of employees and visitors.
- (6) Evaluation of any candidate shall in no way reflect race, color, creed, sex, age, national origin, sexual orientation, gender, ancestry, disability, marital or domestic partner status. Whenever possible, every effort shall be made to hire qualified residents of the City of Albany.
[Amended 6-1-1998 by Ord. No. 26.41.98; 12-17-2001 by Ord. No. 37.91.00^[1]; 4-7-2004 by Ord. No. 18.61.03]
[1] *Editor's Note: This ordinance provided that it take effect 1-1-2003.*
- (7) It shall be made known to all recruitment sources that qualified minority and women are being sought for consideration for professional, subprofessional and other office work of the City.
- (8) Present employees shall be encouraged to refer minority and female applicants.

B. Hiring.

- (1) The staff of each City department who make hiring decisions are to be instructed that minority and female applicants for all jobs are to be considered without discrimination.
- (2) The staff involved in recruitment are to communicate to all sources that qualified minority members and women are being sought for consideration.

C. Training. Training practices shall be as follows:

- (1) Sponsoring and assisting minority and female, as well as others, to enter subprofessional and professional training and making such training available to the maximum extent within the City.
- (2) Advocating through City and individual membership in professional associations that these

associations adopt programs to encourage more minority members and women to seek careers in City government and providing accurate information on necessary education and future opportunities.

- (3) Assuring that the City makes maximum use of apprenticeship and other training to help equalize opportunities for minority and female Albany, New York, residents, by using appropriate steps such as the following:
 - (a) Sponsoring and assisting Albany, New York, minority and females as well as others to enter training and education programs and making such programs available to the maximum extent within the City.
 - (b) Actively encouraging minority and female employees as well as others to increase their skills and job potential through participation in training and education programs and helping to assure that such programs are adequate and are in fact available to minority and/or low-income persons.
 - (c) Actively participating in the establishment and operation of training and education programs.
 - (d) Participating in training and employment programs in the area, especially those funded by the Department of Labor and/or other public agencies.
 - (4) Assuring nondiscriminatory placement and promotion within the City by taking appropriate steps such as the following:
 - (a) Instructing personally those of the City who make decisions on placement and promotion that employees are to be considered without discrimination and that job areas in which there is little or no minority and female representation should be reviewed to determine whether this results from discrimination due to selection requirements and testing not directly related to the job.
 - (b) Maintaining a file of the names and addresses of each person referred to the City and what action was taken with respect to each such referred worker and, if the worker was not employed, the reasons therefor.
 - (c) Assuring nondiscriminatory pay, other compensation and working conditions in the City.
 - (5) Assuring nondiscriminatory demotion, layoff or termination by maintaining a file of the names and addresses of each person who was demoted, laid off or terminated, and the reasons therefor.
- D. Promotion. Instruction is to be given to the staff who makes placement and promotion decisions that minority and female employees are to be considered without discrimination.
- E. Office of Equal Employment Opportunity. The Office of Equal Employment Opportunity, through the Equal Opportunity Officer, shall have the following functions, powers and duties as pertaining to affirmative action:
- (1) Monitor the affirmative action program.
 - (2) Assist individual City departments in achieving goals.
 - (3) Disseminate information concerning the affirmative action program to all City employees and to post copies thereof in conspicuous places within each department.
 - (4) Prepare and file the necessary reports.
 - (5) Render each year to the Mayor and to the Common Council a written report of all of its activities

and its recommendations.

- (6) Such powers and duties as may be designated by the Mayor or otherwise authorized by the Common Council.

§ 48-8. Severability; effect on existing labor contracts; repealer.

- A. If any part of this article or its application to any persons or circumstances is adjudged by a court to be invalid or ineffectual, such judgment shall not affect the remainder of this article or its application to any other person or circumstance.
- B. Nothing contained herein shall be construed to render any existing labor contract or portions thereof invalid.
- C. This article supersedes all prior local acts inconsistent with it to the extent of such inconsistency, but in all other respects shall be supplemental to such acts.

§ 48-9. When effective.

This article shall take effect immediately.

Article II. Minority- and Women-Owned Business Enterprise Program and Minority- and Women-Owned Labor Utilization Plan

[Adopted 6-18-1984; amended in its entirety 4-1-2002 by Ord. No. 13-22-02]

§ 48-10. Intent.

It is hereby ordained and directed that the City of Albany by this article adopts and establishes a Minority- and women-owned Business Enterprise Program and Minority and Women Labor Utilization Plan. The policy, standards and procedures to be followed by the City of Albany and sanctions imposed under this article are set forth below.

§ 48-11. Statement of policy.

It is the policy of the City of Albany that minority- and women-owned business enterprises shall have the maximum opportunity to participate in the performance of contracts let by the City and its several agencies and authorities. It is further the policy of the City of Albany and its several agencies and authorities that all contractors and subcontractors engaged on projects of the City or its several agencies or authorities shall utilize minority and women labor to the fullest extent possible. In the implementation of this policy, the City commits itself to a goal-oriented Minority- and women-owned Business Enterprise Program and a Minority and Women Labor Utilization Plan as set forth below.

§ 48-12. Definitions.

For the purpose of this program, the following definitions shall govern the management and direct implementation of program guidelines for minority- and women-owned business enterprises (MWOBE) and the Minority and Women Labor Utilization Plan (MWLUP):

MINORITY- AND WOMEN-OWNED AND -CONTROLLED BUSINESS

An established, profit-making enterprise, firm or corporation owned, controlled and operated with a minimum of 51% of all vested ownership and management benefits held by citizens and/or permanent residents who are women or a member of one of the following groups: citizens and/or permanent residents identified as minority and defined as such by the United States Department of Commerce, United States Department of Labor:

- A. Black persons not of Hispanic origin: persons having origins in any of the black racial groups of Africa.
- B. Hispanic persons: persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture of origin, regardless of race.
- C. Asians or Pacific islanders: persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent or the Pacific islands. This area includes, for example, China, Japan, Korea, the Philippine islands and Samoa.
- D. American Indians or Alaskan natives: persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.

§ 48-13. Structure of minority- and women-owned and -controlled business.

- A. The minority or women ownership of such business is a profit-making venture engaging in and capable of continuous engagement in construction/construction-related activity and is organized as one of the following:
 - (1) Sole proprietorship.
 - (2) Partnership/joint venture: two minority owned; two women owned; or one minority-owned and one women-owned.
 - (3) Joint venture, minority/women, majority contractor (51% to 49% only).
 - (4) Corporation.
- B. The minority or women owner(s) must possess the authority to direct daily business operations and enforce policies of the firm. Specifically, the minority or women owner(s) must exercise routine, ongoing management responsibilities, including but not limited to:
 - (1) Sharing in all benefits and liabilities in proportion to invested ownership percentage.
 - (2) Authorizing and processing payrolls and payables.
 - (3) The authorizing of all personnel actions, hiring, promotion and terminations.

§ 48-14. Minority business enterprise standards.

- A. The following standards shall be used by the City of Albany to establish criteria and to monitor the operation of a Minority- and Women-Owned Business Enterprise Program. The program requires the

City to:

- (1) Identify minority- and women-owned and -controlled business firms, corporations and establishments capable of engaging successfully in a competitive bid process for the procurement of construction and construction-related projects.
- (2) Maintain a central directory of minority-and women-owned and -controlled firms for bid notification, referrals and for negotiating contracts and subcontracts with construction residential rehab projects.
- (3) Discontinue and disqualify contractors and subcontractors when violations of policy and performance agreements occur.

B. Work performance standards. The MWOBE contractor/subcontractor:

- (1) Is responsible for entering into all contractual agreements which generate contracts.
- (2) Arranges for and supervises contract performance.
- (3) Secures equipment, materials and crew (laborers) sufficient to complete projects.
- (4) Provides bonding insurance and collateral as required for surety in contract performance.
- (5) Authorizes payrolls, payments and reports as requested in routine compliance.

C. Prohibitions.

- (1) Personnel transfers. An approved MWOBE subcontractor shall not include any enterprise whose principal officer, superintendent, foreman or any other similar supervisory-type personnel was in the employ of the low bidder (prime) during the period of time six months prior to the date of the bid announcement and extending to the date of the bid opening.
- (2) Demonstration of independence. Minority and women ownership and control shall be real and continuing and shall not be created solely to take advantage of special programs provided for minority and women business development. Certification shall be denied businesses not controlled by minority and women business persons.

D. Suspect indicators. A nonminority or nonwomen firm may be considered as controlling or having the power to control a minority and women firm when one or more of the following circumstances are found to exist and it is reasonable to conclude that under the circumstances such nonminority or nonwomen firm is directing or influencing or has the power to direct or influence the operation of the minority or women firm:

- (1) Interlocking management. Officers, directors, employees or principal stockholders of the nonminority or nonwomen firm serve as officers of the minority or women firm.
- (2) Common facilities. The nonminority or nonwomen firm shares common office space and/or employees and/or other facilities with the minority or women firm.

E. Reports.

- (1) The Albany MWOBE Officer shall biannually submit a written report to the Common Council on or before April 1 and October 1 of each year summarizing:
 - (a) The standards set forth in Subsection **A** of this section;
 - (b) The number and types of contracts in which minority- and women-owned and -controlled business firms, corporations and establishments have participated; and,

- (c) The attainment of the goals set forth in this article.
- (2) Such report may also include recommendations designed to improve the administration and implementation of the program set forth in this article.

§ 48-15. Administration.

The contractor must develop and submit to the Albany MWOBE Officer, at initial bidding, a detailed schedule of MWOBE participation, including:

- A. The names of MWOBE's intended to be used as subcontractors.
- B. A description of the work each is to perform.
- C. The dollar value of each proposed subcontract with an MWOBE.
- D. Notice to subcontractors of their use of MWOBE's.

§ 48-16. Procedures in carrying out policy.

The contractors shall carry out this policy in the awarding of contracts and subcontracts to minority and women business enterprises to the fullest extent consistent with the efficient performance of this contract and shall consider using positive efforts to meet the applicable MWOBE participation goal. Such positive efforts shall include but not be limited to:

- A. Attendance at preconstruction meetings scheduled by the City and its several agencies and authorities.
- B. Advertising, subcontracting opportunities for MWOBE's in minority and women trade association newsletters and minority and women media. The bid due date and reasonable MWOBE response due date must be specified in the advertisement. At a minimum, the publication chosen must be distributed within reasonable proximity of the location of the construction project. The advertisement must be for specific subcontracts which are described in reasonable detail.
- C. Notifying minority and women contractor associations located within the City of Albany of the available subcontracting opportunities. The notification must be by certified mail and should be received by the addressee associations in time to permit effective MWOBE participation. The MWOBE response due date must be specified in the notifications. The solicitation must be for specific subcontracts, and the work to be done must be described as accurately as possible and in reasonable detail.
- D. Where technically feasible, segmenting the work to be subcontracted to accommodate the size and capabilities of available minority and women subcontracting.
- E. Sending solicitation letters by certified mail inviting quotes or proposals from individual minority and women business enterprises. The solicitation letter must reference specifically segmented portions of work to be contracted. The portions of work must be described as specifically and accurately as possible. Inquiries for further details must be encouraged. The solicitation letter must be sent in a timely manner so as to allow minority and women firms sufficient opportunity to develop quotes or proposals for the work described. All solicitation letters shall include the bid date and a response due date for the information of the addressee.
- F. Engaging in direct negotiations with an MWOBE whose proposal is deemed unreasonably high and rejected for that reason.
- G. Informing its MWOBE subcontractors of change orders that may affect the MWOBE's subcontract.

§ 48-17. Requirements of contractor throughout project.

Throughout the project, the contractor must:

- A. Require each subcontractor under the contract to comply with the MWOBE requirement, if necessary to achieve the MWOBE goal.
- B. Inform the Albany MWOBE Officer of any changes in its detailed schedule of MWOBE participation.
- C. Maintain documentation that will demonstrate good faith efforts to retain MWOBE 's.
- D. Make good faith efforts to replace an MWOBE subcontractor that is unable to perform successfully with another MWOBE.
- E. Notify the Albany MWOBE Officer of any suspected instances of companies fraudulently claiming MWOBE status.
- F. If possible, provide any needed technical assistance to MWOBE 's under contract.
- G. If possible, aid proposed MWOBE subcontractors in obtaining necessary bonding.
- H. Design payment schedules to minimize cash-flow problems faced by MWOBE 's.
- I. Strive to attain a minority and women labor utilization plan of 17.8%.

§ 48-18. Eligibility status.

MWOBE eligibility status shall be renewed annually.

- A. Contract record. The MWOBE firm shall have performed contracts in the trades area. Copies of such previous contracts shall be presented to the City in the MWOBE applications materials or present credentials of training or work history.
- B. Location of business. The MWOBE firm shall maintain a business location designated by full street address and telephone service specific to the business requesting certification and contract negotiations.
- C. Recordkeeping.
 - (1) The MWOBE firm shall present financial records, including a certified copy of the two previous years' profit and loss statement and balance sheet.
 - (2) The MWOBE firm shall make available to the City of Albany all financial bookkeeping records for review and verification by the City, upon request. The City reserves the right to audit the operations of the MWOBE firm for compliance verification and certification purposes.

§ 48-19. Recordkeeping.

- A. All contractors are requested to maintain accurate and complete records to reflect the name of the MWOBE, individual contacted, description of the work to be done, quotation or proposal received (if any) and description of follow-up actions. In the event an interested MWOBE will not be utilized, the record of contact with that firm should include an explanation of the reason(s) why the firm will not be used. All contractors and subcontractors are requested to maintain accurate and complete records to reflect efforts to obtain maximum minority and women labor utilization.

- B. Contractors will be required to maintain for three years such records as are necessary to determine compliance with their MWOBE obligations and to submit regular reports to enable the Albany MWOBE Officer to monitor this compliance.

§ 48-20. Sanctions.

If the contractor cannot meet the goal, the contractor must document to the Albany MWOBE Officer that all positive efforts have been made to achieve it. Failure to meet the goal or to document all positive efforts that have been made to achieve it may result in the City invoking sanctions against the contractor, including but not limited to:

- A. Any legal or equitable remedy available to the City for breach of contract.
- B. Withholding future payments under the contract involved.
- C. Disqualification of the contractor from future contracting opportunities.
- D. Cancellation of the contract and declaration of forfeiture of performance bond.

§ 48-21. Severability; repealer.

- A. If any part of this article or its application to any persons or circumstances is adjudged by a court to be invalid or ineffectual, such judgment shall not affect the remainder of the article or its application to any other person or circumstance.
- B. This article shall supersede all laws inconsistent with it to the extent of such inconsistency, but in all other respects shall be deemed supplemental to such laws.

§ 48-22. (Reserved)

Article III. Omnibus Human Rights Law

[Adopted 7-16-1990; amended 12-7-1992]

§ 48-23. Purpose; jurisdiction; policy.

- A. The City of Albany hereby finds and declares that the City has the responsibility to ensure that every individual within its boundaries is afforded an equal opportunity to enjoy a full and productive life, free from violation of basic civil and human rights, and that discriminatory practices adversely affecting the equality of opportunity threaten the general welfare of the municipality and its inhabitants. The City of Albany realizes its obligation to protect the rights and privileges that all individuals have as human beings, and hereby gives the Office of Equal Employment Opportunity and Fair Housing general jurisdiction and power to implement and enforce the provisions of this article and the Human Rights Commission the general jurisdiction to hear disputes referred to it by the Office under this article and the appellate jurisdiction to review an order of the Office dismissing a complaint for lack of jurisdiction or for want of probable cause.
- B. It shall be the policy of the City of Albany to encourage programs designed to ensure that every individual has an equal opportunity to participate fully in the life of this City, free from violation of their basic civil and human rights, and to prohibit discrimination because of race, sex, creed, color, religion,

national origin, sexual orientation, gender, age, disability, marital or domestic partner status in areas of employment, public accommodations, housing, real property transactions and the provision of City services.

[Amended 2-1-1999 by Ord. No. 1.12.99; 12-17-2001 by Ord. No. 37.91.00^[1]; 4-7-2004 by Ord. No. 18.61.03]

- (1) In so doing, the Common Council makes clear that its action is not intended to promote any particular attitude, course of conduct or way of life. Rather, its purpose is to ensure that individuals who live in our free society have the capacity to make their own choice, follow their own beliefs and conduct their own lives as they see fit, consistent with existing law. Nothing in this legislation should be construed to create, add, alter or abolish any right to marry that may exist under any federal or state constitution or state law.
- (2) Furthermore, nothing contained herein is to be construed to bar any religious or denominational institution or organization or any organization operated for charitable or educational purposes and operated, supervised or controlled by or connected with a religious organization from limiting employment or sale or rental of housing accommodations or admission to or giving preference to persons of the same religion or denomination or from making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

[1] *Editor's Note: This ordinance provided that it take effect 1-1-2003.*

§ 48-24. Equality of opportunity a civil right.

[Amended 2-1-1999 by Ord. No. 1.12.99; 12-17-2001 by Ord. No. 37.91.00^[1]; 4-7-2004 by Ord. No. 18.61.03]

The opportunity to obtain employment, use of places of public accommodation, the use, occupancy and ownership of housing accommodations, land and commercial space and the provision of City services without discrimination because of race, sex, creed, color, religion, national origin, sexual orientation, gender, age, disability, marital or domestic partner status is hereby recognized as and declared to be a civil right. Nothing contained herein, however, shall be construed to protect conduct otherwise proscribed by law.

[1] *Editor's Note: This ordinance provided that it take effect 1-1-2003.*

§ 48-25. Definitions.

A. When used in this article, the following terms shall have the meanings indicated:

COMMISSION

The City of Albany Human Rights Commission.

DISCRIMINATION

Includes segregation and separation.

DOMESTIC PARTNER

Persons who have a registered domestic partnership pursuant to Article **V** of Chapter **245** of the Code of the City of Albany.

[Added 12-17-2001 by Ord. No. 37.91.00^[1]]

EMPLOYEE

Does not include any individual employed by his parents, spouse or child or in the domestic service of any person.

EMPLOYMENT AGENCY

Includes any person undertaking to procure employees or opportunities to work.

GENDER

Shall include actual or perceived sex and shall also include a person's gender identity, self-image, appearance, behavior or expression, whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the legal sex assigned to that person at birth.

[Added 4-7-2004 by Ord. No. 18.61.03]

HOUSING ACCOMMODATION

Includes any building, structure or portion thereof which is used or occupied or is intended, arranged or designed to be used or occupied as the home, residence or sleeping place of one or more human beings.

NATIONAL ORIGIN

Includes ancestry. The terms "disability," "marital status" and "sex" shall be defined and used for the purpose of this article as they are defined and used in the New York Executive Law, as amended. The term "sexual orientation" includes actual or perceived heterosexuality, homosexuality, asexuality and bisexuality.

OFFICE

The City of Albany Office of Equal Employment Opportunity and Fair Housing.

PERSON

Includes one or more individuals, partnership associations, corporations, legal representatives, trustees, trustees in bankruptcy or receivers.

PLACE OF PUBLIC ACCOMMODATION, RESORT OR AMUSEMENT

Includes, except as hereinafter specified, all places included in the meaning of such terms as set forth in the New York Executive Law, Article 15, § 292, as amended, incorporated herein by reference.

PROVISION OF CITY SERVICES

Includes any service provided by the City of Albany, either directly or indirectly through a grant or award of funds or on a contractual basis, including a service, activity or event which is fully or partially funded for a specific or general purpose with City funds or funds administered by the City of Albany. Nothing herein shall be interpreted to prohibit the provision of a City service, which is otherwise provided on a nondiscriminatory basis, to a targeted population or class of individuals.

[Added 2-1-1999 by Ord. No. 1.12.99]

[1] *Editor's Note: This ordinance provided that it take effect 1-1-2003.*

- B. The pronouns "him," "her," "himself," "herself," "he" and "she" are used interchangeably to designate an individual, regardless of the gender thereof.

§ 48-26. Unlawful discriminatory practices.

- A. It shall be an unlawful discriminatory practice:
- (1) For an employer or licensing agency, because of the age, race, sex, creed, color, religion, national origin, sexual orientation, gender, disability, marital or domestic partner status of any individual to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.

[Amended 12-17-2001 by Ord. No. 37.91.00^[1]; 4-7-2004 by Ord. No. 18.61.03]

[1] *Editor's Note: This ordinance provided that it take effect 1-1-2003.*

- (2) For an employment agency to discriminate against any individual because of age, race, sex, creed, color, religion, national origin, sexual orientation, gender, disability, marital or domestic partner status in receiving, classifying, disposing or otherwise acting upon applications for its services or in referring an applicant or applicants to an employer or employers.

[Amended 12-17-2001 by Ord. No. 37.91.00^[2]; 4-7-2004 by Ord. No. 18.61.03]

[2] *Editor's Note: This ordinance provided that it take effect 1-1-2003.*

- (3) For any employer or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement or publication or to use any form of application for employment or to make any inquiry in connection with prospective employment which expresses, directly or indirectly, any limitations, specification or discrimination as to age, race, sex, creed, color, religion, national origin, sexual orientation, gender, disability, marital or domestic partner status or any intent to make any such limitation, specification or discrimination, unless based upon a bona fide occupational qualification; provided, however, that neither this subsection nor any provision of this article or other law shall be construed to prohibit the personnel office from requesting information from applicants for civil service examinations concerning any of the aforementioned characteristics for the purpose of conducting studies to identify and resolve possible problems in recruitment and testing of members of minority groups to ensure the fairest possible and equal opportunities for employment in the civil service for all persons, regardless of age, race, sex, creed, color, religion, national origin, sexual orientation, gender, disability, marital or domestic partner status.

[Amended 12-17-2001 by Ord. No. 37.91.00^[3]; 4-7-2004 by Ord. No. 18.61.03]

[3] *Editor's Note: This ordinance provided that it take effect 1-1-2003.*

- (4) For any employer or employment agency to discharge, expel or otherwise discriminate against any person because he has opposed any practices forbidden under this article or because he has filed a complaint, testified or assisted in any proceeding under this article.
- (5) Nothing in this article shall affect any restrictions upon the activities of persons licensed by the state liquor authority with respect to persons under 21 years of age.
- (6) Nothing contained herein shall restrict an employer's right to insist that an employee meet bona fide job-related qualifications of employment or shall authorize or require employers to establish affirmative action quotas based on sexual orientation or to inquire about the sexual orientation of current or prospective employees.

B. Places of public accommodation, resort or amusement.

- (1) It shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, agent or employee of any place of public accommodation, resort or amusement, because of the race, sex, creed, color, religion, national origin, sexual orientation, gender, age, disability, marital or domestic partner status of any person, directly or indirectly to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof, including the extension of credit, or directly or indirectly to publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from or denied to any person on account of race, sex, creed, color, religion, national origin, sexual orientation, gender, age, disability, marital or domestic partner status or that the patronage or custom thereof of any person of or purporting to be of any particular race, sex, creed, color, religion, national origin, sexual orientation, gender, age or marital status or having a disability is unwelcome, objectionable or not acceptable, desired or solicited.

[Amended 12-17-2001 by Ord. No. 37.91.00^[4]; 4-7-2004 by Ord. No. 18.61.03]

ALB.Doc Pro 000017

[4] *Editor's Note: This ordinance provided that it take effect 1-1-2003.*

- (2) Nothing in this article shall be construed to prevent the barring of any person, because of the sex of such person, from places of public accommodation, resort or amusement if the Commission grants an exemption based on bona fide considerations of public policy, nor shall this article apply to the rental of rooms in a housing accommodation which restricts such rental to individuals of one sex.

- C. It shall be an unlawful discriminatory practice for any real estate broker, real estate salesman or employee or agent thereof or any other individual, corporation, partnership or organization, for the purpose of inducing a real estate transaction from which any such person or any of its stockholders or members may benefit financially, to represent that a change has occurred or will or may occur in the composition with respect to race, sex, creed, color, religion, national origin, sexual orientation, gender, age, disability, marital or domestic partner status of the owners or occupants in the block, neighborhood or area in which the real property is located and to represent, directly or indirectly, that this change will or may result in undesirable consequences in the block, neighborhood or area in which the real property is located, including but not limited to the lowering of property values, an increase in criminal or antisocial behavior or a decline in the quality of schools or other facilities.

[Amended 12-17-2001 by Ord. No. 37.91.00^[5]; 4-7-2004 by Ord. No. 18.61.03]

[5] *Editor's Note: This ordinance provided that it take effect 1-1-2003.*

- D. Housing accommodations.

- (1) It shall be an unlawful discriminatory practice for the owner, lessee, sublessee, assignee or managing agent of or other person having the right to sell, rent or lease a housing accommodation, constructed or to be constructed, or any agent or employee thereof:

[Amended 12-17-2001 by Ord. No. 37.91.00^[6]; 4-7-2004 by Ord. No. 18.61.03]

- (a) To refuse to sell, rent or lease or otherwise to deny to or withhold from any person or group of persons such a housing accommodation because of the race, sex, creed, color, religion, national origin, sexual orientation, gender, age, disability, marital or domestic partner status of such person or persons.
- (b) To discriminate against any person because of his race, sex, creed, color, religion, national origin, sexual orientation, gender, age, disability, marital or domestic partner status in the terms, conditions or privileges of the sale, rental or lease of any such housing accommodation or in the furnishing of facilities or services in connection therewith.
- (c) To print or circulate or cause to be printed or circulated any statement, advertisement or publication or to use any form of application for the purchase, rental or lease of such housing accommodation or to make any record or inquiry in connection with the prospective purchase, rental or lease of housing accommodation which expresses, directly or indirectly, any limitation, specification or discrimination as to race, sex, creed, color, religion, national origin, sexual orientation, gender, age, disability, marital or domestic partner status or any intent to make any such limitation, specification or discrimination.

[6] *Editor's Note: This ordinance provided that it take effect 1-1-2003.*

- (2) The provisions of this subsection shall not apply:

- (a) To the rental of a housing accommodation in a building which contains housing accommodations for not more than two families living independently of each other, if the owner or members of his family reside in one of such housing accommodations;
- (b) To the restriction of the rental of all rooms in a housing accommodation to individuals of the same sex;

- (c) To the rental of a room or rooms in a housing accommodation, if such rental is by the occupant of the housing accommodation or by the owner of the housing accommodation and he or members of his family reside in such housing accommodation; or
- (d) Solely with respect to age, to the restriction of the sale, rental or lease of housing accommodations exclusively to persons 55 years of age or older.
- (3) It shall be an unlawful discriminatory practice for the owner, lessee, sublessee or managing agent of or other person having the right of ownership or possession of or the right to sell, rent or lease, land or commercial space:
- (a) To refuse to sell, rent or lease or otherwise deny to or withhold from any person or group of persons such commercial space because of the age of such person or persons or land or commercial space because of the race, sex, creed, color, religion, national origin, sexual orientation, gender, age, disability, marital or domestic partner status of such person or persons.
 [Amended 12-17-2001 by Ord. No. 37.91.00^[7]; 4-7-2004 by Ord. No. 18.61.03]
^[7] *Editor's Note: This ordinance provided that it take effect 1-1-2003.*
- (b) To discriminate against any person because of her race, sex, creed, color, religion, national origin, sexual orientation, gender, age, disability, marital or domestic partner status in the terms, conditions or privileges of the sale, rental or lease of any such land or commercial space or in the furnishing of facilities or service in connection therewith.
 [Amended 12-17-2001 by Ord. No. 37.91.00^[8]; 4-7-2004 by Ord. No. 18.61.03]
^[8] *Editor's Note: This ordinance provided that it take effect 1-1-2003.*
- (c) To print or circulate or cause to be printed or circulated any statement, advertisement or publication or to use any form of application for the purchase, rental or lease of such land or commercial space or to make any record or inquiry in connection with the prospective purchase, rental or lease of such land or commercial space which expresses, directly or indirectly, any limitation, specification or discrimination as to race, sex, creed, color, religion, national origin, sexual orientation, gender, age, disability, marital or domestic partner status or any intent to make any such limitation, specification or discrimination.
 [Amended 12-17-2001 by Ord. No. 37.91.00^[9]; 4-7-2004 by Ord. No. 18.61.03]
^[9] *Editor's Note: This ordinance provided that it take effect 1-1-2003.*
- (d) With respect to age, the provisions of this subsection shall not apply to the restriction of the sale, rental or lease of land or commercial space exclusively to persons 55 years of age or older.
- (4) It shall be an unlawful discriminatory practice for any real estate broker, real estate salesman or employee or agent thereof:
- (a) To refuse to sell, rent or lease any housing accommodation, land or commercial space to any person or group of persons or to refuse to negotiate for the sale, rental or lease of any housing accommodation, land or commercial space to any person or group of persons because of the race, sex, creed, color, religion, national origin, sexual orientation, gender, age, disability, marital or domestic partner status of such person or persons or to represent that any housing accommodation, land or commercial space is not available for inspection, sale, rental or lease when in fact it is so available or otherwise to deny or withhold any housing accommodation, land or commercial space or any facilities of any housing accommodation, land or commercial space from any person or group of persons because of the race, sex, creed, color, religion, national origin, sexual orientation, gender, age, disability, marital or domestic partner status of such person or persons.
 [Amended 12-17-2001 by Ord. No. 37.91.00^[10]; 4-7-2004 by Ord. No. 18.61.03]

[10] *Editor's Note: This ordinance provided that it take effect 1-1-2003.*

- (b) To print or circulate or cause to be printed or circulated any statement, advertisement or publication or to use any form of application for the purchase, rental or lease of any housing accommodation, land or commercial space or to make any record or inquiry in connection with the prospective purchase, rental or lease of any housing accommodation, land or commercial space which expresses, directly or indirectly, any limitation, specification or discrimination as to race, sex, creed, color, religion, national origin, sexual orientation, gender, age, disability, marital or domestic partner status or any intent to make any such limitation, specification or discrimination.

[Amended 12-17-2001 by Ord. No. 37.91.00^[11]; 4-7-2004 by Ord. No. 18.61.03]

[11] *Editor's Note: This ordinance provided that it take effect 1-1-2003.*

- (c) With respect to age, the provisions of this subsection shall not apply to the restriction of the sale, rental or lease of any housing accommodation, land or commercial space exclusively to persons 55 years of age or older.

- (5) It shall be an unlawful discriminatory practice for any real estate board, because of the race, sex, creed, color, religion, national origin, sexual orientation, gender, age, disability, marital or domestic partner status of any individual who is otherwise qualified for membership, to exclude or expel such individual from membership or to discriminate against such individual in the terms, conditions and privileges of membership in such board.

[Amended 12-17-2001 by Ord. No. 37.91.00^[12]; 4-7-2004 by Ord. No. 18.61.03]

[12] *Editor's Note: This ordinance provided that it take effect 1-1-2003.*

E. Provision of City services.

[Added 2-1-1999 by Ord. No. 1.12.99^[13]]

- (1) It shall be an unlawful discriminatory practice for any department, agency, board, commission, authority, employee or other entity of the City of Albany to discriminate in the provision of City services, for which a person is otherwise entitled, because of the age, race, sex, creed, color, religion, national origin, sexual orientation, gender, disability, marital or domestic partner status of such person.

[Amended 12-17-2001 by Ord. No. 37.91.00^[14]; 4-7-2004 by Ord. No. 18.61.03]

[14] *Editor's Note: This ordinance provided that it take effect 1-1-2003.*

- (2) Any notice of the availability of a grant or award of funds, or notice of a solicitation of bids, for the provision of City services shall include a clause on discriminatory practices prohibited in accordance with this article.
- (3) Any contractual agreement entered into, or award or grant of funds, by or on behalf of the City of Albany for the provision of City services, shall be in conformance with the provisions of this article and shall stipulate that the contractor, awardee or grantee shall not engage in a discriminatory practice prohibited by this article.

[13] *Editor's Note: This ordinance also redesignated former Subsections E, F, G, H and I as F, G, H, I and J, respectively.*

F. It shall be an unlawful discriminatory practice for any person to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this article or to attempt to do so.

G. It shall be an unlawful discriminatory practice for any person engaged in any activity to which this section applies to retaliate or discriminate against any person because he has opposed any practices forbidden under this article or because he has filed a complaint, testified or assisted in any proceeding under this article.

- H. It shall be an unlawful discriminatory practice for any party to a conciliation agreement made pursuant to § 48-27 of this article to violate the terms of such agreement.
- I. Notwithstanding the provisions of Subsections **A** and **D** of this section, it shall not be an unlawful discriminatory practice for an employer, employment agency, labor organization or joint labor-management committee to carry out a plan to increase the employment of members of a minority group.
- J. Nothing in this section shall prohibit the offer or acceptance of a partial discount to a person 65 years of age or older for housing accommodations.

§ 48-27. Procedure.

- A. Any person claiming to be aggrieved by an unlawful discriminatory practice may, by himself or his attorney at law, make, sign and file with the Office a verified complaint, in writing, which shall state the name and address of the person alleged to have committed the unlawful discriminatory practice complained of and which shall set forth the particulars thereof and contain such other information as may be required by the Office. The Office, on its own motion, may, in like manner, make, sign and file such complaint. In connection with the filing of such complaint, the Corporation Counsel or his or her designee is authorized to take proof, issue subpoenas and administer oaths in the manner provided in the Civil Practice Law and Rules. Any employer whose employees, or some of them, refuse or threaten to refuse to cooperate with the provisions of this article may file with the Office a verified complaint asking for assistance by conciliation or other remedial action.
- B. After the filing of any complaint, the Office shall promptly serve a copy thereof upon the respondent and all persons it deems to be necessary parties and make prompt investigation in connection therewith. Within 10 days after a complaint is filed, the Office shall determine whether it has jurisdiction and, if so, within 90 days after a complaint is filed, whether there is probable cause to believe that the person named in the complaint, hereinafter referred to as the "respondent," has engaged or is engaging in an unlawful discriminatory practice. If it finds with respect to any respondent that it lacks jurisdiction, the complaint shall be rejected. If it finds with respect to any respondent that the complaint falls to show probable cause, the Office shall cause to be served on the complainant an order, subject to appellate review by the Commission, dismissing said complaint as against the respondent.
- C. Conciliation.
 - (1) If in the judgment of the Office the circumstances so warrant, it may at any time after the filing of the complaint endeavor to eliminate such unlawful discriminatory practice by conference, conciliation and persuasion. Each conciliation agreement shall include provisions requiring the respondent to refrain from the commission of unlawful discriminatory practices in the future and may contain such further provisions as may be agreed upon by the Office and the respondent agreement. The Office shall not disclose what has transpired in the course of such endeavors.
 - (2) If the respondent and the Office agree upon conciliation terms, the Office shall serve upon the complainant a copy of the proposed conciliation agreement. If the complainant agrees to the terms of the agreement or fails to object to such terms within 15 days after its service upon him, the Office shall issue an order embodying such conciliation agreement. If the complainant objects to the agreement, he shall serve a written specification of his objections upon the Office within such period. Unless such objections are met or withdrawn within 10 days after service thereof, the Office shall notice the complaint for a hearing as provided under Subsection **D** of this section.
 - (3) Notwithstanding any other provision of this section, the Office may, where it finds the terms of a conciliation agreement to be in the public interest, execute such agreement and limit the hearing

to the objections of the complainant.

- (4) If a conciliation agreement is entered into, the Office shall serve a copy of the order embodying such agreement upon all parties to the proceeding.

D. Notice of complaint.

- (1) Within 120 days after a complaint is filed, or within 30 days after the Commission or a duly constituted body thereof has revised and remanded an order dismissing a complaint for want of probable cause, unless the Office has issued an order stating the terms of a conciliation agreement not objected to by the complainant, the Office shall cause to be issued and served a written notice, together with a copy of such complaint, as the same may have been amended, requiring the respondent or respondents to answer the charges of such complaint and appear at a public hearing before a body established by the Commission for this purpose, which appearance shall in no event be less than 10 days after such notice and at a place and time to be fixed by the Office and specified in such notice. The case in support of the complaint shall be presented by the complainant or his/her attorney. Attempts at conciliation shall not be received in evidence. At least two business days prior to the hearing the respondent shall, and any necessary party may, file a written answer to the complaint, sworn to subject to the penalties of perjury, with the Office and serve a copy upon all other parties to the proceeding. A respondent who has filed an answer or whose default in answering has been set aside for good cause shown may appear at such hearing, in person or otherwise, with or without counsel, cross-examine witnesses and the complainant and submit testimony. The complainant and all parties shall be allowed to present testimony in person or by counsel and cross-examine witnesses. The Commission may, in its discretion, permit any person who has a substantial personal interest to intervene as a party and may require that necessary parties not already parties be joined. The Office or the complainant shall have the power to reasonably and fairly amend any complaint, and the respondent and any other party shall have like power to amend his answer. The Commission shall not be bound by the strict rules of evidence prevailing in courts of law or equity. The testimony taken at the hearing shall be under oath and a record made.
- (2) If the respondent fails to answer the complaint, the Commission may enter the default and the hearing shall proceed on the evidence in support of the complaint. Such default may be set aside only for good cause shown, upon equitable terms and conditions.
- (3) Within 30 days after the conclusion of such hearing, a determination shall be made by such body established by the Commission pursuant to Subsection **D(1)** of this section and an order served as hereinafter provided. If, upon all evidence at the hearing, the Commission shall find that a respondent has engaged in any unlawful discriminatory practice as defined in this article, the Commission shall state findings of fact and cause to be served on such respondent an order based on such findings and setting them forth and including such of the following provisions as in the judgment of the Commission will effectuate the purposes of this article:
 - (a) Requiring such respondent to cease and desist from such unlawful practice.
 - (b) Requiring such respondent to take such affirmative action, including but not limited to hiring, reinstatement or upgrading of employees, with or without back pay, the extension of full, equal and unsegregated accommodations, advantages, facilities and privileges to all persons and granting the credit which was the subject of any complaint.
 - (c) Awarding of compensatory damages to the person aggrieved by such practice.
 - (d) Requiring a report of the manner of compliance.
- (4) If, upon all the evidence, the Commission shall find that a respondent has not engaged in any such unlawful discriminatory practice, it shall state findings of fact and shall issue and cause to be

served on the complainant an order based on such findings and setting them forth dismissing the complaint against the respondent. A copy of each order issued by the Commission shall be delivered in all cases to the Corporation Counsel or his or her designee and such other public officers as the Commission deems proper. A copy of any complaint filed against any respondent who has previously entered into a conciliation agreement pursuant to Subsection **C(1)** of this section or against whom an order of the Commission has previously been entered pursuant to this subsection shall be delivered to the Corporation Counsel or his or her designee and to such other public officers as the Commission deems proper.

- (5) The Commission shall establish rules of practice to govern, expedite and effectuate the foregoing procedure and its own actions thereunder.
- E. Any complaint filed pursuant to this section must be so filed within one year after the alleged unlawful discriminatory practice.
- F. Not later than one year from the date of a conciliation agreement or an order issued under this section, and at any other time in its discretion, the Office shall investigate whether the respondent is complying with the terms of such agreement or order. Upon a finding of noncompliance, the Office shall take appropriate action to assure compliance.
- G. No agent or employee of the office shall make public with respect to a particular person without his consent information from reports obtained by the Office except as necessary to the conduct of a proceeding under this section.
- H. Any person claiming to be aggrieved by an unlawful discriminatory practice shall have a cause of action in any court of appropriate jurisdiction for damages and such other remedies at law and in equity as may be appropriate, unless such person had filed a complaint hereunder, provided that, where the Office has dismissed such complaint on the grounds of administrative convenience, such person shall maintain all rights to bring suit as if no complaint had been filed. No person who has initiated any action in a court of competent jurisdiction or who has an action pending before any administrative agency under any other law of the state based upon an act which would be an unlawful discriminatory practice under this article may file a complaint with respect to the same grievance under this section.

**CITY OF ALBANY
AFFIRMATIVE ACTION/EQUAL EMPLOYMENT OPPORTUNITY
POLICY STATEMENT**

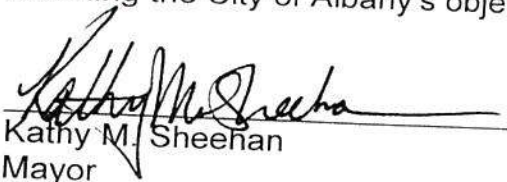
The City of Albany has been and will continue to be an equal opportunity employer. No employee or applicant for employment shall be discriminated against because of race, color, religion, national origin, gender, age, disability, Vietnam Era Veteran status, sexual orientation or marital status. We will take affirmative action to ensure that applicants for employment, employees and minority and women-owned businesses are treated without regard to these characteristics. To carry out this policy, the City of Albany will:

1. Recruit, hire, train, place and promote persons for all jobs without regard to race, religion, color, national origin, gender, age, disability, Vietnam Era Veteran status, sexual orientation or marital status;
2. Take affirmative steps to ensure that minorities and women participate fully in the recruitment and promotion process;
3. Administer other personnel functions such as compensation, benefits, transfers, layoffs, returns from layoffs, City-sponsored training, education, tuition assistance, and social and recreational programs without regard to race, color, religion, national origin, gender, age, disability, Vietnam Era Veteran status, sexual orientation or marital status;
4. Include minority and women-owned businesses in the City's solicitations.

The City of Albany shall, periodically, analyze its procurement and personnel actions to ensure compliance with this policy.

The Department of Administrative Services Office of Equal Employment Opportunity and Fair Housing is responsible for monitoring the City of Albany's Affirmative Action Program. The Personnel Director is the person to contact if an individual believes that he or she has not been treated in accordance with this policy.

All City residents are asked for their continued assistance and support in attaining the City of Albany's objective of equal opportunity in employment.


Kathy M. Sheehan
Mayor