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New York City Charter

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NYC Charter 1

New York City Charter

INTRODUCTORY

§ 1. **The city.**

The city of New York as now existing shall continue with the boundaries and with the powers, rights and property, and subject to the obligations and liabilities which exist at the time when this charter shall take effect.

CASE NOTES

¶ 1. A contract between the city and a domestic corporation whereby the corporation undertook to operate a Foreign Trade Zone theretofore operated by the City at Staten Island under a federal grant from the Foreign Trade Zone Board was not authorized by this section. Although prior to the adoption of the Charter, the city had the authority to operate the Zone itself, and this section continued that power, the city did not have the authority to operate the Zone through the medium of a third party. The inclusion in the table of repealed laws annexed to the Administrative Code (Laws of 1935, Ch. 246) which authorized the city to operate a Foreign Trade Zone was inadvertent where this section provided that the city should continue with the powers possessed at the time the Charter took effect.-*American Dock Co. v. City of New York*, 174 Misc. 813, 21 N. Y. S. 2d 943 [1940], *aff'd*, without opinion, 261 App. Div. 1063, 26 N. Y. S. 2d 704 [1941], *aff'd*, 286 N. Y. 658, 36 N. E. 2d 696 [1941].



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NYC Charter 2

New York City Charter

INTRODUCTORY

§ 2. **The boroughs.**

The boroughs of the city are continued as existing at the time of the adoption of this charter.



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NYC Charter 3

New York City Charter

CHAPTER 1 MAYOR

§ 3. **Office powers.**

The mayor shall be the chief executive officer of the city.

HISTORICAL NOTE

Amended by L. L. 1949, No. 107.

Amended at General Election, November 4, 1975.

Amended by L. L. 1984, No. 19, § 1.

Amended at General Election, November 8, 1988.

CASE NOTES

¶ 1. Unlike the office of President under the federal system, the powers of the office of Mayor of the City of New York are not exclusively executive, and unlike the federal system, which recognizes a separation of powers into three independent branches, the chartered plan of government for the City of New York has but two branches-executive and legislative-the functions of which, as defined by the legislature, are not always independent, since a city is not sovereign, as are the federal government and the states, but is simply an agency of the state. That the Mayor is "the chief executive officer of the city," and the Council is "the local legislative body of the city," and that functions are exercised by the Mayor and the Council which are independent of each other, is not enough to entitle the Mayor to immunities which are accorded the executive under the federal plan of government.-*La Guardia v. Smith*, 288 N. Y. 1, 41 N. E. 2d 153 [1942], *aff'd* 262 App. Div. 708, 27 N. Y. S. 2d 992 [1941], which *aff'd* without opinion, 176 Misc. 482, 27 N. Y. S. 2d 32, [1941].

¶ 2. Resolution of Board of Estimate increasing water and sewer rates was not invalid even though the meeting was presided over by the Mayor's executive assistant as the Mayor can validly delegate the power to preside at Board of Estimate hearings to a member of his executive office and the Mayor had filed an executive order with the City Clerk and Board of Estimate authorizing an executive assistant to sit and act for him at meeting of the Board of Estimate at which he is not present. *Battista v. Board of Estimate of City of N. Y.*, 51 Misc. 2d 962, 274 N. Y. S. 2d 729 [1966].

¶ 3. The mayor has power to appoint a commission to investigate alleged police corruption and to empower it to issue subpoenas and hold hearings. *Kiernan v. City of N. Y.*, 64 Misc. 2d 617, 315 N. Y. S. 2d 74 [1970], *aff'd* 316 N. Y. S. 2d 967 [1970].

¶ 4. The Mayor may delegate administrative functions, powers and duties and hence could properly delegate his authority to investigate and make determinations pursuant to Civil Service Law § 210 to a Special Assistant. *Matter of Kiernan v. Bronstein*, 73 Misc. 2d 629, 342 N. Y. S. 2d 977 [1973].

¶ 5. Homeless Emergency Liaison Project [Project HELP], the Mayor's program is a first step toward helping the homeless mentally ill. There must be alternatives other than involuntary hospitalization or the street. *Billie Boggs* [Joyce Brown] does not belong under this program. *Matter of Boggs*, 136 Misc. 2d 1082 [1987], 132 A. D. 2d 340 [1987].



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NYC Charter 4

New York City Charter

CHAPTER 1 MAYOR

§ 4. **Election term; salary.**

The mayor shall be elected at the general election in the year nineteen hundred sixty-five and every fourth year thereafter. The mayor shall hold office for a term of four years commencing on the first day of January after each such election. A mayor who resigns or is removed from office prior to the completion of a full term shall be deemed to have held that office for a full term for purposes of section 1138 of the charter. The salary of the mayor shall be two hundred twenty-five thousand dollars a year.

HISTORICAL NOTE

Section amended L.L. 51/2006 § 1, eff. Jan. 19, 2007 and deemed in full force and effect as of Nov. 1, 2006. Language was inadvertently omitted in the official local law and has been included here. [See Note 1]

Section amended L.L. 27/2002 § 3, eff. Sept. 25, 2002. [See Note after §25]

Section amended L.L. 41/1999 § 1, eff. Sept. 18, 1999 and retroactive to July 1, 1999.

Section amended L.L. 92/1995 § 1, eff. Feb. 2, 1996 and retroactive to July 1, 1995.

Amended by L. L. 1949, No. 107.

Amended by L. L. 1961, No. 96.

Amended by L. L. 1973, No. 77.

Amended by L. L. 1977, No. 102.

Amended by L. L. 1979, No. 37.

Amended by L. L. 1983, No. 32.

Amended L. L. 25/87 § 1.

NOTE

1. Provisions of L.L. L.L. 51/2006:

§ 6. Notwithstanding any other provision of law to the contrary, the Mayor shall not be required to appoint a quadrennial advisory commission for the review of compensation levels of elected officials in 2007.

§ 7. This local law shall take effect forty-five days after adoption and shall be deemed in full force and effect as of November 1, 2006.



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NYC Charter 5

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CHAPTER 1 MAYOR

§ 5. **Annual statement to council.**

The mayor shall communicate to the council at least once in each year a statement of the finances, government and affairs of the city with a summary statement of the activities of the agencies of the city. Such statement shall include a summary of the city's progress in implementing the goals and strategies contained in the most recent final strategic policy statement submitted by that mayor pursuant to section seventeen.

HISTORICAL NOTE

Amended at General Election, November 7, 1989.



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CHAPTER 1 MAYOR

§ 6. **Heads of departments; appoint; remove.**

a. The mayor shall appoint the heads of administrations, departments, all commissioners and all other officers not elected by the people, except as otherwise provided by law.

b. The mayor, whenever in his judgment the public interest shall so require, may remove from office any public officer holding office by appointment from a mayor of the city, except officers for whose removal other provision is made by law. No public officer shall hold his office for any specific term, except as otherwise provided by law.

HISTORICAL NOTE

Subd. a amended by L. L. 1967, No. 58, July 28.

CASE NOTES

¶ 1. Contention of dismissed city employee that the term of office of the Commissioner of the Department of Housing and Buildings had expired with the expiration of the Mayor's second term and that since the Mayor had failed to formally reappoint him to office, the office of the Commissioner was to be deemed vacant and the Commissioner was therefore without authority to file any charges against the employee, was overruled, since Public Officers Law § 5 provides for a holding over in office after the expiration of the term until a successor is chosen and qualifies, and the Commissioner had not been appointed for a definite term as former § 4, subd. b, (now § 6) of the Charter provides that no public officers shall hold office for any specific term except as otherwise provided by law. Consequently the Commissioner's appointment for an indefinite term did not automatically terminate with the expiration of the Mayor's second term, but since he held office at the pleasure of the appointing power, he continued in office until death, resignation or removal. No formal reappointment was necessary.-In re Jennings (Wilson), 179 Misc. 358, 40 N. Y. S. 2d 400 [1942].

¶ 2. In directing the attention of the Civil Service Commission to Civil Service employee's Commission to Civil Service employee's meretricious relationship with a female city employee who had been found guilty of a serious offense, and in requiring him to act thereon, the mayor did not usurp the Commission's functions nor deprive them of their freedom of action. The mayor, as the chief executive officer of the city, was authorized by the Charter and by standards of proper official conduct to keep himself informed as to the acts of subordinate officials and employees and to cause appropriate action to be taken when impropriety was brought to his attention. Consequently, having acted on their own independent judgment in framing and serving charges against the employee, the Civil Service Commission was authorized to take disciplinary action pending a hearing and determination of the charges.-*Guinier v. Kern*, 106 (30) N. Y. L. J. (8-5-41) 273, Col. 5 T.

¶ 3. While former § 5 authorizes the Mayor to keep informed of the actions of his officials, it does not require him to interfere with their discretionary powers. Hence, a private individual was not entitled to an order compelling the Mayor or Police Commissioner to take official action for the holding of a departmental trial to hear certain charges brought by the private individual against a police officer.-*Matter of Goldberg*, 9 Misc. 2d 663, 168 N. Y. S. 2d 16 [1957]; *aff'd* without opinion 5 A. D. 2d 857, 172 N. Y. S. 2d 526 [1958].

¶ 4. The mayor is under a duty to recommend legislation which he deems necessary and he may direct any investigation which will supply him with the necessary information to recommend such legislation. Thus, the mayor's direction to the Commissioner of Investigation to conduct an inquiry to ascertain whether those doing business in the milk industry in the city employed practices having the effect of increasing the price of milk was within the authority conferred upon the mayor by the Charter and statute.-*Matter of Dairymen's League Co-operative Association, Inc.*, 274 App. Div. 591, 84 N. Y. S. 2d 749 [1948] *aff'd* 299 N. Y. 634, 86 N. E. 2d 509 [1949].

¶ 5. The Mayor has sole power to appoint "all . . . officers not elected by the people, except as otherwise provided by law", Charter §6(a). The proposed Independent Police Investigation and Audit Board would not be a "purely investigative" body (*Henry v. NYS Comm. of Invesig.*, 141 Misc2d 849, *aff'd*. 143 AD2d 914) and its members would be officers. The order declaring Local Law 13 of 1995 invalid is unanimously affirmed. City Council appointments would limit the powers of the Mayor. The Mayor's veto of Local Law 13 cited objections to shared power of appointment and Council overrode and adopted Local Law 13 without a severability clause. For this reason the court declined to sever parts of Local Law 13 found invalid. (*Mayor of city of NY v. Council of city of NY*, 235 AD2d 230, 651 NYS2d 531)



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New York City Charter

CHAPTER 1 MAYOR

§ 7. **Deputy mayors.**

The mayor shall appoint one or more deputy mayors with such duties and responsibilities as the mayor determines.

HISTORICAL NOTE

Amended by L. L. 1967, No. 58, July 28.

Amended at General Election, November 4, 1975.

Amended at General Election, November 8, 1988.

CASE NOTES

¶ 1. The vice chairman of the council cannot sit in the Board of Estimate during absences of the mayor from the City, where such absences continue for less than 30 days and the mayor has designated the deputy mayor to sit in his place during such temporary absence. Nothing in the Charter limits the exercise of the mayor's power to delegate to the deputy mayor the right to sit as a member of the Board in his place to those occasions when the mayor is within the confines of the City. A contrary intention is evidenced by provision authorizing the mayor to delegate designated powers to his deputy either before or after commencement of his absence. This section, which excepts certain powers of the mayor which may not be delegated to the deputy, omits any statement that the right to deputize should cease during the mayor's absence or sickness. Also, by former § 10, sub(b), the president of the council is not permitted to exercise any powers of the mayor which are lawfully delegated to the deputy mayor. Requirement of Charter that president of the council act as presiding officer of the Board of Estimate during mayor's absence did not conflict with authority of mayor to authorize deputy to sit for him during his absence, since the president presides on such occasion because the statute so directs and not because he is acting as mayor.-Sharkey v. LaGuardia, 259 App. Div. 557, 19 N. Y.

S. 2d 965 [1940] aff'd 283 N. Y. 725, 28 N. E. 2d 726 [1940].



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NYC Charter 8

New York City Charter

CHAPTER 1 MAYOR

§ 8. **General powers.**

The mayor, subject to this charter, shall exercise all the powers vested in the city, except as otherwise provided by law.

a. The mayor shall be responsible for the effectiveness and integrity of city government operations and shall establish and maintain such policies and procedures as are necessary and appropriate to accomplish this responsibility including the implementation of effective systems of internal control by each agency and unit under the jurisdiction of the mayor.

b. The mayor shall be a magistrate.

c. Notwithstanding any other provision of law, the mayor shall have the powers of a finance board under the local finance law and may exercise such powers without regard to any provision of law prescribing the voting strength required for a resolution or action of such finance board, provided, however, that whenever the mayor determines that obligations should be issued and the amount thereof, he shall certify such determination to the comptroller who shall thereupon determine the nature and term of such obligations and shall arrange for the issuance thereof.

d. The mayor shall establish a minimum per diem compensation for inspectors of election and clerks employed to assist the inspectors of election in polling places under the direction of the board of elections as follows: on registration and primary election days twenty dollars; on Election day thirty-five dollars, except that the chairman of each election board shall receive an additional three dollars compensation per day. The minimum per diem rate for compensation for election inspectors attending classes of instruction shall be five dollars.

e. The mayor shall establish a professional internal audit function in the executive office of the mayor which is sufficient to provide the mayor with such information and assurances as the mayor, as the chief executive of the city,

requires to ensure the proper administration of the city's affairs and the efficient conduct of its business.

f. Except as otherwise provided in section eleven, the mayor may, by executive order, at any time, create or abolish bureaus, divisions or positions within the executive office of the mayor as he or she may deem necessary to fulfill mayoral duties. The mayor may from time to time by executive order, delegate to or withdraw from any member of said office, specified functions, powers and duties, except the mayor's power to act on local laws or resolutions of the council, to act as a magistrate or to appoint or remove officials. Every such order shall be filed with the city clerk who shall forward them forthwith to the City Record for publication.

g. The city has the power to determine the duties of its employees, and it is essential to the workings of city government that the city retain control over information obtained by city employees in the course of their duties. In the exercise of this power, the mayor may promulgate rules requiring that information obtained by city employees be kept confidential to the extent necessary to preserve the trust of individuals who have business with city agencies. To the extent set forth in such rules, each agency shall, to the fullest extent permitted by the laws of the United States and the state of New York, maintain the confidentiality of information in its possession relating to the immigration status or other private information that was provided by an individual to a city employee in the course of such employee's duties.

HISTORICAL NOTE

Section amended at General Election, November 8, 1988.

Subd. c amended by L. 1962, ch. 998, § 1.

Subd. d added by L. L. 1970, No. 34, July 29.

Subd. e added by L. L. 1970, No. 34, July 29.

Subd. g added at General Election, November 6, 2001 (Question 4 § 2)

eff. November 6, 2001 with special provisions in § 1152 subd. h par

(3).

CASE NOTES

¶ 1. By executive order the mayor may grant exclusive "checkoff" privilege whereby an employee's union dues are deducted from his wages by his employer and sent by the employer to the union pursuant to written authorization granted to the employee's exclusive union representatives elected by a majority of the employees in any designated city-wide collective bargaining unit. *Matter of Bauch v. City of N. Y.*, 54 Misc. 2d 343, 282 N. Y. S. 2d 816 (1967), *aff'd*, 28 App. Div. 2d 1209, 285 N. Y. S. 2d 263 [1967], *aff'd* 21 N. Y. 2d 599, 237 N. E. 2d 235, 289 N. Y. S. 2d 951 [1968], *cert. den.* 393 U. S. 834 [1968].

¶ 2. This section gives the mayor the right to accept gifts and hence a building to be erected on land leased by the Metropolitan Museum of Art from the city to be paid for by private citizens could be accepted without approval of the Board of Estimate or the City Planning Commission. *Tuck v. Hecksher*, 29 N. Y. 2d 288, 277 N. E. 2d 462, 327 N. Y. S. 2d 351 [1971].

¶ 3. Power to make "approvals, decisions and consultations" relating to Westway had been removed from the Board of Estimate and vested in the Mayor by L. 1971, chap 618. Residual authority also lies with the Mayor pursuant to § 8 N.Y.C. Charter.-*Bellamy v. Koch*, 190 (93) N.Y.L.J. (11-15-83) 12, Col. 2B.

¶ 4. This section does not give the Mayor authority to usurp the legislative function of the City Council. Since the Council had not adopted a provision prohibiting employment discrimination based upon "sexual orientation or

affectional preference," the Mayor's attempt to regulate city contracts in such a manner by Executive Order No. 50 is invalid. *Under 21 v. City of NY*, 65 N. Y. 2d 344 [1985].

¶ 5. Task force on NYC Water Supply and its subcommittees, created by the Mayor because of drought conditions to review long range needs, are not subject to the Open Meetings Law (Public Officers Law Art. 7) because it is not a "public body" per POL § 102(2) and its sole purpose is to study and it has no power to implement recommendations. *Poughkeepsie Newspaper v. Mayor's Intergovernmental Task Force*, 145 AD2d 65 [1989].



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NYC Charter 9

New York City Charter

CHAPTER 1 MAYOR

§ 9. **Removal of mayor.**

The mayor may be removed from office by the governor upon charges and after service upon him of a copy of the charges and an opportunity to be heard in his defense. Pending the preparation and disposition of charges, the governor may suspend the mayor for a period not exceeding thirty days.



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NYC Charter 10

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CHAPTER 1 MAYOR

§ 10. **Succession.**

a. In case of the suspension of the mayor from office, the mayor's temporary inability to discharge the powers and duties of the office of mayor by reason of sickness or otherwise, or the mayor's absence from the city, the powers and duties of the office of mayor shall devolve upon the public advocate or the comptroller in that order of succession until the suspension, inability or absence shall cease. While so acting temporarily as mayor neither the public advocate nor the comptroller shall exercise any power of appointment to or removal from office or any power lawfully delegated by the mayor to a deputy mayor before the commencement of such suspension or inability, or before or after the commencement of such absence; and shall not, until such suspension, inability or absence shall have continued nine days, sign, approve or disapprove any local law or resolution, unless the period during which the mayor can act thereon would expire during said nine days in which case the public advocate or the comptroller shall have the power to disapprove the same within forty-eight hours before the time to act expires.

b. In the case of a failure of a person elected as mayor to qualify, or a vacancy in the office caused by the mayor's resignation, removal, death or permanent inability to discharge the powers and duties of the office of mayor, such powers and duties shall devolve upon the public advocate, the comptroller or a person selected pursuant to subdivision c of section twenty-eight, in that order of succession, until a new mayor shall be elected as provided herein. Upon the commencement of the term of the person first elected mayor pursuant to the provisions of subdivision c of this section, the person then acting as mayor pursuant to the provisions of this subdivision, if an elected official, shall complete the term of the office to which such person was elected if any remains.

c. 1. Within three days of the occurrence of a vacancy in the office of the mayor, the person acting as mayor shall proclaim the date for the election or elections required by this subdivision, provide notice of such proclamation to the city clerk and the board of elections and publish notice thereof in the City Record. After the proclamation of the date for an election to be held pursuant to paragraphs four or five of this subdivision, the city clerk shall publish notice

thereof not less than twice in each week preceding the date of such election in newspapers distributed within the city, and the board of elections shall mail notice of such election to all registered voters within the city.

2. If a vacancy occurs during the first three years of the term, a general election to fill the vacancy for the remainder of the unexpired term shall be held in the year in which the vacancy occurs, unless the vacancy occurs after the last day on which an occurring vacancy may be filled at the general election in that same year with party nominations of candidates for such election being made at a primary election, as provided in section 6-116 of the election law. If such a vacancy occurs in any year after such last day, it shall be filled for the remainder of the unexpired term at the general election in the following year provided, however, that no general election to fill a vacancy shall be held in the last year of the term, except as provided in paragraph nine of this subdivision. Party nominations of candidates for a general election to fill a vacancy for the remainder of the unexpired term shall be made at a primary election, except as provided in paragraph five of this subdivision.

3. If a special or general election to fill the vacancy on an interim basis has not been previously held pursuant to paragraphs four, six, seven and eight of this subdivision, the person elected to fill the vacancy for the remainder of the unexpired term at a general election shall take office immediately upon qualification and shall serve until the term expires. If a special or general election to fill the vacancy on an interim basis has been previously held, the person elected to fill the vacancy for the remainder of the unexpired term at a general election shall take office on January first of the year following such general election and shall serve until the term expires.

4. If a vacancy occurs during the first three years of the term and on or before the last day in the third year of the term on which an occurring vacancy may be filled for the remainder of the unexpired term at a general election with party nominations of candidates for such election being made at a primary election, as provided in section 6-116 of the election law, a special or general election to fill the vacancy on an interim basis shall be held, unless the vacancy occurs less than ninety days before the next primary election at which party nominations for a general election to fill the vacancy may be made and on or before the last day on which an occurring vacancy may be filled for the remainder of the unexpired term at the general election in the same year in which the vacancy occurs with party nominations of candidates for such election being made at a primary election, as provided in section 6-116 of the election law.

5. If a vacancy occurs after the last day in the third year of the term on which an occurring vacancy may be filled for the remainder of the unexpired term at a general election in each year with party nominations of candidates for such election are being made at a primary election, as provided in section 6-116 of the election law, but not less than ninety days before the date of the primary election in the fourth year of such term, a special or general election to fill such vacancy for the remainder of the unexpired term shall be held.

6. Elections held pursuant to paragraph four or five of this subdivision shall be scheduled in the following manner: a special election to fill the vacancy shall be held on the first Tuesday at least sixty days after the occurrence of the vacancy, provided that the person acting as mayor, in the proclamation required by paragraph one of this subdivision, may schedule such election for another day not more than ten days after such Tuesday and not less than forty days after such proclamation if the person acting as mayor determines that such rescheduling is necessary to facilitate maximum voter participation; except that

(a) if the vacancy occurs before September twentieth in any year and the first Tuesday at least sixty days after the occurrence of the vacancy is less than ninety days before a regularly scheduled general election or between a primary and a general election, the vacancy shall be filled at such general election; and

(b) if the vacancy occurs before September twentieth in any year and the first Tuesday at least sixty days after the occurrence of the vacancy is after a regularly scheduled general election, the vacancy shall be filled at such general election; and

(c) if the vacancy occurs on or after September twentieth in any year and the first Tuesday at least sixty days

after the occurrence of the vacancy is after, but less than thirty days after, a regularly scheduled general election, the vacancy shall be filled at a special election to be held on the first Tuesday in December in such year.

7. All nominations for elections to fill vacancies held pursuant to paragraphs four and five of this subdivision shall be by independent nominating petition. A signature on an independent nominating petition made earlier than the date of the proclamation required by paragraph one of this subdivision shall not be counted.

8. A person elected to fill a vacancy in the office of the mayor at an election held pursuant to paragraph four of this subdivision shall take office immediately upon qualification and serve until December thirty-first of the year in which the vacancy is filled for the remainder of the unexpired term pursuant to paragraph two of this subdivision. A person elected to fill a vacancy in the office of the mayor at an election held pursuant to paragraph five of this subdivision shall take office immediately upon qualification and serve until the term expires.

9. If a vacancy occurs less than ninety days before the date of the primary election in the last year of the term, the person elected at the general election in such year for the next succeeding term shall take office immediately upon qualification and fill the vacancy for the remainder of the unexpired term.

10. If at any election held pursuant to this subdivision for which nominations were made by independent nominating petitions, no candidate receives forty percent or more of the vote, the two candidates receiving the most votes shall advance to a runoff election which shall be held on the second Tuesday next succeeding the date on which such election was held.

d Determination of mayoral inability.

1. Voluntary declaration of temporary inability. Whenever the mayor transmits to the official next in line of succession and to the city clerk, a written declaration that he or she is temporarily unable to discharge the powers and duties of the office of mayor, such powers and duties shall devolve upon the official next in line of succession, subject to the provisions of subdivision a of this section. Thereafter if the mayor transmits to the acting mayor and to the city clerk a written declaration that he or she is able to resume the discharge of the powers and duties of the office of mayor, the mayor shall resume the discharge of such powers and duties immediately upon the receipt of such declaration by the city clerk.

HISTORICAL NOTE

Subd. b amended at General Election, November 5, 2002 § 1, eff November 5, 2002. [See Note]

Subd. c added at General Election, November 5, 2002 § 2, eff. November 5, 2002. [See Note]

Subd. d relettered (former subd. c) at General Election, November 5, 2002

§ 2, eff. November 5, 2002. [See Note]

NOTE

Ballot Question Abstract:

Currently, the Charter provides that, in the event of a mayoral vacancy, the Public Advocate acts as the Mayor until a general election can be held to fill the vacancy. For the Office of the Public Advocate, Comptroller, Borough President and City Council member, the Charter generally provides for a special election without party nomination in about forty-five days after the vacancy to fill a vacancy, with nominations by independent nominating petitions, and with a subsequent party primary and general election to be held later to fill the vacancy.

This proposal would provide generally that a special election be held in about sixty days after the vacancy to fill

a mayoral vacancy, similar in format to the procedure already set forth in the Charter to fill vacancies in the Offices of Public Advocate, Comptroller, Borough President and City Council member, except that in the special election for the Office of the Mayor, where no candidate receives forty percent or more of the vote, the two candidates receiving the most votes would advance to a run-off election to be held on the second Tuesday following the special election. Pending the result of the election, the Public Advocate would act as Mayor. In order to implement the proposal consistent with State law, this proposal would confer upon the Speaker of the City Council the ability to preside over meetings of the City Council, instead of the Public Advocate having that ability. The Public Advocate would remain a nonvoting member of the City Council, and have all other powers arising from that position. This proposal would take effect immediately, and would apply to vacancies in the Office of the Mayor occurring after September 20, 2002.

2. Inability committee. (a) There shall be a committee on mayoral inability consisting of: the corporation counsel, the comptroller, the speaker of the council, a deputy mayor who shall be designated by the mayor, and the borough president with the longest consecutive service as borough president. If two or more borough presidents have served for an equal length of time, one of such borough presidents shall be selected by lot to be a member of such committee. If at any time there is no valid mayoral designation in force, the deputy mayor with the longest consecutive service as a deputy mayor shall be a member of such committee. The authority to act as a member of such committee shall not be delegable.

(b) Such committee by affirmative declaration of no fewer than four of its members shall have the power to make the declarations described in paragraphs four and five of this subdivision. No such declaration shall be effective unless signed by all the members making it.

3. Panel on mayoral inability. (a) There shall be a panel on mayoral inability. Unless otherwise provided by state law, such panel shall consist of all the members of the council.

(b) The panel shall have the power to make the determinations described in paragraphs four and five of this subdivision.

4. Temporary inability. (a) Whenever the committee on mayoral inability personally serves or causes to be personally served upon the mayor and transmits to the official next in line of succession, the members of the panel on mayoral inability and the city clerk, its written declaration that the mayor is temporarily unable to discharge the powers and duties of the office of mayor, together with a statement of its reasons for such declaration, such declaration shall constitute a determination of temporary inability unless the mayor, within forty-eight hours after receipt of such declaration, transmits to the official next in line of succession, the members of the committee on mayoral inability, the members of the panel on mayoral inability and the city clerk, a written declaration that he or she is able to discharge the powers and duties of the office of mayor, together with responses to the statement by the committee on mayoral inability of its reasons for its declaration.

(b) If personal service of the committee's declaration upon the mayor cannot be accomplished, or if such service has been accomplished but the mayor has not transmitted a declaration that he or she is able to discharge the powers and duties of the office of mayor within forty-eight hours after receipt of such declaration, such powers and duties shall devolve upon the official next in line of succession, subject to the provisions of subdivision a of this section, unless and until the mayor resumes the authority to discharge such powers pursuant to the provisions of subparagraphs (e) or (f) of this paragraph.

(c) If within such forty-eight hours, the mayor transmits a declaration that he or she is able to discharge the powers and duties of the office of mayor, such powers and duties shall not devolve upon the official next in line of succession and the mayor shall continue to discharge the powers and duties of the office of mayor, unless and until the panel on mayoral inability, within twenty-one days after its receipt of the mayor's declaration, determines by two-thirds vote of all its members that the mayor is temporarily unable to discharge the powers and duties of the office of mayor. If the panel determines that the mayor is unable to discharge the powers and duties of the office of mayor, such powers

and duties shall devolve upon the official next in line of succession, subject to the provisions of subdivision a of this section, unless and until the mayor resumes the authority to discharge such powers and duties pursuant to the provisions of subparagraphs (e) or (f) of this paragraph.

(d) If, at any time prior to a final determination by the panel pursuant to subparagraph (c) of this paragraph the mayor transmits a voluntary declaration of temporary inability pursuant to the provisions of paragraph one of this subdivision, to the official next in line of succession, the members of the committee on mayoral inability, the members of the panel on mayoral inability, and the city clerk, then the procedures set forth in paragraph one of this subdivision shall be followed.

(e) If a determination of temporary inability has been made pursuant to the provisions of subparagraphs (a) or (c) of this paragraph, and if thereafter, the mayor transmits to the acting mayor, the members of the committee on mayoral inability, the members of the panel on mayoral inability and the city clerk, a written declaration that he or she is able to resume the discharge of the powers and duties of the office of mayor, then the mayor shall resume the discharge of such powers and duties four days after the receipt of such declaration by the city clerk, unless the committee on mayoral inability, within such four days, personally serves or causes to be personally served upon the mayor and transmits to the acting mayor, the members of the panel on mayoral inability and the city clerk, its written declaration that the mayor remains unable to discharge the powers and duties of the office of mayor.

(f) If the committee transmits a declaration that the mayor remains unable to discharge the powers and duties of the office of mayor, the mayor shall not resume the discharge of the powers and duties of the office of mayor unless and until the panel on mayoral inability, within twenty-one days of its receipt of such declaration, determines by two-thirds vote of all its members that the inability has in fact ceased. Upon such a determination by the panel, or after the expiration of twenty-one days, if the panel has not acted, the mayor shall resume the discharge of the powers and duties of the office of mayor.

5. Permanent inability. (a) Whenever the committee on mayoral inability personally serves or causes to be personally served upon the mayor and transmits to the official next in line of succession, the members of the panel on mayoral inability and the city clerk, its declaration that the mayor is permanently unable to discharge the powers and duties of the office of mayor, together with its reasons for such declaration, the panel on mayoral inability shall, within twenty-one days after its receipt of such declaration, determine whether or not the mayor is permanently unable to discharge the powers and duties of the office of mayor.

(b) If the panel determines by two-thirds vote of all its members that the mayor is permanently unable to discharge the powers and duties of the office of mayor, such powers and duties shall devolve upon the official next in line of succession as acting mayor pursuant to subdivision b of this section, and the office of mayor shall be deemed vacant.

6. Continuation of salary; disability allowance. (a) During the time that any official is acting as mayor pursuant to a determination of temporary inability, the mayor shall continue to be paid the salary of the office of mayor, and the acting mayor shall continue to be paid the salary of the office to which such person was elected.

(b) Any mayor who has been determined to be permanently unable to discharge the powers and duties of the office of mayor pursuant to paragraph five of this subdivision shall continue to receive from the city, a sum which together with the mayor's disability benefits and retirement allowance, if any, computed without optional modification, shall equal the annual salary which such mayor was receiving at the time of the determination of permanent inability. Such disability allowance shall begin to accrue on the date of the determination of permanent inability and shall be payable on the first day of such month until the expiration of the term for which such mayor had been elected or such mayor's death, whichever shall occur first. Such mayor shall apply for any retirement allowance or disability benefits to which he or she may be entitled and the disability allowance provided for in this section shall not reduce or suspend such retirement allowance or disability benefits, notwithstanding any other provision of law.

HISTORICAL NOTE

Amended at General Election, November 4, 1975.

Amended at General Election, November 8, 1988.

Subd. a amended L.L. 19/1993 § 1, eff. Jan. 1, 1994.

Subd. b amended L.L. 19/1993 § 2, eff. Jan. 1, 1994.

Subd. b amended at General Election, November 7, 1989.

Subd. c par. 2 amended at General Election, November 7, 1989.



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NYC Charter 11

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CHAPTER 1 MAYOR

§ 11. **Reorganization of agencies under jurisdiction of mayor.**

a. The agencies existing on the effective date of this section are continued except as otherwise provided in the charter or as otherwise provided by state or local law enacted since that date or by any actions taken by the mayor pursuant to this section since that date. To achieve effective and efficient functioning and management of city government, the mayor may organize or reorganize any agency under his jurisdiction, including the authority to transfer functions from one agency to another; create new agencies; eliminate existing agencies; and consolidate or merge agencies. Any action by the mayor pursuant to this subdivision shall be termed a "reorganization plan" and shall be published in the City Record.

b. In preparing reorganization plans, the mayor shall eliminate, as appropriate, agencies or functions which duplicate or overlap similar agencies of, or functions performed by, other agencies of city, state or local government.

c. If any proposed reorganization plan involves a change of a provision of this charter, except as provided pursuant to subdivision f of this section, or local law now in effect, or otherwise involves reorganization of an agency created pursuant to a resolution of the board of estimate or executive order of the mayor, a copy of the reorganization plan first shall be submitted to the council. Within a period of ninety days from the date of receipt, the council may adopt a resolution that approves or disapproves the reorganization plan. In the event the council takes no action within the ninety-day period, the reorganization plan shall be deemed approved as if the council had taken affirmative action, and is then effective.

d. The text of a reorganization plan approved pursuant to subdivision c of this section shall appear as a part of the administrative code.

e. The mayor may withdraw or modify a reorganization plan submitted to the council before any final action by the council with respect to it.

f. The authority of the mayor pursuant to this section shall not apply (1) to any matter which would otherwise require the submission of a local law for the approval of the electors pursuant to section thirty-seven, or (2) to any board or commission established pursuant to a provision of this charter.

HISTORICAL NOTE

Subd. a amended by L. L. 1977, No. 102.

Subd. b amended by L. L. 1977, No. 102.

Subds. a, c, d amended at General Election, November 8, 1988.

Subd. f amended at General Election, November 7, 1989.

CASE NOTES

¶ 1. The protocol issued by the Mayor ordering coordinated responses for four categories of emergencies, concerns a matter of public safety and is nonjusticiable because it would "embroil the judiciary in the management and operation" of the police and fire departments. This action is not a reorganization which requires compliance with the procedural mandates of Charter § 11. *Mancuso v. Koch*, 156 AD2d 209 [1989].

¶ 2. The Mayor has the authority under this section to consolidate the sheriff's office with the New York City Finance Department.

Fucito v. Vallone, 166 Misc.2d 785, 635 N.Y.S.2d 415 (Sup.Ct. New York Co. 1995).



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CHAPTER 1 MAYOR

§ 12. **Mayor's management report.**

a. Not later than January thirtieth in each year the mayor shall make public and submit to the council a preliminary management report of the city and not later than September seventeenth in each year the mayor shall make public and submit to the council a management report.

b. The preliminary management report shall contain for each city agency

(1) a statement of actual performance for the first four months of the current fiscal year relative to the program performance goals and measures established for such year;

(2) proposed program performance goals and measures for the next fiscal year reflecting budgetary decisions made as of the date of submission of the preliminary budget;

(3) an explanation in narrative and/or tabular form of significant changes in the program performance goals and measures from the adopted budget condition to the current budget as modified and from said modified budget to the preliminary budget statements; and

(4) an appendix indicating the relationship between the program performance goals and measures included in the management report pursuant to paragraph two of this subdivision and the corresponding appropriations contained in the preliminary budget.

c. The management report shall include a review of the implementation of the statement of needs as required by subdivision h of section two hundred four and shall contain for each agency

(1) program performance goals for the current fiscal year and a statement and explanation of performance

measures;

(2) a statement of actual performance for the entire previous fiscal year relative to program performance goals;

(3) a statement of the status of the agency's internal control environment and systems, including a summary of any actions taken during the previous fiscal year, and any actions being taken during the current fiscal year to strengthen the agency's internal control environment and system;

(4) a summary of rulemaking actions undertaken by the agency during the past fiscal year including

(a) the number of rulemaking actions taken,

(b) the number of such actions which were not noticed in the regulatory agenda prepared for such fiscal year, including a summary of the reasons such rules were not included in such regulatory agenda, and

(c) the number of such actions which were adopted under the emergency rulemaking procedures;

(5) a summary of the procurement actions taken during the previous fiscal year, including: (i) for each of the procurement methods specified in section three hundred twelve, the number and dollar value of the procurement contracts entered into during such fiscal year; and (ii) for all procurement contracts entered into pursuant to a procurement method other than that specified in paragraph one of subdivision a of section three hundred twelve, the number and dollar value of such procurement contracts by each of the reasons specified in paragraph one of subdivision b of section three hundred twelve; and

(6) an appendix indicating the relationship between the program performance goals included in the management report pursuant to paragraph two of this subdivision and the corresponding expenditures made pursuant to the adopted budget for the previous fiscal year.

d. For agencies with local service districts or programs within community districts and boroughs, the mayor's preliminary management report and management report insofar as practicable shall include schedules of agency service goals, performance measures and actual performance relative to goals for each such local service district or program.

e. Prior to April eighth in each year the council shall conduct public hearings on the preliminary management report and on the proposed program and performance goals and measures of city agencies contained in such report. The council shall submit to the mayor and make public not later than April eighth a report or reports of findings and recommendations.

HISTORICAL NOTE

Subd. b repealed by L. L. 1980, No. 56.

Section amended by L. L. 1977, No. 102.

Section amended by L. L. 1979, No. 6.

Section amended by L. L. 1980, No. 24.

Section amended by L. L. 1980, No. 56.

Amended at General Election, November 8, 1988.

Section amended at General Election, November 7, 1989.



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CHAPTER 1 MAYOR

§ 13. **Coordinator of criminal justice.**

There is established in the executive office of the mayor a position of coordinator of criminal justice, to be appointed by the mayor. The coordinator shall:

- (1) advise and assist the mayor in planning for increased coordination and cooperation among agencies under the jurisdiction of the mayor that are involved in criminal justice programs and activities;
- (2) review the budget requests of all agencies for programs related to criminal justice and recommend to the mayor budget priorities among such programs; and,
- (3) perform such other duties as the mayor may assign.



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NYC Charter 13-a

New York City Charter

CHAPTER 1 MAYOR

§ 13-a. **Code of administrative judicial conduct.**

The mayor and the chief administrative law judge of the office of administrative trials and hearings shall jointly promulgate, and may from time to time jointly amend, rules establishing a code or codes of professional conduct governing the activities of all administrative law judges and hearing officers in city tribunals, except to the extent that such promulgation would be inconsistent with law. Prior to promulgating or amending any such rules, the mayor and the chief administrative law judge shall consult with the conflicts of interest board, the commissioner of investigation and affected agency and administrative tribunal heads. An administrative law judge or hearing officer shall be subject to removal or other disciplinary action for violating such rules in the manner that such administrative law judge or hearing officer may be removed or otherwise disciplined under law. Further, such rules may set forth additional sanctions or penalties for violations of such rules to the extent consistent with law.

HISTORICAL NOTE

Section added at General Election, November 8, 2005. Ballot Question 3 § 1, eff. Nov. 8, 2005 as per Charter § 1152(j)(1). [See Note 1]

NOTE

1. Ballot Question Abstract:

Question 3: These changes to the City Charter, as proposed by the New York City Charter Revision Commission would require the Mayor and the Chief Administrative Law Judge of the Office of Administrative Trials and Hearings (OATH) to jointly issue rules establishing a code or codes of professional conduct for the administrative law judges (ALJs) and hearing officers in the City's administrative tribunals.

Ballot Explanation:

Question 3: The City's administrative tribunals are among the few places where New Yorkers come into contact with City government. The ALJs and hearing officers who oversee these court-like proceedings represent the face of justice in the City, settling such matters as parking violations, municipal employee discipline, dirty sidewalks, building and fire codes and illegal dumping.

Hundreds of thousands of City residents often form their opinions of their government based on their experiences with these tribunals. It's critical, therefore, that New Yorkers perceive the proceedings and those who oversee them as fair and ethical. Although they're required to follow citywide rules on conflicts of interest, ALJs and hearing officers are not bound by any code or codes of professional conduct that address the quasi-judicial nature of their work. Subjecting them to a uniform code of conduct or ethics is intended to enhance accountability and instill confidence in the public that it's being treated ethically and fairly. Question 3 would require the Mayor and the Chief Administrative Law Judge of the Office of Administrative Trials and Hearings to jointly issue rules establishing such a code or codes.



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CHAPTER 1 MAYOR

§ 14. **Office of veterans' affairs.**

a. There shall be an office of veterans' affairs, the head of which shall be the director of veterans' affairs, who shall be appointed by the mayor.

b. Definition. The term "veteran" means a person who has served in the active military service of the United States and who has been released from such service otherwise than by dishonorable discharge.

c. Powers and duties. The office: 1. shall have such powers as provided by the director of the state veterans' service agency and shall have the duty to inform military and naval authorities of the United States and assist members of the armed forces and veterans, who are residents of this state, and their families, in relation to (a) matters pertaining to educational training and retraining services and facilities, (b) health, medical and rehabilitation service and facilities, (c) provisions of federal, state and local laws and regulations affording special rights and privileges to members of the armed forces and veterans and their families, (d) employment and re-employment services, and (e) other matters of similar, related or appropriate nature. The office also shall perform such other duties as may be assigned by the state director of the division of veterans' affairs.

2. shall utilize, so far as possible, the services, commissions, boards, bureaus, institutions and other agencies of the state and of the political subdivisions thereof and all such officers and agencies shall cooperate with and extend such services and facilities to the office as it may require.

d. Veterans advisory board. There shall be a Veterans' advisory board consisting of nine members, all of whom shall be veterans, five of whom shall be appointed by the mayor and four of whom shall be appointed by the speaker of the council of the city of New York. Of these nine appointees, there shall be one representative from each of the five boroughs of the city of New York. The mayor and the speaker shall each consider service in conflicts involving members of the United States armed forces when making such appointments. All members shall serve for a term of

three (3) years and may be removed by the appointing official for cause. Members of the advisory board shall elect by majority vote one such member to serve as chairperson and one such member to serve as vice-chairperson, each to serve in that capacity for one-year terms. In the event of a vacancy on the advisory board during the term of office of a member by reason of removal, death, resignation, or otherwise, a successor shall be chosen in the same manner as the original appointment. A member appointed to fill a vacancy shall serve for the balance of the unexpired term. The advisory board shall (i) advise the director on all matters concerning veterans; (ii) meet at least quarterly; (iii) keep a record of its deliberations; (iv) determine its own rules of procedure; and (v) submit an annual report of its activities to the mayor and the council on or before December 31st of each year.

HISTORICAL NOTE

Section added L. L. 53/87 § 1.

Section amended at General Election, November 7, 1989.

Subd. d amended L.L. 10/2006 § 1, eff. May 11, 2006.

Subd. d amended L.L. 45/2002 § 1, eff. Feb. 19, 2003.



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CHAPTER 1 MAYOR

§ 15. **Office of operations.**

a. There shall be, in the executive office of the mayor, an office of operations. The office shall be headed by a director, who shall be appointed by the mayor.

b. The director of the office of operations shall have the power and the duty to:

1. plan, coordinate and oversee the management of city governmental operations to promote the efficient and effective delivery of agency services;
2. review and report on the city's management organization including productivity and performance functions and systems;
3. maintain for the mayor a management, planning and reporting system and direct the operation of such system;
4. review the city's operations and make recommendations, where appropriate, for improving productivity, measuring performance and reducing operating expenses; and
5. perform the functions of an office of environmental coordination and provide assistance to all city agencies in fulfilling their environmental review responsibilities for proposed actions by the city subject to such review.

c. There shall be an office of the language services coordinator within the office of operations. Within appropriations therefor, the coordinator shall appoint such experts and assistants as necessary to fulfill the duties assigned to the office by this charter. The office of the language services coordinator shall have the following powers and duties.

1. To establish standards and criteria, to be used by city agencies which provide services to the public, for

estimating, and reporting on, the need to provide such services in languages other than English.

2. To provide technical assistance to such city agencies in developing appropriate plans and programs to: (i) deliver their services in languages other than English, (ii) translate written materials into such languages, and (iii) educate the public about such agency plans and programs.

3. In conjunction with a committee of agency representatives, to develop testing materials to evaluate the ability of city employees to deliver services in languages other than English; to develop materials to be used in the training of such employees; and, either on its own or in cooperation with the appropriate agencies, to provide such training.

4. To monitor and report on the performance of city agencies in delivering services in languages other than English.

5. To maintain in a central place which is accessible to the public a library of written materials published by city agencies in such languages.

d. 1. The city of New York recognizes that services for people suffering from mental retardation and developmental disabilities are provided by programs administered within a number of different city agencies, as well as by non-governmental entities. The city of New York further recognizes the need for coordination and cooperation among city agencies and between city agencies and non-governmental entities that provide such services.

2. There shall be mental retardation and developmental disability coordination within the office of operations. In performing functions relating to such coordination, the office of operations shall be authorized to develop methods to: (i) improve the coordination within and among city agencies that provide services to people with mental retardation or developmental disabilities, including but not limited to the department of health and mental hygiene, the administration for children's services, the human resources administration, department of youth and community development, the department of juvenile justice, and the department of employment, or the successors to such agencies, and the health and hospitals corporation and the board of education; and (ii) facilitate coordination between such agencies and non-governmental entities providing services to people with mental retardation or developmental disabilities; review state and federal programs and legislative proposals that may affect people with mental retardation or developmental disabilities and provide information and advice to the mayor regarding the impact of such programs or legislation; recommend legislative proposals or other initiatives that will benefit people with mental retardation or developmental disabilities; and perform such other duties and functions as the mayor may request to assist people with mental retardation or developmental disabilities and their family members.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

Subd. b amended L.L. 17/2008 § 1, eff. May 6, 2008.

Subd. d added at General Election, November 6, 2001 (Question 5 § 1) eff. November 6, 2001 with special provisions in § 1152 subd. h par (4).

Subd. d par 2 subpar (i) amended L.L. 22/2002 § 1, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



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CHAPTER 1 MAYOR

§ 16. **Report on social indicators.**

The mayor shall submit an annual report to the council, borough presidents, and community boards analyzing the social, economic and environmental health of the city and proposing strategies for addressing the issues raised in such analysis. The report shall present and analyze data on the social, economic and environmental conditions which are significantly related to the jurisdiction of the agencies responsible for the services specified in section twenty seven hundred four, the health and hospitals corporation, and such other agencies as the mayor shall from time to time specify. The report shall include the generally accepted indices of unemployment, poverty, child welfare, housing quality, homelessness, health, physical environment, crime, and such other indices as the mayor shall require by executive order or the council shall require by local law. Such report shall be submitted no later than sixty days before the community boards are required to submit budget priorities pursuant to section two hundred thirty and shall contain: (1) the reasonably available statistical data, for the current and previous five years, on such conditions in the city and, where possible, in its subdivisions; and a comparison of this data with such relevant national, regional or other standards or averages as the mayor deems appropriate; (2) a narrative discussion of the differences in such conditions among the subdivisions of the city and of the changes over time in such conditions; and (3) the mayor's short and long term plans, organized by agency or by issue, for responding to the significant problems evidenced by the data presented in the report.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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CHAPTER 1 MAYOR

§ 17. **Strategic policy statement.**

a. On or before the fifteenth day of November of nineteen hundred ninety, and every four years thereafter, the mayor shall submit a preliminary strategic policy statement for the city to the borough presidents, council, and community boards. Such preliminary statement shall include: (i) a summary of the most significant long-term issues faced by the city; (ii) policy goals related to such issues; and (iii) proposed strategies for meeting such goals. In preparing the statement of strategic policy, the mayor shall consider the strategic policy statements prepared by the borough presidents pursuant to subdivision fourteen of section eighty-two.

b. On or before the first day of February of nineteen hundred ninety-one, and every four years thereafter, the mayor shall submit a final strategic policy statement for the city to the borough presidents, council and community boards. The final statement shall include such changes and revisions as the mayor deems appropriate after reviewing the comments received on the preliminary strategic policy statement.



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CHAPTER 1 MAYOR

§ 18. **Office of immigrant affairs.**

a. The city recognizes that a large percentage of its inhabitants were born abroad or are the children of parents who were born abroad and that the well-being and safety of the city is put in jeopardy if the people of the city do not seek medical treatment for illnesses that may be contagious, do not cooperate with the police when they witness a crime or do not avail themselves of city services to educate themselves and their children. It is therefore desirable that the city promote the utilization of city services by all its residents, including foreign-born inhabitants, speakers of foreign languages and undocumented aliens.

b. In furtherance of the policies stated in subdivision a of this section, there shall be established in the executive office of the mayor an office of immigrant affairs. The office shall be headed by a director, who shall be appointed by the mayor. The director of the office of immigrant affairs shall have the power and the duty to:

1. advise and assist the mayor and the council in developing and implementing policies designed to assist immigrants and other foreign-language speakers in the city;

2. enhance the accessibility of city services to immigrants and foreign-language speakers by establishing programs to inform and educate immigrant and foreign language speakers of such services;

3. manage a citywide list of translators and interpreters to facilitate communication between city agencies and foreign language speakers;

4. perform policy analysis and make recommendations concerning immigrant affairs; and

5. perform such other duties and functions as may be appropriate to pursue the policies set forth in subdivision a of this section.

c. Any service provided by a city agency shall be made available to all aliens who are otherwise eligible for such service to the same extent such service is made available to citizens unless such agency is required by law to deny eligibility for such service to aliens.

HISTORICAL NOTE

Section added at General Election, November 6, 2001 (Question 4 § 3) eff. November 6, 2001 with special provisions in § 1152 subd. h par (3). [See Note]

NOTE

Ballot Question Abstract:

Immigrant Affairs. Currently, neither the Charter nor the Administrative Code requires the City to protect immigrants' rights to access City services, to keep confidential the immigrant status of individuals, or to have an office or agency dedicated to immigrant affairs. The City has maintained such an office and such policies have been in place by executive order. This proposal would establish the Mayor's Office of Immigrant Affairs as a Charter agency to assist in the development and implementation of City policies and programs dedicated to immigrants. This proposal would incorporate into the Charter protection of immigrants' rights to access City services and would authorize the Mayor to promulgate rules to require City agencies to maintain the confidentiality of immigration status and other private information.



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CHAPTER 1 MAYOR

§ 19. **Office to combat domestic violence.**

a. The city of New York recognizes that domestic violence is a public health issue that threatens hundreds of thousands of households each year and that respects no boundaries of race, ethnicity, age, gender, sexual orientation or economic status. The city of New York further recognizes that the problems posed by domestic violence fall within the jurisdiction and programs of various City agencies and that the development of an integrated approach to the problem of domestic violence, which coordinates existing services and systems, is critical to the success of the city of New York's efforts in this area.

b. There shall be, in the executive office of the mayor, an office to combat domestic violence. The office shall be headed by a director, who shall be appointed by the mayor.

c. The director of the office to combat domestic violence shall have the power and duty to:

1. coordinate domestic violence services;
2. formulate policies and programs relating to all aspects of services and protocols for victims of domestic violence;
3. develop methods to improve the coordination of systems and services for domestic violence;
4. develop and maintain mechanisms to improve the response of city agencies to domestic violence situations and improve coordination among such agencies; and
5. implement public education campaigns to heighten awareness of domestic violence and its effects on society and perform such other functions as may be appropriate regarding the problems posed by domestic violence.

d.1. For purposes of this subdivision, the following terms shall have the following meanings:

(i) "Agency" shall mean a city, county, borough, or other office, position, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the city treasury.

(ii) "Domestic violence fatality" shall mean a death of a family or household member, resulting from an act or acts of violence committed by another family or household member, not including acts of self-defense.

(iii) "Family or household member" shall mean the following individuals:

(a) persons related by consanguinity or affinity;

(b) persons legally married to one another;

(c) persons formerly married to one another regardless of whether they still reside in the same household;

(d) persons who have a child in common regardless of whether such persons have been married or have lived together at any time;

(e) persons not legally married, but currently living together in a family-type relationship; and

(f) persons not legally married, but who have formerly lived together in a family-type relationship.

Such term, as described in (e) and (f) of this subparagraph, therefore includes "common law" marriages, same sex couples, registered domestic partners, different generations of the same family, siblings and in-laws.

(iv) "Perpetrator" shall mean a family or household member who committed an act or acts of violence resulting in a domestic violence fatality.

(v) "Victim" shall mean a family or household member whose death constitutes a domestic violence fatality.

2. There shall be a domestic violence fatality review committee to examine aggregate information relating to domestic violence fatalities in the city of New York. Such committee shall develop recommendations for the consideration of the director of the office to combat domestic violence regarding the coordination and improvement of services for victims of domestic violence provided by agencies and private organizations that provide such services pursuant to a contract with an agency. The committee shall be convened by the director of the office to combat domestic violence, or his or her designee, and shall consist of the director of the office to combat domestic violence, or his or her designee, the commissioner of the police department, or his or her designee, the commissioner of the department of health and mental hygiene, or his or her designee, the commissioner of the department of social services/human resources administration, or his or her designee, the commissioner of the department of homeless services, or his or her designee and the commissioner of the administration for children's services, or his or her designee. The committee shall also consist of two representatives of programs that provide social or legal services to victims of domestic violence and two individuals with personal experience with domestic violence. The director of the office to combat domestic violence, or his or her designee, shall serve as chairperson of the committee. At the discretion of the director of the office to combat domestic violence, the committee may also include a representative of any of the offices of the district attorney of any of the five boroughs and/or a representative of the New York city housing authority. Each member of the committee other than any member serving in an ex officio capacity shall be appointed by the mayor.

(i) The service of each member other than a member serving in an ex officio capacity shall be for a term of two years to commence ninety days after the effective date of the local law that added this subdivision. Any vacancy occurring other than by expiration of term shall be filled by the mayor in the same manner as the original position was

filled. A person filling such a vacancy shall serve for the unexpired portion of the term of the member succeeded. New terms shall begin on the next day after the expiration date of the preceding term.

(ii) Members of the committee shall serve without compensation.

(iii) No person shall be ineligible for membership on the committee because such person holds any other public office, employment or trust, nor shall any person be made ineligible to or forfeit such person's right to any public office, employment or trust by reason of such appointment.

(iv) The committee shall meet at least four times a year.

3. The committee's work shall include, but not be limited to, reviewing statistical data relating to domestic violence fatalities; analyzing aggregate information relating to domestic violence fatalities, including, non-identifying data with respect to victims and perpetrators involved in domestic violence fatalities, such as gender, age, race and familial or other relationship involved, and, if available, religion, ethnicity and employment status; examining any factors indicating a high-risk of involvement in domestic violence fatalities; and developing recommendations for the director of the mayor's office to combat domestic violence regarding the coordination and improvement of services for victims of domestic violence provided by agencies and private organizations that provide such services pursuant to a contract with an agency.

4. The committee may request and receive information from any agency as may be necessary to carry out the provisions of this subdivision, in accordance with applicable laws, rules and regulations, including, but not limited to, the exceptions to disclosure of agency records contained in the public officers law. Nothing in this subdivision shall be construed as limiting any right or obligation of agencies pursuant to the public officers law, including the exceptions to disclosure of agency records contained in such law, with respect to access to or disclosure of records or portions thereof. The committee may also request from any private organization providing services to domestic violence victims pursuant to a contract with an agency information necessary to carry out the provisions of this subdivision. To the extent provided by law, the committee shall protect the privacy of all individuals involved in any domestic violence fatality that the committee may receive information on in carrying out the provisions of this subdivision.

5. The committee shall submit to the mayor and to the speaker of the city council, on an annual basis, a report including, but not limited to, the number of domestic violence fatality cases which occurred in the city of New York during the previous year; the number of domestic violence fatality cases reviewed by the committee during the previous year, if any; any non-identifying data with respect to victims and perpetrators involved in domestic violence fatalities, such as gender, age, race and familial or other relationship involved, and, if available, religion, ethnicity and employment status; any factors indicating a high risk of involvement in domestic violence fatalities; and recommendations regarding the coordination and improvement of services for victims of domestic violence provided by agencies and private organizations that provide such services pursuant to a contract with an agency.

HISTORICAL NOTE

Section added at General Election, November 6, 2001 (Question 6 § 2) eff. November 6, 2001 with special provisions in § 1152 subd. h par (5). [See Note 1]

NOTE

1. Ballot Question Abstract Nov. 6, 2001:

Office to Combat Domestic Violence. Currently, the Charter does not provide for the coordination of City services to prevent domestic violence and assist its victims, but a mayoral commission to combat family violence, created by executive order, currently coordinates such services. This proposal would establish a new Charter agency, known as the Office to Combat Domestic Violence, which would be responsible for the coordination of City services

responding to domestic violence. That office would also be responsible for formulating policies and programs relating to all aspects of service delivery for victims of domestic violence.

2. Provisions of L.L. 61/2005:

Section 1. Legislative findings and intent. The Council finds that domestic violence is a continuing problem in New York City. The persistent occurrence of such violence, and the fatalities that often result, reveal an urgent need to better understand the various causes of these crimes, as well as the adequacy of victim assistance and prevention services. Accordingly, the Council finds that a committee dedicated to reviewing and analyzing aggregate information regarding domestic violence fatalities that occur in New York City is needed. The examination of such information will enable the committee to analyze data and any patterns that may emerge from an examination of such information, analyze any demographic changes that may occur over time relating to such incidents and formulate recommendations regarding the coordination and improvement of services to victims to ultimately reduce the number of these tragedies.

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§ 3. Effect of invalidity; severability. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this local law, which remaining portions shall continue in full force and effect.



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NYC Charter 20

New York City Charter

CHAPTER 1 MAYOR

§ 20. **Office of long-term planning and sustainability.**

a. The mayor shall establish an office of long-term planning and sustainability. Such office may, but need not, be established in the executive office of the mayor and may be established as a separate office or within any other office of the mayor or within any department the head of which is appointed by the mayor. Such office shall be headed by a director who shall be appointed by the mayor or by the head of such department. For the purposes of this section only, "director" shall mean the director of long-term planning and sustainability.

b. Powers and duties. The director shall have the power and the duty to:

1. develop and coordinate the implementation of policies, programs and actions to meet the long-term needs of the city, with respect to its infrastructure, environment and overall sustainability citywide, including but not limited to the categories of housing, open space, brownfields, transportation, water quality and infrastructure, air quality, energy, and climate change; and regarding city agencies, businesses, institutions and the public;

2. develop measurable sustainability indicators, which shall be used to assess the city's progress in achieving sustainability citywide; and

3. take actions to increase public awareness and education regarding sustainability and sustainable practices.

c. Sustainability indicators. No later than December thirty-first, two thousand eight and annually thereafter, the director shall identify a set of indicators to assess and track the overall sustainability of the city with respect to the categories established pursuant to paragraph one of subdivision b of this section and any additional categories established by the director, and prepare and make public a report on the city's performance with respect to those indicators. Such report may be prepared and presented in conjunction with the mayor's management report required pursuant to section twelve of this chapter. The report shall include, at a minimum:

1. the city's progress in achieving sustainability citywide, which shall be based in part on the sustainability indicators developed pursuant to paragraph two of subdivision b of this section; and

2. any new or revised indicators that the director has identified and used or will identify and use to assess the city's progress in achieving sustainability citywide, including, where an indicator has been or will be revised or deleted, the reason for such revision or deletion.

d. Population projections. No later than April twenty-second, two thousand ten, and every four years thereafter, the department of city planning shall release or approve and make public a population projection for the city that covers a period of at least twenty-one years, with intermediate projections at no less than ten year intervals. Where feasible, such projections shall include geographic and demographic indicators.

e. Long-term sustainability plan. 1. The director shall develop and coordinate the implementation of a comprehensive, long-term sustainability plan for the city. Such plan shall include, at a minimum:

i. an identification and analysis of long-term planning and sustainability issues associated with, but not limited to, housing, open space, brownfields, transportation, water quality and infrastructure, air quality, energy, and climate change; and

ii. goals associated with each category established pursuant to paragraph one of subdivision b of this section and any additional categories established by the director, and a list of policies, programs and actions that the city will seek to implement or undertake to achieve each goal by no later than April twenty-second, two thousand thirty.

2. No later than April twenty-second, two thousand eleven, and no later than every four years thereafter, the director shall develop and submit to the mayor and the speaker of the city council an updated long-term sustainability plan, setting forth goals associated with each category established pursuant to paragraph one of subdivision b of this section and any additional categories established by the director, and a list of policies, programs and actions that the city will seek to implement or undertake to achieve each goal by no later than twenty years from the date each such updated long-term sustainability plan is submitted. Such updated plan shall take into account the population projections required pursuant to subdivision d of this section. An updated plan shall include, for each four-year period beginning on the date an updated plan is submitted to the mayor and the speaker of the city council, implementation milestones for each policy, program and action contained in such plan. An updated plan shall report on the status of the milestones contained in the immediately preceding updated plan. Where any categories, goals, policies, programs or actions have been revised in, added to or deleted from an updated plan, or where any milestone has been revised in or deleted from an updated plan, the plan shall include the reason for such addition, revision or deletion. The director shall seek public input regarding an updated plan and its implementation before developing and submitting such plan pursuant to this paragraph. The director shall coordinate the implementation of an updated long-term sustainability plan.

f. Review and reporting. 1. No later than April twenty-second, two thousand nine, and no later than every April twenty-second thereafter, the director shall prepare and submit to the mayor and the speaker of the city council a report on the city's long-term planning and sustainability efforts. In those years when an updated long-term sustainability plan is submitted pursuant to paragraph two of subdivision e of this section, such report may be incorporated into the updated long-term sustainability plan. The report shall include, at a minimum:

i. the city's progress made to implement or undertake policies, programs and actions included in the sustainability plan or updated sustainability plan required by subdivision e of this section, since the submission of the most recent plan or updated plan or report required by this paragraph; and

ii. any revisions to policies, programs or actions in the previous long-term sustainability plan, including the reason for such revision.

g. There shall be a sustainability advisory board whose members, including, at a minimum, representatives from

environmental, environmental justice, planning, labor, business and academic sectors, shall be appointed by the mayor. The advisory board shall also include the speaker of the city council or a designee and the chairperson of the council committee on environmental protection or a designee. The advisory board shall meet, at a minimum, twice per year and shall provide advice and recommendations to the director regarding the provisions of this section.

h. The director shall post on the city's website, a copy of each sustainability plan required by subdivision e of this section, and all reports prepared pursuant to this section, within ten days of their completion.

HISTORICAL NOTE

Section added L.L. 17/2008 § 2, eff. May 6, 2008. [See Note 1]

NOTE

1. Provisions of L.L. L.L. 17/2008:

§ 5. This local law shall take effect immediately, provided, however, that PlaNYC, issued on April 22, 2007, shall be deemed to constitute the first long-term sustainability plan as required by paragraph one of subdivision e of section 20 of the New York city charter, as added by section two of this local law.



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NYC Charter 21

New York City Charter

CHAPTER 2 COUNCIL

§ 21. **The Council.**

There shall be a council which shall be the legislative body of the city. In addition to the other powers vested in it by this charter and other law, the council shall be vested with the legislative power of the city. Any enumeration of powers in this charter shall not be held to limit the legislative power of the council, except as specifically provided in this charter.

HISTORICAL NOTE

Amended at General Election, November 7, 1989.

CASE NOTES

¶ 1. The City Council does not act as a departmental agency of the City when it exercises its legislative power by way of an investigation conducted pursuant to former § 43 (now § 41) of the Charter, and hence, former § 891 (now § 1111) prohibiting an agency from incurring a liability in excess of the amount appropriated therefor and §§ 121, 122, and 123, providing that the Board of Estimate has, in the first instance, been given to make appropriation to governmental purposes of the City, did not preclude a stenographer engaged by special committee of the City Council to report the proceedings of the Committee in its investigation from recovering the value of the services notwithstanding the failure of the Board of Estimate to make an appropriation for the necessary expenses of the Committee. That the resolution authorizing the special committee to make its investigation included a provision authorizing the Committee to request that an appropriation for expenses be made by the Board of Estimate, did not show an intent that its action was to be subject to immediate administrative interdiction by the Board of Estimate.-Smith v. City of New York, 289 N. Y. 517, 47 N. E. 2d 45 [1943].

¶ 2. Former § 891 (now § 1111) of the City Charter, providing that no "agency" of the City shall incur liability in

excess of the amount appropriated or otherwise authorized did not preclude an attorney from recovering compensation from City for services rendered as counsel to a special committee of the City Council appointed to investigate pursuant to former § 43 (now § 41) of the Charter. When the Council exercises its investigatory powers it is not an "agency" of the City and has the power to bind the City for the expenses of the investigation without the sanction of, or an appropriation from the Board of Estimate.-*Ellis v. City of New York*, 180 Misc. 968, 46 N. Y. S. 2d 363 [1943], *aff'd*, 267 App. Div. 810, 47 N. Y. S. 2d 96 [1944], *aff'd*, 295 N. Y. 780, 66 N. E. 2d 297 [1946].

¶ 3. Resolution of Council designating a special committee under Charter § 43 (now § 41) to determine whether city broadcasting station should be abolished, was not a local law or resolution as defined by Charter §§ 21 or 26 and hence approval of mayor as provided in former §§ 38, 39 and 40 (now §§ 38 and 39) was not required.-*Matter of Radio Station WNYC* 169 Misc. 502, 7 N. Y. S. 2d 297 [1938] *aff'd*, 255 App. Div. 844, 7 N. Y. S. 2d 998 [1938], *aff'd* 280 N. Y. 629, 20 N. E. 2d 1008 [1939].

¶ 4. Unlike the Federal system of government which recognizes a separation of powers into three independent branches, the Charter plan of government for the City of New York has but two branches, namely, executive and legislative, the functions of which, as defined by the legislature, are not always independent, since a city is not a sovereign, as are the Federal government and the States, but is simply an agency of the state. The mayor is the "chief executive officer of the City" and the Council is the "local legislative body of the City" and the functions exercised by each which are independent of each other, is not enough to entitle the mayor to immunities which are accorded the executive under the Federal plan of government.-*LaGuardia v. Smith*, 288 N. Y. 1, 41 N. E. 2d 153 [1942] *aff'd*, 262 App. Div. 708, 27 N. Y. S. 2d 992 [1941].

¶ 5. Although former § 21 vests the Municipal Council with the sole legislative power of the City, it is modified by Charter § 435 and the Police Commissioner may properly make traffic rules and regulations. The two sections are in *pari materia* and as such must be construed with reference to each other.-*Peo v. Lewis*, 167 Misc. 139, 3 N. Y. S. 2d 508 [1938].

¶ 6. Neither former § 21 nor any other provision of the Charter vests the mayor with the power to remove civil service employees for violating a regulation prohibiting any employee from performing private employment outside his regular working hours.-*Matter of Natilson (Hodgson)*, 264 App. Div. 384, 35 N. Y. S. 2d 537 [1942] *aff'd* 289 N. Y. 842, 47 N. E. 2d 442 [1943].

¶ 7. New York City Cultural Resources Act enacted by the legislature was unconstitutional since it was a special law on its face and an act relating to the property, affairs and government of the city and thus required a home rule message and "the Legislature may not in the guise of seeking ratification of a purported project respecting the use, development and improvement of city land, circumvent the rightful authority lodged in the City Council."-*Hotel Dorset v. Trust for Cultural Resources*, 63 A. D. 2d 157, 407 N. Y. S. 2d 480 [1978].

¶ 8. Article 78 proceeding, which does not lie to review legislative acts, is not inappropriate to review actions of Board of Estimate since only the City Council has legislative power of the city.-*Bustop Shelters, Inc. v. City of N. Y.*, 415 N.Y.S. 2d 726 [1978].



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NYC Charter 22

New York City Charter

CHAPTER 2 COUNCIL

§ 22. **Composition of council.**

a. The council shall consist of the public advocate and of fifty-one other members termed council members. Consistent with state law, the size of the council and the number of districts from which council members are elected may be increased by local law without approval pursuant to section thirty-eight.

b. One council member shall be elected from each council district as now or hereafter constituted.

HISTORICAL NOTE

Section amended L.L. 19/1993 § 3, eff. Jan. 1, 1994.

Amended at General Election, November 7, 1989.

CASE NOTES

¶ 1. This section does not violate section 1 of Article 2 of the New York State Constitution. Neither does it violate the Fourteenth Amendment of the United States Constitution.-Matter of Blaikie, 13 N. Y. 2d 134, 193 N. E. 2d 55, 243 N. Y. S. 2d 185 [1963].

¶ 2. Petitioner who was the candidate of the Liberal Party for one of two positions of Councilman-at-Large from Bronx County and who received 70,054 votes was not elected as against intervenor who was candidate of Republican and Conservative parties and received 40,074 as a candidate of the former and 31,272 votes as a candidate of the latter party for a total of 71,303 votes since the word candidate as used in the statute means person and not candidate of a party or independent body and permits the counting of votes for a candidate who represents different parties.-Matter of Arricale v. Power, 61 Misc. 2d 653, 306 N. Y. S. 2d 334 [1969].



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NYC Charter 23

New York City Charter

CHAPTER 2 COUNCIL

§ 23. **Council members not to be employees of agencies.**

No council member shall be an employee of any agency in any capacity whatever.

HISTORICAL NOTE

Added at General Election, November 7, 1989.

Derived from former § 33, amended at General Election, November 4, 1975.



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New York City Charter

CHAPTER 2 COUNCIL

§ 24. **Public advocate.**

a. The public advocate shall be elected by the electors of the city at the same time and for the same term as in this charter prescribed for the mayor. A public advocate who resigns or is removed from office prior to the completion of a full term shall be deemed to have held that office for a full term for purposes of Section 1138 of the charter.

b. The public advocate may be removed or suspended in the same manner as provided in this charter with respect to the mayor.

c. Any vacancy in the office of public advocate shall be filled by popular election in the following manner:

1. Within three days of the occurrence of a vacancy in the office of the public advocate, the mayor shall proclaim the date for the election or elections required by this subdivision, provide notice of such proclamation to the city clerk and the board of elections and publish notice thereof in the City Record. After the proclamation of the date for an election to be held pursuant to paragraphs four or five of this subdivision, the city clerk shall publish notice thereof not less than twice in each week preceding the date of such election in newspapers distributed within the city, and the board of elections shall mail notice of such election to all registered voters within the city.

2. If a vacancy occurs during the first three years of the term, a general election to fill the vacancy for the remainder of the unexpired term shall be held in the year in which the vacancy occurs, unless the vacancy occurs after the last day on which an occurring vacancy may be filled at the general election in that same year with party nominations of candidates for such election being made at a primary election, as provided in section 6-116 of the election law. If such a vacancy occurs in any year after such last day, it shall be filled for the remainder of the unexpired term at the general election in the following year provided, however, that no general election to fill a vacancy shall be held in the last year of the term, except as provided in paragraph nine of this subdivision. Party nominations of candidates for a general election to fill a vacancy for the remainder of the unexpired term shall be made at a primary

election, except as provided in paragraph five of this subdivision.

3. If a special or general election to fill the vacancy on an interim basis has not been previously held pursuant to paragraphs four, six, seven and eight of this subdivision, the person elected to fill the vacancy for the remainder of the unexpired term at a general election shall take office immediately upon qualification and shall serve until the term expires. If a special or general election to fill the vacancy on an interim basis has been previously held, the person elected to fill the vacancy for the remainder of the unexpired term at a general election shall take office on January first of the year following such general election and shall serve until the term expires.

4. If a vacancy occurs during the first three years of the term and on or before the last day in the third year of the term on which an occurring vacancy may be filled for the remainder of the unexpired term at a general election with party nominations of candidates for such election being made at a primary election, as provided in section 6-116 of the election law, a special or general election to fill the vacancy on an interim basis shall be held, unless the vacancy occurs less than ninety days before the next primary election at which party nominations for a general election to fill the vacancy may be made and on or before the last day on which an occurring vacancy may be filled for the remainder of the unexpired term at the general election in the same year in which the vacancy occurs with party nominations of candidates for such election being made at a primary election, as provided in section 6-116 of the election law.

5. If a vacancy occurs after the last day in the third year of the term on which an occurring vacancy may be filled for the remainder of the unexpired term at a general election in such year with party nominations of candidates for such election being made at a primary election, as provided in section 6-116 of the election law, but not less than ninety days before the date of the primary election in the fourth year of such term, a special or general election to fill such vacancy for the remainder of the unexpired term shall be held.

6. Elections held pursuant to paragraph four or five of this subdivision shall be scheduled in the following manner: A special election to fill the vacancy shall be held on the first Tuesday at least forty-five days after the occurrence of the vacancy, provided that the mayor, in the proclamation required by paragraph one of this subdivision, may schedule such election for another day no more than ten days after such Tuesday and not less than forty days after such proclamation if the mayor determines that such rescheduling is necessary to facilitate maximum voter participation; except that

(a) if the vacancy occurs before September twentieth in any year and the first Tuesday at least forty-five days after the occurrence of the vacancy is less than ninety days before a regularly scheduled general election or between a primary and a general election, the vacancy shall be filled at such general election;

(b) if the vacancy occurs before September twentieth in any year and the first Tuesday at least forty-five days after the occurrence of the vacancy is after a regularly scheduled general election, the vacancy shall be filled at such general election; and

(c) if the vacancy occurs on or after September twentieth in any year and the first Tuesday at least forty-five days after the occurrence of the vacancy is after, but less than thirty days after, a regularly scheduled general election, the vacancy shall be filled at a special election to be held on the first Tuesday in December in such year.

7. All nominations for elections to fill vacancies held pursuant to paragraphs four and five of this subdivision shall be by independent nominating petition. A signature on an independent nominating petition made earlier than the date of the proclamation required by paragraph one of this subdivision shall not be counted.

8. A person elected to fill a vacancy in the office of public advocate at an election held pursuant to paragraph four of this subdivision shall take office immediately upon qualification and serve until December thirty-first of the year in which the vacancy is filled for the remainder of the unexpired term pursuant to paragraph two of this subdivision. A person elected to fill a vacancy in the office of public advocate at an election held pursuant to paragraph five of this subdivision shall take office immediately upon qualification and serve until the term expires.

9. If a vacancy occurs less than ninety days before the date of the primary election in the last year of the term, the person elected at the general election in such year for the next succeeding term shall take office immediately upon qualification and fill the vacancy for the remainder of the unexpired term.

d. The public advocate may, by written authority filed with the appropriate board, body or committee and with the city clerk, designate any two officers or employees appointed by the public advocate to exercise the powers specified in this subdivision. Either such officer or employee, so designated, may act in the place of the public advocate on any board, body or committee, other than the council, of which the public advocate is a member whenever the public advocate shall be absent from a meeting of said board, body or committee for any reason whatever.

e. The public advocate shall have the right to participate in the discussion of the council but shall not have a vote.

f. In addition to other duties and responsibilities, the public advocate shall serve as the public advocate and shall (1) monitor the operation of the public information and service complaint programs of city agencies and make proposals to improve such programs; (2) review complaints of a recurring and multiborough or city-wide nature relating to services and programs, and make proposals to improve the city's response to such complaints; (3) receive individual complaints concerning city services and other administrative actions of city agencies; and (4) investigate and otherwise attempt to resolve such individual complaints except for those which (i) another city agency is required by law to adjudicate, (ii) may be resolved through a grievance mechanism established by collective bargaining agreement or contract, or (iii) involve allegations of conduct which may constitute a violation of criminal law or a conflict of interest. If the public advocate receives a complaint which is subject to a procedure described in items (i) or (ii) of this paragraph, the public advocate shall advise the complainant of the appropriate procedure for the resolution of such complaint. If the public advocate receives a complaint of the type described in item (iii) of this paragraph, the public advocate shall promptly refer the matter in accordance with subdivision k of this section.

g. The public advocate shall establish procedures for receiving and processing complaints, responding to complainants, conducting investigations, and reporting findings, and shall inform the public about such procedures. Upon an initial determination that a complaint may be valid, the public advocate shall refer it to the appropriate agency. If such agency does not resolve the complaint within a reasonable time, the public advocate may conduct an investigation and make specific recommendations to the agency for resolution of the complaint. If, within a reasonable time after the public advocate has completed an investigation and submitted recommendations to an agency, such agency has failed to respond in a satisfactory manner to the recommendations, the public advocate may issue a report to the council and the mayor. Such report shall describe the conclusions of the investigation and make such recommendations for administrative, legislative, or budgetary action, together with their fiscal implications, as the public advocate deems necessary to resolve the individual complaint or complaints or to address the underlying problems discovered in the investigation.

h. In addition to other duties and responsibilities, the public advocate may review the programs of city agencies. Such reviews shall include, but not be limited to, annual evaluations of: (1) the implementation of the requirements for coterminality of local services contained in all subdivisions of section twenty seven hundred four; (2) the effectiveness of the public information and service complaint programs of city agencies; and (3) the responsiveness of city agencies to individual and group requests for data or information regarding the agencies' structure, activities and operations. The public advocate shall submit any reports documenting or summarizing such reviews to the council, mayor and appropriate agency and shall include in such reports his or her recommendations for addressing the problems identified and the fiscal implications of such recommendations.

i. Except for those matters which involve conduct which may constitute a violation of criminal law or a conflict of interest, the public advocate may, on the request of a resident, taxpayer, community board, council member or borough president, or on his or her own motion, inquire into any alleged failure of a city officer or agency to comply with any provision of the charter. If as a result of such inquiry, the public advocate concludes that there is any

substantial failure to comply with any provision of the charter, he or she shall submit a preliminary report documenting the conclusions of the inquiry to the officer or officers and the head of each agency involved. Within a reasonable time after submitting such preliminary report, the public advocate shall issue a final report to the council, mayor, and agency documenting the conclusions of the inquiry.

j. The public advocate shall have timely access to those records and documents of city agencies which the public advocate deems necessary to complete the investigations, inquiries and reviews required by this section. If a city agency does not comply with the public advocate's request for such records and documents, the public advocate may request an appropriate committee of the council to require the production of such records and documents pursuant to section twenty-nine of the charter. The provisions of this subdivision shall not apply to those records and documents of city agencies for which a claim of privilege may properly be raised or which are prepared or maintained by the department of investigation for use in any investigation authorized by chapter thirty-four of the charter.

k. If the public advocate receives a complaint alleging conduct which may constitute a violation of criminal law or a conflict of interest, he or she shall promptly refer the complaint regarding criminal conduct to the department of investigation or, as applicable, to the appropriate prosecuting attorney or other law enforcement agency and shall refer the complaint regarding conflict of interest to the conflicts of interest board. If during the conduct of any investigation, inquiry, or review authorized by this section, the public advocate discovers that the matter involves conduct which may constitute a violation of criminal law or a conflict of interest, he or she shall take no further action but shall promptly refer the matter regarding criminal conduct to the department of investigation or, as applicable, to the appropriate prosecuting attorney or other law enforcement agency and shall promptly refer the matter regarding conflict of interest to the conflicts of interest board. Unless otherwise provided by law, all complaints received and any investigative file prepared or maintained by the public advocate regarding matters covered by this subdivision, shall be confidential.

l. Before making public any portion of any draft, preliminary or final report relating to the operations or activities of a city officer or agency, the public advocate shall send a copy of the draft report to any such officer, and to the head of any agency, discussed in such report and provide the officer and agency, in writing, with a reasonable deadline for their review and response. The public advocate shall include in any report, or portion thereof, which is made public a copy of all such officer and agency responses.

m. The public advocate may hold public hearings in the course of fulfilling the requirements of this section provided that a complete transcript of any such hearings shall be made available for public inspection free of charge within sixty days after the hearing. The public advocate shall also provide a copy of any requested pages of such transcript at a reasonable fee to cover copying and, if relevant, mailing costs.

n. Not later than the thirty-first day of October of each year, the public advocate shall present to the council a report on the activities of the office during the preceding fiscal year. The report shall include: (1) a statistical summary of the complaints received during such fiscal year, categorized by agency, type of complaint, agency response, mode of resolution, and such other factors as the public advocate deems appropriate; (2) an analysis of recurring complaints and the public advocate's recommendations for administrative, legislative or budgetary actions to resolve the underlying problems causing the complaints; (3) a summary of the findings and recommendations of the agency program reviews conducted during the fiscal year and a summary of the agency responses to such findings and recommendations; (4) a summary of the charter requirements which, in the opinion of the public advocate are not being implemented by the city agencies and officers subject to them, including a description of the nature and extent of the failure to comply and a summary of the responses of the agencies or officers to the public advocate's conclusions; and (5) a summary of improvements in charter compliance since the public advocate's last annual report. The public advocate shall include an assessment of the fiscal implications of any recommendations presented in this report.

HISTORICAL NOTE

Section amended L.L. 19/1993 § 4, eff. Jan. 1, 1994.

Amended by L. L. 1945, No. 32; L. L. 1953, No. 63.

Amended by L. 1962, ch. 998, § 2.

Amended by L. 1962, ch. 998, § 3.

Amended by L. L. 1969, No. 82.

Amended at General Election, November 4, 1975.

Amended at General Election, November 8, 1988.

Renumbered at General Election, November 7, 1989 (formerly § 23).

Subd. a amended L.L. 27/2002 § 4, eff. Sept. 25, 2002. [See Note after § 25]

Subd c par 4 amended at General Election, November 7, 1989.

Subd d amended at General Election, November 7, 1989.

Subd e amended at General Election, November 5, 2002 § 3, eff. November 5, 2002.

Subd f amended at General Election, November 7, 1989.

Subds g-n added at General Election, November 7, 1989.

CASE NOTES

¶ 1. The Public Advocate has the power, under this section, to review files of the Police Department in disciplinary cases where the Civil Complaint Review Board (CCRB) "substantiated" complaints against police officers. Since this section permits the Public Advocate to investigate complaints of a recurring nature relating to services and programs, he or she can use the statute to investigate citizen complaints in a high percentage of cases that were substantiated by the CCRB, no disciplinary action was ever taken against the police officer or officers in question. Moreover, where the Police Department refuses to comply with his request for files, the Public Advocate may seek relief from the court without first going to the City Council to obtain a subpoena. *Green v. Safir*, 255 A.D.2d 107, 679 N.Y.S.2d 383 (1st Dept. 1998), leave to appeal denied, 93 N.Y.2d 882, 689 N.Y.S.2d 425 (1999).

¶ 2. The Public Advocate has the right to obtain access to substantiated Civilian Complaint Review Board complaints and files. If denied access to these materials, he or she can proceed directly to court and need not exhaust administrative remedies. *Green v. Safir*, 255 A.D.2d 107, 679 N.Y.S.2d 383 (1st Dept. 1998), leave to appeal denied, 93 N.Y.2d 882, 689 N.Y.S.2d 425 (1999).

¶ 3. The Public Advocate brought an action pursuant to City Charter § 1109, seeking a summary judicial inquiry into the actions taken and public statements made by the Mayor concerning the criminal and juvenile record of a man who had been shot and killed by police. The Mayor contended that the statute was unconstitutional, in that it improperly assigned a "public trust" office to a Supreme Court Justice. The Mayor pointed to Article VI, Section 20 of the State Constitution, which prohibits Supreme Court justices from holding any other public office or trust except in relation to the administration of justice, being a member of a constitutional convention or being a member of the armed forces of the United States or State of New York. The court, however, upheld the statute, giving the following rationale: The Public Advocate is an independently elected official with capacity to sue. The authority of the Public Advocate to petition for a summary inquiry under § 1109 exists in tandem with City Charter § 24, which gives him or her to mandate, investigate and report on complaints of mismanagement or misfeasance by City agencies. The function of a Supreme Court justice in presiding over a summary inquiry resulting in a report of the Public Advocate is a judicial

function comparable to that of a justice presiding over a grand jury investigation. Moreover, the inquiry sought in this case focused on the failure to protect information about the decedent which was contained in court records. Thus, it served a purpose significantly related to the administration of justice in the City's Family and Criminal Courts. It did not matter whether the Public Advocate intended to use the summary inquiry for the purpose of commencing a lawsuit against the City, or whether it was merely to be used for issuance of a report. Either way, the purpose of a justice of the Supreme Court presiding over such an inquiry was judicial, not prosecutorial, the court said. The court further rejected the Mayor's argument that § 1109 impermissibly sought an advisory opinion from the Supreme Court. The purpose of the inquiry (although presided over by a judge) was to obtain information in the form of a written record which was filed with the County Clerk. The summary inquiry did not call for either a decision or an advisory opinion from the court. The Mayor further argued that § 1109 was intended to be limited to acts of corruption or misapplication of City funds. The court, however, held that while inquiries into financial corruption may have been a primary reason for the enactment of the summary inquiry provision, its broad language encompassed a much wider variety of investigations, including the one sought here. *Green v. Giuliani*, 187 Misc.2d 138, 721 N.Y.S.2d 461 (Sup.Ct. New York Co. 2000).



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New York City Charter

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NYC Charter 25

New York City Charter

CHAPTER 2 COUNCIL

§ 25. **Election; term; vacancies.**

a. The council members shall be elected at the general election in the year nineteen hundred seventy-seven and every fourth year thereafter and the term of office of each council member shall commence on the first day of January after the elections and shall continue for four years thereafter; provided, however, that the council member elected at the general election in the year two thousand and one and at the general election in every twentieth year thereafter shall serve for a term of two years commencing on the first day of January after such election; and provided further that an additional election of Council Members shall be held at the general election in the year two thousand three and at the general election every twentieth year thereafter and that the members elected at each such additional election shall serve for a term of two years beginning on the first day of January after such election.

Notwithstanding any other provision of this charter or other law, a full term of two years, as established by this subsection, shall not constitute a full term under section 1138 of this charter, except that two consecutive full terms of two years shall constitute one full term under section 1138. A member of the council who resigns or is removed from office prior to the completion of a full term shall be deemed to have held that office for a full term for purposes of section 1138 of the charter.

b. Any vacancy which may occur among the council members shall be filled by popular election in the following manner.

1. Within three days of the occurrence of a vacancy in the council, the mayor shall proclaim the date for the election or elections required by this subdivision, provide notice of such proclamation to the city clerk and the board of elections and publish notice thereof in the City Record. After the proclamation of the date for an election to be held pursuant to paragraphs four or five of this subdivision, the city clerk shall publish notice thereof not less than twice in each week preceding the date of such election in newspapers distributed within the city, and the board of elections shall mail notice of such election to all registered voters within the district in which the election is to be held.

2. If a vacancy occurs during the first three years of a four-year term or the first year of a two-year term, a general election to fill the vacancy for the remainder of the unexpired term shall be held in the year in which the vacancy occurs, unless the vacancy occurs after the last day on which an occurring vacancy may be filled at the general election in that same year with party nominations of candidates for such election being made at a primary election, as provided in section 6-116 of the election law. If such a vacancy occurs in any year after such last day, it shall be filled for the remainder of the unexpired term at the general election in the following year provided, however, that no general election to fill a vacancy shall be held in the last year of the term, except as provided in paragraph nine of this subdivision. Party nominations of candidates for a general election to fill a vacancy for the remainder of the unexpired term shall be made at a primary election, except as provided in paragraph five of this subdivision.

3. If a special or general election to fill the vacancy on an interim basis has not been previously held pursuant to paragraphs four, six, seven and eight of this subdivision, the person elected to fill the vacancy for the remainder of the unexpired term at a general election shall take office immediately upon qualification and shall serve until the term expires. If a special or general election to fill the vacancy on an interim basis has been previously held, the person elected to fill the vacancy for the remainder of the unexpired term at a general election shall take office on January first of the year following such general election and shall serve until the term expires.

4. If a vacancy occurs during the first three years of a four-year term or in the first year of a two-year term and on or before the last day in the third year of such a four-year term or the first year of such a two-year term on which an occurring vacancy may be filled for the remainder of the unexpired term at a general election with party nominations of candidates for such election being made at a primary election, as provided in section 6-116 of the election law, a special or general election to fill the vacancy on an interim basis shall be held, unless the vacancy occurs less than ninety days before the next primary election at which party nominations for a general election to fill the vacancy may be made and on or before the last day on which an occurring vacancy may be filled for the remainder of the unexpired term at the general election in the same year in which the vacancy occurs with party nominations of candidates for such election being made at a primary election, as provided in section 6-116 of the election law.

5. If a vacancy occurs after the last day in the third year of a four-year term or the first year of a two-year term on which an occurring vacancy may be filled for the remainder of the unexpired term at a general election in each year with party nominations of candidates for such election being made at a primary election, as provided in section 6-116 of the election law, but not less than ninety days before the date of the primary election in the fourth year of such a four-year term or the second year of such a two-year term, a special or general election to fill such vacancy for the remainder of the unexpired term shall be held.

6. Elections held pursuant to paragraph four or five of this subdivision shall be scheduled in the following manner: A special election to fill the vacancy shall be held on the first Tuesday at least forty-five days after the occurrence of the vacancy, provided that the mayor, in the proclamation required by paragraph one of this subdivision, may schedule such election for another day no more than ten days after such Tuesday and not less than forty days after such proclamation if the mayor determines that such rescheduling is necessary to facilitate maximum voter participation; except that

(a) if the vacancy occurs before September twentieth in any year and the first Tuesday at least forty-five days after the occurrence of the vacancy is less than ninety days before a regularly scheduled general election or between a primary and a general election, the vacancy shall be filled at such general election;

(b) if the vacancy occurs before September twentieth in any year and the first Tuesday at least forty-five days after the occurrence of the vacancy is after a regularly scheduled general election, the vacancy shall be filled at such general election; and

(c) if the vacancy occurs on or after September twentieth in any year and the first Tuesday at least forty-five days after the occurrence of the vacancy is after, but less than thirty days after, a regularly scheduled general election,

the vacancy shall be filled at a special election to be held on the first Tuesday in December in such year.

7. All nominations for elections to fill vacancies held pursuant to paragraphs four and five of this subdivision shall be by independent nominating petition. A signature on an independent nominating petition made earlier than the date of the proclamation required by paragraph one of this subdivision shall not be counted.

8. A person elected to fill a vacancy in the council at an election held pursuant to paragraph four of this subdivision shall take office immediately upon qualification and serve until December thirty-first of the year in which the vacancy is filled for the remainder of the unexpired term pursuant to paragraph two of this subdivision. A person elected to fill a vacancy in the council at an election held pursuant to paragraph five of this subdivision shall take office immediately upon qualification and serve until the term expires.

9. If a vacancy occurs less than ninety days before the date of the primary election in the last year of the term, the person elected at the general election in such year for the next succeeding term shall take office immediately upon qualification and fill the vacancy for the remainder of the unexpired term.

HISTORICAL NOTE

Amended by L. L. 1945, No. 32.

Amended by L. L. 1953, No. 63.

Amended by L. 1962, ch. 998, § 3.

Amended by L. L. 1969, No. 82.

Amended at General Election, November 4, 1975.

Amended by L. L. 1977, No. 102.

Amended by L. 1978, ch. 763.

Amended at General Election, November 8, 1988.

Renumbered at General Election, November 7, 1989 (formerly § 24).

Subd. a, subd. b pars. 2, 4, 5 amended at General Election, November 7, 1989.

Subd. a amended L.L. 27/2002 § 2, eff. Sept. 25, 2002. [See Note]

NOTE

Provisions of L.L. 27/2002:

Section 1. Purpose and Intent. This legislation addresses the qualifications for the office of Council Member imposed by Chapter 50 of the Charter in relation to the application of the two-year terms of Council Members established by Chapter 2 of the Charter. It does not change any term of office. Nor does it change those disqualification provisions of Chapter 50 of the Charter prohibiting any elected City official from serving more than two consecutive four-year terms. This legislation also does not change the current law mandating that the election to an unexpired term of office under Section 25b of the Charter not be considered a full term under Chapter 50 of the Charter. Therefore, a Council Member elected to fill an unexpired term of office can still serve two consecutive full terms immediately thereafter.

This bill also addresses the question of whether an elected official who resigns or is removed from office prior to

the end of a full term is disqualified from election to a further consecutive term to such office, if such elected official would have been otherwise disqualified under Section 1138 of the Charter.

A. Section 25 of the Charter

Under Section 25 of the Charter, the terms of Council Members are normally four years and, under state law, councilmatic elections must be held in odd number years. Section 25 also provides that the terms of Council Members elected in 2001 and 2003 and every twenty years after each of these years shall be two years. The purpose of the two-year term is to allow an election for Council Members in 2003 and every twenty years thereafter in order to expeditiously implement the redrawn Council district lines required to be drawn by March of 2003 and every twenty years thereafter. Without this election, the redrawn lines under a four-year term in decades in which an election for Council is held in the first year of that decade, would not go into effect until the fifth year of that decade. Therefore, it allows for the timely redrawing of Council districts while also keeping Council elections on the same four-year cycle as citywide and borough-wide elections.

Section 1138 of Chapter 50 of the New York City Charter, added in 1993, disqualifies Council Members from serving more than two full consecutive terms. It makes no clear distinction between four-year terms and two-year terms, although Section 1137 and the literature in support of the initiative through which it was adopted suggests that the goal of that provision was to limit members to eight consecutive years in office. For example, a brochure distributed by the initiative sponsors told the public that they were voting for a "referendum to limit the Council Member to two consecutive four-year terms." Additionally, the ballot question and other documents discussing the initiative spoke about two consecutive terms of office which in context could only be understood as eight years.

The application of Section 1138 and Section 25 of the Charter results in the disqualification of Council Members elected to their first full term in 1997 and every twenty years thereafter and their second term in 2001 and every twenty years thereafter from running again in 2003 and every twenty years thereafter and the disqualification of Council Members elected in 2003 and every twenty years thereafter and reelected in 2005 and every twenty years thereafter from running for reelection in 2009 and every twenty years thereafter. All other members of the Council remain qualified to serve two full four-year terms. Presently there are eight members who cannot be elected in 2003 under this provision and any new members elected in 2003 will be subject to this special disqualification.

The Council declares that such unequal disqualification for office disadvantages the citizens of those districts from which Council Members are disqualified for running for greater than six consecutive years. Seniority and experience are significant factors in the capacity of Members to represent and serve their districts. Districts in which Members are disqualified from continuing to serve after six consecutive years are substantially disadvantaged as compared to districts in which Members can serve eight consecutive years. Additionally, five of the eight current Members who will be disqualified are members of protected minority groups under the Voting Rights Act of 1965 and four represent majority-minority districts. As of 2002, 25 members of the Council are members of protected minority groups. Nineteen of their districts are majority-minority districts. The effect of the two-year term disqualification is that minority populations will be disproportionately disadvantaged by the disqualification of Members who have served six consecutive years. Such disproportional representation raises equal protection questions.

The Council also declares that the disqualification of Members will serve to destabilize a Council, which has only recently amended its rules to broaden its lawmaking and oversight responsibility to a large number of Members and which faces a continuing budget crisis.

The Council determines that the best means to remedy the above-described problems is to amend Section 25 of the Charter to provide that a two-year term established thereunder shall not be considered a full term for purposes of Section 1138, but the two consecutive two-year terms together shall be considered one full term in relation to Charter Section 1138. The Council determines that it has the authority to enact this amendment to Section 25 of the Charter without referendum. Term limits are qualifications for office and not subject to mandatory referendum under the Charter

or state law. Additionally, the Council is without power to submit such local law to referendum. Under both the Charter and state law, local laws not subject to mandatory referendum may not be submitted to referendum.

B. Leaving Prior to the End of the Term

Under Section 1138 of the Charter, the disqualification for continued consecutive service arguably does not apply in the event that an elected official leaves office prior to the end of that elected officials' term. Thus, an elected official could resign from office prior to the end of his or her elected term and run again without being disqualified. The Council declares that this anomaly undermines the goals of Section 1138 of the Charter. This legislation addresses the problem by clarifying that an elected official serves a full term for purposes of Section 1138 whether he or she resigns or is removed from office.

§ 7. If any provision of this local law or of any amendments thereto, shall be held invalid or ineffective in whole or in part or inapplicable to any person or situation, such 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.

§ 8. This local law shall take effect immediately.

CASE NOTES

¶ 1. Provision of § 24 of the Charter providing that any vacancy which may occur among the City Councilmen shall be filled by election by the Councilmen of a person who must be of the same political party as the Councilman whose place has become vacant, **held** to require the filing of all vacancies, and such obligation to elect a successor remained unaffected by fact that the prior incumbent was not identified with a political party. In the latter case, the party affiliation of the successor would be immaterial.-In re Melzer, 82 N. Y. S. 2d 18 [1948].

¶ 2. Provision of Constitution, Art. XII, § 8, relative to filing of vacancies in office, is applicable to all elective city officers, including Councilmen of the City of New York, and § 24 of the Charter is to be interpreted as if the Legislature intended by such section fully to carry out the constitutional mandate.-Id.

¶ 3. Where nature and extent of the duty of filling vacancies imposed by New York City Charter § 24 in the instant situation posed a question of first impression, giving rise to great doubt as to the proper course to pursue, and the City Council had merely postponed action until clarification by the proper tribunal, there was no refusal to perform a duty enjoined by law or the making of a determination which would be reviewable under C. P. A. Art. 78.-In re Melzer, 82 N. Y. S. 2d 18 [1948].

¶ 4. Section 25(a) of the City Charter, as enacted in 1989 by a voter-initiated referendum, provided that every 20 years, terms for City Council members would be changed from the usual four-year term to two consecutive two-year terms. This was done to accommodate redistricting after a census and to reconcile the election cycle with other New York City offices. Later, term limits were enacted, so that council members (as well as other office holders) were limited to two consecutive terms (City Charter §§1137 and 1138). As a practical matter, office holders were allowed to serve for up to eight consecutive years. However, the law created a problem for certain City Council members who were elected to a four-year term in 1997 and a two-year term in 2001. They were precluded from running for re-election under the "two consecutive terms" rule, even though they had served for only six consecutive years. To correct this "unequal disqualification," the City Council enacted Local Law 27 of 2002, which amended Section 25(a) to provide that a two-year term would not constitute a full term under §1138, except that two consecutive terms of two years would constitute one full term under §1138. A former City Council member and two potential candidates for the City Council challenged the law, contending that the law could not be enacted without a voter referendum, because the law curtailed the power of elected officials within the meaning of City Charter §38(5). A local law is subject to mandatory

referendum if it changes the term of an elected officer, or if it abolishes, transfers or curtails any power of an elective officer. In this case, however, Local Law 27 merely amended the term-limit provision of the City Charter without changing the length of the term of office, or curtailing any power of the office. Thus, the court held that no referendum was necessary for the City Council's enactment of the change. *Golden v. New York City Council*, 305 A.D.2d 598, 762 N.Y.S.2d 410 (2d Dept. 2003), leave to appeal denied, 100 N.Y.2d 504, 762 N.Y.S.2d 874, 793 N.E.2d 411 (2003).

¶ 5. Following the resignation of a City Council member, the Mayor issued a proclamation, dated August 30, 2002, ordering a special election for the vacated seat, to be held on the date of the regularly scheduled election. The proclamation was received by the Board of Elections and the City Clerk on September 5, 2002. The Board of Elections set September 11, 2002 as the last date to file petitions with the Board of Elections, and September 18, 2002 as the last date to commence judicial proceedings with respect to the petitions filed. These dates were in accordance with the Article 6 of the Election Law (Election Law §6-158(9) provides that the last day to file a petition is 12 days after the "issuance" of the Mayor's proclamation). A candidate for the office sought to commence a judicial proceeding to validate his independent nominating petition, even though the proceeding was commenced past the September 18, 2002 deadline. The candidate maintained that although the proclamation was signed by the Mayor on August 30, it was not legally "issued" until after September 5. Petitioner's argument was that regardless of when a petition was signed, it could not be deemed "issued" before the City Clerk and the Board of Elections received notice. Petitioner then maintained that deeming the proclamation "issued" before the City Clerk and the Board of Elections received such notice constituted a violation of his due process rights. The court, however, held that the purpose of the City Charter provision requiring notice to the City Clerk is to inform the general public of the election, not to inform the potential candidates. Thus, the court said, the proclamation was deemed "issued" as of the date it was signed by the Mayor. The court noted that if petitioner's view had been adopted, potential candidates would have had to take the "unprecedented step of investigating bureaucratic measures" taken after the Mayor's execution of a proclamation to determine the date of issuance. This was not a result contemplated by the City Charter or the Election Law, the court said. Thus, the candidate's judicial proceeding was dismissed. *Nieves v. Centeno*, N.Y.L.J., Oct. 22, 2002, page 20, col. 6 (Sup.Ct. Kings Co.).

¶ 6. City Charter §25, as amended by City Charter §1138, does not violate constitutional rights. A person does not have a fundamental right to be a candidate. *Dear v. Board of Elections*, 307 A.D.2d 1006, 763 N.Y.S.2d 509 (2d Dept. 2003). See also *Dear v. Board of Elections*, 2003 WL 22077679 (U.S. Dist. Ct. E.D.N.Y), reported as Note 1 to City Charter §1138.



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NYC Charter 26

New York City Charter

CHAPTER 2 COUNCIL

§ 26. **Salaries and allowances.**

a. The salary of the public advocate shall be one hundred sixty-five thousand dollars a year.

b. The salary of each council member shall be one hundred twelve thousand five hundred dollars a year. In addition any council member, while serving as a committee chairperson or other officer of the council, may also be paid, in addition to such salary, an allowance fixed by resolution, after a hearing, for the particular and additional services pertaining to the additional duties of such position.

c. If prior to the enactment of a local law increasing the compensation of council members, the council establishes a commission to study and make recommendations for changes in the compensation levels of council members, or if it otherwise causes an analysis of such compensation levels to be made to assist it in its consideration of a local law, such study or analysis may include an analysis of the benefits, detriments, costs and impacts of placing restrictions on earned income derived by council members from sources other than their council salary.

HISTORICAL NOTE

Amended by L. L. 1949, No. 107.

Amended by L. L. 1961, No. 96.

Amended by L. L. 1969, No. 82.

Amended by L. L. 1973, No. 77.

Amended at General Election, November 4, 1975.

Amended by L. L. 1979, No. 37.

Amended by L. L. 1983, No. 32.

Amended by L. L. 1987, No. 25.

Renumbered and amended at General Election, November 7, 1989 (formerly § 25).

Subd. a amended L.L. 51/2006 § 2, eff. Jan. 19, 2007 and deemed in full force and effect as of Nov. 1, 2006.

[See § 4 Note 1]

Subd. a amended L.L. 41/1999 § 2, eff. Sept. 18, 1999 and retroactive to July 1, 1999.

Subd. a amended L.L. 92/1995 § 2, eff. Feb. 2, 1996 and retroactive to July 1, 1995.

Subd. a amended L.L. 68/1993 § 1, eff. Jan. 1, 1994.

Subd. b amended L.L. 51/2006 § 2, eff. Jan. 19, 2007 and deemed in full force and effect as of Nov. 1, 2006.

[See § 4 Note 1]

Subd. b amended L.L. 41/1999 § 2, eff. Sept. 18, 1999 and retroactive to July 1, 1999.

Subd. b amended L.L. 92/1995 § 2, eff. Feb. 2, 1996 and retroactive to July 1, 1995.



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NYC Charter 27

New York City Charter

CHAPTER 2 COUNCIL

§ 27. **Local laws and resolutions increasing or decreasing salaries or allowances.**

No local law or resolution increasing or decreasing the salaries, or other allowances, in accordance with section twenty-six shall be adopted during the period between the general election day and the thirty-first day of December, both such days inclusive, in any year in which all of the council members are elected.

HISTORICAL NOTE

Added at General Election, November 7, 1989.



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NYC Charter 28

New York City Charter

CHAPTER 2 COUNCIL

§ 28. **Powers of council.**

a. The council in addition to all enumerated powers shall have power to adopt local laws which it deems appropriate, which are not inconsistent with the provisions of this charter or with the constitution or laws of the United States or this state, for the good rule and government of the city; for the order, protection and government of persons and property; for the preservation of the public health, comfort, peace and prosperity of the city and its inhabitants; and to effectuate the purposes and provisions of this charter or of the other law relating to the city. The power of the council to act with respect to matters set forth in sections one hundred ninety-seven-c and two hundred shall be limited by the provisions of section one hundred ninety seven-d.

b. The council shall have power to provide for the enforcement of local laws by legal or equitable proceedings, to prescribe that violations thereof shall constitute misdemeanors, offenses or infractions and to provide for the punishment of violations thereof by civil penalty, fine, forfeiture or imprisonment, or by two or more of such punishments.

c. In the event that there exists no other provision of law for the filling of a vacancy in any elective office, resulting from removal or suspension from such office, or the death, resignation or inability of the incumbent to exercise the powers or to discharge the duties of the office, the council by a majority vote of all the council members shall elect a successor to fill the vacancy in such office.

d. All local laws shall be general, applying either throughout the whole city or throughout specified portions thereof.

e. The council shall not pass any local law authorizing the placing or continuing of any encroachment or obstruction upon any street or sidewalk excepting temporary occupation thereof by commercial refuse containers or during and for the purpose of the erection, repairing or demolition of a building on a lot abutting thereon under

revocable licenses therefor, and excepting the erection of booths, stands or displays or the maintenance of sidewalk cafes under licenses to be granted only with the consent of the owner of the premises if the same shall be located in whole or in part within stoop lines; any such commercial refuse containers thus placed or continued upon any street or sidewalk pursuant to such a revocable license shall be painted with a phosphorescent substance so that the dimensions thereof shall be clearly discernible at night.

f. All local laws in relation to licenses shall fix the license fees to be paid, if any, and shall provide that all licenses shall be according to an established form and shall be regularly numbered and duly registered.

g. The council shall hold a public hearing prior to the consideration of any resolution requesting the state legislature, in accordance with the provisions of section two of article nine of the Constitution of the state of New York, to pass any bill, the substance of which, if adopted by the council as a local law, would require its approval by the electorate voting thereon at a referendum. Notice of such public hearing shall be published in the City Record for at least five days immediately preceding the commencement of such a hearing.

HISTORICAL NOTE

Subd. d amended by L. 1985, ch. 204, June 18.

Subd. f added by L. L. 1966, No. 42.

Section amended by L. L. 1969, No. 74.

Section amended at General Election, November 4, 1975.

Section amended at General Election, November 7, 1989.

CASE NOTES

¶ 1. Under § 11 of the City Home Rule Law and § 27 of the Charter, the City has broad powers to regulate the use of the City streets and to provide by local law for the good government of the City, and the preservation and promotion of its health, safety and general welfare of its inhabitants. Local laws are valid which have a substantial relation to matters within the field where legislative power is vested in the local legislative body of the City, but they must be reasonably calculated to achieve a legitimate public purpose.-*Good Humor Corp. v. City of New York*, 290 N. Y. 312, 49 N. E. 2d 153 [1943], *aff'g*, 264 App. Div. 620, 36 N. Y. S. 2d 85, [1942], which affirmed, 33 N. Y. S. 2d 905 [1942].

¶ 2. Under the New York Constitution, the Home Rule Law and New York City Charter § 27, the City has the power to enact legislation to protect the safety and health of its inhabitants as long as the legislation does not conflict with State laws.-*Molnar v. Curtin*, 273 App. Div. 322, 77 N. Y. S. 2d 553 [1948].

¶ 3. The provisions of the Administrative Code, §§ B32-250.0 et seq as enacted by Local Law No. 61 of 1947 and the Rules promulgated thereunder for the licensing and regulation of garages and parking lots within the City of New York are constitutional. The report of the Committee on General Welfare as to the abuses which were prevalent before the enactment of the local law made it clear that the regulation of garages and parking lots had a substantial relation to the general welfare of the inhabitants of the City and the enactment therefor constituted a valid exercise of the police power.-*Pomeranz v. City of New York*, 1 Misc. 2d 486, 151 N. Y. S. 2d 789 [1955].

¶ 4. Local Law No. 16 of 1939 which made it unlawful to possess a motor vehicle designed or colored in the manner of vehicles of the fire department was unconstitutional when applied to trucks owned by the plaintiff and registered with the State.-*The Great Atlantic and Pacific Tea Co. v. City of New York*, 173 Misc. 470, 17 N. Y. S. 2d 270 [1940].

¶ 5. A local law (Code § U41-5.0) which imposed penalties for violation of federal price, rationing and rent control programs was within the legislative power of the city and since it was not inconsistent with the federal law, the local law was valid.-*Peo. v. Lewis*, 295 N. Y. 42, 64 N. E. 2d 702 [1945].

¶ 6. Former § 42 (b), prohibiting City Council from passing any local laws authorizing an obstruction or encroachment upon any street or sidewalk, except the temporary occupation thereof for erection, demolition or repair of buildings and for erection of booths, stands or displays or maintenance of sidewalk cafes under licenses required a license for all the enumerated classifications of temporary obstructions, including the erection of booths, stands, and displays. Hence, Administrative Code § 82d 7-15.0 (4) authorizing storekeepers and peddlers to sell and display Christmas trees, holiday decorations and toys on sidewalk upon obtaining consent of owners of abutting premises, was invalid.-*People v. Berner*; *People v. Traet*, 170 Misc. 501, 10 N. Y. S. 2d 339 [1939].

¶ 7. Local Law 14 of 1961 requires all laundromats to close on Sundays and between the hours of midnight and six in the morning on other days. It also requires that an attendant be present from six in the evening until closing. The provision requiring closing on Sunday is invalid because the State Legislature has pre-empted these Sabbath subjects. The other provisions are reasonable, constitutional and valid.-*Schacht v. City of New York*, 40 Misc. 2d 303, 243 N. Y. S. 2d 272 [1963], *aff'd*, 281 N. Y. S. 2d 973 [1967].

¶ 8. Section 343-9.0 of the Code requires that public work contracts with the City contain an agreement by the contractor to pay a minimum wage of \$1.50 per hour and to do the work in safe and sanitary surroundings. These provisions are valid, whether the contractor's employees are in or out of State. Section 220 of the Labor Law has not pre-empted the entire field. The provisions are not inconsistent with sections 27 or 343 of the Charter, or with the State Constitution.-*McMillen v. Browne*, 40 Misc. 2d 348, 243 N. Y. S. 2d 293 (1963), *aff'd*, 20 App. Div. 2d 531, 244 N. Y. S. 2d 833 [1963], *aff'd*, 14 N. Y. 2d 326, 200 N. E. 2d 546, 251 N. Y. S. 2d 641 [1964].

¶ 9. City has power to regulate retail prices of cigarettes so as to require retailers to maintain a difference in price between brands that have a higher tar and nicotine content and those which have a lower tar and nicotine content as this section grants the city police power to promote health.-*People v. Cook*, 34 N. Y. 2d 100, 312 N. E. 2d 452, 356 N. Y. S. 2d 259 [1974].

¶ 10. The City Charter did not authorize the City Council to pass Local Law 16 of 2001 (Adm. Code §17-282), which mandated that the Health and Hospitals Corporation (HHC) utilize "peace officers" appointed pursuant to the Criminal Procedure Law. Thus, the court struck down the statute as an unconstitutional interference with the HHC's right, as established by the New York City Health and Hospitals Corporation Act (Unconsolidated Laws §7381 et seq.) to operate autonomously. The court held that the state legislation pre-empted the field, and that the City Council could not enact any law which conflicted with the state statute. *New York City Health and Hospitals Corp. v. Council of City of New York*, 303 A.D.2d 69, 752 N.Y.S.2d 665 (1st Dept. 2003).



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NYC Charter 29

New York City Charter

CHAPTER 2 COUNCIL

§ 29. **Power of investigation and oversight.**

a. The council, acting as a committee of the whole, and each standing or special committee of the council, through hearings or otherwise:

1. may investigate any matters within its jurisdiction relating to the property, affairs, or government of the city or of any county within the city, or to any other powers of the council, or to the effectuation of the purposes or provisions of this charter or any laws relating to the city or to any county within the city.

2. shall review on a regular and continuous basis the activities of the agencies of the city, including their service goals and performance and management efficiency. Each unit of appropriation in the adopted budget of the city shall be assigned to a standing committee. Each standing committee of the council shall hold at least one hearing each year relating to the activities of each of the agencies under its jurisdiction.

b. Any standing or special committee shall have power to require the attendance and examine and take testimony under oath of such persons as it may deem necessary and to require the production of books, accounts, papers and other evidence relative to the inquiry. Copies of all reports or studies received by the council pursuant to section eleven hundred thirty-four and subdivision c of section ninety-three shall be assigned to the appropriate standing committees for review and action, as necessary.

HISTORICAL NOTE

Added at General Election, November 7, 1989.

Derived from former §§ 41, 44,

§ 41 amended at General Election, November 4, 1975.

§ 44 (now § 29 a 2) added at General Election, November 4, 1975.

CASE NOTES TO FORMER § 41

¶ 1. Resolution of Council designating a special committee under Charter former § 43 (now § 41) to determine whether city broadcasting station should be abolished, was not a local law or resolution as defined by Charter §§ 21 or 26, and hence approval of Mayor as provided in former §§ 38, 39 and 40 (now §§ 38 and 39) was not required.-Matter of Radio Station WNYC, 169 Misc. 502, 7 N. Y. S. 2d 297 [1938], aff'd without opinion, 255 App. Div. 844, 7 N. Y. S. 2d 998 [1938], aff'd, 280 N. Y. 629, 20 N. E. 2d 1008 [1939].

¶ 2. Resolution of the Council authorizing an investigation of the Municipal Civil Service Commission did not exceed the power of the Council because the stated purpose of the inquiry was not to bring about remedial legislation but solely to lay the foundation for a petition to the Mayor by the Council calling for removal of administrative officials. Former § 43 (Now § 41) expressly authorized such an investigation.-Smith v. Kern, 175 Misc. 937, 26 N. Y. S. 2d 560 [1940], aff'd without opinion, 260 App. Div. 1003, 24 N. Y. S. 2d 992 [1940], aff'd 285 N. Y. 632, 33 N. E. 2d 556 [1941].

¶ 3. Aside from the express right to investigate any matter relating to the property, affairs or government of the City conferred by former § 43 (now § 41) of the Charter upon the Council of the right of the Council to pass laws regulating the administration of relief insofar as it was conducted by the City or with City funds necessarily implied the right of the Council to direct an investigation of the administration of relief in the City, and the action of the Council in conducting such investigation was equivalent to that of the legislature, since the Council, where it has jurisdiction, may act for the locality precisely as the legislature may act for the state. Hence, in issuing subpoenas directed to the Commissioner and an employee of the Department of Investigation, the Supreme Court merely acted as the implement of the legislature, and it was not for the Supreme Court to interfere with the legislative section on the complaint that the broad nature of the subpoenas would interfere with the proper conduct of a similar investigation being made by the Commissioner at the Mayor's behest. Furthermore, there would seem no valid reason why information obtained by the Commissioner should not be available to the Council, or why the Commissioner's information should be confidential as against a legislative inquiry.-Herlands v. Surpluss, 258 App. Div. 275, 16 N. Y. S. 2d 454 [1939], aff'd, 171 Misc. 914, 14 N. Y. S. 2d 312 [1939], aff'd, 282 N. Y. 647, 26 N. E. 2d 800 [1939].

¶ 4. In view of the power of the Council to legislate upon matters affecting the health, safety and welfare of civil service employees, and its right to initiate a referendum to change the membership of the Municipal Civil Service Commission, the Council **held** to possess the requisite authority to investigate the Commission, notwithstanding the legislature had set up a complete system for the administration of the Civil Service. However, the Council might not interfere with the merit system itself.-Smith v. Kern, 175 Misc. 937, 26 N. Y. S. 2d 560 [1940], aff'd without opinion, 260 App. Div. 1003, 24 N. Y. S. 2d 992 [1941], aff'd, 285 N. Y. 632, 33 N. E. 2d 556 [1941].

¶ 5. Written report made to the Mayor by City employee whom the Mayor had directed to investigate matters relating to the personnel at the Information Center, **held** subject to subpoena by a special committee of the Council investigating affairs of the Municipal Civil Service Commission, since the scope of former § 43 (now § 41) of the Charter, bestowing upon the Council the power to appoint a special committee to investigate City affairs and granting it power to require the attendance and examine such persons as it might deem necessary, is broad enough to apply to the Mayor. There was not apparent in the Charter an intention by the legislature to keep in a constant state of isolated independence the functions of the Mayor and the Council, and moreover the principle of the separation of powers applies only to the sovereign authority, and not to the government of cities.-La Guardia v. Smith, 288 N. Y. 1, 41 N. E. 2d 153 [1942], aff'd 262 App. Div. 708, 27 N. Y. S. 2d 992 [1941], which aff'd, 176 Misc. 482, 27 N. Y. S. 2d 321 [1941].

¶ 6. Powers conferred upon a special committee appointed by the Council to investigate the Municipal Civil Service Commission might validly be exercised by a single member of the committee, where the Council itself expressly vested each member of the committee with the authority of the entire committee. Section 899 of the Charter providing that whenever any act was authorized to be done by any board or other body, the action of the majority of the board or body should be deemed the act of the entire board or body, and that a majority of the board or body should constitute a quorum thereof, applied only to situations where confusion might otherwise result as to the number of members of the board or body necessary to constitute a quorum, and as to the number necessary to act on behalf of the committee.-*In re Smith v. Kern*, 175 Misc. 937, 26 N. Y. S. 2d 560 [1940] *aff'd* without opinion, 260 App. Div. 1003, 24 N. Y. S. 2d 992 [1940], *aff'd*, 285 N. Y. 632, 33 N. E. 2d 556 [1941].

¶ 7. Inasmuch as the Council had the power in the first instance to authorize an investigation by a committee of one, it possessed the power to authorize a subcommittee of one to conduct hearings in aid of such investigation.-*Id.*

¶ 8. The subcommittee of one member of the committee of the Council investigating the Municipal Civil Service Commission, **held** authorized to examine witnesses at private rather than public hearings, since such power to examine witnesses at private hearings was expressly conferred upon the Commissioner of Investigation by § 803 of the Charter and framers of the Charter must have intended that the Council would have the same power, the requirement of a public hearing would hamper investigation and permit the public airing of reckless charges, and moreover the committee had stated the Civil Service Commissioner would subsequently be accorded an opportunity to testify at a public hearing before the full committee.-*Id.*

¶ 9. Provisions of former § 30 (now § 31) of the Charter that the Council shall sit with open doors referred only to legislative sessions of the Council and not to fact-finding investigations by committees of the Council.-*Id.*

¶ 10. Inasmuch as the Corporation Counsel and the Commissioner of Investigation are heads of executive departments and the obvious design of the Charter was to make the Council an independent body with power to investigate the executive department, the choice of counsel to conduct an investigation lay with the Council, and it was not required to call upon the Corporation Counsel for legal assistance.-*Barry v. City of New York*, 175 Misc. 712, 25 N. Y. S. 2d 27 [1941], *aff'd*, 261 App. Div. 957, 27 N. Y. S. 2d 425 [1941].

¶ 11. A stenographer engaged by a special committee of the city council to report the proceedings of the committee in its investigation of emergency unemployment relief was entitled to recover from the city for the value of his services notwithstanding the failure of the board of estimate to make an appropriation for the necessary expenses of the committee. Former § 891 (now § 1111) of the Charter which prohibits an agency from incurring a liability in excess of the amount appropriated therefor and former §§ 121-123 which provide that the board of estimate has, in the first instance, the duty to make appropriations for the governmental purposes of the city, did not preclude the grant of a judgment to plaintiff because the city council did not act as a departmental agency when it exercised its legislative powers under this section.-*Smith v. City of New York*, 289 N. Y. 517, 47 N. E. 2d 35 [1943].

¶ 12. Attorney who sought to recover from the City of New York for services rendered to the City while acting as counsel to a special committee of the City Council appointed to investigate the Municipal Civil Service Commission, was merely obliged under the Charter to present his bill for audit to the Comptroller, and was not required to submit a statement of his charges for audit to either the Council or the special committee (Charter § 93, subd. C).-*Ellis v. City of N. Y.*, 180 Misc. 968, 46 N. Y. S. 2d 363 [1943], *aff'd* without opinion, 269 App. Div. 685, 54 N. Y. S. 2d 380, [1944], *aff'd*, 295 N. Y. 780, 66 N. E. 2d 297 [1946].

¶ 13. The hiring of plaintiff-attorney by a special committee of the City Council appointed to investigate the Municipal Civil Service Committee implied a promise to pay for the services performed, and any casual remark thereafter made by the attorney during the course of the argument of a motion or in the examination of a witness would not impair the terms of the original undertaking wherein he absolved the individual members of the committee of personal liability for his services, but stated that such absolution was without prejudice to his right to secure

compensation from the City.-Id.

¶ 14. Legal assistants to counsel to special committee appointed to investigate the affairs of the Municipal Civil Service Commission, **held** entitled to recover for services rendered by them, where it was clear that the intent was that they should be compensated for such services.-Ellis v. City of N. Y., 109 (93) N. Y. L. J. (4-22-43) 1562, Col. 7 T.

¶ 15. Attorney who had rendered professional services as attorney to a special committee of the New York City Council investigating alleged abuses in the administration of the Municipal Civil Service Commission, **held** entitled to recover the reasonable value of his services, even though the special committee was not expressly authorized to conduct its investigation and even though no request for an appropriation was made to the Board of Estimate, and no appropriation was actually received. The Charter apparently imposes no limitation on the power of the City Council to contract liability if such course is necessary to the discharge of its legislative functions as defined in the Charter.-Gruss v. City of New York, 179 Misc. 1053, 40 N. Y. S. 2d 816 [1943].

¶ 16. An attorney employed by special committee of Council in an investigation of City departments was entitled to recover from the City for services rendered and no appropriation by the Board of Estimate was necessary since the Council possessed express power to appoint investigating committees under former Charter §§ 21 and 43 (now §§ 21 and 41). The resolution of the Council appointing the special committee which provided that if in the judgment of the City an appropriation of funds was needed for anticipated expenses of the committee be necessary, the request should be made to the Board of Estimate should not be construed as a recognition by the Council of its own lack of power with respect to the expenditure of money and as a command by the Council to the committee not to incur expenses without approval of the Board. The Council was not an "agency" of the City within the meaning of former § 89 (now § 1111) of the Charter prohibiting an agency from incurring any expense in excess of the amount authorized.-Barry v. City of New York, 175 Misc. 712, 25 N. Y. S. 2d 27 [1941], *aff'd*, 261 App. Div. 957, 27 N. Y. S. 2d 425 [1941].

¶ 17. The testimony elicited of a civil service employee who had been subpoenaed to appear at a public hearing before a committee of the City Council which was investigating the Municipal Civil Service Commission could not be called public criticism of the municipal civil service commissioners and punished as such. Hence, the determination of the Commission dismissing the employee for making false public statements impugning the integrity of the Commission to the prejudice of the public service was annulled, where the charges against the employee could not be supported except by a tortured interpretation of the answers made as being in conflict with statements made two years earlier before a commissioner.-Berg v. Marsh, 268 App. Div. 1, 48 N. Y. S. 2d 285 [1944], *aff'd*, 294 N. Y. 713, 61 N. E. 2d 450 [1945].

¶ 18. Civil Practice Act § 352, privileging communications between physician and patient, may be asserted whenever the power of the court is invoked in manner authorized by Civil Practice Act Art. 33 to compel a witness to disclose information which under other provisions of the same article he is forbidden to disclose. Hence New York City Director of Hospitals and the Medical Superintendent of Lincoln Hospital, on basis of § 352, could refuse to obey subpoenas issued to them by a committee of the Council investigating into management of the hospital pursuant to authority of former Charter § 43 (now § 41), where the subpoenas required production of records and complaints with respect to interns and other hospital physicians and with respect to medical or other treatment furnished in the hospital and containing data relating to condition of patients or medical or other treatment furnished them.-New York City Council v. Goldwater (Lincoln Hospital), 284 N. Y. 296, 31 N. E. 2d 31 [1940].



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NYC Charter 30

New York City Charter

CHAPTER 2 COUNCIL

§ 30. Council review of city procurement policies and procedures.

The council shall periodically review all city procurement policies and procedures, including:

1. the rules and procedures adopted by the procurement policy board, all rules relating to the participation of minority and women owned business enterprises in the city's procurement process and the implementation of those rules and procedures by city agencies;
2. patterns of contractual spending by city agencies, including determinations of the need to contract made by agencies in accordance with rules of the procurement policy board;
3. access to and fairness in city procurement opportunities, the fair distribution of contract awards, and the fair employment practices of city contractors;
4. procedures for evaluating contractor performance; and
5. procedures for declaring bidders not responsible and for debarring contractors.

HISTORICAL NOTE

Added at General Election, November 7, 1989.



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NYC Charter 31

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CHAPTER 2 COUNCIL

§ 31. **Power of advice and consent.**

Appointment by the mayor of the commissioner of investigation and of the members of the art commission, board of health (other than the chair), board of standards and appeals, city planning commission (other than the chair), civil service commission, landmarks preservation commission, tax commission, taxi and limousine commission, the public members of the environmental control board, and the public members of the waterfront management advisory board shall be made with the advice and consent of the council after a public hearing. Within thirty days after the first stated meeting of the council after receipt of a nomination, the council shall hold a hearing and act upon such nomination and in the event it does not act within such period, the nomination shall be deemed to be confirmed.

HISTORICAL NOTE

Section amended L.L. 20/2009 § 2, eff. July 16, 2009.

Added at General Election, November 7, 1989.

Derived from former § 46, added at General Election, November 4, 1975, amended by L. L. 1977, No. 75.



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NYC Charter 32

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CHAPTER 2 COUNCIL

§ 32. **Local laws.**

Except as otherwise provided by law, all legislative action by the council shall be by local law. The style of local law shall be "Be it enacted by the council as follows." Every local law shall embrace only one subject. The title shall briefly refer to the subject-matter.

HISTORICAL NOTE

Added at General Election, November 7, 1989 (derived from former §§ 26, 36).

CASE NOTES

¶ 1. A resolution of the Council designating a special committee to investigate the management of a municipal broadcasting station was not a local law or resolution requiring submission to the mayor. The language of the resolution differed from that required by former § 26 for it read "resolved that the committee on rules of the council . . ." and further the investigating powers of the Council are specifically excluded from the charter provisions dealing with local laws.-Matter of Radio Station WNYC (Novik), 169 Misc. 502, 7 N. Y. S. 2d 297 [1938], aff'd, 255 App. Div. 844, 7, N. Y. S. 2d 297 [1938], aff'd, 255 App. Div. 844, 7, N. Y. S. 2d 998, aff'd 280 N. Y. 629, 20 N. E. 2d 1008 [1939].

¶ 2. A proposition submitting to the electorate the question whether the Charter should be amended to reorganize county government by abolishing the county offices of sheriff and register of deeds and creating city-wide appointive offices of City Sheriff and City Register was not invalid on the ground that the proposition embraced more than one subject, since the subject matter was merely the county reorganization.-Burke v. Kern, 287 N. Y. 203, 38 N. E. 2d 500 [1941], rev'g 263 App. Div. 834, 31 N. Y. S. 2d 1015.



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NYC Charter 33

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CHAPTER 2 COUNCIL

§ 33. **Local laws and budget modifications; fiscal impact statements.**

a. No proposed local law or budget modification shall be voted on by a council committee or the council unless it is accompanied by a fiscal impact statement containing the information set forth in subdivision b of this section.

b. A fiscal impact statement shall indicate the fiscal year in which the proposed law or modification would first become effective and the first fiscal year in which the full fiscal impact of the law or modification is expected to occur; and contain an estimate of the fiscal impact of the law or modification on the revenues and expenditures of the city during the fiscal year in which the law or modification is to first become effective, during the succeeding fiscal year, and during the first fiscal year in which the full fiscal impact of the law or modification is expected to occur.

c. All agency heads shall promptly provide to any council committee any information that it requests to assist it in preparing a fiscal impact statement.

d. Each fiscal impact statement shall identify the sources of information used in its preparation.

e. If the estimate or estimates contained in the fiscal impact statement are inaccurate, such inaccuracies shall not affect, impair, or invalidate the local law or budget modification.

HISTORICAL NOTE

Added at General Election, November 7, 1989.



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NYC Charter 34

New York City Charter

CHAPTER 2 COUNCIL

§ 34. **Vote required for local law or resolution.**

Except as otherwise provided by law, no local law or resolution shall be passed except by at least the majority affirmative vote of all the council members.

HISTORICAL NOTE

Amended by L. 1943, ch. 710 § 560, pursuant to L. 1943, ch. 710, part 8, § 9.

Amended by L. 1944, ch. 606, § 6, and L. 1945, ch. 338, § 64.

Amended by L. 1962, ch. 998, § 5.

Amended at General Election, November 4, 1975.

CASE NOTES

¶ 1. Election of a vice-chairman, appointment of committees and adoption of rules by the Council were not "Resolutions" within meaning of § 34 of the Charter, and hence § 34 was not construable as limiting the power of the majority of the quorum to perform such acts, nor as authorizing the Mayor under § 38 to veto such acts.-*Morris v. Cashmore*, 253 App. Div. 657, 3 N. Y. S. 2d 624 [1938], *aff'd*, 278 N. Y. 730, 17 N. E. 2d 143 [1938].

¶ 2. General Construction Law, § 41, providing that a majority of any group of public officers might perform and exercise the powers of the body, did not limit right of the Council to act by a majority of a quorum in intracameral matters, such as the election of a vice-chairman, appointment of committees, and adoption of rules.-*Id.*



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NYC Charter 35

New York City Charter

CHAPTER 2 COUNCIL

§ 35. **Ayes and noes.**

a. On the final passage of a local law or resolution the question shall be taken by ayes and noes, which shall be entered in the journal of proceedings. No such vote may be cast except by a council member who is present and who casts his or her own vote in the manner prescribed by the rules of the council.

b. All committee votes on proposed local laws or resolutions shall be taken by ayes and noes, which shall be entered in a committee report a copy of which shall be filed with the clerk or other official specified by the council rules for this purpose and which shall be available for public inspection. No such vote may be cast except by a member of the committee who is present at the meeting at which the vote is taken.

HISTORICAL NOTE

Section amended at General Election, November 7, 1989.



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NYC Charter 36

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CHAPTER 2 COUNCIL

§ 36. **Local laws; passage.**

No local law shall be passed until it shall have been in its final form and upon the desks of the council members at least seven calendar days, exclusive of Sundays, prior to its final passage, unless the mayor shall have certified as to the necessity for its immediate passage and such local law be passed by the affirmative vote of two-thirds of all the council members.

HISTORICAL NOTE

Amended at General Election, November 4, 1975.

Renumbered at General Election, November 7, 1989 (formerly § 37).

CASE NOTES

¶ 1. Pursuant to § 110 of the Construction Law, and the plain meaning of this section, the day of passage is excluded in determining whether this section has been complied with.-*London v. Wagner*, 22 Misc 2d 360, 195 N. Y. S. 2d 550 [1959], *aff'd*, 13 A. D. 2d 479, 214 N. Y. S. 2d 647 [1961], *aff'd*, 11 N. Y. 2d 762, 181 N. E. 2d 759, 227 N. Y. 2d 762, 181 N. E. 2d 759, 227 N. Y. S. 2d 13 [1962].



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NYC Charter 37

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CHAPTER 2 COUNCIL

§ 37. **Local laws; action by mayor.**

a. Every local law certified by the clerk of the council, after its passage by the council, shall be presented to the mayor for approval.

b. If the mayor approves the local law, the mayor shall sign it and return it to the clerk; it shall then be deemed to have been adopted. If the mayor disapproves it, he or she shall return it to the clerk with his or her objections stated in writing and the clerk shall present the same with such objections to the council at its next regular meeting and such objections shall be entered in its journal. The council within thirty days thereafter may reconsider the same. If after such reconsideration the votes of two-thirds of all the council members be cast in favor of repassing such local law, it shall be deemed adopted, notwithstanding the objections of the mayor. Only one vote shall be had upon such reconsideration. The vote shall be taken by ayes and noes, which shall be entered in the journal. If within thirty days after the local law shall have been presented to him or her, the mayor shall neither approve nor return the local law to the clerk with his or her objections, it shall be deemed to have been adopted in like manner as if the mayor had signed it. At any time prior to the return of a local law by the mayor, the council may recall the same and reconsider its action thereon.

HISTORICAL NOTE

Amended by L. L. 1968, No. 73.

Amended at General Election, November 4, 1975.

Renumbered and amended at General Election, November 7, 1989

(formerly § 38).

CASE NOTES

¶ 1. It was not intended by former § 38 of the Charter that the Mayor should have the power of veto over such matters as the election of a vice-chairman, appointment of committees, or adoption of rules by the Council.-*Morris v. Cashmore*, 253 App. Div. 657, 3 N. Y. S. 2d 624 [1938], *aff'd* without opinion, 278 N. Y. 730, 17 N. E. 2d 143 [1938].

¶ 2. Resolution of Council designating a special committee under Charter § 43 to determine whether city broadcasting station should be abolished, was not a local law or resolution as defined by Charter § 21 or 26 and hence approval of mayor as required by former §§ 38, 39 and 40 (now §§ 38 and 39) was not required.-*Matter of Radio Station WNYC* 169 Misc. 502 N. Y. S. 2d 997 [1938], *aff'd*, 255 App. Div. 844, 7 N. Y. S. 2d 998 [1938], *aff'd*, 280 N. Y. 629, 20 N. E. 2d 1008 [1939].



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NYC Charter 38

New York City Charter

CHAPTER 2 COUNCIL

§ 38. **Local laws; referendum.**

A local law shall be submitted for the approval of the electors at the next general election held not less than sixty days after the adoption thereof, and shall become operative as prescribed therein only when approved at such election by the affirmative vote of a majority of the qualified electors of the city voting upon the proposition, if it:

1. Abolishes or changes the form or composition of the council or increases or decreases the number of votes any member is entitled to cast or reduces the number of districts from which council members shall be elected.
2. Changes the veto power of the mayor.
3. Changes the law of succession to the mayoralty.
4. Abolishes an elective office, or changes the method of nominating, electing or removing an elective officer, or changes the term of an elective officer, or reduces the salary of an elective officer during his or her term of office.
5. Abolishes, transfers or curtails any power of an elective officer.
6. Creates a new elective office.
7. Changes a provision of law relating to public utility franchises.
8. Changes a provision of law relating to the membership or terms of office of the city civil service commission.
9. Reduces the salary or compensation of a city officer or employee or increases the hours of employment or changes the working conditions of such officer or employee if such salary, compensation, hours or conditions have been fixed by a state statute and approved by the vote of the qualified electors of the city; and no provision effecting such

reductions, increases or changes contained in any local law or proposed new charter shall become effective unless the definite question with respect to such reductions, increases or changes shall be separately submitted and approved by the affirmative vote of a majority of the qualified electors voting thereon.

10. Provides a new charter for the city.

11. Transfers powers vested by this charter in an agency the head of which is appointed by the mayor to an agency the head of which is not so appointed or vice versa, other than transfers of power authorized by this charter from an agency the head of which is appointed by the mayor to a community board, borough president or a borough board.

12. Dispenses with a provision of this charter requiring a public notice and hearing as a condition precedent to official action.

13. Dispenses with a requirement of this charter for public bidding or for public letting of contracts except as otherwise provided pursuant to chapter thirteen of this charter.

14. Changes a provision of this charter governing the classes or character of city bonds or other obligations, the purposes for which or the amount in which any class of obligations may be issued.

15. Removes restrictions in this charter on the sale, lease or other disposition of city property.

16. Curtails the powers of the city planning commission, or changes the vote in the council required to take action without or contrary to the recommendation of the city planning commission.

17. Repeals or amends this section or any of the following sections of this charter; sections forty, one hundred ninety-one, one hundred ninety-two, one hundred ninety-three, one hundred ninety-nine, two hundred, two hundred seventeen, eleven hundred ten, eleven hundred eleven, eleven hundred fifteen, eleven hundred sixteen, eleven hundred seventeen, eleven hundred eighteen, and eleven hundred twenty-three.

18. Repeals or amends sections twenty-six hundred one, twenty-six hundred four, twenty-six hundred five, and twenty-six hundred six insofar as they relate to elected officials and section twenty-six hundred two.

HISTORICAL NOTE

Amended at General Election, November 4, 1975.

Subd. 18 amended at General Election, November 8, 1988.

Renumbered at General Election, November 7, 1989.

Subds. 1, 4, 9, 16, 17, 18 amended at General Election, November 7, 1989.

CASE NOTES UNDER FORMER § 39

¶ 1. Order directing Board of Elections to disregard initiative petitions and a proposed local law amending the Charter so as to provide for payment of a salary bonus to the uniformed members of the Police and Fire Departments of the City, and to omit a referendum therefor from the official ballots and voting machines for use at the general election, was affirmed on ground the proposed local law was not an amendment to the Charter within the meaning of City Home Rule Law § 19a. The only law actually proposed to be amended was the Administrative Code, which was enacted by the Legislature and might only be amended as provided by former § 39 of the Charter, or by the Legislature itself.-Astwood v. Cohen, 291 N. Y. 484, 53 N. E. 2d 358 [1944].

¶ 2. Local Law No. 68 of 1938 which purported to amend Code § 82d7-15.0 by providing that Christmas trees

and toys could be sold on a sidewalk during December was violative of Charter § 42 which requires a license for sidewalk displays. If the local law was intended as an amendment to the Charter it was violative of this section since the local law was neither approved by nor presented for approval to the Board of Estimate.-*People (McLees) v. Berner*, 170 Misc. 501, 10 N. Y. S. 2d 339 [1939].

¶ 3. A local law affecting the compensation of probationary patrolmen was not subject to mandatory referendum although it reduced the employees compensation where the compensation of patrolmen was fixed by the Administrative Code, a state statute, which was never a subject of local referendum.-*Allmendinger v. City of New York*, 182 Misc. 142, 46 N. Y. S. 2d 641 [1944], *aff'd*, 269 App. Div. 691, 54 N. Y. S. 2d 392 [1945], *aff'd*, 295 N. Y. 644, 64 N. E. 2d 712 [1945].

¶ 4. Local law authorizing appointment of a committee to formulate a plan for the conduct of off-track pari-mutuel betting on horse races, was not unconstitutional on the ground that only the State Legislature may authorize pari-mutuel betting on horse races.-*In re Young*, 150 (83) N. Y. L. J. (10-25-63) 13, Col. 6F.

¶ 5. Contention of plaintiff who sought to enjoin submission of proposition on referendum, that the real purpose of the local law sought to be submitted was to obtain an expression of public opinion as to establishment of a committee to formulate a plan for the conduct of off-track betting on horse races and that the insertion in the law of provisions permitting the Mayor to disregard § 124(c) of the Charter in making appropriations to the committee which would require a referendum, was merely an artifice to accomplish that purpose, held without validity. *Kupferman v. Katz*, 41 Misc. 2d 124, 245 N. Y. S. 2d 114 [1963], *aff'd*, 19 App. Div. 2d 824, 243 N. Y. S. 2d 773, *aff'd*, 13 N. Y. 2d 932, 194 N. E. 2d 47, 244 N. Y. S. 2d 217 [1963].

¶ 6. The validity of local law which purported to provide for an annual expense budget item of "a sum sufficient, as determined by the council and the board of estimate, to maintain the rates of the New York City Transit Authority existing on January 1, 1966" was declared to be of "serious doubt" since it conflicts with the state public policy prohibiting deviation from the self sustaining principle applicable to the Transit Authority. In any event it must first be approved by referendum before it can be enacted because it attempts to curtail the Mayor's charter powers with respect to budget items and to change his right of veto of the Board of Estimate's or City Council's action in amending his appropriation proposals. *City of N. Y. v. N. Y. City Transit Auth.*, 53 Misc. 2d 627, 279 N. Y. S. 2d 278 [1967].

¶ 7. Local Law 91 of 1997 created a police investigatory board, consisting of five members. It provided that two members shall be appointed by the Mayor, two members would be designated by the City Council, and a fifth member, i.e., the chairperson, would be appointed by the Mayor after consultation with the speaker of the City Council. The court held under City Charter 38, this type of local law had to be approved by the voters in a referendum. Since no referendum was held, the local law was invalid. *Mayor of New York v. City Council of New York*, 721 N.Y.S.2d 39 (App.Div. 1st Dept. 2001).

CASE NOTES

¶ 1. Admin. Code § 6-124, which sought to prevent the City from purchasing uniforms manufactured in sweatshops (those in New York, or other states or countries) violated City Charter § 38(5), which provides that the only way to curtail the power of the Mayor is by means of public referendum. *Mayor of City of New York v. Council of City of New York*, 6 Misc.3d 533, 789 N.Y.S.2d 860 (Sup.Ct. New York Co. 2004).



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NYC Charter 39

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CHAPTER 2 COUNCIL

§ 39. **Reconsideration.**

At any time prior to the election at which a local law is to be submitted to the electors for approval pursuant to this charter, the council, not later than fifteen days prior to the election, may reconsider its action thereon and repeal such local law without submission to the mayor, whereupon the proposition for its approval shall not be submitted at such election, or if submitted the vote of the electors thereon shall be without effect.

HISTORICAL NOTE

Renumbered at General Election, November 7, 1989 (formerly § 40).



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CHAPTER 2 COUNCIL

§ 40. **Amendment of charter.**

Amendments to this charter may be adopted by any of the following methods:

1. By local law adopted in accordance with the provisions of this charter.
2. By vote of the electors of the city upon the petition of electors of the city, an amendment may be adopted.
 - (a) in relation to the manner of voting for the elective officers of the city or any of them, or
 - (b) abolishing any elective office or offices or creating a new office or offices, including if so provided a transfer of powers to the newly created office or offices or a disposition of the powers of any office abolished, but no such amendment shall repeal or change any limitations contained in this charter on any power.

(c) such amendment may be adopted in the manner following:

(1) Not less than fifty thousand qualified electors of the city may file in the office of the city clerk a petition for the submission to the electors of the city at the next general election therein held not less than sixty days after filing of such petition of such a proposed amendment or amendments to the charter to be set forth in full in the petition. The petition may be made upon separate sheets and the signatures of each shall be authenticated in the manner provided by the Election Law for the authentication of designating petitions. The several sheets so signed and authenticated when fastened together and offered for filing shall be deemed to constitute one petition. A signature made earlier than one hundred twenty days before the filing of the petition shall not be counted. If within ten days after the filing of such petition a written objection thereto be filed with the office of the city clerk, the Supreme Court or any justice thereof of the first, second or eleventh judicial district shall determine any question arising thereunder and make such order as justice may require. Such proceedings shall be heard and determined in the manner prescribed by the election law in

relation to judicial proceedings thereunder.

(2) If such proposed amendment or amendments receive the affirmative vote of the majority of the qualified electors of the city voting thereon, it or they shall take effect as prescribed therein.

3. In such other manner as may be provided by law.

HISTORICAL NOTE

Amended by L. L. 1969, No. 74.

Opening paragraph amended by L. 1978, ch. 761.

Renumbered at General Election, November 7, 1989 (formerly § 42).

Subd. 2 par (c) subpar (1) amended at General Election, November 7, 1989.

CASE NOTES

¶ 1. Provisions of the Election Law relative to designating petitions, requiring the furnishing of the address, and assembly and election districts of signatories to a petition, **held** to apply to an initiative petition filed pursuant to former Charter § 44a for purpose of submitting to the City voters an amendment to the Charter abolishing offices for sheriff and registrar and substituting a single sheriff and a single registrar to be appointed by the Mayor. This conclusion was necessary because former § 44a merely required that the petition be signed by 50,000 qualified electors and that their signatures be authenticated, and consequently there would be no way of identifying the signatories if compliance with the Election Law were not required.-Phillips v. Hubbard, 284 N. Y. 152, 29 N. E. 2d 969 [1940].

¶ 2. A "qualified elector," within the meaning of former Charter § 44, is a person qualified as to citizenship, age and residence, as provided in State Constitution, Art. II, § 1 and Election Law § 150, to exercise, at a particular election, the elective franchise within the City of New York.-Id.

¶ 3. Signatures to initiative petition for amendment of the Charter as to which the statement of place of registration and authentication of that statement were false, were invalid and could not be counted, notwithstanding the general statement in the petition that such signers were qualified electors within the City of New York, where no evidence thereof was furnished except the admittedly false statement. Existence of facts necessary to give the petition vitality must be shown and could not be presumed.-Id.

¶ 4. Proposition setting forth a proposed amendment to the Charter, **held** properly submitted to the voters in accordance with former § 44 of the Charter rather than with City Home Rule Law § 19a, which would have required some 213,000 signatures to the initiating petition rather than the 50,000 signatures required by former § 44. Section 19a was enacted after approval of the Charter, which contained former § 44, and moreover § 19a is a general provision applying to the State as a whole, and the rule is that such a law does not repeal by implication a special provision applying to a particular portion of the State. Also, City Home Rule Law § 33 provides that it was not intended to repeal by implication any existing provision of law, § 36 provides that all existing charters and local laws, so far as not inconsistent with the Chapter, should continue in force, and § 19a by its very terms does not set up an exclusive method of enactment.-Burke v. Kern, 287 N. Y. 203, 38 N. E. 2d 500 [1941].

¶ 5. City Clerk **held** properly to have refused to submit to the electors of the City of New York a proposed amendment to the City Charter to add a new chapter providing for creation of a new Department of Transportation of the City, at the head of which should be a Commissioner of Transportation, prescribing the authority, duties and powers of the Commissioner and fixing a rate of fare at not more than 5 cents, etc. Any proposed amendment which would take from the Board of Transportation and the Mayor the powers granted under the Rapid Transit Act would conflict with

former § 375 of the Charter, and consequently such an amendment would be invalid under provisions of former § 44, subd. 2 of the Charter prohibiting any amendment which would repeal or change any limitations contained in the chapter or any power.-*Connolly v. Stand*, 192 Misc. 872, 83 N. Y. S. 2d 445 [1948], *aff'd* 274 App. Div. 877, 82 N. Y. S. 2d 922 [1948], *aff'd* 298 N. Y. 658, 82 N. E. 2d 399 [1948].

¶ 6. The City Home Rule Law cannot be distorted into a mere addendum to former § 44 of the New York City Charter. Section 30 of the Home Rule Law establishes clearly that no action can be taken under it which would conflict with the existing Rapid Transit Law. Furthermore, the argument that transit is now a matter exclusively of city concern and not of state legislation, is fallacious.-*Id.*

¶ 7. An order directing board of elections to disregard initiative petitions in a proposed local law was proper where the proposed local law was not an amendment to the Charter within the meaning of City Home Rule Law § 19a. The only law actually proposed to be amended was the Administrative Code, which was enacted by the Legislature and might only be amended as provided by former § 39 of the Charter or by the Legislature itself.-*Astwood v. Cohen*, 291 N. Y. 484, 53 N. E. 2d 358 [1944].

¶ 8. The enactment of City Home Rule Law § 19-a did not effect a repeal of former § 44 by implication or by necessary intentment. Thus, a proposition signed by "not less than 50,000 qualified electors of the city" was validly submitted although § 19-a of the City Home Rule Law requires that a petition amending a City Charter must be signed by at least 10% of the total number of votes cast for the governor at the last gubernatorial election.-*Albert v. Kern*, 287 N. Y. 666, 39 N. E. 2d 289 [1941].

¶ 9. The creation of a new office is not authorized by this section where its purpose would be to perform functions beyond the jurisdiction of the city such as an office of "Anti Vietnam Coordinator" which deals exclusively with foreign policy. *Matter of Silberman v. Katz*, 54 Misc. 2d 956, 283 N. Y. S. 2d 895 [1967], *aff'd*, 28 App. Div. 2d 992, 284 N. Y. S. 2d 836 [1967].

¶ 10. Laws enacted by the people under initiative provisions are subject to same constitutional, statutory and charter limitations as legislative acts. Council represents the people, *vox populi*, and the people changed their mind. Council may amend voter-initiated laws. *Caruso v. City of New York*, 136 Misc. 2d 892 [1987].

¶ 11. Petitioners sought to place on the general election ballot a referendum to amend the City Charter to place a \$100 limit on campaign contributions for candidates participating in the voluntary campaign finances reform system and to increase the current matching grants to participating candidates under certain circumstances, and a referendum to amend the City Charter to establish a system of televised debates for certain candidates for City elective offices. The court, however, held that Section 40, which permitted referendums relating to the "manner of voting," did not apply, since the instant referendums relate to the methods by which candidates present their messages or how campaigns are financed. *Juntikka v. Cuevas*, N.Y.L.J., Nov. 1, 1996, page 26, col. 1 (Sup.Ct. New York Co.).



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NYC Charter 41

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CHAPTER 2 COUNCIL

§ 41. **Submission of local laws or amendments.**

A proposition for the submission of a local law or an amendment to this charter for the approval of the electors pursuant to this charter shall contain the title of such local law or a brief statement of the subject of such amendment. The city clerk with the advice of the corporation counsel shall prepare an abstract of such local law or amendment concisely stating the title or subject and the purpose and effect thereof in clear language, and forthwith shall transmit such proposition and such abstract to the election officers charged with the duty of publishing the notice of and furnishing the supplies for such election. A sufficient number of copies of such abstract shall be printed, in such manner that the abstract shall appear with the question to appear on the ballot in bold type and separately from the text of the proposition, and shall be delivered with the other election supplies and distributed to the electors at the time of the registration of voters and at the election. If there be more than one such proposition to be voted upon at such election, each such proposition shall be separately, consecutively and consistently numbered on the ballot and on the abstract. In case of a conflict between two local laws or two amendments adopted at the same election, the one receiving the largest affirmative vote shall control.

HISTORICAL NOTE

Renumbered at General Election, November 7, 1989 (formerly § 43).

CASE NOTES

¶ 1. Requirement of former § 45 (now § 43) of the Charter that a sufficient number of copies of the abstract of a proposed amendment should be delivered with the other election supplies and distributed to the electors at the time of the registration of voters and at the election, **held** to have been complied with as to distribution at time of registration by the delivery of 400 copies to each polling place on the opening day of registration week, with instructions to ask for more if needed. As to distribution on election day there was substantial compliance by placards placed in each polling

place calling attention of the voters to the proposition, by having the proposition on the voting machines, and by having copies of the abstract available. Since out of over 2,000,000 voters only some 500,000 voted for or against the amendment, the printing of 1,638,400 copies of the abstract was sufficient. Also, such provision of the statute is directory only, and there was substantial compliance.-*Burke v. Kern*, 287 N. Y. 203, 38 N. E. 2d 500 [1941], rev'g 263 App. Div. 834, 31 N. Y. S. 2d 1015.

¶ 2. The failure of the Board of Elections to comply with the provisions of this section which provide that a sufficient number of copies of an abstract of a proposed local law amending the Charter shall be printed and distributed to the electors at the time of the registration of voters and at the election did not nullify the adoption of a proposition abolishing the office of County Sheriff and Register. There was a substantial compliance with the requirements of the section sufficient to adequately apprise the electorate of the nature of the proposition on Election Day. The Board of Elections did not print a sufficient number of copies to give one to each registrant and no copies were distributed on Election Day. However, two facsimiles were posted on Election Day.-*Albert v. Kern*, 287 N. Y. 666, 39 N. E. 2d 289 [1941].

¶ 3. Proposed submission to voters on referendum of proposition reading "Shall Local Law Number 51 for the year 1963, establishing and providing for the expenses of a Committee to formulate a plan for pari-mutuel, off-track betting on horse races, be approved?" was not objectionable on ground that the form of the proposed submission and the title were misleading.-*Kupferman v. Katz*, 14 Misc. 2d 124, 245 N. Y. S. 2d 114, aff'd, 19 App. Div. 2d 824, 243 N. Y. S. 2d 773 [1963], aff'd, 13 N. Y. 2d 932, 194 N. E. 2d 47, 244 N. Y. S. 2d 217 [1963].



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NYC Charter 42

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CHAPTER 2 COUNCIL

§ 42. **Meetings.**

The first meeting of the council in each year shall be held on the first Wednesday after the first Monday of January at noon. All meetings of the council shall be held as provided by its rules; provided, however, that at least two stated meetings shall be held each month, except in its discretion in July and August. A majority of the council members shall constitute a quorum. At least thirty-six hours prior to a stated meeting of the council, or as soon as practicable prior to a special meeting, the council shall publish and make publicly available a proposed agenda for such meeting, including a list of all proposed local laws or resolutions to be considered at such meetings.

HISTORICAL NOTE

Added at General Election, November 7, 1989.

Derived from former § 28, amended by L. L. 1940, No. 147, amended at General Election, November 4, 1975.



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CHAPTER 2 COUNCIL

§ 43. **Special meetings.**

The mayor may at any time call special meetings of the council. He shall also call a special meeting when a requisition for that purpose signed by five council members has been presented to him. Not less than one day before a special meeting is held, notice of the time thereof and of the business proposed to be transacted, signed by the mayor, shall be published in the City Record, and at the same time the city clerk shall cause a copy of such notice to be left at or sent by post to the usual place of abode or of business of each council member; but want of service of a notice upon any council member shall not affect the validity of the meeting. No business shall be transacted at such special meetings other than that specified in the notice relating thereto.

HISTORICAL NOTE

Added at General Election, November 7, 1989.

Derived from former § 29, amended by L. 1950, ch. 434, amended at General Election, November 4, 1975.

CASE NOTES

¶ 1. Where the City Council met on the day when the notice of meeting was published but adjourned until the next day, proceedings taken on the later day were valid. There was a substantial compliance with the notice requirements of former § 33.-*Whalen v. Wagner*, 2 Misc. 2d 89, 152 N. Y. S. 2d 386 [1956] *aff'd* 3 A. D. 2d 936, 163 N. Y. S. 2d 225 [1957]; *aff'd*, 4 N. Y. 2d 575, 176 N. Y. S. 2d 616, 152 N. E. 2d 54 [1958].



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CHAPTER 2 COUNCIL

§ 44. **Speaker.**

The council shall elect from among its members a speaker and such other officers as it deems appropriate. The speaker shall preside over the meetings of the council. During any period when the public advocate is acting as mayor, or when a vacancy exists in the office of the public advocate, the speaker shall act as public advocate pending the filling of the vacancy pursuant to subdivision c of section twenty-four, and shall be a member of every board of which the public advocate is a member by virtue of his or her office.

HISTORICAL NOTE

Section amended at General Election, November 5, 2002 § 4, eff. November 5, 2002.

Added at General Election, November 7, 1989.

Derived from former § 30, amended by L. 1950, ch. 434, amended by L. 1963, ch. 590, amended at General Election, November 4, 1975, amended by L. L. 1977, No. 102.

Section amended L.L. 68/1993 § 2, eff. Jan. 1, 1994.

CASE NOTES TO FORMER § 30

¶ 1. Former § 29 (now § 30) of the Charter, providing for "election" of a vice-chairman, did not require that the election be consummated by adoption of a resolution, and the method adopted, that of balloting, thus permitting the expression of a choice among several nominees, would seem to have been proper.-*Morris v. Cashmore*, 253 App. Div. 657, 3 N. Y. S. 2d 624 [1938], *aff'd* without opinion, 278 N. Y. 730, 17 N. E. 2d 143 [1938].

¶ 2. Considering the provisions contained in the former charters, and fact that in the Charter there were many

instances where a particular number of votes was specified, fair conclusion was that in omitting similar specifications as to election of a vice-chairman the Charter intended that general parliamentary rules were to apply, and hence a majority of a quorum of the Council were empowered to elect a vice-chairman, appoint a committee, and adopt rules.-Id.

¶ 3. Since the Council was acting under Reed's Rules of Parliamentary Procedure and such rules provided that an officer of a legislative body might be elected by a plurality only where a rule providing for such election had been adopted, and the rules in force at the time required a majority of the quorum to act, the casting of 13 votes for a particular candidate for vice-chairman was insufficient to elect that candidate where there were 26 councilmen present at the roll call.-Id.

¶ 4. Office of vice-chairman **held** intended to carry with it tenure of office for the full term for which the individual had been elected to the Council, and the Council could not subsequently rescind its vote and thus remove the vice-chairman.-Morris v. Cashmore, 253 App. Div. 657, 3 N. Y. S. 2d 624 [1938] aff'd, 278 N. Y. 730, 17 N. E. 2d 143 [1938].

¶ 5. State Constitution, Art. X, § 3, limiting the duration of office "during the pleasure of the authority making the appointment," applies only where the authority is continuous, whereas former § 29 (now § 30) of the Charter refers only to a single election.-Id.

¶ 6. Examination of Charter provisions concerning duties of vice-chairman clearly indicate that selection of person to fill such place was to be deemed more than the temporary designation of a member who was to be unseated at the whim of the body, and that, having once elected the vice-chairman, the Council had exhausted its powers.-Id.



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NYC Charter 45

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CHAPTER 2 COUNCIL

§ 45. **Sergeant-at-arms; procedure; expulsion of members.**

The council may elect a sergeant-at-arms and such research, drafting, clerical and other assistants as are needful to its purposes, within the appropriation provided therefor. It may appoint committees and shall appoint a finance committee properly staffed to consider budgetary and related matters and a land use committee consisting of at least one council member from each borough; shall be the judge of the election returns and qualifications of its own members, subject, however, to review by any court of competent jurisdiction; shall keep a public journal of its proceedings; shall make a complete transcript of each of its meetings and committee hearings available for public inspection free of charge within sixty days after such meeting or hearing and provide a copy of any requested pages of such transcript at a reasonable fee to cover copying and, if relevant, mailing costs; shall sit with open doors; shall have authority to compel the attendance of absent members and to punish its members for disorderly behavior, and to expel any member, after charges and a hearing, with the concurrence of two-thirds of all the council members.

HISTORICAL NOTE

Added at General Election, November 7, 1989.

Derived from former § 31, amended by L. 1962, ch. 998, amended at General Election, November 4, 1975.

CASE NOTES TO FORMER § 31

¶ 1. The right of the City Council to rule on the qualifications of its members impliedly carries with it the equal right to incur any expense reasonably necessary to its exercise and to obligate the City to pay such expense. Thus, the plaintiffs, court stenographers, were entitled to recover from the City the reasonable value of services furnished to the Council during the course of investigations conducted to determine the eligibility of persons to membership in the Council.-*Chambers v. City of New York*, 286 N. Y. 308, 36 N. E. 2d 313 [1941].

¶ 2. The adoption of rules is, by this section, left entirely to the determination of the Council. Thus, the action of the Council in electing a vice-chairman by balloting and not consummating the election by the adoption of a resolution was valid. A majority of a quorum of the Council was empowered to elect a vice-chairman and the casting of 13 votes for the vice-chairman at a meeting at which 25 councilmen were present was sufficient.-*Morris v. Cashmore*, 253 App. Div. 657, 3 N. Y. S. 2d 624 [1938], *aff'd*, 278 N. Y. 730, 17 N. E. 2d 143 [1938].



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CHAPTER 2 COUNCIL

§ 46. **Rules of the council.**

The council shall determine the rules of its own proceedings at the first stated meeting of the council in each year and shall file a copy with the city clerk. Such rules shall include, but not be limited to, rules that the chairs of all standing committees be elected by the council as a whole; that the first-named sponsor of a proposed local law or resolution be able to require a committee vote on such proposed local law or resolution; that a majority of the members of the council be able to discharge a proposed local law or resolution from committee; that committees shall provide reasonable advance notice of committee meetings to the public; that all committee votes be recorded and made available to the public.

HISTORICAL NOTE

Added at General Election, November 7, 1989.



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CHAPTER 2 COUNCIL

§ 47. **Legislative professional staff.**

Within appropriations for such purpose, the council shall establish a structure within the City Council and retain professional staff to review and analyze proposed budgets and departmental estimates, requests for new taxes or changes in taxes, budget modifications, capital borrowings and mayoral management reports. Such staff shall assist the committees of the council and Council Members in their analysis of proposed legislation and in review of the performance and management of city agencies.

HISTORICAL NOTE

Added at General Election, November 4, 1975.

Added by L. L. 1981, No. 15 which repealed the former § 45.

Renumbered at General Election, November 7, 1989 (formerly § 45).



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CHAPTER 2 COUNCIL

§ 48. **City clerk; duties.**

a. The council shall appoint a clerk, who shall perform such duties as may be prescribed by law. The clerk so appointed shall be the city clerk and the clerk of the council, and shall hold office for six years and until such clerk's successor shall be appointed and has qualified. The city clerk shall have charge of all the papers and documents of the city, except such as are by law committed to the keeping of the several departments or of other officers. The city clerk shall keep the record of the proceedings of the council and shall also keep a separate record of all the local laws of the city in a book to be provided for that purpose, with proper indices, which book shall be deemed a public record of such local laws, and each local law shall be attested by said clerk. Copies of all papers duly filed in the office of the city clerk, and transcripts thereof and of the records of proceedings of the council and copies of the laws, ordinances and local laws of the city, certified by the city clerk under the corporate seal of the city, shall be admissible in evidence in all courts and places in the same manner and for the same purposes as papers or documents similarly authenticated by the clerk of a county. The city clerk may be removed on charges by a two-third vote of all the council members, subject, however, to judicial review. The city clerk shall collect such fees as shall be fixed by law.

b. It shall be the duty of the city clerk to keep open for inspection at all reasonable times the records and minutes of the proceedings of the council. The city clerk shall keep the seal of the city, and his or her signature shall be necessary to all grants and other documents, except as otherwise provided by law. In the absence of the clerk by sickness or otherwise, the first deputy clerk shall be vested with and possessed of all the rights and powers and be charged with all the duties by law imposed upon the clerk. In the absence of the first deputy clerk, the city clerk by an instrument in writing may designate one of his or her clerks, who shall be vested with and possessed of all the rights and powers and charged with all the duties by law imposed upon said clerk. The signature of the person so designated shall be in place of and of the same force and effect as the signature of the city clerk. Such designation shall be made in triplicate and shall be duly filed and remain of record in the city clerk's office and in the offices of the mayor and of the comptroller, but the designation shall be for a period not exceeding three months and shall not extend beyond the city

clerk's term of office and shall be at all times revocable by the city clerk.

HISTORICAL NOTE

Added at General Election, November 7, 1989.

Derived from former § 32, amended by L. L. 1958, No. 19, amended by L. L. 1967, No. 58, amended by L. L. 1969, No. 74, amended at General Election, November 4, 1975.



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CHAPTER 2 COUNCIL

§ 49. **Members not to be questioned for speeches.**

For any speech or debate in the council and any committee or subcommittee thereof, the members shall not be questioned in any other place.

HISTORICAL NOTE

Section added L.L. 76/1992 § 1, eff. Oct. 8, 1992.



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CHAPTER 2-A DISTRICTING COMMISSION

§ 50. **Districting Commission; composition; appointment; terms; vacancies; compensation.**

a. There shall be a districting commission consisting of fifteen members appointed as provided in this section.

1. The council delegation of the political party which has the largest delegation in the council shall, by majority vote, appoint five members of the commission, no more than one of whom may be a resident of the same borough.

2. The council delegation of the political party which has the second largest delegation in the council, shall, by majority vote, appoint three members of the commission, no more than one of whom may be a resident of the same borough.

3. If only one political party has a council delegation, then the chairpersons of the county committees of the political party with no council delegation which, at the time of the general election last preceding the time at which such appointments are required to be made, had the largest number of enrolled voters in the city, shall each submit three nominations to the mayor, in order to provide a list of fifteen nominations from that party. The mayor shall appoint three members from such list, no more than one of whom may be a resident of the same borough.

4. The mayor shall appoint seven additional members, but the party enrollment, if any, of these additional members shall be such that individuals enrolled in a single political party shall not be a majority of the total number of members of the commission.

5. Officers and employees of the city or any city agency, lobbyists required to file a statement of registration under federal, state or local law, the employees of such lobbyists, federal, state and local elected officials, and officers of any political party shall not be eligible to be members of the commission.

6. The members of the commission shall elect one of the fifteen members to serve as the chair of the

commission.

7. For purposes of this section, a member of the council who was elected to the council upon the nomination of more than one political party shall be considered to be a member of the council delegation of the political party on whose ballot line he or she received the largest number of votes in his or her last election to the council.

b. 1. The commission shall have among its members (a) at least one resident of each borough, and (b) members of the racial and language minority groups in New York city which are protected by the United States voting rights act of nineteen hundred sixty-five, as amended, in proportion, as close as practicable, to their population in the city.

2. The mayor, no later than twenty-two months before the general election of the council to be held in the year nineteen hundred and ninety-three, and every ten years thereafter, shall convene one or more meetings of all of the appointing and recommending authorities specified in subdivision a of this section for the purpose of establishing a screening and selection process for ensuring that the racial and language minority groups in New York city which are protected by the United States voting rights act of nineteen hundred sixty-five, as amended, will be fairly represented on the commission.

c. Each council delegation authorized by subdivision a of this section to make appointments to the commission shall make such appointments no earlier than one year and eight months before, and no later than one year and six months before, the general election of the council to be held in the year nineteen hundred ninety-three, and every ten years thereafter. In any case in which the chairpersons of the county committees of a political party are authorized to submit nominations to the mayor, such nominations shall be submitted no earlier than one year and eight months before, and no later than one year and six months before, the general election of the council to be held in the year nineteen hundred ninety-three, and every ten years thereafter. The mayor shall make appointments to the commission after each council delegation authorized to make appointments has done so but not later than one year and five months before such a general election of the council. The commission's term shall end sixty days after the day of the first general election of the council following the commission's adoption of a districting plan, as set forth in section fifty-one.

d. In the event of a vacancy by death, resignation or otherwise, a new member enrolled in the same political party from which his or her predecessor was selected shall be appointed in the same manner as the member whose departure from the commission created the vacancy to serve the balance of the term remaining.

e. No member of the districting commission shall be removed from office except by the person or persons who appointed such member and only for cause and upon notice and hearing.

f. The members of the commission shall serve without compensation except that each member shall be allowed actual and necessary expenses to be audited in the same manner as other city charges.

g. The commission may hire or contract for necessary staff assistance and may require agencies of city government to provide technical assistance. The commission shall have a budget as provided by the mayor.

HISTORICAL NOTE

Amended at General Election, November 7, 1989.

Subd. c amended L.L. 20/2003 § 1, eff. Mar. 18, 2003 and retroactive to certain filing date. [See Note 1]

NOTE

1. Provisions of L.L. 20/2003:

§ 3. This local law shall take effect immediately, and shall be retroactive to the day the New York city districting commission files its final plan with the city clerk pursuant to subdivision g of section fifty-one of the New

York city charter.



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NYC Charter 51

New York City Charter

CHAPTER 2-A DISTRICTING COMMISSION

§ 51. Powers and duties of the commission; hearings; submissions and approval of plan.

a. Following each decennial census, the commission shall prepare a plan for dividing the city into districts for the election of council members. In preparing the plan, the commission shall be guided by the criteria set forth in section fifty-two.

b. The commission shall hold one or more public hearings not less than one month before it submits its plan to the city council, in accordance with subdivision c of this section. The commission shall make its plan available to the public for inspection and comment not less than one month before the first such public hearing.

c. The commission shall submit its plan to the city council not less than one year before the general election of the city council to be held in the year nineteen hundred ninety-three and every ten years thereafter.

d. The plan submitted in accordance with subdivision c of this section shall be deemed adopted unless within three weeks, the council by the vote of a majority of all of its members adopts a resolution objecting to such plan and returns the plan to the commission with such resolution and a statement of its objections, and with copies of the written objections of any individual members of the council who have submitted objections to the speaker prior to such date. Any objections from individual members submitted to the speaker by such date shall be transmitted to the districting commission whether or not the council objects to such districting plan.

e. Upon the receipt of any such resolution and objections, the commission shall prepare a revised plan and shall, no later than ten months before such general election of the city council, make such plan available to the council and the public for inspection and comment. The commission shall hold public hearings and seek public comment on such revised plan.

f. Following its consideration of the comments received pursuant to subdivision e of this section, the

commission shall, no later than eight months before such general election of the council, prepare and submit a final plan for the redistricting of the council.

g. Notwithstanding the provisions of subdivision d or subdivision f of this section, no plan shall be deemed adopted in accordance with either of such subdivisions until the commission files, with the city clerk, a copy of such plan and a statement signed by at least nine members of the commission certifying that, within the constraint of paragraph a of subdivision one of section fifty-two, the criteria set forth in the other paragraphs of such subdivision have been applied in the order in which they are listed and that such criteria have been implemented, in such order, to the maximum extent practicable. Such certification shall also set forth the manner in which the commission implemented the requirements of paragraph b of subdivision one of section fifty-two. Such plan shall be deemed adopted upon the commission's filing with the city clerk of such plan and such certification.

h. After the commission files its final plan with the city clerk pursuant to subdivision g of this section, the commission shall take all steps necessary to ensure that such plan is effectuated, including but not limited to submitting such plan for preclearance by the United States department of justice pursuant to the United States voting rights act of nineteen hundred sixty-five, as amended, and making such adjustments in its plan as may be necessary and appropriate to respond to a determination of a court or the United States department of justice.

HISTORICAL NOTE

Amended at General Election, November 7, 1989.

Subd. h added L.L. 20/2003 § 2, eff. Mar. 18, 2003 and retroactive to certain filing date. [See § 50 Note 1]



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NYC Charter 52

New York City Charter

CHAPTER 2-A DISTRICTING COMMISSION

§ 52. **District plan; criteria.**

1. In the preparation of its plan for dividing the city into districts for the election of council members, the commission shall apply the criteria set forth in the following paragraphs to the maximum extent practicable. The following paragraphs shall be applied and given priority in the order in which they are listed.

a. The difference in population between the least populous and the most populous districts shall not exceed ten percentum (10%) of the average population for all districts, according to figures available from the most recent decennial census. Any such differences in population must be justified by the other criteria set forth in this section.

b. Such districting plan shall be established in a manner that ensures the fair and effective representation of the racial and language minority groups in New York city which are protected by the United States voting rights act of nineteen hundred sixty-five, as amended.

c. District lines shall keep intact neighborhoods and communities with established ties of common interest and association, whether historical, racial, economic, ethnic, religious or other.

d. Each district shall be compact and shall be no more than twice as long as it is wide.

e. A district shall not cross borough or county boundaries.

f. Districts shall not be drawn for the purpose of separating geographic concentrations of voters enrolled in the same political party into two or more districts in order to diminish the effective representation of such voters.

g. The districting plan shall be established in a manner that minimizes the sum of the length of the boundaries of all of the districts included in the plan.

2. Each district shall be contiguous, and whenever a part of a district is separated from the rest of the district by a body of water, there shall be a connection by a bridge, a tunnel, a tramway or by regular ferry service.

3. If any district includes territory in two boroughs, then no other district may also include territory from the same two boroughs.

HISTORICAL NOTE

Amended at General Election, November 7, 1989.

CASE NOTES

¶ 1. The Districting Commission acted arbitrarily and capriciously in placing an undivided census block, including an uninhabited waterfront area located within the long-established Brooklyn Heights community, into a district created solely to contain a Latino majority by use of "contiguous" land bridges to connect noncontiguous areas having Latino populations. Refusal to split the census block violated its mandate to "keep intact neighborhoods and communities with established ties of common interest and association," Charter § 52(1)(c). The Districting Commission mandate is not limited to only "people" but must include geographic "places." Inclusion of Brooklyn piers in a Manhattan District does not preserve neighborhood integrity. *Brooklyn Hgts. v. Macchiarola*, 154 Misc. 2d 60 [1992].

¶ 2. The New York City Districting Commission violated the requirements of Charter § 52(1)(c) "district lines shall keep intact neighborhoods and communities with established ties of common interest and association", in promulgating a redistricting plan to establish a Latino district and creating a land bridge between two communities by annexing all of a census tabulation block to the new district rather than splitting the census tabulation block so as not to annex part of the block that historically is considered part of a nearby neighborhood. Furthermore, certain piers were put in a Manhattan district rather than the Brooklyn district they historically belong to in order to follow county boundaries violating the provision of keeping neighborhoods intact. *Brooklyn Hgts. Assn. v. Macchiarola*, 192 AD2d 22 [1993].



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NYC Charter 81

New York City Charter

CHAPTER 4 BOROUGH PRESIDENTS

§ 81. **Qualifications; election; term; salary; removal; vacancy.**

a. There shall be a president of each borough, who shall be a resident thereof at the time of election and remain a resident thereof throughout the term of office.

b. The borough president shall be elected by the electors of the borough at the same time and for the same term as in this charter prescribed for the mayor. A borough president who resigns or is removed from office prior to the completion of a full term shall be deemed to have served a full term for purposes of section 1138 of the charter.

c. The salary of the borough president shall be one hundred sixty thousand dollars a year.

d. A president of a borough may be removed or suspended in the same manner as provided in this charter with respect to the mayor.

e. Any vacancy in the office of a borough president shall be filled by popular election in the manner set forth in this subdivision. Until an interim or permanent successor is first elected, the deputy borough president or the executive assistant, in the order of priority specified by the borough president pursuant to subdivision one of section eighty-two, shall act as borough president.

1. Within three days of the occurrence of a vacancy in a borough presidency, the mayor shall proclaim the date for the election or elections required by this subdivision, provide notice of such proclamation to the city clerk and the board of elections and publish notice thereof in the City Record. After the proclamation of the date for an election to be held pursuant to paragraphs four or five of this subdivision, the city clerk shall publish notice thereof not less than twice in each week preceding the date of such election in newspapers distributed within the city, and the board of elections shall mail notice of such election to all registered voters within the appropriate borough.

2. If a vacancy occurs during the first three years of the term, a general election to fill the vacancy for the remainder of the unexpired term shall be held in the year in which the vacancy occurs, unless the vacancy occurs after the last day on which an occurring vacancy may be filled at the general election in that same year with party nominations of candidates for such election being made at a primary election, as provided in section 6-116 of the election law. If such a vacancy occurs in any year after such last day, it shall be filled for the remainder of the unexpired term at the general election in the following year provided, however, that no general election to fill a vacancy shall be held in the last year of the term, except as provided in paragraph nine of this subdivision. Party nominations of candidates for a general election to fill a vacancy for the remainder of the unexpired term shall be made at a primary election, except as provided in paragraph five of this subdivision.

3. If a special or general election to fill the vacancy on an interim basis has not been previously held pursuant to paragraphs four, six, seven and eight of this subdivision, the person elected to fill the vacancy for the remainder of the unexpired term at a general election shall take office immediately upon qualification and shall serve until the term expires. If a special or general election to fill the vacancy on an interim basis has been previously held, the person elected to fill the vacancy for the remainder of the unexpired term at a general election shall take office on January first of the year following such general election and shall serve until the term expires.

4. If a vacancy occurs during the first three years of the term and on or before the last day in the third year of the term on which an occurring vacancy may be filled for the remainder of the unexpired term at a general election with party nominations of candidates for such election being made at a primary election, as provided in section 6-116 of the election law, a special or general election to fill the vacancy on an interim basis shall be held, unless the vacancy occurs less than ninety days before the next primary election at which party nominations for a general election to fill the vacancy may be made and on or before the last day on which an occurring vacancy may be filled for the remainder of the unexpired term at the general election in the same year in which the vacancy occurs with party nominations of candidates for such election being made at a primary election, as provided in section 6-116 of the election law.

5. If a vacancy occurs after the last day in the third year of the term on which an occurring vacancy may be filled for the remainder of the unexpired term at a general election in each year with party nominations of candidates for such election being made at a primary election, as provided in section 6-116 of the election law, but not less than ninety days before the date of the primary election in the fourth year of such term, a special or general election to fill such vacancy for the remainder of the unexpired term shall be held.

6. Elections held pursuant to paragraph four or five of this subdivision shall be scheduled in the following manner: A special election to fill the vacancy shall be held on the first Tuesday at least forty-five days after the occurrence of the vacancy, provided that the mayor, in the proclamation required by paragraph one of this subdivision, may schedule such election for another day no more than ten days after such Tuesday and not less than forty days after such proclamation if the mayor determines that such rescheduling is necessary to facilitate maximum voter participation; except that

(a) if the vacancy occurs before September twentieth in any year and the first Tuesday at least forty-five days after the occurrence of the vacancy is less than ninety days before a regularly scheduled general election or between a primary and a general election, the vacancy shall be filled at such general election; and

(b) if the vacancy occurs before September twentieth in any year and the first Tuesday at least forty-five days after the occurrence of the vacancy is after a regularly scheduled general election, the vacancy shall be filled at such general election; and

(c) if the vacancy occurs on or after September twentieth in any year and the first Tuesday at least forty-five days after the occurrence of the vacancy is after, but less than thirty days after, a regularly scheduled general election, the vacancy shall be filled at a special election to be held on the first Tuesday in December in such year.

7. All nominations for elections to fill vacancies held pursuant to paragraphs four and five of this subdivision shall be by independent nominating petition. A signature on an independent nominating petition made earlier than the date of the proclamation required by paragraph one of this subdivision shall not be counted.

8. A person elected to fill a vacancy in a borough presidency at an election held pursuant to paragraph four of this subdivision shall take office immediately upon qualification and serve until December thirty-first of the year in which the vacancy is filled for the remainder of the unexpired term pursuant to paragraph two of this subdivision. A person elected to fill a vacancy in a borough presidency at an election held pursuant to paragraph five of this subdivision shall take office immediately upon qualification and serve until the term expires.

9. If a vacancy occurs less than ninety days before the date of the primary election in the last year of the term, the person elected at the general election in such year for the next succeeding term shall take office immediately upon qualification and fill the vacancy for the remainder of the unexpired term.

HISTORICAL NOTE

Subd. b amended L.L. 27/2002 § 6, eff. Sept. 25, 2002. [See Note after § 25]

Subd. c amended L.L. 51/2006 § 3, eff. Jan. 19, 2007 and deemed in full force and effect as of Nov. 1, 2006. [See § 4 Note 1]

Subd. c amended by L. L. 1979, No. 37.

Subd. c amended by L. L. 1983, No. 32.

Section amended by L. L. 1961, No. 96.

Section amended by L. L. 1973, No. 77.

Section amended at General Election, November 4, 1975.

Subd. c amended L. L. 25/87 § 3.

Section amended at General Election, November 8, 1988.

Subd. e par. 4 amended at General Election, November 7, 1989.

Subd. c amended L.L. 41/1999 § 3, eff. Sept. 18, 1999 and retroactive to July 1, 1999.

Subd. c amended L.L. 92/1995 § 3, eff. Feb. 2, 1996 and retroactive to July 1, 1995.

CASE NOTES

¶ 1. Participation, in the election to fill a vacancy in the office of President of the Borough of Richmond, by respondent who since July 1, 1952 had been in possession of the office of Commissioner of Public Works, **held** not to have rendered the election invalid on theory respondent was not legally the Commissioner of Borough Works, since it is well established that the acts of public officers de facto are binding and valid so far as the public and third parties are concerned. Moreover, an injunction would not be granted as to an election which had already been held and in which petitioner had actively participated in his capacity of City Councilman from Richmond, as the courts have uniformly refused to grant injunctive relief against a fact already accomplished.-Schick v. Impellitteri, 122 N. Y. S. 2d 729 [1953], aff'd 282 App. Div. 663, 122 N. Y. S. 2d 794 [1954].

¶ 2. Where the president of a Borough resigned his office following the return of an indictment of conspiracy

against him, the Court of Special Sessions refused to release the minutes of the Grand Jury to the Governor.-Matter of 3rd December, 1959 Grand Jury, 20 Misc. 2d 475, 196 N. Y. S. 2d 233 [1960].

¶ 3. Majority of city council members representing the Borough of the Bronx could select a former member of the city council to fill a vacancy in the office of Bronx Borough President where the person selected had resigned as city councilman immediately prior to his selection.-Matter of Valentin v. Simon, 98 Misc. 2d 5 [1979].



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NYC Charter 82

New York City Charter

CHAPTER 4 BOROUGH PRESIDENTS

§ 82. Powers and duties.

The president of a borough shall:

1. Appoint and may at pleasure remove a deputy and an executive assistant, either of whom may discharge such of the powers of the president of the borough as the president by instrument in writing, filed in the borough president's office and with the city clerk and each board, body or committee of which the borough president is a member, may delegate to either of them either the deputy or the executive assistant, designated pursuant to this subdivision, in the order of priority specified by the president in such instrument, shall, when such office becomes vacant, or when such president is prevented from attending to the duties of the office, by reason of sickness, absence from the city or suspension from office, temporarily act as such president.
2. Have power to appoint a secretary and such assistants, clerks and subordinates as such borough president may deem necessary, within the appropriation therefor. The said secretary, assistants, clerks and subordinates shall hold office at the pleasure of the president, subject to the provisions of the civil service law.
3. Continue to maintain a topographical bureau for such borough and appoint the director of the bureau who shall also serve as construction coordinator and consulting engineer for the borough and shall have qualifications as a licensed professional engineer. In addition to other duties, the director of the bureau shall monitor capital projects in the borough and shall be available to serve as an expeditor on construction projects in the borough and provide technical assistance with respect to construction projects.
4. Have power to recommend capital projects.
5. Have power to hold public hearings on matters of public interest.

6. Make recommendations to the mayor and to other city officials in the interests of the people of the borough.
7. Within appropriations therefor, establish and maintain a budget office for the borough to assist the borough president in the preparation of budget proposals, review and analysis of proposed budgets, departmental estimates, budget modifications and other fiscal matters under the jurisdiction of the president of the borough.
8. Consult with the mayor in the preparation of the executive expense budget and the executive capital budget and submit proposed appropriations and other budget recommendations to the mayor and the council in accordance with chapters three, six, and nine of the charter.
9. Establish and maintain a planning office for the borough to assist the borough president in planning for the growth, improvement and development of the borough; reviewing and making recommendations regarding applications and proposals for the use, development or improvement of land located within the borough; preparing environmental analyses required by law; providing technical assistance to the community boards within the borough; and performing such other planning functions as are assigned to the borough president by this charter or other law.
10. Monitor and make recommendations regarding the performance of contracts providing for the delivery of services in the borough and, when the borough president deems it appropriate, require that a hearing be held in the borough by a contract performance panel.
11. Have power to have legislation introduced in the council; such proposed legislation shall indicate that it was introduced at the behest of the borough president.
12. Provide training and technical assistance to the members of community boards within the borough.
13. Oversee the coordination of a borough-wide public service complaint program and report to the mayor, council president and public on recurring complaints of borough residents and the borough president's recommendations for improving the city's response to such complaints.
14. On or before the first day of September nineteen hundred ninety, and every four years thereafter, prepare a strategic policy statement for the borough and provide copies of such statement to the mayor, council and community boards in the borough. Such statement shall include: (i) a summary of the most significant long-term issues faced by the borough; (ii) policy goals related to such issues; and (iii) proposed strategies for meeting such goals. In preparing the statement, the borough president shall consult with the community boards in the borough.
15. Make a complete transcript of each public hearing called by the borough president available for public inspection free of charge within sixty days after the hearing and provide a copy of any requested pages of such transcript at a reasonable fee to cover copying and, if relevant, mailing costs.
16. Perform such other functions and duties and exercise such other powers as may be assigned by law.

HISTORICAL NOTE

Section amended by L. 1962, ch. 998, § 6.

Section amended at General Election, November 4, 1975.

Subd. 8, formerly subd. 7, renumbered by L. L. 1981, No. 15.

Subds. 1, 2, 3 amended at General Election, November 8, 1988.

Subds. 1, 6, 7 amended at General Election, November 7, 1989.

Subds. 8-15 added at General Election, November 7, 1989.

Subd. 16 renumbered and amended at General Election, November 7, 1989

(formerly subd. 8).

CASE NOTES

¶ 1. Former § 82-c of the Charter, empowering the Borough President to appoint assistants, clerks and subordinates, would seem clearly to contemplate appointments to positions for which salaries have been appropriated and which enjoy Civil Service status, and does not appear to have been intended to embrace "honorary" positions without compensation, such as an "Honorary Commissioner of borough public works."-In re Costello (Simonetti), 202 Misc. 51, 107 N. Y. S. 2d 726 [1951].

¶ 2. Honorary Commissioner of Borough Works appointed by the president of the Borough of Manhattan to examine into the testimony before the U. S. Senate Crime Committee regarding the relationship between one of the parties examined by the Committee and the Secretary to the Borough President and to investigate as to such Secretary's fitness to continue as such, **held** without authority to subpoena petitioner to testify in the investigation. The Secretary to the Borough President holds office only at the pleasure of the Borough President and may be removed without cause and without any hearing, and therefore there was no mandatory nor impartial power of investigation such as might sustain the subpoena power under C. P. A. § 406. Even if such subpoena power resided in the Borough President, the "Honorary Commissioner" was not vested with such power, as the office was unofficial and without validity. Even if such appointment were valid, and C. P. A. § 406 conferred power to issue subpoenas upon the Borough President for purpose of enabling him to take proof as to whether to exercise his power of removal, it would not confer power to issue subpoenas upon an honorary commissioner, to whom no power of removal was delegated.-In re Costello (Simonetti), 202 Misc. 51, 107 N. Y. S. 2d 726 [1951].

¶ 3. Rule of Local Improvement Board of the Borough of Queens providing that in absence of the Borough President and the Commissioner of Borough Works, the Board's meeting should be opened by one of the councilmen, who should cause to be read any communication designating a temporary chairman, and that the temporary chairman designated by the Borough President should then preside at the meeting, **held** to infringe upon the Borough President's powers as granted by Charter former § 82(a), (f), which provides that the Borough President is Chairman of every local improvement board with the right to preside and vote at all meetings, and that he may authorize by instrument in writing filed with the City Clerk any officer or employee appointed by him to exercise any of the powers and perform any of the duties of the President.-Maickel v. Lundy, 4 Misc. 2d 98, 155 N. Y. S. 2d 581 [1953].

¶ 4. The nature and extent of the powers and duties of the Superintendent of Sewers of the Borough of Bronx was an issue of fact in a proceeding by a discharged Superintendent for reinstatement. He could not be dismissed, except for cause after a hearing, where he was a veteran, unless his powers and duties made him a deputy within the meaning of Civil Service Law § 75.-Matter of Levy, 35 Misc. 2d 1012, 231 N. Y. S. 2d 924 [1962].



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NYC Charter 83

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CHAPTER 4 BOROUGH PRESIDENTS

§ 83. **Organization of office.**

Any borough president to the extent to which the organization of such borough president's office is not prescribed by law, may organize such borough president's office into such divisions, bureaus or offices and make such assignments of powers and duties among them, and from time to time change such organization or assignments as the borough president may consider advisable.

HISTORICAL NOTE

Section added at General Election, November 8, 1988.



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NYC Charter 85

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CHAPTER 4 BOROUGH PRESIDENTS

§ 85. **Borough board.**

a. There shall be in each borough a board to be known as the borough board which shall consist of the borough president and the district council members from such borough, and the chairperson of each community board in the borough. The borough president shall be the chairperson of such board, which shall hold public hearings at stated intervals in the borough and report to the council, the mayor and the city planning commission on borough programs and proposed borough capital projects. The borough president, the council members from the borough and the chairperson of the community boards in the borough shall be voting members of the borough board but a member from a community board shall vote only on issues that directly affect the community district represented by such member. The borough board shall employ technical and clerical assistance within appropriations for such purposes, and the borough president shall provide necessary additional staff assistance.

b. Each borough board shall:

(1) Cooperate with community boards and city agencies with respect to matters relating to the welfare of the borough and its residents; (2) In its discretion hold or conduct public or private hearings;

(3) Adopt by-laws and meet at least once a month but no formal action of the board shall be taken except at a meeting open to the public;

(4) Assist agencies that deliver services within the borough in the preparation of service statements for the borough and review such statements;

(5) Prepare comprehensive and special purpose plans for the physical growth, improvement and development of the borough;

(6) Review and make recommendations with respect to applications and proposals of public agencies and private entities for the use, development, or improvement of land located in more than one district; (7) Mediate disputes and conflicts among two or more community districts in the borough;

(8) Submit a comprehensive statement of the expense and capital budget priorities and needs of the borough;

(9) Evaluate the progress of capital developments within the borough and the quality and quantity of services provided by agencies within the borough;

(10) Give notice of all its public meetings and hearings, and make such meetings and hearings available for broadcasting and cablecasting;

(11) Keep a public record of its activities and transactions, including minutes of meetings, majority and minority reports, by-laws, and all documents which the board is required by law to review; such documents shall, in accordance with law, be made available to elected officials upon request and for reasonable public inspection; and

(12) Otherwise consider the needs of the borough.

c. A majority of the members of any borough board entitled to vote on a matter before such board shall constitute a quorum of such board for action on such board.

d. Whenever any act is authorized to be done or any determination or decision made by any borough board, the act, determination or decision of the majority of the members present entitled to vote during the presence of a quorum, shall be held to be the act, determination or decision of such board.

e. Any borough board may adopt rules permitting a member to designate a representative to exercise all the power of such member as a member of the borough board. Such a representative shall be considered a member of the board for the purpose of determining a quorum of the borough board.

HISTORICAL NOTE

Section amended at General Election, November 4, 1975.

Subd. a amended by L. L. 1977, No. 102.

Subd. c added by L. L. 1979, No. 11.

Subd. d added by L. L. 1979, No. 11.

Subd. e added by L. L. 1981, No. 32.

Subds. a, b amended at General Election, November 7, 1989.



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CHAPTER 4 BOROUGH PRESIDENTS

§ 86. **Opening and closing streets.**

Except in the case of an emergency, no person, agency, business, association, or corporation shall remove the pavement, disturb the surface or otherwise open or close a street, road or highway until a written notice is filed at least ten days in advance of the intended action with the construction coordinator and consulting engineer for the borough in the office of the borough president and the office of district manager for the community district in which the street, road or highway is located. In the event of an emergency, such notice may be made in person or by telephone before the action is instituted and in writing immediately after the action is instituted. If this is not feasible, notice shall be made in person or by telephone and in writing immediately after the action is instituted.

HISTORICAL NOTE

Added by General Election, November 4, 1975.

Amended by L. L. 1979, No. 37.

Amended by L. L. 1983, No. 32.



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CHAPTER 5 COMPTROLLER

§ 91. **Election; term; salary.**

The comptroller shall be elected by the electors of the city at the same time and for the same terms as in this charter prescribed for the mayor. A comptroller who resigns or is removed from office prior to completion of a full term shall be deemed to have served a full term for purposes of section 1138 of the charter. The salary of the comptroller shall be one hundred eighty-five thousand dollars a year.

HISTORICAL NOTE

Amended by L. L. 1949, No. 107.

Amended by L. L. 1961, No. 96.

Amended by L. L. 1973, No. 77.

Amended by L. L. 1979, No. 37.

Amended by L. L. 1983, No. 32.

Amended L. L. 25/87 § 4.

Section amended L.L. 92/1995 § 4, eff. Feb. 2, 1996 and retroactive to July 1, 1995.

Section amended L.L. 41/1999 § 4, eff. Sept. 18, 1999 and retroactive to July 1, 1999.

Section amended L.L. 27/2002 § 5, eff. Sept. 25, 2002. [See Note after § 25]

Section amended L.L. 51/2006 § 4, eff. Jan. 19, 2007 and deemed in full force and effect as of Nov. 1, 2006.
[See § 4 Note 1]



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CHAPTER 5 COMPTROLLER

§ 92. **Removal from office.**

The comptroller may be removed or suspended in the same manner as provided in this charter with respect to the mayor.



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CHAPTER 5 COMPTROLLER

§ 93. Powers and duties.

a. The comptroller from time to time in his or her discretion may, and whenever required by law or requested by the mayor or the council, shall advise the mayor and the council on the financial condition of the city or any phase thereof and make such recommendations, comments and criticisms in regard to the operations, fiscal policies and financial transactions of the city as he or she may deem advisable in the public interest.

b. The comptroller shall have power to audit and investigate all matters relating to or affecting the finances of the city, including without limitation the performance of contracts and the receipt and expenditure of city funds, and take the testimony under oath of such persons as the comptroller may deem necessary. The comptroller shall conduct all audits of entities under contract with the city as expeditiously as possible and in no case shall initiate an audit later than two years after the expiration of a contract term unless the comptroller determines in writing that: (1) such audit is initiated in connection with litigation brought by or against the city, (2) it was not practicable to initiate an audit within such two year period, or (3) the initiation of the audit after the two year period is appropriate in light of information discovered in an audit of another contract of the same contractor. Such written determination shall be filed with the mayor, council and public advocate.

c. The comptroller shall have power to audit all agencies, as defined in subdivision two of section eleven hundred fifty, and all agencies, the majority of whose members are appointed by city officials. The comptroller shall be entitled to obtain access to agency records required by law to be kept confidential, other than records which are protected by the privileges for attorney-client communications, attorney work products, or material prepared for litigation, upon a representation by the comptroller that necessary and appropriate steps will be taken to protect the confidentiality of such records. The comptroller shall establish a regular auditing cycle to ensure that one or more of the programs or activities of each city agency, or one or more aspects of each agency's operations, is audited at least once every four years. The audits conducted by the comptroller shall comply with generally accepted government auditing

standards. In accordance with such standards, and before any draft or final audit or audit report, or portion thereof, may be made public, the comptroller shall send a copy of the draft audit or audit report to the head of the audited agency and provide the agency, in writing, with a reasonable deadline for its review and response. The comptroller shall include copies of any such agency response in any draft or final audit or audit report, or portion thereof, which is made public. The comptroller shall send copies of all final audits and audit reports to the council, the mayor, and the audit committee.

d. The comptroller shall (1) audit financial transactions of the city, including vouchers, warrants, and payrolls; (2) audit all official accounts and the accrual and collection annually of all revenues and receipts; and (3) audit the expenditure of city funds by any public or private agency that receives such funds from the city.

e. The comptroller shall audit the operations and programs of city agencies to determine whether funds are being expended or utilized efficiently and economically and whether the desired goals, results or benefits of agency programs are being achieved. The comptroller shall investigate the processing of vouchers and the payment of bills by city agencies and shall audit agency compliance with applicable procedures in procuring goods, services and construction. The comptroller shall also undertake studies, including cost benefit analyses, of: (i) purchases of goods, services, and construction by agencies of government that use city funds for such purposes and (ii) the adoption and use of new technology by city agencies to promote their economy and efficiency, and periodically report the findings and recommendations of such studies to the mayor, the council and the public.

f. Not later than the first day of March of each year, the comptroller shall deliver to the mayor and council a report describing all major audits of city agencies conducted by the comptroller during the previous fiscal year; the corrective actions recommended in such audits; the corrective actions which have been implemented to the extent such information is known to the comptroller on the basis of agency reports, comptroller audits, or otherwise; and the comptroller's recommendations, if any, for additional corrective actions.

g. The comptroller shall have the power and duty to audit all vouchers before payment for availability of funds and prepare warrants. No warrant shall be prepared by the comptroller unless sufficient appropriations are available to cover the payments involved. No agency shall expend or commit any funds otherwise than for the program and purposes for which the funds have been appropriated and the comptroller shall conduct audits and take such other action as is required to assure compliance with this provision.

h. Except as provided in subdivision g, the agencies shall prepare and audit vouchers before payment, prepare and audit payrolls, receive and inspect goods and forward vouchers to the comptroller for payment. The comptroller shall prescribe methods, with which all agencies shall comply, for preparing and auditing vouchers before payment, preparing payrolls, and recording, reporting and accounting in the several agencies and shall conduct reviews to assure compliance. The comptroller may suspend or withdraw the authority delegated to an agency pursuant to this subdivision (1) upon a finding of abuse of such authority or on a determination that the agency lacks adequate internal controls to exercise such authority properly and (2) upon the approval of the audit committee after the agency has had an opportunity to be heard on this matter.

i. The comptroller shall have the power to settle and adjust all claims in favor of or against the city in such manner as shall be prescribed by law and for that purpose may administer oaths, except that, with regard to excise and non-property taxes, such power shall be vested in the commissioner of finance. The comptroller shall not revise the terms of a contract or agreement with the city after its execution. The city may include in construction contracts or agreements for capital projects provisions that authorize the comptroller to submit disputes arising under any such contract or agreement to impartial arbitration.

j. The comptroller shall administer and manage the several sinking funds of the city and all other trust funds held by the city, and provide for the receipt and safekeeping of all moneys in such funds, except as provided in paragraph b of subdivision three of section fifteen hundred four of this charter, and in such administration the comptroller shall be deemed to be acting in a fiduciary capacity.

k. The comptroller shall keep the accounts of the city and shall at least once in each month render to each agency a summary statement of so much thereof as relates to such agency.

l. Within four months after the close of each fiscal year, the comptroller shall publish a statement for such year, including a full and detailed statement of the revenues and expenditures of the city and the surplus at the end of the fiscal year, including the average daily collected deposits in bank accounts of the city, the investment performance of city pension and other investment funds, an itemized statement of all taxes due and uncollected at the close of the fiscal year, the reserve for estimated uncollectible taxes, and the uncollected parking violation fines receivable, an itemized statement of the condition of the sinking funds, and any other assessable improvement funds, and of the tax appropriation and general fund stabilization reserve fund as at the close of the fiscal year, the different sources of city revenue, including itemization of receivables due from state or federal sources by program and fiscal year, and the amount received from each, the several appropriations made for the fiscal year, the objects for which they were made and the amount of expenditures made under each, the money borrowed on the credit of the city, the amount of each loan, the authority under which it was made and the terms on which it was obtained, and such other information in regard to such fiscal year as may be determined by the comptroller or by law.

m. The comptroller shall establish for his or her office and for all city agencies a uniform system of accounting and reporting based on generally accepted accounting principles.

1. Such uniform system of accounts shall provide:

(a) control accounts in the office of the comptroller that are consistent with budgeted units of appropriation and that are adequate to record and control spending by the agencies and to prevent agencies from exceeding appropriations;

(b) detailed accounts in the agencies for the purposes of cost accounting, rate of expenditure information and other management information data; and

(c) geographic accounts for the reporting of expenditures for local service districts of agencies within community districts and boroughs.

2. The comptroller shall prescribe procedures for accounting and reporting for all agencies, and review agency accounts and systems to assure compliance with this chapter and with the methods, standards and procedures prescribed by the comptroller for the agencies.

n. The comptroller shall prescribe systems of accounting for city agencies whose revenues arising out of the use of the facilities and services supplied by such agencies constitute fifty per centum or more of the appropriations provided for the operation of such agencies, which systems of accounting shall conform so far as practicable to standard public utility accounting practices. The comptroller shall publish in the comptroller's annual report the financial statements for such city agencies.

o. Notwithstanding the provisions of any general, special or local law or this charter or any contract heretofore or hereafter made or awarded by the city of New York or by any agency, department or authority acting on its behalf, the comptroller may, at his or her discretion, turn over the physical custody and safekeeping of bonds, notes, obligations or other evidences of indebtedness which have been or will be deposited with the comptroller as collateral security as required by law or contract to a custodian who may be (a) any bank or trust company incorporated in the state, or (b) any national bank located in the state, or (c) any private banker duly authorized by the superintendent of banks of this state to engage in business here. The comptroller may enter into a contract with such custodian under terms and conditions which the comptroller may require. Each depositor of collateral security shall bear a proportionate share of the cost of such custodial safekeeping which shall be paid to the city of New York.

p. No contract or agreement executed pursuant to this charter or other law shall be implemented until (1) a copy has been filed with the comptroller and (2) the comptroller has registered it in accordance with sections three hundred

twenty-eight and three hundred seventy-five of the charter.

q. The council shall periodically review the requirements contained in the charter for studies and reports by the comptroller and may by local law revise such requirements as it deems appropriate. At such times as the mayor or the council shall request, the comptroller shall submit to them such information as they may request. The comptroller, upon request, shall assist the council in the conduct of any of its investigations or studies of the fiscal or economic affairs of the city or of any agency. The comptroller shall provide reports to the council upon request and shall testify before the council or a committee thereof.

r. The comptroller shall make a complete transcript of each public hearing conducted by the office available for public inspection free of charge within sixty days after such hearing. The comptroller shall also provide a copy of any requested pages of such transcript at a reasonable fee to cover copying and, if relevant, mailing costs.

HISTORICAL NOTE

Section amended by L. 1943, ch. 710, § 561 with effective date postponed by L. 1944, ch. 606, § 6.

Section amended by L. 1954, ch. 338, § 64.

Section amended by L. 1962, ch. 998, § 7.

Section amended by L. L. 1968, No. 3.

Section amended by L. L. 1968, No. 10.

Section amended by L. L. 1969, No. 74.

Section amended by L. 1973, ch. 868.

Section amended at General Election, November 4, 1975.

Subd. d amended by L. L. 1976, No. 28.

Subd. e amended by L. L. 1976, No. 28.

Subd. g amended by L. L. 1977, No. 30.

Subd. h amended by L. L. 1977, No. 30.

Subd. h amended by L. L. 1977, No. 102.

Subd. j amended by L. L. 1977, No. 102.

Subd. l amended by L. L. 1977, No. 102.

Section amended at General Election, November 7, 1989.

Subd. b amended L.L. 68/1993 § 3, eff. Jan. 1, 1994.

CASE NOTES

¶ 1. Where the Common Council, in the exercise of its investigatory powers employed an attorney, the attorney was not required to have his statement of charges approved or audited by either the City Council or its special committee. It was sufficient that the attorney presented his bill for audit by the comptroller.-Ellis v. City of New York,

180 Misc. 968, 46 N. Y. S. 2d 363 [1943], *aff'd*, 267 App. Div. 810, 47 N. Y. S. 2d 96, [1944], *aff'd*, 295 N. Y. 780, 66 N. E. 2d 297 [1946].

¶ 2. Although the provisions of this section may prohibit the Comptroller from inquiring into the justness of a claim accruing under the provisions of a contract for public letting, where a contract between a contractor and the Board of Water Supply stated that the City shall not be estopped from showing the true value of work, the city could withhold payment to the contractor. Where such clauses are found in a contract and where there is no clear showing that the public agency is independent of the City, mandamus will not lie.-*Matter of Frazier-Davis Construction Co.*, 6 A. D. 2d 112, 175 N. Y. S. 2d 765 [1958].

¶ 3. A voucher of the Board of Education for work performed by a contractor cannot be made subject to audit by the Comptroller.-*In re C. K. Rehner, Inc.*, 17 Misc. 2d 226, 184 N. Y. S. 2d 998 [1959].

¶ 4. The City sent to plaintiff contractors a check with a "payment in full" notation. The check was received and deposited by an employee of plaintiffs during their absence from their office. In an action by plaintiffs to recover for extra work, the City was not entitled to summary judgment. The nature of the payment and its acceptance raised issues of fact.-*Moriarty v. City of New York*, 141 (65) N. Y. L. J. (4-6-59) 15, Col. 4 T.

¶ 5. A comptroller, after a hearing, established rates for welders for the period of 1938-1945 and deducted 10 per cent from the wages of the welders for reasonable monetary value of vacations and pension benefits granted by the City. The plaintiffs, who were welders, sued the City to recover the 10 per cent deductions. Held: The Comptroller was in error in making said deductions. However, the complaint was dismissed, since the exclusive remedy of the plaintiffs was by writ of certiorari within 30 days after the determination of the Comptroller, pursuant to § 220(8) of the Labor Law.-*Jung v. The City of New York*, 6 Misc. 2d 200, 76 N. Y. S. 2d 235 [1947].

¶ 6. Although petitioner's claim for the use of his equipment in the performance of a contract had been audited and paid by the City, the acting comptroller could issue a subpoena for the purpose of investigating whether petitioner had been overpaid.-*In re Tully & DiNapoli, Inc.*, 146 (99) N. Y. L. J. (11-22-61) 11, Col. 8 F.

¶ 7. The Supreme Court could not set aside a determination of the Board of Standards and Appeals of the City of New York granting a variance for a gasoline station in a residence district in which the New York City Housing Authority constructed a housing project. The granting of the variance was within the discretionary powers of the board.-*New York City Housing Authority v. Foley*, 32 Misc. 2d 41, 223 N. Y. S. 2d 621 [1961].

¶ 8. Claims made by private non-profit hospital corporations for refund of overpayment of New York City real estate taxes against the Comptroller of the City of New York could not be allowed where the Tax Commission of the City of New York has been given exclusive statutory authority to revise erroneous tax assessments on real property. Taxes are not "claims" which the Comptroller may compromise under this section of the City Charter.-*St. Luke's Hospital v. Beame*, 47 Misc. 2d 71, 262 N. Y. S. 2d 129 [1965].

¶ 9. Railroad which serviced tenants who leased space from city in Hunts Point Terminal Market and whose rent was based partially on the number of carloads received by each tenant could be required to disclose information as to carload deliveries pursuant to a subpoena duces tecum served on them by the comptroller in an investigation by the city into whether it might be losing substantial sums in rent payments because of false reports by tenants as to the number of carloads actually received although a federal statute prohibits carriers from disclosing information of this type where the statute does not prevent the railroad from furnishing the information in response to a court order. *In re Corty (Smith)*, 160 (44) N. Y. L. J. (8-30-68) 2, Col. 1 F.

¶ 10. Comptroller of city is not entitled to call for records and documents of board of education's vocational education program for the purpose of evaluating whether the goals of the board's program are being achieved since this is a purely educational matter.-*Bd. of Education of City of N. Y. v. Goldin*, 405 N. Y. S. 2d 589 [1978].

¶ 11. Comptroller had authority under this section to conduct an investigation of pupil transportation contracts for the board of education and could issue subpoenas duces tecum for books and records of corporation which had transported handicapped children for about six years prior to the date of the subpoena under a contract with the board of education.-*Goldin v. Greenberg*, 49 N. Y. 2d 566, 404 N. E. 2d 722, 427 N. Y. S. 2d 599 [1980], reversing, 66 A. D. 2d 681 [1978].

¶ 12. Provision of § 93d-1.0 of Administrative Code that a claim "settled and adjusted by the comptroller" shall not be paid unless an auditor of accounts certifies that the charges are just and reasonable does not give the Comptroller authority to settle and adjust claims without a prior audit of the claims by his office.-*White Plains v. City of N. Y.*, 63 A. D. 2d 396, 407 N. Y. S. 2d 517 [1978].

¶ 13. Comptroller was authorized by this section to issue a subpoena duces tecum for a period extending back to 1974 in connection with an audit of the New York City Board of Education pupil transportation system for corporate and financial books and records of a contractor which had been supplying pupil transportation for a number of years.-*Parochial Bus System v. Goldin*, 75 A. D. 2d 568, 427 N. Y. S. 2d 261 [1980].

¶ 14. Chief engineer of a construction project has no authority to settle or adjust a claim, since that power is expressly reserved to the City Comptroller pursuant to § 93(g). *Crimmins v. City of New York*, 138 AD2d 138 [1988].

¶ 15. Petitioner who was awarded six contracts in 1981 to perform construction at six public schools, prevailed upon the Board of Education to adopt a resolution authorizing an additional \$145,000 in compensation allocated equally to the six contracts. The resolution was properly not acted upon by the Board of Estimate in the absence of review by the City Comptroller. Capital expenditures by the Board of Education are subject to approval by the Board of Estimate (NY City Charter § 222(a)) and the Comptroller is charged with oversight and is authorized to investigate and to make recommendations concerning the operations, fiscal policies and financial transactions of all city agencies (NY City Charter § 93(d)). *Marshall Construction Corp. v. Board of Education*, 160 AD2d 643.



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CHAPTER 5 COMPTROLLER

§ 94. **Deputy comptrollers and other appointees.**

a. The comptroller shall appoint and at pleasure remove a first, and second deputy comptroller. The comptroller may appoint and at pleasure remove a third deputy comptroller who shall be a person qualified to advise and assist the comptroller in all matters relating to borrowings and the investment of funds. Except as provided in subdivision b of this section, each of the deputies and any officer or employee appointed by the comptroller shall have such powers and duties as may be assigned such person by the comptroller by instrument in writing filed with the city clerk. Provided however that no more than five such additionally appointed officers or employees shall serve simultaneously. The city clerk shall notify the council of the filing or revocation of each such appointment.

b. Any deputy comptroller or any officer or employee appointed by the comptroller may act in place of the comptroller on any board, body or committee of which the comptroller is a member whenever the comptroller shall so authorize in writing and such authorization is filed with such board, body or committee and with the city clerk.

c. Any vacancy in the office of comptroller shall be filled by popular election, in the manner set forth in this subdivision. In the event of a vacancy in the office of comptroller until an interim or permanent successor is first elected, or whenever by reason of sickness, absence from the city or suspension from office, the comptroller shall be prevented from attending to the duties of the office, or while the comptroller is acting as mayor, the first deputy comptroller or in the case of his illness or absence the second deputy comptroller or in the case of his or her illness or absence the third deputy comptroller shall act as comptroller.

1. Within three days of the occurrence of a vacancy in the office of the comptroller, the mayor shall proclaim the date for the election or elections required by this subdivision, provide notice of such proclamation to the city clerk and the board of elections and publish notice thereof in the City Record. After the proclamation of the date for an election to be held pursuant to paragraphs four or five of this subdivision, the city clerk shall publish notice thereof not less than twice in each week preceding the date of such election in newspapers distributed within the city, and the board of

elections shall mail notice of such election to all registered voters within the city.

2. If a vacancy occurs during the first three years of the term, a general election to fill the vacancy for the remainder of the unexpired term shall be held in the year in which the vacancy occurs, unless the vacancy occurs after the last day on which an occurring vacancy may be filled at the general election in that same year with party nominations of candidates for such election being made at a primary election, as provided in section 6-116 of the election law. If such a vacancy occurs in any year after such last day, it shall be filled for the remainder of the unexpired term at the general election in the following year provided, however, that no general election to fill a vacancy shall be held in the last year of the term, except as provided in paragraph nine of this subdivision. Party nominations of candidates for a general election to fill a vacancy for the remainder of the unexpired term shall be made at a primary election, except as provided in paragraph five of this subdivision.

3. If a special or general election to fill the vacancy on an interim basis has not been previously held pursuant to paragraphs four, six, seven and eight of this subdivision, the person elected to fill the vacancy for the remainder of the unexpired term at a general election shall take office immediately upon qualification and shall serve until the term expires. If a special or general election to fill the vacancy on an interim basis has been previously held, the person elected to fill the vacancy for the remainder of the unexpired term at a general election shall take office on January first of the year following such general election and shall serve until the term expires.

4. If a vacancy occurs during the first three years of the term and on or before the last day in the third year of the term on which an occurring vacancy may be filled for the remainder of the unexpired term at a general election with party nominations of candidates for such election being made at a primary election, as provided in section 6-116 of the election law, a special or general election to fill the vacancy on an interim basis shall be held, unless the vacancy occurs less than ninety days before the next primary election at which party nominations for a general election to fill the vacancy may be made and on or before the last day on which an occurring vacancy may be filled for the remainder of the unexpired term at the general election in the same year in which the vacancy occurs with party nominations of candidates for such election being made at a primary election, as provided in section 6-116 of the election law.

5. If a vacancy occurs after the last day in the third year of the term on which an occurring vacancy may be filled for the remainder of the unexpired term at a general election in each year with party nominations of candidates for such election being made at a primary election, as provided in section 6-116 of the election law, but not less than ninety days before the date of the primary election in the fourth year of such term, a special or general election to fill such vacancy for the remainder of the unexpired term shall be held.

6. Elections held pursuant to paragraph four or five of this subdivision shall be scheduled in the following manner: a special election to fill the vacancy shall be held on the first Tuesday at least forty-five days after the occurrence of the vacancy, provided that the mayor, in the proclamation required by paragraph one of this subdivision, may schedule such election for another day no more than ten days after such Tuesday and not less than forty days after such proclamation if the mayor determines that such rescheduling is necessary to facilitate maximum voter participation; except that

(a) if the vacancy occurs before September twentieth in any year and the first Tuesday at least forty-five days after the occurrence of the vacancy is less than ninety days before a regularly scheduled general election or between a primary and a general election, the vacancy shall be filled at such general election; and

(b) if the vacancy occurs before September twentieth in any year and the first Tuesday at least forty-five days after the occurrence of the vacancy is after a regularly scheduled general election, the vacancy shall be filled at such general election; and

(c) if the vacancy occurs on or after September twentieth in any year and the first Tuesday at least forty-five days after the occurrence of the vacancy is after, but less than thirty days after, a regularly scheduled general election,

the vacancy shall be filled at a special election to be held on the first Tuesday in December in such year.

7. All nominations for elections to fill vacancies held pursuant to paragraphs four and five of this subdivision shall be by independent nominating petition. A signature on an independent nominating petition made earlier than the date of the proclamation required by paragraph one of this subdivision shall not be counted.

8. A person elected to fill a vacancy in the office of the comptroller at an election held pursuant to paragraph four of this subdivision shall take office immediately upon qualification and serve until December thirty-first of the year in which the vacancy is filled for the remainder of the unexpired term pursuant to paragraph two of this subdivision. A person elected to fill a vacancy in the office of the comptroller at an election held pursuant to paragraph five of this subdivision shall take office immediately upon qualification and serve until the term expires.

9. If a vacancy occurs less than ninety days before the date of the primary election in the last year of the term, the person elected at the general election in such year for the next succeeding term shall take office immediately upon qualification and fill the vacancy for the remainder of the unexpired term.

HISTORICAL NOTE

Section amended by L. L. 1974, No. 5.

Section amended at General Election, November 4, 1975.

Subd. a amended by L. L. 1977, No. 20.

Subd. b amended by L. L. 1983, No. 22.

Subds. a, c amended at General Election, November 8, 1988.

Subds. a, b amended at General Election, November 7, 1989.

Subd. c pars 4, 6 amended at General Election, November 7, 1989.

CASE NOTES

¶ 1. A Third Deputy Comptroller had authority to modify a commitment of the New York City Employees' Retirement System for a mortgage loan as financing by a private corporation of an office building since the Comptroller has power to invest the funds of the System and can delegate this power to such deputy comptroller. *Fisher-Sixth Nominee Corp. System*, 165 (35) N. Y. L. J. (2-23-71) 2, Col. 6 F.



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CHAPTER 5 COMPTROLLER

§ 95. **Annual audit.**

a. The city, in accordance with subdivision b of this section and section ninety-seven of this chapter, shall take such action as may be necessary to enable an independent certified public accounting firm or consortium of such firms to perform an annual audit in accordance with generally accepted auditing standards and to furnish to the city, in accordance with subdivision b of this section, the report on such audit prepared by such firm or consortium of firms, which report shall include an opinion as to whether the city's financial statements have been prepared in accordance with generally accepted accounting principles and shall state whether the audit of such financial statements was made in accordance with generally accepted auditing standards. The city shall make available for inspection and copying all books, records, work papers and other data and material as required by such auditors, and officers and employees of the city shall be made available to, and shall cooperate with, such auditors so as to permit such annual audit to be completed and the report issued within four months after the close of the city's fiscal year.

b. The annual audit described in subdivision a of this section shall be made by a firm or firms of certified public accountants, as set forth in such subdivision, selected by the audit committee. Copies of the annual audit shall be submitted to the mayor, the comptroller, the council and the state comptroller and shall be published in the City Record. No audit engagement contract pursuant to this section shall exceed four years.

HISTORICAL NOTE

Section amended L.L. 59/2001 § 1, eff. Nov. 1, 2002.

Section amended at General Election November 8, 2005. Ballot Question 4 § 2, eff. Nov. 8, 2005, as per Charter § 1152(j)(2). [See Charter § 258 Note 1]



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CHAPTER 5 COMPTROLLER

§ 96. **Actuarial audit.**

The comptroller, with the approval of the audit committee, biennially shall select an independent actuary to review and comment upon the financial soundness and probity of the actuarial assumptions employed by the city to calculate contributions to the city pension funds. The report of the actuary shall be published in the City Record. No actuary may be selected more than twice consecutively.

HISTORICAL NOTE

Added at General Election, November 4, 1975.

Amended at General Election, November 7, 1989.



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CHAPTER 5 COMPTROLLER

§ 97. **Audit Committee.**

a. There shall be an audit committee which shall consist of the mayor, the comptroller, the public advocate and four private members appointed by the mayor, two of whom shall be appointed upon the recommendation of the comptroller. The members of the committee shall elect a private member as chair for an annual term commencing on the first day of March.

b. The private members of the audit committee shall include (i) two persons with expertise in finance, and (ii) two persons with expertise in accounting. Two private members, one of whom shall have been recommended by the comptroller, shall serve for two-year terms commencing on the first day of March, nineteen hundred ninety; and two private members, one of whom shall have been recommended by the comptroller, shall serve for two-year terms commencing on the first day of March, nineteen hundred ninety-one. Private members shall continue in office until their successors have been appointed and qualified. Private members shall serve without salary but shall be reimbursed for expenses actually and necessarily incurred in the performance of official duties and shall also receive a per diem allowance when rendering services to the committee.

c. The audit committee shall:

(1) approve or disapprove the comptroller's suspension or withdrawal of authority delegated to an agency pursuant to subdivision h of section ninety-three;

(2) select a firm or firms of certified public accountants to perform the annual audit of the city's accounts required by section ninety-five; (3) assist in the determination of areas of inquiry for, review the progress of, and evaluate the results of, the annual audit required by section ninety-five;

(4) approve the selection of the independent actuary to perform the actuarial audit required by section ninety-six;

and

(5) perform such other functions as are agreed to by all of the members.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

Subd. a amended L.L. 68/1993 § 4, eff. Jan. 1, 1994.



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New York City Charter

CHAPTER 6 EXPENSE BUDGET

§ 100. Format of expense budget departmental estimates, preliminary expense budget, and executive expense budget.

a. The expense budget departmental estimates, the preliminary expense budget, and the executive expense budget for each year shall consist of proposed units of appropriation for personal service and proposed units of appropriation for other than personal service for the ensuing fiscal year.

b. Each agency head, for the departmental estimates, and the mayor, for the executive budget, shall submit (i) a statement of the impact of the proposed units of appropriation on the level of services to be provided during the ensuing fiscal year and (ii) a written response to each of the expense budget priorities included in each community board's statement of budget priorities submitted in accordance with section two hundred thirty of this charter, including the disposition of each such priority and a meaningful explanation of any disapprovals contained in such estimates or budget.

c. Each proposed unit of appropriation shall represent the amount requested for personal service or for other than personal service for a particular program, purpose, activity or institution; provided, however, that a single unit of appropriation for personal service or a single unit of appropriation for other than personal service may represent the amount requested for more than one particular program, purpose, activity or institution if the council has adopted, on the recommendation of the mayor, or if the council has adopted on its own initiative and the mayor has approved, a resolution setting forth the names, and a statement of the programmatic objectives, of each program, purpose, activity or institution to be included in such a single unit of appropriation. Copies of such resolutions must be included as an appendix to any preliminary budget, executive budget, and adopted budget to which they apply. If, in accordance with such a resolution, a proposed unit of appropriation for other than personal service shall represent the total amount requested for other than personal service for more than one proposed unit of appropriation for personal service, the amount of such unit of appropriation for other than personal service which is allocable to each unit of appropriation for

personal service shall be set forth for informational purposes at the end of each such unit of appropriation for personal service. If, in accordance with such a resolution, a proposed unit of appropriation for personal service shall represent the total amount requested for personal service for more than one proposed unit of appropriation for other than personal service, the amount of such unit of appropriation for personal service which is allocable to each unit of appropriation for other than personal service shall be set forth for informational purposes at the end of each such unit of appropriation for other than personal service.

d. Each proposed unit of appropriation contained in the departmental estimates, the preliminary expense budget and the executive expense budget shall be accompanied by a statement of the programmatic objectives of the program, purpose, activity or institution involved.

e. Each proposed unit of appropriation contained in the departmental estimates and the executive budget shall be supported by line items showing how the total amount of such unit is determined.

f. The departmental estimates shall be in such form and contain such further information as may be required by the mayor or by law and shall be public records which shall at all reasonable times be open to public inspection.

g. For each city agency that has local or borough service districts within community districts and boroughs, the departmental estimates and the executive budget, where practicable, shall contain a statement of proposed direct expenditures in each such service district for each requested unit of appropriation.

h. The departmental estimates and the executive expense budget shall include a contract budget prepared in accordance with the provisions of section one hundred four.

HISTORICAL NOTE

Section renumbered and amended at General Election, November 7, 1989 (formerly § 112).

Former § 112 amended by L. L. 1964, No. 24; L. L. 1975, No. 5; General Election, November 4, 1975; L. L. 1976, No. 6; L. L. 1977, No. 102; L. L. 1979, No. 6.



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NYC Charter 101

New York City Charter

CHAPTER 6 EXPENSE BUDGET

§ 101. **Preliminary expense budget.**

The preliminary expense budget shall contain proposed expenditures and a forecast of revenues for the ensuing fiscal year, including, for each tax revenue source which represents five percent or more of the total forecast of tax revenues, a detailed statement of the methodology and assumptions used to determine the forecast of revenues estimated to be received from such source in sufficient detail to facilitate official and public understanding of the manner in which such forecasts are made, shall indicate proposed units of appropriations for personal service and for other than personal service, shall include a financial plan for the city for the four ensuing fiscal years (of which the first year is the year for which such preliminary expense budget is being prepared), consistent with section two hundred fifty-eight, with the amounts estimated to be available for discretionary increases, as defined in section one hundred two, in such years, shall include the departmental estimates of agency expenditures for the ensuing fiscal year pursuant to section one hundred together with proposed sources of revenue for each unit of appropriation specified therein and shall present a plan to ensure balance between the expense and revenue budgets during the ensuing fiscal year.

HISTORICAL NOTE

Added by L. L. 1979, No. 6.

Amended by L. L. 1981, No. 29.

Section renumbered and amended at General Election, November 7, 1989

(formerly § 112-a).

Section amended at General Election November 8, 2005. Ballot Question 4 § 3, eff. Nov. 8, 2005 as per Charter § 1152(j)(2). [See Charter § 258 Note 1]

CASE NOTES

¶ 1. The Court denied a petition for an order directing the Commissioner of Health to include in the budget of the Department of Health funds for mosquito control.-Matter of Modugno, 11 Misc. 2d 1022, 173 N. Y. S. 2d 729 [1958].



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NYC Charter 102

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CHAPTER 6 EXPENSE BUDGET

§ 102. **Expense budget borough allocations.**

a. Definition. The term "discretionary increases" as used in this section shall mean an amount equal to the total amount of general fund expenditures of city funds and state and federal funds over which the city has substantial discretion proposed to be made in the ensuing fiscal year for all purposes other than debt service minus the sum of the following items as certified by the mayor, including related fringe benefits:

(1) all such proposed expenditures which are necessary to continue to operate current programs and provide current services at the levels at which they were authorized to be operated or provided, pursuant to the expense budget for the current year as adopted in accordance with section two hundred fifty-four and two hundred fifty-five or at levels not exceeding such levels;

(2) all proposed increases in such expenditures for current programs or services which are projected to be necessary to accommodate projected increases in the caseload of current programs or to accommodate a portion of such projected increases;

(3) all proposed increases in such expenditures for current programs or services which are projected to be necessary as a result of federal, state or local laws or judicial decisions which require increases in benefit levels, service levels, or similar matters;

(4) all proposed increases in such expenditures for new programs or new services required by federal, state or local law to be initiated during the ensuing fiscal year; and

(5) all proposed expenditures, in excess of the expenditures specified in paragraph one of this subdivision, which are necessary to continue to operate current programs and provide current services at the levels at which they are currently authorized to be operated or provided pursuant to the expense budget for the current year as modified in

accordance with section one hundred seven, excluding the portion of such excess which is attributable to budget modifications adopted in accordance with such section which were not necessary to (i) continue to operate programs and provide services at the level at which they were authorized in the expense budget for the current year as initially adopted, (ii) accommodate actual but unanticipated caseload increases in such programs, or (iii) accommodate actual but unanticipated increases in spending of the types referred to in paragraphs three and four of this subdivision, and excluding that portion of any expenditure increase which was financed by a decrease in any appropriations originally included in the executive expense budget for the current year to pay for a discretionary increase.

b. Borough allocation. Five percent of the total amount of the discretionary increases which the mayor includes in the executive expense budget for the ensuing fiscal year shall be allocated among the boroughs by a formula based on factors related to population and need and shall be known as the expense budget borough allocation. Such formula shall be established by local law, but in any fiscal year for which no such local law is effective, such expense budget borough allocation shall be allocated among the boroughs on the basis of the average of (i) each borough's share of the total population of the city, (ii) each borough's share of the total population of the city below one hundred twenty-five percent of the poverty level, and (iii) each borough's share of the total land area of the city. Such a borough allocation shall be reduced by any amounts necessary, in excess of the amounts available pursuant to section one hundred two-a, to pay for the operating costs, as certified in accordance with the provisions of subparagraph a of paragraph one of subdivision c of section two hundred eleven, of capital project constructed with funds recommended for appropriation by the borough president in accordance with the provisions of section two hundred eleven.

c. Preliminary borough allocations; initial borough president notification. Concomitantly with the submission of the preliminary expense budget, the mayor shall inform each borough president of the portion of the executive expense budget for the ensuing fiscal year and for the three subsequent fiscal years that, pursuant to the formula required by subdivision b of this section, would be allocated to each borough if the amount of the discretionary increases for the ensuing fiscal year and for the three subsequent years were the same as the amounts projected by the mayor, in accordance with section one hundred one, to be available for such purposes in such years. The amount of such portion shall be known as the preliminary expense budget borough allocation.

d. Borough president proposals. Each borough president, during the consultations required by section two hundred forty-four, shall submit to the mayor, in such form as the mayor shall prescribe, proposed appropriations for the expense budget not exceeding such borough's allocation of the expense budget borough allocation as certified by the mayor to the borough presidents during such consultations. The timing of such certification shall allow sufficient time for such consultations and for meeting the deadlines established by section two hundred forty-nine. The mayor shall include such proposed appropriations without modification in the executive expense budget in accordance with the provisions of subdivision two of section one hundred three; provided, however, that the mayor may also include such comments and recommendations relating to such proposed appropriations as the mayor may deem proper.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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NYC Charter 102-a

New York City Charter

CHAPTER 6 EXPENSE BUDGET

§ 102-a. **Capital budget borough allocation expense budget contingencies.**

An amount equal to nine tenths of one percent of the cost of capital projects constructed with funds recommended for appropriation in accordance with the provisions of section two hundred eleven, shall be available to provide for the expense budget requirements of such capital projects.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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NYC Charter 103

New York City Charter

CHAPTER 6 EXPENSE BUDGET

§ 103. **Contents of the executive expense budget.**

a. There shall be included in the budget:

1. Units of appropriation, prepared according to section one hundred, in such amounts and upon such terms and conditions as may be determined by the mayor. Such appropriations shall include:

(a) The amounts required by law to be appropriated to the several sinking funds as certified by the comptroller.

(b) The amount required to pay the interest and principal of city obligations as certified by the comptroller.

(c) An amount, as certified by the comptroller, equal to the average of all expenditures during each of the five preceding fiscal years for the payment of the expense of the removal of snow and ice, exclusive of salaries and wages of regular employees of the city except for overtime work and for work on Sundays and holidays, and exclusive of the purchase of equipment.

(d) The several amounts which are payable from sources other than the real estate tax levy, provided however that amounts appropriated pursuant to chapter nine of this chapter which are allocable to a particular program, purpose, activity or institution, shall be included for informational purposes only.

(e) Such other amounts as may be required by law.

(f) Such amounts as shall be determined in the manner provided in this chapter to be necessary to pay the expenses of conducting the business of the city for the ensuing fiscal year and for other lawful public purposes.

(g) A reserve for unanticipated contingencies.

2. The proposed appropriations submitted by the borough presidents in accordance with section one hundred two.

3. An identification of the proposed appropriations, being proposed, by agency and project type and, within project type, by personal service and other than personal service, for the maintenance of all major portions of the capital plant, as such terms are defined in subdivision a of section eleven hundred ten-a.

4. The terms and conditions under which appropriations shall be administered.

b. All such units of appropriation and other amounts shall be set forth without deduction of revenues from any source except as otherwise provided by law.

HISTORICAL NOTE

Section renumbered and amended at General Election, November 7, 1989 (formerly § 117 subd. a).

Former § 117 amended by L. L. 1961, No. 93; L. 1962, ch. 998 §§ 10-12; General Election, November 4, 1975; L. L. 1977, No. 102; General Election, November 8, 1988.

NOTE

Provisions of L.L. 52/1995 eff. June 27, 1995 and retroactive to

Apr. 26, 1995

Section 1. Notwithstanding any inconsistent provisions of paragraph (c) of subdivision 1 of section 103 of the New York City Charter, as redesignated and amended by vote of the electors of such city at a general election held on November 7, 1989, in any year in which the expense of the removal of snow and ice for fiscal year 1994 would pursuant to such paragraph be included in the expenditures used to determine the minimum amount to be certified in accordance with such paragraph, such expense for fiscal year 1994 shall be excluded from such expenditures and such minimum amount to be certified shall instead be the average of all such expenditures during the remaining four of the five preceding fiscal years.

§ 2. This local law shall take effect immediately and shall be deemed to be in full force and effect as of the twenty-sixth day of April nineteen hundred ninety-five.

CASE NOTES TO FORMER § 117

¶ 1. Absence of a statutory appropriation for employment of outside stenographers did not preclude recovery by plaintiffs from City of New York of the agreed price and reasonable value of stenographic services furnished by plaintiffs during course of investigations conducted by the Council to determine the qualifications and election of three members of the Council.-Chambers v. City of N. Y., 286 N. Y. 308 [1941], aff'g 261 App. Div. 807, 24 N. Y. S. 2d 1021, [1941], which aff'd, 173 Misc. 769, 19 N. Y. S. 2d 79 [1940].

¶ 2. In the exercise of its powers and the performance of its duties under former § 30 (now § 31) of the Charter, in order that the Council may be properly organized and may properly conduct its meetings as a department of government, the Council may create a liability of the City for expenses reasonably necessary.-Id.

¶ 3. A stenographer engaged by a special committee of the City Council to report the proceedings of the committee in its investigation of the local handling of emergency unemployment relief was entitled to recover from the city for the value of his services notwithstanding the failure of the board of estimate to make an appropriation for the necessary expenses of the committee. The City Council does not act as a departmental agency of the City when it exercises its legislative power by way of an investigation and hence former § 891 (now § 1111) which prohibits an

agency from incurring a liability in excess of the amount appropriated therefor is not applicable.-*Smith v. City of N. Y.*, 289 N. Y. 517, 47 N. E. 2d 35 [1943].

¶ 4. An attorney could recover compensation from the City for services rendered as counsel to a special committee of the City Council appointed to make an investigation pursuant to former § 43 (now § 41) even though the Board of Estimate did not make an appropriation therefor.-*Ellis v. City of N. Y.*, 180 Misc. 968, 46 N. Y. S. 2d 363 [1943], *aff'd*, 267 App. Div. 810, 47 N. Y. S. 2d 96 [1944], *aff'd*, 295 N. Y. 780, 66 N. E. 2d 297 [1946].

¶ 5. The maximum amount of budget notes which can legally be issued and sold by the City of New York to finance pay increases proposed to be granted to employees of the Board of Transportation, held governed by Local Finance Law § 29, subd. c2, which contains no limitation as to amount, and not by subd. a2, which does impose a limitation. The wage increases planned by the Board of Transportation were "claims" within meaning of § 29, subd. c2, and former § 117 of the N. Y. C. Charter.-*Wilmerding v. O'Dwyer*, 272 App. Div. 35, 69 N. Y. S. 2d 90 [1947], reversed on ground that issues were moot 297 N. Y. 664, 76 N. E. 2d 325 [1947].

¶ 6. Former § 117, subd. 5(a), providing for the inclusion in the budget of items for payment of claims, judgments, etc., continues in force and remains unaffected by enactment of the Local Finance Law, and clearly indicates a requirement that the annual budget for the City include an appropriation based on a five year average that would represent the sums necessary to meet expenditures for payment of claims, judgments, etc.-*Id.*

¶ 7. The failure of the city to make a budget appropriation for the publication of notices required by statute was not a defense to a newspaper publisher's claim for reimbursement. However, the publisher could not recover where the publication was commenced in 1938 at a time when the Charter restricted publication to the City Record.-*Brooklyn Citizen v. City of N. Y.*, 258 App. Div. 657, 17 N. Y. S. 2d 765 [1940].

¶ 8. Perusal of the sections of the Charter relating to the preparation of the City Budget read in the light of the statutory purposes to be served, discloses the intention of the drafters to have the Charter provide a comprehensive scheme for subitemization of budgetary code items through supporting schedules so as to (1) permit a comparison of items with similar appropriations for preceding years, (2) facilitate public hearings and discussion concerning the necessity for the proposed items of expenditure, and (3) enable the City Council to examine the budget as proposed and determine which items are proper and necessary. Accordingly, the itemization should be sufficiently explicit to disclose with reasonable clarity the purposes for which the money is proposed to be expended.-*Wilmerding v. La Guardia*, 268 App. Div. 496, 52 N. Y. S. 2d 169 [1944].

¶ 9. Supporting line schedules for code item designated "Unallocated Appropriations", setting forth an appropriation of \$3,500,000 for "motor vehicles, equipment, repair parts, special machinery, unforeseen expenditures and sundry expenses", was objectionable. As respects the first stated purpose of the purchase of motor vehicles, equipment, repair parts and special machinery, the lumping of such items without any separation of the amounts sought for each would not seem to comply with requirements of the Charter for items supported by line schedules and even if separately stated, it would seem that such items were required under former § 120 to be made to the Department of Purchase, and segregated in the name of the institution or agency for which the moneys were intended. The second purpose of the appropriation, for "unforeseen expenditures and sundry expenses", which would appear to permit the use of the whole sum of \$3,500,000 for such purpose, would seem objectionable, as there was no statement concerning the nature of the emergency, or other attempted limitation as to the purpose for which the money might be expended, and it afforded no reasonable opportunity for comparison with prior budgets, or criticism at public hearing, or for consideration by the City Council. Although an appropriation for increased compensation, or "cost of living bonuses," for city firemen, for which purpose \$3,000,000 of such sum was actually used, would no doubt be a proper municipal expenditure, concealment of such a proposed expenditure by calling it "unforeseen expenditures and sundry expenses" would be the sort of practice that itemized budget making seeks to prevent. Furthermore, statements contained in the Mayor's message or matters disclosed by subsequent resolution could not be considered in determining the sufficiency of the complaint of a taxpayer who attacked the legality of appropriations in the City budget.-*Id.*

¶ 10. The legality of a proposed appropriation would appear to be an official act such as to impair the public interests or calculated to work public injury, and would threaten waste through the dissipation of public funds in a manner not authorized by law. Accordingly, a taxpayer's complaint attacking the legality of certain appropriations in the budget was sufficient without an allegation of facts showing waste, and mere allegations of illegality without specifying waste, were sufficient.-*Wilmerding v. La Guardia*, 268 App. Div. 496, 52 N. Y. S. 2d 169 [1944], *aff'g*, 183 Misc. 142, 50 N. Y. S. 2d 292 [1944].

¶ 11. Provision for a cost of living bonus for certain city firemen was not an unforeseen contingency, except as to amount, and therefore there should have been a reference to it in the budgetary items.-*Wilmerding v. La Guardia*, 184 Misc. 607, 54 N. Y. S. 2d 531 [1945].

¶ 12. Although there should have been a reference to the cost of living bonus in the budgetary items, no injunction would be granted against the use for such bonus of a sum appropriated for unforeseen expenditures and sundry expenses, as it would be detrimental to the municipality to require that such bonus be financed by tax notes, and it might lead to unnecessary complications if payment were ordered to be made for existing surplus appropriations. However, an injunction would issue against the use of the balance of the appropriation for unforeseen expenditures and sundry expenses, and this balance would be ordered to go into the tax deficiency account.-*Id.*



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NYC Charter 104

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CHAPTER 6 EXPENSE BUDGET

§ 104. **Contract budget.**

a. Each contract budget shall set forth by agency each major category of contractual services and each multiple purpose category of contractual services for which appropriations are being proposed.

b. Each agency head for the departmental estimates, the mayor for the executive budget, and the council for the adopted budget by a resolution adopted with the budget, shall certify that each major category of contractual services is presented as such and that no multiple purpose category contains a major category of contractual services.

c. For purposes of this section

1. the term "major category" shall mean:

(a) a programmatic category related to a major service provided by the agency or a major responsibility of the agency regardless of dollar amount; or

(b) a programmatic category related to a particular state or federal requirement; or

(c) a subcategory of those categories set forth in subparagraph a or b of this paragraph where the dollar amount constitutes a major commitment of city funds; or

(d) a category established by the council as a major category pursuant to subdivision f of this section; or

(e) a category certified by the mayor as a major category.

2. the term "multiple purpose category" shall mean:

(a) groupings of contractual services for related purposes, none of which individually constitute a major category, but which together facilitate public understanding of contractual spending provided by an agency; or

(b) a grouping of unrelated contractual services, which individually do not constitute a major category, and which are not appropriately grouped with other contractual spending of the agency.

3. the term "contractual services" shall mean technical, consultant or personal services provided to the city through contracts.

d. Major categories. Each major category of contractual services shall be accompanied by a detailed description of the programmatic objectives of the category, the number of contracts estimated to be included in the category and the proposed appropriations for that category.

e. Multiple purpose categories. All other contractual services shall be aggregated in multiple purpose categories. Each multiple purpose category shall be accompanied by the number of contracts estimated to be included in the category and the supporting schedules identifying the purposes and amounts involved in sufficient detail to allow the council to certify that the category does not contain major categories of contractual services.

f. Change of categories. The council may alter any category in the contract budget submitted by the mayor, or change any terms and conditions of it. The mayor shall provide sufficient information and technical assistance to allow the council to certify each category as a major or multiple purpose category. The mayor may disapprove any alteration by the council. The mayor's disapproval may be overridden by a two-thirds vote of all of the members of the council.

g. Adoption of contract budget. The council may increase, decrease, add or omit any amount in the contract budget as submitted by the mayor, or change any terms and conditions of the amount in that category. The mayor may disapprove any increase or addition to the amounts in the categories, or any change in any term and condition of the contract budget. The mayor's disapproval may be overridden by a two-thirds vote of all of the members of the council.

h. Modification of terms and conditions. All spending for contractual services shall be in accordance with the terms and conditions of the contract budget as adopted; provided, however, that during any fiscal year the mayor shall notify the council of any proposed modification of such a term or condition. Within thirty days of the first stated meeting of the council following the receipt of such notice, the council may disapprove the proposed notification.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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NYC Charter 105

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CHAPTER 6 EXPENSE BUDGET

§ 105. **Appropriations for goods, services or construction.**

Appropriations for the procurement of goods or services or the provision of services, utilities, or facilities by the department of citywide administrative services for other agencies and institutions in accordance with the authority of the department of citywide administrative services under the provisions of this charter shall be made to the department of citywide administrative services but shall be segregated under the name of the agency or institution for which they are intended and shall be considered and accounted for as appropriated for such agency or institution. Nothing herein contained shall prevent the designation of part of such appropriations as a general stores account or under other appropriate designation to enable the department of citywide administrative services to maintain a stock in anticipation of requirements or to provide services, utilities or facilities for joint use by more than one agency or institution.

HISTORICAL NOTE

Amended by L. L. 1962, ch. 998, § 13.

Amended by L. L. 1968, No. 69.

Amended by L. L. 1977, No. 102.

Section renumbered and amended at General Election, November 7, 1989 (formerly § 118).

Section amended L.L. 77/1995 § 2, eff. Nov. 23, 1995.

Section amended L.L. 59/1996 § 2, eff. Aug. 8, 1996.

CASE NOTES

¶ 1. A budget item for "unallocated appropriations-motor vehicle equipment, repair parts, special machinery, unforeseen expenditures and sundry expenses. . . . \$3,500,000" was invalid for lack of proper itemization. However, even if separately stated, the appropriations being for the purchase of supplies, were required under this section to be made to the Department of Purchase and segregated in the name of the institution or agency for which the money was intended.-*Wilmerding v. La Guardia*, 268 App. Div. 496, 52 N. Y. S. 2d 169 [1944].



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NYC Charter 106

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CHAPTER 6 EXPENSE BUDGET

§ 106. **Expense budget administration.**

a. Except as otherwise provided by law, no unit of appropriation shall be available for expenditure by any city agency until schedules fixing positions and salaries and setting forth other expenses within the units of appropriation are established pursuant to the adopted budget, the administration of which is subject to the provisions of this chapter, the civil service law, and other applicable law.

b. The mayor shall establish and may modify for each agency (1) quarterly spending allotments for each unit of appropriation and (2) aggregate position and salary limits for each unit of appropriation, which shall be made available for public review upon adequate notice. No agency shall expend any sum in excess of such quarterly spending allotments, or exceed aggregate position and salary limits. The mayor may set aside specified sums as necessary reserves which shall not be included in the quarterly spending allotments until released by the mayor. Each agency shall administer all monies appropriated or available for programs and purposes of the agency in accordance with quarterly allotment plans proposed by the agency and approved or modified by the mayor. Each such plan shall set forth by units of appropriation for the quarter of the fiscal year during which it is to remain in effect: (1) rates of expenditures for personal services and other than personal services; (2) ceilings on the total number of uniformed, civilian and pedagogical employees; and (3) the total amount of funds to be spent or committed by the agency during such quarter.

c. The mayor shall keep informed, during the course of each fiscal year, of the progress of expenditures and the receipt of revenues, and it shall be the duty of all agencies, when requested by the mayor, to supply all information needed for this purpose.

d. The mayor may assume direct responsibility for the administration of the schedule required to be filed by the agency head pursuant to subsection a of this section when in the mayor's judgment the fiscal condition of the city so requires or when an agency (1) is expending funds in excess of the quarterly spending allotments or (2) is otherwise not complying with spending allotments or aggregate position and salary limits or (3) is not maintaining adequate accounts

pursuant to requirements of this charter.

e. Whenever the mayor determines, pursuant to the provisions of this charter or other relevant statutes, that the full amount of any appropriation should not be available for expenditure during the fiscal year, the mayor shall notify the council of such determination and the implications and consequences of those impoundments for service levels and programmatic goals affected. The mayor shall respond in writing to a request by the council for an explanation of why an appropriation should not be expended.

f. 1. Within thirty days of the adoption of the executive expense budget, the head of each agency responsible for one or more of the services listed in paragraph four of this subdivision shall submit to each borough president, a plan for the allocation within the borough of the personnel and resources appropriated for each such service in the borough.

2. Within thirty days of receiving such a plan, the borough president may propose a reallocation of the personnel and resources within the borough. Such proposed reallocations shall be implemented by the agency, unless the head of the agency objects, in writing, to the borough president. If such an objection is submitted, the borough president may submit a revised reallocation proposal to the agency head which shall be implemented by the agency head provided that no such modification may increase or decrease the personnel or resources allocated to any community district for such service by more than five percent.

3. If, during the course of the fiscal year, however, a material reallocation of personnel or resources within a borough is anticipated by an agency head to be necessary for any of the services listed in subdivision four, the agency head shall consult with the borough president prior to the implementation of any such reallocation.

4. The services covered by this subdivision shall include the following services and any additional services identified for this purpose by the mayor: local parks services, street cleaning and refuse collection, housing code enforcement, highway and street maintenance and repair sewer maintenance and repair, and the maintenance of public buildings by the department of citywide administrative services.

HISTORICAL NOTE

Amended by L. L. 1962, ch. 998, § 17.

Amended by L. L. 1975, No. 5.

Amended at General Election, November 4, 1975.

Section renumbered and amended at General Election, November 7, 1989 (formerly § 123).

Subd. f par 4 amended L.L. 59/1996 § 3, eff. Aug. 8, 1996.

CASE NOTES

¶ 1. Article 78 petition seeking a judgment directing the mayor to refrain from implementing "staff-cut" order was dismissed where mayor acted within his statutory authority and did not come within the scope of section 124, when his actions did not result in a transfer of part or all of any unit of appropriation from one agency to another or establish a new unit of appropriation or transfer any unit of appropriation or change the terms and conditions of the budget.-Matter of Allen v. Lindsay, 66 Misc. 2d 705, 321 N. Y. S. 2d 740 [1971].



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NYC Charter 107

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CHAPTER 6 EXPENSE BUDGET

§ 107. **Budget modification.**

a. Subject to the quarterly spending allotments and aggregate position and salary limits established pursuant to section one hundred six, and to other applicable provisions of this charter, of the civil service law and of other law, changes in schedules, within units of appropriation, may be made by the head of each agency. Any such changes shall be reported to the mayor and the comptroller before the effective date thereof, and shall be made available for public inspection under reasonable terms and conditions.

b. The mayor during any fiscal year may transfer part or all of any unit of appropriation to another unit of appropriation, except that when any such transfer (1) shall be from one agency to another or (2) shall result in any unit of appropriation having been increased or decreased by more than five percent or fifty thousand dollars, whichever is greater, from the budget as adopted for such unit of appropriation, the mayor shall notify the council of the proposed action. Within thirty days after the first stated meeting of the council following the receipt of such notice, the council may disapprove the proposed action; provided, however, that the mayor may recommend such a transfer if it is related to an appropriation included in the budget pursuant to section one hundred two only with the concurrence of the relevant borough president; and a borough president may make such a recommendation with regard to such an appropriation if it is concurred in by the mayor and does not include a reduction in an appropriation other than one included in the budget pursuant to section one hundred two on the recommendation of such borough president. Written notice of any transfer pursuant to this subdivision shall be given to the comptroller and shall be published in the City Record as soon as possible after such transfer.

c. The provisions of this section shall not be deemed to authorize any transfer from appropriations required by law.

d. The council may during any fiscal year transfer part or all of any unit of appropriation within the council appropriation to any other council unit of appropriation for any of its programs or projects or for any other purpose,

solely by adoption of a council resolution. Each such transfer shall be published in the City Record and written notice thereof shall be given to the mayor and to the comptroller not less than ten days before the effective date thereof.

e. The procedures and required approvals pursuant to sections two hundred fifty-four, two hundred fifty-five, and two hundred fifty-six, without regard to the dates specified therein, shall be followed in the case of: (1) any proposed amendment to the budget respecting the creation of new units of appropriation, or (2) the appropriation of new revenues from any source except for revenues from federal, state or private sources in regard to the use of which the city has no discretion; provided, however, that the mayor shall give notice to the council of the receipt and proposed utilization of any such revenues, or (3) the proposed use by the city of previously unappropriated funds received from any source. Any request by the mayor respecting an amendment to the budget that involves an increase in the budget shall be accompanied by a statement of the source of current revenues or other identifiable and currently available funds required for the payment of such additional amounts.

HISTORICAL NOTE

Amended by L. 1962, ch. 998, § 18.

Amended at General Election, November 4, 1975.

Section renumbered and amended at General Election, November 7, 1989 (formerly § 124).

CASE NOTES TO FORMER § 124

¶ 1. Under former § 127 (now § 124) of the Charter, the power of the Board of Estimate to make transfer of appropriations during the fiscal year may be exercised at any time after the adoption of the budget, provided that the transfer takes effect after commencement of the fiscal year.-*Wilmerding v. La Guardia*, 184 Misc. 607, 54 N. Y. S. 2d 531 [1945]. See also 183 Misc. 142, 50 N. Y. S. 2d 292, modified in other respects, 268 App. Div. 496, 52 N. Y. S. 2d 169.

¶ 2. Provision of former § 128 of the Charter authorizing the Director of the Budget upon the request of the head of an agency and "with the approval of the Board of Estimate" to transfer during any fiscal year an appropriation or part thereof from one line to another within the same schedule provided the total appropriation for the applicable code item is not increased, requires that the Board of Estimate itself first be satisfied with each separate transfer order made by the Budget Director, and such official duty of the board to pass judgment upon actual transfers of appropriations cannot be delegated. Furthermore, the scope of former § 128 cannot be deemed to have been enlarged through administrative construction, as it would appear that former § 128 was a limitation upon the practice that had previously been made use of by the Budget Director in his handling of appropriations within codes. Hence, the Budget Director, with the concurrence of the Comptroller, might not modify the City expense budget by eliminating ten positions of battalion chief in the Fire Department and by creating therein ten additional positions in the next higher rank of deputy chief on theory he was merely making provision for additional incumbents of a position already created at the rate established therefor by the original budget.-*Broderick v. City of N. Y.*, 295 N. Y. 363, 67 N. E. 2d 737 [1946], *aff'd* 268 App. Div. 856, 50 N. Y. S. 2d 844 [1944], *aff'd*, 182 Misc. 990, 47 N. Y. S. 2d 714 [1944].

¶ 3. Local Law No. 51 of 1963 provides for the appointment of a committee to formulate a plan for off-track pari-mutuel betting. It further provides that the Mayor may transfer appropriations from one city agency to the committee. Because of the latter provision, section 124 of the Charter required the submission of the local law to referendum. Petitioner, in seeking to invalidate the referendum failed to establish that the real purpose of the local law was to obtain an expression of public opinion as to the desirability of off-track betting. The insertion into the local law of a provision permitting the transfer of appropriations was not shown to be a mere artifice. Further, the title of the local law was not misleading or invalid. It was not necessary that only a portion of the local law be submitted to referendum.-*Kupferman v. Katz*, 14 Misc. 2d 124, 245 N. Y. S. 2d 114 [1963], *aff'd*, 19 App. Div. 2d 829, 243 N. Y. S. 2d 773 [1963] *aff'd*, 13 N. Y. 2d 932, 194 N. E. 2d 47, 244 N. Y. S. 2d 217 [1963].

¶ 4. A referendum of the voters on a local law authorizing the appointment of a committee to formulate a plan for off-track betting was proper under the budgetary provisions of this section and was not enjoined.-*Matter of Young*, 41 Misc. 2d 230, 245 N. Y. S. 2d 180 [1963], *aff'd*, 19 App. Div. 2d 824, 243 N. Y. S. 2d 1014 [1963] *aff'd*, 13 N. Y. 2d 934, 194 N. E. 2d 47, 244 N. Y. S. 2d 217 [1963].

¶ 5. Court could not compel city to turn over money to Transit Authority and to restore the subway fare to 15 cents as modifications in an approved budget must be made in accordance with the procedures set forth in this section.-*Weiss v. City of N. Y.*, 52 Misc. 2d 391, 275 N. Y. S. 2d 557 [1966].

¶ 6. Mayor had power to eliminate positions of certain city employees without a public hearing since this section does not pertain to permanency of tenure during the budget year and the action did not change the terms and conditions of the budget but if anything changed the schedule of positions or salaries and this is not within the ambit of the budget.-*Matter of District Council 37, American Federation of State, County and Municipal Employees, AFL-CIO* (Lindsay), 165 (99) N. Y. L. J. (5-24-71) 2, Col. 4 F.

¶ 7. Mayor as a member of the board of estimate may vote on proposals to override budget modifications under subdivision b of this section.-*Golden v. Koch*, 49 N. Y. 2d 690, 404 N. E. 2d 1321, 427 N. Y. S. 2d 780 [1980], *aff'g*, 73, A. D. 2d 575, 423 N. Y. S. 2d 165 [1979], *reversing*, 98 Misc. 2d 972, 415 N. Y. S. 2d 331 [1979].

CASE NOTES

¶ 1. The assignment of funds within the Mayor's office to the Mollen Commission, which was established by Executive Order 42 of 1992 to investigate police corruption and procedures, is a proper intraagency transfer that is permitted under Charter § 107(a). *Kelly v. Dinkins*, 155 Misc. 2d 787 [1993].

¶ 2. The Mayor submitted two proposed budget modifications to the City Council, MN-9 pursuant to Charter § 107(b) which sets forth the procedures to reallocate funds and MN-10 pursuant to Charter § 107(e) which establishes procedures for the appropriation of new revenues. On the day the City Council was to vote on the proposals the Mayor withdrew MN-10. The Council passed both MN-9 and MN-10. The court ruled however that the budget modification withdrawal by the Mayor was timely, even though not made three days before the Council voted thereon and because MN-9 and MN-10 were submitted in conjunction with each other that the passage of MN-9 was also null and void. *NYC Council v. Giuliani*, 163 Misc. 2d 681 [1994].



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NYC Charter 108

New York City Charter

CHAPTER 6 EXPENSE BUDGET

§ 108. **[Detailed quarterly accountings.]*4**

The council shall be required to publish quarterly accountings of its actual and planned expenditures, in sufficient detail to indicate the positions and their purposes which have been funded, as well as the activities and categories of materials and supplies purchased.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

FOOTNOTES

4

[Footnote 4]: * Section heading supplied by editor.



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NYC Charter 109

New York City Charter

CHAPTER 6 EXPENSE BUDGET

§ 109. **General fund.**

All revenues of the city, of every administration, department, board, office and commission thereof, and of every borough, county and other division of government within the city, from whatsoever source except taxes on real estate, not required by law to be paid into any other fund or account shall be paid into a fund to be termed the "general fund."

HISTORICAL NOTE

Amended by L. L. 1967, No. 58.

Section renumbered and amended at General Election, November 7, 1989 (formerly § 126).

CASE NOTES

¶ 1. Difference between revenues derived from occupancy tax imposed by City of New York and amount presently necessary for housing subsidies might be used for general City purposes, and was not required to be accumulated as a reserve for housing subsidies for future use, since the State Constitution, Art. XVIII § 2 and State Housing Law § 94 specifically direct that revenues from the occupancy tax and other taxes authorized were to be deposited in the general fund of the City, under New York City Charter former § 130 (now § 126) the general fund must be employed to meet municipal expenses generally and to reduce the real estate taxes to be levied, and in view of the statutory history it would seem the word "may" as used in Public Housing Law § 94 authorizing the levy of the tax and providing that the revenues resulting "may be used for the purpose of making municipal periodic subsidies," was not construable as "must."-Wilmerding v. La Guardia, 105 (27) N. Y. L. J. (2-1-41) 504, Col 4 F.

¶ 2. A tax for the privilege of selling liquor, wine or beer at retail within the City of New York did not have to comply with § 22 of Article III of the State Constitution for the constitutional provision does not apply to local taxes.

However, even if the provision applied, it was satisfied by the requirement of this section that the tax money was to go into the City's General Fund.-*Steuben Restaurants, Inc. v. City of New York*, 202 Misc. 22, 114 N. Y. S. 2d 753 [1952].



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NYC Charter 110

New York City Charter

CHAPTER 6 EXPENSE BUDGET

§ 110. **Expenditure reports.**

Any public or private agency, authority, corporation, board or commission which receives city funds and is not otherwise subject to the requirements of section one hundred six of this chapter shall submit quarterly reports of the expenditure of such funds to the mayor in such form and detail as the mayor may prescribe.

HISTORICAL NOTE

Added at General Election, November 4, 1975.

Section renumbered and amended at General Election, November 7, 1989 (formerly § 130).



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NYC Charter 111

New York City Charter

CHAPTER 6 EXPENSE BUDGET

§ 111. **Self-dealing among members of the governing boards of charitable institutions.**

a. Any charitable institution which receives any payment from the New York city charitable institutions budget shall pass and implement by-laws which will:

1. Require disclosure to the agency responsible for the administration of charitable institutions budget and approval by such agency of the material terms of any contract or transaction, direct or indirect, between an institution and any member of its governing board, any partnership of which he or she is a member or any corporation in which he or she holds ten per cent or more of the outstanding common stock.

2. Preclude any member of the governing board of any institution from sharing, participating or benefiting, directly or indirectly, in the proceeds from any contract or transaction entered into between the institution and any third party unless such participation or benefit has been approved in advance by the agency and the governing board of the institution has approved the transaction by a two-thirds majority excluding the vote of member to be benefited.

3. Require each member of its governing board to submit to the agency each year a disclosure statement including such member's name, home address, principal occupation and business interests from which such member or such member's spouse or domestic partner received income equal to or greater than ten per cent of their aggregate gross income during the previous year.

b. At the discretion of the agency, any payment or any portion of any payment may be withheld from any institution which has failed to pass and implement such by-laws.

HISTORICAL NOTE

Section added at General Election, November 8, 1988 (formerly § 2608).

Section renumbered at General Election, November 7, 1989 (formerly § 131).

Subd. a par 3 amended L.L. 27/1998 § 4, eff. Sept. 5, 1998.

CASE NOTES

¶ 1. This section is no defense to an Article 78 proceeding to annul a determination that rent moneys be returned to city where petitioner, which provided child care services, was reimbursed by the city for the rent it paid for its premises when one of the partners who owned the property to which the petitioner paid rent was also a member of the petitioner's board of directors.-Matter of Obel Children's Home (City of New York), 180 (48) N. Y. L. J. (9-8-78) 6, Col. 5 M.



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NYC Charter 150

New York City Charter

CHAPTER 7 TAX APPEALS*5

§ 150. **Office of administrative tax appeals.**

There shall be an office of administrative tax appeals, which shall consist of the tax commission established by section one hundred fifty-three of this charter and the tax appeals tribunal established by section one hundred sixty-eight of this charter and shall provide staff and administrative assistance to such commission and such tribunal. The office of administrative tax appeals shall operate pursuant to a written agreement between the president of the tax commission and the president of the tax appeals tribunal, and shall be headed by a director appointed in accordance with such agreement. Such director may be the president of the tax commission or the president of the tax appeals tribunal or both. If there is no such agreement, such office shall provide staff and administrative assistance to such commission and such tribunal in accordance with the respective powers of such presidents.

HISTORICAL NOTE

Section added L.L. 59/2007 § 1, eff. Jan. 20, 2008. [See Note 1]

NOTE

1. Provisions of L.L. L.L. 59/2007:

§ 7. Whenever pursuant to any provision of this local law functions, powers or duties are transferred from the tax commission or tax appeals tribunal to the office of administrative tax appeals, such functions, powers or duties shall be continued by the office of administrative tax appeals and such office shall have power to continue any business, proceeding or other matter involving such transferred functions, powers or duties.

§ 8. The records, property and equipment of the tax commission and tax appeals tribunal shall be transferred and delivered to the office of administrative tax appeals consistent with the transfer of any functions, powers and duties

from the tax commission and tax appeals tribunal to the office of administrative tax appeals.

§ 9. No existing right or remedy of any character shall be lost, impaired or affected by reason of the adoption of this local law.

§ 10. No action or proceeding, civil or criminal, pending at the time when this local law shall take effect, brought by or against the city or any agency or officer, shall be affected or abated by the adoption of this local law or by anything herein contained.

§ 11. Whenever pursuant to any provision of this local law functions, powers or duties are assigned to the office of administrative tax appeals that were exercised by any employee of the tax commission or tax appeals tribunal or any officer thereof, all such employees in the classified city civil service who were engaged in the performance of such function, powers or duties shall be transferred to the office of administrative tax appeals, without examination and without affecting existing compensation or pension or retirement rights, privileges or obligations of such officers and employees.

§ 12. This local law shall take effect January 20, 2008, or as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to this local law and subdivision 2 of section 70 of the civil service law; provided, however, that any or all actions necessary to effectuate such transfer may be taken prior to such effective date.

FOOTNOTES

5

[Footnote 5]: * Title heading amended at General Election, November 8, 1988.



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NYC Charter 153

New York City Charter

CHAPTER 7 TAX APPEALS*5

§ 153. **Tax commission.**

a. There shall be within the office of administrative tax appeals a tax commission to consist of the president and six commissioners who shall be appointed by the mayor for a term of six years, except the term of two commissioners first appointed pursuant to this section shall be two years, the term of the president and two additional commissioners shall be four years and the term of the remaining two commissioners shall be six years. Each commissioner shall have at least three years business experience in the field of real estate or real estate law. At least one resident of each borough shall be included among the commissioners.

b. The tax commission shall be charged with the duty of reviewing and correcting all assessments of real property made pursuant to the provisions of section fifteen hundred six.

HISTORICAL NOTE

Amended by L. L. 1973, No. 26.

Amended by L. L. 1984, No. 76.

Subd. a amended L.L. 59/2007 § 2, eff. Jan. 20, 2008. [See § 150 Note 1]

CASE NOTES

¶ 1. The Tax Commission does not have co-ordinate authority with the Industrial and Commercial Incentive Board to determine whether construction has been completed for purposes of project eligibility for a two-stage decreasing tax exemption for certain commercial construction.-Park Tower Associates v. City of N. Y., 116 Misc. 2d 1059 [1982].

FOOTNOTES

5

[Footnote 5]: * Title heading amended at General Election, November 8, 1988.



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NYC Charter 154

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CHAPTER 7 TAX APPEALS*5

§ 154. **Administrative powers of commissioners.**

Any commissioner shall exercise such other powers and duties as the president may from time to time assign to him.

FOOTNOTES

5

[Footnote 5]: * Title heading amended at General Election, November 8, 1988.



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CHAPTER 7 TAX APPEALS*5

§ 155. **Annual report.**

a. The tax commission shall issue an annual report to the city council and the mayor not later than the first day of March in each year. Such report shall include the following information compiled for the previous calendar year:

- (1) the number of applications for correction filed with the tax commission;
- (2) the total actual assessed valuation of all applications for correction filed with the tax commission;
- (3) the total number of hearings conducted on applications for correction;
- (4) the total number of applications for which a reduction or remittance was offered by the commission and accepted;
- (5) the total actual assessed valuation of the reductions and remittances offered by the commission and accepted;
- (6) the number of accepted offers of reduction in assessed valuation that amounted to (i) less than \$50,000, (ii) \$50,000 to \$249,999 and (iii) \$250,000 or more; and
- (7) any planned or implemented improvements or modifications in the manner in which the tax commission operates, including, but not limited to, hearing practices and procedures, record-keeping, fact-finding and information-gathering procedures, supervision and staff productivity and efficiency measures.

b. The foregoing information shall be classified, wherever applicable, according to real property class designation.

HISTORICAL NOTE

Section added L.L. 7/1992 § 1, eff. Apr. 1, 1992.

FOOTNOTES

5

[Footnote 5]: * Title heading amended at General Election, November 8, 1988.



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New York City Charter

CHAPTER 7 TAX APPEALS*5

§ 156. **Right of entry.**

The president or any commissioner may enter upon real property and into buildings and structures at all reasonable times to ascertain the character of the property. Refusal by the owner or his agent to permit such entry shall be triable by a judge of the criminal court and punishable by not more than thirty days' imprisonment, or by a fine of not more than fifty dollars, or both.

HISTORICAL NOTE

Amended by L. L. 1968, No. 10.

Amended by L. L. 1977, No. 102.

FOOTNOTES

5

[Footnote 5]: * Title heading amended at General Election, November 8, 1988.



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New York City Charter

CHAPTER 7 TAX APPEALS*5

§ 163. **Application for correction of assessment for taxation.**

a. When used in this chapter:

1. "Class designation" shall mean the determination, pursuant to section eighteen hundred two of the real property tax law, of whether real property is included in class one, two, three or four.

2. "Excessive assessment" or an assessment which is excessive shall mean and include:

(a) an entry on an assessment roll of the assessed valuation or real property which exceeds the full value of real property; or

(b) an entry on an assessment roll of the taxable assessed valuation of real property which is excessive because the real property failed to receive all or a portion of a partial exemption to which the property or owner thereof is entitled pursuant to the law authorizing the partial exemption; or

(c) an entry on an assessment roll of an assessed valuation for real property which is excessive because of a failure to comply with the limitations on increases in assessed value set forth in section eighteen hundred five of the real property tax law.

3. "Misclassification" or real property which is misclassified shall mean and include:

(a) an entry on an assessment roll of an incorrect class designation; or

(b) an entry on an assessment roll of a class designation which results in an incorrect allocation of a parcel's assessed valuation between two or more classes.

4. "Unequal assessment" or an assessment which is unequal shall mean and include an entry on an assessment roll of the assessed valuation of real property which is made at a higher proportionate valuation than the assessed valuation of other real property in the same class on the same roll by the same officer.

5. "Unlawful assessment" or an assessment which is unlawful shall mean and include:

(a) an entry on the taxable portion of an assessment roll of the assessed value of real property which, except for the provisions of section four hundred ninety of the Real Property Tax Law, is wholly exempt from taxation; or

(b) an entry on an assessment roll of the assessed value of real property which is entirely outside the boundaries of the city of New York; or

(c) an entry on an assessment roll of the assessed value of real property which cannot be identified from the assessment roll description or tax map land parcel number on the assessment roll; or

(d) an entry of the assessed value of real property on an assessment roll which has been made by a person or body without authority to make such entry.

b. During the time that the books of annual records of the assessed valuation of real estate are open for public inspection, any person or corporation claiming to be aggrieved by the assessed valuation of real estate may apply for correction of such assessment. Such application shall be duly verified by a person having personal knowledge of the facts stated therein, provided that if the application is signed by someone other than the person or an officer of the corporation claiming to be aggrieved, the application must be accompanied by a duly executed power of attorney as prescribed by the rules and regulations of the tax commission.

c. The grounds for review of an assessment shall be that the assessment complained of is excessive, unequal, or unlawful, or that the real property is misclassified.

d. The application with respect to an assessment shall be on a form prescribed by the tax commission and shall contain a statement specifying the respect in which the assessment is excessive, unequal, or unlawful, or the respect in which the real property is misclassified, and the reduction in assessed valuation or taxable assessed valuation or change in class designation or allocation of assessed valuation sought.

e. Except in the case of a multiple or other dwelling which is occupied or is to be occupied exclusively by fewer than seven families, all income received or accrued and all expenses paid or incurred in the operation of the property, to be reported as follows:

(a) if the applicant's books and records reflecting the operation of the property are maintained on a calendar year basis, and the applicant operated the property or has knowledge of the income and expenses of said operation for a period of operation of at least two calendar years preceding the first day of January of the year of the application, the income and expense figures for the second calendar year preceding the date of the application shall be filed with the application;

(b) if the applicant's books and records reflecting the operation of the property are maintained on a calendar year basis, and the applicant has operated the property or has knowledge of the income and expenses of such operation for a period of less than two calendar years but at least six months of the calendar year immediately preceding the date of the application, the income and expense figures, related to the time during which the applicant operated the property or had knowledge of the income and expenses of the operation in the calendar year immediately preceding the date of the application, shall be filed either with the application or prior to the twenty-fifth day of March in the year of the application;

(c) if the applicant's books and records reflecting the operation of the property are maintained on a fiscal year

basis for federal income tax purposes and such fiscal year ended at least six months prior to the date of the application, and the applicant has operated the property for at least one year and six months prior to the date of the application or has knowledge of the income and expenses of the property for a period of at least one year and six months prior to the date of the application, the income and expense figures of the operation of the property for the last complete fiscal year preceding the date of the application shall be filed with the application;

(d) if the books and records reflecting the operation of the property are maintained on a fiscal year basis for federal income tax purposes and either such fiscal year ended less than six months prior to the date of the application, or the applicant has not operated the property or has no knowledge of the income and expenses of such operation for the last entire fiscal year which ended at least six months prior to the date of the application, income and expense figures shall be filed, either with the application or prior to the twenty-fifth day of March in the year of the application, reflecting the period of the applicant's operation or knowledge of the operation of the property during the fiscal year preceding the date of the application, provided such period encompassed at least six months and further provided however, such fiscal year ends prior to the taxable status date under review;

(e) if the applicant has not operated the property for at least six months of the calendar year preceding the date of the application and is without knowledge of the income and expenses of operation, it shall state such facts under oath in lieu of filing an income and expense statement.

f. The filing of an application in the manner and form hereinabove described shall be prerequisite to the review of a final determination of the tax commission as provided in section one hundred sixty-six. Such application, in the case of real property indicated on a tax map by a parcel number, shall be filed in the office of the tax commission in the borough in which such real property is situated and in the case of real property indicated by an identification number, it shall be filed in the main office of the tax commission. Employees of the commission assigned by the president for the purpose of receiving such applications are thereby authorized to administer oaths between the fifteenth day of January and the first day of March.

HISTORICAL NOTE

Amended by L. 1964, ch. 714.

Amended by L. L. 1968, No. 10.

Amended by L. L. 1984, No. 77.

Section heading amended at General Election, November 7, 1989.

CASE NOTES

¶ 1. A paper sworn to in another state is not verified when it is merely sworn to before a notary public (C. P. A. § 359). It must have a certificate of authentication attached to it, and the absence thereof was jurisdictional and might not be waived, and the Court might not direct that the paper be returned to realtor for purpose of supplying a jurisdictional defect (5 N. Y. Civil Pro. R. 376).-People (Thompson) v. Miller, 105 (15) N. Y. L. J. (1-18-41) 288, Col. 3 F.

¶ 2. Application for reduction of assessment which was signed and verified in Ohio but failed to have attached thereto an authenticating certificate to the signature of the notary public, **held** not ineffective, since proof of due authentication might be furnished at any time.-People (Rudolph Wurlitzer Co.) v. Miller, 106 (81) N. Y. L. J. (10-4-41) 897, Col. 6 M.

¶ 3. Technicality of notary public's name appearing on the line where owner's name should be did not deprive taxpayer of his right to review.-Genia Realty Corp. v. Boyland, 133 (55) N. Y. L. J. (3-21-55) 7, Col. 6 F.

¶ 4. A consolidation of the two lots for assessment purposes did not change the character and status of the real estate even though the value may have been increased as the result of consolidation, and consequently no protest was necessary as a condition to maintenance of a certiorari proceeding to review the assessment.-People (Karlopat Realty Corp.) v. Sexton, 106 (144) N. Y. L. J. (12-22-41) 2084, Col. 2 M.

¶ 5. Where applications for exemption were filed but no applications for correction of the assessments on the parcels were ever filed with the Tax Department, the Court was without jurisdiction of certiorari proceeding to review the assessments.-People (McElroy) v. Miller, 105 (101) N. Y. L. J. (5-1-41) 1938, Col. 5 M.

¶ 6. Court, in a certiorari proceeding to review tax assessments, could not amend the application for correction so as to decrease the value as stated in the application, since the commissioners had relied upon such statement when reviewing the assessments.-People (125 East 57th St. Corp.) v. Miller, 104 (139) N. Y. L. J. (12-16-40) 2059, Col. 5 T.

¶ 7. Where following the assessment in question the then owner of the property contracted for and sold the property pursuant to a bargain and sale deed which contained the customary clause "together with the appurtenances and all the estate and rights of the party of the first part in and to said premises," the former owner of the premises thereby divested himself of title and was no longer a party aggrieved entitled to bring a certiorari proceeding (264 App. Div. 262). However, the new owner, who had instituted a certiorari proceeding within the proper period, was a party aggrieved, inasmuch as it had succeeded to all the rights of the former owner, and with the obligation to pay taxes thereafter accruing was the corresponding right to challenge those taxes (85 N. Y. 536; &c.).-People (Jamaica Sav. Bank) v. Lilly, 108 (30) N. Y. L. J. (8-5-42) 280, Col. 4 T.

¶ 8. Where on February 16 C contracted to sell to realtor a portion of a large plot owned by it, C advised the Tax Department thereof but such Department did not apportion the tax lot until October 3, the only protest filed against the tax assessment was that of C, which confined its objection to valuations of the improvements on the portion of the tax lot not included in the sale made to realtor, and the assessment was reduced on C's application, a writ subsequently obtained by realtor to review the assessment on its property **held** to have been without authority.-Ginstling v. Lilly, 121 (114) N. Y. L. J. (6-13-49) 2096, Col. 6 M.

¶ 9. Tenant who occupied the premises under a long term lease which provided that the tenant should pay the taxes, was a person aggrieved by the assessment and might bring a certiorari tax proceeding to review it.-Irish Government v. Boyland, 127 (119) N. Y. L. J. (6-19-52) 2433, Col. 1 T.

¶ 10. Contention that since the property was exempted from taxation at least until November 10, 1952, when petitioner acquired title thereto, the then owner of the property was in no position to protest the valuation as made and therefore failure to file the protest should not foreclose petitioners from now questioning the correctness of the assessment, was rejected, as the pecuniary rights of an owner of tax exempt property are definitely concerned with excessive valuations and such a person has every right as an aggrieved party to file a protest and petition to review a determination for alleged overvaluation.-Bierman v. Boyland, 125 N. Y. S. 2d 86 [1953].

¶ 11. Proceeding to review final determination of Tax Commission assessing petitioner's real property in a certain sum upon restoration of the property from the exempt rolls to the tax rolls of the City pursuant to Tax Law § 1-a, was dismissed, inasmuch as there had been a default in protesting the alleged overvaluation within the time prescribed by the Charter. Contention that the owner of the property during the time when protest should have been filed was in no position to protest because the property was exempt was rejected, as the owner of exempt property may claim to be aggrieved by reason of assessed valuation. Administrative Code § 153b-2.0 was not designed to afford relief in the courts to those who fail to comply with the applicable provisions of the Charter, or to create new or additional remedies to purchasers of real property after March 15 where there was default or failure to file protest prior to that date.-Seamen's Bank for Savings v. Boyland, 125 N. Y. S. 2d 265 [1953].

¶ 12. Where the aggrieved party to an assessment was a lessee obligated by his lease to pay the taxes, the

statement of the affiant that he was an officer of the owner corporation when, in fact, he was an officer of the lessee corporation was merely a procedural defect and was not fatal to the application.-*Milhouse-Link, Inc. v. Tax Comm'rs*, 134 (120) N. Y. L. J. (12-23-55) 3, Col. 3 F.

¶ 13. Application for review of a real property tax assessment was ineffective where it was mailed on March 14 and was not received by the Tax Commission until March 16. Arguments that mailing on March 14 constituted substantial compliance with the law and that the Tax Commission, by retaining the application and signing the post-office receipt therefore waived any possible delay in filing, were unsuccessful in the Court of Appeals.-*Mayflower Realty Corp. v. Tax Comm.*, 14 N. Y. 2d 640, 198 N. E. 2d 597, 249 N. Y. S. 2d 426 [1964].

¶ 14. Motion to require respondent to accept application for correction of assessed value of real estate of petitioner and 50 taxpayers listed therein, was denied, as §§ 160 and 163 of the Charter required the applications to be filed by March 15 whereas the applications were mailed by registered mail, special delivery, on Friday, March 14, in Manhattan but were not received at the Tax Commission's office until Monday, March 17, due to the fact that the Kew Gardens Post Office Substation, where the applications were finally transmitted for delivery by the Post Office Department, is closed on Saturdays. The courts are without power to extend the short statute of limitations fixed by the Legislature for the time of filing.-*Kaye v. Boyland*, 127 (80) N. Y. L. J. (4-24-52) 1645, Col. 7 F.

¶ 15. Where no protest against the valuation had been filed by the former owner prior to March 15, 1952 and no petition to review the determination was filed prior to October 24, 1952, no challenge thereto upon the ground of overvaluation might be entertained by the Court. The proceeding for a review of real property tax assessments by the courts is statutory and must be strictly followed, and failure to timely file a protest as provided by statute foreclosed any right of review.-*Bierman v. Boyland*, 125 N. Y. S. 2d 86 [1953].

¶ 16. Application for correction of an assessment which failed to specify any objection whatsoever as to the assessment or to state the grounds for any objection, **held** fatally insufficient, requiring dismissal of the certiorari proceedings for lack of jurisdiction (N. Y. C. Charter § 163; 284 N. Y. 150; 281 N. Y. 554; &c.).-*People ex rel. 2440 Grand Concourse, Inc.) v. Miller*, 178 Misc. 1038, 37 N. Y. S. 2d 264 [1940], *aff'd* without opinion, 261 App. Div. 948, 26 N. Y. S. 2d 219 [1941].

¶ 17. Where application to Tax Commission for correction of assessed valuation was made on a blank furnished by the City, and, although the applicant failed to answer the questions as to whether the objection was based on the valuation of the land or the building, or upon inequality or illegality, he had set forth the assessed valuation and the considerably lower amount as the value he considered the fair value, and the Tax Commissioner had regarded the publication as a sufficient statement of the objection and had then overruled such objection, the City might not now be heard to object to the sufficiency of the specification of objections.-*People ex rel. MacCracken v. Miller*, 291 N. Y. 55, 50 N. E. 2d 542 [1943].

¶ 18. Application for writ of certiorari to review a tax assessment which was stated in the application valuation of both land and building, was not defective for failure to state the amount of claimed overvaluation. Mere fact that application did not comply with rule adopted by the Tax Commission directing the commissioners to take no action when the claimed value was omitted from the application, did not make the application defective, as the rules could not add to the statutory requirements. Furthermore, refusal of the commissioners to give realtor the opportunity of finding the amount of such overvaluation in an appraisal at the hearing before the commissioners, or otherwise, was arbitrary and unreasonable. Even if there was a defect, action of the commissioners in failing to allow further facts to be presented to them amounted to a waiver of any defect.-*People (Relmar Operating Corp.) v. Mills*, 65 N. Y. S. 2d 194 [1946].

¶ 19. Section 163 of the Charter does not expressly require that the applicant's opinion of the value of the property be set forth in the application for a tax reduction. Accordingly, application which stated that the objection to the assessment was based on valuation of the land and building and which set forth other facts sufficient to enable the Tax

Commission to act on the application, was not jurisdictionally defective for failure to state the fair value of the property on the taxable status date.-New York Wetpruf Corp. v. Mills, 120 (80) N. Y. L. J. (10-25-48) 903, Col. 6 M.

¶ 20. An application for correction of assessment for taxation which merely stated that the assessed valuation of realtor's property was \$1,050,000 and that realtor considered the full value of the property on the assessment date to be \$850,000, held sufficient as stating a claim that the property was overvalued to extent of \$200,000.-Weston Estates, Inc. v. Chambers, 121 (60) N. Y. L. J. (3-21-49) 1015, Col. 7 F.

¶ 21. Action of tax commissioners in granting realtor a hearing based on the application, and in thereafter reaffirming the assessment, **held** not to constitute a waiver of the defects in the application, since realtor had sought to review for overvaluation, and the basis for such action on part of the commissioners was in the application for correction, and in any event it would appear that the commissioners could not waive a statutory requirement that gave jurisdiction.-People (2440 Grand Concourse, Inc.) v. Miller, 178 Misc. 1038, 37 N. Y. S. 2d 264 [1940] *aff'd* without opinion, 261 App. Div. 948, 26 N. Y. S. 2d 219.

¶ 22. Failure to set forth a claimed value in the application for correction of the assessed value, constituted a procedural defect and not a jurisdictional one, and was waived by conduct of the Tax Commission in holding a hearing and in making a return based upon the application.-People ex rel. Irving Trust Co. v. Miller, 264 App. Div. 270, 37 N. Y. S. 2d 266 [1942].

¶ 23. Where applications by realtors to review tax assessments had been signed by an attorney-in-fact, his failure to file therewith a power of attorney as required by § 163 of the Charter, **held** to have rendered the applications so fatally defective as to deprive court of jurisdiction to entertain the proceeding to review the assessments.-Berkley v. Boyland, 205 Misc. 264, 129 N. Y. S. 2d 52 [1954].

¶ 24. Application for review of real estate assessments signed by attorney in fact was defective when not accompanied by a power of attorney.-Matter of Sulzberger v. Tax Commission of City of N. Y., 33 A. D. 2d 543, 304 N. Y. S. 2d 285 [1969].

¶ 25. An application for correction of assessment was dismissed where such application was signed by petitioner's attorney without the filing of a power of attorney.-Boyd v. Boyland, 133 (55) N. Y. L. J. (3-21-55) 7, Col. 7 M.

¶ 26. Where petitioner failed to file with his application for correction of the assessment a statement of the income received and expenses incurred in the operation of the property during the calendar year preceding the date of the application, his proceeding to review the assessment was dismissed, as the filing of a statement is a jurisdictional requirement to a review.-Casper Garber Realty v. Boyland, 131 (103) N. Y. L. J. (5-28-54) 9, Col. 2 T.

¶ 27. Local Law No. 128 of 1952, amending former § 163 of the Charter wherein all petitioners seeking to review tax assessments were required to file an income and expense statement **held** inconsistent with § 166-1.0 of the Administrative Code where, by legislative enactment, the Supreme Court acquired jurisdiction to entertain all tax proceedings upon the presentation of a petition which clearly stated the grounds of objection. Local law was invalid under the Constitution and the City Home Rule Law.-Schayes v. MacDuff, 285 App. Div. 1220, 140 N. Y. S. 2d 764 [1955].

¶ 28. A determination of the Tax Commission granting a tax exemption on real property owned by Columbia University became final on March 15th, and thereafter the Commission was without authority to change the assessment. Thus, a petition seeking to cancel the exemption on the ground that the Commission had not made a finding that Columbia University did not practice racial discrimination was dismissed where it was filed on July 19th, more than 4 months after the determination of the Commission became final.-Goldstein v. Mills, 185 Misc. 851, 57 N. Y. S. 2d 810 [1945], *aff'd*, 270 App. Div. 930, 62 N. Y. S. 2d 619 [1946].

¶ 29. Where City of New York was owner of real property, cost of sidewalk repairs charged against the property

was not assessable to new owner who purchased the real property from the City after the repairs were made.-*Miller Ave. Parking Corp. v. City of New York*, 144 (117) N. Y. L. J. (12-20-60) 11, Col. 7 M.

¶ 30. The Supreme Court would not entertain an action by a taxpayer for declaratory judgment that her assessment was illegal and void based on the contention that the assessor had not made a personal inspection, since the plaintiff's sole remedy is by a proceeding as set forth in § 166-1.0 of the Administrative Code.-*Cedzich v. The City of New York*, 19 Misc. 2d 572, 190 N. Y. S. 2d [1959].

¶ 31. The failure to set forth details of assessment in body of original petition and schedule was fatal, since the Court could not permit an amendment, as the time for filing and serving another petition had expired.-*Matter of Beekman's Estate (Boyland)*, 143 (15) N. Y. L. J. (1-2-60) 13, Col. 6 T.

¶ 32. The President of 53 civic organizations in the Borough of Queens filed a petition for review of real estate assessments in behalf of 32,000 protestees and 250,000 owners of 1- and 2-family houses in Queens. Held: the petition deals largely in generalities and irrelevancies and does not satisfy §§ 163-166 of the Charter or § 166-1.0 of the Administrative Code, which set forth specifically, the matter in which a review of an assessment may be obtained. There is no basis set forth in this petition for a review of any single assessment of the 53 parcels of the named petitioners, or the 32,000 protestees, or of the 250,000 home owners or of the many more thousands of commercial properties contained in this assessment roll.-*Matter of Lome*, 19 Misc. 2d 803, 192 N. Y. S. 2d 787 [1959]; *aff'd* 11 A. D. 2d 773, 204 N. Y. S. 2d 910 [1960].

¶ 33. Applications to review assessment of property were dismissed when signed by a person who was not the managing agent nor a partner of the owner of the property and the applications were not accompanied by a power of attorney.-*In re 1222 John Co. (Tax Comm. of City of N. Y.)*, 165 (20) N. Y. L. J. (1-29-71) 20, Col. 6 T.

¶ 34. Where the time for filing a tax protest terminated on Sunday, the taxpayer could properly file the protest on the following Monday.-*Matter of Fay*, 18 Misc. 2d 504, 187 N. Y. S. 2d 504 [1959].

¶ 35. An application for the correction of an assessment should not have been rejected on the ground that it failed to state the grounds of the objection where, although the application did not specify that the objection was made on the grounds of overvaluation it did set forth that the property was assessed in the sum of \$137,000 and did claim that the full value of the property was only \$87,000.-*Matter of Reiner*, 278 App. Div. 580, 102 N. Y. S. 2d 461 [1951].

¶ 36. Protests of assessments signed by persons other than the petitioners are jurisdictionally defective where a power of attorney has not been filed with the Tax Department.-*In re Devellier (Tax Commissioners)*, 141 (40) N. Y. L. J. (3-2-59) 13, Col. 1 M.

¶ 37. The City has no power to impose restrictions upon a taxpayer's right to a review by certiorari. A petition signed by petitioner's attorney, during the petitioner's absence in Europe, was proper, despite the lack of a power of attorney.-*MacPherson v. Boyland*, 136 (5) N. Y. L. J. (7-9-56) 4, Col. 5 M.

¶ 38. While the City may, as a prerequisite to review by its own tax officers, require a statement of income and expenses in the application, it has no authority to bar a further review by the Court. The City's application to dismiss the petition is denied.-*Matter of 749 Broadway Realty Corp. v. Boyland*, 1 A. D. 2d 819, 148 N. Y. S. 2d 741 [1955]; *aff'd* without opinion 3 N. Y. 2d 737, 163 N. Y. S. 2d 973, 143 N. E. 2d 519 [1957]. (Citation in paragraph 27 under § 163 in Vol. 1 should have been *Matter of 749 Broadway Realty Corp. v. Boyland*, 1 Misc. 2d 575, 140 N. Y. S. 2d 766 [1955].

¶ 39. Failure to file a power of attorney as required by this section is not so fatally defective as to deprive the court of jurisdiction of a proceeding to review an assessment for taxes; hence the court could permit amendment of the petition *nunc pro tunc* so as to allege that the petitioner is the duly authorized agent of the owners under a power of attorney executed by them.-*Verney v. Tax Comm. of City of New York*, 49 Misc. 2d 123, 266 N. Y. S. 2d 1006 [1965].

¶ 40. Failure to send tax bills to petitioner for article 78 proceeding to review and annul assessment of real property to review and annual assessment of real property taxes on petitioner's property for four consecutive years did not constitute a denial of the opportunity to timely challenge the assessments under the procedures afforded by this section since petitioner could have inspected the public records during these periods and hence court would not review respondent's determination.-F. W. Eversley & Co., Inc. v. Finance Adm'r., 388 N. Y. S. 2d 192 [1975].

¶ 41. Where a lessee merely pays a pro rata share of the real property taxes on the property in excess of a base tax, rather than the whole tax, that lessee lacks standing to bring a tax certiorari proceeding challenging the real property tax. The court noted that there was no lease provision giving the tenant the right to institute certiorari proceedings in the landlord's name. Waldbaum, Inc. v. Finance Administrator of the City of New York, 74 N.Y.2d 128, 544 N.Y.S.2d 561 (1989).

¶ 42. Failure to timely commence an Article 7 proceeding bars plaintiff from review of that or that of previous years, Charter § 166. Nor was a timely application made to the Tax Commissioner to correct the assessment which is a jurisdictional condition precedent to an Article 7 proceeding, Charter § 163(f). G.A.D. Holding Co. v. City of NY Fin. Dept., 192 AD2d 441 [1993].

¶ 43. An application for correction of a tax assessment must be verified by a person having knowledge of the facts stated in the application. The signature of a principal of a company engaged in representing property seeking tax reductions, was insufficient. Janklovits v. Tax Commission of the City of New York, 274 A.D.2d 395, 710 N.Y.S.2d 625 (2d Dept. 2000).

FOOTNOTES

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[Footnote 5]: * Title heading amended at General Election, November 8, 1988.



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NYC Charter 164

New York City Charter

CHAPTER 7 TAX APPEALS*5

§ 164. **Procedure on application.**

a. Between the fifteenth day of January and the twenty-fifth day of May, the tax commission may itself or by a commissioner or assessor thereunto authorized by the commission or any other person with qualifications relevant to the review of real property tax assessments, including real estate and real estate law, as determined by the commission and consistent with state law, act upon applications, compel the attendance of witnesses, administer oaths or affirmations and examine applicants and other witnesses under oath. It shall make rules of practice for proceedings before the tax commission, and such rules and regulations as may be appropriate and expedient to the end that the taxpayers may have a hearing in the borough in which they reside or in which their property is located, except that all applications with respect to property indicated on the tax maps by identification numbers shall be heard by the tax commission sitting as a body at its main office.

b. The tax commission shall determine the final assessed valuation or taxable assessed valuation, or the actual assessment or transition assessment, or the proper class designation of the real property of each applicant. The final assessed valuation or taxable assessed valuation of real property may be the same as or less than the original assessment or, if determined to be unlawful, the same shall be ordered stricken from the roll or where appropriate entered on the exempt portion of the roll. If it is determined that the real property is misclassified, the correct class designation or allocation of assessed valuation shall be entered on the roll.

HISTORICAL NOTE

Amended by L. L. 1951, No. 58.

Amended by L. L. 1984, No. 11.

Amended by L. L. 1984, No. 77.

Subd. a designated and amended L.L. 59/2007 § 3, eff. Jan. 20, 2008. [See § 150 Note 1]

CASE NOTES

¶ 1. An application for correction of a tax assessment must be verified by a person having knowledge of the facts stated in the application. The signature of a principal of a company engaged in representing property seeking tax reductions, was insufficient. *Janklovits v. Tax Commission of the City of New York*, 274 A.D.2d 395, 710 N.Y.S.2d 625 (2d Dept. 2000).

¶ 2. Following the arrests of two former New York City tax assessors (and others) in connection with alleged bribes to current assessors, the City modified its forms for applications for Correction of Assessed Value. Under the new procedures, any applicant of a reduction in assessed value had to indicate whether or not the applicant (or someone acting on the applicant's behalf) had engaged the services of the two former assessors, and whether those former assessors negotiated with current or former Department of Finance employees regarding the assessment. The instructions to the form indicated that unless those questions were answered, under oath, the City would deny review of the claim and confirm the assessment. In a challenge to the policy brought by an applicant for correction of assessed value, the court held that the department exceeded its statutory powers in enacting the new requirement. The only requirement for a Tax Commission merits review of a claimed over-assessment is a "statement specifying the respect in which the assessment is excessive," and the "reduction in value sought." (City Charter §163). The Tax Commission contended that under City Charter §164, it had the right to make rules of practice to provide for taxpayer hearings. The court, however, said that §164 did not expand the jurisdiction of the Commission *439 East 88 Owners Corp. v. Tax Commission*, N.Y.L.J., Dec. 9, 2002, page 23, col. 2 (Sup.Ct. New York Co.).

FOOTNOTES

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[Footnote 5]: * Title heading amended at General Election, November 8, 1988.



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NYC Charter 164-a

New York City Charter

CHAPTER 7 TAX APPEALS*5

§ 164-a. **Procedure on application for correction of an assessment of seven hundred fifty thousand dollars or more.**

a. Notwithstanding any other provision of this charter or the administrative code, the tax commission may itself or by a commissioner or assessor authorized by the commission act upon applications for correction of an assessment of real property assessed at seven hundred fifty thousand dollars or more between the first day of February and the first day of September. Any such application shall specify all income received or accrued and all expenses paid or incurred in the operation of the property during the calendar year preceding the date of application, or during the applicant's last fiscal year preceding the date of the application if the applicant's books and records are maintained on a fiscal year basis for federal income tax purposes which ends six months or more prior to the date of application, or during any part of such calendar or fiscal year in which the property was operated by the applicant, except that where the applicant has not operated the property and is without knowledge of the income and expenses of the operation, it shall state such facts under oath in lieu thereof. In the event that the statement of income and expenses is not filed as part of the application, such statement, when duly verified, shall be filed prior to the twenty-fifth day of March.

b. All other provisions of law shall apply to the review of applications for correction of tentative assessed valuation of property assessed for seven hundred fifty thousand dollars or more except insofar as the dates contained therein are inconsistent with the dates set forth in this section.

c. Repealed.

d. Whenever such a reduction is granted after a final completion of the assessment roll any tax imposed upon the amount of such reduction shall be refunded or credited as soon as practicable.

e. Any reduction shall be made public within sixty days after it is rendered. A list of reductions in real property assessments shall be published thereafter in the city record on or before the first of November.

HISTORICAL NOTE

Subd. c repealed L.L. 88/1996 § 1, eff. Nov. 12, 1996.

Subd. c amended at General Election, November 7, 1989.

FOOTNOTES

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[Footnote 5]: * Title heading amended at General Election, November 8, 1988.



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NYC Charter 164-b

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CHAPTER 7 TAX APPEALS*5

§ 164-b. **Procedure on application for correction of an assessment of class one property.**

a. When used in this section:

1. "Class designation" shall mean the determination, pursuant to article eighteen of the real property tax law, of whether real property is included in class one, two, three or four.

2. "Excessive assessment" or an assessment which is excessive shall mean and include:

(a) an entry on an assessment roll of the assessed valuation of real property which exceeds the full value of real property; or

(b) an entry on an assessment roll of the taxable assessed valuation of real property which is excessive because the real property failed to receive all or a portion of a partial exemption to which the real property or owner thereof is entitled pursuant to the law authorizing the partial exemption; or

(c) an entry on the assessment roll of an assessed valuation for real property which is excessive because of a failure to comply with the limitations on increases in assessed value set forth in section eighteen hundred five of the real property tax law.

3. "Misclassification" or real property which is misclassified shall mean and include:

(a) an entry on an assessment roll of an incorrect class designation; or

(b) an entry on the assessment roll of a class designation which results in an incorrect allocation of a parcel's assessed valuation between two or more classes.

4. "Unequal assessment" or an assessment which is unequal shall mean and include an entry on an assessment roll of the assessed valuation of real property improved by a one, two or three family residence which is made at either a higher proportion of full value than the assessed valuation of other residential property on the same roll or at a higher proportion of full value than the assessed valuation of all real property on the same roll.

5. "Unlawful assessment" or an assessment which is unlawful shall mean and include:

(a) an entry on the taxable portion of the assessment roll of the assessed valuation of real property which, except for the provisions of section four hundred ninety of the real property tax law, is wholly exempt from taxation; or

(b) an entry on an assessment roll of the assessed valuation of real property which is entirely outside the boundaries of the city of New York; or

(c) an entry on an assessment roll of the assessed valuation of real property which cannot be identified from the assessment roll description or tax map land parcel number on the assessment roll; or

(d) an entry of the assessed valuation of real property on an assessment roll which has been made by a person or body without the authority to make such entry.

b. Notwithstanding any other provision of this charter or administrative code, any party claiming to be aggrieved by the assessed valuation of a parcel designated class one pursuant to the provisions of article eighteen of the real property tax law may apply for correction of such assessment from the fifteenth day of January until the fifteenth day of March, including the filing of exemptions for senior citizens, and the office of the real property assessment bureau of the department of finance in each borough shall remain open for accepting such applications during normal business hours and for at least three additional hours each week.

c. the grounds for review of an assessment shall be that the assessment complained of is excessive, unequal, unlawful, or that the real property is misclassified.

d. The application for correction of assessment shall be on a form prescribed by the tax commission and shall contain a statement specifying the respect in which the assessment is excessive, unequal, or unlawful, or the respect in which the real property is misclassified, and the reduction in assessed valuation or taxable assessed valuation or change in class designation or allocation of assessed valuation sought. Such application must be made by the aggrieved party or by some person authorized in writing by the aggrieved party or his agent to make such statement who has knowledge of the facts stated therein. Such written authorization must be made a part of the application and bear a date within one year of the date on which the application is filed. In lieu of a verification the application shall contain the following sentence: "I certify that all statements made on this application, including the attached sheet(s) consisting of pages, are true and correct to the best of my knowledge and belief and I understand that the making of any willful false statement of material fact herein will subject me to the provisions of the penal law relevant to the making and filing of false statements."

e. The tax commission shall thereafter determine the final assessed valuation or taxable assessed valuation, or the actual assessment or transition assessment, or the proper class designation of the real property of each applicant. When the applicant specifies that the assessment is unequal, in addition to other evidence presented, the tax commission shall consider the residential assessment ratio determined pursuant to section seven hundred thirty-eight of the real property tax law. The final assessed valuation or taxable assessed valuation of real property may be the same as or less than the original assessment or, if determined to be unlawful, the same shall be ordered stricken from the roll or where appropriate entered on the exempt portion of the roll. If it is determined that the real property is misclassified, the correct class designation or allocation of assessed valuation shall be ordered entered on the roll.

f. All other provisions of law shall apply to the review of applications for correction of tentative assessed valuation of class one property except when inconsistent with any provision of this section.

HISTORICAL NOTE

Added by L. L. 1984, No. 11, § 4.

CASE NOTES

¶ 1. Sections of Charter under which taxes are levied upon real estate in the City of New York more than satisfy the taxpayer's right, under due process requirements, to notice and a chance to be heard at some stage before the charge becomes an absolute lien upon his property.-In re 801-815 East New York Ave. Brooklyn (Cannon), 290 N. Y. 236, 48 N. E. 2d 502 [1943].

¶ 2. Section 164 of the Charter does not authorize the Tax Commission to modify or enlarge provisions of § 163, which provides that an application to correct an assessment shall specify the objections and the grounds therefor. It does not authorize the taxing authorities to write to an applicant who filed a protest, requiring him to furnish additional information and making the furnishing thereof a jurisdictional requirement.-People (Sprague Realty Corp.) v. Mills, 71 N. Y. S. 2d 132 [1947].

¶ 3. Provisions of N. Y. C. Charter § 164, authorizing Tax Commission to make rules of practice, does not authorize the Commission to modify or enlarge the provisions of § 163.-People (Fein) v. Mills, 118 (106) N. Y. L. J. (11-17-47) 1333, Col. 2 M.

¶ 4. Application for correction of assessed valuation signed by a person recited to be "agent" of the owner, might not be rejected for failure to comply with rule of the Tax Commission requiring that an application signed by a person other than the aggrieved party must be accompanied by a duly executed power of attorney. Neither § 163 nor § 164 of the Charter authorized the Commission to enlarge or modify the legal requirements of an application.-Id.

¶ 5. Application for correction of assessed valuation was not defective for alleged failure to comply with rule of the Tax Commission requiring an application for correction of assessed valuation, where signed by a person other than the person claiming to be aggrieved by the assessment, to be accompanied by a duly executed power of attorney or by proof of authorization sworn to by the agent. § 164 of the Charter authorizing the Tax Commission to make rules and regulations does not authorize it to modify or enlarge the provisions of § 163 as to applications to correct assessments.-Irish Government v. Boyland, 127 (119) N. Y. L. J. (6-19-52) 2433, Col. 1 T.

¶ 6. Where application for correction of assessed valuation was filed without being accompanied by proof of authorization and a statement of income and expense as required by the Tax Commission's rules, but the Commission gave realtor permission to file the authorization at a subsequent date, and later notified realtor to appear at a hearing to be held on April 3, the realtor's offering of the required authorization and income and expense statement at the time of the hearing and the subsequent filing of the authorization with the Tax Department on April 8, both dates being within the statutory period in which the Commission is empowered to hold hearings, **held** to constitute a timely correction of the defects.-People (McVeigh) v. Mills, 116 (134) N. Y. L. J. (12-20-46) 1829, Col. 2 M.

¶ 7. Furthermore, the Commission's failure to object to the application at time of filing and its giving permission to realtor to file additional proof at a subsequent date, coupled with sending of a notice of hearing without raising any objection, amounted to a waiver of the failure to supply the proof within the time specified in the rules.-Id.

¶ 8. The concept of due process requires that applicants for tax exemption be afforded a hearing before the tax commission and that a proper transcript of such a hearing be made so that after a determination by the tax commission the court will have an adequate record to review in an article 78 proceeding.-Matter of Pacifica Foundation v. Lewisohn, 79 Misc. 2d 550, N. Y. S. 2d 575 [1974].

FOOTNOTES

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[Footnote 5]: * Title heading amended at General Election, November 8, 1988.



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NYC Charter 165

New York City Charter

CHAPTER 7 TAX APPEALS*5

§ 165. **Final determination of the tax commission.**

The final determination of the tax commission upon any application for the correction of an assessment shall be rendered not later than the twenty-fifth day of May. Otherwise, the assessment objected to shall be deemed to be the final determination of the tax commission.

CASE NOTES

¶ 1. See *in re Barnett J. Brimberg v. Commissioner of Finance of the City of NY*, 45 AD3d 506, 847 N.Y.S.2d 39 (1st Dept. 2007), discussed in note 4, City Charter Sec. 165-a.

FOOTNOTES

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NYC Charter 165-a

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CHAPTER 7 TAX APPEALS*5

§ 165-a. **Notices of final determination on applications for owner-occupied residential property.**

On or before the last day provided by law for the rendering of the final determination of the tax commission pursuant to section one hundred sixty-five of this charter the tax commission shall mail to each applicant who has filed an application for the correction of the assessment of a one, two or three family residential structure, except such property held in a cooperative or condominium form of ownership, a notice of the tax commission's determination of his or her assessment. Such notice shall also contain the statement: "If you are dissatisfied with the determination of the New York city tax commission and you are the owner of a one, two or three family residential structure and reside at such residence, you may seek judicial review of your assessment either under title one of article seven of the real property tax law or under the small claims assessment review law provided by title one-A of article seven of the real property tax law." Such notice shall also state the last date to file petitions for judicial review and the location where small claims assessment review petitions may be obtained. Failure to mail any such notice or failure of the applicant to receive the same shall not affect the validity of the assessment.

HISTORICAL NOTE

Section amended L.L. 59/2007 § 4, eff. Jan. 20, 2008. [See § 150 Note 1]

CASE NOTES

¶ 1. City's motion to dismiss on the ground that petition for review of final determination of City Tax Commission was not timely **denied** where petition failed to show date of final adverse determination.-The Second District Dental Society of N. Y. v. Boyland, 139 N. Y. S. 2d 123 [1955].

¶ 2. The determination of the Tax Commission continuing the exemption of real property owned by Columbia University became final on March 15th, 1945 and a proceeding to review the determination of the Tax Commission in

refusing to cancel the exemption which was brought more than four months after the determination of the exemption had become final was barred by Civil Practice Act § 1286.-Goldstein v. Mills, 185 Misc. 851, 57 N. Y. S. 2d 810 [1945], aff'd, 270 App. Div. 930, 62 N. Y. S. 2d 619 [1946].

¶ 3. Tax Comn. denied of real-estate tax exemption to the Church of Scientology was improper because comn. declared that Scientology was not a bona fide religion without setting forth the objective tests used to determine whether an organization is a bona fide religion and the manner in which the Church of Scientology failed to meet those tests.-Church of Scientology v. Tax Comn. 191(97) N. Y. L. J. (5-18-84) 6, Col. 4 M.

¶ 4. The four-month statute of limitations begins to run on the date that the tax roll becomes final and binding. In re Barnett J. Brimberg v. Commissioner of Finance of the City of NY, 45 AD3d 506, 847 N.Y.S.2d 39 (1st Dept. 2007).

FOOTNOTES

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[Footnote 5]: * Title heading amended at General Election, November 8, 1988.



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NYC Charter 166

New York City Charter

CHAPTER 7 TAX APPEALS*5

§ 166. **Proceeding to review final determination of the tax commission.**

A proceeding to review or correct on the merits any final determination of the tax commission may be had as provided by law, and if brought to review a determination mentioned in section one hundred sixty-five must be commenced before the twenty-fifth day of October following the time when the determination sought to be reviewed or corrected was made.

HISTORICAL NOTE

Amended by L. 1949, ch. 550.

Amended by L. L. 1984, No. 14, § 1.

Amended by L. L. 1984, No. 14.

CASE NOTES

¶ 1. Claim of State Insurance Fund to exemption from taxation of real property purchased by it for purpose of erecting an office building thereon for transaction of its business, on ground it was an agency of the State of New York and therefore exempt under Tax Law § 4, subd. 2, **held** reviewable in a proceeding under C. P. A. Art. 78, notwithstanding the statutory remedy provided by §§ 165 and 166 of the Charter, and 166-1.0 of the Administrative Code for review of a determination of the Tax Commission. The "illegality" envisaged by the Administrative Code does not encompass a genuine jurisdictional challenge to the very power of the Commission to assess at all. Moreover, statutes purporting to set up exclusive procedures for reviewing tax assessments do not bar collateral action when the taxes are levied without jurisdiction.-State Ins. Fund v. Boyland, 282 App. Div. 516, 125 N. Y. S. 2d 169 [1953], *aff'd* 309 N. Y. 1009, 133 N. E. 2d 457 [1954].

¶ 2. A proceeding under C. P. A. Art. 78 may not be resorted to by the taxpayer as an alternative remedy to the one provided by the Tax Law or the City Charter.-*Bierman v. Boyland*, 125 N. Y. S. 2d 86 [1953].

¶ 3. Application for review of determination of the tax commissioners which denied petitioner an exemption from taxation of its real property, might not properly be made under C. P. A., Art. 78, inasmuch as the New York City Charter provides a complete remedy for review of an assessment claimed to be erroneous because the property is exempt (N. Y. C. Charter § 166), and such jurisdiction is exclusive, as only where the Charter is entirely silent may recourse be had to the Tax Law and the Civil Practice Act (198 App. Div. 317; 178 App. Div. 251; 262 N. Y. 665:&c.).-*In re National Arts Club (Miller)*, 105 (58) N. Y. L. J. (3-12-41) 1121, Col. 3 M.

¶ 4. Section 166 of the Charter, providing that an application to review a determination of the tax commission must be brought before October 25, applied only to tax assessments made in the future for a fiscal year beginning July 1, 1939, and proceedings to review assessments for the year 1938 and the first half of 1939 were governed by the time schedule prescribed by the old Charter, since both in the old and new charters the period of elapsed time to review assessments was five months, and it clearly was not intended to grant nine months in which to bring proceedings to review assessments for 1938 and the first half of 1939. Furthermore, there was nothing inconsistent in applying the limitation date provided in the old Charter to review assessments made under the time schedule of that Charter (Charter §§ 951, 982).-*People (Kaydel Realty Co.) v. Miller*; *People (Vandalia Realty Corp.) v. Miller*, 255 App. Div. 449, 7 N. Y. S. 2d 963 [1938] *aff'd* without opinion, 280 N. Y. 652 [1939].

¶ 5. Tax certiorari proceedings were dismissed on ground that since the writ of certiorari was not served on the Tax Commissioner within the time limited by § 166 for the commencement of such statutory proceedings, the proceedings were not timely begun and the court acquired no jurisdiction to entertain them.-*People (Cary) v. Lilly*, 293 N. Y. 828, 59 N. E. 2d 432 [1944]; *People (Bowery Savings Bank) v. Lilly*, 293 N. Y. 833, 59 N. E. 2d 434 [1944].

¶ 6. Application for order directing Tax Commission to cancel tax exemption on real property of Columbia University, **held** barred by the four-month period prescribed by C. P. A. § 1286, where more than four months had elapsed since the Commission made its determination or allegedly failed to perform the duty of cancelling the tax exemption. The four-month period ran from March 15, 1945, which was the last day permitted by law for filing of applications for correction of or protest against assessed valuations (Charter §§ 160, 163).-*Goldstein v. Mills (Trustees of Columbia Univ.)*, 185 Misc. 851, 57 N. Y. S. 2d 810 [1945], *aff'd*, 270 App. Div. 930, 62 N. Y. S. 2d 619 [1946].

¶ 7. General Construction Law § 25-a, providing that when a certain period of time ends on Sunday or holiday, act may be done on next succeeding business day **held** not applicable to § 166 of the Charter requiring that tax review proceeding must be commenced before October 25, since that section does not involve any computation of time.-*R. R. Heywood Co. v. Boland*, 140 N. Y. S. 2d 769 [1955].

¶ 8. Where application to correct assessment was on file all during the time set for its filing and was acted upon by the Board of Taxes and Assessments and was accepted by it as the basis of the realtor's protest, motion of the Board to quash the writ, after a final order had been entered, on ground the application to correct the assessment was prematurely filed, was denied.-*People (Gallagher's Steak House, Inc.) v. Miller*, 114 (80) N. Y. L. J. (10-4-45) 763, Col. 1 T.

¶ 9. Certiorari proceedings to review tax assessments must be commenced before October 25th. Thus, a writ obtained on October 24th and served on October 25th was ineffective as not being served within the time limited by this section of the Charter.-*People ex rel. Sheffield Farms Co., Inc. v. Lilly*, 295 N. Y. 354, 67 N. E. 2d 579 [1946].

¶ 10. Proceeding for review of tax assessment is begun with service of the writ, and hence writ was dismissed where service was made on July 1, whereas the Charter required that the proceeding be begun no later than June 30.-*Bremark Realty Corp. v. Miller*, 123 (43) N. Y. L. J. (3-6-50) 799, Col. 6 F.

¶ 11. Certiorari proceeding to review tax assessment was not "begun" within the time limit fixed by § 166 of the Charter, where nothing more was done by the aggrieved taxpayer before the end of the time limit than to obtain a court

order directing a writ to issue, and fixing the time within which service should be made. The inadvertent failure of the taxpayer to cause the writ to be issued and served prior to the statutory date was not an irregularity for which Special Term could afford relief, and subsequent service of a writ bearing date some 2¹/₂ months after the last date on which the proceedings might have been "begun" did not constitute due and timely process.-People (Northchester Corp.) v. Miller, 288 N. Y. 163, 42 N. E. 2d 469 [1942].

¶ 12. City's motion to dismiss on the ground that petition for review of final determination of City Tax Commission was not timely **denied** where petition failed to show date of final adverse determination.-The Second District Dental Society of N. Y. v. Boyland, 139 N. Y. S. 2d 123 [1955].

¶ 13. Proceedings to review the final determination of the Tax Commission must be commenced before October 25th and even though October 24th falls on a Sunday the time to commence the proceedings is not extended.-Clemons Realty Co. v. Boyland, 134 (123) N. Y. L. J. (12-29-55) 5, Col. 5 F.

¶ 14. The filing of a petition within the time limited for the commencement of certiorari proceedings was not sufficient where the writ was not actually served until after the expiration of the time limited for the commencement of such proceedings.-People ex rel. Goelet v. Miller, 293 N. Y. 832, 59 N. E. 2d 433 [1944].

¶ 15. In absence of any provision in the New York City Charter governing the allowance of costs on appeal in a tax certiorari proceeding, recourse was to be had to applicable provisions of the Tax Law.-People (243 Corp.) v. Miller, 104 (138) N. Y. L. J. (12-14-40) 2041, Col. 3 T, a 3 M.

¶ 16. Failure to file an income and expense statement within the time prescribed was not a jurisdictional defect. Local Law No. 28, being inconsistent with the Code, **held** invalid.-In re Lindley House, Inc. (Tax Comm'rs) 133 (55) N. Y. L. J. (3-21-55) 7, Col. 6 F.

¶ 17. To same effect, Alwalt Realty Corp. v. Boyland, 5 Misc. 2d 1061, 160 N. Y. S. 2d 504 [1957]; appeal dismissed 4 A. D. 2d 940, 170 N. Y. S. 2d 490 [1957].

¶ 18. Where a tenant makes timely application for review of an assessment and then decides to discontinue the proceeding, his landlord may intervene for the purpose of continuing it even after the expiration of the statute of limitations.-Matter of Fleetair, Inc. v. Tax Commission, 15 Misc. 2d 502, 181 N. Y. S. 2d 645 [1958].

¶ 19. Application to the Tax Commission followed by timely institution of judicial proceedings to review determination of tax commission under this section was not exclusive remedy to have lower court determination removing religious property from tax rolls reinstated and an article 78 proceeding was an appropriate method to obtain the relief sought.-Watchtower Bible & Tract Soc. v. Lewisohn, 35 N. Y. 2d 92, 315 N. E. 2d 801, 358 N. Y. S. 2d 757 [1974].

¶ 20. Challenge to method of valuation of property rather than to the valuation itself does not require an Art. 7 Real Property Tax Law proceeding so is not time barred by Charter § 166 and may be entertained in declaratory judgment actions.-South First Street v. DHPD, 150 A. D. 2d 218 [1989].

¶ 21. In NYC, Real Property Tax Law Article 7 proceedings seeking judicial review of assessments "must be commenced before the twenty-fifth day of October following the time when the determination sought to be reviewed or corrected was made" (Charter § 166). 78 S. First St. Corp. v. Crotty, 150 AD2d 218 reversed, 75 NY2d 984 [1990].

FOOTNOTES

[Footnote 5]: * Title heading amended at General Election, November 8, 1988.



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NYC Charter 167

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CHAPTER 7 TAX APPEALS*5

§ 167. **Exemptions for persons sixty-five years of age or over. [Repealed]**

HISTORICAL NOTE

Section repealed L. L. 8/1992 § 1, eff. Jan. 1, 1992. (See Administrative Code § 11-245.3)

Section amended entirely or in part L. L. 91/1973, 102/1977, L. L. 39/1977, L. L. 57/1980, L. L. 82/1981, L. L. 14/1984, L. L. 75/1986, General Election Nov. 7, 1989, L. L. 1/1990.

FOOTNOTES

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[Footnote 5]: * Title heading amended at General Election, November 8, 1988.



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NYC Charter 168

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CHAPTER 7 TAX APPEALS*5

§ 168. **Tribunal for tax appeals.**

a. An independent tax appeals tribunal is hereby established. Such tribunal shall be within the office of administrative tax appeals established under section one hundred fifty of this charter. The tribunal shall have jurisdiction to hear and determine cases initiated by the filing of petitions protesting notices issued by the commissioner of finance, which give a person the right to a hearing, including but not limited to any notice of determination of tax due, of a tax deficiency, of a denial of a refund or credit application or of the refusal to grant, the suspension or the revocation of a license issued pursuant to chapter thirteen of title eleven of the administrative code, which notices relate to nonproperty taxes, excise taxes and annual vault charges imposed by the city, except those taxes and charges administered by the State of New York on behalf of the City of New York. For purposes of the preceding sentence, if the commissioner of finance fails to act with respect to a refund application before the expiration of the time period after which the taxpayer may file a petition for refund with the tribunal pursuant to subdivision (c) of section 11-529 or subdivision three of section 11-680 of the administrative code, such failure shall be deemed to be a notice of denial of a refund issued by the commissioner of finance pursuant to such subdivision. The tribunal shall review petitions and other documents submitted to it, hold hearings, and render decisions as provided in this chapter. In rendering its decisions on claims asserted by taxpayers or the commissioner of finance, the tribunal shall have the same power and authority as the commissioner of finance to impose, modify or waive any taxes within its jurisdiction, interest thereon, and any applicable civil penalties. In appeals in which the rules of the commissioner of finance are at issue, the tribunal shall have the power and authority to rule on the legality of such rules.

b. The tribunal shall be composed of three commissioners, each of whom shall be appointed by the mayor. The mayor shall designate one of the three commissioners as president of the tribunal, who shall serve as president during his or her term as commissioner. The president of the tribunal, in addition to performing his or her duties as a commissioner, shall be in charge of the administration and operation of the tribunal. Each commissioner shall serve a term of six years, except the mayor shall specify in the case of the first three commissioners appointed that (i) the term

of one of those commissioners shall expire on June thirtieth, nineteen hundred and ninety-two, (ii) the term of another of those commissioners shall expire on June thirtieth, nineteen hundred and ninety-four, and (iii) the term of the commissioner designated president shall expire on June thirtieth, nineteen hundred and ninety-six. The mayor may remove any commissioner from the tribunal for neglect of duty, for inability to perform duties because of mental or physical disability, for malfeasance or for any other just cause, after providing such commissioner prior notice and an opportunity to be heard. The mayor shall fill any vacancy in the tribunal occurring other than by expiration of term in the same manner as for making original appointments, except an appointment to fill a vacancy shall expire at the end of the term of the commissioner whose departure created the vacancy. The number of commissioners on the tribunal may be increased by local law.

c. No person shall be appointed as a commissioner unless that person possesses substantial knowledge and competence in the area of taxation and has been admitted to practice as an attorney in the State of New York for at least ten years. Every commissioner, while in office, shall give his or her whole time to the duties of the office, and shall not engage in the practice of law or other occupation, profession or employment. Each commissioner shall receive an annual salary in the same amount as is payable to a judge of the civil court of the City of New York. A commissioner's annual salary shall not be diminished during his or her term of office.

d. The president of the tribunal shall appoint administrative law judges, subject to appropriations therefor, who shall be authorized to conduct any hearing or motion procedure within the jurisdiction of the tribunal, subject to en banc review by the tribunal. Each administrative law judge shall be an attorney admitted to practice in the state of New York for at least five years or is currently employed as a hearing officer in the department of finance. Each administrative law judge shall be appointed pursuant to the civil service law. The president may designate one of the administrative law judges to be the chief administrative law judge, having such powers as are prescribed under the rules of the tribunal. A determination issued by an administrative law judge shall finally decide the matters in controversy unless any party to the hearing takes exception by timely requesting a review by the tribunal sitting en banc as provided for by rules adopted under section one hundred sixty-nine of the charter. Determinations issued by administrative law judges shall not be cited, shall not be considered as precedent nor given any force or effect in any other proceedings conducted by the tribunal or in any judicial proceedings conducted in this state.

e. The president of the tribunal shall appoint presiding officers, subject to appropriations therefor, who shall be authorized to conduct small claims hearings under a procedural system to be established pursuant to subdivision e of section one hundred sixty-nine of the charter. The qualifications for the position of presiding officer shall be determined by rules adopted pursuant to subdivision e of section one hundred sixty-nine of the charter, and each presiding officer shall be appointed pursuant to the civil service law.

f. The tribunal shall collect, compile and prepare for publication statistics and other data with respect to its operations, and shall submit annually to the mayor a report on such operations, including, but not limited to, the number of proceedings initiated, the types of dispositions made and the number of proceedings pending.

HISTORICAL NOTE

Section added at General Election, November 8, 1988.

Subd. a amended L.L. 59/2007 § 5, eff. Jan. 20, 2008. [See § 150 Note 1]

Subd. a amended ch. 808/1992 § 132, eff. Oct. 1, 1992.

Subds. d, e amended ch. 809/1992 § 1, eff. Oct. 1, 1992.

Subds. d, e added ch. 808/1992 § 133, eff. Oct. 1, 1992.

Subd. f added ch. 808/1992 § 133, eff. Oct. 1, 1992.

FOOTNOTES

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[Footnote 5]: * Title heading amended at General Election, November 8, 1988.



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NYC Charter 169

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CHAPTER 7 TAX APPEALS*5

§ 169. **Rules of tribunal.**

Pursuant to chapter forty-five of this charter, the tribunal shall promulgate rules of procedure, which shall include, but not be limited to, rules on the following matters:

a. The types of representatives, such as accountants and enrolled agents enrolled to practice before the internal revenue service, who may appear, in addition to lawyers, on behalf of a petitioner before the tribunal;

b. The form and contents of the petition, answer, affidavits and memoranda to be submitted to the tribunal, and reasonable time limitations for serving and filing such papers;

c. A procedure for promptly hearing and determining any matter concerning jeopardy assessments or predecision warrants based thereon;

d. A procedural system guaranteeing a hearing in compliance with chapter forty-five of this charter. Such a system shall be designed to assign each petition filed with the tribunal to an administrative law judge who shall hear and determine all matters pertaining to questions of law or fact. Such a system also shall be designed to require the tribunal to review en banc at the request of any party the determination rendered by an administrative law judge, provided, however, that if there is no such request for a review within thirty days of the giving of notice of such determination by the administrative law judge, such determination shall finally and irrevocably decide all the issues in the proceeding before the administrative law judge and shall be considered a final decision of the tribunal upon the expiration of such thirty-day period, except that, notwithstanding any other provision of law, such determination by the administrative law judge shall not be subject to judicial review. Such a system shall provide that the tribunal may, based upon the record of the hearing before the administrative law judge, make its own findings of fact and conclusions of law and issue a decision either affirming, reversing or modifying the determination of the administrative law judge, or the tribunal may remand the case for additional proceedings before the administrative law judge, as it may deem appropriate. The

tribunal in its discretion may grant oral argument. Such a system shall provide that when the tribunal reviews a matter en banc it must have a majority present and that not less than two votes shall be necessary to take any action. Such a system also shall provide for a pre-hearing conference at which settlement is encouraged; reasonable discovery; and the submission of papers addressing both the factual and legal merits in each proceeding; e. A procedural system to be followed in cases in which the matter in controversy is ten thousand dollars or less, exclusive of interest and penalties. Such a system shall be designed to provide a simplified and informal procedure for such small claims proceedings. The option to proceed with a small claims hearing shall be exercised by the petitioner. At any time prior to the conclusion of such hearing, a petitioner may by written notice to the tribunal discontinue such small claims hearing and request that the matter be transferred to a hearing conducted before an administrative law judge. Such transfer shall be effectuated by such written notice and such discontinuance shall be without prejudice to any subsequent hearing before an administrative law judge. The determination of the presiding officer conducting the small claims hearing shall be conclusive upon all parties, shall be considered a final decision of the tribunal and shall not be subject to review by the tribunal sitting en banc or by any court of the state. However, the tribunal may order a rehearing upon proof or allegation of misconduct by the small claims presiding officer. Determinations issued by presiding officers shall not be cited, shall not be considered as precedent nor given any force or effect in any other proceedings conducted by the tribunal or in any judicial proceedings conducted in this state; and

f. A method for notifying taxpayers and the commissioner of finance of, and for publishing, the decisions of the tribunal.

HISTORICAL NOTE

Section added at General Election, November 8, 1988.

Section amended ch. 808/1992 § 134, eff. Oct. 1, 1992.

FOOTNOTES

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NYC Charter 170

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§ 170. **Commencing an appeal before the tribunal.**

a. Any taxpayer who has been issued a notice referred to in subdivision a of section one hundred sixty-eight of the charter by the commissioner of finance may petition the tribunal for administrative review. To commence a proceeding, such a taxpayer must, within ninety days after being issued the notice at issue by the commissioner of finance or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of the administrative code and the taxpayer has requested a conciliation conference in accordance therewith, within ninety days from the mailing of the conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serve a petition upon the commissioner of finance and (2) file the petition with the tribunal. Notwithstanding the time specified in the preceding sentence for filing a petition, a petition for refund filed pursuant to subdivision (c) of section 11-529 of the administrative code or subdivision three of section 11-680 of such code may be filed within the time specified in such subdivision (c) or such subdivision three. The tribunal shall not extend the time limitations for commencing a proceeding for any petitioner failing to comply with such time limitations. The petition shall contain a plain and concise statement of the facts and law on which the proceeding is based.

b. Within thirty days after service of the petition on the commissioner of finance, or within such longer period as the tribunal may prescribe by rule, the commissioner of finance shall serve and file an answer responding to each of the allegations in the petition and setting forth all affirmative defenses and requests for counter-relief.

c. The filing of a petition with the tribunal shall stay (1) the collection of any taxes or annual vault charges and (2) the payment of any refund of taxes or annual vault charges, together with interest and penalties, which are the subject of the petition, provided, however, if the commissioner of finance finds that the assessment or collection of a tax, charge, penalty or interest will be jeopardized by delay, such assessment or collection shall not be stayed.

d. Upon assignment of a petition filed with the tribunal to an administrative law judge, such administrative law judge shall hear and determine any issues of fact or law. Unless otherwise provided by law, the party seeking relief as to

each issue shall bear the burden of proof. Upon a request to the tribunal for review of a determination of an administrative law judge, the tribunal shall proceed in accordance with the rules adopted pursuant to subdivision d of section one hundred sixty-nine of the charter. The tribunal shall follow as precedent the prior precedential decisions of the tribunal (but not of its small claims presiding officers), the New York State Tax Appeals Tribunal or of any federal or New York state court or the U.S. Supreme Court insofar as those decisions pertain to any substantive legal issues currently before the tribunal.

e. The tribunal shall have power to subpoena and require the attendance of witnesses and the production of books, papers and documents pertinent to the proceedings which it is authorized to conduct, and to examine them in relation to any matter which it has power to investigate and to issue commissions for the examination of witnesses who are out of the state or unable to attend proceedings conducted pursuant to the authority of the tribunal or excused from attendance at such proceedings. The tribunal may designate and authorize administrative law judges and other officers or employees of the tribunal to exercise any of the powers or perform any of the functions provided for in this subdivision. A subpoena issued under this subdivision shall be regulated by the civil practice law and rules. Any person who shall testify falsely in any proceeding conducted pursuant to the authority of the tribunal shall be guilty of and punishable for perjury.

f. The tribunal shall have power to provide that an attorney for any party at a hearing conducted before an administrative law judge may issue a subpoena as provided in the civil practice law and rules.

HISTORICAL NOTE

Section added at General Election, November 8, 1988.

Section amended ch. 808/1992 § 135, eff. Oct. 1, 1992.

FOOTNOTES

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CHAPTER 7 TAX APPEALS*5

§ 171. **Decisions of the tribunal and judicial review.**

a. (1) The determinations of the administrative law judges and the decisions of the tribunal sitting en banc shall be in writing. Each determination or decision, with the exception of those rendered pursuant to the small claims procedure, shall contain findings of fact and conclusions of law. A final decision of the tribunal may (i) grant in whole or in part the relief sought by the petitioner and/or the commissioner of finance, or (ii) dismiss the petition or request for counter-relief either on the merits or with leave to renew.

(2) An administrative law judge shall render a determination after a hearing, within six months after submission of briefs subsequent to completion of such a hearing or, if such briefs are not submitted, then within six months after completion of such a hearing. Such six month period may be extended by the administrative law judge, for good cause shown, to no more than three additional months. If the administrative law judge fails to render a determination within such six month period (or such period as extended pursuant to this subdivision), the petitioner for such hearing or the commissioner of finance, or both, may institute a proceeding under article seventy-eight of the civil practice law and rules to compel the issuance of such determination.

(3) A decision of the tribunal sitting en banc shall be issued within six months from the date of the request to the tribunal for en banc review of an administrative law judge's determination, except that where oral argument is granted or written arguments are submitted such six month period will commence to run on the date that such oral argument was concluded or written argument received by the tribunal, whichever was later.

b. Except as otherwise provided in subdivisions d and e of section one hundred sixty-nine of the charter, each decision of the tribunal, shall finally and irrevocably decide all the issues raised in the proceedings before it, unless the petitioner who commenced the proceeding seeks judicial review of any such decision in the manner provided in article seventy-eight of the civil practice law and rules within four months after the giving of the notice of such decision.

c. A decision of the tribunal shall be deemed to have been rendered on the postmarked date on the decision sent by certified mail, return receipt requested, to the address most recently provided to the tribunal by each of the parties to the proceeding.

d. The tribunal shall not participate in proceedings for judicial review of its decisions. The record to be reviewed in such proceedings for judicial review shall include but not be limited to the notice of the commissioner of finance which was the subject of the petition filed with the tribunal, the determination of the administrative law judge, the decision of the tribunal, the stenographic transcript of the hearing before the administrative law judge and any exhibit or document admitted into evidence at any proceeding before the administrative law judge or the tribunal.

HISTORICAL NOTE

Section added at General Election, November 8, 1988.

Section amended ch. 808/1992 § 136, eff. Oct. 1, 1992.

FOOTNOTES

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CHAPTER 7 TAX APPEALS*5

§ 172. **Sanctions.**

a. The failure of any party to appear for a conference or hearing without having obtained an extension from all the opposing parties or the tribunal at least forty-eight hours in advance of such conference or hearing shall be grounds for the tribunal to enter a decision in favor of the opposing party or parties.

b. The signing of any paper submitted to the tribunal constitutes a certificate by the signer that the signer has read the paper, and that to the best of the signer's knowledge, information and belief formed after reasonable inquiry, the paper is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that the paper is not interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of the proceedings. If a paper is signed in violation of this section, the tribunal, upon motion or upon its own initiative, shall impose upon the person who signed the paper, a represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties such sanction. The amount of any sanction shall be related to the amount of reasonable expenses, including a reasonable attorney's fee, incurred by the other party or parties because of the serving or filing of the paper.

HISTORICAL NOTE

Section added at General Election, November 8, 1988.

FOOTNOTES

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CHAPTER 8 CITY PLANNING

§ 191. **Department and director of city planning.**

a. There shall be a department of city planning, the head of which shall be the director of city planning. The director of city planning shall be the chair and a member of the city planning commission and shall serve at the pleasure of the mayor.

b. The director of city planning shall:

1. Advise and assist the mayor, the borough presidents and the council in regard to the physical planning and public improvement aspects of all matters related to the development of the city.

2. Provide staff assistance to the city planning commission in all matters under its jurisdiction.

3. Be the custodian of the city map and record thereon all changes legally authorized.

4. Conduct continuous studies and collect statistical and other data to serve as the basis for planning recommendations.

5. Provide community boards with such staff assistance and other professional and technical assistance as may be necessary to permit such boards to perform their planning duties and responsibilities under this chapter.

6. Assist the mayor in the preparation of strategic plans, including the preparation of the report provided for in section sixteen concerning the social, economic and environmental health of the city, the strategic policy statement provided for in section seventeen and the ten-year capital strategy provided for in section two hundred fifteen.

7. Appoint a deputy executive director for strategic planning.

8. Make a complete transcript of the public meetings and hearings of the commission available for public inspection free of charge within sixty days after any such meeting or hearing. The director shall also provide a copy of any requested pages of such transcript at a reasonable fee to cover the costs of copying and, where relevant, mailing.

9. Perform such other functions as are assigned to him or her by the mayor or other provisions of law.

c. The department shall employ such planning experts, engineers, architects and other officers and employees as may be required to perform its duties, within the appropriation therefor.

HISTORICAL NOTE

Amended by L. L. 1969, No. 39.

Amended at General Election, May 4, 1975.

Section amended at General Election, November 7, 1989.



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NYC Charter 192

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§ 192. **City planning commission.**

a. There shall be a city planning commission to consist of the chair and twelve other members. The mayor shall appoint the chair and six other members of the commission, the public advocate shall appoint one member, and each borough president shall appoint one member. Members shall be chosen for their independence, integrity and civic commitment. Appointments of all members, except for the chair, shall be subject to the advice and consent of the council. For such appointments by officials other than the mayor, the procedure for obtaining the advice and consent of the council shall be the same as the procedure provided for in section thirty-one for appointments by the mayor. Except as otherwise provided in section one hundred ninety-one, no member shall hold any other city office. Members other than the chair shall be appointed for a term of five years; provided, however, that of the members other than the chair, one member appointed by the mayor and one member appointed by a borough president shall serve for terms to expire on the thirtieth day of June, nineteen hundred ninety-one; one member appointed by the mayor and one member appointed by a borough president shall serve for terms to expire on the thirtieth day of June, nineteen hundred ninety-two; one member appointed by the mayor and one member appointed by a borough president shall serve for terms to expire on the thirtieth day of June, nineteen hundred ninety-three; one member appointed by the mayor and one member appointed by a borough president shall serve for terms to expire on the thirtieth day of June, nineteen hundred ninety-four; and two members appointed by the mayor, the member appointed by the public advocate and one member appointed by a borough president shall serve for terms to expire on the thirtieth day of June, nineteen hundred ninety-five. The borough presidents shall determine by lot the length of the term to be served by the member first appointed by each borough president. The appointing officials shall make their first appointments to the commission on or before the first day of March, nineteen hundred ninety. The commission members so appointed shall assume office on the first day of July, nineteen hundred ninety. Members of the commission shall serve until their successors have been confirmed. Any vacancy occurring other than by expiration of term shall be filled by the official who appointed the member in the same manner as the original appointment. A person so appointed shall serve for the unexpired portion of the term of the member succeeded. Terms shall begin on the next date after the expiration date of the preceding term.

b. Members, except for the chair, shall not be considered regular employees of the city for purposes of chapter sixty-eight. The agency served by the members of the commission shall for purposes of chapter sixty-eight be deemed to be both the commission and the department of city planning. No member, while serving as a member, shall appear directly or indirectly before the department, the commission, or any other city agency for which the conflicts of interest board shall, by rule, determine such appearance creates a conflict of interest with the duties and responsibilities of the member. No firm in which a member has an interest may appear directly or indirectly before the department or commission. For purposes of this section, the terms "agency," "appear," "firm," and "interest" shall be defined as provided in chapter sixty-eight.

c. One of the members other than the chair shall be designated by the mayor as vice-chair and shall serve as vice-chair at the pleasure of the mayor. The vice-chair shall possess the powers and perform the duties of the chair when the chair is absent or while a vacancy exists in the office of the chair, and shall at such times serve as director of city planning.

d. The city planning commission shall be responsible for the conduct of planning relating to the orderly growth, improvement and future development of the city, including adequate and appropriate resources for the housing, business, industry, transportation, distribution, recreation, culture, comfort, convenience, health and welfare of its population.

e. The city planning commission shall oversee implementation of laws that require environmental reviews of actions taken by the city. The commission shall establish by rule procedures for environmental reviews of proposed actions by the city where such reviews are required by law. Such rules shall include procedures for (1) selection of the city agency or agencies that will be responsible for determining whether an environmental impact statement is required in connection with a proposed action and for preparation and filing of any such statement required by law, (2) participation by the city in environmental reviews involving agencies other than city agencies and (3) coordination of environmental review procedures with the land use review procedures set forth in this charter. The director of city planning and the commissioner of the department of environmental protection shall assign from the staffs of such departments an office of environmental coordination, which shall provide assistance to all city agencies in fulfilling their environmental review responsibilities.

f. Not later than the thirty-first day of December, nineteen hundred ninety-two and every four years thereafter, the commission shall file with the mayor, the council, the public advocate, the borough presidents, and community boards, a zoning and planning report. The report shall include (1) a statement of the planning policy of the commission, which policy shall take into consideration, among other things, the ten-year capital strategy, the four-year capital program, the report on the social, economic and environmental health of the city issued pursuant to section sixteen, the strategic policy statements provided for in section seventeen and plans approved pursuant to section one hundred ninety-seven-a, (2) a summary of the significant plans and studies completed or undertaken by the department of city planning in the preceding four years, (3) an analysis of those portions of the zoning resolution that merit reconsideration in light of the planning policy of the commission and (4) proposals for implementing the planning policy of the commission whether by amendment of the zoning resolution, development of plans or otherwise.

HISTORICAL NOTE

Amended at General Election, May 4, 1975.

Section amended at General Election, November 7, 1989.

Subd. a amended L.L. 68/1993 § 5, eff. Jan. 1, 1994.

Subd. f amended L.L. 68/1993 § 6, eff. Jan. 1, 1994.

CASE NOTES

¶ 1. There is no incompatibility between the office of associate member of the Planning Commission and the office of Commissioner of Parks, and of Commissioner of Public Works.-Childs v. Moses, 265 App. Div. 353, 38 N. Y. S. 2d 704 [1942], aff'g 178 Misc. 828, 36 N. Y. S. 2d 574, aff'd 290 N. Y. 828, 50 N. E. 2d 235.

¶ 2. The City Planning Commission is an advisory body; it cannot execute City powers or expend City funds without approval or acquiescence of the Board of Estimate.-Childs v. Moses, 265 App. Div. 353, 38 N. Y. S. 2d 704 [1942], aff'g 178 Misc. 828, 36 N. Y. S. 2d 574 [1942], aff'd, without opinion 290 N. Y. 828, 50 N. E. 2d 235 [1943].



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§ 193. **Removal of commission members.**

A member of the commission other than the chair may be removed by the appointing official only upon proof of official misconduct, neglect of official duties, conduct in any manner connected with his or her official duties which tends to discredit his or her office, or mental or physical inability to perform his or her office, or mental or physical inability to perform his or her duties. Before removal, any such member shall receive a copy of the charges and shall be entitled to a hearing on a record by the office of administrative trials and hearings, which shall make final findings of fact, recommend a decision and submit such findings and recommended decision to the appointing official for final action.

HISTORICAL NOTE

Section amended at General Election, November 7, 1989.



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CHAPTER 8 CITY PLANNING

§ 195. **Acquisitions of office space.**

Acquisitions by the city of office space or existing buildings for office use, whether by purchase, condemnation, exchange or lease, shall be subject to the following review and approval procedure:

a. The agency proposing any such acquisition shall file with the department of city planning a notice of intent to acquire. The department of city planning shall send such notice to the community board in which the proposed acquisition is located and to all borough presidents.

b. Within thirty days of the filing of such notice, the city planning commission shall hold a public hearing on such acquisition and shall approve or disapprove such acquisition. Notice of such hearing shall be published in the City Record not less than ten days in advance of such hearing.

c. In reviewing any such acquisition, the commission shall apply the criteria for the location of city facilities provided for in section two hundred and three.

d. Within the thirty days provided for commission action pursuant to subdivision b of this section, the commission shall file any approval of such an acquisition with the council. Within twenty days of such filing, the council may by two-thirds vote disapprove such acquisition.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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CHAPTER 8 CITY PLANNING

§ 196. **Affected boards and borough presidents.**

For purposes of this chapter: the term "affected community board" shall mean the community board for a community district in which land included in a plan or an application pursuant to this chapter is located; the term "affected borough president" shall mean the president of a borough in which land included in such a plan or an application is located; and a borough board shall be deemed "affected" if such a plan or application includes land within two or more community districts within the borough represented by such borough board.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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NYC Charter 197-a

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CHAPTER 8 CITY PLANNING

§ 197-a. **Plans.**

a. Plans for the development, growth, and improvement of the city and of its boroughs and community districts may be proposed by (1) the mayor, (2) the city planning commission, (3) the department of city planning, (4) a borough president with respect to land located within his or her borough, (5) a borough board with respect to land located within its borough, or (6) a community board with respect to land located within its community district. A community board, borough board or borough president that proposes any such plan shall submit the plan together with a written recommendation to the city planning commission for determinations pursuant to subdivision b of this section. Any such submission may be made by a community board, borough board or borough president only after the board or borough president proposing such a plan has held a public hearing on the plan.

b. The city planning commission shall adopt rules establishing minimum standards for the form and content of plans pursuant to this section within a reasonable time period after the first day of July, nineteen hundred ninety. Upon receipt of a plan proposed pursuant to this section by a community board, borough board or borough president, the city planning commission shall, within a reasonable time period, determine whether such plan satisfies the standards established in such rules and is consistent with sound planning policy. If the commission makes such determinations with respect to a plan submitted by a community board, it shall prepare or cause to be prepared any environmental analysis of such plan required by law to enable the city planning commission and the council to act on the plan pursuant to subdivision d of this section. If the city planning commission makes the determinations provided for in this subdivision with respect to a plan, such plan shall be referred to the department of city planning for circulation and review pursuant to subdivisions c and d of this section.

c. All plans proposed pursuant to this section shall be referred to the department of city planning for circulation by the department to all affected community boards, all affected borough boards and all affected borough presidents for review and written recommendation, except that any such plan need not be circulated to the agency or official that

proposed such plan. All affected community boards and borough boards to which such a plan is referred shall hold a public hearing on any such plan, except that in the case of a plan that includes an entire borough or land in more than one borough, only one public hearing need be held in each affected borough. The city planning commission shall establish by rule the procedures and schedule for review of such plans, consistent with the provisions of this section. A community board or borough board may review a plan which does not involve land so located as to require its review if in its judgment the plan significantly affects the welfare of the district or borough served by such board. In such case, the plan and any written recommendations relative thereto shall be made available to such board on request. Such board may hold its own public hearing on such plan if it desires and may submit its own written recommendations in regard thereto to the city planning commission.

d. Within a reasonable time period following review and recommendation of a plan pursuant to subdivision c of this section, the city planning commission shall (1) review such plan, (2) hold a public hearing on such plan, and (3) by resolution approve, approve with modifications or disapprove such plan. If the commission has approved a plan or approved a plan with modifications, such plan shall be subject to review and action by the council pursuant to section one hundred ninety-seven-d. The council may by a two-thirds vote approve a plan which the city planning commission disapproved or on which the commission has failed to act if the mayor so requests. Upon the filing by the mayor of such a request with the commission and the council, the commission shall within five days file with the council a copy of its decision together with a copy of the plan. Copies of approved plans shall be filed with the city clerk, the department of city planning, the affected borough presidents, the affected borough boards and the affected community boards.

HISTORICAL NOTE

Added at General Election, May 4, 1975.

Amended by L. L. 1977, No. 102.

Amended by L. L. 1979, No. 29.

Section amended at General Election, November 7, 1989.

Subd. b amended L.L. 17/2008 § 3, eff. May 6, 2008.

CASE NOTES

¶ 1. A ten year capital housing plan, which involved a projected allocation for the preservation and upgrading of housing units for low and middle income persons, is not a "plan" within the meaning of this section, since it does not mention any specific parcels of property or neighborhoods to be affected. Thus, review under this section is not required. *Housing Justice Campaign v. Koch*, 164 A.D.2d 656, 565 N.Y.S.2d 472 (1st Dept. 1991).



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NYC Charter 197-b

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CHAPTER 8 CITY PLANNING

§ 197-b. **Notification of plans and proposals.**

a. Advance notice of all preliminary and final plans of public agencies and public benefit corporations or of private agencies, entities or developers filed with the city that relate to the use, development or improvement of land subject to city regulation shall be given to the affected community board or boards and the office of the affected borough president, provided that exceptions may be made in matters of no appreciable public concern by agency rule.

b. Copies of (1) all requests for proposals and other solicitations of proposals issued by or on behalf of the city, whether or not issued by an agency, a local development corporation or other entity, and (2) all letters of intent executed by or on behalf of the city, whether or not executed by an agency, a local development corporation or other entity, that relate to the private use or the disposition of city-owned land, shall be conveyed to the community boards where such land is located and the office of the borough president where such land is located promptly after issuance or execution.

HISTORICAL NOTE

Added at General Election, May 4, 1975.

Amended by L. L. 1977, No. 102.

Amended at General Election, November 8, 1988.

Section amended at General Election, November 7, 1989.



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NYC Charter 197-c

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CHAPTER 8 CITY PLANNING

§ 197-c. **Uniform land use review procedure.**

a. Except as otherwise provided in this charter, applications by any person or agency for changes, approvals, contracts, consents, permits or authorization thereof, respecting the use, development or improvement of real property subject to city regulation shall be reviewed pursuant to a uniform review procedure in the following categories:

- (1) Changes in the city map pursuant to section one hundred ninety-eight and section one hundred ninety-nine;
- (2) Maps of subdivisions or platting of land into streets, avenues or public places pursuant to section two hundred two;
- (3) Designations of zoning districts under the zoning resolution, including conversion from one land use to another land use, pursuant to sections two hundred and two hundred one;
- (4) Special permits within the jurisdiction of the city planning commission under the zoning resolution, pursuant to sections two hundred and two hundred one;
- (5) Site selection for capital projects pursuant to section two hundred eighteen;
- (6) Revocable consents pursuant to section three hundred sixty-four, requests for proposals and other solicitations for franchises pursuant to section three hundred sixty-three, and major concessions as defined pursuant to section three hundred seventy-four;
- (7) Improvements in real property the costs of which are payable other than by the city pursuant to section two hundred twenty;
- (8) Housing and urban renewal plans and projects pursuant to city, state and federal housing laws;

(9) Sanitary or waterfront land-fills pursuant to applicable charter provisions or other provisions of law;

(10) Sale, lease (other than the lease of office space), exchange, or other disposition of the real property of the city, including the sale or lease of land under water pursuant to section sixteen hundred two, chapter fifteen, and other applicable provisions of law;

(11) Acquisition by the city of real property (other than the acquisition of office space for office use or a building for office use), including acquisition by purchase, condemnation, exchange or lease and including the acquisition of land under water pursuant to section sixteen hundred two, chapter fifteen, and other applicable provisions of law; and

(12) Such other matters involving the use, development or improvement of property as are proposed by the city planning commission and enacted by the council pursuant to local law.

b. The following documents shall be filed with the department of city planning: (1) applications under this section, (2) any amendments thereto that are made prior to approval of such applications pursuant to this chapter, (3) any written information submitted by an applicant for purposes of determining whether an environmental impact statement will be required by law, and (4) documents or records intended to define or substantially redefine the overall scope of issues to be addressed in any draft environmental impact statement required by law. The department of city planning shall forward a copy of any materials it receives pursuant to this subdivision (whether or not such materials have been certified as complete) within five days to each affected borough president, community board or borough board.

c. The department of city planning shall be responsible for certifying that applications pursuant to subdivision a of this section are complete and ready to proceed through the uniform land use review procedure provided for in this section. Upon certification of an application, the department shall give notice of such certification to the council. If an application under this section has not been certified within six months after filing, both the applicant and, if the land use proposed in an application is consistent with the land use policy or strategic policy statement of the affected borough president, the affected borough president shall have the right at any time thereafter to appeal to the city planning commission for certification. The commission shall promptly, but in any event within sixty days of the filing of such an appeal, either certify the application or state in writing what further information is necessary to complete the application. If such an appeal is brought by an affected borough president, the affirmative vote of five members of the commission shall be sufficient to certify the application.

d. If a meeting involving a city agency and an applicant is convened to define or substantially redefine the overall scope of issues to be addressed in any draft environmental impact statement required by law for an application subject to review under this section, each affected community board and each affected borough president shall receive advance notice of such meeting, and each shall have the right to send one representative to the meeting.

e. Each affected community board shall, not later than sixty days after receipt of an application that has been certified pursuant to subdivision c of this section,

(1) notify the public of the application in a manner specified by the city planning commission pursuant to subdivision i of this section, and

(2) either (a) conduct a public hearing thereon and prepare and submit a written recommendation directly to the city planning commission and to the affected borough president or (b) where authorized by this charter, submit a written waiver of the right to conduct a public hearing and to submit such written recommendations to the commission and the affected borough president.

f. A copy of a recommendation or waiver by a community board pursuant to subdivision e of this section that involves land located within two or more community districts in a borough shall also be filed with the affected borough

board within the same time period as specified in subdivision e. Not later than thirty days after the filing of a recommendation or waiver with the borough board by all affected community boards, or, if any affected community board shall fail to act, thirty days after the expiration of the time allowed for such community board to act, the borough board may hold a public hearing on the application and any such recommendations and submit a written recommendation or waiver thereof to the city planning commission.

g. Not later than thirty days after the filing of a recommendation or waiver with the borough president by all affected community boards, or, if any affected community board shall fail to act, thirty days after the expiration of the time allowed for such community board to act, the borough president shall submit a written recommendation or waiver thereof to the city planning commission.

h. Not later than sixty days after expiration of time allowed for the filing of a recommendation or waiver with the city planning commission by a borough president, the commission shall approve, approve with modifications, or disapprove the application. Any such approval or approval with modifications of the commission shall require the affirmative vote of at least seven of the members, except that the affirmative vote of nine members shall be required to approve or approve with modifications an application pursuant to paragraph five, ten or eleven of subdivision a of this section relating to a new city facility if the affected borough president recommends against approval of such application pursuant to subdivision g of this section and has proposed an alternative location in the same borough for such new city facility pursuant to subdivision f or g of section two hundred four. The commission shall conduct a public hearing on all applications that are subject to review and approval by the commission pursuant to this section. Prior to taking any action pursuant to this subdivision on a matter involving the siting of a capital project, the sale, lease, exchange or other disposition or acquisition of real property, a request for a proposal or other solicitation for a franchise or a revocable consent, the city planning commission may obtain a report from the office of management and budget or the department of citywide administrative services, as appropriate. Any action of the city planning commission which modifies or disapproves a written recommendation of the community board, borough president or borough board shall be accompanied by a written explanation of its reason for such action.

i. The city planning commission shall establish rules providing (1) guidelines, minimum standards, and procedural requirements for community boards, borough presidents, borough boards and the commission in the exercise of their duties and responsibilities pursuant to this section, (2) minimum standards for certification of applications pursuant to subdivision c of this section, and (3) specific time periods for review of applications pursuant to this section prior to certification.

j. If a community board, borough president or borough board fails or waives its right to act within the time limits for review pursuant to subdivisions e, f and g of this section, the application shall be referred to the next level of review. If the city planning commission fails to act on an application within the time limit specified in subdivision h of this section, the application shall be deemed to have been denied unless the application (i) is pursuant to paragraph three or four of subdivision a of this section, in which case the application may be forwarded to the council for review pursuant to the provisions of subdivision b of section two hundred, if applicable, or (ii) is pursuant to paragraph eight of subdivision a of this section, in which case the application shall be referred to the council for review and action as provided by state law.

k. Notice of any hearing on an application by the city planning commission shall be published in the City Record at least ten days immediately prior to the date of the hearing, and a copy of the notice shall be mailed to all community boards or borough boards affected by the application.

l. The commission shall establish by rule procedures for advance posting of notices of commission hearings on applications. Such notices shall be posted at the location of the land involved in such manner and with respect to such types of applications as the commission deems appropriate. Failure to post any such notice shall not affect or impair the validity of any decision of the city planning commission, the council or other agency or official pursuant to this chapter.

m. A community or borough board may review an application which is subject to the uniform land use review procedure pursuant to this section but does not involve land so located as to require reference to such board for review, if in the board's judgment the application might significantly affect the welfare of the community district or borough served by such board. In such a case the application and the related materials submitted to the affected board or boards by the city planning department shall be submitted also to such board upon the request of such board, and such board may hold its own public hearing thereon if it so desires and may submit its own written recommendations in regard thereto to the city planning commission for consideration at any time before the city planning commission takes action thereon.

HISTORICAL NOTE

Section added at General Election, May 4, 1975.

Subd. a-e, h, j amended by L. L. 1977, No. 102.

Subd. e amended by L. L. 1979, No. 29 § 3.

Subd. g amended at General Election, November 8, 1988.

Section amended at General Election, November 7, 1989.

Subd. h amended L.L. 59/1996 § 4, eff. Aug. 8, 1996.

CASE NOTES

¶ 1. The provisions of this section found not applicable to the awarding of cable TV franchises wherein no land use impact was found to be present, but only economic impact. Therefore the City could award the contracts without submitting the issue to the community boards. *Starburst v. City of NY*, 125 A. D. 2d 148 [1987].

¶ 2. The provisions of this section providing for review of land use are not applicable to a redevelopment project carried out under the New York State Urban Development Corporation Act (L. 1968, ch. 174, as amended; McKinney's Uncons Laws of NY § 6251 et seq). The "override power" of the Act (§ 6283) is not limited to regulatory provisions which would govern UDC's activity, but includes as well the provisions which would govern the activity of a municipality contracting with UDC concerning a redevelopment project. Thus the board of estimate resolutions of November 9, 1984 approving the Times Square Redevelopment Project and authorizing the Mayor to enter into certain contracts with the UDC are upheld even though this section had not been complied with prior to the resolutions having been approved. *Waybro v. NYC Bd. of Estimate*, 67 N. Y. 2d 349 [1986].

¶ 3. Mapping of plaintiff's property which made it "virtually unsaleable" cannot be considered an unconstitutional taking of the property because it is not a final administrative action. *Petosa v. City of New York*, 135 AD2d 801 [1987].

¶ 4. Petitioners' claim that use and preparation of pier for temporary use of prison barge required ULURP review since it is disposition of city-owned property and site selection for capital projects is not persuasive. Emergency actions such as this is to alleviate overcrowding are immediately necessary. Court's function is not to determine if emergency exists but to decide whether decision was rationally based. *Matter of Silver v. Koch*, 137 AD2d 467 [1988].

¶ 5. Three buildings of Greenpoint Hospital were being renovated to shelter up to 300 homeless men. The Human Resources Administrator declared an emergency determining that "the protection and preservation of the life and health of homeless people require immediate action." Action was brought that ULURP procedures were violated because of failure to conduct requisite hearings. ULURP does apply and premises may be utilized during review. *Greenpoint Renaissance Enterprise v. City of New York*, 137 AD2d 597 [1988].

¶ 6. Interagency transfer of land for development must be submitted to ULURP even though such transfers are not

included in categories specifically subject to ULURP § 197-c since the board of estimate has authority to authorize such review where "a change in use, activity, function or operation will ensue." *Responsible Planners v. Koch*, 142 Misc. 2d 1038 [1988].

¶ 7. Tibbett Garden residential complex construction required an environmental impact statement. This procedure may be consolidated with ULURP mandated by § 197-c. To remand for further review would be an unnecessary delay since school portion of property is still subject to full environmental review. *Responsible Planning v. Koch*, 148 AD2d 230 [1989].

¶ 8. Denial by Board of Standards and Appeals of a claim for permit to build a single-family house in bed of a mapped but undeveloped street is ripe for judicial review even though petitioners might pursue elaborate "demapping" procedure, Charter §§ 197-c, 197-d, which is costly and requires final approval of the NYC Council. Ripeness doctrine does not impose a threshold barrier of required remedies. *Ward v. Bennett*, 174 AD2d 681, modified 79 NY2d 394 [1992].

¶ 9. A privately owned 72-unit SRO will be renovated and become a city-funded 100-unit facility with some persons referred by the Department of Mental Health. Plaintiff sufficiently pleaded a timely cause of action based on violation of the city ULURP, § 197-c in undertaking a "housing plan" without the requisite review, but a preliminary injunction is not granted lacking a clear showing of likelihood of success on the merits. *W 97th Sts. Assn. v. Volunteers*, 153 Misc. 2d 321 [1991].

¶ 10. Oral lease by city and commercial hotel to provide shelter for 150 homeless families requires compliance with Uniform Land Use Review Procedures and the "fair share" procedures in Charter § 197-c(a)(11) and § 203. *Davis v. Dinkins*, 154 Misc. 2d 518 [1992].

¶ 11. A shift in composition of residents of a building being used in City's shelter system brought on by the renovation of the building does not require the implementation of review procedure, Charter § 197-c. Referring and servicing homeless at an SRO does not constitute a "plan" under ULURP. *W97-W98 Sts. v. Volunteers*, 190 AD2d 303 [1993].

¶ 12. A loan by the City to a private organization for the purchase of a single building, and its conversion after minor cosmetic renovation from one sort of privately owned and operated residence to another, does not constitute the type of "housing or urban renewal plan" subject to Uniform Land Use Review Procedure, Charter § 197-c(a)(8). Furthermore, the agreement by which the City Human Resources Administration reimburses the nonprofit organization for sheltering homeless families is not a contract respecting the use of real property so as to make ULURP applicable. *Planning Bd. No. 4 v. Homes*, 158 Misc. 2d 184 [1993], 600 NYS2d 619.

¶ 13. The development of a community residence for certain homeless persons on City property acquired through condemnation by the State involves the "disposition of the real property of the city" so as to require the City's compliance with the Uniform Land Use Review Procedure, Charter § 197-c(a)(10). *Connor v. Cuomo*, 161 Misc. 2d 889 [1994].

¶ 14. Charter § 197-c has no legal requirement for a superseding restrictive declaration to be included in order for a land use application to be complete. Charter § 197-c(a), (b), (c), (i) and the implementing regulations, 62 RCNY 2-02(a)(5)(iv), (v) do not make the filing of a superseding restrictive declaration a prerequisite to deeming an application complete for ULURP notification and processing purposes. *Coalition against Lincoln W. v. City of New York*, 208 AD2d 472 affirmed, 86 NY2d 123 [1995].

¶ 15. The court held that there was no lease between the city the Kennedy Inn to shelter homeless people. Here there was never any agreement to rent a particular number of rooms nor an agreement as to time. The city only agreed to refer homeless families of "at most" 150 of the hotels 189 rooms. The use of the hotel is not subject to ULURP, Charter §197-c, nor was it subject to a "fair-share" hearing since the Inn is not a "city facility" as defined in Charter §203. *Davis*

v. Dinkins, 206 AD2d 365 [1994].

¶ 16. All 21 rooms of the Wakefield Motor Inn were contracted by the City for rental to homeless families. Substantial improvements were also made to accommodate the City. This arrangement for day-rates at the hotel is not a defacto lease requiring City to conduct Uniform Land Use Review Procedure, Charter §197-c. Although all the rooms will be used by the City, the owner will control and be running the hotel. *Ferrer v. Dinkins*, 218 A.D.2d 89, 635 N.Y.S.2d 965, leave to appeal denied, 88 N.Y.2d 801, 644 N.Y.S.2d 493 [1996].

¶ 17. A community board does not have capacity to bring a Freedom of Information Article 78 proceeding against the New York City Department of City Planning, even though a land use question might be involved. *Community Board 7 of the Borough of Manhattan v. Schaffer*, 84 N.Y.2d 148, 615 N.Y.S.2d 644 (1994).

¶ 18. Section 197-c(a)(9) requires Uniform Land Use Review Procedures (ULURP) where there is an application that involves "waterfront land fills." The court held that in the absence of a statutory definition of the above term, the City Council reasonably interpreted the term to mean the addition of fill materials to land that is below the high water line. Thus, since the project in question involves land fill which would be above the mean high water line, ULURP review is not required. *Coppotelli v. Commissioner of the Dept. of Buildings*, 646 N.Y.S.2d 773, 169 Misc.2d 888 (Sup.Ct. Richmond Co. 1996).

¶ 19. An agreement under which the State of New York permitted the City to use a State-owned psychiatric center building to house homeless men constituted a lease and was therefore subject to the Uniform Land Use Review Procedures of § 197-c. The central characteristic of a lease is the surrender of absolute possession and control of property to another party for an agreed-upon rental. The agreement here called for a two year period of occupancy at a specified rental. *Dodgertown Homeowners Association v. Batts*, 652 N.Y.S.2d 761, 235 A.D.2d 538, leave to appeal denied, 89 N.Y.2d 809, 655 N.Y.S.2d 888 (App.Div. 2d Dept. 1997).

¶ 20. The issuance by the Commissioner of Ports and Terminals of a permit for the mooring of a prison barge, which permit was terminable upon 30 days written notice. The court held that this constituted a license, and was not a lease which would constitute a disposition of City property under § 197-c so as to trigger the application of the Uniform Land Use Review Procedure (ULURP). Although § 197-c(a) brought "site selection for capital projects" within the ambit of ULURP review, the execution of this license was not deemed a site selection for a capital project. An important factor in the determination was that only \$1.6 million (a relatively small sum in terms of government spending) had been allocated from the general expense budget of the Corrections Department, and this was for minor repairs and improvements to the pier. *Silver v. Koch*, 137 AD2d 467, 525 N.Y.S.2d 186 (1st Dept. 1988).

¶ 21. The City Council has a role in deciding whether a New York City Health and Hospitals Corporation health care facility, which had provided services for indigent persons, can be surrendered to the City and demolished. The planned action is also subject to the requirements of the Uniform Land Use Review Procedure of Section 197-c. *Council of the City of New York v. Giuliani*, 183 Misc.2d 799, 705 N.Y.S.2d 801 (Sup.Ct. New York Co. 1999).

¶ 22. The City Charter requires that amendments to the Zoning Resolution be reviewed and approved by the City Planning Commission, and then forwarded to the City Council for approval, disapproval or modification. When the City Planning Commission approves the zoning amendment, it issues a report that is filed with the City Council, pursuant to City Charter § 197-c. *Beekman Hill Ass'n. v. Chin*, 274 A.D.2d 161, 712 N.Y.S.2d 471 (1st Dept. 2000).

¶ 23. Easements are considered "real property" for purposes of determining the types of actions which are subject to the city's land use review laws. *New York City Council v. City of New York*, 2002 WL 554192 (Sup.Ct. New York Co.).

¶ 24. In one case, the court had to decide whether the City was required to apply the Uniform Land Use Review Procedure (ULURP) to an agreement to demolish an elevated railway. The court held that the surrender of easements from the New York Central to the City was not an "acquisition" of property by the City, so that it did not trigger

ULURP review. Since the City already owned the property subject to the easement, it was not acquiring anything new. Where the title in fee to both the dominant and servient tenements become vested in one person, an easement is extinguished by merger. Since the process of merger represents the extinction, not the conveyance, of an interest in real estate, no acquisition of property was contemplated by the agreement. *New York City Council v. City of New York*, 4 A.D.3d 85, 770 N.Y.S.2d 346 (1st Dept. 2004).



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NYC Charter 197-d

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§ 197-d. **Council Review.**

a. The city planning commission shall file with the council and with the affected borough president a copy of its decisions to approve or approve with modifications (1) all matters described in subdivision a of section one hundred ninety-seven-c, (2) plans pursuant to section one hundred ninety-seven-a, and (3) changes in the text of the zoning resolution pursuant to sections two hundred and two hundred one. Any such filing of a decision pursuant to section one hundred ninety-seven-c shall be completed prior to the expiration of the sixty-day period for action by the commission. Any such filing with the council shall include copies of all written recommendations of community boards, borough boards and borough presidents with respect to the decision being filed.

b. The following decisions filed with the council pursuant to subdivision a of this section, shall be subject to review and action by the council:

(1) any decision of the city planning commission to approve or approve with modifications a matter described in paragraph three or eight of subdivision a of section one hundred ninety-seven-c, a disposition of residential real property (as defined in this paragraph) pursuant to paragraph ten of subdivision a of section one hundred ninety-seven-c (except for dispositions to companies that have been organized exclusively to develop housing projects for persons of low income), a plan pursuant to section one hundred ninety-seven-a, or a change in the text of the zoning resolution pursuant to sections two hundred or two hundred one. For purposes of this section, residential real property shall mean real property improved by structures, whether or not occupied, built for or converted to a use which is primarily residential, but shall not include property subsequently converted to non-residential use;

(2) any other decision of the city planning commission to approve or approve with modifications a matter described in subdivision a of section one hundred ninety-seven-c, if (i) both an affected community board (after holding a public hearing) and the affected borough president, within the time periods allotted for their reviews pursuant to section one hundred ninety-seven-c, have recommended in writing against approval and (ii) the affected borough

president, within five days of receiving a copy of the decision of the commission, files with the commission and the council a written objection to the decision; and

(3) any other decision of the city planning commission to approve or approve with modifications a matter described in subdivision a of section one hundred ninety-seven-c, if within twenty days of the filing of such decision pursuant to subdivision a of this section, the council resolves by the majority vote of all the council members to review the decision of the commission.

c. Within fifty days of the filing with the council pursuant to subdivision a of this section of any decision of the city planning commission which pursuant to subdivision b of this section is subject to review by the council, the council shall hold a public hearing, after giving public notice not less than five days in advance of such hearing, and the council, within such fifty days, shall take final action on the decision. The affirmative vote of a majority of all the council members shall be required to approve, approve with modifications or disapprove such a decision. If, within the time period provided for in this subdivision and, if applicable, in subdivision d of this section, the council fails to act or fails to act by the required vote on a decision of the city planning commission subject to council review pursuant to subdivision b of this section, the council shall be deemed to have approved the decision of the commission.

d. The council shall not approve with modifications a commission decision if the commission has determined pursuant to this subdivision that additional review of the modifications is required. Prior to approving a decision of the commission with modifications, the council shall file the text of any such proposed modifications with the commission. Within fifteen days of such filing, the commission shall file with the council a written statement indicating whether such proposed modifications are of such significance that additional review of environmental issues or additional review pursuant to section one hundred ninety-seven-c is required. If no additional review is required, the commission may include in such statement its advisory recommendation concerning the proposed modifications, together with any proposed amendments to the proposed modifications. The council may thereafter approve such proposed modifications, with or without the amendments proposed by the commission. The time period for council action shall be tolled during such fifteen-day period; provided, however, that proposed modifications may be referred to the commission pursuant to this subdivision only once with respect to each application or group of related applications under review by the council.

e. All actions of the council pursuant to this section shall be filed by the council with the mayor prior to the expiration of the time period for council action under subdivisions c and, if applicable, d of this section. Actions of the council pursuant to this section shall be final unless the mayor within five days of receiving a filing with respect to such an action of the council files with the council a written disapproval of the action. Any mayoral disapproval under this subdivision shall be subject to override by a two-thirds vote of all the council members within ten days of such filing by the mayor.

f. The mayor shall have the right to file a written disapproval of any approval deemed to have occurred pursuant to subdivision c of this section as a result of a failure of the council to act or to act by the required vote. Any such written disapproval must be filed within five days of the expiration of the time period for action by the council under subdivisions c and, if applicable, d of this section. Any mayoral disapproval under this subdivision shall be subject to override by a two-thirds vote of all the council members within ten days of such filing by the mayor.

g. If a decision of the commission approving an application is not subject to council review pursuant to paragraph one of subdivision b of this section or is not made subject to council review pursuant to paragraphs two or three of subdivision b of this section, the mayor may nonetheless file with the council a written objection to such decision of the commission within five days of the expiration of time for the council to act under paragraph three of subdivision b of this section. Any mayoral objection under this subdivision shall be subject to override by a two-thirds vote of all the council members within ten days of such filing by the mayor.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

CASE NOTES

¶ 1. The City Council has a role in deciding whether a New York City Health and Hospitals Corporation health care facility, which had provided services for indigent persons, can be surrendered to the City and demolished. The planned action is also subject to the requirements of the Uniform Land Use Review Procedure of Section 197-c. *Council of the City of New York v. Giuliani*, 705 N.Y.S.2d 801 (Sup.Ct. New York Co. 1999).



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CHAPTER 8 CITY PLANNING

§ 198. **City map.**

a. The city map is hereby continued.

b. The director of city planning shall be the custodian of the city map, and it shall be his or her duty to complete and maintain the same and to register thereon all changes resulting from action authorized by law.

c. The city map shall be on file in the office of the department of city planning, and certified copies thereof and of all changes thereto shall be filed in the offices of the corporation counsel, of the city clerk and of the borough president of the borough in which the land shown on the map is located and in the office in which conveyances of real estate are required to be recorded in the county in which the land shown on the map is located.

HISTORICAL NOTE

Amended by L. 1962, ch. 998, § 21.

Section amended at General Election, November 7, 1989.

CASE NOTES

¶ 1. Homeowner was entitled to judgment declaring that the City of New York may not require him to install a storm sewer in any street as a condition to granting a permit for construction of a sanitary sewer.-*Stonedge Estates, Inc. v. City of N. Y.*, 24 App. Div. 2d 888, 264 N. Y. S. 2d 576 [1965], modifying, 47 Misc. 2d 270, 262 N. Y. S. 2d 558 [1965].



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§ 199. **Projects and changes in city map.**

a. No improvement or project affecting the city map and no addition to or change in the city map shall be authorized otherwise than as provided in this charter.

b. The review of any proposed addition to or change in the city map initiated by or referred to the city planning commission shall be made pursuant to section one hundred ninety-seven-c and section one hundred ninety-seven-d.

HISTORICAL NOTE

Amended by L. 1963, ch. 928.

Amended at General Election, November 4, 1975.

Amended by L. 1978, ch. 763.

Subd. b amended at General Election, November 7, 1989.

CASE NOTES

¶ 1. Section 199 b of the Chapter, requiring a public hearing before the taking of any action on any proposed change in the City map not initiated by the City Planning Commission, was without application where the change called merely for inclusion of property immediately adjacent to the original site and some 260 feet in width, the purpose being to decrease cost of plant construction and facilitate development of plant, as the City map is not required by Administrative Code § 198a-2.0 to specify the location or lay out of sewage treatment plant.-*Timmerman v. City of N. Y.*, 69 N. Y. S. 2d 102 [1946], *aff'd* without opinion, 272 App. Div. 758, 70 N. Y. S. 2d 140 [1947].

¶ 2. Where City Planning Commission failed to report on a city map change within ten weeks but belatedly reported thereafter and before any action had been taken by the Board of Estimate and the board then voted in conformity with the Planning Commission recommendation, a simple majority rather than a three-fourths vote was all that was required.-*Jacobs v. City of N. Y.*, 54 Misc. 2d 46, 281 N. Y. S. 2d 867 [1966], *aff'd*, 28 App. Div. 2d 668, 282 N. Y. S. 2d 633 [1967].

¶ 3. Contention that the order of condemnation to acquire property for school site was illegal in that the resolution selecting the site modified the Master Plan of the City without following procedure outlined in the Charter, was rejected, as there was involved no change in the City map, the Board of Education pursuant to Education Law § 875 had selected four alternate sites for the school and thereafter by resolution had selected as an additional alternative site the land acquired in the present proceeding.-*In re City of N. Y. (School Site, 37th Ave., Queens)*, 118 (73) N. Y. L. J. (10-6-47) 751, Col. 2 T.

¶ 4. The selection of a site for the construction of a high school **held** in compliance with the Charter where, though the site did not conform to the master plan and was not recommended by the City for that reason, it was approved by the Board of Estimate by unanimous vote.-*In re Kenniff (Wagner)*, 132 (25) N. Y. L. J. (8-5-54) 3, Col. 5 F.

¶ 5. An amendment to a building zone resolution which did not change the building zone district lines in any way which could be reflected or located in the master plan but merely added to the list of permissible uses, in districts already zoned for residential use, a new subdivision, providing for administrative offices and laboratory uses under conditions and safeguards not theretofore permitted, came within § 200 of the Charter relating to "zoning regulations" and was required to be affirmatively passed by a $\frac{3}{4}$'s vote, or at least by a majority vote of the Board of Estimate, pursuant to former § 199, which relates to the master plan of the city.-*Nappi v. LaGuardia*, 184 Misc. 775, 55 N. Y. S. 2d 80 [1944] *aff'd* without opinion, 269 App. Div. 693, 54 N. Y. 722 [1945], *aff'd*, 295 N. Y. 652, 64 N. E. 2d 716 [1945].

¶ 6. Application under C. P. A. Art. 78 to review determination of the City Planning Commission, was denied, as the determination sought to be reviewed, viz., the plan of the Commission and its findings and determination, were but preliminary steps which were required to be submitted to the Board of Estimate for its approval. The determination did not finally determine the rights of the parties, as required by C. P. A. § 1285, subd. 3.-*Altmayer v. City Planning Commission*, 130 (68) N. Y. L. J. (10-5-53) 643, Col. 4 T.

¶ 7. The selection of a school site by the Board of Estimate will not be upset by the courts unless there was corruption or bad faith amounting to fraud. Action was dismissed where it was claimed that the Board members had conspired to obscure and suppress consideration of a suitable site and thereby authorize the acquisition of another site which included plaintiff's property.-*Chelnik v. Wagner*, 134 (109) N. Y. L. J. (12-8-55) 7, Col. 4 F.

¶ 8. The legality of the action of the Board of Estimate in changing a zone is a legislative act which must be challenged in a plenary proceeding in which the City Planning Commission and the Board of Estimate are parties. Thus, a proceeding against the Borough Superintendent of Queens to compel him to rescind his revocation of approval of plans for erection of a multiple dwelling after the zoning had been changed by the Board of Estimate was dismissed where the basis of the action was that the zoning change had been accomplished in a manner not in accordance with applicable law.-*Farino v. Kelleher*, 134 (34) N. Y. L. J. (8-18-55) 6, Col. 3 T.

¶ 9. Petitioner was aggrieved because a project for widening a boulevard cut off a cross street at its intersection therewith, upon which he operated a gasoline station. However, the action of the Board of Estimate in adopting a resolution changing the City map was legislative in character. It referred the proposal to the City Planning Commission in accordance with law, and the latter reported favorably after a public hearing, at which no opposition was expressed. It cannot be said that the Board's action was arbitrary or capricious. It is not subject to review under Art. 78 of the Civil Practice Act, and the petition is dismissed.-*Matter of Asness v. City of New York*, 5 Misc. 2d 779, 160 N. Y. S. 2d 733

[1957]; aff'd 4 A. D. 2d 677, 164 N. Y. S. 2d 994 [1957].

¶ 10. A proposal that the lower Manhattan Expressway be eliminated from the city map was referred to the Planning Commission which failed to make a timely report. A property owner claiming that the Expressway routes on the city map interfered with his ability to finance the improvement of his property sought to require the Commission to render a report. The Court dismissed the proceeding on the ground that regardless of any recommendation made by the Commission, the Board of Estimate was the agency to take final and conclusive action on changes on the city map.-Matter of Porter Flushing Realty Co., Inc. v. N. Y. C. Planning Comm., 21 App. Div. 2d 864, 251 N. Y. S. 2d 125 [1964].

¶ 11. Mayor's certificate was not improper because certain temporary construction and demolition easements were not shown on the approved 1960 map, as temporary easements necessary to construction are not changes in city map and do not require special authorization.-DeSalvio v. McMorran, 50 Misc. 2d 483, 270 N. Y. S. 2d 651 [1965].



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CHAPTER 8 CITY PLANNING

§ 200. **Zoning resolution.**

a. Except as provided in subdivision b, any existing resolution or regulation of the council, the board of estimate or of the city planning commission to regulate and limit the height and bulk of buildings, to regulate and determine the area of yards, courts and other open spaces, to regulate density of population or to regulate and restrict the locations of trades and industries and location of buildings designed for specific uses or creating districts for any such purpose, including any such regulation which provides that the board of standards and appeals may determine and vary the application of such resolutions or regulations in harmony with their general purpose and intent and in accordance with general or specific rules contained in such regulations, may be amended, repealed or added to only in the following manner:

1. The city planning commission may upon its own initiative at any time or upon application as provided in section two hundred one, adopt a resolution to amend the text of the zoning resolution subject to the limitations provided by law. Before adopting any such resolution, the commission shall notify any community board or borough board affected by the resolution and shall afford persons interested an opportunity to be heard at a time and place to be specified in a notice of hearing to be published in the City Record for the ten days of publication of the City Record immediately prior thereto setting forth in general terms the nature of the proposed resolution and a statement of the place at which the entire resolution may be examined.

2. Any resolution by the commission approving a change in the text of the zoning resolution shall be subject to review and approval by the council pursuant to section one hundred ninety-seven-d. Any resolution for a zoning text change which the mayor shall have certified to the council as necessary, and which has been disapproved by the commission, may be adopted by the council by a two-thirds vote and, after notice to the parties affected, a public hearing. The council shall act upon such resolution within fifty days of the filing of the certification of the mayor with the council, and such resolution shall become effective upon approval by the council.

3. In case a protest against such a resolution approved by the city planning commission shall have been presented to the city clerk within thirty days from the date of the filing of such resolution with the council, duly signed and acknowledged by the owners of twenty per centum or more of the area of:

- (1) the land included in changes proposed in such proposed resolution, or
- (2) the land immediately adjacent extending one hundred feet therefrom, or
- (3) the land, if any, directly opposite thereto extending one hundred feet from the street frontage of such opposite land,

such resolution shall not be effective after the filing of such protest unless approved by the council by a three-fourths*8 vote within one hundred eighty days after the filing of said resolution with the city clerk. The effective date of such resolution, if so approved, shall be the date of such approval. A protest duly filed as herein provided may be withdrawn at any time within sixty days from the date of the filing of such resolution.

b. Designations of zoning districts under the zoning resolution and the issuance of special permits which under the terms of the zoning resolution are within the jurisdiction of the city planning commission shall be subject to review and approval pursuant to the procedures provided in section one hundred ninety-seven-c and section one hundred ninety-seven-d, except that whenever the city planning commission has not recommended approval of a proposed change in the designation of a zoning district or the issuance of a special permit under the zoning resolution or has failed to act on such a matter within the time specified in section one hundred ninety-seven-c, the council by a two-thirds vote may approve such change or the issuance of such permit only if the mayor shall have certified to the council that such change or issuance is necessary. The council shall act upon such designation or permit within fifty days of the filing of the certification of the mayor with the council.

HISTORICAL NOTE

Amended by L. 1959, ch. 652.

Amended at General Election, November 4, 1975.

Amended by L. 1978, ch. 763.

Section amended at General Election, November 7, 1989.

CASE NOTES

¶ 1. In action by property owner for a judgment declaring a zoning resolution unconstitutional as to its property, defense asserting that plaintiff had not asked for a change of zoning as to its property, was sufficiently broad to include every manner or means by which a change in the zoning resolution, as applied to plaintiff's property, might be consummated, and included a change either by an amendment or by a variance of the zoning resolution.-*Ulmer Park Realty Co. v. City of New York*, 267 App. Div. 291, 45 N. Y. S. 2d 527 [1943].

¶ 2. Property owner, as a condition to maintaining an action attacking the constitutionality of a zoning resolution as applied to its property, was not required first to seek an amendment of the zoning resolution. Neither was it required first to seek a variance of the restrictive provisions of the resolution, as an application for a variance was not available to plaintiff because apparently it did not desire to erect a structure to be devoted to a non-conforming use, and furthermore the Board of Standards and Appeals was powerless to grant a variance since the claim was not that of a special or unique hardship but that the resolution was unreasonable in its application to the locality and confiscatory in its application to the plaintiff's property.-*Id.*

¶ 3. Amendment of Building Zone Resolution to permit administrative offices and industrial laboratory projects in

residential districts on plots of 10 acres or more, was constitutional, in view of the various safeguards, such as that no more than 25 percent of the land should be occupied by buildings and structures, that buildings should be at least 20 feet apart and might not exceed 50 feet in height, and that separate approval of each project must be given by the City Planning Commission and the Board of Estimate.-*Nappi v. La Guardia*, 184 Misc. 775, 55 N. Y. S. 2d 80 [1944], *aff'd* without opinion, 269 App. Div. 693, 54 N. Y. S. 2d 722 [1945], *aff'd*, 295 N. Y. 652, 64 N. E. 2d 716 [1945].

¶ 4. An amendment to a zoning ordinance which narrowed previous restrictions against garages in a retail use district so as to exclude only such garages as sold gasoline and oil **held** not unconstitutional where hearings were held, and after an extensive study of off-street parking the Planning Commission determined there was insufficient provision for such parking.-*Congregation Beth Israel West Side Jewish Center v. Board of Estimate of City of N. Y.*, 285 App. Div. 629, 139 N. Y. S. 2d 645 [1955].

¶ 5. Where amendatory resolution proposed by the City Planning Commission changed the area restrictions as to Residential and Retail Use Districts only in "B" Area Districts, and made no change with respect to the existing area restrictions affecting Business, Manufacturing and Unrestricted Use Districts within "B" Area Districts, protests by owners of 20 percent of the area of land in all the various Retail Use Districts contained in "B" Area Districts throughout the City was sufficient to require unanimous approval of the changes by the Board of Estimate pursuant to former § 200 of the Charter. That the proposed amendment was comprehensive in nature and included changes affecting various types of Use Districts in many Area and Height Districts did not require protests from 20 percent of the area of the land in all of the districts affected by any provision of the amendment. It appeared that the changes were indicated in separate sections, each affecting entirely different districts, and therefore separate sections should be considered as if separately enacted so far as the right to protest was concerned. At least all Use Districts in "B" Area Districts not affected by any change brought about by a particular section should have been excluded.-*431 Fifth Avenue Corp. v. City of New York*, 270 App. Div. 241, 59 N. Y. S. 2d 25 [1945], *aff'd* without opinion, 296 N. Y. 588, 68 N. E. 2d 877 [1946].

¶ 6. Inasmuch as proposed amendment increased the area of a plot which might be built upon within a "B" Area District to extent that the space used for parking and unloading might be included, and this exception was without application in a Residential Use District, protests filed by more than 20 percent of the area of land in the various Retail Use Districts contained in "B" Area Districts throughout the City was sufficient.-*Id.*

¶ 7. Contention that action of the Board of Estimate approving amendment of Building Zone Resolution to permit administrative offices and laboratory uses in residence districts on plots of not less than 10 acres, should have been unanimous in view of fact that a protest was filed by the owner of 20 percent or more of the area of the land immediately adjacent to the 28¹/₂ acres belonging to the defendant, was without merit, as the protest was filed in connection with the general amendment to the zoning resolution and not in connection with the application relating to defendant's plot, and in order to require unanimous approval by the Board it would have been necessary for the owners of at least 20 percent of the tracts of 10 acres or more in residential districts in the city, or the owners of at least 20 percent of the land immediately adjacent thereto for a distance of 100 feet, or the owners of at least 20 percent of the land directly opposite thereto for a distance of 100 feet, to protest.-*Nappi v. La Guardia*, 184 Misc. 775, 55 N. Y. S. 2d 80 [1944], *aff'd* without opinion, 269 App. Div. 693, 54 N. Y. S. 2d 722 [1945], *aff'd*, 295 N. Y. 652, 64 N. E. 2d 716 [1945].

¶ 8. Zoning Resolution rezoning a particular area from an "F" to an "E" district wherein construction was limited to dwellings intended for occupancy by single families, **held** not invalid as an attempt to exercise the power to regulate density of population, although it might tend indirectly to have that effect. The resolution did not limit the number of dwellings which might be constructed within the area but only the character of the structures. Hence the resolution was within the power delegated to the City Planning Commission by Charter former § 200, unless there were other proper objections.-*Hall v. Leonard*, 260 App. Div. 591, 23 N. Y. S. 2d 360 [1940], *aff'd* without opinion, 285 N. Y. 719, 34 N. E. 2d 893 [1941].

¶ 9. So much of a new Comprehensive Zoning Resolution of the Planning Commission (11-341 (e)) as provided that in any pending application to the Board of Standards and Appeals for a use variance, no use which would previously have been prohibited in a Restricted Retail District shall be permitted on a lot which is now zoned in a Residence District, was valid as this section provides for the amendment and repeal of zoning regulations including provisions applicable to the Board of Standards and Appeals.-Ruiz v. Foley, 23 App. Div. 2d 493, 255 N. Y. S. 2d 964 [1965].

¶ 10. Where on March 16 the City Planning Commission, pursuant to Charter former § 200, duly adopted a resolution amending the Building Zone Resolution so as to change the area in which petitioners' premises were located from a non-restricted district in which gasoline service stations were permissible into a business use district in which they were prohibited and under former § 200 such zoning change became effective in 30 days, determination of the authorities denying petitioners' applications for the erection of a service station, filed March 30, and for a drop-curb, filed March 31, **held** proper.-Chesebrough v. Murdock, 256 App. Div. 803, 9 N. Y. S. 2d 400 [1939].

¶ 11. Contention that amendment of the zoning resolution to permit administrative offices and industrial laboratory projects in residential districts on plots of not less than 10 acres was passed to permit the defendant to locate at a specific place and that this constituted illegal "spot zoning" was rejected, as the minutes of the hearing before the Planning Commission and the Board of Estimate disclosed that the amendment was intended to be city wide in scope, objections were filed not to defendant's project but to the amendment as a whole, the amendment in itself authorized no projects whatsoever and moreover required subsequent separate approval of each project submitted to the Planning Commission and the Board of Estimate.-Nappi v. La Guardia, 184 Misc. 775, 55 N. Y. S. 2d 80 [1944], *aff'd* without opinion, 269 App. Div. 693, 54 N. Y. S. 2d 722 [1945], *aff'd* 295 N. Y. 652, 64 N. E. 2d 716 [1945].

¶ 12. Failure to disapprove defendant's projects was not arbitrary, inasmuch as the project was located close to the waterfront in a substantially undeveloped district, with but two residences within a thousand feet thereof, and no adjacent land owner complained of the proposed use.-Nappi v. La Guardia, 184 Misc. 775, 55 N. Y. S. 2d 80 [1944], *aff'd* without opinion, 269 App. Div. 693, 54 N. Y. S. 2d 722 [1945], *aff'd*, 295 N. Y. 652, 64 N. E. 2d 716 [1945].

¶ 13. In connection with a zoning amendment to permit administrative offices and industrial laboratory projects in residential districts on plots of 10 acres or more, requirement of separate approval of each project submitted to the City Planning Commission and the Board of Estimate was both reasonable and proper.-Nappi v. La Guardia, 184 Misc. 775, 55 N. Y. S. 2d 80 [1944], *aff'd* without opinion, 269 App. Div. 693, 54 N. Y. S. 2d 722 [1945], *aff'd* 295 N. Y. 652, 64 N. E. 2d 716 [1945].

¶ 14. A zoning change did not take effect on the date of the filing of the resolution of the Planning Commission with the Board of Estimate and the subsequent issuance of a building permit inconsistent with the rezoning resolution was valid.-Bentrovato v. Crinnion, 206 Misc. 648, 133 N. Y. S. 2d 120 [1954].

¶ 15. Where corporation which proposed to construct multiple dwellings was aware of proposed rezoning making such construction nonconforming, corporation's actions in engaging architect and clearing site did not give rise to any vested right which would render the zoning change inoperative as to it.-Rosenzweig v. Crinnion, 139 N. Y. S. 2d 172 [1954], appeal dismissed 286 App. Div. 1066, 148 N. Y. S. 2d 912.

¶ 16. Where builder had notice of zoning ordinance amendment rendering his partially completed construction non-conforming, his vested right to a completion permit depended upon the work done before the amendment.-Riverdale Community Planning Ass'n v. Crinnion, 133 N. Y. S. 2d 706 [1954], *aff'd* 285 App. Div. 1047, 141 N. Y. S. 2d 510 [1955].

¶ 17. Contention that plaintiff's action for a declaratory judgment that certain zoning resolution amendments were invalid was premature as plaintiff had not showed that it had any plans under way for new construction or rebuilding, was rejected, as the complaint might be read as stating a grievance, actual or potential, on behalf of all the owners of

property devoted to retail use in B Area Districts, and not merely the unique problem of a particular land owner. In such a situation it was sound public policy for the court to exercise its discretion to allow a declaratory judgment in order to secure an expeditious determination of the broad questions presented.-431 Fifth Ave. Corp. v. City of N. Y., 184 Misc. 1001, 55 N. Y. S. 2d 203 [1945], *aff'd* on this point, 270 App. Div. 241, 59 N. Y. S. 2d 25 [1945], *aff'd*, 296 N. Y. 588, 68 N. E. 2d 877 [1946].

¶ 18. Article 78 CPLR proceeding to review City Planning Commissioner's determination refusing to approve petitioner's application for a zoning change was dismissed as zoning ordinance is a legislative act and legislative acts are not subject to judicial review.-Matter of Alfarone (Elliot), 157 (37) N. Y. L. J. (2-24-67) 16, Col. 7 F.

¶ 19. Contention that plaintiff should have applied for a variance was rejected, as the plaintiff was attacking generally the application of the zoning amendment to a considerable area embracing many separate parcels, and was not in the position of a land owner who was uniquely affected by a zoning regulation of general import and who suffered unusual hardship because of the peculiar application of the regulation to his property.-431 Fifth Ave. Corp. v. City of N. Y., 184 Misc. 1001, 55 N. Y. S. 2d 203 [1945], *aff'd* on this point, 270 App. Div. 241, 59 N. Y. S. 2d 25 [1945], *aff'd*, 296 N. Y. 588, 68 N. E. 2d 877 [1946].

¶ 20. Plaintiff's contention that the amendment to the zoning resolution rezoning a part of defendant's property from a residence district to a retail district was invalid because notice of a hearing was not personally served on plaintiff, was without merit, as there is no such requirement under the Charter.-Elgar v. S. H. Kress & Co., 280 App. Div. 621, 116 N. Y. S. 2d 527 [1952], *rev'd* on other grounds, 308 N. Y. 533, 127 N. E. 2d 325 [1955].

¶ 21. That City Planning Commission has approved plaintiff's application to establish new G area for single family houses only, **held** not to warrant grant of an injunction restraining property owner in contiguous area wherein apartment houses were permitted from continuing construction of a multiple family dwelling, even though plaintiffs intended to endeavor to have the contiguous property also placed in zone prohibiting multiple dwellings (288 App. Div. 86; 134 N. Y. 163; 2234 App. Div. 87).-Fieldston Prop. Owners Assn. Inc. v. Hall, 99 (150) N. Y. L. J. (6-29-38) 3129, Col. 6 F.

¶ 22. Owners of single family residences in area of the Bronx devoted exclusively to such residences **held** entitled to temporary injunction restraining defendants from proceeding with proposed construction of an apartment house pending conclusion of application before the City Planning Commission to change the area to a "G" district which would exclude multiple buildings, since if defendants were permitted to proceed with the construction they might secure vested rights which would interfere with the Commission's judgment in acting upon the application (132 Misc. 82, *aff'd* 225 App. Div. 179, 255 N. Y. 541). Mere affidavit setting forth expenditure of money and incurring of obligations by defendants could not be regarded as establishing the acquisition of a vested right to erect the apartment house, as the proper mode of determining this would be on a trial where cross-examination might be had. That the injunction was until the Commission took action and that after that there would allegedly be no need for a trial, did not preclude grant of the injunction on theory it would in fact be a permanent one, since in case of adverse action of the Commission defendants might review its findings. However, an undertaking in sum of \$9,000 was required of plaintiff.-O'Neil v. Riverdale Park, Inc., 101 (65) N. Y. L. J. (3-21-39) 1290, Col. 1 T.

¶ 23. In action to declare void certain zoning resolutions affecting plaintiff's property, plaintiff might not examine as adverse parties the members of the City Planning Commission and of the Board of Estimate with respect to "all factors that have entered into the determination and enactment of" the regulations. In recommending changes in zoning ordinances the Planning Commission acts in an advisory capacity and its recommendations may or may not be followed, and therefore they were neither material nor necessary to the instant action. The Board of Estimate in adopting zoning resolution acts in a legislative capacity and the reasons motivating legislators are beyond review by the courts. If the resolutions resulted in confiscation of plaintiff's property, the resolutions themselves must be attacked and not the motives of the legislators.-Riccio v. Wagner, 123 (72) N. Y. L. J. (4-14-50) 1323, Col. 5 T.

¶ 24. The power of the City Planning Commission is not limited to the regulation of the location of trades and

industries but it may "regulate and restrict * * * locations of buildings, designed for specific uses or creating districts for any such purpose." Thus, the Commission could control the location of physicians' offices. Contention that the Commission, once having controlled the location of the building, could no longer restrict the use of the building except under its power to regulate the location of trades and industries was rejected. The Commission had the power to enact a regulation permitting the use of apartments in multiple dwellings in residence districts by physicians only when the physicians offices were on the first or second floor and access was available from other than a public hall.-*People v. 960 Park Ave. Corp.*, 1 N. Y. 2d 771, 153 N. Y. S. 2d 46, 135 N. E. 2d 585 [1956] *aff'd* without opinion 286 A. D. 493, 145 N. Y. S. 2d 190 [1955].

¶ 25. Provision for off-street parking facilities in connection with a shopping center was not objectionable as spot zoning.-*Fitchett Crescent Corp. v. City of New York*, 155 N. Y. S. 2d 272 [1956].

¶ 26. Not error to dismiss action to enjoin implementation of resolution adopted by City Planning Commission and approved by Board of Estimate which rezoned certain real property from general residential to general commercial use even though the Chairman of the Planning Commission who cast the deciding vote had not attended the public hearings conducted by the commission since members of the commission are not limited to what is brought out at the public hearings and can use additional data outside the record to make an informed decision.-*Free Synagogue of Flushing v. Board of Estimate of City of N. Y.*, 35 App. Div. 2d 599, 313 N. Y. S. 2d 557 [1970].

¶ 27. Where Board of Estimate did not comply with requirements of section in adopting "stop-gap" interim zoning resolution suspending all permits for construction of nursing homes, petitioners had right to "vest" their interest by completing the foundation as well as to later secure the exception provided for under an amended zoning ordinance.-*Temkin v. Karagheuzoff*, 34 N. Y. 2d 324, 313 N. E. 2d 770, 357 N. Y. S. 2d 470 [1974].

¶ 28. NYC Planning Commission granted a 20% floor-area-ratio bonus in return for \$35 to \$40 million of local subway improvements and an additional \$57 million in cash for other purposes. The developer and the city officials who approved this contract realize the bonus is worth a great deal more to the city but zoning benefits are not cash items and the city is prohibited from making what is in effect a "cash sale" of a zoning bonus. Contract provides for an illegal payment and is null and void.-*Municipal Art v. City of New York*, 137 Misc 2d 832 [1987].

¶ 29. The City Charter requires that amendments to the Zoning Resolution be reviewed and approved by the City Planning Commission, and then forwarded to the City Council for approval, disapproval or modification. When the City Planning Commission approves the zoning amendment, it issues a report that is filed with the City Council, pursuant to City Charter § 197-c.

Beekman Hill Ass'n. v. Chin, 274 A.D.2d 161, 712 N.Y.S.2d 471 (1st Dept. 2000).

FOOTNOTES

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[Footnote 8]: * Other references in this section to board of estimate three-fourths vote were changed to council two-thirds vote at General Election, November 7, 1989.



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NYC Charter 201

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CHAPTER 8 CITY PLANNING

§ 201. **Applications for zoning changes and special permits.**

a. Applications for changes in the zoning resolution may be filed by any taxpayer, community board, borough board, borough president, by the mayor or by the land use committee of the council if two-thirds of the members of the committee shall have voted to approve such filing with the city planning commission. All such applications involving changes in the designation of zoning districts under the zoning resolution shall be subject to review and approval pursuant to section one hundred ninety-seven-c, and one hundred ninety-seven-d. For applications involving other changes in zoning resolutions and regulations, the commission prior to taking action upon any such application shall refer it to the affected community boards or borough boards for a public hearing and recommendation.

b. Applications for special permits within the jurisdiction of the city planning commission under the zoning resolution may be filed by any person or agency. All such applications for the issuance of special permits shall be subject to review and approval pursuant to section one hundred ninety-seven-c and section one hundred ninety-seven-d.

HISTORICAL NOTE

Amended by L. 1957, ch. 127.

Amended by General Election, November 4, 1975.

Amended by L. L. 1977, No. 10.

Section amended at General Election, November 7, 1989.



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CHAPTER 8 CITY PLANNING

§ 202. **Platting of land and dedication of streets and public places.**

a. No map of a subdivision or platting of land into streets, avenues or public places and blocks within the limits of the city shall be received for filing in the office in which instruments affecting real property are required to be recorded in the county in which the land is situated, unless such map shall have been reviewed and approved pursuant to section one hundred ninety-seven-c and section one hundred ninety-seven-d. If such map is disapproved, the chair of the city planning commission shall certify such fact in writing upon such map, and such map shall be received only for record without such approval.

b. No street, avenue, highway or public place, the layout of which has not been approved as provided in this section, shall be deemed to have been accepted by the city as a street, avenue, highway or public place, unless such street, avenue, highway or public place shall lie within the lines of a street, avenue, highway or public place upon the city map.

HISTORICAL NOTE

Section amended at General Election, November 7, 1989.

CASE NOTES

¶ 1. Section 26 of the General City Law was not effective in the City of New York where no appropriate resolution and no appropriate certificate was filed by the City.-*DiBiasi v. City of New York*, 19 App. Div. 2d 323, 242 N. Y. S. 2d 942 [1963], *aff'd*, 14 N. Y. 2d 711, 199 N. E. 2d 160, 250 N. Y. S. 2d 60 [1964].

¶ 2. The City of New York has had its own statutory scheme of map establishment since the original charter of 1898 which provided for the approval and acceptance of private subdivision maps.-*Id.*

¶ 3. A resolution of the Board of Estimate authorizing its Chief Engineer to approve maps for incorporation in the City map was not an invalid delegation of legislative power pursuant to former § 1540 of the Charter of 1898.-Id.

¶ 4. New York City was properly restrained from denying a building permit to a corporate property owner on the ground the street giving access to the subject premises was not on "official map" as provided by section 36 of the General City Law where subdivision map including the subject street had been approved pursuant to the provisions of the City Charter.-Id.



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NYC Charter 203

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CHAPTER 8 CITY PLANNING

§ 203. **Criteria for location of city facilities.**

a. Not later than the first day of July, nineteen hundred ninety, the mayor, after consulting with each of the borough presidents, shall file with the city planning commission proposed rules establishing criteria for (1) the location of new city facilities and (2) the significant expansion, closing or significant reduction in size or capacity for service delivery of existing facilities. The criteria shall be designed to further the fair distribution among communities of the burdens and benefits associated with city facilities, consistent with community needs for services and efficient and cost effective delivery of services and with due regard for the social and economic impacts of such facilities upon the areas surrounding the sites. Not later than thirty days after the filing of such proposed rules, the city planning commission shall publish a notice of proposed rule making under section one thousand forty-three with regard to such rules, as proposed by the mayor or as proposed to be modified by the commission. Promptly thereafter, the commission shall approve or approve with modifications the rules and shall file the rules as approved with the council.

b. At any time after the adoption of such criteria, the mayor, after consulting with the borough presidents, may submit to the city planning commission proposed amendments to the rules. Not later than thirty days after the filing of such proposed amendments, the city planning commission shall publish a notice of proposed rule making under section one thousand forty-three with regard to such amendments, as proposed by the mayor or as proposed to be modified by the commission. Promptly thereafter, the commission shall approve, approve with modifications or determine not to approve the amendments and shall file any approved amended rules with the council.

c. For purposes of this chapter, "city facility" shall mean a facility used or occupied or to be used or occupied to meet city needs that is located on real property owned or leased by the city or is operated by the city or pursuant to a written agreement on behalf of the city.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

CASE NOTES

¶ 1. Oral lease by city and commercial hotel to provide shelter for 150 homeless families requires compliance with Uniform Land Use Review Procedures and the "fair share" procedures in Charter § 197-c(a)(11) and § 203. *Davis v. Dinkins*, 154 Misc. 2d 518 [1992].

¶ 2. Fair share rules and criteria, come into force only where the City locates a new facility, significantly expands, closes or reduces the size or capacity for service delivery of existing facilities, Charter § 203. The mere renovation of a building having no effect on the size of facility which might change the composition of categories served bears no relation to fair share objectives. *W97-W98 Sts. v. Volunteers*, 190 AD2d 303 [1993].

¶ 3. The Fair Share Criteria for locating city facilities, Charter § 203, were violated by siting a multiagency garage and fueling facility on city-owned wharf property without conducting a meaningful alternative site analysis. The mere fact that time and expense are saved is not sufficient to satisfy the Fair Share Criteria. Moreover, the Department of General Services did not consider the compatibility with existing facilities issue in the site vicinity. *Matter of Silver v. Dinkins*, 158 Misc. 2d 550 [1994].

¶ 4. The court held that there was no lease between the city and the Kennedy Inn to shelter homeless people. Here there was never any agreement to rent a particular number of rooms nor an agreement as to time. The city only agreed to refer homeless families of "at most" 150 of the hotel's 189 rooms. The use of the hotel is not subject to ULURP, Charter § 197-c, nor was it subject to a "fair-share" hearing since the Inn is not a "city facility" as defined in Charter § 203. *Davis v. Dinkins*, 206 AD2d 365 [1994].

¶ 5. An IAS Court erred in a proceeding challenging the City's arrangement for the placement of homeless families in a hotel, by determining that the City was "evading the intended mandates" of the City's Charter by calling the arrangement with the hotel a day-rate agreement when it was a defacto lease and directed City to conduct "fair share" proceedings, Charter § 203. This is not a fair share review case because City does not own or lease the hotel and other threshold requirements are not met. *Ferrer v. Dinkins*, 218 AD2d 89 [1996].

¶ 6. A proceeding challenging the City's failure to conduct a "fair share" assessment process is in the nature of mandamus. Hence, the four month statute of limitations on Article 78 proceedings (CPLR 217) applies. *Rowe v. City of New York*, 162 Misc.2d 683, 615 N.Y.S.2d 959 (Sup.Ct. New York Co. 1994).



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NYC Charter 204

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CHAPTER 8 CITY PLANNING

§ 204. **Citywide statement of needs.**

a. Each year not later than the fifteenth day of November, the mayor shall submit to the council, borough presidents, borough boards and community boards a citywide statement of needs concerning city facilities prepared in accordance with the criteria established pursuant to section two hundred three. Copies of the statement shall also be made available to the public in the main branch of the public library in each borough. The statement shall identify by agency and program: (1) all new city facilities and all significant expansions of city facilities for which the mayor or an agency intends to make or propose an expenditure or to select or propose a site during the ensuing two fiscal years and (2) all city facilities which the city plans to close or to reduce significantly in size or in capacity for service delivery during the ensuing two fiscal years.

b. With respect to the city facilities referred to in clause one of subdivision a of this section, the statement of needs shall describe for each proposed new city facility or significant expansion: (1) the public purpose to be served thereby, (2) the size and nature of the facility, (3) the proposed location by borough and, if practicable, by community district or group of community districts, and (4) the specific criteria to be used in locating the new facility or expansion.

c. With respect to the city facilities referred to in clause two of subdivision a of this section, the statement of needs shall describe with respect to each such city facility: (1) the reasons for such proposed closing or reduction, (2) the location, and (3) the specific criteria for selecting the city facility for closure or for reduction in size or capacity for service delivery.

d.* The statement¹¹ of needs shall be accompanied by a map together with explanatory text, indicating (1) the location and current use of all city-owned real property, including the appendix with respect to city waterfront property described in subdivision i of this section; (2) all final commitments relating to the disposition or future use of city-owned real property, including assignments by the department of citywide administrative services pursuant to clause b of subdivision three of section sixteen hundred two, and (3) to the extent such information is available to the

city, the location of health and social service facilities operated by the state of New York or the federal government or pursuant to written agreement on behalf of the state or the federal government. Information which can be presented most effectively in text may be presented in this manner. In addition to being transmitted with the statement of needs pursuant to subdivision a of this section, such map shall be kept on file with the department of city planning and shall be available for public inspection and copying. The map with explanatory text shall be updated in each year ending with an even number.

e. Preparation of the statement of needs. (1) Annually on such date as the mayor shall direct, each agency shall submit to the mayor a statement containing all the information required to be included in the statement of needs for the ensuing two fiscal years pursuant to subdivisions a, b and c of this section that relates to the plans, jurisdiction and responsibility of such agency. Such statements shall be known as the departmental statements of need for city facilities. In preparing such departmental statements of needs, each agency shall review and consider the district needs statements submitted by community boards pursuant to paragraph ten of subdivision d of section twenty eight hundred and the statements of budget priorities submitted by the community boards pursuant to section two hundred thirty.

(2) The mayor, assisted by the department of city planning, the department of design and construction and the department of citywide administrative services, shall review such departmental statements of need and use them to prepare the statement of needs. In preparing the statement of needs, the mayor shall apply the criteria established pursuant to section two hundred three.

f. Upon receipt of the statement of needs pursuant to subdivision a of this section, each community board and borough president shall review the statement of needs. Each community board shall make the statement of needs available to the public and conduct a public hearing on the statement of needs. Each community board and borough president shall have the right to submit comments on the statement of needs to the department of city planning within ninety days of receipt of the statement. Each borough president shall have the right, within ninety days of receipt of the statement of needs, to submit a written statement to the mayor proposing locations for any new city facilities to be located in his or her borough pursuant to the statement of needs. All such locations proposed by a borough president shall be located in his or her borough and shall be certified by the borough president as being consistent with the specific criteria for the location of city facilities contained in the statement of needs and with the criteria established pursuant to section two hundred three. Each city agency shall consider such written statements in taking actions with respect to matters included in the statement of needs.

g. Whenever an application involving a new city facility is submitted to the department of city planning pursuant to paragraph five, ten or eleven of subdivision a of section one hundred ninety-seven-c, the applicant shall include as part of the application a statement of (1) how the proposed action satisfies the criteria for the location of city facilities established pursuant to section two hundred three, (2) whether the proposed action is consistent with the most recent statement of needs, and (3) whether the proposed action is consistent with any written statements or comments submitted by borough presidents and community boards in response to the statement of needs. If the proposed action is not consistent with the criteria for location of city facilities, the statement of needs, or any such written statements or comments submitted in response to the statement of needs, the agency shall include as part of its application a statement of the reasons for any such inconsistencies. If the proposed new facility is not referred to in the statement of needs, the applicant shall submit to the affected borough president a description of the public purpose to be served by the city facility, its proposed location, the appropriation (if any) that the agency intends to use in connection with the facility, the size and nature of the facility and the specific criteria for the location of the facility. The affected borough president shall have the right, within thirty days of the submission of such description, to propose an alternative location in his or her borough for the proposed city facility, provided that the borough president shall certify that the alternative location satisfies the criteria for location of city facilities under section two hundred three and the specific criteria for locating the facility in the statement of needs. The application for the proposed site selection, disposition or acquisition shall not be certified and shall not be reviewed pursuant to section one hundred ninety-seven-c until at least thirty days after the submission of such information to the affected borough president. A borough president may elect to waive the right to such thirty-day review period.

h. The mayor's management report, prepared pursuant to section twelve, shall include a review of the implementation of the statement of needs. Such review shall consist of (1) a list of the proposed actions in the statement of needs that have been implemented and of those proposed actions that have not been implemented and (2) a description of the proposed actions in the statement of needs which have been implemented in a manner significantly different from what was proposed in the statement of needs and the reasons therefor.

i.* The map¹² and explanatory text accompanying the statement of needs shall include an appendix with respect to city waterfront property, which shall consist of a list indicating for each such property its borough and map location; street address; tax block and lot; applicable zoning district; approximate area in square feet; number of structures, if any; current user and use; and such other information as the departments of city planning and citywide administrative services deem appropriate. For purposes of this subdivision, the term "city waterfront property" shall mean property owned or leased by the city, which is seaward of the first upland mapped and improved street, provided that it shall also include areas upland of such street which would be contiguous with the property but for such intervening street where such areas are in the same use.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

Subd. d par (2) amended L.L. 59/1996 § 5, eff. Aug. 8, 1996.

Subd. d amended L.L. 20/2002 § 1, eff. July 29, 2002 and amendment expires and reverts to Subd. d as it appears in the main volume on Dec. 31, 2008. [See Note]

Subd. e par (2) amended L.L. 77/1995 § 3, eff. Nov. 23, 1995.

Subd. e par (2) amended L.L. 59/1996 § 6, eff. Aug. 8, 1996.

Subd. i added L.L. 20/2002 § 2, eff. July 29, 2002 and expiring on Dec. 31, 2008. [See Note]

NOTE

Provisions of L.L. 20/2002:

§ 3. Notwithstanding any provision of subdivision i of section 204 of the New York city charter, as added by section two of this local law, to the contrary, the appendix with respect to city waterfront property accompanying the map and explanatory text prepared in conjunction with the statement of needs pursuant to subdivision d of such section and submitted pursuant to subdivision a of such section not later than the fifteenth day of November, two thousand two, may consist of a list indicating for each such property: (i) its borough and map location; street address; tax block and lot; and applicable zoning district; and (ii) such other information described in such subdivision i as the departments of city planning and citywide administrative services deemed practicable to include.

§ 4. This local law shall become effective immediately upon enactment and the provisions of sections one and two of this local law related to the appendix with respect to city waterfront property shall expire and be of no further force and effect on the thirty-first day of December, two thousand eight.

FOOTNOTES

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[Footnote 12]: * Expires Dec. 31, 2008.



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NYC Charter 205

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CHAPTER 8 CITY PLANNING

§ 205. **Comprehensive waterfront plan.**

Not later than the thirty-first day of December, two thousand and ten and not less than every ten years thereafter, the department of city planning shall file with the mayor, the council, the public advocate, the borough presidents, and the community boards, a comprehensive waterfront plan. Such plan shall be drafted in consultation with the appropriate city, state, and federal agencies and regulatory bodies, and with input from the public, and shall include (1) an assessment of waterfront resources for the natural waterfront, the public waterfront, the working waterfront and the developing waterfront, (2) a statement of the planning policy of the department of city planning, which policy shall take into consideration, among other things, the ten year capital strategy, the assessment of waterfront resources included pursuant to (1) above, the four year capital plan, the strategic policy statements provided for in section seventeen and plans approved pursuant to section one hundred ninety-seven-a and (3) proposals for implementing the planning policy of the department whether by amendment of the zoning resolution, development of plans or otherwise.

HISTORICAL NOTE

Section added L.L. 49/2008 § 1, eff. Oct. 20, 2008.



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CHAPTER 9 CAPITAL PROJECTS AND BUDGET

§ 210. **Definitions.**

As used in this charter:

1. The term "capital project" shall mean:

(a) A project which provides for the construction, reconstruction, acquisition or installation of a physical public betterment or improvement which would be classified as a capital asset under generally accepted accounting principles for municipalities or any preliminary studies and surveys relative thereto or any underwriting or other costs incurred in connection with the financing thereof.

(b) The acquisition of property of a permanent nature including wharf property.

(c) The acquisition of any furnishings, machinery, apparatus or equipment for any public betterment or improvement when such betterment or improvement is first constructed or acquired.

(d) Any public betterment involving either a physical improvement or the acquisition of real property for a physical improvement consisting in, including or affecting:

(1) Streets and parks;

(2) Bridges and tunnels;

(3) Receiving basins, inlets and sewers, including intercepting sewers, plants or structures for the treatment, disposal or filtration of sewage, including grit chambers, sewer tunnels and all necessary accessories thereof;

(4) The fencing of vacant lots and the filling of sunken lots.

(e) Any other project allowed to be financed by the local finance law, with the approval of the mayor and the comptroller.

(f) Any combination of the above.

2. The term "pending" shall mean not yet completed.

3. The term "standards" for each category of capital projects to which they apply shall include: maximum gross and net areas allowed; types of programs which may be operated in the facility; performance requirements for environmental systems; allowable materials and finishes; maximum areas allowed for different functions and activities; approximate cost limits per square foot of construction; and such other items designated by the mayor or by resolution of the council.

4. The term "scope of project" or "proposed scope of project" shall mean a description of a capital project included in the capital budget that contains specific guidelines for the design and implementation of such project consistent with the standards for the appropriate category of capital projects and includes each of the following items of information which are relevant to the capital project involved:

(a) Purposes and public to be served;

(b) Programs to be conducted in the facility;

(c) Gross and net amounts of space and bulk for any building or structure and for areas for different functions and activities;

(d) Identification of required architectural, engineering or other consultants and estimated fees for such consultants;

(e) Estimated completion dates for scope, design and construction; (f) Total estimated project costs, including costs for site acquisition, preparation and tenant relocation, design, construction and equipment; (g) Estimated expenditures for the project for each fiscal year until its completion;

(h) Estimated annual costs to operate programs within the facility when fully staffed and to maintain the facility; and,

(i) Such other information as shall be required by the mayor or by resolution of the council.

5. The term "cost" shall include the contract liabilities and expenditure incurred for work in carrying out the physical improvement and interest thereon, and the compensation to be made to the owner of any real property acquired for the improvement as determined by a court or by agreement, and interest thereon.

6. The term "expenses" shall mean any expenses incurred in relation to an assessable improvement exclusive of cost and of damages assessed by the board of assessors.

7. The term "street," as used in this chapter, shall include street, avenue, road, alley, lane, highway, boulevard, concourse, parkway, driveway, culvert, sidewalk, crosswalk, boardwalk, and viaduct, and every class of public road, square and place, except marginal streets.

8. The term "real property" shall include all lands and improvements, lands under water, water front property, the water of any lake, pond or stream, all easements and hereditaments, corporeal or incorporeal, and every estate, interest and right, legal or equitable, in lands or water, and right, interest, privilege, easement and franchise relating to the same, including terms for years and liens by way judgment, mortgage or otherwise.

HISTORICAL NOTE

Amended by L. L. 1961, No. 93.

Amended at General Election, November 4, 1975.

Amended by L. L. 1977, No. 102.

Amended by L. L. 1981, No. 61.

Subd. 1 par a amended L. L. 12/86 § 1.

Section renumbered and amended at General Election, November 7, 1989 (formerly § 211).



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CHAPTER 9 CAPITAL PROJECTS AND BUDGET

§ 211. **Capital budget borough allocations.**

a. Borough allocation. Five percent of the appropriations, funded by debt supported by city tax levy funds and state and federal funds over which the city has substantial discretion, proposed in the executive capital budget for the ensuing fiscal year, except any lump sum appropriation for school construction or rapid transit proposed to be made to public authorities established pursuant to the provisions of state law, shall be allocated among the boroughs by a formula based on an equal weighting of factors relating to population and geographic area, and shall be known as the capital budget borough allocation. Such formula shall be established by local law, but in any fiscal year for which no such local law is effective such amount shall be allocated among the boroughs on the basis of the average of (i) each borough's share of the total population of the city, and (ii) each borough's share of the total land area of the city.

b. Preliminary borough allocations; initial borough president notification. Concomitantly with the submission of the preliminary capital budget and preliminary certificate, the mayor shall inform each borough president of the portion of the executive capital budget for the ensuing fiscal year and of the executive capital budgets for each of the three succeeding years that, pursuant to the formula required by subdivision a of this section, would be allocated to each borough if the amount of the appropriations proposed in the executive capital budget for each of such fiscal years were the same as the maximum amounts of appropriations for such years which the mayor anticipates to be certified in the preliminary certificate issued in accordance with section two hundred thirty-five. The amount of such portion shall be known as the preliminary capital budget borough allocation.

c. Borough president proposals. 1. Each borough president, during the consultations required by section two hundred forty-four, shall submit to the mayor, in such form as the mayor shall prescribe, proposed capital appropriations in an amount not exceeding that borough's allocation of the capital budget borough allocation as certified by the mayor to the borough presidents during such consultations. The timing of such certification shall allow sufficient time for such consultations and for meeting the deadlines established by section two hundred forty-nine. Each such proposed

appropriation shall be accompanied by the following information:

(a) for each such proposed appropriation for construction of a capital project, the estimated annual cost to operate and maintain the facility to be constructed pursuant to such appropriation when construction is completed. Such estimates shall be prepared in accordance with the standards established for this purpose pursuant to section two hundred twenty-one of this chapter and shall be certified by the director of the office of management and budget. In the event that a borough president and the director of management and budget do not agree on such estimate for a particular project, such director and the director of the independent budget office shall jointly certify an estimate for such purpose;

(b) for each such proposed appropriation for the planning and design of a capital project, (i) the estimated cost of the construction of the project, and (ii) the fiscal year in which the borough president intends to propose an appropriation for the construction of the project, if no technical problems regarding the viability of the project are identified during planning, site selection or design;

(c) the total of all appropriations which will be necessary during the three ensuing fiscal years to provide for the construction of projects for which planning and design appropriations are being proposed.

2. If a borough president proposes an appropriation for the construction of a capital project, the appropriation must provide for the total amount estimated to be necessary for the completion of the project. If such a proposed appropriation for the construction of a capital project is for an amount which is less than the amount that the office of management and budget estimates to be necessary for the completion of the project, the borough's capital budget borough allocation in any future year in which additional appropriations are necessary for the completion of the project shall be reduced by the amount of such additional appropriations.

3. If the total appropriations necessary, during any of the ensuing three fiscal years, to provide for the construction of (i) projects for which the borough president is proposing appropriations for planning and design, and (ii) projects for which appropriations were previously made for planning and design on the recommendation of the borough president, is greater than the capital budget borough allocation anticipated to be available during such years based on the certificate issued pursuant to paragraph sixteen of section two hundred fifty of this charter, then the borough president shall submit for inclusion in the executive budget a list of the projects requiring construction appropriations during such year, in priority order.

4. If the estimated annual cost to operate and maintain the capital projects being proposed for construction by a borough president is greater than the amounts dedicated to such expense budget purposes from the expense budget borough allocation and the capital budget borough allocation expense budget contingency projected to be available to the borough president in one or more ensuing fiscal years then such proposed appropriations may only be included by a borough president in the capital budget with the concurrence of the mayor.

d. The mayor shall include the proposed appropriations submitted by the borough presidents in accordance with subdivision c of this section in the executive capital budget provided however, that the mayor may also include such comments and recommendations relating to such proposals as the mayor deems appropriate.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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CHAPTER 9 CAPITAL PROJECTS AND BUDGET

§ 212. Format of departmental estimates for capital projects, preliminary capital budget and executive capital budget.

The departmental estimates for capital projects and the executive capital budget shall consist of a detailed estimate of all capital projects pending or which the agency head, for departmental estimates, or the mayor, for the executive budget, believes should be undertaken within the ensuing fiscal year and the three succeeding fiscal years. Each agency head, for departmental estimates, and the mayor, for the executive budget, shall submit a written response to each of the capital budget priorities included in the community board's statement of budget priorities submitted in accordance with section two hundred thirty. Such responses shall include the response of the agency head and the mayor, as appropriate, regarding the disposition of each such priority and meaningful explanations of any disapprovals contained in such estimates or budget.

HISTORICAL NOTE

Section added at General Election, November 4, 1975.

Subd. a amended by L. L. 1979, No. 6.

Section renumbered and amended at General Election, November 7, 1989 (formerly § 214).



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CHAPTER 9 CAPITAL PROJECTS AND BUDGET

§ 213. **Preliminary capital budget.**

The preliminary capital budget shall consist of: (1) a financial plan, consistent with section two hundred fifty-eight, covering estimates of capital expenditures for the four ensuing fiscal years, (2) departmental estimates for capital projects as provided in section two hundred twelve together with the cash flow requirements and proposed sources of funding for each project included in such estimates, (3) a capital program status report which sets forth the appropriations for each project included in the capital budget for the current fiscal year together with the expenditures to date, and (4) a summary description of the purpose of each capital project and the needs it will fulfill, the schedule for beginning and constructing the project, its period of probable usefulness and an appropriate maintenance schedule.

HISTORICAL NOTE

Added by L. L. 1979, No. 6.

Section renumbered and amended at General Election, November 7, 1989 (formerly § 214-a).

Section amended at General Election November 8, 2005. Ballot Question 4 § 4, eff. Nov. 8, 2005 as per Charter § 1152(j)(2). [See Charter § 258 Note 1]



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CHAPTER 9 CAPITAL PROJECTS AND BUDGET

§ 214. **Executive capital budget.**

a. The executive capital budget shall set forth separately each capital project, including the capital projects proposed by the borough presidents in accordance with section two hundred eleven, and shall include:

(1) A brief description and the location of each project; the total estimated cost of the project; the appropriations which have been previously adopted for this project; the amount of appropriations recommended to be adopted for the ensuing fiscal year, the aggregate amount of which shall not exceed the amount in the mayor's certificate; the amount of appropriations required thereafter to complete the project; the sources of funds for the project including state, federal, private and other funds; the period of probable usefulness; the estimated additional annual maintenance and operation costs; any terms and conditions of the project; and the estimated dates of completion of final scope, final design and final construction;

(2) A listing of all pending projects; and any recommendations that any pending projects be modified, rescinded or postponed accompanied by a statement of the budgetary impact of any such action; and

(3) A listing of proposed capital projects by community district and by borough and an identification of those projects which were included in the statement of capital priorities submitted by each community board and borough board.

b. The executive capital program shall set forth for both program categories and individual projects:

(1) A statement for each of the three succeeding fiscal years of the total dollar amounts necessary to complete projects initiated in prior years and projects proposed in the executive budget, the amounts necessary for projects proposed to be initiated in future years and the amounts necessary for amendments and contingencies; and

(2) A statement of the likely impact on the expense budget of staffing, maintaining and operating the capital projects included in or contemplated by the capital program.

HISTORICAL NOTE

Section amended by L. L. 1963, No. 30.

Subd. a amended by L. L. 1969, No. 74.

Subd. a amended at General Election, November 4, 1975.

Subd. a amended by L. L. 1977, No. 12.

Subd. a amended by L. L. 1979, No. 6.

Subd. b par. 4 amended by L. L. 1977, No. 102.

Section renumbered and amended at General Election, November 7, 1989 (formerly § 219).



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CHAPTER 9 CAPITAL PROJECTS AND BUDGET

§ 215. **Ten-year capital strategy.**

a. The ten-year capital strategy shall be issued by the mayor pursuant to section two hundred forty-eight after (i) submission of a preliminary strategy by the department of city planning and the office of management and budget pursuant to section two hundred twenty-eight, and (ii) submission of a report on the preliminary strategy by the city planning commission following a public hearing, pursuant to section two hundred thirty-four.

b. Contents of ten-year capital strategy. Each ten-year capital strategy shall include:

(1) a narrative describing the strategy for the development of the city's capital facilities for the ensuing ten fiscal years; the factors underlying such strategy including goals, policies, constraints and assumptions and the criteria for assessment of capital needs; the anticipated sources of financing for such strategy; and the implications of the strategy, including possible economic, social and environmental effects;

(2) tables presenting the capital commitments estimated to be made during each of the ensuing ten fiscal years, by program category and agency. Where relevant the anticipated sources of financing for particular categories and projects shall be specified; and

(3) a map or maps which illustrate major components of the strategy as relevant.

c. In the preparation of the preliminary ten-year capital strategy, the department of city planning and office of management and budget shall consider (i) the strategic policy statements of the mayor and the borough presidents pursuant to section seventeen, (ii) relevant citywide, borough and community plans adopted pursuant to section one hundred ninety seven-a, and (iii) the reports pursuant to section two hundred fifty-seven comparing the most recent ten-year capital strategy with the capital budgets and programs adopted for the current and previous fiscal years.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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CHAPTER 9 CAPITAL PROJECTS AND BUDGET

§ 216. **Amendment.**

a. Upon receipt of a recommendation in writing from the mayor or a borough president, in manner specified herein, the council may amend the capital budget or capital program in the same manner as the adoption of the capital budget and capital program including the right to approve the proposed amendment as submitted or to increase or decrease the amounts of funds proposed to be appropriated thereby, but only if funds are available within the capital budget and the applicable program category of the capital program; provided, however, that (i) the mayor may only recommend such an amendment relating to an appropriation included in the capital budget pursuant to section two hundred eleven with the concurrence of the relevant borough president; and (ii) the borough president may only make such a recommendation with regard to such an appropriation if it provides for an offsetting reduction in another appropriation included in the capital budget pursuant to section two hundred eleven on the recommendation of such borough president and it is concurred in by the mayor.

b. Upon the adoption of any such amendment by the council, it shall be certified by the mayor, the public advocate and the city clerk and the capital budget shall be amended accordingly.

c. Not later than five days after such certification such amendment shall be filed in the office of the comptroller and shall be published forthwith in the City Record.

HISTORICAL NOTE

Section amended at General Election, November 4, 1975.

Subd. a amended by L. 1977, No. 102.

Section renumbered and amended at General Election, November 7, 1989 (formerly § 224).

Subd. b amended L.L. 68/1993 § 7, eff. Jan. 1, 1994.



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CHAPTER 9 CAPITAL PROJECTS AND BUDGET

§ 217. **Restrictions on capital projects.**

a. No obligations of the city shall be issued or authorized for or on account of any capital project not included in a capital budget, or for which funds have not been reserved in an appropriate program category of the capital program for any year of such program in which it is projected that funds will be expended for the completion of the project, or in excess of the maximum amount of obligations which may be issued on account of such project as fixed in such capital budget; and no amount may be expended on account of any capital project in excess of the amount appropriated for such purposes in a capital budget, except that the amount appropriated for such purposes may be increased by the mayor by not more than fifteen per centum thereof in order to meet any costs required to advance such project. Notice of any such increase shall be provided to the council together with a statement of identifiable funds available for payment of the increase.

b. Funds included in the capital budget for a capital project that are not obligated or committed during the fiscal year in which appropriated shall not be obligated or committed in the subsequent fiscal year unless reappropriated in a subsequent capital budget or an amendment thereto. A capital project included in a capital budget that is not initiated by the expenditure of funds within two years after its inclusion in the budget shall be eliminated from the budget.

c. The city may issue capital debt only to finance capital projects as defined in section two hundred ten. The capital budget may not include expense items that are properly includable only in the expense budget, as determined in accordance with the accounting principles set forth in the state comptroller's uniform system of accounts for municipalities, as the same may be modified by the state comptroller, in consultation with the city comptroller, for application to the city.

d. No capital project shall be included in the proposed executive capital budget or otherwise adopted as part of the capital budget or as an amendment thereto unless sufficient funds are available within the appropriate general program category of the capital program for any year of such program in which it is projected that additional

appropriations will be necessary for the completion of the project.

HISTORICAL NOTE

Section amended at General Election, November 4, 1975.

Subd. a, c, d, e amended by L. L. 1978, ch. 763.

Section renumbered and amended at General Election, November 7, 1989 (formerly § 225).

CASE NOTES

¶ 1. An electrical contractor who submitted the lowest bid for electrical work in the construction of a school building was entitled to recover his increased costs over his bid price where the increased costs were the result of the failure of the Board of Education to award the contract for plumbing and heating at the same time it made the award for electrical work. Although the total bids exceeded the city's appropriation for the project, the Board was liable where plaintiff relied upon representation that it would award all the contracts at once.-*Bank v. Board of Education*, 305 N. Y. 119, 111 N. E. 2d 238 [1952].

¶ 2. Health Code provision proposing program for fluoridation of water supply was valid and within Health Departments power. Contention that funds for program should have been appropriated by amendment of capital budget and that expense budget moneys could not be used was rejected. There was no proof that obligations of City would be issued to finance the program.-*Paduano v. City of New York*, 45 Misc. 2d 718, 257 N. Y. S. 2d 531 [1965], *aff'd*, 24 App. Div. 2d 437, 260 N. Y. S. 2d 831 [1965], *aff'd*, 17 N. Y. 2d 875, 218 N. E. 2d 339, 274 N. Y. S. 2d 305 [1966], *cert. den.*, 385 U. S. 1026 [1966].



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CHAPTER 9 CAPITAL PROJECTS AND BUDGET

§ 218. **Site selection.**

a. The selection of sites for capital projects shall be pursuant to the uniform procedures provided pursuant to sections one hundred ninety-seven-c and one hundred ninety-seven-d, except for acquisition of office space pursuant to section one hundred ninety-five.

b. To the maximum extent feasible, final approval of a site for a capital project shall occur prior to or simultaneously with the approval of the scope of the project pursuant to this chapter.

c. During the review required by subdivision a, the community board and borough president shall also review, and may comment on, the scope of the project.

HISTORICAL NOTE

Adopted at General Election, November 4, 1975.

Section renumbered and amended at General Election, November 7, 1989 (formerly § 227).

CASE NOTES

¶ 1. Where the city had title to the bed of street, project to construct underground electrical substation was excepted from jurisdiction of the Site Selection Board.-Matter of 78 St. Asso. v. City of N. Y., 25 N. Y. 2d 662, 254 N. E. 2d 772, 306 N. Y. S. 2d 472 [1969], aff'g, 33 App. Div. 2d 545, 304 N. Y. S. 2d 429 [1969].



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CHAPTER 9 CAPITAL PROJECTS AND BUDGET

§ 219. **Project initiation; commitment plan.**

a. The inclusion of a capital project in the capital budget as adopted or amended shall constitute a direction and order to the agency to proceed with the preparation of a scope of project pursuant to this chapter unless sufficient planning funds for such purpose have not been appropriated in the capital budget. The head of the agency shall notify the comptroller of the amount of appropriated planning funds to be encumbered for such purpose.

b. The approval of a scope of project for a capital project pursuant to this chapter, including the amount of obligations necessary to finance the design and construction of the project, shall constitute a direction and order to the agency to design the project, unless sufficient funds for such purpose have not been appropriated in the capital budget or are otherwise not available within the appropriate program category of the capital program. Such approval shall constitute notification to the comptroller of the comptroller's authorization to expend appropriated design funds.

c. The approval of the final design for a capital project pursuant to this chapter shall constitute a direction and order to the agency responsible for construction to prepare bid and award documents and to proceed to bid, unless sufficient funds for such purpose have not been appropriated in the capital budget or are otherwise not available within each year of the capital program in which it is projected that funds will be expended for the completion of the project. Such approval shall constitute notification to the comptroller of the comptroller's authorization to expend appropriated construction funds.

d. The mayor shall require each agency to prepare and submit periodic reports in regard to the progress of its capital projects, including schedules and clear explanations of any delays for particular prospects and summary information on each agency's record on such matters. Such reports shall be published at least three times each year: within ninety days of the adoption of the capital budget; with the preliminary capital budget; and with the executive capital budget. Copies of such reports shall be transmitted by the mayor to the council, the city planning commission, and the community boards, the borough boards and borough presidents. Such reports shall include, for each project, the

dates set in the adopted capital budget for the completion of scope, design, and construction and any changes in such dates.

1. The report issued with the executive budget shall include, for each new capital project being proposed in the executive budget, a description of the project including, to the extent practicable, the information required to be included in a scope of project by paragraph four of section two hundred ten.

2. The report issued following the adoption of the budget shall include, for each capital project added to the budget, a description of the project including, to the extent practicable, the information required to be included in a scope of project by paragraph four of section two hundred ten.

3. The report issued following the adoption of the budget shall include, for each capital project for which a substantial change was made, a revised description of the project including, to the extent practicable, the information required to be included in a scope of project by paragraph four of section two hundred ten.

e. Any capital project which results in the acquisition or construction of a capital asset which will be subject to the requirements of section eleven hundred ten-a shall contain a provision requiring a comprehensive manual setting forth the useful life of the asset and explaining the activities necessary to maintain the asset throughout such useful life.

f. The mayor may issue directives and adopt rules and regulations in regard to the execution of capital projects, consistent with the requirements of subdivisions a, b, c and d of this section, which shall be binding upon all agencies.

HISTORICAL NOTE

Section amended by L. 1962, ch. 998.

Section amended at General Election, November 4, 1975.

Subd. c & d amended by L. L. 1977, No. 102.

Subd. e added, subd. f designated at General Election, November 8, 1988.

Section renumbered and amended at General Election, November 7, 1989 (formerly § 228).

CASE NOTES

¶ 1. Mayor could approve acquisition of property after Board of Estimate notified him that the required public hearing had been held and closed.-DeSalvio v. McMorran, 50 Misc. 2d 483, 270 N. Y. S. 2d 651 [1965].

¶ 2. Action of Board of Estimate in acquiring property for a new high school was not void on the ground that it did not take affirmative action where the Board directed its secretary to communicate with the Mayor and a vote of the Board of Estimate is not required at the conclusion of its hearing on a capital improvement.-Battista v. City of N. Y., 165 (104) N. Y. L. J. (6-1-71) 19, Col. 4 F.

¶ 3. Court cannot grant specific performance directing the Mayor to issue a condemnation certificate since this is a discretionary act by an administrative officer which cannot be specifically enforced.-Cicalo v. N. Y. S. Housing & Development Administration, 79 Misc. 2d 769, 361 N. Y. S. 2d 263 [1974].



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CHAPTER 9 CAPITAL PROJECTS AND BUDGET

§ 220. **Improvements payable other than by city.**

Any owner of real property or any other person interested may apply to the council to authorize an improvement referred to in paragraph d of subdivision one of section two hundred ten hereof, not included in the capital budget. The council may authorize such improvement to be made by the city or by such owner or other person interested upon compliance with the following conditions:

1. Such owner or group or other persons interested shall enter into an agreement with the city, whereby they will either authorize the city, or themselves agree, to perform such work in accordance with such plans and specifications approved by the agencies having jurisdiction thereover and under their supervision.
2. All of such work shall be done for the account of or at the sole cost and expense of the person or persons applying for permission to do the same, who shall furnish to the city such security and in such amount as may be required to secure the payment of such cost and expense or the proper performance of the said work in the time and in the manner agreed upon, and shall further secure the city, in the latter case, against latent defects in such work for a period of two years.
3. Such improvement shall be approved by the city planning commission and reviewed pursuant to sections one hundred ninety-seven-c and one hundred ninety-seven-d.
4. Any agreement providing for the performance of such work and the furnishing of such security, shall be first approved by the council before the same shall become effective.

HISTORICAL NOTE

Amended at General Election, November 4, 1975.

Intro. par. amended by L. L. 1979, No. 29.

Section renumbered and amended at General Election, November 7, 1989 (formerly § 229).



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CHAPTER 9 CAPITAL PROJECTS AND BUDGET

§ 221. **Standards for capital projects.**

The mayor shall prepare general standards and cost limits for categories of capital projects and standards for the preparation of the scope of project for capital projects of various types. Such standards and limits shall be submitted by the mayor to the council for review. The proposed standards shall become effective thirty days after they have been filed with the council unless within that time the council modifies or disapproves them or part of them, after conducting a public hearing. Any modification by the council shall be subject to disapproval by the mayor in accordance with section thirty-eight and any such disapproval shall be subject to override by the council in accordance with such section.

HISTORICAL NOTE

Added at General Election, November 4, 1975.

Section renumbered and amended at General Election, November 7, 1989 (formerly § 231).



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CHAPTER 9 CAPITAL PROJECTS AND BUDGET

§ 222. **Scope of project.**

a. Each agency, with respect to a capital project under its jurisdiction included in a capital budget, shall prepare a proposed scope of project within appropriated planning funds. In preparing the proposed scope of project, the agency shall consult with the community board for the community district in which the capital project is to be located. The proposed scope of project, or, in the case of a delay, an explanation for such delay along with a revised schedule, shall be submitted to the mayor and to the respective council committee, borough president and community board by the date specified in the adopted capital budget in which the capital project is included. Such proposed scope shall identify all substantial differences between the guidelines for the capital project as contained in such scope and the description of the capital project contained in the report issued pursuant to subdivision d of section two hundred nineteen at the time such project was proposed in the executive budget or following the budget adoption in which such project was added to the capital budget.

b. Not later than sixty days after receipt of the proposed scope of project from an agency pursuant to subdivision a of this section, the mayor shall approve, modify, or disapprove the proposed scope of project and notify the agency, and the respective council committee, borough president and community board. In the case of a scope approved by the mayor with modifications, such notification shall include a copy of the scope as approved.

c. During the review of the selection of a site of a capital project pursuant to the uniform land use review procedure established by section one hundred ninety-seven-c, the community board and borough president shall also review, and may comment on, the scope of the project.

d. No scope of project shall be approved by the mayor unless (1) it contains the information required by paragraph four of section two hundred ten and it conforms to the applicable standards for the type of project adopted pursuant to this chapter, and (2) funds are available within the appropriate program category of the capital program that can be reserved for each fiscal year required to complete the project.

HISTORICAL NOTE

Added at General Election, November 4, 1975.

Section renumbered and amended at General Election, November 7, 1989 (formerly § 232).



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CHAPTER 9 CAPITAL PROJECTS AND BUDGET

§ 223. **Design of capital project.**

The proposed design and final design for a capital project shall be made available for review to the respective council committee, borough president and the community board for the community district in which the project is to be located. The mayor or his representative shall review the final design to determine its conformance with the approved scope of project pursuant to this chapter.

HISTORICAL NOTE

Added at General Election, November 4, 1975.

Section renumbered and amended at General Election, November 7, 1989 (formerly § 233).



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CHAPTER 9 CAPITAL PROJECTS AND BUDGET

§ 224. **Works of art.**

a. As used in this section the term "works of art" includes all forms of the visual and performing arts conceived in any medium, material or combination thereof.

b. Works of art shall be provided for each capital project which involves the construction or the substantial reconstruction of a city-owned public building or structure the intended use of which requires that it be accessible to the public generally or to members of the public participating in, requiring or receiving programs, services or benefits provided thereat. For the purposes of this section a police precinct house and a firehouse shall be deemed to be such buildings.

c. An amount not less than one per cent of the first twenty million dollars and one-half of one per cent of any amount in excess of twenty million dollars of capital funds appropriated by the city for each such capital project, other than funds appropriated for the acquisition of real property, shall be allocated for works of art; provided, however, that this section shall in no case require the expenditure of more than four hundred thousand dollars for works of art for any capital project; nor more than the sum of one and one-half million dollars for works of art in any fiscal year. The mayor may exempt a capital project from the provisions of this section if in his sole judgment the inclusion of works of art as provided hereby would be inappropriate.

d. Reasonable advance notification of the intention to include works of art in a project shall be provided to the appropriate council member, borough president and chairperson of the community board of the community district in which the project is located. All such works of art shall be subject to the approval of the art commission pursuant to section eight hundred fifty-four*10 of this charter.

e. The mayor shall adopt rules and regulations to implement the provisions of this section.

HISTORICAL NOTE

Added by L. L. 1982, No. 65.

Subd a amended at General Election, November 8, 1988.

Section renumbered, subd. c, d amended at General Election, November 7, 1989 (formerly § 234).

FOOTNOTES

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[Footnote 10]: * The term "work of art" was redefined in this section, portions included in "Structures."



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CHAPTER 9 CAPITAL PROJECTS AND BUDGET

§ 224.1. **Green building standards.**

a. As used in this section the following terms shall have the following meanings:

(1) The term "capital project" shall mean a capital project as defined in section 210 of this chapter that is paid for in whole or in part from the city treasury.

(2) The term "city agency" shall mean a city, county, borough, or other office, position, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid, in whole or in part, from the city treasury.

(3) The term "construction work" shall mean any work or operations necessary or incidental to the erection, demolition, assembling, alteration, installing, or equipping of any building.

(4) The term "green building standards" shall mean design guidelines, a rating system or rules for constructing buildings that ensure site planning, water efficiency, energy efficiency and renewable energy, conservation of materials and resources and indoor environmental quality.

(5) The term "inflation" shall mean the annual twelve (12) month average of the consumer price index published by the United States department of labor.

(6) The term "LEED energy and atmosphere credit 1" shall mean the credit point under LEED for New Construction version 2.1 intended to achieve increased energy performance.

(7) The term "LEED green building rating system" shall mean a version of the Leadership in Energy and Environmental Design (LEED) building rating system published by the United States Green Building Council, not less

stringent than the selected green building rating system, including a standard developed by or for the city consisting of practices and technologies derived from the LEED rating system that are reasonable and appropriate for building in New York city.

(8) The term "LEED water efficiency credit 3.2" shall mean the credit point under the LEED for New Construction version 2.1 intended to achieve water use reduction.

(9) The term "not less stringent" shall mean providing no less net environmental and health benefits.

(10) The term "rehabilitation work" shall mean any restoration, replacement or repair of any materials, systems and/or components.

(11) The term "selected green building rating system" shall mean the current and most appropriate building rating system published by the United States Green Building Council; provided, however, at the mayor's discretion, the term "selected green building rating system" shall mean New Construction version 2.1, Existing Buildings version 2 or Commercial Interiors version 2, whichever is most appropriate for the project under United States Green Building Council guidelines.

(12) The term "substantial reconstruction" shall mean a capital project in which the scope of work includes rehabilitation work in at least two of the three major systems, electrical, HVAC (heating, ventilating and air conditioning) and plumbing, of a building and construction work affects at least fifty percent (50%) of the building's floor area.

b. (1) Each capital project with an estimated construction cost of two million dollars (\$2,000,000) or more involving (i) the construction of a new building, (ii) an addition to an existing building, or (iii) the substantial reconstruction of an existing building shall be designed and constructed to comply with green building standards not less stringent than the standards prescribed for buildings designed in accordance with the LEED green building rating system to achieve a LEED silver or higher rating, or, with respect to buildings classified in occupancy groups G or H-2, to achieve a LEED certified or higher rating. If the mayor elects to utilize green building standards other than the LEED green building rating system, the mayor shall publish findings demonstrating that such other green building standards are not less stringent than the LEED standards described above for achievement of a LEED silver or, if applicable, a LEED certified rating. The green building standards utilized by the city in accordance with this section shall be reviewed and updated, as necessary, by the mayor no less often than once every three years.

(2) In addition, if the estimated construction cost of a project required to comply with green building standards in accordance with paragraph one of this subdivision is 12 million dollars (\$12,000,000) or more such project shall be designed and constructed to reduce energy cost as follows:

(i) Capital projects, other than buildings classified in occupancy group G, with an estimated construction cost of 12 million dollars (\$12,000,000) or more but less than 30 million dollars (\$30,000,000) shall be designed and constructed to reduce energy cost by a minimum of twenty percent (20%), as determined by the methodology prescribed in LEED energy and atmosphere credit 1 or the New York state energy conservation code, whichever is more stringent. In addition to such twenty percent (20%) reduction in energy cost, the design agency shall make investments in energy efficiency that reduce energy cost by an additional five percent (5%) if it finds that the payback on such investment through savings in energy cost would not exceed seven years.

(ii) Capital projects, other than buildings classified in occupancy group G, with an estimated construction cost of 30 million dollars (\$30,000,000) or more shall be designed and constructed to reduce energy cost by a minimum of twenty-five percent (25%), as determined by the methodology prescribed in LEED energy and atmosphere credit 1 or the New York state energy conservation code, whichever is more stringent. In addition to such twenty-five percent (25%) reduction in energy cost, the design agency shall make investments in energy efficiency that reduce energy cost by an additional five percent (5%) if it finds that the payback on such investment through savings in energy cost would

not exceed seven years.

(iii) Capital projects involving buildings classified in occupancy group G with an estimated construction cost of 12 million dollars (\$12,000,000) or more shall be designed and constructed to reduce energy cost by a minimum of twenty percent (20%), as determined by the methodology prescribed in LEED energy and atmosphere credit 1 or the New York state energy conservation code, whichever is more stringent. In addition to such twenty percent (20%) reduction in energy cost, the design agency shall make investments in energy efficiency that reduce energy cost by an additional five percent (5%) if it finds that the payback on such investment through savings in energy cost would not exceed seven years or, in the alternative, the design agency shall make investments in energy efficiency that reduce energy cost by an additional ten percent (10%) if it finds that the payback on such investment through savings in energy cost would not exceed seven years.

c. Capital projects, other than those required to comply with green building standards in accordance with subdivision b of this section, shall be subject to the following:

(1) Each capital project that includes the installation or replacement of a boiler at an estimated construction cost for such installation or replacement of two million dollars (\$2,000,000) or more, or that involves the installation or replacement of lighting systems in a building at an estimated construction cost for such installation or replacement of one million dollars (\$1,000,000) or more, shall be designed and constructed to reduce energy cost by a minimum of ten percent (10%), as determined by the methodology prescribed in LEED energy and atmosphere credit 1 or the New York state energy conservation code, whichever is more stringent.

(2) Each capital project, other than a project required to comply with paragraph one of this subdivision, that involves the installation or replacement of HVAC comfort controls at an estimated construction cost for such installation or replacement of two million dollars (\$2,000,000) or more, shall be designed and constructed to reduce energy cost by a minimum of five percent (5%) as determined by the methodology prescribed in LEED energy and atmosphere credit 1 or the New York state energy conservation code, whichever is more stringent.

d. In addition to complying with any other applicable subdivision in this section, each capital project involving the installation or replacement of plumbing systems that includes the installation or replacement of plumbing fixtures at an estimated construction cost for such installation or replacement of plumbing systems of five hundred thousand dollars (\$500,000) or more shall be designed and constructed to reduce potable water consumption in the aggregate by a minimum of thirty percent (30%), as determined by a methodology not less stringent than that prescribed in LEED water efficiency credit 3.2; provided, however, that such percentage shall be reduced to a minimum of 20% if the department of buildings rejects an application for the use of waterless urinals for the project.

e. This section shall apply only to capital projects involving buildings classified in occupancy groups B-1, B-2, C, E, F-1a, F-1b, F-3, F-4, G, H-1 and H-2.

f. The mayor may exempt from each provision of this section capital*13 projects accounting for up to 20% of the capital dollars in each fiscal year subject to such provision if in his or her sole judgment such exemption is necessary in the public interest. At the conclusion of each fiscal year the mayor shall report to the council the exemptions granted pursuant to this section.

g. This section shall not apply to capital projects of entities that are not city agencies unless fifty percent (50%) or more of the estimated cost of such project is to be paid for out of the city treasury. This exemption shall not apply to any capital project that receives ten million dollars (\$10,000,000) or more out of the city treasury.

h. This section shall not apply to capital projects that have received capital dollars from the city treasury before January 1, 2007.

i. The mayor shall promulgate rules to carry out the provisions of this section.

j. The costs listed in subdivisions b, c, d and g of this section shall be indexed to inflation.

k.* Capital14 projects accounting for at least fifty percent (50%) of the capital dollars in each fiscal year allocated for each city agency that are subject to paragraph one of subdivision b of this section that utilize a version of the LEED green building rating system for which the United States Green Building Council will accept applications for certification, shall apply to the United States Green Building Council for certification that such projects have achieved a silver or higher rating under the LEED green building rating system or, with respect to projects involving buildings classified in occupancy groups G or H-2, a certified or higher rating under such rating system.

HISTORICAL NOTE

Section added L.L. 86/2005 § 2, eff. Jan. 1, 2007 with special provisions. [See Note 1]

NOTE

1. Provisions of L.L. L.L. 86/2005:

Section 1. Statement of findings and purpose. Probably no urban activity has greater impact on human health and the environment than building construction and use. Enormous quantities of resources are used during building construction, renovation and operation, and the production of these resources has substantial environmental impacts. It is estimated that 40% of raw materials consumed globally are used for buildings. In addition, in the United States, commercial and residential buildings are responsible for approximately 65% of electricity consumption, 30% of greenhouse gas emissions, 12% of potable water use and 136 million tons of construction and demolition waste annually. Also, many indoor building materials release hazardous toxins, impairing indoor air quality and reducing occupant health and productivity.

Since most of New York City's electricity is produced within the City and many buildings use oil or natural gas for their heating and hot water, energy consumption in building operation translates into greater local pollution, including emissions of sulfur dioxide, nitrogen oxides, particulate matter, carbon dioxide, and mercury. These pollutants contribute to respiratory disease, heart disease, smog, acid rain, and climate change. Moreover, as energy demand rises, so does our reliance on dirty, inefficient power plants, as well as the nation's dependence on foreign oil and natural gas.

Modern architects and engineers can reduce the health and environmental impacts of buildings by designing "high-performance buildings" or "green buildings." The United States Green Building Council, the nation's foremost coalition of real estate and environmental organizations working to promote green buildings, has developed a green building rating system known as LEED (Leadership in Energy and Environmental Design). Buildings receive LEED certification if their designs score sufficient "points" in five general design areas including siting, water efficiency, energy and atmosphere, materials and resources and indoor environmental quality. Thousands of residential and commercial buildings, ranging from single-family homes to large corporate headquarters, have been designed and constructed throughout the United States utilizing green building principles. Significant local examples include 4 Times Square and 20 River Terrace. A recent study conducted for the State of California concluded that, on average, green buildings show a ten times return on the investment in green building design. This comprehensive analysis of 33 green buildings revealed an average green cost premium of less than 2%, with only a 0.66% premium for buildings that achieved the most basic level of LEED certification.

Numerous municipalities, including Atlanta, Austin, Boston, Boulder, Chicago, Dallas, Los Angeles, Portland (Oregon), San Diego, San Francisco, San Jose, and Seattle, have adopted LEED or have otherwise required that city-owned buildings be built according to green building criteria. Some localities have created incentive programs for privately-owned green building construction, including the use of direct subsidies, density bonuses and expedited permitting. Indeed, Boston will soon require private sector buildings of over 50,000 square feet to be LEED-certifiable.

In New York City, numerous governmental bodies have also embraced green building concepts. The Battery

Park City Authority has begun utilizing green building guidelines modeled on LEED for all commercial and residential building construction in Battery Park City. The Department of Design and Construction has also developed High Performance Building Guidelines and has begun applying the guidelines for libraries and other facilities. The New York City Transit Authority has adopted green building guidelines for all new transit facilities, including the Second Avenue Subway. Moreover, the Lower Manhattan Development Corporation and the Port Authority of New York and New Jersey have developed sustainable design guidelines and have designated "environmental planning" as one of five general requirements for the redevelopment of the World Trade Center site and surrounding area.

Likewise, many states, such as California, Connecticut, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, and Rhode Island, have begun utilizing LEED for state-owned buildings. The State of New York provides tax credits for buildings that meet defined green building criteria and, under Executive Order 111, state agencies are directed to reduce energy use and carbon dioxide emissions and to utilize green building principles.

The City owns approximately 1,300 buildings and leases over 12.8 million square feet of office space, and this legislation will affect approximately \$12 billion in construction over the City's ten-year capital plan. Considering the size of the City's real estate portfolio, the Council finds that the use of green building criteria for City capital projects will substantially reduce New York City's electricity consumption, air pollution and water use, as well as improve occupant health and worker productivity and encourage market transformation. The Council further finds that reducing overall energy demand through green building techniques will reduce our dependence on foreign oil. Finally, the Council finds that green buildings are a sound investment of public dollars. The Council's financial analysis indicates that, without taking any other savings or social benefits into account, savings in water and energy cost will offset debt service payments on any increase in capital expenditures resulting from this legislation. Accordingly, the Council declares that it is reasonable and necessary to employ green building standards in the construction and renovation of City-owned and City-funded buildings and that these standards be utilized in an orderly and timely fashion.

§ 3.* An annual¹⁵ report shall be prepared no later than September 1 of each year in accordance with the procedure and format established by the department of design and construction. Such report shall include, but shall not be limited to, a list and brief description, including square footage and total cost, of any capital project subject to section 224.1 of the charter, as added by section 2 of this local law, completed during the preceding calendar year; the estimated level of LEED certification such capital projects have achieved as determined by the design agency in accordance with the LEED rating system or, if applicable, the level achieved, as certified by the United States Green Building Council; additional costs attributable to complying with the LEED green building rating system or any other green building standard; an assessment of the health, environmental and energy-related benefits achieved in comparison with a base-case code compliant project (including projected energy savings and reductions in peak load, reductions in emissions, reductions in storm water runoff and potable water use); a summary of agency findings related to additional investment in energy efficiency pursuant to subparagraphs (i), (ii), and (iii) of paragraph two of subdivision b of section 224.1 of the charter, including any additional investment in energy efficiency considered and the estimated payback time for such investment through savings in energy cost; and the total value of capital allocations in each fiscal year, by city agency, of projects subject to, and exempted by the mayor for each of paragraph one and subparagraphs (i), (ii) and (iii) of paragraph two of subdivision b, paragraphs one and two of subdivision c and subdivision d of section 224.1 of the charter, as added by section 2 of this local law, as well as a list and brief description, by agency, of such exempted projects, including square footage and project cost. The first such report shall be completed on or prior to September 1, 2008.

§ 4. This local law shall take effect on January 1, 2007 and shall apply to capital projects for which the final design is approved pursuant to section 223 of the New York city charter after such effective date, except that prior to such effective date the mayor shall take all actions necessary for the timely implementation of this local law, including the promulgation of rules, and shall take all practicable steps to implement this local law. Section 3 of this local law shall expire and shall be of no further force and effect on and after January 1, 2019. Subdivision k of section 224.1 of

the charter, as added by section 2 of this local law, shall expire and shall be of no further force and effect on and after January 1, 2017.

FOOTNOTES

13

[Footnote 13]: * Should be "capital".

14

[Footnote 14]: * Subd. k expires Jan. 1, 2017 per L.L. 86/2005 § 4. [See Note 1]

15

[Footnote 15]: * Section 3 expires Jan. 1, 2019 per L.L. 86/2005 § 4.



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NYC Charter 225

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CHAPTER 10 BUDGET PROCESS

§ 225. **Budgetary responsibilities of the mayor, the director of management and budget and the comptroller.**

a. The mayor shall each year, in accordance with the provisions of this chapter, prepare and submit to the council a preliminary budget and an executive budget each of which shall present a complete financial plan for the city and its agencies for the ensuing fiscal year, setting forth proposed operating and capital expenditures, proposed interfund transfers, anticipated revenues and any other anticipated sources and uses of funds. Each such budget shall consist of three parts: the expense budget, which shall set forth proposed appropriations for the operating expenses of the city including debt service; the capital budget and program, which shall set forth proposed appropriations for capital projects for the ensuing fiscal year and the three succeeding fiscal years; and the revenue budget, which shall set forth the estimated revenues and receipts of the city.

b. There shall be an office of management and budget in the executive office of the mayor, the head of which shall be director of management and budget who shall be appointed by the mayor. It shall be the duty of the director to perform all such duties in regard to the budget and related matters as the mayor may direct. The director of management and budget shall have the power, personally or through representatives, to survey each agency for the purpose of ascertaining its budgetary requirements. The director may require any agency, or any officer or employee, to furnish data and information and to answer inquiries pertinent to the exercise of any of the director's duties in regard to the budget and related matters.

c. The comptroller shall produce timely analyses of the preliminary and executive budgets including evaluations of the recommendations of the borough presidents, as well as those of the mayor, and of the assumptions and methodologies used by the mayor in making the revenue estimates contained in such budgets.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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NYC Charter 226

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CHAPTER 10 BUDGET PROCESS

§ 226. **Fiscal year.**

The fiscal year of the city shall commence on the first day of July in each year and shall terminate at midnight on the ensuing thirtieth day of June.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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NYC Charter 227

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CHAPTER 10 BUDGET PROCESS

§ 227. **Spending pursuant to appropriations.**

a. No money, except for grants or gifts from private entities, shall be paid from any fund under the management of the city, or any fund under the management of any agency or officer of the city, or any other entity the majority of the members of whose board are city officials or are appointed directly or indirectly by city officials, except in pursuance of an appropriation by the council or other specific legal authorization; provided, however, that

(1) if at any time the council shall fail to make an appropriation for the payment of debt service on any debts of the city as they fall due, or for the payments to the several sinking funds, the commissioner of finance shall set apart, from the first revenues thereafter received applicable to the general fund of the city, a sum sufficient to pay such amounts and shall so apply such sum; and

(2) money, the ownership and equitable title of which belongs to an individual, corporation, organization or government other than the city and which is being held by any agency or officer of the city pending transfer of such money to such individual, corporation, organization or government in accordance with the terms and conditions pursuant to which it was placed in the custody of such agency or officer, may be transferred to such individual, corporation, organization or government by such agency or officer without an appropriation by law, provided such transfers are made in accordance with such terms and conditions; and

(3) money or other financial resources may only be transferred from one fund to another without specific statutory authorization for such a transfer if that money or those other financial resources are being loaned temporarily to such other fund and an accurate accounting and reporting of the balance of financial resources in each fund and of the amount due by each fund to each other fund is made at the end of each month; and

(4) grants or gifts from private entities exempt from the requirements of this section, and expenditures of such funds, shall be subject to disclosure, at least annually, by the responsible agency, officer or entity in a form and

containing such information as the mayor shall prescribe for this purpose by rule.

b. The head of each agency of the city, and each entity the majority of the members of whose board are city officials or individuals appointed directly or indirectly by city officials, shall, on or before the fifteenth day of October in each year, submit to the mayor and the council, in such form as the mayor shall prescribe, a statement of the sources, amounts and disposition of all money received by such agency or entity, or by a unit or officer of such agency during the preceding fiscal year, other than (i) money appropriated for the use of such agency or entity by the council, or (ii) money paid by such agency or entity into the city treasury and reported in the annual report of the comptroller for such fiscal year. The mayor shall ensure that copies of such statements are available for public inspection, and shall designate a city officer to maintain copies of such statements for such purpose.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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CHAPTER 10 BUDGET PROCESS

§ 228. **Draft ten-year capital strategy.**

Not later than the first day of November in each even-numbered year, the director of management and budget and the director of city planning shall jointly submit to the mayor, the council, the borough presidents and the city planning commission a draft ten-year capital strategy prepared in accordance with the provisions of section two hundred fifteen.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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CHAPTER 10 BUDGET PROCESS

§ 229. **Revenue reports of the comptroller and mayor.**

a. Not later than the first day of November, the comptroller shall certify to the mayor the actual revenues for the previous fiscal year.

b. Not later than the fifteenth day of November, the mayor shall issue a report comparing actual revenues to estimated revenues in the budget as adopted for the previous fiscal year, accompanied by a detailed listing and an explanation of any variances between actual revenues and estimated revenues. This report shall be published in the City Record.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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CHAPTER 10 BUDGET PROCESS

§ 230. **Community board budget priorities.**

a. Not later than thirty days prior to the date set by the mayor in accordance with section two hundred thirty-one for the submission of departmental estimates, each community board shall submit to the mayor and the appropriate borough president a statement of its expense budget priorities and a statement of its capital budget priorities for the ensuing fiscal year, in such form and containing such information as the mayor shall prescribe. The form prescribed by the mayor shall include (i) a method by which continuing support may be expressed by a community board for existing programs and capital projects and (ii) reasonable limitations on the total number of expense and capital budget priorities which a community board may propose. The mayor shall provide each community board with reasonable notice of the date set for the submission of such priorities. The mayor shall ensure that representatives of each agency that delivers local services, or is responsible for capital projects, within any community district shall be available for consultation with the community board for such community district in the preparation of its statement of budget priorities.

b. Each community board in the preparation of its statement of budget priorities, shall, upon adequate public notice, hold a public hearing at which residents of the community district and other interested individuals may express their opinions as to the service and capital needs of the district.

c. Copies of each statement of budget priorities shall be provided expeditiously by the mayor to the city planning commission and the head of each agency affected.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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CHAPTER 10 BUDGET PROCESS

§ 231. **Departmental estimates.**

a. Not later than such date as the mayor may direct, the head of each agency shall submit to the mayor, in such form and containing such information as the mayor shall require, a detailed estimate of the expense budget requirements of such agency for the ensuing fiscal year and capital budget and program requirements for the ensuing fiscal year and three succeeding fiscal years, prepared in accordance with the provisions of section one hundred and section two hundred twelve, respectively, and a detailed estimate of all receipts, from sources other than taxes, which the agency anticipates collecting during the ensuing fiscal year. Such estimates shall be known collectively as departmental estimates and shall be known respectively as expense budget departmental estimates, capital budget and program departmental estimates and revenue budget departmental estimates. Copies of such departmental estimates shall be provided expeditiously by the mayor to each borough president.

b. In the preparation of such departmental estimates, the head of each agency that delivers local services, or is responsible for capital projects, within any community district shall (1) consult with the community board for such community district through appropriate officers and employees of the agency, and (2) consider the community board statements of expense and capital budget priorities submitted in accordance with section two hundred thirty of this chapter.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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CHAPTER 10 BUDGET PROCESS

§ 232. **Report of the comptroller on capital debt and obligations.**

Not later than the first day of December, the comptroller shall submit to the mayor, the council and the city planning commission a report, which shall be published forthwith in the City Record, setting forth the amount and nature of all obligations authorized on account of each pending capital project and the liabilities incurred for each such project outstanding on the first day of July and setting forth and commenting in detail upon the city's financial condition and advising as to the maximum amount and nature of debt and reserves which in the comptroller's opinion the city may soundly incur for capital projects during each of the four succeeding fiscal years, and containing such other information relevant to this subject as may be required by local law, by the mayor by executive order, or which the comptroller deems necessary and relevant.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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CHAPTER 10 BUDGET PROCESS

§ 233. **Report of the comptroller on the state of the city's finances.**

Not later than the fifteenth day of December, the comptroller shall report to the council, at a stated meeting of the council, on the state of the city's economy and finances, including evaluations of the city's financial plan, as most recently updated by the mayor in accordance with section two hundred fifty-eight, and the assumptions on which the revenue and expenditure forecasts contained therein are based.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

Section amended at General Election November 8, 2005. Ballot Question 4 § 5, eff. Nov. 8, 2005 as per Charter § 1152(j)(2). [See Charter § 258 Note 1]



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CHAPTER 10 BUDGET PROCESS

§ 234. **City planning commission hearing and statement on the draft ten-year capital strategy.**

Not later than the sixteenth day of January in each odd numbered year, the city planning commission shall submit to the mayor, the borough presidents and the council a report containing its comments on the draft ten-year capital strategy submitted in accordance with section two hundred twenty-eight of this chapter, including such recommendations as it deems appropriate. The city planning commission, in the preparation of such report, shall, upon adequate public notice, hold a public hearing at which interested organizations and individuals may express their opinions regarding the draft ten-year capital strategy.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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CHAPTER 10 BUDGET PROCESS

§ 235. **Preliminary certificate of the mayor on capital debt and obligations.**

No later than the sixteenth day of January, the mayor shall submit to the council, the comptroller, the borough presidents and the city planning commission and publish a preliminary certificate setting forth the maximum amount of debt and reserves which, in the mayor's opinion, the city may soundly incur for capital projects during the ensuing fiscal year and during each of the following three fiscal years, and the maximum amount of appropriations and expenditures for capital projects which the city, given such maximum amount of debt and reserves, may soundly make during each such fiscal year. At any time up to the submission of the executive capital budget to the council, the mayor may amend such preliminary certificate. Any such amendments shall be submitted to the council, the comptroller, the borough presidents and the city planning commission, and published forthwith in the City Record.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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CHAPTER 10 BUDGET PROCESS

§ 236. **Submission of the preliminary budget.**

Not later than the sixteenth day of January, the mayor shall submit to the council and publish a preliminary budget for the ensuing fiscal year. Copies of such budget shall be provided to the council, borough presidents, each community board and borough board, the city planning commission, and the department of city planning. Beginning in calendar year 1999 and every calendar year thereafter, a copy of such preliminary budget shall also be provided to the council not later than the sixteenth day of January on floppy disks having dimensions of three and one-half inches or on CD Roms. Such floppy disks or CD Roms shall be in a readable ascii format or readable Lotus or Excel spread sheet format or any other format mutually agreed upon between the mayor and the council.

HISTORICAL NOTE

Section amended L.L. 25/1998 § 1, eff. July 6, 1998.

Section added at General Election, November 7, 1989.



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CHAPTER 10 BUDGET PROCESS

§ 237. **Report of independent budget office on revenues and expenditures.**

On or before the first day of February, the director of the independent budget office shall publish a report, for the ensuing fiscal year, with respect to expected levels of revenues and expenditures, taking into account projected economic factors and the proposals contained in the preliminary budget submitted by the mayor for such fiscal year. Such report shall also include a discussion of city budget priorities, including alternative ways of allocating the total amount of appropriations, expenditures and commitments for such fiscal year among major programs or functional categories taking into account how such alternative allocations will meet major city needs and effect balanced growth and development in the city.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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CHAPTER 10 BUDGET PROCESS

§ 238. **Community board review of preliminary budget.**

Not later than the fifteenth day of February, each community board shall submit to the mayor, the council, director of management and budget, the appropriate borough president and each member of the borough board of the borough in which the community board is located, a statement containing the community board's assessment of the responsiveness of the preliminary budget to its statement of budget priorities submitted pursuant to section two hundred thirty and any other comments or recommendations which it wishes to make in regard to the preliminary budget.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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CHAPTER 10 BUDGET PROCESS

§ 239. Estimate of assessed valuation, and statement of taxes due and uncollected by the commissioner of finance.

Not later than the fifteenth day of February, the commissioner of finance shall submit to the mayor and to the council:

- a. a tentative estimate of the assessed valuation of real property subject to taxation for the ensuing fiscal year, which shall be published forthwith in the City Record; and
- b. a certified statement showing as of a specified date the amount of all real property taxes due, the amount expected to be received and the amount actually uncollected by such categories and classifications as will facilitate understanding of such information.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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CHAPTER 10 BUDGET PROCESS

§ 240. **Tax Benefit Report.**

Not later than the fifteenth day of February the mayor shall submit to the council a tax benefit report which shall include: a. a listing of all exclusions, exemptions, abatement, credits or other benefits allowed against city tax liability, against the base or the rate of, or the amount due pursuant to, each city tax, provided however that such listing need not include any benefits which are applicable without any city action to such city tax because they are available in regard to a federal or state tax on which such city tax is based; and

b. a description of each tax benefit included in such listing, providing the following information:

1. the legal authority for such tax benefit;
2. the objectives of, and eligibility requirements for, such tax benefit;
3. such data and supporting documentation as are available and meaningful regarding the number and kind of taxpayers using benefits pursuant to such tax benefit and the total amount of benefits used pursuant to such tax benefit, by taxable and/or fiscal year;
4. for each tax benefit pursuant to which a taxpayer is allowed to claim benefits in one year and carry them over for use in one or more later years, the number and kind of taxpayers carrying forward benefits pursuant to such tax benefit and the total amount of benefits carried forward, by taxable and/or fiscal year;
5. for nineteen hundred ninety and each year thereafter for which the information required by paragraphs three and four are not available, the reasons therefor, the steps being taken to provide such information as soon as possible, and the first year for which such information will be available;

6. such data and supporting documentation as are available and meaningful regarding the economic and social impact and other consequences of such tax benefit; and

7. a listing and summary of all evaluations and audits of such tax benefit issued during the previous two years.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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NYC Charter 241

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CHAPTER 10 BUDGET PROCESS

§ 241. **Borough board preliminary budget hearings.**

Not later than the twenty-fifth day of February each borough board shall submit a comprehensive statement on the budget priorities of the borough to the mayor, council, and director of management and budget. Each borough board, in the preparation of this statement, shall, upon adequate public notice, hold one or more public hearings on the preliminary budget, to obtain the views and recommendations of the community boards within the borough, residents of the borough and others with substantial interests in the borough, on the proposals contained in the preliminary budget and on the capital and service needs of the borough. Officers of agencies, when requested by the borough board, shall appear and be heard.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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CHAPTER 10 BUDGET PROCESS

§ 242. **Statement of debt service by the comptroller.**

Not later than the first day of March, the comptroller shall submit to the mayor and to the council a certified statement which shall be published forthwith in the City Record and which shall contain a schedule of the appropriations required during the ensuing fiscal year for debt service, including appropriations to the several sinking funds as required by law, and such other information as may be required by law.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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CHAPTER 10 BUDGET PROCESS

§ 243. **The operating budget of the council.**

Not later than the tenth day of March, the council shall approve and submit to the mayor detailed itemized estimates of the financial needs of the council for the ensuing fiscal year. Such estimates shall be comprised of at least one personal service unit of appropriation and at least one other than personal service unit of appropriation for each standing committee of the council and for each organizational unit established pursuant to section forty-five of this charter. The mayor shall include such estimates in the executive budget without revision, but with such recommendations as the mayor may deem proper.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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NYC Charter 244

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CHAPTER 10 BUDGET PROCESS

§ 244. **Preparation of the executive budget.**

In preparing the executive budget to be submitted in accordance with section two hundred forty-nine, the mayor shall consult with the borough presidents.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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CHAPTER 10 BUDGET PROCESS

§ 245. **Borough president recommendations to the mayor.**

a. Not later than the tenth day of March, each borough president shall submit to the mayor and council, in such form and containing such information as the mayor shall prescribe, any proposed modifications of the preliminary budget which the borough president recommends in accordance with the provisions of subdivision b of this section.

b. Each borough president shall propose such modifications to the preliminary budget as the borough president deems to be in the best interest of the borough, taking into consideration community and borough board priorities and testimony received at public hearings held pursuant to section two hundred forty-one. The net effects of any such modifications recommended by the borough president may not result in an increase in the total amount of appropriations proposed in the preliminary budget. If increases in appropriations within the borough are recommended, offsetting reductions in other appropriations within the borough must also be recommended. Each proposed increase or reduction must be stated separately and distinctly and refer each to a single object or purpose.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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NYC Charter 246

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CHAPTER 10 BUDGET PROCESS

§ 246. **Report of independent budget office on preliminary budget.**

On or before the fifteenth day of March, the director of the independent budget office shall publish a report analyzing the preliminary budget for the ensuing fiscal year.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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CHAPTER 10 BUDGET PROCESS

§ 247. **Council preliminary budget hearings and recommen- dations.**

a. Not later than the twenty-fifth day of March, the council, through its committees, shall hold hearings on the program objectives and fiscal implications of the preliminary budget, the statements of budget priorities of the community boards and borough boards, the draft ten-year capital strategy and the report of the city planning commission on such strategy, the borough presidents recommendations submitted pursuant to section two hundred forty-five to the extent that such recommendations are available at the time of these hearings, and the status of capital projects and expense appropriations previously authorized. The public and representatives of community boards and borough boards may attend and be heard in regard to all such matters. Representatives of the director of management and budget and the director of city planning may attend the hearings and ask questions. Officials of agencies, when requested by the committees of the council, shall appear and be heard.

b. Findings and recommendations of the council, or its committees, including recommendations for any changes in the unit of appropriation structure which the council deems appropriate, shall be submitted to the mayor and published not later than the twenty-fifth day of March. The net effect of the changes recommended by the council in the preliminary capital budget shall not result in a capital budget which exceeds the maximum amount set forth in the preliminary certificate issued pursuant to section two hundred thirty-five of this charter.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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CHAPTER 10 BUDGET PROCESS

§ 248. **Ten-year capital strategy.**

Not later than the twenty-sixth day of April in each odd-numbered year, the mayor shall issue and publish a ten-year capital strategy, prepared in accordance with the provisions of section two hundred fifteen of this chapter.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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CHAPTER 10 BUDGET PROCESS

§ 249. **Submission of the executive budget.**

a. Not later than the twenty-sixth day of April, the mayor shall submit to the council (1) a proposed executive budget for the ensuing fiscal year, and (2) a budget message, both of which, along with any accompanying reports and schedules, shall be printed forthwith. Beginning in calendar year 1998 and every calendar year thereafter, copies of such proposed executive budget, budget message and any accompanying reports and schedules shall also be provided to the council not later than the twenty-sixth day of April on floppy disks having dimensions of three and one-half inches or on CD Roms. Such floppy disks or CD Roms shall be in a readable ascii format or readable Lotus or Excel spread sheet format or any other format mutually agreed upon between the mayor and the council.

b. As soon after the submission of the executive budget as is practicable, the mayor shall submit to the council copies of all proposed local laws and all proposed home rule requests necessary to implement the recommendations made in the executive budget.

c. Adjustment of expense budget borough allocation. If the executive expense budget submitted by the mayor in accordance with this section includes an expense budget borough allocation which is greater or less than the expense budget borough allocation certified by the mayor to the borough presidents in accordance with subdivision d of section one hundred two, the mayor shall, concomitantly with the submission of the executive expense budget, notify each borough president of the difference between such amounts and of the portion of such difference allocable to each borough pursuant to the provisions of section one hundred two. Within seven days of receiving such notification, each borough president shall submit to the mayor and the council, in such form as the mayor shall prescribe, proposed additional appropriations or proposed reductions in appropriations equaling such portion of such difference.

d. Adjustments of capital budget borough allocations. If the executive capital budget submitted by the mayor in accordance with this section includes a capital budget borough allocation which is greater or less than the capital budget borough allocation certified by the mayor to the borough presidents in accordance with subdivision c of section two

hundred eleven the mayor shall, concomitantly with the submission of such executive capital budget, notify each borough president of the difference between such amounts and of the portion of such difference allocable to each borough pursuant to the provisions of subdivision a of section two hundred eleven. Within seven days of receiving such notification, each borough president shall submit to the mayor and the council, in such form as the mayor shall prescribe, proposed additional appropriations or proposed reductions in appropriations equaling such portion of such difference.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

Subd. a amended L.L. 25/1998 § 2, eff. July 6, 1998.



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NYC Charter 250

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CHAPTER 10 BUDGET PROCESS

§ 250. **The budget message.**

The budget message, which shall not be deemed a part of the budget, shall include:

1. An explanation, in summary terms, of the major programs, projects, emphases and objectives of the budget, the general fiscal and economic condition of the city, the tax and fiscal base of the city, and intergovernmental fiscal relations.
2. Itemized information and supporting schedules of positions, salaries and other than personal service expenses, anticipated for the ensuing fiscal year.
3. Recommendations for any changes in the revenue sources and fiscal operations of the city, including intergovernmental revenue and fiscal arrangements.
4. An itemized statement of the actual revenues and receipts and accruals of the general fund and of all other revenue sources, including state and federal aid and revenues for specified purposes, for each of the four preceding fiscal years, and for the first eight months of the current fiscal year, and the estimated amount of such items for the balance of the current fiscal year, and for the ensuing fiscal year. In preparing such information the mayor shall consult with the comptroller.
5. A listing of the sources and amounts of all revenues and other monies of a nonrecurring nature that are being proposed to be utilized during the ensuing fiscal year and that are not expected to be available or used in subsequent fiscal years.
6. An update of the four-year financial plan, as set forth in section two hundred fifty-eight of this chapter, containing, (a) for each agency, for all existing programs, forecasts of expenditures for the ensuing fiscal year and the

succeeding three fiscal years at existing levels of service; (b) forecasts of revenue by source from existing sources of revenue for the ensuing fiscal year and the succeeding three fiscal years; and (c) for each new or expanded program, an indication of when such program is projected to be fully implemented and a forecast of the annual recurring costs for such program or program expansion after it is fully implemented.

7. For each agency, a comparison of the proposed appropriations for the ensuing fiscal year with (i) the amounts appropriated in the current expense budget as originally adopted and as modified through the first eight months of the current fiscal year, (ii) the amounts actually expended in the previous fiscal year and (iii) the amounts actually expended through the first eight months of the current fiscal year and the estimated expenditures for the balance of the current fiscal year.

8. For each agency that has local service districts within community districts and boroughs, a statement of proposed direct expenditures in each service district for each unit of appropriation and a statement of the basis for the allocation of direct expenditures to local service districts of each such agency.

9. An explanation of principal changes in performance goals and indicators from the date of submission of the preliminary management report to the submission of the proposed executive budget.

10. An itemized statement, covering the city's entire capital plant, except for those portions of the capital plant which have been committed to the care and control of the board of education or officers or employees thereof, by agency and project type and, within project type, by personal services and other than personal services, of the amounts appropriated for maintenance of such capital plant in the previous and current fiscal years as originally adopted and as modified through the first eight months of the current fiscal year, and of the amounts actually expended for such maintenance in the previous fiscal year and through the first eight months of the current fiscal year and the amounts estimated to be expended for such purpose during the balance of the current fiscal year; and, for each agency, an explanation of the substantive differences, if any, between the amounts actually expended for such maintenance in the previous fiscal year or projected to be expended for such purpose in the current fiscal year and the amounts originally appropriated for such purpose for such years.

11. A presentation of the maintenance activities proposed by the mayor to be completed during the ensuing fiscal year for all major portions of the capital plant, as such terms are defined in subdivision a of section eleven hundred ten-a, categorized by agency and project type; an explanation of the differences, if any, between such proposed activities and the activities scheduled to be undertaken during such fiscal year pursuant to subdivision c of such section; an explanation of the differences, if any, between the proposed appropriations for such activities and the estimates of the amounts submitted, pursuant to subdivision f of such section, as necessary to maintain such portions of the capital plant; and a presentation and explanation of the differences, if any, between the maintenance activities for all major portions of the capital plant proposed by the mayor, in the budget message for the previous fiscal year, to be completed during such fiscal year and the activities actually completed during such fiscal year.

12. A statement of the extent to which the executive budget incorporates the revisions to the preliminary budget suggested by the borough presidents, in accordance with subdivision a of section two hundred forty-five and the reasons why any other suggested revisions were not incorporated in the executive budget.

13. A statement of the modifications, if any, which the mayor recommends that the council make in the appropriations submitted by the borough presidents pursuant to sections one hundred two and two hundred eleven.

14. A statement of any substantive changes in the methodology and assumptions used to determine the revenue estimates presented pursuant to subdivisions four, five and six of this section from the methodology and assumptions presented in the preliminary budget.

15. A statement of the implications for the orderly development of the city, its community districts and boroughs of the capital projects included in or contemplated by the capital budget and program.

16. A certificate setting forth the maximum amount of debt and reserves which, in the mayor's opinion, the city may soundly incur for capital projects during the ensuing fiscal year and during each of the following three fiscal years, and the maximum amount of appropriations and expenditures for capital projects which the city, given such maximum amount of debt and reserves, may soundly make during each such fiscal year.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

Subd. 6 amended at General Election November 8, 2005. Ballot Question 4 § 6, eff. Nov. 8, 2005 as per Charter § 1152(j)(2). [See Charter § 258 Note 1]



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NYC Charter 251

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CHAPTER 10 BUDGET PROCESS

§ 251. **Borough president recommendations on the executive budget.**

Not later than the sixth day of May, each borough president shall submit to the mayor and the council a response to the mayor's executive budget. Such response shall indicate which of the recommended appropriations submitted by the borough president pursuant to section two hundred forty-five, which were not included by the mayor in the executive budget, should be considered by the council for inclusion in the budget. Any appropriations recommended in this manner for inclusion in the budget shall be accompanied by recommendations for offsetting reductions in other appropriations within the borough. Any such increases or reductions must be stated separately and distinctly and refer each to a single object or purpose.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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NYC Charter 252

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CHAPTER 10 BUDGET PROCESS

§ 252. **Report of independent budget office on executive budget.**

On or before the fifteenth day of May, the director of the independent budget office shall publish a report analyzing the executive budget for the ensuing fiscal year.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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NYC Charter 253

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CHAPTER 10 BUDGET PROCESS

§ 253. **Executive budget hearings.**

Between the sixth day of May and the twenty-fifth day of May, the council shall hold public hearings on the budget as presented by the mayor. The council may hold such hearings either as a body or by its finance committee or other committees. Officers of agencies and representatives of community boards and borough boards shall have the right, and it shall be their duty when requested by the council, to appear and be heard in regard to the executive budget and to the capital and service needs of the communities, boroughs and the city.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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CHAPTER 10 BUDGET PROCESS

§ 254. **Amendment and adoption of the executive budget.**

a. The council may not alter the budget as submitted by the mayor pursuant to section two hundred forty-nine except to increase, decrease, add or omit any unit of appropriation for personal service or other than personal service or any appropriation for any capital project or add, omit or change any terms or conditions related to any or all such appropriations; provided, however, that each increase or addition must be stated separately and distinctly from any items of the budget and refer each to a single object or purpose; and, provided, further, that the aggregate amount appropriated for capital projects shall not exceed the maximum amount of appropriations contained in the mayor's certificate issued pursuant to subdivision sixteen of section two hundred fifty.

b. The council shall consider, and act upon, all recommendations made by the borough presidents pursuant to section two hundred fifty-one of this chapter and all recommendations made by the mayor pursuant to paragraph thirteen of section two hundred fifty of this chapter.

c. The budget when adopted by the council shall become effective immediately without further action by the mayor, except that appropriations for the council or appropriations added to the mayor's executive budget by the council or any changes in terms and conditions, shall be subject to the veto of the mayor.

d. If an expense budget has not been adopted by the fifth day of June pursuant to subdivisions a and b of this section, the expense budget and tax rate adopted as modified for the current fiscal year shall be deemed to have been extended for the new fiscal year until such time as a new expense budget has been adopted.

e. If a capital budget and a capital program have not been adopted by the fifth day of June pursuant to subdivisions a and b of this section, the unutilized portion of all prior capital appropriations shall be deemed reappropriated.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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CHAPTER 10 BUDGET PROCESS

§ 255. **Veto of the mayor.**

a. The mayor, not later than the fifth day after the council has acted upon the budget or capital program submitted with the executive budget, may disapprove any increase or addition to the budget, any unit of appropriation, or any change in any term or condition of the budget. The mayor, by such date, may also disapprove any item or term or condition included in such budget pursuant to the provisions of section two hundred forty-three of this chapter. The mayor shall return the budget by that date to the council, setting forth objections in writing.

b. The council, by a two-thirds vote of all the council members, may override any disapproval by the mayor pursuant to subdivision a of this section; provided, however, that if no such action by the council is taken within ten days of such disapproval, the expense budget to which such disapprovals relate shall be deemed adopted as modified by the disapprovals by the mayor.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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NYC Charter 256

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CHAPTER 10 BUDGET PROCESS

§ 256. **Appropriation, certification and publication.**

Not later than the day after the budget is finally adopted, the budget as finally adopted in such year shall be certified by the mayor, the comptroller and the city clerk as the budget for the ensuing fiscal year, and the several amounts therein specified as appropriations or units of appropriation shall be and become appropriated to the several purposes therein named, whether payable from the tax levy or otherwise and subject to the terms and conditions of the budget. The budget shall thereupon be filed in the offices of the comptroller and the city clerk, and shall be published forthwith. When finally adopted in accordance with sections two hundred fifty-four and two hundred fifty-five, such budget as adopted and as modified during the fiscal year in accordance with sections one hundred seven and two hundred sixteen shall have the force of law.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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NYC Charter 257

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CHAPTER 10 BUDGET PROCESS

§ 257. **Comparison of adopted budget and ten-year capital strategy.**

Not later than thirty days after the budget is finally adopted, the mayor shall prepare a statement of how the capital budget and program as finally adopted vary, if at all, from the ten-year capital strategy, submitted pursuant to section two hundred forty-eight. Such statement shall be published as an appendix to the ten year capital strategy.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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NYC Charter 258

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CHAPTER 10 BUDGET PROCESS

§ 258. **Standards for budget and financial plan.**

a. The operations of the city shall be such that, at the end of the fiscal year, the results thereof shall not show a deficit when reported in accordance with generally accepted accounting principles. The mayor shall take all actions necessary in accordance with the provisions of the charter, including but not limited to section one hundred six, or other applicable law to ensure that the city is in compliance with this subdivision.

b. Pursuant to the procedures contained in subdivision c of this section, each year the mayor shall develop, and from time to time modify, a four year financial plan. Each such financial plan and financial plan modification shall comply with the requirements of subdivision d of this section and shall conform to the following standards: (1) For each fiscal year, the city's budget covering all expenditures other than capital items shall be prepared and balanced so that the results thereof would not show a deficit when reported in accordance with generally accepted accounting principles and would permit comparison of the budget with the report of actual financial results prepared in accordance with generally accepted accounting principles.

(2) The city shall issue no obligations which shall be inconsistent with the financial plan prepared in accordance with this section.

(3) Provision shall be made for the payment in full of the debt service on all bonds and notes of the city and for the adequate funding of programs of the city which are mandated by state or federal law and for which obligations are going to be incurred during the fiscal year.

(4) All projections of revenues and expenditures contained in the financial plan shall be based on reasonable and appropriate assumptions and methods of estimation. All cash flow projections shall be based upon reasonable and appropriate assumptions as to sources and uses of cash (including but not limited to the timing thereof), and shall provide for operations of the city to be conducted within the cash resources so projected.

(5) A general reserve shall be provided for each fiscal year to cover potential reductions in projected revenues or increases in projected expenditures during each such fiscal year. The amount provided for such general reserve shall be estimated in accordance with paragraph four of this subdivision, but in no event shall it be less than one hundred million dollars at the beginning of any fiscal year.

(6) In the event that the results of the city's operations during the preceding fiscal year have not comported with subdivision a of this section, the first fiscal year included in any financial plan shall make provision for the repayment of any deficit incurred by the city during the preceding fiscal year.

c. The financial plan shall be developed and may from time to time be modified, in accordance with the following procedures:

(1) The mayor shall, in conjunction with the preliminary budget prepared pursuant to section one hundred one, prepare a financial plan covering the four ensuing fiscal years (the first year of which is the year for which such preliminary budget is being prepared) as well as updating the current fiscal year.

(2) After the preparation by the mayor of a financial plan in accordance with the preceding paragraph, the mayor shall reexamine, at least on a quarterly basis, the projections of revenues and expenditures and other estimates contained in the financial plan, and shall prepare modifications in accordance with the following procedures:

(a) The budget message, issued pursuant to section two hundred fifty of this chapter, shall include an update of the financial plan covering the four ensuing fiscal years (the first year of which is the year for which such budget message is being prepared) as well as an update for the current fiscal year.

(b) Not later than thirty days after the budget is finally adopted, the mayor shall issue an update of the financial plan covering the four ensuing fiscal years (the first year of which shall be the year for which such budget has been adopted) as well as an update for the fiscal year that is ending or has just ended. Such update shall reflect changes which were made in the budget in accordance with sections two hundred fifty-four and two hundred fifty-five; provided, however, that the budget adopted in accordance with such sections shall be consistent with the standards applicable to the financial plan set forth in this section.

(c) During the second quarter of the fiscal year, the mayor shall issue an update of the financial plan covering the fiscal year in which such quarter occurs and the three ensuing fiscal years.

(d) In addition, on such schedule as the mayor deems appropriate, the mayor may issue further updates of the financial plan during the fiscal year.

d. The financial plan shall include projections of all revenues, expenditures and cash flows (including but not limited to projected capital expenditures and debt issuances) and a schedule of projected capital commitments of the city. In addition, each financial plan and financial plan modification shall include a statement of the significant assumptions and methods of estimation used in arriving at the projections contained therein.

e. Notwithstanding any inconsistent provision of this charter, in the event of any change in generally accepted accounting principles, or change in the application of generally accepted accounting principles to the city, if the mayor determines that immediate compliance with such change will have a material effect on the city's budget over a time period insufficient to accommodate the effect without a substantial adverse impact on the delivery of essential services, the mayor may authorize and approve a method of phasing the requirements of such change into the budget over such reasonably expeditious time period as the mayor deems appropriate.

f. The powers, duties, and obligations set forth in this section shall be subject to the powers, duties, and obligations placed upon any state or local officer or agency, including but not limited to the New York state financial control board, by or pursuant to the New York State Financial Emergency Act for the City of New York, while such act

remains in effect.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

Section repealed and added at General Election November 8, 2005. Ballot Question 4 § 1, eff. Nov. 8, 2005 as per Charter § 1152(j)(2). [See Note 1]

NOTE

1. Ballot Question Abstract:

Question 4: These changes to the City Charter, as proposed by the New York City Charter Revision Commission, would establish as Charter requirements the following fiscal mandates that, in general, now apply to the City through a State law enacted in response to the City's 1975 fiscal crisis. The changes would add these mandates to the City Charter so that they would continue to apply after the State law expires. The changes would:

- Require that the City annually prepare a budget balanced in accordance with generally accepted accounting principles (GAAP), and end each year not showing a deficit in accordance with those principles;
- Require that the Mayor annually prepare a four-year City financial plan, to be based on reasonable assumptions and modified on at least a quarterly basis, and that the plan provide for payment of the City's debts and a general reserve of at least \$100 million to cover shortfalls;
- Impose additional conditions on the Charter's current restrictions on short-term debt (which may be issued by the City to fund a projected deficit or in anticipation of the receipt of funds from taxes, revenues and bonds). These conditions generally limit the duration and amount of the short-term debt; and
- Impose additional conditions on the annual audit of the City's accounts. These conditions relate to application of generally accepted auditing standards and access by auditors to records so that the audit may be issued within four months after the close of the City fiscal year.

Ballot Question Explanation:

Question 4: Prior to 1975, the City regularly issued large amounts of short-term debt to pay for expenses it couldn't afford and failed to adequately report and account for revenue and spending. Banks and other financial institutions lost confidence in the City's ability to pay its debts and shut off access to credit markets, precipitating a major financial crisis. To help the City restore fiscal stability, the State Legislature enacted the Financial Emergency Act (FEA).

Among other things, the FEA essentially required the City to prepare a four-year financial plan each year; adopt a balanced budget, end the fiscal year without a deficit of more than \$100 million, conduct an annual audit according to generally accepted accounting principles, and imposed strict limits on short-term indebtedness. Some of the FEA's provisions are set to expire in 2008, while others will expire at a later date.

"The City has a responsibility to import those provisions of the FEA that all agree are positive financial planning and management tools directly into the Charter now," the Commission said in its final report. The Commission has proposed making these practices permanent in the Charter-with appropriate modifications-with the intention of demonstrating the City's commitment to sound financial practice in advance of the State discussion about appropriate State oversight of the City's finances that will likely take place when certain FEA provisions expire in 2008.



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NYC Charter 259

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CHAPTER 11 INDEPENDENT BUDGET OFFICE

§ 259. **Independent budget office.**

a. There shall be an independent budget office to be headed by a director who shall be appointed upon the recommendation of the independent budget office advisory board, by a special committee convened for this purpose. Such committee shall consist of the comptroller, the public advocate, a borough president chosen by the borough presidents, and a council member chosen by the council, and shall act by majority vote. The director shall be appointed without regard to political affiliation and solely on the basis of fitness to perform the duties assigned by this chapter. The term of office of the director first appointed shall expire on August first, two thousand, and the terms of office of directors subsequently appointed shall expire on such date in each fourth year thereafter. Any individual appointed to fill a vacancy prior to the expiration of a term shall serve only for the unexpired portion of the term. An individual serving as director at the expiration of a term may continue to serve until a successor is appointed.

b. The appropriations available to pay for the expenses of the independent budget office during each fiscal year shall not be less than ten percentum of the appropriations available to pay for the expenses of the office of management and budget during such fiscal year. The director shall appoint such personnel and procure the services of such experts and consultants, within the appropriations available therefor, as may be necessary for the director to carry out the duties and functions assigned herein. Such personnel and experts shall perform such duties as may be assigned to them by the director.

c. The director shall be authorized to secure such information, data, estimates and statistics from the agencies of the city as the director determines to be necessary for the performance of the functions and duties of the office, and such agencies shall provide such information, to the extent that it is available, in a timely fashion. The director shall not be entitled to obtain records which are protected by the privileges for attorney-client communications, attorney work product, and material prepared for litigation.

d. There shall be an independent budget office advisory committee consisting of ten members appointed jointly

by the comptroller and the public advocate for five year staggered terms. Of the members originally appointed, two shall serve until the thirty-first day of March, nineteen hundred ninety-nine, two shall serve until the thirty-first day of March, two thousand, two shall serve until the thirty-first day of March, two thousand one, two shall serve until the thirty-first day of March, two thousand two and two shall serve until the thirty-first day of March, two thousand three. The members shall all be individuals with extensive experience and knowledge in the fields of finance, economics, accounting, public administration and public policy analysis, including at least one former director of the New York city office of management and budget or of a comparable office in another local government jurisdiction in the United States; one nationally recognized expert in the fields of budget theory and the budgetary process; one former director of the New York state division of the budget or of a comparable legislative or executive office in another state government; one dean or director or former dean or director of a graduate school of business administration located in New York city; one dean or director or former dean or director of a graduate school of public administration or public affairs or public policy located in New York city; one chair or former chair of a graduate economics department of a college or university located in New York city; one officer or former officer of, or economic advisor of, a labor union; one officer or former officer of, or economic advisor to, a business corporation; one officer or former officer of a civic or public interest advocacy organization involved in budgetary matters; and one officer or former officer of a human services advocacy organization involved in budget matters. No member may be reappointed to consecutive terms. Vacancies occurring because of the expiration of terms shall be filled promptly on the recommendation of the members of the committee whose terms are not expiring. Vacancies occurring otherwise shall be filled promptly on the recommendation of the remaining members of the committee. The members of the committee shall receive no compensation but shall be reimbursed for their necessary expenses. The committee shall at its first meeting in every even numbered year elect, from among its members, a chair and vice-chair who shall serve until the thirty-first day of March of the next even numbered year.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

Subd. a amended L.L. 30/1994 § 2, eff. July 7, 1994.

Subd. d amended L.L. 30/1994 § 3, eff. July 7, 1994.

CASE NOTES

¶ 1. Any law that would curtail the funding of the Independent Budget Office, thus in effect abolishing the office, is invalid in the absence of a referendum by the voters. *New York Public Interest Research Group v. Guiliani*, 1996 Westlaw 325430 (App.Div. 1st Dept.).



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NYC Charter 260

New York City Charter

CHAPTER 11 INDEPENDENT BUDGET OFFICE

§ 260. **Powers and duties.**

a. It shall be the duty of the office to provide to the comptroller, the president of the council, the members and committees of the council, the borough presidents, and the community boards information which will assist such officials and bodies in the discharge of their responsibilities which are related to the budgetary process, including:

- (1) information with respect to the budget, appropriations bills and proposed local laws with fiscal implications;
- (2) information with respect to estimated revenues and receipts and changing revenue conditions; and
- (3) to the extent practicable, such other information or analyses as may be requested by such officials and bodies.

b. The director, upon the request of a borough president or the president of the council for a proposed local law introduced by such official, or the chair or ranking minority member of a committee of the council for a proposed local law being considered by such committee, shall complete a fiscal impact statement of such proposed local law consistent with the requirements of section thirty-three.

c. The director shall from time to time publish such reports as may be appropriate to enhance official and public understanding of the budgetary process and of the budget documents published in accordance with the provisions of chapters six, nine and ten. The director shall from time to time publish such reports as may be necessary or appropriate to provide such information, data, and analysis as will enhance official and public understanding of matters relating to city revenues, expenditures, financial management practices and related matters.

d. The director may procure, for the office, up-to-date computer equipment, obtain the services of experts and consultants in computer technology, and develop techniques for the evaluation of revenue projections and budgetary

requirements.

e. The director shall make all information, data, estimates, and statistics obtained under subdivision c of section ninety-eight, and all studies and reports prepared by the office, available for public inspection and copying during normal business hours and shall, to the extent practicable, furnish a copy of any such information or report to any person upon request at a reasonable cost.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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NYC Charter 265

New York City Charter

CHAPTER 12 OBLIGATIONS OF THE CITY*12

§ 265. **Allocation of authorizations to department of citywide administrative services.**

So much of the amount of any obligation authorized as is applicable to the purchase of supplies, materials and equipment or the provision of services, utilities or facilities which the department of citywide administrative services is authorized to purchase or provide shall be allotted to the department of citywide administrative services, but shall be considered and accounted for as a part of the cost of the project for which the obligations were authorized.

HISTORICAL NOTE

Amended by L.L. 1968, No. 69.

Amended by L.L. 1969, No. 74.

Amended by L.L. 1977, No. 102.

Section renumbered at General Election, November 7, 1989 (formerly § 253).

Section amended L.L. 59/1996 § 7, eff. Aug. 8, 1996.

FOOTNOTES

12

[Footnote 12]: * Chapter renumbered at General Election, November 7, 1989 (formerly Chapter 10).



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NYC Charter 265-a

New York City Charter

CHAPTER 12 OBLIGATIONS OF THE CITY*12

§ 265-a. **Allocation of authorizations to department of design and construction.**

So much of the amount of any obligation authorized as is applicable to the completion of construction projects, acquisition of real property or acquisition of personal property in connection with construction or a capital project by the department of design and construction, including but not limited to the provision of services, utilities or facilities of such department, shall be allotted to the department of design and construction, but shall be considered and accounted for as a part of the cost of the project for which the obligations were authorized.

HISTORICAL NOTE

Section added L.L. 77/1995 § 4, eff. Nov. 23, 1995.

FOOTNOTES

12

[Footnote 12]: * Chapter renumbered at General Election, November 7, 1989 (formerly Chapter 10).



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NYC Charter 266

New York City Charter

CHAPTER 12 OBLIGATIONS OF THE CITY*12

§ 266. **Short term debt.**

a. Subject to the provisions of subdivisions b through j of this section, the city may issue temporary debt obligations in anticipation of taxes and revenues as authorized by state law. The city shall issue no short-term obligations which shall be inconsistent with the limitations set forth in subdivisions b through j of this section. The limitations on short-term borrowing imposed upon the city by this section shall be in addition to the limitations on short-term borrowing imposed on the city under the state local finance law. The powers, duties, and obligations set forth in this section shall be subject to the powers, duties, and obligations placed upon any state or local officer or agency, including but not limited to the New York state financial control board, by or pursuant to the New York State Financial Emergency Act for the City of New York, while such act remains in effect.

b. Revenue or tax anticipation notes shall be issued against a specific tax or revenues receivable which are clearly identified by source and fiscal year.

c. If the amount of taxes or revenues receivable against which anticipation notes have been issued becomes equal to the amount of such notes outstanding, the city shall deposit all further funds obtained from such sources into a segregated bank account which may be used only to redeem such debt upon maturity.

d. The city shall not issue anticipation notes against taxes or revenues which have been receivable for more than two years.

e. No tax anticipation notes shall be issued by the city in anticipation of the collection of taxes or assessments levied for a fiscal year which would cause the principal amount of such issue of tax anticipation notes to exceed an amount equal to ninety per cent of the available tax levy with respect to such issue. For purposes of this subdivision, "available tax levy" with respect to an issue of tax anticipation notes means at any date of computation the total amount of city real estate taxes or assessments projected, consistent with the financial plan then in effect, to be received in cash

on or before the fifth day preceding the maturity date of such tax anticipation note issue, less amounts required during the period between the date of computation and the fifth day preceding such maturity date to be paid into a general debt service fund or otherwise required to pay interest payable on other outstanding city bonds and notes, principal (including payments into sinking funds) coming due on outstanding city bonds and principal to be paid from sources other than the proceeds of bonds or renewal notes on other outstanding city notes (exclusive of revenue anticipation notes or renewals thereof issued less than two years prior to the date of computation) but not including payments from sinking funds required by the terms of certain city bonds.

f. Tax anticipation notes and renewals thereof shall mature not later than the last day of the fiscal year in which they were issued.

g. (1) No revenue anticipation note shall be issued by the city in anticipation of the collection or receipt of revenue in a fiscal year which would cause the principal amount of revenue anticipation notes outstanding to exceed ninety per cent of the available revenues for such fiscal year. For purposes of this subdivision, "available revenues" shall be the revenues other than real estate taxes and assessments which have been estimated in the financial plan prepared pursuant to section two hundred fifty-eight to be realized in cash during such year, less revenues previously collected, other than revenues on deposit in any special fund or account established pursuant to law for the payment of interest and/or principal of revenue anticipation notes.

(2) Each issue of revenue anticipation notes shall be issued only in anticipation of the receipt of a specific type or types of revenue and the amount of revenue, the source of revenue and the anticipated date of payment shall be stated in the proceedings authorizing the issuance of such notes.

(3) Revenue anticipation notes shall mature not later than the last day of the fiscal year in which they were issued, and may not be renewed or extended to a date more than ten days after the anticipated date of receipt of such revenue. No such renewal note shall mature after the last day of such fiscal year unless the mayor shall certify that the revenue against which such renewal note is issued has been properly accrued and estimated in the financial plan set forth in section two hundred fifty-eight in effect on the date of issuance of such renewal note; provided that in no event shall any such renewal notes mature later than one year subsequent to the last day of the fiscal year during which such revenue anticipation notes were originally issued.

h. (1) No bond anticipation note shall be issued by the city in any fiscal year which would cause the principal amount of bond anticipation notes outstanding, together with interest due or to become due thereon, to exceed fifty per cent of the principal amount of bonds issued by the city in the twelve months immediately preceding the month in which the note is to be issued.

(2) The proceeds of each bond issue shall be (i) held in trust for the payment, at maturity, of the principal of and interest on any bond anticipation notes of the city issued in anticipation of such bonds and outstanding at the time of the issuance of such bonds, (ii) paid into the general fund of the city in repayment of any advance made from such fund pursuant to section 165.10 of the state local finance law, and (iii) any balance shall be expended for the object or purpose for which such bonds were issued.

(3) Bond anticipation notes shall mature not later than six months after their date of issuance and may be renewed for a period not to exceed six months.

i. Budget notes issued pursuant to section 29.00 of the state local finance law may only be issued to fund projected expense budget deficits. No budget notes or renewals thereof shall mature later than sixty days prior to the last day of the fiscal year next succeeding the fiscal year during which such budget notes were originally issued.

j. All references to the state local finance law in this section shall be deemed to refer to the provisions of the New York state local finance law as such provisions may be amended over time or any successor provisions thereto.

HISTORICAL NOTE

Added at General Election, November 4, 1975.

Section renumbered, subd. a amended at General Election, November 7, 1989 (formerly § 254).

Section amended at General Election November 8, 2005. Ballot Question 4 § 7, eff. Nov. 8, 2005 as per Charter § 1152(j)(2). [See Charter § 258 Note 1]

FOOTNOTES

12

[Footnote 12]: * Chapter renumbered at General Election, November 7, 1989 (formerly Chapter 10).



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NYC Charter 270

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CHAPTER 12 OBLIGATIONS OF THE CITY*12

§ 270. **Application.**

The provisions of sections two hundred seventy-one through two hundred seventy-nine shall apply to the several sinking funds of the city established prior to July first, nineteen hundred eighty-one.

HISTORICAL NOTE

Section added L.L. 81/1981 § 2.

FOOTNOTES

12

[Footnote 12]: * Chapter renumbered at General Election, November 7, 1989 (formerly Chapter 10).



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NYC Charter 271

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CHAPTER 12 OBLIGATIONS OF THE CITY*12

§ 271. **Sinking fund of the city of New York.**

There is hereby continued the fund known as the "sinking fund of the city of New York" which shall have for its purpose the amortization and redemption of the principal of the debt of the city of New York incurred on and after the first day of January eighteen hundred ninety-eight, and evidenced by corporate stock of the city of New York, excepting that issued to provide for the supply of water and that issued since the first day of January, nineteen hundred ten, for rapid transit or rapid transit unification purposes and that issued since the first day of July nineteen hundred eighty-one which is redeemable from the general sinking fund or any other sinking fund established pursuant to sections two hundred ninety through two hundred ninety-nine.

HISTORICAL NOTE

Section amended L.L. 81/1981 § 3.

FOOTNOTES

12

[Footnote 12]: * Chapter renumbered at General Election, November 7, 1989 (formerly Chapter 10).



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NYC Charter 272

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CHAPTER 12 OBLIGATIONS OF THE CITY*12

§ 272. **Water sinking fund of the city of New York.**

There is hereby continued the fund known as the "water sinking fund of the city of New York" which shall have for its purpose the amortization and redemption of all corporate stock of the city of New York issued on and after the first day of January, eighteen hundred ninety-eight, to provide for the supply of water, excepting that issued since the first day of July nineteen hundred eighty-one which is redeemable from the general sinking fund or any other sinking fund established pursuant to sections two hundred ninety through two hundred ninety-nine.

HISTORICAL NOTE

Section amended L.L. 81/1981 § 3.

FOOTNOTES

12

[Footnote 12]: * Chapter renumbered at General Election, November 7, 1989 (formerly Chapter 10).



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NYC Charter 273

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CHAPTER 12 OBLIGATIONS OF THE CITY*12

§ 273. **Rapid transit sinking fund of the city of New York.**

There is hereby continued the fund known as the "rapid transit sinking fund of the city of New York" which shall have for its purpose the amortization and redemption of all corporate stock of the city of New York issued on and after the first day of January, nineteen hundred ten, for rapid transit purposes, excepting that issued since the first day of July nineteen hundred eighty-one which is redeemable from the general sinking fund or any other sinking fund established pursuant to sections two hundred ninety through two hundred ninety-nine.

HISTORICAL NOTE

Section amended L.L. 81/1981 § 3.

Section added ch. 474/1939.

FOOTNOTES

12

[Footnote 12]: * Chapter renumbered at General Election, November 7, 1989 (formerly Chapter 10).



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NYC Charter 273-a

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CHAPTER 12 OBLIGATIONS OF THE CITY*12

§ 273-a. **Transit unification sinking fund of the city of New York.**

There is hereby continued the fund known as the "transit unification sinking fund of the city of New York" which shall have for its purpose the amortization and redemption of all corporate stock of the city of New York issued on and after the first day of January, nineteen hundred thirty-nine, for transit unification purposes.

HISTORICAL NOTE

Section added Local Laws of 1962.

FOOTNOTES

12

[Footnote 12]: * Chapter renumbered at General Election, November 7, 1989 (formerly Chapter 10).



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NYC Charter 274

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CHAPTER 12 OBLIGATIONS OF THE CITY*12

§ 274. **Administration of sinking funds.**

The comptroller shall administer and manage the several sinking funds of the city established prior to July first, nineteen hundred eighty-one, and shall have custody of the securities in such funds. In the administration of such funds the comptroller shall be deemed to be acting in a fiduciary capacity. Where moneys of such sinking funds are invested pursuant to section two hundred seventy-five, in securities which are obligations of the United States or of any agency, subdivision, department, division or instrumentality thereof, or obligations fully guaranteed or insured as to interest and principal by an agency, subdivision, department, division or instrumentality of the United States, acting pursuant to a grant of authority from the congress of the United States, notwithstanding any other provision of law, the comptroller may turn over the physical custody and safekeeping of these obligations to (a) any bank or trust company incorporated in this state, or (b) any national bank located in this state, or (c) any private banker duly authorized by the superintendent of banks of this state to engage in business here. All such private bankers shall, as private bankers, maintain a permanent capital of not less than one million dollars in this state. The comptroller may direct such bank, trust company or private banker to register and hold any such securities in its custody, in the name of its nominee. The comptroller may deposit, or authorize such bank, trust company or private banker, to deposit, or arrange for the deposit of, any of such securities with a federal reserve bank to be credited to an account as to which the ownership of, and other interest in, such securities may be transferred by entries on the books of such federal reserve bank without physical delivery of any such securities. The records of any such bank, trust company or private banker shall show, at all times, the ownership of such obligations, and they shall, when held in the possession of such bank, trust company or private banker be, at all times, kept separate from the assets of such bank, trust company or private banker. When any such obligations are so registered in the name of a nominee, such bank, trust company or private banker shall be absolutely liable for any loss occasioned by the acts of such nominee with respect to such obligations.

HISTORICAL NOTE

Section amended L.L. 81/1981 § 4.

Section amended ch. 983/1972.

FOOTNOTES

12

[Footnote 12]: * Chapter renumbered at General Election, November 7, 1989 (formerly Chapter 10).



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NYC Charter 275

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CHAPTER 12 OBLIGATIONS OF THE CITY*12

§ 275. **Investment of sinking fund moneys.**

The comptroller may invest the moneys of the several sinking funds of the city established prior to July first, nineteen hundred eighty-one in any of the following securities:

1. Obligations of the city of New York.
2. Obligations of the state of New York.
3. Obligations of the United States or of any agency, subdivision, department, division or instrumentality thereof, or obligations fully guaranteed or insured as to interest and principal by any agency, subdivision, department, division or instrumentality of the United States, acting pursuant to a grant of authority from the congress of the United States.
4. Obligations of the municipal assistance corporation for the city of New York.

HISTORICAL NOTE

Section amended L.L. 81/1981 § 5.

Section amended ch. 868/1975.

Section amended ch. 6/1975.

Section added ch. 845/1970.

FOOTNOTES

12

[Footnote 12]: * Chapter renumbered at General Election, November 7, 1989 (formerly Chapter 10).



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NYC Charter 276

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CHAPTER 12 OBLIGATIONS OF THE CITY*12

§ 276. **Annual appropriations to the sinking funds.**

For the redemption of the corporate stock redeemable from the several sinking funds of the city established prior to July first, nineteen hundred eighty-one there shall be included annually in the budget and paid into each of such sinking funds an amount to be estimated and certified by the comptroller, which amount shall be not less than the aggregate of such annual contributions, as calculated at the time each issue of corporate stock redeemable from such sinking fund was made, would be sufficient if thereafter annually contributed to such fund together with the accumulations of interest thereon computed at the rate of four per centum per annum to meet and discharge such outstanding corporate stock when the same shall be payable; provided, however, that if at the close of a fiscal year there is in any sinking fund a surplus over and above the reserve required by such sinking fund computed as hereinabove provided, the comptroller, in estimating the amount to be included for such sinking fund in the budget, shall reduce the amount of the annual contributions by the amount of such surplus. Amounts received annually from the operation of any rapid transit railroad for the construction, equipment or acquisition of which corporate stock redeemable from any such fund shall have been issued, shall not be considered or treated as surplus, but such amounts shall be deducted from the amount certified by the comptroller for the budget for the ensuing year.

HISTORICAL NOTE

Section amended L.L. 81/1981 § 6.

Section amended ch. 868/1975.

FOOTNOTES

12

[Footnote 12]: * Chapter renumbered at General Election, November 7, 1989 (formerly Chapter 10).



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CHAPTER 12 OBLIGATIONS OF THE CITY*12

§ 277. **Monthly report.**

Not later than the tenth day in each month, the comptroller shall submit to the mayor and the council a certified report, which shall be published forthwith in the City Record, setting forth the operations of the several sinking funds during the preceeding*13 month and the condition of such funds at the commencement and close of such month and such other information as may be required.

HISTORICAL NOTE

Section amended L.L. 102/1977 § 39.

FOOTNOTES

12

[Footnote 12]: * Chapter renumbered at General Election, November 7, 1989 (formerly Chapter 10).

13

[Footnote 13]: * So in original.



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CHAPTER 12 OBLIGATIONS OF THE CITY*12

§ 278. **Annual report.**

Not later than the first day of September in each year, the comptroller shall submit to the mayor and the council a certified report, which shall be published forthwith in convenient form as a supplement to the City Record and which shall set forth in detail the operations of the several sinking funds during the preceding fiscal year, the reserves required, the assets of such funds at the close of such year, the obligations redeemable from such funds, the dates of their maturities and such other information as may be required.

HISTORICAL NOTE

Section added Local Laws of 1962.

FOOTNOTES

12

[Footnote 12]: * Chapter renumbered at General Election, November 7, 1989 (formerly Chapter 10).



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CHAPTER 12 OBLIGATIONS OF THE CITY*12

§ 290. **Application.**

The provisions of sections two hundred ninety-one through two hundred ninety-nine shall apply to the establishment, operation and administration of sinking funds established on or after July first, nineteen hundred eighty-one.

HISTORICAL NOTE

Section added L.L. 81/1981 § 7.

FOOTNOTES

12

[Footnote 12]: * Chapter renumbered at General Election, November 7, 1989 (formerly Chapter 10).



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CHAPTER 12 OBLIGATIONS OF THE CITY*12

§ 291. **General sinking fund.**

There is hereby established a general sinking fund to amortize and redeem any or all of the sinking fund bonds issued and sold from time to time by the city of New York on or after July first, nineteen hundred eighty-one for any purpose for which sinking fund bonds may be authorized, excepting sinking fund bonds which are redeemable from the sinking fund of the city of New York, the water sinking fund of the city of New York, the rapid transit sinking fund of the city of New York, or any additional sinking fund established pursuant to section two hundred ninety-eight.

HISTORICAL NOTE

Section amended at General Election, November 8, 1988.

FOOTNOTES

12

[Footnote 12]: * Chapter renumbered at General Election, November 7, 1989 (formerly Chapter 10).



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CHAPTER 12 OBLIGATIONS OF THE CITY*12

§ 292. **Administration.**

The comptroller shall administer and manage the general sinking fund and any additional sinking funds established pursuant to section two hundred ninety-eight of this chapter and shall have custody of the securities and other assets in such funds. In the administration of such funds the comptroller shall be deemed to be acting in a fiduciary capacity.

HISTORICAL NOTE

Section added L.L. 81/1981 § 7.

FOOTNOTES

12

[Footnote 12]: * Chapter renumbered at General Election, November 7, 1989 (formerly Chapter 10).



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CHAPTER 12 OBLIGATIONS OF THE CITY*12

§ 293. **Terms and conditions with respect to the general sinking fund.**

a. The comptroller may:

(1) provide for the redemption, purchase and cancellation prior to maturity of sinking fund bonds redeemable from the general sinking fund;

(2) establish accounts within the general sinking fund for the amortization and redemption of specific issues of sinking fund bonds and provide for restrictions on the use of assets of any such account for purposes other than the redemption of the sinking fund bonds to be redeemed from such account; and

(3) subject to the rights of bondholders and notwithstanding any other provision of this charter (i) withdraw moneys from the general sinking fund, or (ii) transfer any or all responsibility for the administration and management of the general sinking fund and the custody of securities and other assets contained therein to any bank or trust company incorporated in this state, or any national bank located in this state.

b. The sinking fund bonds of a particular series redeemable from the general sinking fund may differ among themselves in their stated maturities, rates of interest and applicable redemption provisions.

c. A schedule of annual or semiannual payments shall be established at the time of issuance of any series of sinking fund bonds redeemable from the general sinking fund sufficient to provide for the redemption of the principal amount of such bonds, and annual appropriations shall be made to the general sinking fund in accordance with such schedule of payments.

HISTORICAL NOTE

Section added L.L. 81/1981 § 7.

FOOTNOTES

12

[Footnote 12]: * Chapter renumbered at General Election, November 7, 1989 (formerly Chapter 10).



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CHAPTER 12 OBLIGATIONS OF THE CITY*12

§ 294. **Redemption.**

The sinking fund bonds to be redeemed from the general sinking fund or any additional sinking funds established pursuant to section two hundred ninety-eight may be selected in such manner as the comptroller may determine and may be identified on the face thereof. The principal amount of sinking fund bonds required to be redeemed on any date by payment from the general sinking fund or any additional sinking fund shall be reduced by the principal amount of any such bonds which has been timely purchased or redeemed and cancelled by the city and not theretofore applied as a credit against such requirements.

HISTORICAL NOTE

Section added L.L. 81/1981 § 7.

FOOTNOTES

12

[Footnote 12]: * Chapter renumbered at General Election, November 7, 1989 (formerly Chapter 10).



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CHAPTER 12 OBLIGATIONS OF THE CITY*12

§ 295. **Defeasance.**

A series or part of a series of sinking fund bonds redeemable from the general sinking fund or any additional sinking fund established pursuant to section two hundred ninety-eight, including any covenants or other agreements relative thereto, shall be fully discharged and of no further force and effect at such time as (a) sufficient moneys or direct obligations of the United States or obligations guaranteed by the United States have been deposited in a separate trust account with a bank, trust company or other fiduciary, the principal of and/or interest on which will provide sufficient moneys to pay punctually when due at maturity or prior to maturity by redemption, in accordance with their terms, all principal of, applicable redemption premium, if any, and interest on such sinking fund bonds, and irrevocable instructions from the city to such bank, trust company or other fiduciary to make payment of such principal, applicable redemption premium, if any, and interest with such moneys shall have been given, or (b) such sinking fund bonds, together with interest thereon, shall have been paid in full at maturity, or shall have otherwise been refunded, redeemed, defeased or discharged.

HISTORICAL NOTE

Section added L.L. 81/1981 § 7.

FOOTNOTES

12

[Footnote 12]: * Chapter renumbered at General Election, November 7, 1989 (formerly Chapter 10).



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CHAPTER 12 OBLIGATIONS OF THE CITY*12

§ 296. **Investments.**

Subject to subdivision a of section two hundred ninety-three, the comptroller may invest the moneys of the general sinking fund or any additional sinking funds established pursuant to section two hundred ninety-eight in any securities in which the city is authorized to invest, including but not limited to the following securities:

- (1) Obligations of the city of New York;
- (2) Obligations of the state of New York;
- (3) Obligations of the United States or of any agency, subdivision, department, division or instrumentality thereof, or obligations fully guaranteed or insured as to interest and principal by an agency, subdivision, department, division or instrumentality of the United States, acting pursuant to a grant of authority from the congress of the United States;
- (4) Obligations of the municipal assistance corporation for the city of New York.

HISTORICAL NOTE

Section added L.L. 81/1981 § 7.

FOOTNOTES

[Footnote 12]: * Chapter renumbered at General Election, November 7, 1989 (formerly Chapter 10).



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CHAPTER 12 OBLIGATIONS OF THE CITY*12

§ 297. [Monthly and annual reports.]

The provisions of sections two hundred seventy-seven and two hundred seventy-eight of the charter shall apply to the general sinking fund and any additional sinking funds established pursuant to section two hundred ninety-eight.

HISTORICAL NOTE

Section added L.L. 81/1981 § 7.

FOOTNOTES

12

[Footnote 12]: * Chapter renumbered at General Election, November 7, 1989 (formerly Chapter 10).



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NYC Charter 298

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CHAPTER 12 OBLIGATIONS OF THE CITY*12

§ 298. **Additional sinking funds.**

On or after July first nineteen hundred eighty-one the comptroller may establish from time to time additional sinking funds to amortize and redeem any or all of the sinking fund bonds issued and sold from time to time by the city of New York on or after that date for any purpose for which sinking fund bonds may be authorized excepting sinking fund bonds which are redeemable from the sinking fund of the city of New York, the water sinking fund of the city of New York, the rapid transit sinking fund of the city of New York or the general sinking fund. Notwithstanding any inconsistent provision of section two hundred ninety-three, such additional sinking funds shall be established with such terms and conditions as the comptroller shall prescribe.

HISTORICAL NOTE

Section added L.L. 81/1981 § 7.

FOOTNOTES

12

[Footnote 12]: * Chapter renumbered at General Election, November 7, 1989 (formerly Chapter 10).



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NYC Charter 299

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CHAPTER 12 OBLIGATIONS OF THE CITY*12

§ 299. **[Redemption from sinking funds established prior to July first, nineteen hundred eighty-one].**

The comptroller shall determine whether sinking fund bonds issued on or after July first, nineteen hundred eighty-one shall be redeemable from any of the several sinking funds of the city established prior to July first nineteen hundred eighty-one, the general sinking fund or any of the additional sinking funds established pursuant to section two hundred ninety-eight.

HISTORICAL NOTE

Section added L.L. 81/1981 § 7.

FOOTNOTES

12

[Footnote 12]: * Chapter renumbered at General Election, November 7, 1989 (formerly Chapter 10).



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NYC Charter 310

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CHAPTER 13 PROCUREMENT*14

§ 310. **Scope.**

Except as otherwise provided in this charter or by statute,

1. all goods, services or construction to be paid for out of the city treasury or out of moneys under the control of or assessed or collected by the city shall be procured as prescribed in this chapter; provided, however, that for (i) the office of an independently elected city official, or (ii) the council, where the provisions of this chapter require action by the mayor or an appointee of the mayor in regard to a particular procurement except for mayoral action pursuant to subdivision c of section three hundred thirty-four, such action shall not be taken by the mayor or such appointee of the mayor, but shall be taken respectively, by (i) by such elected official or (ii) the speaker of the council, or another member of the council designated by the speaker with the approval of a majority of the members of the council, and

2. all goods, services or construction to be procured by an entity, the majority of the members of whose board are city officials or are individuals appointed directly or indirectly by city officials shall be procured as prescribed in this chapter; provided, however, that where the provisions of this chapter require action by the mayor or an appointee of the mayor in regard to a particular procurement except for mayoral action pursuant to subdivision c of section three hundred thirty-four, such action shall not be taken by the mayor or such appointee of the mayor, but shall be taken by the governing board of such entity or by the chair of the board or chief executive officer of such entity pursuant to a resolution adopted by such board delegating such authority to such officer.

HISTORICAL NOTE

Section renumbered and amended at General Election, November 7, 1989 (formerly § 341).

CASE NOTES

¶ 1. In view of provisions of the Election Law requiring the Board of Elections to furnish supplies and facilities for registration and enrollment, provisions of § 341 of the Charter that purchase of supplies and equipment payable with City funds should be provided for as prescribed "in this chapter" except as otherwise provided in the Charter "or by Statute," and provisions of § 782a that Commissioner of Department of Purchase, "except as otherwise provided in this charter," should have sole power to purchase all supplies and equipment, Commissioners of Elections of New York City **held** to possess the power to advertise for and receive bids and to award contracts thereon for ballots, supplies, stationery or printing required by the Board of Elections, without reference to the Department of Purchase. Such conclusion was fortified by fact that power of Board of Elections to make purchases had been conceded for years under the old Charter, that nothing in the Charter substantially changed this, and that in such cases Charter § 982c provided that the provisions were not a new enactment but a continuation of the old provisions.-*Forbes v. Cohen*, 254 App. Div. 548, 5 N. Y. S. 2d 316 [1938].

¶ 2. Municipal purchases must comply with the applicable statutory provisions relating thereto before recovery therefor may be had, even though harsh and unjust results may at times follow, since it is a matter of public policy to prevent inefficiency or dishonesty in such purchases (88 App. Div. 542; 251 N. Y. 198; 236 N. Y. 91). Hence where there were no formal purchase orders confirming the alleged phone orders as required by Bulletin 44 of the T. E. R. A., which is given the force of law by Emergency Relief Act, § 27, no recovery might be had. The material presently involved, covering a period of ten months, could not be included within phrase "immediate needs" in Rule 8, and the "competition" required by such Rule was not shown to have taken place.-*Mahoney-Clarke, Inc. v. City of N. Y.*, 103 (59) N. Y. L. J. (3-12-40) 1135, Col. 6 T.

¶ 3. Even though competitive bidding is not required in granting a franchise for a bus stop shelter since the award of a franchise does not involve expenditure of funds from the city treasury, because of the active interest in the program by several parties it was reasonable to seek proposals based upon terms and conditions adopted by the Board of Estimate.-*Bustop Shelters, Inc. v. City of N. Y.*, 99 Misc. 2d 198, 415 N. Y. S. 2d 726 [1978].

FOOTNOTES

14

[Footnote 14]: * Chapter heading amended at General Election, November 7, 1989.



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NYC Charter 311

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CHAPTER 13 PROCUREMENT*14

§ 311. **Procurement Policy Board.**

a. There shall be a procurement policy board consisting of five members, three of whom shall be appointed by the mayor and two of whom shall be appointed by the comptroller. Each member shall serve at the pleasure of the appointing official. Members shall have demonstrated sufficient business or professional experience to discharge the functions of the board. At least one member appointed by the mayor and one member appointed by the comptroller shall not hold any other public office or public employment. The remaining members shall not be prohibited from holding any other public office or employment provided that no member may have substantial authority for the procurement of goods, services or construction pursuant to this chapter. The mayor shall designate the chair.

b. The board shall promulgate rules as required by this chapter, including rules establishing:

1. the methods for soliciting bids or proposals and awarding contracts, consistent with the provisions of this chapter;

2. the manner in which agencies shall administer contracts and oversee the performance of contracts and contractors;

3. standards and procedures to be used in determining whether bidders are responsible;

4. the circumstances under which procurement may be used for the provision of technical, consultant or personal services, which shall include but not be limited to, circumstances where the use of procurement is (a) desirable to develop, maintain or strengthen the relationships between non-profit and charitable organizations and the communities where services are to be provided, (b) cost-effective, or (c) necessary to (i) obtain special expertise, (ii) obtain personnel or expertise not available in the agency, (iii) to provide a service not needed on a long-term basis, (iv) accomplish work within a limited amount of time, or (v) avoid a conflict of interest;

5. the form and content of the files which agencies are required to maintain pursuant to section three hundred thirty-four and such other contract records as the board deems necessary and appropriate;

6. the time schedules within which city officials shall be required to take the actions required by this chapter, sections thirteen hundred four and thirteen hundred five, or by any rule issued pursuant thereto, in order for contracts to be entered into, registered or otherwise approved, and time schedules within which city officials should take action pursuant to any other provision of law or rule regarding individual contracts, which rules shall specify the appropriate remedies, including monetary remedies, for failure to meet the terms of any applicable schedule for taking such actions. The board may set forth exceptions to these rules. The promulgation of rules defining time schedules for actions by the division of economic and financial opportunity of the department of small business services and the division of labor services of such department shall require the approval of each division, as such rules pertain to actions required of such divisions, prior to the adoption of such rules by the procurement policy board;

7. procedures for the fair and equitable resolution of contract disputes; and

8. rules relating to the making of small purchases in a manner that will advance the purposes of the program for minority- and women-owned business enterprises and emerging business enterprises established pursuant to subdivision b of section thirteen hundred four.

9. such other rules as are required by this chapter.

c. The board may promulgate such additional rules, policies and procedures consistent with and as may be necessary to implement the provisions of this chapter. The board shall annually review all of its rules, policies and procedures and make such revisions as the board deems necessary and desirable. Nothing herein shall prevent the board from reviewing its rules, policies, and procedures, and making such revisions as the board deems necessary and desirable, more than once per year.

d. The board shall promulgate rules to facilitate the timely and efficient procurement of client services, and to ensure that such contracts are administered in the best interests of the city. Such rules shall include but not be limited to: (i) rules authorizing city agencies to meet annual financial audit requirements through the acceptance of consolidated audits across multiple contracts and multiple agencies; (ii) rules providing for expedited renewal or extension of existing client services contracts; (iii) rules mandating the promulgation of draft and final contract plans by all agencies procuring client services.

e. The board shall submit an annual report to the mayor, comptroller, and council setting forth the professional standards for agency contracting officers adopted by the mayor, including any applicable certification process.

f. In the promulgation of any rules pertaining to the procurement of construction or construction related services, the board shall consult with any office designated by the mayor to provide overall coordination to the city's capital construction activities.

g. The board shall make such recommendations as it deems necessary and proper to the mayor and the council regarding the organization, personnel structure and management of the agency procurement function including, where appropriate, recommendations for revision of this charter or local laws affecting procurement by the city. Such reports may include recommendations regarding agency use of advisory groups to assist in preparation of bids or proposals and selection of contractors. The board shall also review the form and content of city contract documents and shall submit to the law department recommendations for standardization and simplification of contract language.

h. The board shall not exercise authority with respect to the award or administration of any particular contract, or with respect to any dispute, claim or litigation pertaining thereto.

HISTORICAL NOTE

Section amended L.L. 20/2004 § 1, eff. July 20, 2004.

Section added at General Election, November 7, 1989.

Subd. b par 6 amended L.L. 61/1991 § 1, eff. July 1, 1991.

Subd. b par 6 amended L.L. 91/1996 § 1, eff. Dec. 2, 1996.

Subd. b par 6 amended L.L. 34/2002 § 1, eff. Nov. 7, 2002.

Subd. b par 8 amended L.L. 12/2006 § 2, eff. May 23, 2006.

Subd. b par 8 added L.L. 129/2005 § 2, eff. Dec. 29, 2005. [See Charter § 1304 Note 1]

Subd. b par 9 renumbered (former par 8) L.L. 129/2005 § 2, eff. Dec.29, 2005. [See Charter § 1304 Note 1]

Subd. c amended L.L. 91/1996 § 2, eff. Dec. 2, 1996.

FOOTNOTES

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[Footnote 14]: * Chapter heading amended at General Election, November 7, 1989.



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CHAPTER 13 PROCUREMENT*14

§ 312. **Procurement; general rule and exceptions.**

a. Prior to entering into or renewing a contract valued at more than one hundred thousand dollars to provide technical, consultant, or personal services, an agency shall follow the procedure established herein.

1. Prior to issuing an invitation for bids, request for proposals, or other solicitation, the agency shall determine whether such contract will directly result in the displacement of any city employee. If the agency determines that such result would not occur, it shall include a certification to that effect, signed by the agency head, in any invitation for bids, request for proposals, or other solicitation. If the agency determines that such result would occur, the agency shall determine the costs incurred and the benefits derived in performing the service, consistent with the scope and specifications within the solicitation, with city employees, and shall submit such analysis, with all supporting documentation, prior to issuance of any solicitation, to the comptroller.

2. Immediately upon receipt of bids and proposals, the agency shall submit such determination, analysis, and supporting documentation to the council and to the appropriate collective bargaining representatives representing employees who would be affected pursuant to paragraph 1 of subdivision a of this section.

3. Prior to award of a contract, the agency shall perform a comparative analysis of the costs expected to be incurred and the benefits expected to be derived from entering into a contract with the proposed vendor, based on such vendor's best and final offer, and such agency's analysis of the costs incurred and the benefits derived from providing the service with city employees. If the agency head intends to award the contract, he or she shall submit the reasons therefor, together with such analysis, and all supporting documentation, to the comptroller, the council, and the appropriate collective bargaining representatives representing employees who would be affected pursuant to paragraph 1 of paragraph a of this section.

4. The council may, within thirty days after receipt of such reasons, analysis, and supporting documentation hold

a hearing on this matter. No contract award shall be made prior to the expiration of this thirty-day period or a council hearing, whichever is sooner.

5. a. All cost and comparative analyses required under this section shall be conducted in accordance with standard methodology of the office of management and budget, and consistent with the rules of the procurement policy board, as both are modified herein, subject to further modification by local law. Such analyses shall include all reasonable costs associated with performing the service using city employees and all reasonable costs associated with performing the service under the proposed contract.

b. Such analyses shall further include, the total number, qualifications, job descriptions, and titles of all personnel to be employed by the vendor under the proposed contract, as well as the nature and cost of salaries and benefits to be provided to such personnel.

c. Such analyses shall further include, but not be limited to, the cost of employee supervision directly related to the provision of the service, vendor solicitation, contract preparation, contract administration, monitoring and evaluating the contractor, capitalization of equipment over the period such equipment shall be in use, supplies; the cost of providing the equivalent quantity and quality of service by city employees compared to the cost of providing such service by contract, based upon the best and final offer of the proposed vendor, and such other factors as will assist in arriving at full and accurate cost determinations and comparisons.

6. The reasons given to award the contract shall include all factors that have been considered in determining whether contracting for this service is in the best interest of the city, whether or not such reasons are contained within the cost or comparative analyses. Such factors shall include, but not be limited to, the potential for contractor default, the time required to perform the service, and the quality of the service to be delivered.

7. The mayor or his or her designee may prepare and implement a plan of assistance for displaced city employees, which may include, but need not be limited to, training to place such employees in comparable positions within the contracting agency or any other agency. The cost of such assistance plan may be included within the cost of contracting-out in the cost and comparative analyses.

8. For the purpose of this section, "displacement" shall mean any employment action that results in a reduction in the number of funded positions, including but not limited to, those resulting from the layoff; demotion; bumping; involuntary transfer to a new class, title, or location; time-based reductions, or reductions in customary hours of work, wages, or benefits of any city employee.

b. 1. Except as provided for in sections three hundred fourteen, three hundred fifteen and three hundred sixteen, contracts shall be awarded by competitive sealed bidding under such rules as shall be made by the procurement policy board, except that, in a special case as defined in subdivision b of this section, the head of an agency proposing to award such contract may order otherwise in accordance with policies and procedures established by the procurement policy board.

2. A determination by the head of an agency to use other than competitive sealed bidding except as provided for by sections three hundred fourteen and three hundred sixteen shall be made in writing, stating the reasons why competitive sealed bidding is not practicable or not advantageous and why the method of procurement selected pursuant to section three hundred seventeen is the most competitive alternative that is appropriate under the circumstances. The head of the agency shall include the determination or a summary of the determination in the notice of solicitation, or for an emergency procurement in the notice of award, required to be published pursuant to section three hundred twenty-five of this chapter.

c. 1. For the purposes of this chapter, the term "special case" shall be defined as a situation in which it is either not practicable or not advantageous to the city to use competitive sealed bidding for one of the following reasons:

- i. specifications cannot be made sufficiently definite and certain to permit selection based on price alone;
 - ii. judgment is required in evaluating competing proposals, and it is in the best interest of the city to require a balancing of price, quality, and other factors;
 - iii. the good, service or construction to be procured is available only from a single source;
 - iv. testing or experimentation is required with a product or technology, or a new source for a product or technology, or to evaluate the service or reliability of such product or technology; or
 - v. such other reasons as defined by rule of the procurement policy board.
2. The procurement policy board may provide by rule that it is either not practicable or not advantageous to the city, for one of the reasons set forth in paragraph one of this subdivision, to procure a specified type of good, service or construction by competitive sealed bidding.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

Subd. a added L.L. 35/1994 § 2, eff. Oct. 17, 1994. [See Note]

Subd. b relettered L.L. 35/1994 § 2, eff. Oct. 17, 1994. (formerly subd. a)

Subd. b par. 2 amended L.L. 3/1997 § 1, eff. Jan. 23, 1997.

Subd. c relettered L.L. 35/1994 § 2, eff. Oct. 17, 1994. (formerly subd. b)

NOTE

Provisions of L.L. 35/1994 § 1

Section 1. Declaration of Legislative Findings and Intent. The Council finds that in order to ensure sound procurement practice and the delivery of high quality services in the most cost-efficient manner to New York City residents, it is necessary to require agencies to evaluate the costs and benefits of proposed service contracts valued at more than one hundred thousand dollars that result in displacement of a City employee. Sound procurement practice requires an assessment by the agency of the costs and benefits of providing a service in-house prior to any determination to solicit bids or proposals, a determination of the costs and benefits of providing the same service by contracting-out, and a comparison of the two.

This legislation is designed to ensure that a contract is in the best interests of the citizens of the City of New York and its employees. Such legislation is not intended to delay or impede upon the normal contracting process of the City.

FOOTNOTES



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NYC Charter 313

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CHAPTER 13 PROCUREMENT*14

§ 313. **Competitive sealed bidding.**

a. The term competitive sealed bidding shall mean a method of procurement where the award of a contract is made to the lowest responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bids.

b. Procedures for competitive sealed bidding.

1. Bids shall be solicited through an invitation for bids, which shall include a purchase description and a notice of where vendors may obtain a copy of all contractual terms and conditions applicable to the procurement. A notice of the intention to solicit bids shall be publicly advertised in accordance with the provisions of section three hundred twenty-five of this chapter. The terms of such contracts shall be settled by the corporation counsel as an act of preliminary specification to an invitation for bids.

2. The agency letting the contract may reject all bids if it shall deem it for the interest of the city so to do; if not, it shall, without other consent or approval, award the contract to the lowest responsible bidder, unless the mayor shall determine in writing, justifying the reasons therefor, that it is the best interest of the city that a bid other than that of the lowest responsible bidder shall be accepted. Such determination shall be published in the City Record. Tie bids are to be decided by the agency letting the contract and the award made. Whenever a contract is awarded to other than the lowest bidder because the lowest bidder is determined by the agency not to be a responsible bidder or because the lowest bid is determined by the agency to not meet the requirements and criteria set forth in the invitation for bids, the agency making such determination and awarding such contract shall immediately notify the lowest bidder of such determination and shall file in the agency contract file a statement in detail of the reasons therefor.

3. Any bidder who is declared not responsible by an agency and any bidder whose bid is determined by an agency to not meet the requirements and criteria set forth in the invitation for bids may, within five days of receipt of notice of the agency decision, appeal such decision to the agency head. A determination of an agency head of an appeal

of a decision of non-responsibility may be appealed to the mayor who shall take final action regarding such matter. A determination of an agency head of an appeal of a decision that a bid does not meet the requirements and criteria set forth in the invitation for bids shall be final.

c. No bid shall be valid unless accompanied by a deposit in the amount and manner set forth and specified in the proposal; provided, however, that the procurement policy board shall establish such requirements for bid deposits as are necessary and practicable, and, pursuant to rules and standards, may waive the bid deposit requirement for specific classes of purchase or types of transactions. Upon the award of the contract the deposits of unsuccessful bidders shall be returned to them, and the deposit of the successful bidder shall be returned upon execution of the contract and furnishing of the required security.

d. Every invitation for bids shall contain a provision that in the event of the failure of the bidder to execute the contract and furnish the required security within ten days after notice of the award of the contract, the deposit or so much thereof as shall be applicable to the amount of the award made shall be retained by the city, and the bidder shall be liable for and shall agree to pay on demand the difference between the price bid and the price for which such contract shall be subsequently relet, including the cost of such reletting and less the amount of such deposit. No plea of mistake in such accepted bid shall be available to the bidder for the recovery of the deposit or as a defense to any action based upon such accepted bid.

HISTORICAL NOTE

Section amended by L. L. 1963, No. 75.

Section amended by L. L. 1968, No. 10.

Subd. b amended by L. L. 1976, No. 28.

Subd. b amended by L. L. 1977, No. 102.

Subd. b par 2 amended L.L. 3/1997 § 2, eff. Jan. 23, 1997.

Subd. c amended by L. L. 1977, No. 102.

Subd. d amended by L. L. 1977, No. 102.

Subd. d amended at General Election, November 8, 1988.

Section renumbered and amended at General Election, November 7, 1989 (formerly § 343).

CASE NOTES TO RENUMBERED § 343

¶ 1. Complaint, in action to compel award of contract to lowest bidder in a case subject to provisions of the Rapid Transit Act, **held** insufficient, since § 36 of the Rapid Transit Act did not require the award of the contract to the lowest bidder, it was not alleged that the award of the contract to another company would cause damage to the public interest, and moreover it appeared that the award was made to another at the identical price bid by the lowest bidder, and no claim was made that the successful party was not responsible or competent to perform the work.-Rao Const. Co. v. Bd. of Transportation, 103 (21) N. Y. L. J. (1-25-40) 393, Col. 4 T.

¶ 2. The Board of Transportation was clearly empowered to reject all bids, as there is no requirement that the Board award orders by competitive bids (Rapid Transit Act § 36), and in absence of any showing of arbitrary, capricious or illegal conduct the court would not substitute its judgment for that of the Board.-Chalton Paint Co. v. Delaney, 104 (129) N. Y. L. J. (12-4-40) 1862, Col. 2 M.

¶ 3. Although the matter of determining the responsibility of a contractor was within discretion of the City officials, there exercise of such discretion was not conclusive upon the court where abuse and prejudice was indicated, and particularly where the effect would be to cause waste by increasing costs.-*Burland Printing Co. v. LaGuardia*, 9 N. Y. S. 2d 616 [1938].

¶ 4. Court would not overrule finding of New York City Board of Responsibility and Board of Education that petitioner was not a responsible bidder for award of construction contract where determination was made after a hearing in which lengthy testimony of a technical nature was presented and also proof of alleged failure of corporations affiliated with and controlled by petitioner's principal to properly perform work on other construction jobs.-*Kooleraire Service & Installation Corp. v. City of N. Y.*, 155 (94) N. Y. L. J. (5-13-66) 15, Col. 2 T.

¶ 5. Where plaintiff printing company over period of eight years had done City work amounting to millions of dollars and had saved the City several hundred thousand dollars by being the lowest bidder, testimonials from the City departments attested to its excellent work and president of the printing trades union stated it was a responsible bidder from the union's viewpoint, action of city officials in barring the company from further city work on ground it was not the lowest **responsible** bidder merely because at one time it had sublet a small portion of its union work to a non-union firm, for which it had been fined, and that at another time it had sublet to a subsidiary company a small quantity of work without consent of Commissioner of Purchases **held** to constitute an abuse of discretion. However, as to contracts which had already been let court would not interfere because that would result in increasing waste, but as to contracts not yet let the City would be restrained from shutting out plaintiff from bidding, or from rejecting its bid on the grounds alleged, pending a trial on the merits.-*Id.*

¶ 6. Requirement of § 343 of the Charter that the award of contracts on public letting be made to the "lowest responsible bidder" does not mean one who is only pecuniarily responsible but one who also possesses moral worth, and it implies skill, judgment and integrity as well as sufficient financial resources.-*Picone v. City of N. Y.*, 176 Misc. 967, 29 N. Y. S. 2d 539 [1941].

¶ 7. Where lowest bidder claimed privilege against self incrimination in inquiry conducted by Board of Responsibility to determine whether its bids "were tainted with collusion" it was not a responsible bidder.-*Matter of Dairymen's League Cooperative Asso. v. Perrini*, 54 Misc. 2d 400, 282 N. Y. S. 2d 887 [1967].

¶ 8. Duty of the awarding agency to determine whether the lowest bidder was the lowest responsible bidder was judicial in its nature, and authorized the agency to investigate and consider the background of the bidder, and in absence of a showing to the contrary it was to be assumed that the discretion of the awarding agency was exercised with an honest desire to award the contract to the lowest responsible bidder and was therefore not subject to review by the courts.-*Id.*

¶ 9. Award of sewer construction contract to concern which was the second lowest bidder would not be interfered with by the court where the determination of the agency awarding the contract and the finding of the Board of Responsibility that such concern was the lowest responsible bidder was based upon the ground that the firm which was the lowest bidder constituted a "front" for a certain person, and his corporation, whose activities in connection with public construction contracts over a period of years had brought them into frequent conflict with the criminal law and its enforcement agencies.-*Id.*

¶ 10. City, acting through the Commissioner of Public Works on the recommendation of the Board of Contract Responsibility of the Board of Estimate, **held** not to have acted arbitrarily in rejecting petitioner's bid for an electrical contract in connection with a sewage treatment works contract on ground petitioner was not the lowest responsible bidder as it lacked the necessary technical experience and personnel to perform the work. That petitioner at the hearing offered to hire a qualified engineer to lay out and supervise the job did not change the fact that it was not qualified at that time.-*Martin Epstein Co. v. City of New York*, 100 N. Y. S. 2d 326 [1950].

¶ 11. Action of Board of Estimate in setting up a Board of Contract Responsibility, consisting of the comptroller, the corporation counsel and the head of the agency making the award to investigate and pass upon the responsibility of the bidder, did not constitute an illegal delegation of power.-Id.

¶ 12. Determination of committee composed of representatives of the N. Y. C. Department of Purchase, the Department of Welfare and the Comptroller's Office, accompanied by members of the advisory dental board, finding that petitioner dental laboratory was not qualified by equipment, working space, personnel or standard of work product to meet requirements for performance of a contract for dentures for the Department of Welfare and therefore was not a "responsible bidder," might not be disturbed by the court in the absence of showing of fraud, bad faith, arbitrary or other illegal conduct.-Kniska v. Splain, 201 Misc. 729, 110 N. Y. S. 2d 267 [1952].

¶ 13. Corporation which specialized in hospital supplies and merely maintained a small office in New York City where it had some files which appeared to be used for its own purposes and some items of hospital equipment, and which had no warehouse in the City, **held** not to have met the qualification for bidders prescribed by the Commissioner of Purchase in inviting bids for office furniture and equipment and specifying that bids would be considered only from firms regularly engaged in the business covered by the proposal, and that the bidder must have a place of business or warehouse in the City.-Cohen v. City of N. Y., 205 Misc. 105, 127 N. Y. S. 2d 617 [1953].

¶ 14. An unsuccessful bidder on a competitively let contract sued for an order rescinding the award of the contract to another and directing that the contract be awarded to it. **Held:** action dismissed where the successful bidder was not made a party to the action.-In re Edison Park Corp., 148 (100) N. Y. L. J. (11-26-62) 13, Col. 8 F.

¶ 15. The Court, by way of an order in the nature of mandamus, will rarely direct an administrative agency to award a contract to a particular bidder, since in such cases there is generally vested in the governmental agency a certain amount of discretion, although should the governmental agency have acted arbitrarily in willful disregard of the requirements of law the Court would not hesitate to direct the contract to be awarded to the bidder clearly entitled to receive it.-Id.

¶ 16. Complaint, in taxpayer's action under General Municipal Law § 51, alleging that bids were advertised by City Parkway Authority for construction and improvement of Cross Bay Boulevard but that the Authority failed to act on the bids and delegated its duty to pass thereon to Board of Estimate, which had awarded the contract to a party who bid \$25,000 higher than plaintiff, **held** sufficient to state a cause of action for illegality and waste, and it was for the defense to plead that it was for the public interest to ignore the lowest bid.-Bartlett v. LaGuardia, 104 (7) N. Y. L. J. (7-9-40) 63, Col. 4 F.

¶ 17. Also, cause of action pleading the alleged illegality of act of Board of Estimate in authorizing the Borough President of Queens County and the Park Commissioner to make an award without public letting, was sufficient, since burden of showing a special case in which public letting might be dispensed with was upon the officials, and the recital in the complaint that a large contract was let without public bidding demanded an explanation.-Id.

¶ 18. Under this section, the Board of Estimate can dispense with competitive bidding in a special case. A finding of a special case is proper when only one manufacturer is able to supply the product. But such a finding cannot be made on a certification by the Board of Elections that only one manufacturer can meet its specifications, if the specifications are improperly tailored to limit the purchase to one manufacturer. Hence, an action under General Municipal Law § 51 was proper to enjoin the purchase of voting machines without competitive bidding.-Tinston v. City of New York, 17 App. Div. 2d 311, 234 N. Y. S. 2d 730 [1962], *aff'd*, 13 N. Y. 2d 850, 192 N. E. 2d 271, 242 N. Y. S. 2d 490 [1963].

¶ 19. The Board of Estimate adopted a resolution which approved the granting of a \$700,000 landscape contract without public bidding. In an action to restrain the Commissioner of Parks from letting the contract the plaintiff did not show any illegality, fraud, corruption or bad faith (General Municipal Law 51). The action was dismissed.-Cascione v. Morris, 40 Misc. 2d 431, 243 N. Y. S. 2d 67 [1963].

¶ 20. Plaintiff, suing as lowest bidder on certain municipal contracts and complaining of the award of the contracts to another, **held** not entitled to a temporary injunction, since action of Borough President in awarding the contracts to another concern on being advised by the Board of Responsibility that plaintiff was not responsible, was within his authority and was in the nature of a judicial determination which, in absence of caprice, unreasonableness, fraud or collusion, was not subject to review. Furthermore, the policy is not to grant a restraining order pendente lite in a doubtful case, plaintiff was guilty of laches (211 N. Y. 301), and the successful bidders were necessary parties to the action (126 Misc. 140).-Enocip Bldg. Corp. v. City of N. Y., 104 (64) N. Y. L. J. (9-14-40) 625, Col. 6 T.

¶ 21. Decision of Board of Education to reject A's bid for the manufacture and installation of store equipment in trades school notwithstanding it was the lowest bidder and to make the award to the second lowest bidder, **held** not subject to review by the courts, where there was no showing of bad faith of meretricity in the Board's acts, and the decision was made after the report of a committee that the lowest bidder's equipment was inadequate, that it had never done similar work, that work done by it for the Board in another school was unsatisfactory and that on previous occasions its bid had been rejected because of inadequate facilities (131 N. Y. 26; 236 App. Div. 283; 198 N. Y. 402; 255 N. Y. 288).-Neprock Realty, Inc. v. Board of Education, 102 (123) N. Y. L. J. (11-28-39) 1835, Col. 4 F.

¶ 22. Even if plaintiff were the low bidder, it was not entitled to an injunction restraining the Commissioner of Purchases from awarding the contract to another, as the Commissioner had the power to reject all bids or to make separate awards for the items in Class 4 without any award on Class 5, on which the plaintiff made a bid. Furthermore, if plaintiff had a legal right to any award which might be made on Class 5, its remedy at law for damages would appear to be adequate.-N. Y. Trap Rock Corp. v. Pleydell, 113 (47) N. Y. L. J. (2-27-45) 756, Col. 6 F.

¶ 23. Even if it were shown that there was an abuse of discretion on part of the Commissioner of Public Works in rejecting petitioner's bid on ground it was not the lowest "responsible" bidder, it was doubtful whether petitioner would be entitled to any relief, as statutes governing public letting of contracts have been construed as imposing duties upon public officers for the benefit of the public, and not as granting rights to the disappointed bidders.-Martin Epstein Co. v. City of New York, 100 N. Y. S. 2d 326 [1956].

¶ 24. In taxpayer's action against City and various officials to restrain the award of contracts upon which a particular printing company was a low bidder, and to restrain disqualification of such printing company as a bidder on future work, the printing company **held** entitled to join in the action with the taxpayer.-Burland Printing Co. v. La Guardia, 9 N. Y. S. 2d 616 [1938].

¶ 25. Petitioner, who had submitted the low bid for a contract for dentures for the N. Y. C. Department of Welfare but had been found not to be a responsible bidder, **held** to have properly brought a proceeding under C. P. A. Art. 78 to review the award of the contract to a higher bidder.-Kniska v. Splain, 201 Misc. 729, 110 N. Y. S. 2d 267 [1952].

¶ 26. Where City of New York had rejected all bids for demolition work incident to clearance of a site for new Criminal Court Building and without readvertisement the work was undertaken at City's request by New York Housing Authority without cost to City, low bidder was not entitled to temporarily enjoin City from proceeding with the work, since there was no illegality in conduct of City with resultant harm to the low bidder, as the rejection of all bids was within statutory power of City (New Charter § 343, subd. b).-Goldstein v. La Guardia, 99 (43) N. Y. L. J. (2-23-38) 909, Col. 7 T, aff'd without opinion, 254 App. Div. 673, 4 N. Y. S. 2d 989 [1938].

¶ 27. Conduct of the City agency in rejecting all bids for moving a certain building on ground that the bids were too high and that the competition was not sufficiently broad, would not be disturbed, as the City agency had the right to exercise its discretion to determine if it was for the best interest of the City to reject all bids, and in the absence of arbitrary exercise thereof the Court would not interfere.-Halpern v. Hodgkiss, 89 N. Y. S. 2d 451 [1948].

¶ 28. Where serious legal issues had been raised as to which of the four bidders for the electrical work in connection with construction of a hospital by the City of New York was the low bidder, Commissioner **held** not to have

acted arbitrarily in exercising his privilege under the contract and Charter former § 343(b) to reject all bids, in view of the prospect of prolonged litigation.-*John G. Hellman Co. v. Zurmuhlen*, 129 (123) N. Y. L. J. (6-25-53) 2119, Col. 6 F.

¶ 29. Where original specifications for buses contained in proposed contract for transportation of physically handicapped school children were so drawn as to exclude competition and to result in contract being awarded to the only company which had the requisite number of buses, and a so-called "interpretation" of the specifications which would have permitted an award of the contract to others was in reality an amendment of the specifications and had not been advertised as required by resolution of Board of Estimate, plaintiff **held** entitled to injunction restraining Board of Education from accepting bids.-*Starkie Bldg. Corp. v. Bd. of Education*, 101 (78) N. Y. L. J. (4-5-39) 1554, Col. 6 F.

¶ 30. Plaintiff, claiming that the specifications for buses to be used in transportation of physically handicapped school children excluded competition since there was only one company having the requisite number of conforming buses, and that the attempted amendment of the specifications was not legally adopted because no adequate notice thereof had been given, **held** entitled to maintain an action in form of a taxpayer's suit to enjoin the acceptance of bids under the proposals for bids (156 Misc. 2, aff'd 246 App. Div. 699).-*State Bldg. Corp. v. Bd. of Education*, 101 (78) N. Y. L. J. (4-5-39) 1554, Col. 6 F.

¶ 31. City was not limited by street light specifications to accept only luminaries employing horizontally burning lamps where specifications added the words "or approved equal."-*Westinghouse Elec. Corp. v. Ford*, 131 (114) N. Y. L. J. (6-15-54) 7, Col. 6 M.

¶ 32. That the Board of Estimate had previously adopted a resolution authorizing the Commissioner of Docks to award the particular contract by public letting, pursuant to which resolution bids had been received, was merely evidentiary as to whether a "special case" did actually exist, and did not preclude a subsequent determination that such a case did exist.-*Heisman v. McKenzie*, 100 (119) N. Y. L. J. (11-22-38) 1751, Col. 6 F, at 7 M.

¶ 33. Whether there was reasonable basis for determination of Board of Estimate that the award of a contract for installation of concrete piles within a 60-day period in connection with airplane hangers and buildings at North Beach Airport, Queens, presented a "special case" warranting the award thereof without public letting so as to permit the award to go to the firm which was the second lowest bidder in response to a public letting which the Board had theretofore authorized, **held** determinable only at a trial, inasmuch as the complete factual picture was apparently not presently before the court (12 N. Y. 631). Inasmuch as time was of the essence in performing the contract, the court would not interfere with the performance thereof by issuance of a temporary injunction, but the matter would be put down for immediate trial.-*Id.*

¶ 34. An agreement which was intended to eliminate plaintiff as a bidder on work for which bids had been asked by the City of New York, was illegal as against public policy.-*Unity Sheet Metal Works, Inc. v. Louis Supran, Inc.* 112 (87) N. Y. L. J. (10-13-44) 866, Col. 7 M.

¶ 35. Where the "Instructions to Bidders" issued by the Board of Education specifically stated that "Bidders must submit this unit price with their bids or their bids will not be accepted," the Board was within its rights in rejecting the bid of a concern which failed to comply with such instructions and sought to submit a supplementary bid for additional material an hour after all bids had been opened and the results of the bidding publicly announced.-*Dordan v. Bd. of Education of City of N. Y.*, 105 (131) N. Y. L. J. (6-6-41) 2550, Col. 1 T.

¶ 36. Plaintiff, which had obtained a contract from the City of New York for certain work in the construction of a hospital, **held** not entitled to reformation of the contract to increase the unit price for removal of excavated material from the bid price of \$6.50 per cubic yard to \$26.50 per cubic yard, on ground it had made a mistake in its bid. Plaintiff had done none of the acts provided for in the contract for relief from error, but on the contrary had completed the contract in accordance with its terms. Allegation that the City knew the unit price of \$6.50 per cubic yard was inadequate and concealed such knowledge from the plaintiff, was insufficient as a matter of law to constitute fraud. The

City was not required to act for the protection of plaintiff's interests.-Heating Maintenance Corp. v. City of N. Y., 131 (54) N. Y. L. J. (3-22-54) 8, Col. 3 F.

¶ 37. Under City fuel contract which set the price of fuel at the price quoted in the National Petroleum News, the price on Monday as quoted in such paper would apply to all deliveries during the publication week.-Paragon Oil Co. v. City of N. Y. 133 (55) N. Y. L. J. (3-21-55) 11, Col. 5 M.

¶ 38. A finding by the board of responsibility of faulty past performance by a manufacturer of fire trucks was based largely upon evidence that its trucks had met all specifications and tests but had required an inordinate amount of repairs. The repairs were stated quantitatively and not according to their nature. The board refused to take evidence concerning performance of similar equipment of other manufacturers. Moreover, the Fire Commissioner unduly dominated the three-man board and indulged in statements which were neither evidence nor proper argument. Witnesses were not sworn. Since the essential elements of a fair trial were not observed, it was necessary to remand the matter for proper reconsideration unless either all bids are rejected or the Board of Estimate approves the award to a higher bidder by a three-fourths vote.-Matter of Ward La France Truck Corp. v. City of N. Y., 7 Misc. 2d 739, 160 N. Y. S. 2d 679 [1957].

¶ 39. The provisions of this section which authorize city agencies to "reject all bids" do not apply to the Board of Education. Thus, the Board of Education was liable for the excess costs incurred by an electrical contractor over his bid price where the bid had been made on the representation by the Board of Education that contracts for plumbing and heating would be awarded at the same time as the contracts for electrical work and the plumbing and heating contracts were not awarded until the year following the award of the electrical contract. The provision of Education Law § 2556(10) that the Board may reject all bids was not added until 1950 several years after the bids and the contracts were made.-Bank v. Board of Education, 305 N. Y. 119, 111 N. E. 2d 238 [1953].

¶ 40. The low bid on a contract to supply steel lockers omitted two pages of terms required to be included therein. The Commissioner of Purchase advised the bidder that its bid was unacceptable in that form, thus indicating that the omission was not a mere informality which could be waived. Thereafter the bid was revised by the insertion of the missing terms, and the Commissioner accepted it. Petitioner, the next higher bidder, sought mandamus to compel acceptance of its bid. Although the Commissioner's action in accepting the revised bid was a violation of law, it does not follow that petitioner is entitled to any relief. In view of the facts that petitioner was guilty of laches in bringing its proceeding, that the low bidder had commenced performance of the contract, and that the city, for whose benefit the statute was enacted, will save money on the low bid, the discretionary relief of mandamus will be denied.-General Steel Products Corp. v. City of New York, 18 Misc. 2d 106, 1987 N. Y. S. 2d 74 [1959].

¶ 41. Where the low bidder on an electrical contract submitted his bid on a form of the wrong color and in violation of instructions to bidders, his bid was properly rejected. The Commissioner of Public Works had ample authority to require that different types of bids be submitted upon specified forms of distinctive colors.-In re Benj. Hochman Electric Co., 141 (29) N. Y. L. J. (2-11-59) 12, Col. 4 F.

¶ 42. A resolution of the New York City Board of Estimate awarding a general construction contract to the second lowest bidder was presumptively valid and sustainable in view of the lowest bidder's practice of giving gifts to city employees.-Kayfield Construction Corp. v. Morris, 15 A. D. 2d 373, 225 N. Y. S. 2d 507 [1962].

¶ 43. Petitioner's contention that specifications for concrete pipe were unsound would not be sufficient grounds for the setting aside of a contract awarded to a competitive bidder. The court would not interfere with the decision of the Commissioner.-William Clemente Corp. v. D'Angelo, 146 (24) N. Y. L. J. (8-4-61) 3, Col. 6 F.

¶ 44. In a proceeding to which the Board of Estimate was not a party, petitioner could not claim that the adoption of a resolution by the board permitting the awarding of a contract was arbitrary.-In re Kayfield Construction Corp., 15 A. D. 2d 373, 225 N. Y. S. 2d 507 [1961].

¶ 45. Award of contract for ophthalmic spectacles to second low bidder on findings that low bidder's plant and clerical facilities were inadequate was not arbitrary.-*In re Center Optical Co.*, 152 (70) N. Y. L. J. (10-7-64) 16, Col. 6 F.

¶ 46. Section 343-9.0 of the Code requires that public work contracts with the City contain an agreement by the contractor to pay a minimum wage of \$1.50 per hour and to do the work in safe and sanitary surroundings. These provisions are valid, whether the contractor's employees are in or out of State. Section 220 of the Labor Law has not pre-empted the entire field. The provisions are not inconsistent with sections 27 or 343 of the Charter, or with the State Constitution.-*McMillen v. Browne*, 40 Misc. 2d 348, 243 N. Y. S. 2d 293 [1963], *aff'd* 20 App. Div. 2d 531, 244 N. Y. S. 2d 833 [1963], *aff'd* 14 N. Y. 2d 326, 200 N. E. 2d 546, 251 N. Y. S. 2d 641 [1964].

¶ 47. Reserved right of Commissioner to reject all bids which was conferred upon him by this section and by the "Information for Bidders," was absolute and might not be questioned, either by a bidder or the court. Petitioner, whose bid was the lowest one for an electrical job failed to establish bad faith of the Commissioner in rejecting all bids because the lowest bid was more than \$300,000 in excess of the estimated cost and also because in his opinion performance of the work required supervision by an electrical engineer of broad experience and competence.-*A. I. Smith Electrical Contractors, Inc. v. Reidy*, 150 (60) N. Y. L. J. (9-24-63) 14, Col. 2 M.

¶ 48. Printing contract was awarded to the second lowest bidder instead of to petitioner, the lowest bidder. On the basis of investigations the Commissioner determined that petitioner's plant and equipment were inadequate to permit it to properly perform the contract. There was no showing of arbitrariness in this ruling.-*Driscoll-Schalk Printing & Binding Co. v. Browne*, 150 (64) N. Y. L. J. (9-30-63) 13, Col. 7 F.

¶ 49. Failure of low bidder on office equipment contract to submit manufacturer's certificate as required by special instructions did not permit defeated bidder to obtain injunction prohibiting award to low bidder.-*Aburley Corp. v. City of New York*, 152 (44) N. Y. L. J. (8-31-64) 7, Col. 8 F.

¶ 50. Approval and acceptance of bid to rent space for the operation of two restaurants and three snack bars and to install vending machines in New York City Terminal Market would not be disturbed where the determination rested on the evaluation by the Commissioner of Markets of various factors which necessitated "a degree of **expertise** which falls within the special province of the commissioner."-*A. B. C. Consol. Corp. v. Pacetta*, 154 (119) N. Y. L. J. (12-22-65), 10, Col. 1 T.

¶ 51. Contract entered into by the Administrator of the Housing and Development Administration to provide for the rendition of consulting services to the petitioner could be made without Board of Estimate approval or hearing and public bidding on sealed bids since it called for the making of studies relating to maintenance and upgrading of existing housing and stimulation of private new construction which calls for services which require scientific knowledge and professional skill.-*In re City of N. Y. (Beame)* 164, (106) N. Y. L. J. (12-3-70) 2, Col. 5 M.

¶ 52. Comptroller was justified in refusing to register management consulting contract for \$250,000 awarded by mayor without competitive bidding as a valid contract.-*City of N. Y. v. Beame*, 37 App. Div. 2d 89, 322 N. Y. S. 2d 503 [1971].

¶ 53. A contract with the New York Urban League which provided for community based supervision of probationers by five probation officers assigned to the program by the city's Office of Probation did not require competitive bidding since this was a contract for personal services.-*Morton v. City of N. Y.*, 168 (23) N. Y. L. J. (8-3-72) 10, Col. 1 F.

¶ 54. Although an agreement had been created whereby city had awarded petitioner contracts for electrical work as low bidder and parties had executed formal agreements, city could not thereafter cancel on such grounds as that petitioner failed to pay prevailing wages or had a sweetheart contract with the union under the authority of this section since once a contract has been let and notice of award made the provisions of § 343b no longer apply.-*Mansfield Const.*

Corp. v. Lindsay, 169 (35) N. Y. L. J. (2-21-73) 19, Col. 6 F.

¶ 55. Where petitioners submitted lowest bid for labor, material and equipment to excavate and backfill street opening and were thereafter notified by Environmental Protection Agency that Board of Contract responsibility would meet to determine their responsibility in connection with the contract and at the meeting petitioners were questioned about the return of certain material under a prior contract a new hearing was required in the interests of justice since it appeared that petitioners were not informed that this matter would be taken up at the hearing.-In re Joselo Const., Inc. (Environmental Protection Admin.), 174 (9) N. Y. L. J. (7-14-75) 12, Col. 8 F.

¶ 56. Contract to provide security guards for the city which was of indefinite duration and subject to cancellation by either party upon reasonable notice was not subject to competitive bidding.-Lance Investigation Service v. City of N. Y., 88 Misc. 2d 119, 387 N. Y. S. 2d 32 [1976].

¶ 57. The discretion to reject bids on the ground of responsibility is vested in the Commissioner of public works and he did not act arbitrarily in rejecting second low bidder and ordering new bidding where first low bidder had withdrawn and there was substantial controversy regarding second low bidder.-Expert Electric, Inc. v. City of N. Y., 177 (57) N. Y. L. J. (3-24-77) 6, Col. 2 B.

¶ 58. Commissioner improperly permitted correction of calculation of bid of respondent bidder after all bids had been opened by allowing it to vary its total amount bid by changing the number of units included therein to conform to the bid conditions since this offered this bidder the opportunity of proceeding or not with the same unit price applied to a smaller quantity and thus gave it the option, which was not afforded to other bidders, of determining whether to stay in the competition.-Blandford Land Clearing Corp. v. Davidson, 179 (1) N. Y. L. J. (1-3-78) 12, Col. 3 T.

¶ 59. Munic. agency may convene a bd. of responsibility after awarding contract to determine whether awarding agency should perform contract where facts come to light after awarding of contract affecting bidder's responsibility. It may rescind contracts and that decision is not subject to the remedy of prohibition. However, decision by N. Y. C. Dept. of General Services bd. of responsibility cannot be used by N. Y. C. Transp. Dept. to rescind a contract awarded by it. A bidder may only be disqualified based upon determination of bd. of awarding agency.-Lord Electric Co. v. Litke, Comr. of Dept. of Gen. Services, 122 Misc. 2d 112 [1983].

¶ 60. Method used to determine whether petitioner was a "responsible bidder" was in conformance with regulations promulgated by Bd. of Estimate.-Matter of L. K. Comstock & Co., Inc. (Yermack) 191 (11) (1-17-84) 12, Col. 5 B.

¶ 61. "Responsibility" of a bidder may be determined even after the bidder has lawfully withdrawn its bid to determine if the bidder should be barred from future bidding. Sanitation garage construction contract was being let and bidder offered inaccurate answers and fraudulent backdated claim letters.-Mars Assoc. v. Palmer, 140 Misc 2d 1005 [1988].

CASE NOTES

¶ 1. The City sought to bypass the "lowest responsible bidder" rule on contracts involving a combination of public work and utility interference work. The court, however, held that this procedure would be improper. In other words, in the event that the lowest responsible bidder on the public portion of the work differed from the lowest responsible bid on the package (city work plus utility work), the City would have to do either of two things: (1) reject all bids and call for resubmission of bids until the lowest bidder on the package project was also the lowest bidder on the public portion of the work; or (2) the Mayor would have to file with the Procurement Policy Board and publish in the City Record an explanation why the City accepted a bid even though another bid contained a lower price on the public portion of the work (the cost of which was borne by taxpayers). Matter of HHM Associates, Inc. v. Appleton, 157 Misc.2d 759, 597 N.Y.S.2d 894 (Sup.Ct. New York Co. 1993).

¶ 2. Section 103 of the General Municipal Law provides that municipal contracts must be awarded to the lowest responsible bidder, except as otherwise provided by an act of the state legislature or by a local law adopted prior to September 1, 1953. In *Diamond Asphalt Corp. v. Sander*, 92 N.Y.2d 244, 678 N.Y.S.2d 567 (1998), a low bidder who was not awarded a contract challenged the Mayor's authority to award the contract to anyone other than the lowest bidder. In response, the City argued that City Charter 313(b)(2) qualified as a local law within the meaning of General Municipal Law Sec. 103. Specifically, the City contended that when the City Charter was revised in 1989 and later approved by the voters, Sec. 313 (which was included in the revised charter) was a mere recodification of a pre-1953 law which had permitted the Board of Estimate to bypass competitive bidding procedures. The court, however, held that because Sec. 313 represented a major shift of power, from the Board of Estimate to the Mayor, City Charter Sec. 313 did not qualify for exemption from the General Municipal Law bidding procedures. Thus, the court held that the award of the contract to a bidder other than Diamond Asphalt was unlawful.

FOOTNOTES

14

[Footnote 14]: * Chapter heading amended at General Election, November 7, 1989.



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NYC Charter 314

New York City Charter

CHAPTER 13 PROCUREMENT*14

§ 314. **Small purchases.**

a. Notwithstanding any other provision of this charter, the procurement policy board and the council may, by concurrent action, establish dollar limits for procurement of goods, services, construction, or construction-related services that may be made without competition or without public advertisement. Awards pursuant to this section shall be made in accordance with rules of the procurement policy board.

b. On or before September thirtieth, two thousand and three, and on or before the last day of every quarter thereafter, the mayor or his or her designee shall submit to the council and the comptroller a report detailing each small purchase award made pursuant to this section during the quarter that ended three months before such report is due and for which information is required to be contained in the computerized data base maintained pursuant to subdivision a of section 6-116.2 of the administrative code. Such report shall provide the name of the vendor selected to fulfill the requirements of each such small purchase award, the date and dollar amount of each such small purchase award and the type of goods or services provided.

HISTORICAL NOTE

Section amended L.L. 9/2002 § 1, eff. June 13, 2002.

Section repealed and added L.L. 34/1995 § 1, eff. Apr. 21, 1995.

Section added at General Election, November 7, 1989.

CASE NOTES

¶ 1. CDRB held that a purchase order was invalidly issued where it exceeded the \$100,000 small purchase limit

for information technology as set in the PPB rules, and was not "placed against" an existing contract. Tower Technology, Inc. v. New York City Employees' Retirement System, OATH Index No. 1544/02, mem. dec. (Oct. 11, 2002).

FOOTNOTES

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[Footnote 14]: * Chapter heading amended at General Election, November 7, 1989.



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NYC Charter 315

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CHAPTER 13 PROCUREMENT*14

§ 315. **Emergency procurement.**

Notwithstanding the provisions of section three hundred twelve of this chapter, in the case of an unforeseen danger to life, safety, property or a necessary service, an emergency procurement may be made with the prior approval of the comptroller and corporation counsel, provided that such procurement shall be made with such competition as is practicable under the circumstances, consistent with the provisions of section three hundred seventeen of this chapter. A written determination of the basis for the emergency and the selection of the contractor shall be placed in the agency contract file and the determination or summary of such determination shall be included in the notice of the award of contract published pursuant to section three hundred twenty-five of this chapter.

HISTORICAL NOTE

Section amended L.L. 3/1997 § 3, eff. Jan. 23, 1997.

Section added at General Election, November 7, 1989.

FOOTNOTES

14

[Footnote 14]: * Chapter heading amended at General Election, November 7, 1989.



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NYC Charter 316

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CHAPTER 13 PROCUREMENT*14

§ 316. **Intergovernmental procurement.**

Notwithstanding any other requirement of this chapter,

a. any goods may be procured, ordered or awarded through the United States General Services Administration, or any other federal agency if the price is lower than the prevailing market price; any services or construction may be procured, ordered or awarded through the United States General Services Administration, or any other federal agency if the price is fair and reasonable, and

b. any goods may be procured, ordered or awarded through the New York State office of general services, or any other state agency, if the price is lower than the prevailing market price; any services or construction may be procured, ordered or awarded through the New York State office of general services, or any other state agency, if the price is fair and reasonable.

HISTORICAL NOTE

Section amended L.L. 16/2004 § 1, eff. July 28, 2004. [See Note 1]

Section amended L.L. 45/1995 § 1, eff. June 2, 1995.

Section added at General Election, November 7, 1989.

NOTE

1. Provisions of L.L. 16/2004 § 2:

§ 2. This local law shall take effect 45 days after adoption, provided that the City agencies affected, including,

but not limited to, the procurement policy board may take any actions necessary to effectuate the provisions of this local law prior to its effective date.

FOOTNOTES

14

[Footnote 14]: * Chapter heading amended at General Election, November 7, 1989.



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CHAPTER 13 PROCUREMENT*14

§ 317. **Alternatives to competitive sealed bidding.**

a. If, in accordance with section three hundred twelve, an agency determines that the use of competitive sealed bidding is not practicable or not advantageous to the city, the agency shall select the most competitive alternative method of procurement provided for by sections three hundred eighteen through three hundred twenty-two which is appropriate under the circumstance. Each agency contract file shall contain documentation of such determination and of the basis upon which each contract is awarded, as is required by the procurement policy board.

b. Each contract for goods, services or construction in value of more than five million dollars proposed by an agency to be awarded which is let by other than (i) competitive sealed bidding, (ii) competitive sealed bids from prequalified vendors, or (iii) competitive sealed proposals, where the weight assigned to each of the factors or criteria to be considered in selecting the proposal most advantageous to the city was set forth in a writing filed in the agency contract file prior to the opening of proposals, shall require the approval of the mayor prior to its execution. Notwithstanding the preceding sentence, the mayor may, where the mayor has determined that it is appropriate, exclude an agency's contracts or a particular category of contracts from the approval requirement of this subdivision.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

Subd. b amended L.L. 23/2004 § 1, eff. July 28, 2004. [See Note 1]

NOTE

1. Provisions of L.L. 23/2004 § 2:

§ 2. This local law shall take effect 45 days after adoption, provided that the City agencies affected, including, but not limited to, the procurement policy board may take any actions necessary to effectuate the provisions of this local law prior to its effective date.

FOOTNOTES

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[Footnote 14]: * Chapter heading amended at General Election, November 7, 1989.



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CHAPTER 13 PROCUREMENT*14

§ 318. **Competitive sealed bids from prequalified vendors.**

In accordance with section three hundred seventeen, bids may be solicited from vendors who have been prequalified for the provision of a good, service or construction pursuant to section three hundred twenty-four by mailing notice to each prequalified vendor or, if special circumstances require, to a selected list of prequalified vendors. Award of the contract shall be made in accordance with the provisions of section three hundred thirteen of this chapter. A determination to employ selective solicitation for a particular procurement or for a particular category of procurement shall be made in writing by the agency and approved by the mayor; unless the mayor, upon adequate assurances of an agency's capacity to comply with procedural requirements in relation to this section, has determined that such approval is not required for an agency's contracts or particular categories of contracts.

HISTORICAL NOTE

Section amended L.L. 18/2004 § 1, eff. July 28, 2004. [See Note 1]

Section amended L.L. 3/1997 § 4, eff. Jan. 23, 1997.

Section added at General Election, November 7, 1989.

NOTE

1. Provisions of L.L. 18/2004 § 3:

§ 3. This local law shall take effect 45 days after adoption, provided that the City agencies affected, including, but not limited to, the procurement policy board may take any actions necessary to effectuate the provisions of this local law prior to its effective date.

FOOTNOTES

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[Footnote 14]: * Chapter heading amended at General Election, November 7, 1989.



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CHAPTER 13 PROCUREMENT*14

§ 319. **Competitive sealed proposals.**

In accordance with section three hundred seventeen, proposals may be solicited through a request for proposals with award to the responsible offeror whose proposal is determined to be the most advantageous to the city, taking into consideration the price and such other factors or criteria as are set forth in the request for proposals. No other factors or criteria shall be used in the evaluation and award of the contract except those specified in the request for proposals. Discussions may be conducted with responsible offerors who submit proposals, provided that offerors shall be accorded fair treatment with respect to any opportunity for discussion and revision of the proposals.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

FOOTNOTES

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[Footnote 14]: * Chapter heading amended at General Election, November 7, 1989.



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§ 320. **Competitive sealed proposals from prequalified vendors.**

In accordance with section three hundred seventeen, proposals may be solicited from vendors who have been prequalified for the provision of a good, service or construction pursuant to section three hundred twenty-four by mailing notice to each prequalified vendor or, if special circumstances require, to a selected list of prequalified vendors. Award of the contract shall be made in accordance with the provisions of section three hundred nineteen. A determination to employ selective solicitation for a particular procurement or for a particular category of procurement shall be made in writing by the agency by the mayor; unless the mayor, upon adequate assurance of an agency's capacity to comply with the procedural requirements in relation to this section, has determined that such approval is not required for an agency's contracts or particular categories of contracts.

HISTORICAL NOTE

Section amended L.L. 18/2004 § 2, eff. July 28, 2004. [See Note 1]

Section amended L.L. 3/1997 § 5, eff. Jan. 23, 1997.

Section added at General Election, November 7, 1989.

NOTE

1. Provisions of L.L. 18/2004 § 3:

§ 3. This local law shall take effect 45 days after adoption, provided that the City agencies affected, including, but not limited to, the procurement policy board may take any actions necessary to effectuate the provisions of this local law prior to its effective date.

FOOTNOTES

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[Footnote 14]: * Chapter heading amended at General Election, November 7, 1989.



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§ 321. **Sole source.**

a. In accordance with section three hundred seventeen, a contract may be awarded for a good, service or construction without competition when an agency determines, pursuant to rules promulgated by the procurement policy board, that there is only one source for the required good, service or construction. The agency contract file shall contain the agency's determination that only a single source is available for the required good, service or construction, including the process by which the agency made such determination. Copies of such notice shall be filed with the comptroller.

b. Whenever an agency determines that there is only a single source for a good, service or construction, an agency shall give immediate notice in the City Record of such determination and shall in such notice solicit the application of vendors qualified to provide such good, service or construction, or interested in providing such good service or construction in the future. The procurement policy board shall by rule define the timing and duration of such notification to ensure that vendors qualified to provide such good, service or construction have sufficient opportunity to express their interest to the agency prior to the initiation of any sole source negotiation; provided, however, that if the agency has determined that it should not reveal to the vendor with whom it is negotiating that it is doing so on a sole source basis under circumstances defined by rule of the procurement policy board, the notice required by this subdivision shall be made upon the completion of such negotiations or the award of the contract. Vendors interested in providing such good, service or construction in the future shall be prequalified in accordance with section three hundred twenty-four, or shall be included for receipt of notice in accordance with subdivision a of section three hundred twenty-five.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

Subd. a amended L.L. 3/1997 § 6, eff. Jan. 23, 1997.

FOOTNOTES

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[Footnote 14]: * Chapter heading amended at General Election, November 7, 1989.



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§ 322. **Alternative procurement procedures.**

In accordance with section three hundred seventeen, a contract may be awarded according to another procurement procedure established by rule of the procurement policy board, under circumstances, defined by rule of the procurement policy board, in which the use of such procedures is in the best interest of the city. An agency determination to utilize such an alternative procurement procedure for a particular procurement or for a particular type of procurement shall require the written approval of the mayor prior to seeking bids or proposals. The agency contract file shall contain the determination to use an alternative procurement procedure which shall state (1) which circumstances defined by the board to be in the best interest of the city apply to the procurement, including the basis upon which the agency made such determination, and (2) which procedure, as defined by the board pursuant to this section, was used in awarding the contract.

HISTORICAL NOTE

Section amended L.L. 3/1997 § 7, eff. Jan. 23, 1997.

Section added at General Election, November 7, 1989.

FOOTNOTES

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[Footnote 14]: * Chapter heading amended at General Election, November 7, 1989.



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§ 323. **Multi-step sealed proposals.**

A preliminary request for proposals may be issued requesting the submission of unpriced offers. Submissions in response to such a preliminary request for proposals may be relied upon by an agency (a) to solicit competitive sealed bids in accordance with section three hundred thirteen of this chapter; (b) to solicit competitive sealed bids from prequalified vendors in accordance with section three hundred eighteen; (c) to solicit competitive sealed proposals in accordance with section three hundred nineteen; or (d) to solicit proposals from prequalified vendors in accordance with section three hundred twenty.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

FOOTNOTES

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[Footnote 14]: * Chapter heading amended at General Election, November 7, 1989.



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§ 324. **Prequalification.**

a. Agencies may maintain lists of prequalified vendors and entry into a prequalified group shall be continuously available. Prospective vendors may be prequalified as contractors for the provision of particular types of goods, services and construction, in accordance with general criteria established by rule of the procurement policy board which may include, but shall not be limited to, the experience, past performance, ability to undertake work, financial capability, responsibility, and reliability of prospective bidders, and which may be supplemented by criteria established by rule of the agency for the prequalification of vendors for particular types of goods, services or construction or by criteria published in the City Record by the agency prior to the prequalification of vendors for a particular procurement. Such prequalification may be by categories designated by size and other factors.

b. Any vendor who is denied prequalification or whose prequalification is revoked by an agency may appeal such decision to the agency head. A determination of an agency head may be appealed to the office of administrative trials and hearings for a hearing and such office shall take final action regarding such matter. A decision by an agency to suspend a vendor's prequalification may be appealed to the agency head, provided that if such suspension extends for more than three months, it shall be deemed a revocation of the prequalification for the purposes of this section.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

Subd. a amended L.L. 17/2004 § 1, eff. July 28, 2004. [See Note 1]

NOTE

1. Provisions of L.L. 17/2004 § 2:

§ 2. This local law shall take effect 45 days after adoption, provided that the City agencies affected, including, but not limited to, the procurement policy board may take any actions necessary to effectuate the provisions of this local law prior to its effective date.

CASE NOTES

¶ 1. Asbestos contractor, appealing revocation of its prequalified vendor status to the Office of Administrative Trials and Hearings, pursuant to this subsection, failed to demonstrate that the agency's actions were arbitrary or capricious, where it was undisputed that petitioner contracted with a consultant who was under criminal investigation for his involvement as a subcontractor at the Deutsche Bank building, where a fire occurred, killing two firefighters. **Gramercy Group, Inc. v. Dep't of Housing Preservation & Development** , OATH Index No. 637/09, mem. dec. (Nov. 12, 2008).

FOOTNOTES

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[Footnote 14]: * Chapter heading amended at General Election, November 7, 1989.



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§ 325. **Planning and Notification.**

a. Agencies that award client services contracts shall produce a draft and final plan and schedule detailing anticipated contracting actions for the upcoming fiscal year, and shall hold at least one public hearing each year immediately following the release of the draft plan and schedule to receive testimony regarding the plan and schedule. The draft and final plan and schedule shall include, but not be limited to: the type of services to be provided, the authorized maximum amount of funding associated with the program, the authorized number of contracts to be let for a particular program, the month and year of the next planned competitive solicitation. Failure to include a contract in the plan and schedule issued pursuant to this section shall not be grounds for invalidating the contract. The procurement policy board shall promulgate rules governing the issuance of the draft and final plans and schedules, which shall ensure that the draft plan and schedule is issued promptly following the submission of the executive budget and that the final plan and schedule is issued no later than September thirtieth each year.

b. Pursuant to rules of the procurement policy board, each agency shall

1. for each category of goods, services or construction which is regularly procured by the agency, periodically publish in the City Record a notice soliciting the names of vendors interested in being notified of future procurement opportunities in each such category,

2. for each category of goods, services or construction for which the agency prequalifies vendors for future procurement, periodically publish in the City Record a notice soliciting the names and qualifications of vendors interested in being considered for prequalification for such category, and

3. publish in the City Record, and, where appropriate, in newspapers of city, state or national distribution and trade publications, notice of

(a) the solicitation of bids or proposals pursuant to section three hundred thirteen and three hundred seventeen through three hundred twenty-two, where the value of a contract is estimated to be above the small purchase limits, except where the agency has determined pursuant to section three hundred eighteen or three hundred twenty that solicitation should be limited to prequalified vendors,

(b) the award of a contract exceeding the small purchase limits in value. Each such notice of award shall indicate the name of the contractor, the dollar value of the contract, the procurement method by which the contract was let, and for contracts let by other than competitive sealed bidding, a citation of the clause of subdivision b of section three hundred twelve pursuant to which a procurement method other than competitive sealed bidding was utilized.

c. The procurement policy board, in consultation with the commissioner of citywide administrative services, shall promulgate rules providing for the publication and content of notices of contract actions required by this chapter. Such rules shall include provisions regarding,

i. the timing and frequency of notices,

ii. the required duration of solicitation periods,

iii. the form and content of notices, including the organization and presentation of such notices within standard categories of goods, services and construction which are sufficiently detailed to provide meaningful distinctions among categories.

d. The notice required by subparagraph a of paragraph three of subdivision a of this section shall not apply to contracts awarded on an emergency basis pursuant to section three hundred fifteen, provided that the agency shall, as soon as is practicable, publish notice that such a contract has been entered into, pursuant to rules of the procurement policy board, nor shall such notice requirements apply where the notice would disclose litigation strategy or otherwise impair the conduct of litigation by the city.

HISTORICAL NOTE

Section amended L.L. 24/2004 § 1, eff. July 28, 2004.

Section amended L.L. 46/1995 § 1, eff. June 2, 1995.

Section added at General Election, November 7, 1989.

Subd. b amended L.L. 59/1996 § 8, eff. Aug. 8, 1996.

FOOTNOTES

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[Footnote 14]: * Chapter heading amended at General Election, November 7, 1989.



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§ 326. **Public hearings on contract awards.**

a. Prior to entering into any contract for goods, services or construction to be awarded by other than competitive sealed bidding or competitive sealed bids from prequalified vendors, the value of which exceeds one hundred thousand dollars, the agency shall upon reasonable public notice conduct a public hearing to receive testimony regarding the proposed contract. Notwithstanding the preceding sentence, if, within a period of time after such notice, which period of time shall be determined by the procurement policy board, no individual requests an opportunity to speak at such a public hearing with respect to any such proposed contract the value of which does not exceed one million dollars, then such public hearing need not be conducted. The procurement policy board may by rule exempt from this public hearing requirement contracts to be let which do not differ materially in terms and conditions, as defined by the board, from contracts currently held by the city where the parties to such contracts are the same; provided, that under no circumstance may such exemption apply to any contract in value exceeding ten million dollars.

b. The requirements of this section shall not apply to any procurement (i) let pursuant to a finding of an emergency under section three hundred fifteen, (ii) required to be made on an accelerated basis due to markets which experience significant, short-term price fluctuations, as identified by rule of the board, or (iii) where a public hearing would disclose litigation strategy or otherwise impair the conduct of litigation by the city.

HISTORICAL NOTE

Section amended L.L. 19/2004 § 1, eff. July 28, 2004. [See Note 1]

Section amended L.L. 8/2002 § 1, eff. July 28, 2002.

Section added at General Election, November 7, 1989.

NOTE

1. Provisions of L.L. 19/2004 § 2:

§ 2. This local law shall take effect 45 days after adoption, provided that the City agencies affected, including, but not limited to, the procurement policy board may take any actions necessary to effectuate the provisions of this local law prior to its effective date.

FOOTNOTES

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[Footnote 14]: * Chapter heading amended at General Election, November 7, 1989.



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§ 327. **Certification of legal authority and procedural requisites.**

a. In the case of any contract which is let by other than competitive sealed bidding, the mayor shall certify, prior to the filing of the contract with the comptroller for registration in accordance with section three hundred twenty-eight of this chapter, that the procedural requisites for the solicitation and award of the contract have been met. The mayor may delegate such function to the agency proposing to award a contract only upon adequate assurance of an agency's capacity to comply with procedural requirements.

b. The corporation counsel shall certify prior to the filing of a contract with the comptroller for registration in accordance with section three hundred twenty-eight of this chapter, that each agency proposing to award a contract has legal authority to award each such contract.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

CASE NOTES

¶ 1. See *Comptroller of the City of New York v. Mayor of the City of New York*, 19 A.D.3d 230, 797 N.Y.S.2d 465 (1st Dept. 2005), *aff'd* 7 N.Y.3d 256, 819 N.Y.S.2d 672 (2006). reported under note 6 of City Charter § 328.

FOOTNOTES

[Footnote 14]: * Chapter heading amended at General Election, November 7, 1989.



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§ 328. **Registration of contracts by the comptroller.**

a. No contract or agreement executed pursuant to this charter or other law shall be implemented until (1) a copy has been filed with the comptroller and (2) either the comptroller has registered it or thirty days have elapsed from the date of filing, whichever is sooner, unless an objection has been filed pursuant to subdivision c of this section, or the comptroller has grounds for not registering the contract under subdivision b of this section.

b. Subject to the provisions of subdivision c of this section, the comptroller shall register a contract within thirty days unless the comptroller has information indicating that:

i. there remains no unexpended and unapplied balance of the appropriation or fund applicable thereto, sufficient to pay the estimated expense of executing such contract, as certified by the officer making the same;

ii. that a certification required by section three hundred twenty-seven of this chapter has not been made; or

iii. the proposed vendor has been debarred by the city in accordance with the provisions of section three hundred thirty-five.

c. The comptroller may, within thirty days of the date of filing of the contract with the comptroller's office, object in writing to the registration of the contract, if in the comptroller's judgment there is sufficient reason to believe that there is possible corruption in the letting of the contract or that the proposed contractor is involved in corrupt activity. Such objection shall be delivered within such thirty day period to the mayor setting forth in detail the grounds for the comptroller's determination. After the mayor has responded to the comptroller's objections in writing, indicating (i) the corrective actions if any, that have been taken or will be taken in response to the comptroller's objections, or (ii) the reasons why the mayor disagrees with the comptroller's objections, the mayor may require registration of the contract despite the comptroller's objections. Such response by the mayor shall not serve as the basis for further

objection by the comptroller, and the comptroller shall register the contract within ten days of receipt of the mayor's response.

d. The requirements of this section shall not apply to

(1) an emergency contract awarded pursuant to section three hundred fifteen or to an accelerated procurement as defined under section three hundred twenty-six, provided that the agency shall, as soon as is practicable, submit any such contract to the comptroller for an audit of the procedures and basis for the determination of the need for an emergency or accelerated procurement, or

(2) a contract awarded pursuant to this chapter for the provision of goods, services or construction that is not to be paid for out of the city treasury or out of moneys under the control of the city, provided that the board of the entity awarding such a contract shall within ten days of awarding contract, file a copy of such contract and any related materials specified by the mayor, with the mayor or the mayor's designee for purposes of section three hundred thirty-four of this charter.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

CASE NOTES

¶ 1. The New York City Comptroller properly declined to register a bus transportation contract awarded to the low bidder due to petitioner bus company's involvement in "corrupt practices", Charter § 328(c), calling into question its integrity evidenced by false statements regarding bribery for bus inspections. *Dentom Transp. Inc. v. NY City HRA*, 155 Misc. 2d 31 [1993].

¶ 2. Mayor's determination declared null and void which upheld Comptroller's objection under Charter § 328(c) that petitioner was not responsible contractor-despite clear information that petitioner was not target of law enforcement investigation, was not associated with known criminals and was of good character. Evidence contained only impression of guilt by association and was not rationally based. *Matter of DeMatteis Constr. Corp. v. Dinkins*, 190 AD2d 621 [1993].

¶ 3. Mayor declined to direct Comptroller to register a contract between petitioner and the General Services Department. The reasons given were corrupt activities and petitioner's connection to organized crime evidenced by sworn declaration of FBI agent, violations of New Jersey waste disposal laws, inaccurate disclosures on Vendex forms and noncompliance with Comptroller's subpoenas. Charter §328(c) allows Comptroller and Mayor to reject bidders even after award of contract on ground of lack of integrity to perform contract. *Matter of Tully Constr. Co. v. Hevesi*, 214 AD2d 465 [1995], 625 NYS2d 531.

¶ 4. The Comptroller is not required to automatically register all contracts which the City and its agencies present to it. The Comptroller can object to the registration of a contract where there is reason to believe that corruption has occurred. Thus, the court denied a mandamus petition which had sought to compel the Comptroller to register a contract. *Garrison Protective Services v. Office of the Comptroller of the City of New York*, 92 N.Y.2d 732, 685 N.Y.S.2d 921 (1999).

¶ 5. Under Section 328(c), the Comptroller may lawfully refuse to register a municipal contract if corruption is suspected. However, once the Mayor responds to the objection in writing, indicating his or her disagreement, the Comptroller must register the contract. *Giuliani v. Hevesi*, 276 A.D.2d 398, 715 N.Y.S.2d 12 (1st Dept. 2000).

¶ 6. Under § 328, the Comptroller can refuse to register a contract entered into between the City and another party, thereby blocking its implementation, where there are appropriate grounds to do so. The Comptroller could have

blocked the implementation of the contract between the City and Snapple Beverages on the ground that the certification required by City Charter § 327 had not been provided. However, in order to do so, the Comptroller must promptly notify the agency Concession Manager in writing of grounds for the determination. Here, the Comptroller's letter to the Mayor and Corporation Council challenged the substantive underpinnings of the certification, i.e., the Mayor's failure to submit to the City's Franchise and Concession Review Committee for approval of that part of the Snapple marketing agreement granting a concession for the use of certain of the City's intangible and intellectual property, such as use of the City's trademark. This was not a proper objection under City Charter § 328(b)(ii), which only permits the Comptroller to object to the existence or non-existence of the specifically required certifications, not to look beyond the certifications to inspect the underlying process. By failing to make a proper written objection, the City waived the objection. Thus, the court declared the Snapple contract to be valid, and directed that it be implemented. *Comptroller of the City of New York v. Mayor of the City of New York*, N.Y.L.J., June 23, 2005, at 25, col. 6, 2005 WL 1431691 (App.Div. 1st Dept.).

¶ 7. See *Comptroller of the City of New York v. Mayor of the City of New York*, 19 A.D.3d 230, 797 N.Y.S.2d 465 (1st Dept. 2005), *aff'd* 7 N.Y.3d 256, 819 N.Y.S.2d 672 (2006).

FOOTNOTES

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[Footnote 14]: * Chapter heading amended at General Election, November 7, 1989.



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§ 329. **By whom procured.**

a. All services to be performed by contract, including the furnishing of goods incident thereto, shall be obtained by the agency for whose use the appropriation therefor shall have been made, except as otherwise provided by law or by rule of the procurement policy board.

b. All other goods shall be purchased or procured by the department of citywide administrative services, except as otherwise provided pursuant to this chapter or other law.

c. Pursuant to rules of the procurement policy board and subject to other sections of this chapter, each agency may purchase directly goods in an amount not to exceed one thousand dollars for each transaction or, with the prior approval of the commissioner of citywide administrative services, in an amount not to exceed five thousand dollars for each transaction. The limitation of this subdivision shall not apply to purchases by an agency under a vendor contract entered into by the commissioner of general services.

d. The dollar limits for direct agency purchases without the prior approval of the commissioner of citywide administrative services pursuant to subdivision c of this section may be raised to five thousand dollars for each transaction for any or all agencies by the commissioner of citywide administrative services with the approval of the mayor. Any proposed increases in the limits for such purchases above five thousand dollars shall be subject to the further approval of the comptroller. Any increase in dollar limits pursuant to this subdivision shall be published in the City Record and may be rescinded by the commissioner of citywide administrative services, the mayor, or the comptroller.

e. Subject to the approval of the comptroller, a specific procurement of a specific good may be delegated by the commissioner of citywide administrative services, in the best interest of the city, to any agency for direct purchase by such agency, and shall not be subject to the provisions of subdivisions b, c or d of this section; provided, however, that

such delegation shall not be made for goods that are to be generally used by city agencies.

HISTORICAL NOTE

Amended by L. 1949, ch. 852.

Amended at General Election, November 4, 1975.

Amended by L. L. 1977, No. 30.

Amended by L. L. 1977, No. 102.

Section renumbered and amended at General Election, November 7, 1989 (formerly § 344).

Subds. b, c, d amended L.L. 59/1996 § 9, eff. Aug. 8, 1996.

Subd. e added L.L. 21/2004 § 1, eff. July 28, 2004.

CASE NOTES

¶ 1. This section authorizing non-public bids for contracts and purchases of less than \$2500 did not apply where corporation which had sidewalk installed sued city for reimbursement where there was no certification by the city comptroller of an unexpended appropriation to pay for contract.-Steiner Egg Noodle Co. v. City of N. Y., 63 Misc. 2d 163, 311 N. Y. S. 2d 406 [1969].

FOOTNOTES

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[Footnote 14]: * Chapter heading amended at General Election, November 7, 1989.



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§ 330. **Inspection.**

Inspection and acceptance or rejection of all deliveries of goods shall be made by the agency that makes the direct purchase other than under a vendor contract. The commissioner of citywide administrative services may authorize an agency to which delivery is made to perform such functions on purchases made by the department of citywide administrative services subject to standards and policies of the commissioner. The comptroller may continue to perform such inspectional duties as are necessary for auditing purposes, including ascertainment of whether items purchased and paid for by the department of citywide administrative services or other agencies have been received and put to use by agencies.

HISTORICAL NOTE

Amended at General Election, November 4, 1975.

Amended by L. L. 1977, No. 102.

Renumbered and amended at General Election, November 7, 1989 (former § 346).

Section amended L.L. 59/1996 § 10, eff. Aug. 8, 1996.

FOOTNOTES

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[Footnote 14]: * Chapter heading amended at General Election, November 7, 1989.



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§ 331. **Specifications.**

All purchases shall be based upon specifications which are definite and certain, which permit of competition and which shall not be at variance with standard specifications for the various classes of goods approved by the commissioner of citywide administrative services. Before adopting standard specifications the commissioner shall obtain and consider the recommendations of agencies using the items to be standardized.

HISTORICAL NOTE

Amended by L. L. 1969, No. 74.

Amended at General Election, November 4, 1975.

Amended by L. L. 1977, No. 102.

Renumbered and amended at General Election, November 7, 1989

(formerly § 347).

Section amended L.L. 59/1996 § 11, eff. Aug. 8, 1996.

CASE NOTES

¶ 1. City's specification in its proposal for bids for parking meters, of a meter designed to regulate parking in only one parking space, **held** not shown to have been arbitrary by plaintiff manufacturer of a double type parking meter controlling the parking of two adjacent car parking spaces.-*Internat. Meters, Inc. v. City of N. Y.*, 124 (53) N. Y. L. J. (9-15-50) 476, Col. 5 F.

¶ 2. Specifications prescribed by defendant City of New York for bids for parking meters, requiring that manufacturers have been engaged in the manufacture of parking meters for at least five years and submit satisfactory evidence of the successful operation for three years in the field of at least 500 of their meters, and requiring that the meters be designed to regulate parking in only one parking space, **held** unreasonable and arbitrary and a waste of the taxpayers' money insofar as it would exclude from consideration plaintiff's twin type parking meters which they had been manufacturing and selling for four years. The City's plan to install 1500 single type meters was experimental; there were obvious advantages of plaintiff's product to do, at least, a major portion of the full ultimate job at manifold possible savings as claimed; there was no showing of any marked degree of superiority of a single space meter; the information concerning available products and qualifications which should have been within the knowledge of the defendant's authorities should have dictated the preparation of a proposal that would enable plaintiff's product to be bid in the interest of testing the new device, and it was quite likely that when the period of experiment was over plaintiffs would have arrived at the point of five-year manufacturer and three years successful operation.-*Internat. Meters, Inc. v. City of N. Y.*, 101 N. Y. S. 2d 208 [1950].

FOOTNOTES

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[Footnote 14]: * Chapter heading amended at General Election, November 7, 1989.



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§ 332. **Payments procedure.**

The procurement policy board shall promulgate rules for the expeditious processing of payment vouchers by city agencies and departments including (i) the maximum amount of time allowed for the processing and payment of such vouchers from the later of (a) the date such vouchers are received by the agency, or (b) the date on which the goods, services or construction to which the voucher relates have been received and accepted by the agency, (ii) a program for the payment of interest, at a uniform rate, to vendors on vouchers not paid within the maximum amount of time pursuant to clause i of this subdivision, (iii) a process for the allocation and charging of any such interest payments to the budget of the agency responsible for the delay leading to the interest payments and (iv) agency reporting on the promptness of such payments in such form and containing such information as the board shall prescribe. The board shall coordinate and publish such agency prompt payment reports.

HISTORICAL NOTE

Section amended L.L. 20/2004 § 2, eff. July 18, 2004.

Amended at General Election, November 4, 1975.

Amended by L. L. 1977, No. 102.

Section renumbered and amended at General Election, November 7, 1989 (formerly § 350).

FOOTNOTES

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[Footnote 14]: * Chapter heading amended at General Election, November 7, 1989.



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§ 333. **Evaluation and monitoring of contractor performance.**

a. Each agency letting contracts shall monitor the performance of every contractor. Information with respect to contractor performance shall be maintained in a central place in accordance with subdivision c of section three hundred thirty-four.

b. 1. If a borough president determines there is reason to believe a term or condition of a contract providing for the delivery of services in the borough is not being complied with and that the contract should be terminated for noncompliance, modified, not renewed, modified at the time of renewal, or that the existing terms of the contract should be enforced, the borough president shall document in writing the reasons for that determination and present such determination, with a recommendation for appropriate action, to the agency head for review. In the case of a recommendation that a contract should not be renewed or should be modified at the time of renewal, such recommendation shall be made to the agency head at least one hundred and twenty days prior to the expiration of the contract.

2. The agency head shall respond to the borough president's findings within ten days from receipt of such findings, indicating what action, if any, shall be taken. If such action is not satisfactory to the borough president, the borough president shall, within thirty days of receipt of such responses, be authorized to require that a hearing be held in the borough by a contract performance panel consisting of the public advocate, the comptroller and the mayor, or their designees, to receive the testimony of the borough president and other interested persons on the borough president's recommendations. The hearing shall be held within twenty days from the borough president's request for the hearing. The head of the agency which procured the services in question, or designee of such agency head, and the contractor whose performance is being evaluated, shall have the right, and it shall be their duty when requested by the panel to appear and be heard.

3. The panel shall recommend, within thirty days of the date of such hearing, such action as it deems appropriate

and shall promptly deliver its recommendations in writing to the agency head, borough president and contractor. Within thirty days of receipt of the panel's recommendation, the agency head shall respond in writing to the panel and the borough president, indicating which of the panel's recommendations shall be acted upon and what, if any, alternative action will be taken.

4. In the case of any contract regarding which more than one borough president has submitted a determination in accordance with paragraph one of this subdivision, the agency receiving such determinations shall notify each such borough president of the agency response submitted in accordance with paragraph two of this subdivision. A hearing, if any, held shall include the comments of all such borough presidents.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

Subd. b par 2 amended L.L. 68/1993 § 8, eff. Jan. 1, 1994.

FOOTNOTES

14

[Footnote 14]: * Chapter heading amended at General Election, November 7, 1989.



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NYC Charter 334

New York City Charter

CHAPTER 13 PROCUREMENT*14

§ 334. **Information on city contracts.**

a. Agency contract files. Each agency shall maintain files containing information pertaining to the solicitation, award and management of each contract of the agency in accordance with standard record maintenance requirements established pursuant to section three thousand four of this charter. The agency contract files shall contain copies of each determination, writing or filing required by this chapter pertaining to a contract and such information as is prescribed by rule of the procurement policy board, in such form as is prescribed by the procurement policy board. Agency contract files shall be open to the public inspection with adequate protection for information which is confidential.

b. Requests by elected officials for contract documentation. Whenever an elected official of the city requests documentation relating to the solicitation or award of any city contract, the mayor and city agencies shall promptly provide such documentation as is requested or shall promptly respond to the requesting official with reason why such documentation cannot be provided. If the mayor or agency is unable to provide the requested documentation within ten business days of the day the request is received, the mayor or agency shall within such time deliver to the requesting official a statement of the reasons the documentation can not be promptly provided and shall include in such statement a timetable within which the documentation will be provided, not to exceed thirty days from the date of the original request.

c. Centralized contract and contractor information. The mayor shall ensure that copies of city contracts and other standard information regarding city contracts and contractors are reasonably available for public inspection in accordance with provisions of section one thousand sixty-four of this charter.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

FOOTNOTES

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[Footnote 14]: * Chapter heading amended at General Election, November 7, 1989.



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New York City Charter

CHAPTER 13 PROCUREMENT*14

§ 335. **Centralized evaluation of contractor integrity, performance, and capability.**

The mayor may evaluate the integrity, performance, and capability of entities that contract with the city, are seeking to contract with the city, or may seek to contract with the city. The mayor may designate one or more agencies to participate in such efforts. The evaluations of the mayor and any agency designated by the mayor may include conclusions regarding whether the entity should be considered a responsible contractor. The mayor and any agency designated by the mayor may make such evaluations and conclusions available to agencies and the public through a centralized data base.

HISTORICAL NOTE

Section repealed and added at General Election, November 6, 2001 (Question 6 § 6) eff. November 6, 2001 with special provisions in § 1152 subd. h par (5).

Section added at General Election, November 7, 1989.

Subd. b par 3 subpar e amended L.L. 61/1991 § 2, eff. July 1, 1991.

CASE NOTES

¶ 1. When an informal hearing provides petitioner with an opportunity to be heard in accordance with the terms of a contract, a full evidentiary hearing is not required. When a contractor is found to be in default, the contractor is not automatically barred from contracting with the city in the future. A future contracting agency would decide at that time whether the petitioner is a responsible bidder and entitled to a full hearing pursuant to § 335. *A. I. Smith Electrical Contractors v. NYC Fire Dept.*, 176 AD2d 149 [1991].

¶ 2. Admin. Code § 6-124, which sought to prevent the City from purchasing uniforms manufactured in sweatshops (those in New York, or other states or countries) violates City Charter § 335, which vests in the Mayor the power to determine the qualifications of bidders on City contracts. In other words, the statute impermissibly encroaches on the Mayor's function and the discretion of the agencies vested with the duty to determine whether a bidder is responsible. The statute runs afoul of the doctrine of separation of powers. *Mayor of City of New York v. Council of City of New York*, 6 Misc.3d 533, 789 N.Y.S.2d 860 (Sup.Ct. New York Co. 2004).

FOOTNOTES

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[Footnote 14]: * Chapter heading amended at General Election, November 7, 1989.



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NYC Charter 362

New York City Charter

CHAPTER 14 FRANCHISES, REVOCABLE CONSENTS AND CONCESSIONS*18

§ 362. **Definitions.**

For the purposes of this charter:

a. "Concession" shall mean a grant made by an agency for the private use of city-owned property for which the city receives compensation other than in the form of a fee to cover administrative costs, except that concessions shall not include franchises, revocable consents and leases.

b. "Franchise" shall mean a grant by an agency of a right to occupy or use the inalienable property of the city to provide a public service.

c. "Responsible Agency" shall mean (1) with respect to a franchise, the agency designated by the mayor pursuant to section three hundred sixty-three or three hundred seventy-eight as the agency having primary expertise and responsibility for the type of franchise involved, (2) with respect to a revocable consent, the agency authorized to grant a revocable consent of the type involved pursuant to section three hundred sixty-four, or (3) with respect to a concession, the agency granting a concession.

d. "Revocable Consent" shall mean a grant by the city of a right, revocable at will, (1) to any person to construct and use for private use pipes, conduits and tunnels under, railroad tracks upon, and connecting bridges over inalienable property, (2) to an owner of real property or, with the consent of the owner, to a tenant of real property to use adjacent inalienable property for such purposes as may be permitted by rules of the department of transportation or the department of information technology and telecommunications or (3) to a public service corporation for facilities ancillary to, but not within, a franchise granted prior to the effective date of this section.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

Subd. d amended L.L. 24/1994 § 1, eff. July 5, 1994.

CASE NOTES

¶ 1. *Comptroller of the City of New York v. Mayor of the City of New York*, N.Y.L.J., June 23, 2005, at 25, col. 6, 2005 WL 1431691 (App.Div. 1st Dept.). City Charter § 362 applies to City-owned intellectual property. While the legislative history of the City Charter and concessions indicates that it has been applied predominantly to real property, and the legislative history does not specifically address intellectual property, there is nothing in the legislation that limits its application to real property.

FOOTNOTES

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[Footnote 18]: * Chapter heading amended at General Election, November 7, 1989.



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NYC Charter 363

New York City Charter

CHAPTER 14 FRANCHISES, REVOCABLE CONSENTS AND CONCESSIONS*18

§ 363. **Franchises.**

a. Franchises shall be awarded only in accordance with the provisions of an authorizing resolution adopted by the council pursuant to the provisions of this section.

b. An initial determination of the need for franchises of a particular type shall be made by the head of the agency designated by the mayor as having the primary expertise and responsibility in the policy area covered by that type of franchise. Upon making such a determination, such agency, with the advice of the corporation counsel and such other agencies as the mayor shall determine, shall prepare a proposed authorizing resolution for that type of franchise and shall submit such proposed authorizing resolution to the mayor. Such a proposed authorizing resolution shall set forth the nature of the franchise or franchises to be granted, the public service to be provided, the terms and conditions of the franchise or franchises, including any subsidies that will be given to a franchisee, the method by which proposals will be solicited for the franchise or franchises and the criteria to be used in evaluating the proposals submitted in response to such a solicitation.

c. The mayor may submit such a proposed authorizing resolution to the council. Promptly upon submission to the council, the text of any such authorizing resolution shall be published in the City Record. Within ninety days of receiving such a proposed resolution, the council or a committee of the council shall hold a public hearing on such resolution. The council may approve, approve with modifications or disapprove such resolution by majority vote. Any action of the council approving a modification to a proposed authorizing resolution or disapproving a proposed authorizing resolution shall be subject to the disapproval of the mayor in the same manner as a local law which is passed by the council, and any such disapproval shall be subject to reconsideration, repassing and adoption, notwithstanding the objections of the mayor, in the same manner as a local law which is disapproved by the mayor. The council may on its own initiative amend an authorizing resolution. The procedure for council review and approval of such a proposed amendment shall be the same as for an authorizing resolution.

d. No authorizing resolution or other action of the council may provide for any involvement by the council or any member of the council in the selection of a franchise pursuant to such resolution.

e. Pursuant to an authorizing resolution adopted by the council, the responsible agency may issue one or more requests for proposals or other solicitations of proposals, provided that (1) the corporation counsel shall have determined that the request for proposals is consistent with the provisions of the authorizing resolution and (2) no such request or solicitation shall be issued unless either the department of city planning has determined that the proposed franchise would not have land use impacts or implications or such request or solicitation has been reviewed and approved pursuant to section one hundred ninety-seven-c and section one hundred ninety-seven-d. A community board may waive a public hearing and the preparation of a written recommendation with respect to any such request for proposals or solicitation which in its judgment does not involve a substantial land use interest. Any such request for proposals or solicitation issued in accordance with this subdivision shall set forth the criteria and procedures to be utilized in evaluating the proposals submitted in response to such request or solicitation.

f. The selection of a franchisee shall be in accordance with the provisions of the authorizing resolution covering franchises of the type involved. Each such selection and each franchise agreement shall be subject to the review and approval of the franchise and concession review committee pursuant to sections three hundred seventy-one, three hundred seventy-two and three hundred seventy-three.

g. Nothing in this section shall preclude any agency, prior to proposing an authorizing resolution, from issuing one or more requests for information or other solicitations of information regarding the availability of potential franchisees with expertise in the subject matter of a proposed type of franchise, suggestions regarding the appropriate terms and conditions which should be contained in an authorizing resolution for that type of franchise or any other information which would assist the agency in determining how to proceed with regard to the public service involved.

h. All franchises shall be consistent with the following requirements:

(1) Every grant of a franchise or modification thereof must be by written agreement approved by the franchise and concession review committee and executed by the responsible agency under the authority of an authorizing resolution adopted by the council in accordance with the provisions of this chapter.

(2) No such agreement shall be for a longer period than twenty-five years except that in the case of a tunnel railroad it may be for a period not exceeding fifty years.

(3) The agreement may, at the option of the city, provide for giving to the grantee the right of renewals not exceeding in the aggregate twenty-five years on a fair redetermination of the compensation to the city to be made upon standards and methods as therein specified.

(4) At the termination of such agreement all the rights or property of the grantee in the inalienable property of the city to which the franchise relates shall cease without compensation.

(5) Any such agreement may provide that upon its termination the property, plant and equipment of the grantee shall, to the extent therein specified, thereupon be and become the property of the city, either without compensation to the grantee or on payment to the grantee of the fair value thereof as property, to be determined as provided in the contract, but excluding any value derived from the franchise. The city shall have the option either to take and operate on its own account the property, plant and equipment when so acquired, or to lease the same for a term not exceeding twenty years or to require that the property of the city be restored to its condition prior to the granting of the franchise.

(6) Every agreement granting a franchise for the performance of any public service shall contain an agreement by the grantee to recognize the right of its employees to bargain collectively through representatives of their own choosing, and at all times to recognize and deal with the representatives duly designated or selected by the majority of its employees for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment or other

conditions of employment and not to dominate, interfere with or participate in the management or control of or give financial support to any union or association of its employees. This subdivision shall not apply to a contract providing for a modification or amendment of or extension of service under a franchise not containing a similar provision, provided that the term of such franchise is not extended thereby.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

Subd. h is composite of amended former sections:

Subd. h par (1) was former § 363

Subd. h par (2) was former § 364 subd. a

Subd. h par (3) was former § 364 subd. b

Subd. h par (4) was former § 365

Subd. h par (5) was former § 366

Subd. h par (6) was former § 367 par b.

CASE NOTES TO FORMER § 363

¶ 1. Where the Board of Estimate passed a resolution granting to bus company "the franchise, right and consent" described in a form of proposed contract and authorizing the Mayor to execute the contract on behalf of the City, and the Mayor thereafter approved the resolution and the bus company signed and filed the proposed contract, the provisions of §§ 362, 363 and 373 of the Charter were substantially complied with and the contract extending the franchise was binding on the parties thereto, notwithstanding the failure of a City official to affix his signature. Such an act was merely ministerial and did not affect the validity of the contract.-*In re North Shore Bus Co. (City of N.Y.)*, 75 N. Y. S. 2d 372 [1947].

¶ 2. Operator of street cars and buses on City streets **held** required by franchise contract to pay compensation to City based on gross receipts of advertising company to which they had leased the space used in cars and buses for advertising, where it appeared that the advertising company had a total capital of only \$2000 consisting of 20 shares, 19 of which were owned by one of the plaintiffs which had furnished the funds for its organization and had complete charge of its business and supplied the officers and offices. The City was not estopped by any prior laxity in collecting. Furthermore, the advertising contracts were assigned in violation of provision of franchise requiring the city's consent and the assumption by the transferee of all obligations of the franchise contract.-*Third Ave. Transit Corp. v. City of N.Y.*, 183 Misc. 1027, 54 N. Y. S. 2d [1945], *aff'd* without opinion, 270 App. Div. 983, 62 N. Y. S. 2d 872 [1946].

¶ 3. Under franchise requiring bus company to pay City a fixed percentage of its gross receipts and defining gross receipts to include revenues of the company from whatever source, the company's receipts from lease of privilege of installing advertising cards in its buses were required to be included as part of its gross receipts for purpose of computing payments under the franchise. However, the company was required to include only what it received under the lease and not the gross receipts by its lessee.-*Madison Ave. Coach Co. v. City of N. Y.*, 82 N. Y. S. 2d 270 [1948], *aff'd* 274 App. Div. 1050, 86 N. Y. S. 2d 464 [1949], *aff'd*, 300 N. Y. 467, 88 N. E. 2d 656 [1949].

¶ 4. Plaintiff brewing company **held** not entitled to rescission of franchise or consent granted it by the Board of Estimate of the City of New York to maintain tunnels, pipes and other structures below and above the surface of a street running between and connecting plaintiff's plant and brewery on both sides of the street, on ground that plaintiff's predecessor had acquired a perpetual easement to maintain and use the structures under an award in a condemnation

proceeding whereby the City, in 1890, had acquired title to a portion of the street under and above which the structures were maintained, and that plaintiff had accepted the franchise under a mistake as to its rights. The evidence failed to establish the existence of underground or overhead structures in use by plaintiff's predecessor at time of the condemnation proceeding; failure of the City officials to enforce their possible rights for a long period of time could not be made the basis of an admission or estoppel resulting in possible loss of rights of the public or the municipality; and in the absence of proof that the structures were in existence at time of the award there was no basis for a conclusion that any easement to maintain them was reserved to plaintiff's predecessor. Furthermore, there was no basis for rescinding the franchise and consent for mistake, as every aspect of the situation had been fully investigated by competent persons over a nineteen-month period during which negotiations continued.-*Rubel Corp. v. City of N. Y.*, 73 N. Y. S. 2d 813 [1947].

¶ 5. Where in 1936 the Triborough Bridge Authority had granted defendant bus company a permit to operate bus service over its bridge and such permit had been approved by the Board of Estimate so far as use of City streets as terminals was concerned, with defendant being required to pay a 25 cent toll for each bus, and the City apparently was content from that time to the present to permit operation of such shuttle route without a City permit, the contention of the City which thereafter granted defendant a permit to operate service over the bridge during the World's Fair, that when defendant continued the shuttle route after the closing of the Fair it was operating a part of the routes authorized by the World's Fair consent and accordingly became liable to the City under such consent for a percentage of the gross receipts of the shuttle operation, **held** untenable. The World's Fair consent did not create a valid franchise inasmuch as there was no compliance with statutory requirements, and there was no clear acceptance of benefits under the unlawful consent as defendant in 1940 had notified the City that it had discontinued the operations under such consent and would make no further payments thereunder, and accordingly no estoppel could be invoked against defendant. Furthermore, since the City was free to end the shuttle operation at any time there was no mutual estoppel, and the estoppel invoked against defendant failed for such reason also. Also, City had failed to act with reasonable diligence inasmuch as it had taken no definite action during seven years of operation by defendant, during which defendant paid the Authority \$228,025.05 in tolls.-*City of N. Y. v. N. Y. C. Omnibus Corp.*, 84 N. Y. S. 2d 616 [1948].

¶ 6. Contention that the ferry charges were illegal because the City allegedly made a grant of a ferry franchise without complying with the Charter requirements, was overruled, where the City itself was operating the ferry and the charges were being collected by another only for purpose of turning them over to the City. In the circumstances, the City could not be deemed to have granted a franchise.-*Heller v. City of N. Y.*, 123 (19) N. Y. L. J. (1-27-50) 347, Col. 2 F.

¶ 7. Agreement of bus company that its surrender of its franchise to the City should in no way release it from any outstanding obligations to the City, and the City's resolution cancelling and terminating the rights of the bus company under the franchise, did not relieve the bus company from its obligation under the franchise contract to arbitrate certain disputes, and hence City properly initiated arbitration proceedings to settle valuation of the bus company's equipment which City proposed to purchase.-*In re North Shore Bus Co.*, (City of N. Y.), 75 N. Y. S. 2d 372 [1947].

¶ 8. Complaint, in action by water service corporation against City of New York to recover for breach of franchise held by plaintiff to supply water in a part of the City, arising from City's failure to issue permits required by plaintiff to carry on its business under the franchise, would be permitted to stand notwithstanding contention that plaintiff as a franchise holder was limited to a proceeding under C. P. A. Article 78. Use of plaintiff's wells may have been in conflict with the sovereign policy of the State or of the municipality, and the attempted use of mandamus to obtain the permits was met with the decision that the application had been rendered academic by exercise of the municipality's power of eminent domain.-*N. Y. Water Service Corp. v. City of N. Y.*, 201 Misc. 594, 116 N. Y. S. 2d 290 [1952], *aff'd*, 279 App. Div. 1048, 113 N. Y. S. 2d 260 [1952], *aff'd*, 304 N. Y. 945, 110 N. E. 2d 885 [1953].

¶ 9. Under the Charter, two public hearings are required in connection with the grant of a franchise, the first being a hearing upon the petition for a contract and the second upon the form of the contract itself. The Board of Estimate was not confined to the precise form of contract mentioned by the applicant in his petition, as evidenced by the provision for

a second hearing which otherwise would serve no useful purpose. In fact, the petition need not refer to the terms of the proposed contract at all. Consequently, the fact that the original application was for a "franchise" and the contract granted was described as a "permit" and that the applicant offered to enter into a certain type of contract and the final contract was different, was immaterial.-*Loos v. City of New York*, 257 App. Div. 219, 13 N. Y. 2d 119 [1939].

¶ 10. Franchise issued by City to plaintiff to transport passengers to and from city's airports and Nassau County was not unconstitutional because it required plaintiff to pay City one per cent of its gross revenue which plaintiff claimed to be far in excess of the payments required by similar businesses where the terms of the franchise were reached after substantial negotiations between the parties.-*Long Island Airports Limousine Service Corp. v. City of N. Y.*, 166 (79) N. Y. L. J. (10-22-71) 2, Col. 5 F.

¶ 11. Although a proposed grant of a cable television franchise must be approved by the City Council, the role of the City Council ends after the Council's approval of the resolution. The City Council does not participate in the selection of a franchisee. Thus, a franchise can be renewed by action of the Public Service Commission and the Franchise City's Franchise and Concession Review Committee, without the approval of the City Council. Council of the City of New York v. Public Service Commission, 99 N.Y.2d 64, 751 N.Y.S.2d 822 (2002).

CASE NOTES TO FORMER § 364

¶ 1. City might lawfully grant a terminable permit for operation of bus line pursuant to Transportation Corporations Law, Art. V, and at the same time provide for a fixed maximum term pursuant to Charter § 361 et seq. There is no inconsistency between a permit terminable at will but having a maximum life of ten years. Nothing in the Transportation Corporations Law prevented the City from taking advantage of the Charter provisions authorizing a fixed term contract, or from combining the two forms of contracts, provided they were not inconsistent.-*Loos v. City of N. Y.*, 257 App. Div. 219, 13 N. Y. S. 2d 119 [1939], rev'g 170 Misc. 14, 104, 9 N. Y. S. 2d 760.

¶ 2. Condition inserted in the certificate of convenience and necessity issued by Transit Commission to bus line, that the rights thereby granted should terminate on April 20, 1941, constituted a valid condition within the power of the Transit Commission to impose.-*Clark v. City of N. Y.*, 176 Misc. 893, 28 N. Y. S. 2d 110 [1941], aff'd without opinion, 262 App. Div. 855, 28 N. Y. S. 2d 182 [1941].

CASE NOTES TO FORMER § 366-a

(bracketed out of law at General Election, November 7, 1989)

¶ 1. Where a proposed contract was for a full service broad band communications system and the franchise originally proposed was for a closed circuit communications system plaintiff demonstrated a clear likelihood that it would succeed in establishing upon trial the illegality of the contract because the variance between the contract now proposed and the original petition was so material and substantial that a new hearing should have been scheduled upon a new petition proposing a full cable television system.-*Orth-O-Vision v. City of N. Y.*, 101 Misc. 2d 987, 422 N. Y. S. 2d 781 [1979].

¶ 2. Community boards and borough board must be given the opportunity to review petitions for cable television franchises even though they might involve relatively little land impact.-*Id.*

CASE NOTES TO FORMER § 367

¶ 1. The power to grant franchises conferred upon the City of New York by § 367 of the Charter is primarily designed to protect the City in the use of its streets, and the fares to be provided are incidental.-*East Side Omnibus Corp. v. Maltbie*, 186 Misc. 424, 61 N. Y. S. 2d 81 [1946], aff'd 271 App. Div. 81, 63 N. Y. S. 2d 712 [1946], aff'd, 296 N. Y. 893, 72 N. E. 2d 618 [1947].

¶ 2. The Public Service Commission possessed power to direct a reduction of the rates of fare of bus companies operating under franchises with the City of New York notwithstanding such franchises fixed the rate of fare, and to conduct the necessary investigation upon which to base a determination as to reduction of fares. The incidental power granted to the City to regulate fares yields to the general power of the Public Service Commission where the State occupies the disputed area of regulation. That some of the companies involved were successors to street car companies which served similar routes, and that the rates of fare were fixed by franchise agreements between the City and such companies before occupation of the field of regulation by the State in 1907, did not preclude the Legislature from fixing a different rate of fare.-Id.

CASE NOTES TO FORMER § 368

(bracketed out of law at General Election, November 7, 1989)

¶ 1. Consent given by City to operation by defendant of certain bus routes did not create a valid franchise where the consent was granted without compliance with any of the provisions of the Charter, and operation under it could have been enjoined at instance of a taxpayer or other interested party.-City of N. Y., v. N. Y. C. Omnibus Corp., 84 N. Y. S. 2d 616 [1948].

¶ 2. New York World-Telegram, a newspaper which is printed and first given to the public in the Borough of Manhattan, although ultimately circulated throughout the City, **held** not to be a newspaper "published" in the Borough of Queens within meaning of Charter § 368, requiring notice of public hearing upon a franchise petition to be published in newspapers published in the Borough affected, since the "place of publication" is the place where the paper is first given to the public for circulation. Hence the contract awarded for operation of buses was illegal because the notice of hearing upon the contract was not published in two newspapers published in the Borough of Queens, where one of the two newspapers was the World-Telegram.-Id.

¶ 3. Objection to publication in the Wall Street Journal as not being published in Queens was not valid when petitioner failed in its burden of showing that a daily newspaper was published in Queens.-Orth-O-Vision v. City of N. Y., 101 Misc. 2d 987, 422 N. Y. S. 2d 781 [1979].

¶ 4. Where a proposed contract was for a full service broad band communications system and the franchise originally proposed was for a closed circuit communications system plaintiff demonstrated a clear likelihood that it would succeed upon trial in establishing the illegality of the contract because the variance between the contract now proposed and the original petition was so material and substantial that the procedure required by this section for awarding a franchise was violated in that a new hearing was not scheduled upon a new petition proposing a full cable television system.-Orth-O-Vision v. City of N. Y., 101 Misc. 2d 987, 422 N. Y. S. 781 [1979].

CASE NOTES TO FORMER § 369

(bracketed out of law at General Election, November 7, 1989)

¶ 1. Order staying enforcement of an injunction against respondents' operation of buses to and from a race track in order to afford the respondents an opportunity to obtain necessary certificates of public convenience and to make applications for municipal franchises, would be extended for a further two-month period, where the applications could not presently be acted upon by the Board of Estimate, the vehicles were presently under regulation of public authority, particularly that of the Police Department, having been thought originally to come within the provisions of the New York City Administrative Code applying to sight-seeing buses, and the respondents had shown reasonable diligence and had attempted to comply with the law.-Maltbie v. Veterans Bus Corp., 81 N. Y. S., 2d 622 [1948].

¶ 2. Under the charter, two public hearings are required in connection with the grant of a franchise, the first being a hearing upon the petition for a contract and the second upon the form of the contract itself. The Board of Estimate was not confined to the precise form of contract mentioned by the applicant in his petition, as evidenced by the provision for

a second hearing which otherwise would serve no useful purpose. In fact, the petition need not refer to the terms of the proposed contract at all. Consequently, the fact that the original application was for a "franchise" and the contract granted was described as a "permit" and that the applicant offered to enter into a certain type of contract and the final contract was different, was immaterial.-*Loos v. City of New York*, 257 App. Div. 219, 13 N. Y. S. 2d 119 [1939].

¶ 3. Waiver by Con. Ed. of certain credits against spec. franchise taxes (§ 626 Real Prop Tax L) in agreement with N. Y. C. to use certain streets, public places and sidewalks for installation and maintenance of transformer vaults and related equipment is enforceable and not against public policy. Furthermore, § 369 N. Y. C. Charter authorizes waiving benefits by empowering bd. of estimate to determine adequacy of proposed compensation and embody its determination in a contract with conditions.-*Con. Ed. v. N. Y. C.* 92 A. D. 2d 484, affirmed, 61 N. Y. 2d 623 [1983].

CASE NOTES TO FORMER § 372

(bracketed out of law at General Election, November 7, 1989)

¶ 1. Contract between the City and certain corporations, providing for the acquisition of real property for, and the financing, operation and supervision of a slum clearance and development project, **held** not to constitute a "franchise" within the meaning of Chapter 14 of the Charter, and particularly § 372 of the Charter requiring a three-fourths vote of the Board of Estimate to constitute a valid franchise. That the carrying out of the project would necessitate the closing of streets within the area, and that the contract gave the development company the right to construct and operate pipes, conduits and tunnels under the street for heat and other utilities, did not constitute the granting of the franchise, as franchise in the use of the street within the purview of the Charter means use thereof by public service companies in connection with the sale of their facilities to the public generally.-*Goldstein v. La Guardia*, 180 Misc. 738, 43 N. Y. S. 2d 202 [1943].

¶ 2. Housing project entered into by the City of New York pursuant to the Redevelopment Companies Law providing that the approval of a housing plan by the local legislative body may be by resolution adopted by a majority of the whole number of votes authorized to be cast by all the members thereof, was validly entered into by the City. Contention that a three-fourths vote of the Board of Estimate was required for approval of the project because public streets of the City were involved was rejected, as the contract did not call for the granting of any franchise, and moreover the Redevelopment Companies Law was one of statewide application.-*Pratt v. LaGuardia*, 182 Misc. 462, 47 N. Y. S. 2d, 359 [1944], aff'd 268 App. Div. 973, 52 N. Y. S. 2d 569, [1944].

FOOTNOTES

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[Footnote 18]: * Chapter heading amended at General Election, November 7, 1989.



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CHAPTER 14 FRANCHISES, REVOCABLE CONSENTS AND CONCESSIONS*18

§ 364. **Revocable consents.**

a. A revocable consent shall not be granted for a use that would interfere with the use of inalienable property of the city for public purposes, nor shall a revocable consent be granted for a purpose for which a franchise may be granted.

b. All revocable consents shall be revocable at any time by the responsible agency, shall be granted for a fixed term, and shall provide for adequate compensation to be annually provided to the city during the continuance of the consent.

c. Revocable consents, other than for telecommunications purposes, may be granted by the department of transportation with respect to property under its jurisdiction or by such other agency as may be authorized by law to grant revocable consents. Revocable consents for telecommunications purposes may be granted by the department of information technology and telecommunications. All revocable consents shall require the approval of the department of transportation.

d. Every petition for the grant of a revocable consent shall be filed with the department of transportation. Each petition shall state the location of the proposed revocable consent and shall be in such form and contain such other information as the department of transportation and other responsible agencies, if any, shall require by rule. Petitions for each type of revocable consent shall be distributed to and reviewed by the agencies required to do so by local law or executive order of the mayor. If, in the judgment of the department of city planning, a proposed revocable consent has land use impacts or implications, the petition for the proposed revocable consent shall be subject to review and approval pursuant to section one hundred ninety-seven-c and section one hundred ninety-seven-d.

e. Notwithstanding any provision of this charter or the administrative code, revocable consents to construct and operate sidewalk cafes shall be reviewed pursuant to subchapter six of chapter two of title twenty of the administrative code.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

Former § 374 governed revocable consents, amended L. L. 1977, No. 102.

Subd. c amended L.L. 24/1994 § 2, eff. July 5, 1994.

CASE NOTES TO FORMER § 374

¶ 1. Plaintiff's assignor, having requested, and the Board of Estimate granted, an extension of the date of revocation of its franchise, or a suspension of the resolution of revocation, could not now question the legality of the extension for the purpose of avoiding its obligation to make the agreed franchise payments. However, it would seem that the Board, acting as a legislative body, could lawfully modify its original resolution by extending the date of revocation of the franchise, as requested by the licensee.-*Bauer v. City of N. Y.*, 107 (14) (1-17-42) 253, Col. 1 F.

¶ 2. Although public streets were involved in the granting of a contract for a redevelopment project, inasmuch as the contract did not call for the granting of any franchise, the three-fourths vote required by this section was not necessary.-*Pratt v. La Guardia*, 182 Misc. 462, 47 N. Y. S. 2d 359 [1944], *aff'd* 268 App. Div. 973, 52 N. Y. S. 2d 569 [1944].

FOOTNOTES

18

[Footnote 18]: * Chapter heading amended at General Election, November 7, 1989.



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NYC Charter 365

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CHAPTER 14 FRANCHISES, REVOCABLE CONSENTS AND CONCESSIONS*18

§ 365. **Terms of agreements; enforcement.**

a. Every agreement memorializing the terms and conditions of a franchise, revocable consent or concession shall contain adequate provisions by way of forfeiture or otherwise (1) to secure efficiency of public service at reasonable rates, if a public service is to be provided, (2) to assure the maintenance of the property of the city in good condition throughout the term of the agreement, and (3) to provide for adequate compensation to the city.

b. Every agreement memorializing the terms and conditions of a franchise, revocable consent or concession shall contain an agreement by the grantee that it will (1) permit the placement or display of the public health messages required by section 17-621 of the code, on any property subject to such franchise, revocable consent or concession, or any facility, plant, equipment or other property used in connection with such franchise, revocable consent or concession; and (2) bear any costs associated with the posting of such public health messages and any costs in terms of foregone advertising revenues associated with the placement or display of such public health messages.

c. The responsible agency shall also monitor the performance of the grantee and enforce the terms and conditions of any franchise, revocable consent or concession under its jurisdiction.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

Subd. b added L.L. 83/1992 § 6, eff. Apr. 25, 1992.

Subd. c relettered L.L. 83/1992 § 6, eff. Apr. 25, 1992 (formerly subd. b)

FOOTNOTES

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[Footnote 18]: * Chapter heading amended at General Election, November 7, 1989.



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NYC Charter 371

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CHAPTER 14 FRANCHISES, REVOCABLE CONSENTS AND CONCESSIONS*18

§ 371. **Public hearing on proposed agreement; publication of notice.**

The franchise and concession review committee in the case of a franchise, or the responsible agency in the case of a revocable consent, shall hold a public hearing on the proposed agreement memorializing the terms and conditions of each proposed franchise or revocable consent before final approval of the proposed franchise or consent. Any such public hearing conducted by the franchise and concession review committee shall be held within thirty days of the filing with the committee by the responsible agency of a proposed agreement containing the terms and conditions of the proposed franchise. No hearing held by the franchise and concession review committee or by the responsible agency shall be held until after notice thereof and a summary of the terms and conditions of the proposed agreement shall have been published for at least fifteen days, except Sundays and legal holidays, immediately prior thereto in the City Record, nor until a notice of such hearing, indicating the place where copies of the proposed agreement may be obtained by all those interested therein, shall have been published at least twice at the expense of the proposed grantee in a daily newspaper designated by the mayor which is published in the city of New York and having a circulation in the borough or boroughs in which the affected property of the city is located and a weekly newspaper or newspapers designated by the mayor which are published in the city of New York and have a circulation in the community district or districts in which the affected property of the city is located. In the event a franchise or revocable consent relates to property of the city located in more than one borough, notice of hearing in a weekly newspaper shall not be required; however, in that event, notice of hearing in two daily newspapers, and mailing by the grantee, no later than fifteen days immediately prior to the date of the public hearing, of such notice to the borough presidents and community boards and council members in whose districts the affected property of the city is located, shall be required. In the case of a franchise for a bus route which crosses one or more borough boundaries, notice of hearing in a weekly newspaper shall not be required; however, in that event, notice of hearing in two daily newspapers, and mailing by the grantee, no later than fifteen days immediately prior to the date of the public hearing, of such notice to the borough presidents and community boards and council members in whose districts the bus route is located, and posting of such notice in the buses operating upon such route, shall be required.

HISTORICAL NOTE

Amended by L. L. 1979, No. 102.

Amended at General Election, November 7, 1989.

Section amended L.L. 78/1990 § 1, eff. Feb. 5, 1991.

CASE NOTES

¶ 1. Notice of the hearing on the proposed contract was not required to be published in the same two newspapers as the petition and notice of public hearing required under § 368 where between the dates of publication of these two required notices one of the newspapers ceased publications.-*Orth-O-Vision v. City of N. Y.*, 101 Misc. 2d 987, 422 N. Y. S. 2d 781 [1979].

FOOTNOTES

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[Footnote 18]: * Chapter heading amended at General Election, November 7, 1989.



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CHAPTER 14 FRANCHISES, REVOCABLE CONSENTS AND CONCESSIONS*18

§ 372. **Powers of the mayor.**

a. The separate and additional approval of the mayor shall be necessary to the validity of every franchise agreement and revocable consent agreement.

b. Every such agreement shall before it takes effect be presented, duly certified, to the mayor for approval. Such agreement shall not be effective unless approved by the mayor within sixty days after it is presented to the mayor.

HISTORICAL NOTE

Section renumbered and amended at General Election, November 7, 1989 (formerly § 373).

FOOTNOTES

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[Footnote 18]: * Chapter heading amended at General Election, November 7, 1989.



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NYC Charter 373

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CHAPTER 14 FRANCHISES, REVOCABLE CONSENTS AND CONCESSIONS*18

§ 373. **Franchise and concession review committee.**

a. A franchise and concession review committee is hereby established. The committee shall consist of the following officials or their designees: the mayor, who shall serve as chair; the director of the office of management and budget; the corporation counsel; the comptroller; and one additional appointee of the mayor. Whenever the committee reviews a proposed franchise or concession or the procedures for granting a particular concession, the borough president of the borough in which such franchise or concession is located or his or her designee shall also serve as a member of the committee. If such a franchise, concession or procedure relates to more than one borough, the borough presidents of such boroughs shall designate one of such borough presidents or another individual to serve as a member of the committee for the purpose of considering such matter.

b. The mayor shall designate a public officer or employee to act as the clerk of the committee who shall be responsible for maintaining the records and minutes of the committee and performing such other duties as may be required.

c. The committee shall act by the affirmative vote of at least four members except that the affirmative vote of at least five members shall be required to approve a franchise agreement.

d. The committee shall:

(1) adopt rules establishing procedures for granting concessions through public bidding or by other means designed to ensure a competitive and fair process;

(2) review and approve the granting of concessions that are proposed to be granted pursuant to procedures that differ from the procedures established by the rules of the committee; provided, however, that the committee need not review awards of concessions that are not subject to renewal and have a term of less than thirty days;

(3) determine whether each franchise agreement proposed by a city agency is consistent with the request for proposal or other solicitation pursuant to which such agreement was negotiated and require appropriate modifications to any such agreements to correct any significant inconsistencies; and

(4) review and approve the selection of franchisees pursuant to subdivision f of section three hundred sixty-three.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

FOOTNOTES

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[Footnote 18]: * Chapter heading amended at General Election, November 7, 1989.



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CHAPTER 14 FRANCHISES, REVOCABLE CONSENTS AND CONCESSIONS*18

§ 374. **Concessions.**

a. No city agency shall grant a concession without either complying with the procedures established by the franchise and concession review committee or obtaining the approval of the committee prior to granting the concession.

b. The city planning commission shall adopt rules that either list major concessions or establish a procedure for determining whether a concession is a major concession. A "major concession" shall mean a concession that has significant land use impacts and implications, as determined by the commission, or for which the preparation of an environmental impact statement is required by law. All major concessions shall be subject to review and approval pursuant to section one hundred ninety-seven-c and section one hundred ninety-seven-d.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

FOOTNOTES

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[Footnote 18]: * Chapter heading amended at General Election, November 7, 1989.



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CHAPTER 14 FRANCHISES, REVOCABLE CONSENTS AND CONCESSIONS*18

§ 375. **Registration with the comptroller.**

All agreements memorializing the terms of franchises, revocable consents or concessions shall be agreements subject to the applicable registration requirements and other provisions of section three hundred twenty-eight except that the terms "vendor" and "contractor" as used in section three hundred twenty-eight shall be deemed to apply to the holders of franchises, revocable consents and concessions.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

FOOTNOTES

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[Footnote 18]: * Chapter heading amended at General Election, November 7, 1989.



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CHAPTER 14 FRANCHISES, REVOCABLE CONSENTS AND CONCESSIONS*18

§ 376. **Central file.**

Copies of all franchise and revocable consent agreements shall be filed with the department of transportation. The department of transportation shall compile and keep up to date a listing of all current franchises and revocable consents which shall be available to the public and shall include the date, terms, names of the parties, description of the permitted use and location of each franchise and revocable consent. Such listing shall be arranged and indexed so as to enable a member of the public to determine what current franchises and revocable consents involving use or occupancy of streets and sidewalks have been granted for any location in the city and the identity of the holder of each such franchise or revocable consent.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

FOOTNOTES

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[Footnote 18]: * Chapter heading amended at General Election, November 7, 1989.



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CHAPTER 14 FRANCHISES, REVOCABLE CONSENTS AND CONCESSIONS*18

§ 377. **Bureau of Franchises.**

The bureau of franchises shall be discontinued as of the first day of July, nineteen hundred ninety. The records and staff of the bureau of franchises shall be transferred to the department of transportation, except that the records and staff of the bureau relating to telecommunications franchises shall be transferred to the department of telecommunications and the records relating to energy shall be transferred to such agency as the mayor shall designate.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

FOOTNOTES

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[Footnote 18]: * Chapter heading amended at General Election, November 7, 1989.



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CHAPTER 14 FRANCHISES, REVOCABLE CONSENTS AND CONCESSIONS*18

§ 378. **Transition.**

a. All franchises, revocable consents and concessions granted prior to the effective date of this section shall remain in full force and effect for the terms which they were granted.

b. Not later than the first day of March, nineteen hundred ninety, the mayor shall designate a single agency as the responsible agency for each type of franchise currently granted by the city. If such an agency intends to continue granting any such type of franchise, the agency shall submit to the council a proposed authorizing resolution for such type of franchise at least two years, or such shorter period as may be approved by the franchise and concession review committee, prior to the earliest expiration date of any existing franchise of that type; provided, however, that the department of transportation, with the approval of the franchise and concession review committee, may extend the expiration date of the operating authority of any private bus company that does not receive a subsidy from the city to a date not later than the thirtieth day of June, two thousand and nine. Notwithstanding the provisions of section three hundred seventy-one, the public notice and hearing requirements of the franchise and concession review committee with respect to an approval of an extension of the operating authority of a private bus company shall be fully satisfied by a public hearing held after notice of such hearing shall have been published at least one day prior thereto in the City Record.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

Subd. b amended L.L. 30/2008 § 1, eff. June 30, 2008.

Subd. b amended L.L. 30/2007 § 1, eff. June 14, 2007 and deemed to have been in full force and effect on and after June 29, 2007.

Subd. b amended L.L. 26/2006 § 1, eff. July 11, 2006 and deemed to have been in full force and effect on and after June 28, 2006.

Subd. b amended L.L. 132/2005 § 1, eff. Dec. 29, 2005 and deemed in full force and effect on and after Dec. 1, 2005.

Subd. b amended L.L. 110/2005 § 1, eff. Dec. 19, 2005 and deemed to have been in full force and effect on and after Nov. 30, 2005.

Subd. b amended L.L. 78/2005 § 1, eff. Aug. 9, 2005 and deemed to have been in full force and effect on and after July 31, 2005.

Subd. b amended L.L. 54/2005 § 1, eff. May 19, 2005 and deemed to have been in full force and effect on and after Apr. 30, 2005.

Subd. b amended L.L. 27/2005 § 1, eff. Mar. 29, 2005 and deemed to have been in full force and effect on and after Mar. 26, 2005.

Subd. b amended L.L. 3/2005 § 1, eff. Jan. 3, 2005 and deemed to have been in full force and effect on and after Dec. 31, 2004.

Subd. b amended L.L. 56/2004 § 1, eff. Dec. 1, 2004.

Subd. b amended L.L. 29/2004 § 1, eff. June 30, 2004 and deemed in force June 24, 2004.

Subd. b amended L.L. 28/2004 § 1, eff. June 30, 2004 and deemed in force June 1, 2004.

Subd. b amended L.L. 71/2003 § 1, eff. Nov. 26, 2003.

Subd. b amended L.L. 57/2003 § 1, eff. Sept. 4, 2003.

Subd. b amended L.L. 79/2001 § 1, eff. Dec. 27, 2001.

Subd. b amended L.L. 52/2000 § 1, eff. Sept. 12, 2000.

Subd. b amended L.L. 8/2000 § 1, eff. Feb. 22, 2000.

Subd. b amended L.L. 74/1999 § 1, eff. Dec. 13, 1999.

Subd. b amended L.L. 47/1998 § 1, eff. Oct. 14, 1998.

Subd. b separately amended L.L. 87/1995 § 1, eff. Dec. 4, 1995 and L.L. 25/1995 § 1, eff. Apr. 10, 1995.

Subd. b amended L.L. 71/1992 § 1, eff. Aug. 13, 1992.

Subd. b amended L.L. 83/1991 § 1, eff. Aug. 15, 1991.

FOOTNOTES



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NYC Charter 381

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CHAPTER 15 PROPERTY OF THE CITY

§ 381. **Authority to acquire real property.**

The city may acquire title in fee to real property or any interest therein whenever required for any public or municipal use or purpose or for the promotion of public utility, comfort, health, enjoyment or adornment. Such title or interest shall be acquired according to law by purchase, condemnation or otherwise.

CASE NOTES

¶ 1. The delegation of the right of eminent domain by the State, under which right the City took petitioner's property, was within the power of the State.-*Matter of City of New York (Brooklyn-Battery T. Plaza)*, 186 Misc. 603, N. Y. S. 2d 303 [1946], *aff'd*, 270 App. Div. 1027, 64 N. Y. S. 2d 175 [1947].

¶ 2. The Commercial Rent Law did not have as its purpose, the prevention of a city from acquiring property for a public improvement by eminent domain during the period of the housing emergency. Thus, the petitioner, as the former owner of a building taken under the City's power of eminent domain and thereafter a tenant at will could not enjoin the city from removing it as a tenant on the ground that it was protected in its tenancy by the Commercial Rent Law. The right to take private property means the right to take not only the legal title, but also the physical possession of the property.-*Matter of City of New York (Brooklyn-Battery T. Plaza)*, 186 Misc. 603, 62 N. Y. S. 2d 303 [1946], *aff'd*, 270 App. Div. 1027, 64 N. Y. S. 2d 175 [1947].



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CHAPTER 15 PROPERTY OF THE CITY

§ 382. **Notice to owners of proceeding to acquire property.**

In addition to all other requirements of law, written notice of the application to have compensation for real property ascertained in any proceeding brought by the city to acquire title to real property shall be given by the corporation counsel to the owners of all property affected by the proceeding at least ten days prior to such application, by mailing the same to such owners at the address registered or filed with the commissioner of finance for the purpose of forwarding to them bills for taxes, assessments and frontage water rates. Such notice shall state the purpose for which the property is to be acquired and the date when such application will be presented and shall contain a copy of such application. Upon request by the corporation counsel, the commissioner of finance shall furnish a certified list of the registered or filed names and addresses of such owners. Failure to comply with the directions contained in this section shall not invalidate or affect the proceeding.

HISTORICAL NOTE

Amended by L. L. 1968, No. 10.

Amended by L. L. 1970, No. 30.

Amended by L. L. 1976, No. 28.

Amended at General Election, November 7, 1989.

CASE NOTES

¶ 1. Fact that City failed to give proper notice of street extension proceeding **should not** weigh against the City on motion by owner for payment of condemnation award.-Application of Joseph E. Marx Co. Inc. 139 N. Y. S. 2d 311

[1954].



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NYC Charter 383

New York City Charter

CHAPTER 15 PROPERTY OF THE CITY

§ 383. **Inalienable property.**

The rights of the city in and to its water front, ferries, wharf property, bridges, land under water, public landings, wharves, docks, streets, avenues, highways, parks, waters, waterways and all other public places are hereby declared to be inalienable; but upon the closing or discontinuance of any street, avenue, park or other public place, the property may be sold or otherwise disposed of as may be provided by law, and leases of land under water, wharf property, wharves, docks and piers may be made as may be provided by law. Nothing herein contained shall prevent the granting of franchises, permits and licenses in respect to inalienable property.

HISTORICAL NOTE

Section amended at General Election, November 7, 1989.

CASE NOTES

¶ 1. The City of New York has no power to sell or offer to sell land acquired for park purposes to private purchasers without the sanction of the legislature.-*Aldrich v. City of N. Y.*, 208 Misc. 930, 145 N. Y. S. 2d 732 [1955].

¶ 2. Under Lien Law § 3 the lien attaches, with respect to property owned by municipal corporations, not to the land and the improvements thereon but to any sum that the municipality may have appropriated for the purpose of making the improvements. Hence, no lien could attach to the interests of New York City in land leased by the City to the World's Fair Corporation and in turn leased to a concessionaire which had contracted for the erection of the improvement against which the lien was asserted. The City could take the land belonging to it and lease it for a private purpose and still claim that it did not thereby subject the fee of the land to a lien to the same extent as other private lands. The inalienability of city-owned real estate under Charter § 383 was required to be preserved.-*John Kennedy & Co. v. New York World's Fair*, 260 App. Div. 386, 22 N. Y. S. 2d 901 [1940] *aff'd*, 288 N. Y. 494, 41 N. E. 2d 789

[1943].

¶ 3. Since 1935 plaintiff continuously and without consent used a portion of defendant's adjoining property to gain access to a garage at the rear of their premises. Thereafter the premises were deeded to the City of New York for police station purposes. **Held:** the property was dedicated to a public use and fell within the definition of inalienable property. Consequently, the doctrine of prescriptive right could not be asserted. -Cotrone v. City of New York, 38 Misc. 2d 580, 237 N. Y. S. 2d 487 [1963].

¶ 4. The New York City Transit Authority cannot be held liable for injuries caused by the defective condition of a city sidewalk, since the TA does not own, maintain, operate or control the public streets. Thus, the TA did not have a duty to exercise reasonable care with respect to an area five feet from the subway entrance where plaintiff fell. Patanzis v. City of New York, 211 A.D.2d 427, 621 N.Y.S.2d 57 (1st Dept. 1995).

¶ 5. A contractor cannot obtain a mechanic's lien against City-owned property. Instead, the contractor would have to obtain a public improvement lien, which does not attach to the property itself but instead secures a creditor's interest upon the money of the public corporation which is supposed to be applied to the construction of such improvements. EMC Iron Works v. City of New York, 742 N.Y.S.2d 230 (App.Div. 1st Dept. 2002).

¶ 6. The granting of a concession for an amphitheater in a city park is a permissible park use, so that legislative approval is not required. SFX Entertainment, Inc. v. City of New York, 297 A.D.2d 555, 747 N.Y.S.2d 91 (1st Dept. 2002).



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NYC Charter 384

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CHAPTER 15 PROPERTY OF THE CITY

§ 384. **Disposal of property of the city.**

a. No real property of the city may be sold, leased, exchanged or otherwise disposed of except with the approval of the mayor and as may be provided by law unless such power is expressly vested by law in another agency.

b. Except as otherwise specifically provided by law:

1. The mayor may authorize the sale or lease only for the highest marketable price or rental, at public auction or by sealed bids and after advertisement for at least thirty days in the City Record, of any real property belonging to the city or any interest therein. No such sale or lease shall be authorized until a public hearing has been held with respect to such sale or lease after the publication of notice in the City Record at least thirty days in advance of such hearing. No such lease shall run for a term longer than ninety-nine years. Any conveyance or lease may provide for the restriction of the use of such real property.

2. Real property of the city may be leased only after appraisal made within six months prior to the authorization of the lease by the mayor, provided, however, that advertisement for a public auction or for sealed bids shall be commenced within sixty days of such authorization.

3. Real property of the city may be sold only after appraisal made within six months prior to the authorization of the sale and after a review of such appraisal by the department of citywide administrative services within thirty days prior to authorization of the sale, provided that advertisement for the public auction for such sale shall be commenced within sixty days of such authorization.

4. Notwithstanding the provisions of this charter, or any general, special, or local law to the contrary, the mayor may, with the approval of a majority of the members of the borough board of the borough in which such real property is located, lease or sell any real property of the city, except inalienable property or any interest therein, to a local

development corporation without competitive bidding and for such purpose or purposes and at such rental or for such price as may be determined by the mayor to be in the public interest, and no such lease shall run for a term longer than ninety-nine years.

5. Any application for the sale, lease (other than lease of office space), exchange or other disposition of real property of the city shall be subject to review and approval pursuant to sections one hundred ninety-seven-c and one hundred ninety-seven-d. Such review shall be limited to the land use impact and implications of the proposed transaction.

(a) A community board may waive the conduct of a public hearing and the preparation of a written recommendation with respect to any proposed lease of property which in the judgment of the board does not involve a substantial land use interest.

(b) The city planning commission may waive a public hearing on any application involving a lease of property.

HISTORICAL NOTE

Section amended by L. 1967, ch. 757.

Section amended by L. L. 1968, No. 69.

Section amended by L. 1973, ch. 668.

Section amended at General Election, November 4, 1975.

Subd. b amended by L. L. 1977, No. 22.

Subd. b amended by L. L. 1977, No. 102.

Subd. b amended by L. L. 1979, No. 29.

Section amended at General Election, November 7, 1989.

Subd. b par 3 amended L.L. 59/1996 § 12, eff. Aug. 8, 1996.

NOTE

Provisions of ch. 239/1995 eff. July 26, 1995

AN ACT in relation to authorizing the city of New York to sell waterfront property including the land under water appurtenant thereto owned by or which may be acquired in the future by such city in the lands known as Broad channel in the borough of Queens and to repeal chapter 756 of the laws of 1973 relating to the power of the city of New York to sell certain lands in Broad channel in the county of Queens.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Notwithstanding any inconsistent provisions of section 20 of the general city law or section 383 of the New York city charter restricting the alienation of waterfront property and land under water, the city of New York is hereby authorized to sell and convey all or any part of the right, title, and interest which the city now has or which it may hereafter acquire by virtue of in rem tax foreclosure proceedings in the lands known as "Broad channel", tax blocks 15300 through and including tax block 15500 on the tax map of the city of New York for the borough of Queens.

Except as otherwise provided in sections two and three of this act, the sale of such lands shall be subject to section 384 of the New York city charter.

§ 2. Notwithstanding any inconsistent provision of section 384 of the New York city charter and subject to review pursuant to sections 197-c and 197-d of the New York city charter, for a period of five years after the effective date of this act, the mayor of such city may authorize the sale, without competitive bidding and for such consideration and upon such terms and conditions as shall be determined by the mayor of such city, of the city's right, title, and interest in any parcel or parcels of the property described in section one of this act which on August 19, 1982 was subject to a leasehold: (i) to a person who was the lessee of such parcel on such date or his or her heirs, successors or assigns ("lessee"), or (ii) if the lessee cannot be located, to the owner of the improvements situated on such parcel who would otherwise qualify to be a tenant of the city for such property at the time of sale ("owner of improvements"), or (iii) if the lessee and owner of improvements cannot be located, to an occupant in possession of such parcel who would otherwise qualify to be a tenant of the city for such property at the time of the sale of said parcel pursuant to this section.

§ 3. Notwithstanding any inconsistent provision of section 384 of the New York city charter and subject to review pursuant to sections 197-c and 197-d of the New York city charter, for a period of five years after the effective date of this act, the mayor of such city may authorize the sale of the city's right, title, and interest in any parcel or parcels of the property described in section one of this act which is adjacent to a privately owned parcel, without competitive bidding and for such consideration and upon such terms and conditions as shall be determined by the mayor of such city, to the owner of such privately owned parcel, provided that (i) if the privately owned parcel was purchased from the municipality prior to the effective date of this act, the adjoining parcel shall not exceed three thousand square feet, or (ii) if the privately owned parcel was purchased from the municipality after the effective date of this act, the adjoining parcel shall not exceed the area of privately owned parcel which was or is being purchased.

§ 4. Any proposed sale pursuant to section one, two or three of this act shall be reviewed, where required by law, for consistency with any waterfront revitalization program, including the public access policies thereof, adopted by the city pursuant to section 915 of the executive law.

§ 5. Chapter 756 of the laws of 1973 relating to the power of the city of New York to sell certain land in Broad channel in the county of Queens is REPEALED.

§ 6. This act shall take effect immediately.

CASE NOTES

¶ 1. A taxpayer's action to enjoin the acquisition of property for a slum clearance project, the evidence indicated that all provisions of law respecting advertising and notice of the proposed sale had been duly observed and complied with. Contention that the City did not intend to sell a portion of the property at the "highest marketable price" and at "public auction" was not substantiated by factual proof.-*Bleecker Luncheonette v. Wagner*, 141 N. Y. S. 2d 293 [1955], aff'd 286 App. Div. 828, 143 N. Y. S. 2d 628 [1955].

¶ 2. Property which came within the category of properties which the City of New York was permitted to sell or otherwise dispose of under applicable statutes could be lost to the City by adverse possession (278 N. Y. 86; 228 N. Y. 140; &c.).-*City of N. Y. v. Milone*, 105 (12) N. Y. L. J. (1-15-41) 240, Col. 6 F.

¶ 3. Under lease with City giving tenant option to renew for a ten-year term by giving notice of his election, and providing that at expiration of the term or any renewal thereof the City might either grant further renewals or pay the tenant for any buildings, mortgagee of the leasehold, by notifying City of its desire not to renew but to obtain payment of the value of the building, could not obligate the City to pay the value of the building where tenant desired an extension of the lease for another ten years, since the tenant's mortgage could not vary or increase the City's obligations, and the mortgagee knew the terms of the lease and was bound by them.-*In re City of N. Y. (Wallabout Market)*, 104 (128) N. Y. L. J. (12-3-40) 1848, Col. 3 M.

¶ 4. City of New York, as fee owner of land under Grand Central Terminal viaduct, which was and now is a

legally opened street, held such land in trust for use of all people of the State and not as corporate or municipal property, and hence § 383 of the Charter was not construable as permitting the granting of a permit with respect to such property. City could not use the property itself nor permit others to use it except for street purposes.-City of N. Y. v. Aviation Distributors, Inc., 84 N. Y. S. 2d 84 [1948].

¶ 5. A housing project entered into by the City of New York pursuant to the Redevelopment Companies Law providing that the approval of a housing plant by the local legislative body may be by resolution adopted by a majority of the whole number of votes authorized to be cast by all the members thereof, was validly entered into by the city. Contention that there was a non-compliance with this section in that the sale of city property should be had only after a three-fourths vote of the Board of Estimate was rejected.-Pratt v. La Guardia, 182 Misc. 462, 47 N. Y. S. 2d 359 [1944], aff'd 268 App. Div. 973, 52 N. Y. S. 2d 569 [1944].

¶ 6. Summary judgment was refused where the City sued a purchaser of City property for the deficiency resulting when it had to resell the property after the original purchaser stopped payment on his check. Various issues arising out of the conduct of the original auction sale required trial. In the case of such sales, the strict rules of law are relaxed.-City of New York v. Nadel, 15 Misc. 2d 991, 184 N. Y. S. 2d 995 [1959].

¶ 7. Where public officials recommended the demolition of the old Supreme Court Building in Brooklyn and the Board of Estimate conducted an investigation, the order of demolition would not be enjoined, since the Board had the power to dispose of the same and had not acted in an arbitrary manner.-Moritt v. Wagner, 9 A. D. 2d 751, 193 N. Y. S. 2d 995 [1960].

¶ 8. Petitioner was the highest bidder for a parcel of real property at a public auction held by the Department of Real Estate. After the time within which title was to close, the Board of Estimate adopted a resolution reciting that the sale "is hereby cancelled." The resolution did not recite any public purpose, but the City Planning Commission had previously recommended a public purpose for the property. **Held:** the sale was not cancelled. The Board of Estimate must adopt the recommendation of public purpose prior to the closing date set in the memorandum of sale.-Lloyd Corp., 148 (73) N. Y. L. J. (10-15-62) 18, Col. 2 M.

¶ 9. Plaintiff was the successful bidder for seven parcels of land sold by the City at a public auction held on December 14, 1960. The closing date was set for March 24, 1961. On March 10, 1961, the City cancelled the sale on the ground the property might be required for public use. **Held:** the sale took place immediately upon acceptance of plaintiff's bid and could not thereafter be cancelled by the City. The terms of the sale permitting the City to reject any and all bids did not authorize a withdrawal after a bid had been accepted. While the terms and conditions also authorized the City to cancel a sale in the event it should appear at any time before closing that the property was required for a public use, an attempt at cancellation by subsequent action of a Board of Estimate beyond the date set for the closing could not act retroactively.-N. Y. Lien Corp. v. City of New York, 148 (67) (10-4-62) 16, Col. 5 M.

¶ 10. Resolution of Board of Estimate made subsequent to time within which title was to close following sale of premises at a public auction without any statement that the premises were required for public use, was ineffectual to accomplish cancellation of the sale.-Raia v. City of N. Y., 149 (124) N. Y. L. J. (6-27-63) 12, Col. 7 M.

¶ 11. City agreed to convey a marketable title to the successful bidder but a title report showed an easement for ingress and egress for motor vehicles over the entire parcel, rendering the premises unusable. Bidder could reject title.-City of N. Y. v. Kroy Realty Corp., 150 (43) N. Y. L. J. (8-29-63) 13, Col. 4 F.

¶ 12. Property was sold by the City at public auction subject to building restrictions and zoning regulations. Successful bidder could not avoid specific performance on the ground building restrictions and zoning regulations prohibited the use of the plot for any legal use.-City of N. Y. v. Interstate Storage Whse., Inc., 150 (45) N. Y. L. J. (9-3-63) 16, Col. 8 M.

¶ 13. An agreement between the Commissioner of Parks and a named corporation whereby the corporation was to

construct and operate a golf driving range, parking lot and accessory buildings in a park constituted a lease and not a license and was invalid under this section.-*Miller v. City of New York*, 20 App. Div. 2d 720, 247 N. Y. S. 2d 496 [1964].

¶ 14. Limitation of bidding by city to non-profit corporations and requirement as a term of sale that property be used solely for religious and educational purposes coupled with rejection of a bid higher than the one accepted, constituted a violation of New York City Charter § 384 since the effect of the restriction was to reduce competitive bidding.-*Tarshis v. City of New York*, 24 App. Div. 2d 644, 262 N. Y. S. 2d 538 (1965), modified, 24 App. Div. 2d 723, 263 N. Y. S. 2d 307, affirmed, 17 N. Y. 2d 451, 266 N. Y. S. 2d 810, 213 N. E. 2d 890.

¶ 15. Where highest bid at a public auction sale by City for real property was immediately rejected because others complained that their higher bids had been ignored and lot was again listed for public auction rejection of auctioneers acceptance of plaintiff's alleged highest bid was not wrongful as official in charge has a right to reject auction bids if he believes auctioneer ignored a higher bid.-*Taylor v. City of N. Y.*, 61 Misc. 2d 612, 306 N. Y. S. 2d 369 (1969), *aff'd*, 315 N. Y. S. 2d 606 [1970].

¶ 16. This section was not violated even though there was no appraisal of the premises within sixty days prior to the lease when there was an appraisal a few days prior to submission of the proposal to lease to the Board of Estimate which accorded with the universal practice of the city and the court accepted the construction urged by the city that the time period be measured prior to the commencement of the leasing process.-*Aronson v. City of N. Y.*, 165 (73) N. Y. L. J. (4-16-71) 17, Col. 3 M.

¶ 17. That competitive bidding is decreased does not by itself invalidate a lease of the use of air rights from the city where the leasing was done in accordance with this section.-*Fur-Lex Realty, Inc. v. Lindsay*, 167 (11) N. Y. L. J. (1-17-72) 2, Col. 2 M.

¶ 18. The use to which a parcel of realty may be restricted is solely within the discretion of the Board of Estimate and the court would not annul determination of the board to lease parcel that contained structure formerly used as the Women's House of Detention for a proposed educational facility.-*Matter of Moran (Duchan)* 167 (127) N. Y. L. J. (6-30-72) 12, Col. 1 M.

¶ 19. Conveyance of air rights above a plane at a minimum of approximately 20 feet higher than the road surface to certain non-profit charitable owners of abutting land by the City Planning Commission and the Board of Estimate was proper when it involved the needs of abutting owners to expand their present physical plant and facilities for health, medicine and related research and was in consideration of construction and future maintenance of an elevated walkway without cost to the city.-*In re Ademec (City Planning Commission)*, 171 (96) N. Y. L. J. (5-17-74) 17, Col. 4 M.

¶ 20. Because the Board of Estimate is not required to hold public hearings regarding the advisability of the sale of such city owned real property as the "Alimony Jail" petitioner could not validly complain that the notice of hearing was inadequate.-*Lubkemeier v. City of N. Y.*, 79 Misc. 2d 786, 361 N. Y. S. 2d 246 [1974].

¶ 21. Lease agreement between private owner of property and city did not violate competitive bidding requirement of this section in that under the terms of the proposed leasing agreement the auction was in essence limited to bids by an adjoining lot owner or one who had or could have acquired the adjoining lot where there was no unfair or corrupt motive by city officials to benefit any particular persons.-*Fur-Lex Realty, Inc. v. Lindsay*, 81 Misc. 2d 904, 367 N. Y. S. 2d 388 [1975].

¶ 22. Where the N. Y. C. Transit Authority was permitted to use city property to stage, park, and idle its buses under an agreement which gave the Department of Environmental Protection the privilege of cancelling the permit on 30 days notice, a license rather than a lease was created and no estate in realty was created.-*Mauldin v. N. Y. C. Transit Auth.*, 64 A. D. 2d 114, 408 N. Y. S. 2d 538 [1978].

¶ 23. Permits issued to other mobile food cart vendors were rescinded in so far as they allowed them to operate in those areas of Central Park to which petitioner had exclusive rights under contract which included the plaza located between 59th and 60th Street west of Fifth Avenue which contains the statue of General Sherman since this plaza is part of Central Park proper.-Matter of Yum Yum Hot Dogs, Inc. (Davis), 183 (26) N. Y. L. J. (2-6-80) 10, 2 M.

¶ 24. This section which specifies the manner in which public land is to be leased must be strictly complied with, and thus the filing and enforcement of a mechanic's lien against a leasehold of municipal property is not permissible.-Paerdegat Boat & Racquet Club v. Zarrelli, 57 N. Y. 2d 966 [1982].

¶ 25. New York Coliseum at Columbus Circle is an urban renewal project and sale need not be by competitive bidding because § 384 provides for exceptions where "specifically provided by law." General Municipal Law § 507(2)(d) exempts urban renewal projects from requirement.-Jo & Wo Realty v. City of NY, 140 Misc 2d 154 [1988], affirmed, 157 AD2d 205 [1990].

¶ 26. The competitive bidding requirements of the NYC Charter § 384(b) were inapplicable to the sale of the site of an obsolete building, the New York Coliseum which was constructed over 30 years ago pursuant to an urban renewal plan without competitive bidding, with site still governed by the 40-year urban renewal program. Jo & Wo Realty Corp. v. City of NY, 157 AD2d 205.

¶ 27. The City of NY and the Triborough Bridge and tunnel authority may sell real property purchased by the authority as part of a larger urban renewal project undertaken by the city to a private concern without adhering to the competitive bidding requirements contained in NY City Charter § 384, where the authority determined that it could not economically maintain the real property. Jo & Wo Realty v. City of New York, 76 NY2d 962, 563 N.Y.S.2d 727 (1990).

¶ 28. Although petitioner was highest bidder for the lease of property known as Bush Terminal Industrial Complex, its proposal was later rejected given its weak management record. New York City Charter § 384 requires that the award be made to the highest bidder, however, the respondent Department of Ports, International Trade and Commerce is empowered under NY City Charter § 704(g) to lease wharf property belonging to the city to be sold at public auction and "if not so sold the terms of any lease must be approved by the Board of Estimate by a three-fourths vote after a public hearing." Therefore, there was no statutory violation. Matter of Kenston Management Co. v. Huerta, 159 AD2d 410.

¶ 29. In 1983 the City leased property under the arches of the Queensboro Bridge to the Public Development Corporation for reassignment to a developer to construct a market. The lease had Board of Estimate approval, was never challenged but was never reassigned. Instead in 1987 the City and developer renegotiated certain terms relating to floor area and uses, and entered into a new lease without seeking Board of Estimate approval. Since lease was not given to a local development corporation and Borough Board approval was not obtained, § 384(b)(4) which would have excused parties from competitive bidding requirements of § 384(b)(1) is not available. Summary judgment should have been granted and lease declared null and void because of lack of competitive bidding. Doubling and altering floor area and varying use limitations, the 1987 lease required new approval by the Board of Estimate under § 384(a). Sutton Area Comm. v. City of New York, 190 AD2d 562 [1993].

¶ 30. The city's sale of Bronx Site 11A to Croton Housing Associates without an appraisal first as required by Charter § 384(b) and other substantial and procedural violations of the State Development Action Area Act and the city's procedural guidelines regarding transfer of city-owned property entitled petitioners to a preliminary injunction. Matter of Lee v. NYC DHPD, 162 Misc. 2d 901 [1994].

¶ 31. This section does not require the City to sell a City-owned radio station by means of competitive bidding. Creole Enterprises, Inc. v. Guiliani, 636 N.Y.S.2d 547 (Sup.Ct. New York Co. 1995).

¶ 32. The mode of exercise of municipal powers regarding leasing of property must be strictly complied with.

Thus, where a municipal lease is not approved by agency officials having proper authority to bind the City, that lease is not valid. *New York City Economic Devel. Corp. v. Harborside Mini Storage, Inc.*, 12 Misc.3d 1155(A), 819 N.Y.S.2d 211 (Civ.Ct. Kings Co. 2006).

¶ 33. The City is not bound by a "letter of intent" to enter into a lease where the lease has not been approved by the Office of Management and Budget, the Commissioner of the Department of Citywide Administrative Services and the Corporation Counsel. These approvals are not mere formalities or technicalities. *Benedict Realty Co. v. City of New York*, 11 Misc.3d 1086(A), 819 N.Y.S.2d 846 (Sup.Ct. Richmond Co. 2006).



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NYC Charter 385

New York City Charter

CHAPTER 16 HEADS OF MAYORAL AGENCIES*19

§ 385. **Heads of mayoral agencies.**

a. This chapter shall apply to heads of agencies holding office upon appointment of the mayor and to heads of those units within the executive office of the mayor designated by the mayor to be covered by the provisions of the chapter. It shall not apply to agencies headed by boards, commissions, or other multi-member bodies whether appointed by the mayor or otherwise, nor to elected officials, nor to other agencies the heads of which are appointed by officials other than the mayor or by multi-member bodies. References in this chapter to other sections of the charter shall not be construed to affect the applicability of those sections to officials and agencies not subject to this chapter.

b. Except as otherwise provided by law, all functions, powers and duties assigned to each mayoral agency by the charter or other law shall be vested in the head of such agency. In exercising such powers and duties and the powers and duties specifically assigned to the agency head, such official shall exercise due diligence in ensuring their faithful execution, enforcement and performance. In addition to the powers and duties granted to them and their agencies by the charter or by other law, and in addition to such other functions as are assigned to them by the mayor, heads of mayoral agencies shall have the powers and duties listed in the remaining sections of this chapter.

HISTORICAL NOTE

Section added at General Election, November 8, 1988.

FOOTNOTES

[Footnote 19]: * Added at General Election, November 8, 1988.



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NYC Charter 386

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CHAPTER 16 HEADS OF MAYORAL AGENCIES*19

§ 386. **Planning, advising, coordinating activities.**

a. In the areas under their jurisdiction, heads of mayoral agencies shall have the power and duty to (1) review, analyze, and evaluate the needs of the city; (2) prepare and submit to the mayor and other appropriate governmental authorities short term, intermediate, and long range plans and programs to meet the needs of the city; (3) develop, implement, and maintain systems to collect, store, and disseminate data; and (4) conduct research and studies to aid in planning and developing policies and programs.

b. Heads of mayoral agencies shall advise and assist the mayor, other elected officials and bodies of elected officials in regard to matters under the jurisdiction of their agencies.

c. To the maximum extent feasible, heads of mayoral agencies shall coordinate the activities of their agencies with those of other city, state, and federal agencies and other organizations and institutions on matters within their jurisdiction by such means as the mayor may require and, when not inconsistent with mayoral directives, by such means as the agency head may deem appropriate, including by establishing and participating in coordinating committees.

HISTORICAL NOTE

Section added at General Election, November 8, 1988.

FOOTNOTES

[Footnote 19]: * Added at General Election, November 8, 1988.



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CHAPTER 16 HEADS OF MAYORAL AGENCIES*19

§ 387. **Program management.**

a. The heads of mayoral agencies shall supervise the execution and management of all programs and activities of their respective agencies and shall have cognizance and control of the government, administration, and discipline of their agencies.

b. Heads of mayoral agencies shall determine standards for, and monitor, evaluate, and exercise general supervision over, all services and facilities under their jurisdiction. To the extent necessary to carry out the provisions of the charter and other applicable law, and when not inconsistent with any other law, heads of mayoral agencies shall have the power and duty to visit and inspect providers of services under their jurisdiction.

HISTORICAL NOTE

Section added at General Election, November 8, 1988.

FOOTNOTES

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[Footnote 19]: * Added at General Election, November 8, 1988.



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CHAPTER 16 HEADS OF MAYORAL AGENCIES*19

§ 388. **Financial management.**

a. The heads of mayoral agencies shall supervise the execution and management of all expenditures of their respective agencies.

b. They shall prepare and transmit budget estimates of the agency as prescribed by the charter, and other laws, and fulfill all other requirements of the budget preparation, adoption, modification, and administration process as set forth in the charter.

c. In accordance with the methods prescribed by the comptroller pursuant to subdivision h of section ninety-three of the charter and subject to the comptroller's power to suspend or withdraw such authority in accordance with the provisions of that subdivision, heads of mayoral agencies shall prepare and audit vouchers before payment, prepare and audit payrolls, receive and inspect goods and forward bills to the comptroller for payment and record, report and account for such payments.

d. In accordance with the standards and procedures prescribed by the comptroller pursuant to subdivision m of section ninety-three, heads of mayoral agencies shall maintain a system of uniform accounting and reporting for their agencies.

HISTORICAL NOTE

Section added at General Election, November 8, 1988.

Subds. c, d amended at General Election, November 7, 1989.

FOOTNOTES

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[Footnote 19]: * Added at General Election, November 8, 1988.



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CHAPTER 16 HEADS OF MAYORAL AGENCIES*19

§ 389. **Internal controls, rule-making, contracting.**

a. In accordance with the policies and procedures established by the mayor for this purpose, heads of mayoral agencies shall maintain an internal control environment and system which is intended to maximize the effectiveness and integrity of agency operations and to reduce the vulnerability of the agency to fraud, waste, abuse, error, conflict of interest, and corruption.

b. Except as otherwise provided by law and in accordance with the provisions of the charter and other law, heads of mayoral agencies shall have the power to adopt rules to carry out the powers and duties delegated to the agency head or the agency by or pursuant to federal, state or local law.

c. Heads of mayoral agencies may, subject to the requirements of the charter, other law, and rules promulgated pursuant to them, and within appropriations therefor, enter into contracts and make purchases to fulfill the duties assigned to them.

HISTORICAL NOTE

Section added at General Election, November 8, 1988.

FOOTNOTES

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[Footnote 19]: * Added at General Election, November 8, 1988.



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CHAPTER 16 HEADS OF MAYORAL AGENCIES*¹⁹

§ 390. **Powers and duties specified in other charter chapters.**

Heads of mayoral agencies shall, in addition to the duties assigned to them by this chapter, fulfill all other powers and duties assigned to them by the charter or other law.

HISTORICAL NOTE

Section added at General Election, November 8, 1988.

FOOTNOTES

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[Footnote 19]: * Added at General Election, November 8, 1988.



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CHAPTER 17 LAW DEPARTMENT*20

§ 391. **Department; corporation counsel.**

There shall be a law department the head of which shall be the corporation counsel.

FOOTNOTES

20

[Footnote 20]: * Chapter renumbered at General Election, November 8, 1988 (formerly Chapter 16).



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NYC Charter 392

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CHAPTER 17 LAW DEPARTMENT*20

§ 392. **Assistants.**

a. The corporation counsel may appoint a first assistant corporation counsel and such other assistants as may be necessary within the appropriation therefor.

b. The first assistant corporation counsel shall, during the absence or disability of the corporation counsel, possess all the powers and perform all the duties of the corporation counsel and in case of the death or the corporation counsel or of a vacancy in that office shall act as corporation counsel until the appointment and qualification of a corporation counsel.

c. Any assistant shall, in addition to the duties regularly assigned to him or her, possess such of the powers and perform such of the duties of the corporation counsel as the corporation counsel shall empower such assistant to exercise by written authority filed and remaining on record in the department.

HISTORICAL NOTE

Subd. c amended at General Election, November 7, 1989.

CASE NOTES

¶ 1. The propriety of the employment of approximately 100 assistant corporation counsel of the City of New York in the exempt class of the civil service rather than in the competitive class was open to question when both competitive and exempt employees were doing the same job.-In re Grossman (Rankin), 166 (109) N. Y. L. J. (12-8-71) 24, Col. 6 F.

¶ 2. Petitioner and intervenors who were employed in the Law Department as competitive class Assistant Corporations Counsel could maintain an Article 78 proceeding to challenge the propriety of the Civil Service

Commission's classification determination of 105 exempt-class positions of Assistant Corporations Counsel and could claim that the actions of the Commission in reviewing the exempt-class position was an abuse of discretion.-In re Grossman (Rankin), 169 (2) N. Y. L. J. (1-3-73) 19, Col. 6 T.

FOOTNOTES

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[Footnote 20]: * Chapter renumbered at General Election, November 8, 1988 (formerly Chapter 16).



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NYC Charter 393

New York City Charter

CHAPTER 17 LAW DEPARTMENT*20

§ 393. **Offices.**

The corporation counsel may maintain an office in each of the boroughs or any of them.

FOOTNOTES

20

[Footnote 20]: * Chapter renumbered at General Election, November 8, 1988 (formerly Chapter 16).



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NYC Charter 394

New York City Charter

CHAPTER 17 LAW DEPARTMENT*20

§ 394. **Powers and duties.**

a. Except as otherwise provided in this chapter or other law, the corporation counsel shall be attorney and counsel for the city and every agency thereof and shall have charge and conduct of all the law business of the city and its agencies and in which the city is interested.

b. Except as otherwise provided in this chapter or other law, the corporation counsel shall have charge and conduct of the legal proceedings necessary in opening, widening, altering and closing streets and in acquiring real estate or interests therein for the city by condemnation proceedings, and the preparation of all leases, deeds, contracts, bonds, and other legal papers of the city, or of or connected with any agency or officer thereof, and the corporation counsel shall approve as to form all such deeds and bonds and, individually or by standard type of class, all contracts, leases and other legal papers.

c. Except as otherwise provided in this chapter or other law, the corporation counsel shall have the right to institute actions in law or equity and any proceedings provided by law in any court, local, state or national, to maintain, defend and establish the rights, interests, revenues, property, privileges, franchises or demands of the city or of any part or portion thereof, or of the people thereof, or to collect any money, debts, fines or penalties or to enforce the laws. The corporation counsel shall not be empowered to compromise, settle or adjust any rights, claims, demands, or causes of action in favor of or against the city, and shall not permit, offer or confess judgment against the city, or accept any offer of judgment in favor of the city without the previous approval of the comptroller, except that with regard to matters involving excise and non-property taxes, such previous written approval shall be obtained from the finance administrator; provided, however, that this inhibition shall not operate to limit or abridge the discretion of the corporation counsel in regard to the proper conduct of the trial of any action or proceeding or to deprive such corporation counsel of the powers and privileges ordinarily exercised in the courts of litigation by attorneys-at-law when acting for private clients.

HISTORICAL NOTE

Section amended at General Election, November 4, 1975.

Subd. b amended by L. L. 1977, No. 102.

Subd. c amended by L. 1962, ch. 998, § 28.

Subd. c amended by L. 1969, No. 74.

Subd. d amended by L. L. 1977, No. 102.

Subds. b, c amended at General Election, November 7, 1989.

Subd. d repealed by L. L. 1989, No. 42 § 4.

CASE NOTES

¶ 1. Authority of the Corporation Counsel to conduct all law business of the City and its agencies is exclusive, with certain exceptions.-*Kay v. Bd. of Higher Education*, 260 App. Div. 9, 20 N. Y. S. 2d 898 [1940].

¶ 2. Motion of Corporation Counsel of City of New York for order directing District Attorney to turn over to him copies of the testimony of two named persons and all employees of the City Tax Department who appeared before a certain grand jury, for use by the Corporation Counsel in connection with Departmental proceedings contemplated against certain employees in the Tax Department, was granted, on consent of the District Attorney, in view of the Corporation Counsel's status as a law enforcement officer, and fact that he was acting in discharge of his duties.-*In re Corporation Counsel of City of N. Y.*, 131 (26) N. Y. L. J. (2-8-54) 7, Col. 7 T.

¶ 3. The corporation counsel is a proper party to commence action under § 22-a of the Code of Criminal Procedure to enjoin the publication and distribution of material devoted to obscenity and lewdness.-*Brown v. Kingsley Books*, 208 Misc. 150, 142 N. Y. S. 2d 735 [1955], *aff'd* 1 N. Y. 2d 177, 151 N. Y. S. 2d 639, 134 N. E. 2d 461 [1956].

¶ 4. Corporation counsel is the attorney for the City and every agency thereof. Since the Board of Education is an agency of the City the corporation counsel is its statutory attorney and corporation counsel could not renounce or acquiesce in the delegation of his duties to a private attorney merely because his advice was not followed on a particular occasion. Moreover the Board of Education has no power to retain private counsel even though such counsel is not paid a fee.-*Kingsport Press, Inc. v. Board of Education*, 52 Misc. 2d 276, 276 N. Y. S. 2d 75 [1966].

¶ 5. President of Borough of Bronx could not institute proceeding in that capacity against directors of the metropolitan transportation authority for judgment directing restoration of free transfer points on Bronx bus routes since corporation counsel has charge of all law business of city and its agencies.-*Abrams v. Ronan*, 36 N. Y. 2d 714, 367 N. Y. S. 2d 484 [1975].

¶ 6. Approval of comptroller to settlement of real estate review proceedings was required under this section and is not an "intrusion."-*1555 Boston Road Corp. v. Finance Administrator of City of N. Y.*, 401 N. Y. S. 2d 536 A. D. [1978].

¶ 7. Where it was alleged that defendant assaulted complainant, an employee of the Department of Social Services at a Department center, the district attorney, although a party to the proceeding was without standing to quash a subpoena duces tecum issued by Criminal Court at request of defendant and which directed the Department of Social Services to produce for in camera inspection personnel file of complainant since the Department of Social Services as the adversely affected and interested person is the proper party, through the corporation counsel, to challenge the validity of the subpoena.-*People v. Grosunor*, 108 Misc. 2d 932 [1981].

¶ 8. Corporation counsel under his authority to regulate the manner in which the law business of the city shall be conducted could promulgate a regulation prohibiting attorneys employed in his office from engaging in the private practice of law except under "unusual circumstances."-Civil Service Bar Asso. Local 237 v. Schwartz, 114 Misc. 2d 849 [1982].

¶ 9. Corporation Counsel can delegate authority to bring a forfeiture action for property seized in commission of crime to police department property clerk. Prop. Clerk v. Covell, 139 Misc 2d 707 [1988].

¶ 10. A stipulation of settlement made by the Corporation Counsel without the approval of the Comptroller cannot be enforced. Walentas v. New York City Department of Ports, 167 A.D.2d 211, 561 N.Y.S.2d 718 (1st Dept. 1990).

¶ 11. The fact that the Corporation Counsel refused to represent the Staten Island borough president in a challenge to toll increases on the Verrazano Bridge did not give the borough president the right to retain private counsel to bring the case. Lamberti v. Metropolitan Transportation Authority, 170 A.D.2d 224, 565 N.Y.S.2d 111 (1st Dept. 1991).

¶ 12. An Assistant Corporation Counsel, who mistakenly believed that he had the authority to settle a case, entered into a purported settlement. Upon hearing of the proposed settlement, the attorney's superior directed that the settlement offer be withdrawn. The court held that in the absence of approval by the Comptroller, the settlement was not binding, and that the City could insist upon taking the case to trial. Garcia v. O'Keefe, Justice Schulman, N.Y.L.J., Feb. 10, 2003, page 20, col. 1 (Sup.Ct. New York Co.).

FOOTNOTES

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[Footnote 20]: * Chapter renumbered at General Election, November 8, 1988 (formerly Chapter 16).



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NYC Charter 395

New York City Charter

CHAPTER 17 LAW DEPARTMENT*20

§ 395. **Legal service to agencies.**

The corporation counsel may assign an assistant or assistants to any agency. The head of each agency, within appropriations for such purpose, may employ staff counsel to assist in the legal affairs of the agency. No officer or agency, except as provided in this chapter or otherwise especially provided, shall have or employ any attorney or counsel, except where a judgment or order in an action or proceeding may affect such officer or agency individually or may be followed by a motion to commit for contempt of court, in which case such officer or agency may employ and be represented by attorney or counsel at their own expense.

HISTORICAL NOTE

Amended at General Election, November 4, 1975.

Amended at General Election, November 7, 1989.

CASE NOTES

¶ 1. Decision of Corporation Counsel that it was inadvisable to appeal from an order setting aside the appointment of a teacher at the College of the City of New York, was binding upon the Board of Higher Education, and its attempted appeal from an order was therefore dismissed as not properly before the court. None of the exceptions to rule that the Corporation Counsel is the sole judge as to conduct of litigation was applicable, since the majority of the Board did not assert that they intended to be contumacious and disobey the order so as to bring themselves within § 395 of the Charter authorizing an officer or agency to employ counsel where a judgment might affect him individually or be followed by a motion to commit for contempt, there was no duty resting upon the Board to engage the teacher, so an order restraining it from so doing might properly be obeyed, and the Corporation Counsel was not charged with fraud, collusion or corruption nor called upon to represent conflicting interests.-*Kay v. Bd. of Higher Education*, 260 App.

Div. 9, 20 N. Y. S. 2d 898 [1940].

¶ 2. Inasmuch as the Corporation Counsel and the Commissioner of Investigation are heads of executive departments appointed by the City's chief executive, and the obvious design of the Charter was to make the Council an independent body with power to investigate all executive departments, the choice of counsel to conduct the investigation by a special committee of the Council in an investigation of City departments concerned with administration of emergency unemployment relief, lay with the Council, and it was not required to call upon the Corporation Counsel for legal assistance (Charter §§ 394, 395).-Barry v. City of N. Y., 175 Misc. 712, 25 N. Y. S. 2d 27 [1941]; *aff'd* without opinion, 261 App. Div. 957, 27 N. Y. S. 2d 425 [1941].

¶ 3. Union-appointed members of the board of trustees of the Police Pension Fund, who commence litigation arising out of a disagreement with the City-appointed trustees regarding construction of retirement laws, are not entitled to payment by the pension fund of their legal costs. Caruso v. New York City Police Department Pension Funds, 136 A.D.2d 266, 526 N.Y.S.2d 948 (1st Dept. 1988).

FOOTNOTES

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[Footnote 20]: * Chapter renumbered at General Election, November 8, 1988 (formerly Chapter 16).



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CHAPTER 17 LAW DEPARTMENT*20

§ 396. **Actions and proceedings for recovery of penalties.**

All actions and proceedings for the recovery of penalties for the violation of any law shall be brought in the name of the city of New York and not in that of any agency, except where otherwise provided by law.

CASE NOTES

¶ 1. The New York Police Department is not a legal entity, and therefore should not be named as a party to a lawsuit. *Davis v. City of New York*, 2000 WL 1877045 (U.S. Dist. Ct. S.D.N.Y.). See also, *Montes v. King*, 2002 WL 424318 (S.D.N.Y.); *Gonzalez v. City of New York*, 2002 WL 252564 (S.D.N.Y.).

¶ 2. The Department of Investigation is not a legal entity and is not a proper party to litigation against the City. *Siino v. Dept. of Education of the City of New York*, 44 A.D.3d 568, 843 N.Y.S.2d 828 (1st Dept. 2007).

FOOTNOTES

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[Footnote 20]: * Chapter renumbered at General Election, November 8, 1988 (formerly Chapter 16).



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CHAPTER 17 LAW DEPARTMENT*20

§ 397. **Delegation of legal authority.**

a. The mayor may delegate to any agency, after consultation with the corporation counsel and the head of the agency, responsibility for the conduct of routine legal affairs of the agency subject to standards, policies, and guidelines of the corporation counsel, and consistent with city-wide controls and uniformity. The mayor may transfer or assign attorneys from the law department to the agency to assist in the conduct of such delegated functions. The corporation counsel shall monitor and evaluate on a regular and continuous basis the exercise of authority delegated pursuant to this section and the mayor, on recommendation of the corporation counsel, may suspend or withdraw any delegated authority whenever in his or her judgment the interests of the city justify such action.

b. Nothing contained in this section shall abrogate the authority of the corporation counsel as attorney and counsel for the city and every agency of the city.

HISTORICAL NOTE

Added at General Election, November 4, 1975.

Subd. a amended at General Election, November 7, 1989.

FOOTNOTES

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[Footnote 20]: * Chapter renumbered at General Election, November 8, 1988 (formerly Chapter 16).



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CHAPTER 17 LAW DEPARTMENT*20

§ 398. **Ex parte administrative warrants.**

If entry to a location or premises to be inspected pursuant to an agency's powers and duties is not gained on consent, or if circumstances call for entry without prior notice, the commissioner of such agency, or his or her authorized representative, may request the corporation counsel to make an application, ex parte, in any court of competent jurisdiction for an order directing the entry and inspection of such premises or location and, in accordance with applicable law, to abate any nuisance thereon. Nothing in this section shall be construed to limit, abridge, affect or amend the power of an agency under law, including state, local or case law, to enter and inspect any location or premises or abate any nuisance thereon, either with or without a warrant, to carry out any of its functions, powers and duties.

HISTORICAL NOTE

Section added at General Election, November 6, 2001 (Question 6 § 4) eff. November 6, 2001 with special provisions in § 1152 subd. h par (5).

FOOTNOTES

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[Footnote 20]: * Chapter renumbered at General Election, November 8, 1988 (formerly Chapter 16).



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NYC Charter 431

New York City Charter

CHAPTER 18 POLICE DEPARTMENT

§ 431. **Department; commissioner.**

a. There shall be a police department the head of which shall be the police commissioner who shall be appointed by the mayor and shall, unless sooner removed, hold office for a term of five years.

b. Whenever in the judgment of the mayor or the governor the public interests shall so require, the commissioner may be removed from office by either, and shall be ineligible for reappointment thereto.

c. Whenever a vacancy shall occur in the office of police commissioner, a police commissioner shall be appointed by the mayor within ten days thereafter.

CASE NOTES

¶ 1. Where it did not appear whether the ground for rejection of petitioner as probationary patrolman was the fact of Communist petition signed by applicant's mother or was based on the number of applicant's traffic violations, Court **ordered** disclosure by Police Commissioner to determine whether rejection was arbitrary and capricious.-*Forde v. Adams*, 207 Misc. 577, 138 N. Y. S. 2d 603 [1955].

¶ 2. Where it could not be determined upon papers in certiorari action whether petitioner was passed over for appointment as patrolman because his mother had signed a Communist party petition or because he had violated Traffic and Hack Bureau regulations, the matter was remitted to the Commissioner for further appropriate action.-*Matter of Nathanson*, 207 Misc. 572, 138 N. Y. S. 2d 598 [1955].

¶ 3. Section 2/47.0 of the Police Department Rules and Regulations is valid and was authorized by this section of the Charter and other sections. The rule requires that a policeman devote his full time and attention to the service of the department. It states that a policeman shall not engage in any other occupation except when suspended from duty

without pay or when on vacation or other leave.-Flood v. Kennedy, 12 N. Y. 2d 345, 190 N. E. 2d 13, 239 N. Y. S. 2d 665 [1963].

¶ 4. Section 2/47.0 of the Police Department Rules and Regulations, which declare that a policeman is subject to duty at all times and cannot engage in any other occupation except when on vacation or other leave is valid and enforceable.-Flood v. Kennedy, 12 N. Y. 2d 345, 190 N. E. 2d 13, 239 N. Y. S. 2d 665 [1963].



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NYC Charter 432

New York City Charter

CHAPTER 18 POLICE DEPARTMENT

§ 432. **Deputies.**

The commissioner shall have the power to appoint and at pleasure remove seven deputies, one to be known as first deputy commissioner. During the absence or disability of the commissioner, the first deputy commissioner, or if he shall be absent or under disability, the deputy commissioner designated by the commissioner shall possess all the powers and perform all the duties of the commissioner except the power of making appointments and transfers.

HISTORICAL NOTE

Amended by L. L. 1946, No. 6.

Amended by L. L. 1954, No. 43.

Amended by L. L. 1962, No. 8.

CASE NOTES

¶ 1. Deputy Commissioner of Trials had authority to enter into plea settlements in disciplinary proceedings.-Brown v. Codd, 405 N. Y. S. 2d 687 [A. D. 1978].



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New York City Charter

CHAPTER 18 POLICE DEPARTMENT

§ 433. **Member of department; no other office.**

[Became § 1129.]



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NYC Charter 434

New York City Charter

CHAPTER 18 POLICE DEPARTMENT

§ 434. **Commissioner; powers and duties.**

a. The commissioner shall have cognizance and control of the government, administration, disposition and discipline of the department, and of the police force of the department.

b. The commissioner shall be the chief executive officer of the police force. He shall be chargeable with and responsible for the execution of all laws and the rules and regulations of the department.

CASE NOTES

¶ 1. Policemen, who were members of Patrolmen's Benevolent Association, were entitled to an order against Police Commissioner for deduction from their salary of their dues, pursuant to a resolution of the Board of Estimate authorizing salary deductions of employees to pay membership dues of employee organization. The Court could see no conflict between the exclusive right of the Police Commissioner over the discipline of the men and the provisions of the resolutions.-Matter of Moriarty, 20 Misc. 2d 593, 192 N. Y. S. 2d 32 [1959].

¶ 2. Under subdivision (a) of this section, the Commissioner of Police is given the control of the administration and discipline of the Police Department.-Patrolmen's Benevolent Association of the City of New York v. Kennedy, 25 Misc. 2d 63, 201 N. Y. S. 2d 536 [1960].

¶ 3. A general order, #25, promulgated by the Police Commissioner which prohibits any member of the Department from soliciting, accepting or publishing advertisements or receiving funds in connection therewith, in connection with public items. Of any police line organization, without the authority of the Commissioner was not unconstitutionally applied when the Commissioner refused to give his permission to the Patrolmen's Benevolent Association's request to approve the acceptance of advertisements for its journals. The Commissioner was not unreasonable, arbitrary or capricious and the general order did not violate the freedom of the press.-Patrolmen's

Benevolent Association of the City of New York v. Kennedy, 25 Misc. 2d 63, 201 N. Y. S. 2d 536 [1960].

¶ 4. Though the members of the police force are civil service employees, they are subject to strict discipline and special proceedings, sanctions and punishments.-*People v. Russell*, 33 Misc. 2d 851, 227 N. Y. S. 2d 826 [1962].

¶ 5. Subdivision d of § 434a-2.0 does not make policewomen ineligible to compete in examinations for promotions to sergeant. And the other provisions of the Charter and Code do not impose duties on the office of sergeant or on the Police Department generally which would make a policewoman ineligible for the office of sergeant. And since there is nothing in the law which would make it impossible for a woman to perform the duties of sergeant, the refusal to permit policewomen to participate in a promotion examination was unwarranted and an abuse of discretion.-*Matter of Shpritzer*, 17 App. Div. 2d 285, 234 N. Y. S. 2d 285 [1962], *aff'd*, 13 N. Y. 2d 744, 191 N. E. 2d 919, 241 N. Y. S. 2d 869 [1963].

¶ 6. A policeman must submit his official memorandum book and binder to inspection upon command of his superior officer, and narcotics found in such a binder are lawful evidence in a prosecution of the policeman for violation of Penal Law § 1751-a.-*People v. Russell*, 33 Misc. 2d 851, 227 N. Y. S. 2d 826 [1962].

¶ 7. Section 2/47.0 of the Police Department Rules and Regulations is valid and was authorized by this section of the Charter and other sections. The rule requires that a policeman devote his full time and attention to the service of the department. It states that a policeman shall not engage in any other occupation except when suspended from duty without pay or when on vacation or other leave.-*Flood v. Kennedy*, 12 N. Y. 2d 345, 190 N. E. 2d 25, 239 N. Y. S. 2d 665 [1963].

¶ 8. Proposed local laws to establish procedure for the handling of civilian complaints against members of the Police Department would alter authority granted to Police Commissioner and hence initiative petitions seeking to amend the charter by submitting these local laws to the electorate at the next general election were valid.-*Cassese v. Katz*, 18 N. Y. 2d 474 (1966), *aff'g*, 26 App. Div. 2d 248, 273 N. Y. S. 2d 227 [1966].

¶ 9. In class action for declaratory judgment by patrolmen in New York City Police Department and for an injunction restraining Mayor and Police Commissioner from enforcing a police department order which established a Civilian Complaint Review Board court held such order valid as to appointment of four civilians by Mayor as this section vests broad administrative power in the Police Commissioner and it is not the province of the Court "to dictate to an appointed public official how he may best command his department."-*Cassese v. Lindsay*, 51 Misc. 2d 59, 272 N. Y. S. 2d 324 [1966].

¶ 10. Court could not prohibit police commissioner from implementing a Master Plan for operation of the Police department which was uniform throughout the city when petitioner did not claim that it would violate any statute or rule of law.-*Biaggi v. Lindsay*, 168 (32) N. Y. L. J. (8-16-72) 2, Col. 2 M.

¶ 11. Police commissioner had right to obtain injunction against Police Benevolent Association and a professional fund raising organization prohibiting them from soliciting contributions from the public for advertising in a souvenir journal to be published in connection with its annual policemen's ball on ground that those solicited "may feel some coercion to contribute" and that officers on the beat "may be tempted to favor a contributor with a PBA sticker for his car."-*McGuire v. Krane*, 179 (102) N. Y. L. J. (5-26-78) 5, Col. 1 B, *aff'd*, 65 A. D. 2d 718 [1978].

¶ 12. The legislative intent of this section is to leave the disciplining of police officer, including the right to determine guilt or innocence of breach of disciplinary rules and the penalty to be imposed upon conviction, to the discretion of the Police Commissioner, subject to a review by the courts pursuant to CPLR Article 78. Thus, the court held that a collective bargaining demands regarding arbitration of disciplinary complaints was not proper. *City of New York v. MacDonald*, 201 A.D.2d 258, 607 N.Y.S.2d 24 (1st Dept. 1994).

¶ 13. Where an officer was intoxicated while off duty but armed, and accompanied a second intoxicated officer

who menaced civilians and threatened them with bodily harm, there was sufficient justification to require the first officer to enter an in-patient rehabilitation program. *Roberts v. Bratton*, 233 A.D.2d 132, 649 N.Y.S.2d 137 (App.Div. 1st Dept. 1996).

¶ 14. The Police Commissioner has the discretion to grant the Civilian Complaint Review Board the revocable authority to prosecute police officers administratively for certain offenses. This follows from the general statutory right of the Commissioner to control the discipline of police officers. *Lynch v. Giuliani*, 301 A.D.2d 351, 755 N.Y.S.2d 6 (1st Dept. 2003).



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NYC Charter 435

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CHAPTER 18 POLICE DEPARTMENT

§ 435. **Department; duties.**

a. The police department and force shall have the power and it shall be their duty to preserve the public peace, prevent crime, detect and arrest offenders, suppress riots, mobs and insurrections, disperse unlawful or dangerous assemblages and assemblages which obstruct the free passage of public streets, sidewalks, parks and places; protect the rights of persons and property, guard the public health, preserve order at elections and all public meetings and assemblages; subject to the provisions of law and the rules and regulations of the commissioner of traffic,*21 regulate, direct, control and restrict the movement of vehicular and pedestrian traffic for the facilitation of traffic and the convenience of the public as well as the proper protection of human life and health; remove all nuisances in the public streets, parks and places; arrest all street mendicants and beggars; provide proper police attendance at fires; inspect and observe all places of public amusement, all places of business having excise or other licenses to carry on any business; enforce and prevent the violation of all laws and ordinances in force in the city; and for these purposes to arrest all persons guilty of violating any law or ordinance for the suppression or punishment of crimes or offenses.

b. The provisions of law and the rules and regulations of the commissioner of transportation relating to regulating, directing, controlling and restricting the parking of vehicles and the movement and conduct of vehicular and pedestrian traffic for the facilitation of traffic and the convenience of the public as well as the proper protection of human life and health may also be enforced by an employee of the police department.

c. Except as specifically provided herein, nothing contained in this section shall be deemed to limit, restrict, divest, transfer or supersede the powers or the jurisdiction of any agency as defined in section eleven hundred fifty of the charter.

d. Nothing contained in this charter shall be deemed to grant the department of traffic cognizance or control over the government, administration, disposition and discipline of the police department or police force.

HISTORICAL NOTE

Amended by L. L. 1949, No. 2.

Amended by L. L. 1950, No. 27.

Subd. b amended L.L. 22/2006 § 1, eff. July 2, 2006. [See Ad. Cd. § 14-118.2 Note 1]

Subd. b added L.L. 58/1996 § 1, eff. Aug. 8, 1996. [See Note]

Subds. c, d relettered (formerly subds. b, c) L.L. 58/1996 § 1, eff. Aug. 8, 1996.

NOTE

1. Provisions of L.L. L.L. 58/1996 eff. Aug. 8, 1996:

§ 3. [(a)] In order to effectuate the provisions of subdivision b of section four hundred thirty-five of the New York city charter, as enacted by section one of this local law, officers and employees in the classified city civil service who are engaged in the performance of the functions, powers or duties described in such section shall be transferred to the police department without further examination or qualification, and shall retain their respective civil service classifications and civil service status.

[(b) Notwithstanding subdivision a of this section, officers and employees of the department of transportation classified in the parking control specialist series shall not be transferred pursuant to this local law.] [§ 3 amended L.L. 22/2006 § 3, eff. July 2, 2006. See Ad. Cd. § 14-118.2 Note 1]

§ 4. Notwithstanding any other provision of law, no traffic enforcement function assumed by the police department as a result of this local law shall be transferred to any agency with the authority to perform such function unless such transfer is approved by the council by local law within ninety days after the first regular meeting subsequent to receipt by the council of a request by the mayor for such approval. In the event that the council does not act within such ninety day period such request shall be deemed to have been approved.

§ 5. No existing right or remedy of any character accruing to the city shall be lost or impaired or affected by reason of the enactment of this local law.

§ 6. No civil, criminal or administrative action or proceeding pending at the time when this local law shall take effect, brought by or against the city or any agency or officer of the city, shall be affected or abated by the enactment of this local law or by anything contained herein; but all such actions and proceedings may be continued notwithstanding that functions, powers and duties of any agency or officer party thereto may by or pursuant to this local law be assigned or transferred to the police department, but in that event the same may be prosecuted or defended by the police commissioner.

§ 7. The program for the towing of vehicles on parkways, expressways, drives, highways, interstate routes, thruways, and bridges set forth in the traffic rules of the department of transportation shall be administered by the police department and permits issued thereunder be issued by the police commissioner. Any permits previously issued by the commissioner of transportation pursuant to such rules shall remain in effect as permits of the police commissioner, subject to the terms, conditions and expiration dates thereof. However, the commissioner of transportation may continue to issue permits with respect to those applications pending on the effective date of the local law that enacted this provision.

CASE NOTES

¶ 1. The power to regulate and restrict the movement of traffic conferred by the Charter upon the Police

Commissioner may properly be given a broad construction.-Bus Depot Holding Corp. v. Valentine, 288 N. Y. 115, 41 N. E. 2d 913.

¶ 2. Traffic Regulations of the City of New York, such as § 14 limiting the speed of vehicles on City streets to not more than 25 miles per hour, have the force of law, and may be judicially noticed.-Angueira v. B'klyn & Queens Transit Corp., 263 App. Div. 43, 31 N. Y. S. 2d 168 [1941].

¶ 3. The Traffic Commission has succeeded to the powers formerly belonging to the Police Commissioner in respect to the making of regulations for traffic control, and the violation of such regulations continue to be tried by a City Magistrate.-People (Joyce) v. Hogenson, 117 N. Y. S. 2d 200 [1952].

¶ 4. Police regulations, promulgated for safety and welfare of the people, should not be interfered with by the courts unless justification for interference is clearly manifest (149 N. Y. 453, 459). Hence motion by bus company for an injunction pendente lite restraining enforcement of a certain police regulation, was denied, with the case being set down for prompt trial.-Pennsylvania Greyhound Lines, Inc. v. Valentine, 104 (104) N. Y. L. J. (11-1-40) 1367, Col. 7 M.

¶ 5. Evidence, consisting of testimony of two police experts who estimated speed of defendant's automobile on basis of the length of the skid marks of his automobile and the application of a mathematical formula, **held** sufficient to establish that defendant was driving his automobile in excess of speed limit of 25 miles per hour.-People (Lucius) v. Herman, 174 Misc. 235, 20 N. Y. S. 2d 149 [1940].

¶ 6. In absence of any evidence indicating that signs were posted at the point in question indicating that a greater or lesser speed was authorized, the general prohibition of a speed faster than 25 miles per hour applied, in prosecution of defendant for violating Article 3, § 14 of the City Traffic Regulations.-Id.

¶ 7. In prosecution of motorist for violation of Article 3, § 14 of City Traffic Regulations prohibiting a speed greater than 25 miles per hour, the prosecution was not required to establish that motorist was traveling at a speed in excess of 25 miles per hour for at least one-quarter of a mile, notwithstanding provision of Vehicle and Traffic Law § 56 that a speed in excess of 40 miles per hour for one-fourth of a mile should be presumptive evidence of driving at a speed which was not prudent. The traffic regulation prescribed a definite rate of speed whereas the state law merely sought to prohibit driving at a dangerous speed, and furthermore under Vehicle and Traffic Law § 54 the Legislature reserved to cities of the first class the power to regulate the speed of motor vehicles operated upon its streets.-Id.

¶ 8. Traffic Regulations of City of New York would appear to include street cars in regulating the speed of vehicles (Traffic Regulations § 1, subd. 13).-Angueira v. B'klyn & Queens Transit Corp., 263 App. Div. 43, 31 N. Y. S. 2d 168 [1941].

¶ 9. Defendant, charged with violating traffic regulations of Police Commissioner prohibiting the driving of a vehicle at a speed in excess of 25 miles per hour "except where signs authorized by proper authority are posted indicating a greater or lesser speed," **held** entitled to a dismissal of the complaint, inasmuch as defendant was charged with speeding on the Belt Parkway, and although the Police Commissioner had concurrent jurisdiction in the matter with the Park Commissioner it did not appear definitely that he had exercised it with sufficient clarity to satisfy the requirements for language prescribing penal offenses, since the rule excepted from its application instances where signs authorized by proper authority are posted authorizing a different speed, and in the immediate case the signs were posted on the parkway by the Park Commissioner.-People v. Hugh Perry, 23 N. Y. S. 2d 769 [1940].

¶ 10. In prosecution of defendant for speeding, based on testimony of police officer who followed defendant for three-tenths of a mile at a uniform distance of 75 feet and clocked defendant's speed on his motorcycle speedometer, testimony of officer that he had observed a test of his speedometer against a master speedometer in the motorcycle headquarters on a date eight days before the arrest and again six days afterwards and that the speedometer was found accurate, **held** sufficient, without testimony of the officer who actually made the test.-People v. Tyler, 127 (6) N. Y. L.

J. (1-9-52) 107, Col. 3 T.

¶ 11. Where admittedly defendants' trucks were being expeditiously loaded and unloaded while on street of Midtown Manhattan, they were not "parked," as such term is defined in Vehicle and Traffic Law, § 2, subd. 20, and hence defendants were not guilty of violation of § 190 of the Traffic Regulations providing that a vehicle not being expeditiously loaded or unloaded should be deemed a parked vehicle subject to the parking regulations. The summons did not charge defendant with violating provision of § 190 prohibiting the stopping of a vehicle for purpose of loading or unloading merchandise for a period of more than two hours.-*People v. Interstate Dress Carriers, Inc.*, 203 Misc. 883, 120 N. Y. S. 2d 370 [1953].

¶ 12. Conviction of defendant for violation of § 191 of the Traffic Regulations, providing that no driver of a vehicle shall operate, enter, traverse, stop, stand or park certain types of vehicles upon certain streets in the Borough of Manhattan between certain hours, was reversed on ground defendant was not the "driver" of the vehicle but was evidently a foreman who merely stated he was "responsible" for the vehicle being there.-*People v. Goltz*, 203 Misc. 883, 120 N. Y. S. 2d 453 [1953].

¶ 13. Truckdriver who double-parked his truck for purpose of delivering merchandise, **held** not to have violated Art. 2 § 10, subd. (o) of the N. Y. C. Traffic Regulations, prohibiting any person from parking a vehicle on the roadway side of any vehicle parked at the curb of a street, in view of provision of par. (a) of subd. 17 of § 1 of Art. 1, exempting from the definition of "park," a vehicle actually and expeditiously engaged in loading or unloading merchandise.-*People v. Essanen*, 306 N. Y. 267, 117 N. E. 2d 547 [1954].

¶ 14. Section 14 of the Traffic Regulations, which permits a physician to leave his car on the street in front of hospitals, clinics and premises wherein actually attending a patient, for such length of time as may be necessary for that purpose, was not intended to permit a physician to violate subd. O of § 10, which prohibits double parking, but was merely intended to except physicians from the time limit upon single parking imposed by other subdivisions of § 10.-*Harnik v. Levine*, 202 Mis. 648, 115 N. Y. S. 2d 25 [1952], revd. on another grd., 281 App. Div. 878, 120 N. Y. S. 2d 62 [1953].

¶ 15. Parking of defendant in violation of the Traffic Regulations constituted a public nuisance entitling the plaintiffs, who could not extricate their car, to a recovery of at least nominal damages. Plaintiffs suffered a financial loss similar to that recoverable when one wrongfully detains the property of another, and this was to be distinguished from damages sought for mental suffering or injured feelings.-*Id.*

¶ 16. Double parking in the City of New York should not be treated by the courts as an act of negligence per se.-*Miraglia v. Loiacono*, 205 Misc. 232, 129 N. Y. S. 2d 879 [1954].

¶ 17. Traffic regulation stating that parking an automobile means "the standing of a vehicle, whether occupied or not, except when actually engaged in loading or unloading merchandise or discharging or picking up passengers," discussed, and differences between such regulation and Vehicle and Traffic Law § 2, par. 20, pointed out. Opinion expressed that in case of conflict between the traffic regulation and the Vehicle and Traffic law the former controlled. Also, provision relative to loading or unloading is apparently construed as allowing a reasonable time therefor, as indicated by letter of Commissioner Valentine.-105 (148) N. Y. L. J. (6-26-41) 2858, and 106 (20) N. Y. L. J. (7-24-41) 186.

¶ 18. The stopping of defendant's truck on the side of a parked vehicle for the purpose of making a delivery was not "double parking" within the meaning of Traffic Regulation, Art. 1, subd. 17 or Art. 2, par. 10, subd. 2.-*Curro v. John J. Casale, Inc.*, 135 (55) N. Y. L. J. (3-21-56) 7, Col. 8 F.

¶ 19. Act of Police Commissioner in creating "express" streets upon which no parking was permitted during business hours, was not an unreasonable exercise of the police power.-*People v. Lewis*, 167 Misc. 139, 3 N. Y. S. 2d 508 [1938].

¶ 20. Although violation of traffic regulation creating "express streets" was not a crime in the strict sense of that term, it was nevertheless a violation of a police regulation commonly known as an offense, punishable by fine or imprisonment, or both.-Id.

¶ 21. Police officer **held** not to have exceeded his authority in placing an overtime parking ticket on defendant's automobile notwithstanding Roosevelt Street, in New York County, at the point at which the automobile was parked, is privately owned. Even though the City may not have acquired title to a street and it may be closed off to the public for brief periods at regular intervals in order to protect the title of its true owners, the street is none the less subject to the same police regulations as any other street when being used by the general public.-People v. Garland, 193 Mis. 664, 84 N. Y. S. 2d 72 [1948].

¶ 22. Clause of bus company's franchise enumerating the streets and avenues to be traversed and specifically providing for operation in either direction except that such operation should not be in a direction contrary to police regulations, was not construable as permitting the Police Department to change two-way traffic along the main routes to one-way traffic, but merely meant that when using the few cross streets named in the franchise the buses were limited by traffic regulations.-Eighth Avenue Coach Corp. v. City of N. Y., 286, N. Y. 84, 35 N. E. 2d 907 [1941], aff'd 259 App. Div. 870, 20 N. Y. S. 2d 402, which affirmed 170 Misc. 243, 10 N. Y. S. 2d 170 [1940].

¶ 23. Clause of franchise requiring bus company to obey all laws, ordinances and traffic regulations applicable to omnibus operations and to comply with specific orders issued by the Police Department with respect to operation of buses, was merely a standard clause providing in general terms that the operation should not be illegal, and related only to regulation of the movement of buses while being so operated, and hence did not authorize the Police Department to change two-way traffic along the main route to one-way traffic, since the right to regulate did not reserve the right to destroy the most profitable portion of the route.-Id.

¶ 24. Clause of franchise providing for operation of buses in event any portion of the specified routes were closed to traffic for any reason therein specified, merely provided for temporary diversion of the buses when necessitated by emergency, and did not authorize the Police Department to change two-way traffic along the main route to one-way traffic.-Id.

¶ 25. Where the bus company had paid \$475,000 to City for its ten-year franchise to operate buses, had deposited an additional \$30,000 as security and had made a large investment for buses and equipment, proposed regulation of Police Commissioner to establish part one-way traffic operation upon Eighth and Ninth avenues over one-sixth of its routes in the best-paying portion, **held** to constitute a taking of the company's property without due process. City might negotiate with the company as to fair terms for curtailing the bus routes, and should the company seek too much the City might condemn the franchise, with the bus company having the right to have just compensation for the taking fixed by the court.-Id.

¶ 26. Traffic regulation (Traffic Code § 110) prohibiting the carrying of any advertising sign on the person or on any vehicle on the street or sidewalk, but exempting persons who were exercising a lawful right to picket, **held** invalid as being indefinite in not defining what constituted picketing, and as not being reasonable and fair in its application, despite the alleged purpose of the regulation to relieve against unsightliness and congestion.-Walters v. Valentine, 172 Misc. 264, 12 N. Y. S. 2d 612 [1939].

¶ 27. Express company which displayed upon its trucks a sign advertising "Wrigley's Spearmint Gum," **held** guilty of violation of regulation of Police Commissioner providing that advertising trucks shall not be allowed in the streets (194 N. Y. 19, aff'd 221 U. S. 467).-Id.

¶ 28. General sales manager of corporation engaged in the clothing business, **held** guilty of violation of traffic regulation prohibiting use of advertising trucks, where he had caused to be driven in a congested portion of Madison Avenue a white covered wagon drawn by two burros and containing on both sides of the wagon signs of large

proportions, reading "Modern Custom Tailors, Inc., Harry Berkowitz, Custom Tailor, 804 Lexington Avenue."-Id.

¶ 29. Section 124 of the Traffic Regulations prohibiting the operation of advertising vehicles on the streets, but excepting the putting of business notices upon business delivery vehicles which are not used merely or mainly for advertising, **held** not unconstitutional as in violation of due process, nor as violating equal protection of the laws, nor as being a burden on interstate commerce.-*Railway Express Agency, Inc. v. People of State of N. Y.*, 336 U. S. 106, [1937], *aff'g* 297 N. Y. 783, 77 N. E. 2d 794 [1938].

¶ 30. Vehicle and Traffic Law § 54, prohibiting enactment of any ordinance or regulation inconsistent with such law, but providing that the validity or effect of any traffic regulations adopted pursuant to law in cities of the first class were not thereby impaired, **held** to validate § 67 of the Traffic Rules and Regulations of the City of New York, requiring motor vehicles to display certain lights of a certain type while being operated after sunset and before sunrise, since such regulation could not be inconsistent with the Vehicle and Traffic Law inasmuch as it was identical with § 15, subd. 2 of such law, and furthermore the charge against defendant in the present case was based on a failure to display any lights at the time in question and did not involve the physical lighting equipment itself.-*People v. Killmeyer*, 171 Misc. 778, 13 N. Y. S. 2d 839 [1939].

¶ 31. Charter § 435, authorizing Police Commissioner to "regulate, direct, control and restrict the movement of vehicular and pedestrian traffic," **held** to authorize enactment of a regulation specifying hours during which lights should be displayed on motor vehicles.-Id.

¶ 32. Regulation of Police Department prohibiting operation over city streets of any bus not having a franchise or permit, except over a route designated by the Police Commissioner, and prohibiting the stopping of buses to take on or discharge passengers except at stops designated by the Police Commissioner, **held** not to apply to operation of buses hired by parents to convey their children to and from school under arrangement whereby parents paid expenses of transportation and the buses called for the children at their various homes and were restricted to carrying the children called for under contract. Hence conviction of defendants for failure to obtain from the Police Commissioner a designated route over which to operate the buses was reversed and the information dismissed.-*People v. Weisberger*, 282 N. Y. 1, 24 N. E. 2d 721 [1940].

¶ 33. Where city authorities had established a temporary terminal to be used by plaintiff bus company and others during emergency caused by strike of employees of two bus terminals formerly used by plaintiff, refusal of Police Commissioner to permit plaintiff to use terminal facilities of another bus line of West 41st Street between 7th and 8th Avenues because of congested traffic conditions, **held** not to have been arbitrary, and court would not interfere with his determination.-*Edwards Motor Transit Co. v. Wallander*, 187 Misc. 446, 61 N. Y. S. 2d 93 [1945].

¶ 34. Traffic regulation prohibiting operation of omnibuses except upon the routes designated in the franchise, did not apply to a bus which, because of engine trouble, deviated from its authorized route but took on no passengers while off the streets designated in its franchise. Hence, in an action to recover for personal injuries sustained in an accident while traveling off its scheduled route, it was improper for the court to charge that the jury should consider on the question of the defendant's negligence the fact that the bus was proceeding along an avenue not commonly used by buses. Moreover, even if the bus had been operating for hire, the charge would have been improper because it did not appear that there was any causal connection between such use and the accident.-*Weidenfold v. Surface Transp. Corp.*, 269 App. Div. 341, 55 N. Y. S. 2d 780 [1945].

¶ 35. Under traffic regulation providing that the driver of a vehicle approaching an intersection not controlled by traffic lights shall grant the right of way to the operator of the vehicle approaching from the right, and a further regulation that a driver making a right turn shall grant the right of way to a driver proceeding straight ahead on an intersecting street, the driver of a bus which was proceeding straight ahead on the intersecting street had the right of way over a police car which was approaching on the intersecting street to the right of the bus, and which was struck by the bus as it was in the act of making a right turn.-*People v. Albergottie*, 51 N. Y. S. 2d 270 [1944].

¶ 36. Violation by infant of traffic regulation prohibiting roller skating in the roadway did not make the infant guilty of contributory negligence as a matter of law, although such violation could properly be considered by the jury with all the other circumstances.-*Poplet v. Surface Transp. Corp.*, 127 (13) N. Y. L. J. (1-18-52) 245, Col. 2 F.

¶ 37. A violation of Article 7, § 101 of the Traffic Regulation relative to brakes, is not a crime, but an offense punishable pursuant to § 1063 of the Charter. Driver of vehicle to which there was attached a two-wheel trailer loaded with two wooden poles 55 feet in length, **held** guilty of violation of traffic regulation prescribing the allowable braking distance. The hydraulic brakes on the forward wheels of the vehicles were inoperable due to the exhaustion of hydraulic fluid in the compression cylinder, but no evidence of leakage immediately prior to the alleged offense was adduced in behalf of the defendant.-*People v. Pulizzi*, 199 Misc. 405, 106 N. Y. S. 2d 680 [1950].

¶ 38. Conviction of defendant for violation of Traffic Regulations, Art. 3, § 50, providing that a driver shall sound the horn of his vehicle only when necessary to warn a person or animal of danger, was affirmed without opinion. A police officer had testified that he heard the sounding of an automobile horn three times for about two or three seconds each time, and upon investigation discovered that a disabled ambulance was being pushed by an automobile, behind which were two cars and that of defendant. Defendant testified the ambulance driver was astride the center line of the street blocking traffic, that the regulation was ambiguous, and moreover was arbitrary and capriciously administered.-*People v. Weil*, 304 N. Y. 555 [1952].

¶ 39. Child who was injured while playing on a "Play Street" in the City of New York when its foot and ankle came in contact with the rear wheel of a sanitation truck proceeding through the street, **held** not to have established a right of recovery. The sanitation truck was lawfully traversing the street for purpose of collecting refuse, it was proceeding at a slow rate of speed and in a reasonably prudent manner, and the inference was that there was negligence on part of the infant.-*Castro v. City of N. Y.*, 131 (60) N. Y. L. J. (3-30-54) 9, Col. 6 F.

¶ 40. Section 191 of Article 15 of the Traffic Regulations of the City of New York, prohibiting entrance into the congested garment district of Manhattan of vehicles for transportation of merchandise having an overall length of 33 feet or more between the hours of 8 a.m. and 6 p.m. from Monday through Friday, but permitting entry of such vehicles if destined to an off-street parking facility or terminal located within the area **held** valid. The regulation had been promulgated only after extensive study and following a hearing; that incidentally interstate commerce was adversely affected was irrelevant; and a possible loss of profit and pecuniary damage to the plaintiff carriers would not prevent the exercise of police power, although such loss and damage were relevant factors determining the reasonableness of the exercise of the power.-*Arrow Carrier Corp. v. Traffic Comm'n*, 198 Misc. 1112, 99 N. Y. S. 2d 138 [1950].

¶ 41. A court refused to entertain jurisdiction of an action for a declaratory judgment that police officers have no power to order a person who is lawfully standing on a public sidewalk to move on, where such person is not congregating with others and is not interfering with the equal rights of others. Plaintiff had allegedly been ordered to move on while standing on 42nd Street to enjoy the scenery.-*Caplan v. Murphy*, 38 Misc. 2d 512, 236 N. Y. S. 2d 979 [1962].

¶ 42. Section 180 of Article 14 of the Traffic Regulations of the City of New York, forbidding any vehicle or any combination of vehicles over 33 feet in length, including load, for the transportation of merchandise, to enter any of the streets named in the regulation which pertained to the locality known as the Washington Market Area and the section thereof referred to as the "Butter and Egg District," and § 181 prohibiting the parking of vehicles in the locality, on the named streets, 24 hours daily, seven days a week, **held** invalid as unreasonable and discriminatory, inasmuch as no similar restrictions were imposed with respect to the "Midtown Area" or "Garment Center" where greater traffic congestion prevailed and where the cross streets were narrower than those in the market area, and moreover the forbidding of over-length trucks to use the streets when trucks 33 feet in length might use the streets without limitation as to number was illogical. That plaintiffs had grudgingly submitted to the regulations during the several years they had been in effect would not give rise to any estoppel.-*Zenith-Godley v. Wylie*, 108 N. Y. S. 2d 681 [1951]. The Appellate Division stated that "limiting the length of trucks which may enter various areas in New York City does not appear to be

invalid of itself," and reversing in part and affirming in part **held** that in the instant case, involving the reasonableness of a municipal regulation, a trial should be required before the granting of an injunction pendente lite against enforcement of the regulation, 279 App. Div. 498, 110 N. Y. S. 2d 599 [1952].

¶ 43. Section 180 of Article 14 of the Traffic Regulations of the City of New York, forbidding any vehicle or any combination of vehicles over 33 feet in length, including load, for the transportation of merchandise, to enter any of the streets named in the Regulation which pertained to the locality known as the Washington Market Area and the section thereof referred to as the "Butter and Egg District," **held**, following a trial, valid and constitutional. The Traffic Commissioner had the power to make the Regulation; such Regulation did not constitute a total prohibition and was not unreasonable; it was intended to relieve traffic conditions in the area and it did relieve such conditions; and it was a proper exercise of police power. Conditions in the Garment Center, which was not subjected to the same Regulation, were dissimilar from those in the instant area.-Zenith-Godley Co. v. Wiley, 121 N. Y. S. 2d 795 [1953].

¶ 44. Local Law No. 68 of 1938, providing that storekeepers and peddlers might sell and display Xmas trees and supplementary items on sidewalk during December, contravened the City Charter (170 Misc. 501), as control of street conditions at holiday time, as well as other times, in congested districts, was a proper subject of regulation, of which the municipal police should not be deprived.-Ploche v. Valentine, 102 (141) N. Y. L. J. (12-19-39) 2217, Col. 4 M.

¶ 45. A record of conviction of defendant for a traffic infraction consisting of "dangerous driving" as defined in N. Y. C. Traffic Regulations, Art. 3, § 20, after trial on a not guilty plea, was inadmissible against the defendant in a civil suit arising out of the same occurrence, and he was not subject to interrogation in respect to such conviction to establish a charge of negligence.-Walther v. News Syndicate Co., 276 App. Div. 169, 93 N. Y. S. 2d 537 (1949).

¶ 46. Regulations of Police Commissioner providing that a violation of speed limits subjects offender to a fine or imprisonment or both, are penal in nature and should be strictly construed.-People v. Hugh Perry, 23 N. Y. S. 2d 769 [1940].

¶ 47. A temporary injunction restraining Police Department from stationing an officer outside bar and restaurant and requiring removal of a "raided premises," sign, was denied. On August 4, 1962 there had been an arrest in the premises of four persons, one of whom was found guilty of possession of policy slips, there was still pending a charge of disorderly conduct under the A. B. C. Law, there had been several prior arrests and complaints, and the license had previously been suspended as a result of police action.-E. S. Restaurant, Inc. v. Murphy, 149 (2) N. Y. L. J. (1-3-63) 12, Col. 5 F.

¶ 48. Injunction restraining Police Commissioner from maintaining a "raided premises" sign at bar and grill was denied where there had been at least two arrests in the premises for violation of P. L. § 722, charging the bar with being a "disorderly premises," and prior to the arrests there were three complaints alleging the premises were frequented by homosexuals, etc. That the present owner had been in possession only a very short time and did not have actual knowledge of the nature of the premises and its attendant patronage, was immaterial.-111 Restaurant, Inc. v. Murphy, 149 (17) N. Y. L. J. (1-24-63) 13, Col. 5 M.

¶ 49. Police Commissioner **held** to have acted lawfully in stationing a policeman and maintaining a "Raided" sign in plaintiff's business premises where many violations had occurred therein.-Azee Rest., Inc. v. Adams, 133 (94) N. Y. L. J. (5-13-55) 7, Col. 3 F.

¶ 50. Commissioner acted lawfully in assigning police officers to petitioner's cafe and posting sign "Raided Premises" thereon, where numerous arrests involved petitioner's customers and official sources reported unlawful activities of its patrons.-674 Cafe, Inc. v. Adams, 132 (3) N. Y. L. J. (7-6-54) 3, Col. 5 F.

¶ 51. Plaintiffs **held** entitled to temporary injunction restraining stationing of police officer in their premises, where since plaintiffs had purchased the premises there had been but a single isolated arrest, plaintiffs had received no complaints or notices from the police, and the complaints received by the police after plaintiffs' purchase were based

upon acts occurring prior to the purchase.-Fuld v. Wallander, 119 (58) N. Y. L. J. (3-25-48) 1101, Col. 2 M.

¶ 52. Motion to restrain Police Commissioner from maintaining a patrolman in plaintiff's hotel and from displaying a "raided premises" sign thereon, was denied, where 18 complaints of prostitution had been received by the Police Department between September, 1947 and May, 1948, resulting in numerous arrests and convictions. Although plaintiff had only taken over operation of the premises in May, 1948, he had been the owner since February, 1946, and should have known what was going on during such time.-Kahan v. Wallander, 193 Misc. 190, 83 N. Y. S. 2d 570 [1948].

¶ 53. Hotel operator's application for injunction restraining Police Commissioner from stationing a police officer in the hotel, was denied, where, although the hotel clerk and a woman guest who had been arrested on April 8, 1948, were discharged in Magistrate's Court, from January, 1942, to date there had been 105 arrests made in the hotel, 104 of them in connection with prostitution and 66 of them resulting in convictions and since January 1, 1947, 54 arrests were made, resulting in 34 convictions.-Regent Hotel Corp. v. Wallander, 119 (104) N. Y. L. J. (5-28-48) 2011, Col. 5 T.

¶ 54. The stationing of police in front of a Times Square grill and the maintenance of a "Raided Premises" sign could not be enjoined where the evidence showed that the Armed Forces had complained that venereal disease had been contracted by servicemen from prostitutes met at plaintiff's premises. Evidence also showed that a large percentage of plaintiff's customers were servicemen, that unescorted females frequented the premises and that there was solicitation for immoral purposes.-L. & P. Co. v. Kennedy, 135 (55) N. Y. L. J. (3-21-56) 7, Col. 4 T.

¶ 55. The stationing of police officers in front of plaintiff's premises and the placing of a "raided premises" sign was reasonable where the police department had received complaints that 18 members of the armed forces had contracted venereal disease from prostitutes met at the premises and many other similar complaints were received.-Eighth Avenue Ringside Restaurant, Inc. v. Kennedy, 151 N. Y. S. 2d 91 [1956].

¶ 56. The Police Commissioner was not arbitrary where he placed plaintiff's bar and grill under surveillance and posted a "Raided Premises" sign. The Commissioner had withdrawn his surveillance upon the plaintiff's representation that the premises would be operated in an orderly manner but plaintiff continued to permit male characters affecting feminine mannerisms to visit the premises.-Kay's Bar and Grille, Inc. v. Kennedy, 135 (66) N. Y. L. J. (4-5-56) 8, Col. 1 F.

¶ 57. A temporary injunction prohibiting the Police Commissioner from maintaining a "Raided Premises" sign was denied where charges of violation of law springing from activities initiated in the premises had resulted in some convictions.-389 Eighth Ave. Restaurant, Inc. v. Kennedy, 134 (63) N. Y. L. J. (9-29-55) 7, Col. 1 F.

¶ 58. Defendants carrying placard and walking back and forth in front of visitors' entrance to the United Nations and distributing leaflets were improperly convicted of disorderly conduct under Penal Law, § 722. Case did not turn on any agreements executed between the United Nations and the United States.-People v. Carcel, 3 N. Y. 2d 327, 165 N. Y. S. 2d 113, 144 N. E. 2d 81 [1957].

¶ 59. The City was not obligated to station police in a vicinity involved in a labor dispute and plaintiff, who was assaulted by pickets could not recover from the City for its failure to maintain a police officer at the scene of the picketing as a protection for the public.-King v. City of New York, 3 Misc. 2d 241, 152 N. Y. S. 2d 110 [1956].

¶ 60. Petitioner's application for order directing Police Commissioner to discharge the police guard assigned to protect him presented a triable issue of fact, in view of statements allegedly made by petitioner that his life was in danger and "a lot of guys would be glad to get me."-In re Polizio (Wallander), 118 (54) N. Y. L. J. (9-13-47) 445, Col. 6 T.

¶ 61. Plaintiff's intestate furnished information to the City police, concerning a national known criminal, who had evaded the clutches of the law. He requested police protection after he had received various threats against his life.

Within three weeks he was shot and killed by an unknown person or persons. An action for damages was filed against the City based on the theory that the City had failed to furnish adequate police protection. The complaint was dismissed. Held: the complaint stated a cause of action. The public (acting in this instance through the City of New York) owes a common-law duty to use reasonable care for the protection of persons, who have corroborated with it, in the arrest or prosecution of criminals, once it reasonably appears that they are in danger, due to their corroboration. Section 1848 of the Penal Law, while it recognizes a duty on the part of municipal corporations to persons, who are killed or injured, from aiding in the apprehension of criminals, neither expressly or by implication repeals the common-law remedy.-*Shuster v. City of New York*, 5 N. Y. 2d 75, 180 N. Y. S. 2d 265, 154 N. E. 2d 534 [1958].

¶ 62. In action by certain members of New York City Police Department for a declaratory judgment nullifying a rule of the Police Commissioner prohibiting members of the police force from joining any labor union, an application for an injunction pendente lite restraining the Commissioner from enforcing the rule by disciplinary action, was denied, since the plaintiffs failed to show that irreparable harm would result to them if the injunction were not granted, and they failed to show a clear and convincing right to prevail upon the ultimate determination. In every instance when the question has arisen in the courts of last resort in other states, the Court has sustained the power of the Police Commissioner to prohibit members of the police force from joining proscribed organizations. Furthermore, the State Constitution, Art. 1, § 17, providing that employees shall have the right to organize and to bargain collectively through representatives of their own choosing, was not intended to apply to public employees.-*Butler v. Monaghan*, 200 Misc. 327, 106 N. Y. S. 2d 861 [1951].

¶ 63. Rule 33 of the Commissioner of Docks which required the payment at the New York Municipal Airport of a fee each time a taxicab entered an area designated as a passenger pickup point was valid and enforcement could not be enjoined. The rule was not in conflict with this section which gives the Police Commissioner the power to make rules and regulations governing the traffic on public streets.-*Weinstein v. McKenzie*, 177 Misc. 451, 30 N. Y. S. 2d 733 [1941].

¶ 64. Rules promulgated by the Police Commissioner which prohibited the employment of any person in a cabaret who had not obtained an identification card, required prospective employees to be fingerprinted and provided that no person convicted of a felony or certain other offenses could be employed in a cabaret were valid.-*Matter of Friedman (Valentine)*, 177 Misc. 437, 30 N. Y. S. 2d 891 [1941], *aff'd* 266 App. Div. 561, 42 N. Y. S. 2d 593 [1943].

¶ 65. The defendant was charged with going the wrong way on a one-way street. The Magistrate refused to admit evidence of a diagram and a photograph taken by defendant $1\frac{1}{2}$ hour after he was served with a summons. Held: the refusal of the Magistrate to admit such evidence was reversible error.-*People v. Hausen*, 142 (101) N. Y. L. J. (11-24-59) 12, Col. 6 F.

¶ 66. Where City of New York posted a "raided premises" sign and stationed a police officer within the owner's premises, court would not enjoin the City from continuing such action in view of testimony of numerous complaints made regarding owner's activities in the premises. In absence of convincing proof that the actions of the City were arbitrary the court would not interfere with the police in the performance of their duties.-*Anonfo v. City of New York*, 144 (19) N. Y. L. J. (7-28-60) 7, Col. 1 F. Same in *Barbarn Realty Corp. v. Kennedy*, 144 (62) N. Y. L. J. (9-28-60) 13, Col. 1 F and *Barbarn Realty Corp. v. Kennedy*, 144 (109) N. Y. L. J. (12-8-60) 14, Col. 4 M.

¶ 67. Police Commissioner would not be temporarily restrained from posting a "raided premise" sign and stationing a uniformed policeman on the premises where the telephone switchboard operator had been arrested for bookmaking in the hotel and there were unusual telephone arrangements and connections in one of the rooms of the hotel of which the plaintiff could not be said to have been unaware.-*Bryant Hotel Inc. v. Murphy*, 145 (125) N. Y. L. J. (6-29-61) 8, Col. 1 M.

¶ 68. Plaintiff had been arrested 10 times for gambling at his restaurant since 1947, convicted three times, and in April, 1961, a patron was arrested for bookmaking and plaintiff was also arrested for permitting his premises to be used

for gambling purposes, although both arrests resulted in acquittals. **Held**, the court would not interfere with the action of Commissioner in stationing a uniformed policeman on the premises but the posting of the sign "raided premises" would be enjoined.-*Gentile v. Murphy*, 146 (2) N. Y. L. J. (7-5-61) 7, Col. 2 T.

¶ 69. Although the evidence presented in the affidavits indicated that there might be a reasonable basis for posting a "raided premises" sign and stationing a policeman on petitioner's premises, the earliest time for a trial would be September 5 and in the meantime petitioner's business might be destroyed. Under such circumstances the Commissioner will be temporarily enjoined until the trial date.-*Paramount Buffet, Inc. v. Murphy*, 145 (122) N. Y. L. J. (6-26-61) 8, Col. 7 F.

¶ 70. Where there were 15 arrests for prostitution at plaintiff's hotel between March, 1959 and March, 1961 and two additional arrests were made on March 28, 1961, one for prostitution and the other for offering to perform an indecent act, a motion for injunction pendente lite restraining the Police Commissioner from maintaining a "raided premises" sign and stationing a uniformed policeman on the premises, would be denied.-*Harglo Hotel Corp. v. Murphy*, 146 (15) N. Y. L. J. (7-24-61) 5, Col. 5 F.

¶ 71. Petitioner's name was continued in the known gamblers file merely because of two arrests in 1946 for bookmaking, with the first arrest resulting in a \$25 fine and the second resulting in an acquittal. Pursuant to the rules of the Department the petitioner's activities at home, with neighbors, co-workers and superiors were periodically checked resulting in embarrassment and harassment. The rules were arbitrary and unreasonable in failing to take into account the degree of rehabilitation and restoration to society as a useful citizen, and the continuance of petitioner's name on the list was arbitrary.-*Di Melfi v. Kennedy*, 145 (73) N. Y. L. J. (4-17-61) 15, Col. 2 F.

¶ 72. Pursuant to § 534 of the Charter, the Commissioner of Parks issued a regulation, which provided that "no person operating, driving or propelling any vehicle shall proceed at a greater and maximum or less than minimum speed indicated by sign; but in no case shall such maximum speed exceed 40 miles per hour." The defendant was convicted for violating Article 6, § 60 of the Traffic Regulations in that he was driving at a rate of 50 miles per hour in a 40-mile zone. The defendant appealed and claimed that he was entitled to reversal since the prosecution had failed to show that there were any signs posted along the parkway specifying the maximum speed limit. **Held**: the regulation of the Commissioner had the force of law and the defendant was presumed to have known that this law prohibited signs from being erected permitting speed in excess of 40 miles per hour in this location. Therefore, it was immaterial whether signs had been posted along the parkway.-*People v. Amabile*, 21 Misc. 2d 951, 198 N. Y. S. 2d 560 [1960].

¶ 73. Testimony by officer that he had checked a defendant for 7/10ths of a mile with a speedmeter and that the speedmeter had recently been checked was legally insufficient to convict defendant of speeding charge, especially, in view of the fact that, there was no evidence as to the qualifications of the officer to estimate speed.-*People v. Mallee*, 142 (101) N. Y. L. J. (11-24-59) 12, Col. 16.

¶ 74. The defendant was charged with operating a motor vehicle at an excessive rate of speed, namely, at 48 miles per hour, in a traffic zone having a posted rate of speed of 40 miles per hour, in violation of § 60 of the Traffic Regulations of the City of New York. Speeding at the scene of the alleged infraction was checked by radar, and highway signs to that effect warned the motorists. **Held**: The registering and recording of the speed of the defendant's vehicle by the radar speedmeter in the case at bar, in view of an expert's explanation of its nature and function, and the way in which it was set up, tested and operated by the police units, constituted legally admissible evidence. Furthermore, the court held that the time had come now to recognize the scientific accuracy of radar speedmeters in speed cases.-*People v. Nasella*, 3 Misc. 2d 418, 155 S. 2d 463 [1956].

¶ 75. A defendant was guilty of violating subdivision c-1 of § 81 of the Traffic Regulations, even though he was parked in front of his own driveway. The Regulation is intended to protect the right of an owner to have free access to and from his property. However, that did not give the defendant the right to park his own car where such parking was specifically prohibited.-*People v. Koenig*, 17 Misc. 2d 934, 187 N. Y. S. 2d 379 [1959].

¶ 76. Traffic Regulation 15 prohibiting parking of any vehicle in posted zone applies to push carts. The definition of parking in § 2, subdivision (20) of the Vehicle and Traffic Law limiting definition to motor vehicles does not render the Traffic Regulation invalid, since it was enacted pursuant to the Charter which takes precedence over the general law.-*People v. Weinberger*, 8 Misc. 2d 953, 165 N. Y. S. 2d 229 [1957].

¶ 77. Permission granted by the City for omnibuses to carry exterior advertising was not illegal in that the buses operated in City parks, on parkways, and on highways built with State and Federal funds.-*Matter of LaGuardia*, 22 Misc. 2d 340, 198 N. Y. S. 2d 230 [1960]; *aff'd* 11 A. D. 2d 655, 203 N. Y. S. 2d 1020 [1960].

¶ 78. The parking of a searchlight truck in the street opposite a theatre, with the light directed toward the marquee of the theatre and at the sky, constituted a violation of the regulations prohibiting parking of a vehicle on any street for advertising purposes.-*People v. Wendelken*, 4 N. Y. 2d 994, 177 N. Y. S. 2d 511, 152 N. E. 2d 533 [1958].

¶ 79. Although the operator of a gasoline station had procured curbcut permits to allow entrance to its premises, its rights were subordinate to those of the public in the use of the highway. The City was within its authority in establishing bus stops in front of the station, even though this interfered with access thereto.-*Cities Service Oil Co. v. City of New York*, 5 N. Y. 2d 110, 180 N. Y. S. 2d 769, 154 N. E. 2d 814 [1958].

¶ 80. A temporary injunction was granted against police surveillance of a restaurant which was about to change hands, in order that the owner might bring about changes of conditions objected to.-*Vinli Restaurant Corp. v. Kennedy*, 135 (85) N. Y. L. J. (5-2-56) 8, Col. 1 T.

¶ 81. The Police Commissioner was not required to provide police protection to a person as a result of vandalism against his car and apartment.-*Todd v. Kennedy*, 143 (40) N. Y. L. J. (3-1-60) 13, Col. 4 F.

¶ 82. Traffic Regulation 51, which provides that the driver of a vehicle shall not turn the vehicle so as to proceed in the opposite direction upon any street in a business district, is unconstitutional, and invalid, because of vagueness. The words "business district" are especially indefinite, since a driver has no way of knowing as to what "business district" is referred to.-*People v. Kassover*, 20 Misc. 2d 782, 191 N. Y. S. 2d 54 [1959].

¶ 83. The defendant was not guilty of violating § 30 of Article 3 of the Traffic Regulations, where with a green light in his favor, he proceeded into the intersection and made a left-hand turn, in view of the fact that there were no other vehicles or pedestrians at the intersection in question at the time.-*People v. Murray*, 19 Misc. 2d 981, 192 N. Y. S. 2d 960 [1959].

¶ 84. Where defendant was convicted of murder in the second degree his application for an order directing the Police Department to give him a transcript of certain police records alleged to be necessary in subsequent litigation was denied as being beyond the authority of the court.-*People v. Girardi*, 145 (38) N. Y. L. J. (2-27-61) 17, Col. 3 F.

¶ 85. Tenant of a service station was involved in a private controversy with its landlord which concerned the landlord's forceful entry during the pendency of a summary proceeding. Tenant applied for an order directing the Police Commissioner to divulge the name of the person who committed a crime against the tenant, to arrest the offender and to give petitioner police protection. **Held**, application denied. Petitioner had sufficient information to commence an action against the landlord on information and belief and then to obtain further evidence by pretrial examination. There was no clear showing of a need for the relief requested.-*Matter of Tex Bayside Service Station Inc. (Kennedy)*, 29 Misc. 2d 337, 214 N. Y. S. 2d 560 [1961].

¶ 86. The Police Department and the Commissioner of Traffic had the right to regulate traffic and parking on privately owned streets which were used as public highways with the consent of the owners.-*Fieldston Property Owners Association, Inc. v. Bianchi*, 29 Misc. 2d 326, 215 N. Y. S. 2d 834 [1961].

¶ 87. Where there had been numerous arrests and convictions for prostitution, a hotel corporation could enjoin the

Police Department from maintaining a "raided premises" sign but not from maintaining a police officer on the premises.-Hotel Coolidge, Inc. v. Murphy, 146 (49) N. Y. L. J. (9-11-61) 9, Col. 2 F.

¶ 88. The Police Commissioner acted within his discretion in stationing a patrolman in plaintiff's hotel for nine months. The hotel had a record of prostitution offenses and there was no showing that the owner had adopted preventative measures.-Barbarn Realty Corp. v. Kennedy, 28 Misc. 2d 447, 216 N. Y. S. 2d 291 [1960].

¶ 89. Plaintiff was entitled to a permanent injunction restraining the Police Commissioner from maintaining a policeman in plaintiff's restaurant, together with a sign describing the premises as "raided." Plaintiff's police record consisted solely of the arrest of its bartender and two women who were found not guilty after trial.-Crest Room, Inc. v. Murphy, 31 Misc. 2d 909, 221 N. Y. S. 2d 438 [1961].

¶ 90. The court refused to enjoin the Police Commissioner from stationing a police officer in front of a bar and grill and posting a sign "Raided Premises" where there had recently been a series of complaints, violations and arrests within the bar and grill. However, the owner was granted leave to renew his motion after 90 days.-Cafe DeLys, Inc. v. Murphy, 148 (24) N. Y. L. J. (8-3-62) 4, Col. 6 M.

¶ 91. The Police Commissioner can be required to remove a sign "raided premises" only in a plenary action seeking injunctive relief.-Tic Toc Lounge, Inc. v. Murphy, 148 (32) N. Y. L. J. (8-15-62) 5, Col. 6 F.

¶ 92. The Police Department could not be required to produce a letter allegedly written by plaintiff's landlord informing the police that plaintiff was operating a house of prostitution for the purpose of permitting plaintiff to craft a complaint in her libel action against the landlord. The right of the police to protect informants is superior to the right of a private person to prove an alleged libel.-Zucker v. Rosenbaum, 37 Misc. 2d 222, 234 N. Y. S. 2d 170 [1962].

¶ 93. Section 2/47.0 of the Police Department Rules and Regulations is valid and was authorized by this section of the Charter and other sections. The rule requires that a policeman devote his full time and attention to the service of the department. It states that a policeman shall not engage in any other occupation except when suspended from duty without pay or when on vacation or other leave.-Flood v. Kennedy, 12 N. Y. 2d 345, 190 N. E. 2d 13, 239 N. Y. S. 2d 665 [1963].

¶ 94. Club allegedly formed for purpose of fostering better communal relations was not entitled to an injunction pendente lite restraining police officers from entering premises and harassing its members, in view of affidavits of officers setting forth the receipt of numerous complaints that gambling was taking place in the club's premises, that entrance to the premises could be gained only after ringing a bell, in response to which a buzzer would open a door, and then the person seeking admittance would be observed through a peephole in a second door before he would be admitted and that sixteen individuals were arrested, charged with playing cards for money.-Brook Civic Club v. Murphy, 149 (118) N. Y. L. J. (6-19-63) 18, Col. 5 M.

¶ 95. Where petitioner was entitled to institute a plenary suit for an injunction his Article 78 proceeding for an order pendente lite to remove a "raided premises" sign and officer stationed at premises was dismissed.-London Bridge Steak House v. Leary, 155 (82) N. Y. L. J. (4-27-66) 17, Col. 8 T.

¶ 96. Where arrest based on conduct that allegedly took place in restaurant did not take place there and premises had a good reputation for many years owner was entitled to a temporary injunction restraining Police Commissioner from keeping a "raided premises" sign and policeman at premises.-232 East 86th St. Restaurant, Inc. v. Leary, 155 (58) N. Y. L. J. (3-24-66) 16, Col. 5 M.

¶ 97. Restaurant was not entitled to an injunction restraining Police Department from assigning a police officer to the premises and from posting a "raided premises" sign where there were 13 summonses pending disposition since plaintiff took over operation of the premises in April 1966 and undercover officers of defendant swore that hidden signal devices were installed and used to warn patrons in the back room allegedly engaged in immoral and illegal

activities of the approach of police officers.-Jomac Restaurant, Inc. v. Leary, 157 (23) N. Y. L. J. (2-2-67) 16, Col. 6 M.

¶ 98. Suspected truants from school may be detained by NYC police for purpose of transporting to board of education. NYC Charter § 435 (a) reflects this understanding of police authority and role. Matter of Shannon B., 122 A. D. 2d 268, 70 N. Y. 2d 458 [1987].

¶ 99. The Supreme Court has the authority to require the NYC Police Department to enforce a court order requiring protestors to keep at least 50 feet away from petitioners' two business establishments; pursuant to NY City Charter § 435(a) it shall be the duty of the police department to preserve the public peace, disperse unlawful or dangerous assemblages and assemblages which obstruct the free passage of public streets, sidewalks and places, protect the rights of persons and property, and enforce and prevent the violation of all laws. Boung Jae Jang v. Brown, 161 AD2d 49.

¶ 100. Police department must enforce a supreme court order requiring protestors to keep at least 50 feet away from petitioners to business establishments. Supreme Court has authority to order the police and it is part of their duties pursuant to Charter § 435(a). Boung Jae Jang v. Brown, 161 AD2d 49 [1991].

¶ 101. City Charter § 435(a), which imposes a duty on the Police Department to arrest criminals, suppress riots and mobs, and disperse unlawful assemblages, does not provide a basis for a cause of action against the City by an Emergency Medical Service (EMS) worker who was injured during an attack by correction officers at an illegal demonstration of correction officers. Betancur v. City of New York, 11 A.D.3d 266, 782 N.Y.S.2d 446, leave to appeal denied, 4 N.Y.3d 707, 796 N.Y.S.2d 580, 829 N.E.2d 63 (2005).

FOOTNOTES

21

[Footnote 21]: * Should be commissioner of transportation.



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NYC Charter 436

New York City Charter

CHAPTER 18 POLICE DEPARTMENT

§ 436. **Powers over certain trades.**

The commissioner shall possess powers of general supervision and inspection over all licensed or unlicensed pawnbrokers, vendors, junkshop keepers, junk boatment, cartmen, dealers in second-hand merchandise and auctioneers within the city; and in connection with the performance of any police duties he shall have power to examine such persons, their clerks and employees and their books, business premises, and any articles of merchandise in their possession. A refusal or neglect to comply in any respect with the provisions of this section on the part of any pawnbroker, vendor, junkshop keeper, junk boatman, cartman, dealer in second-hand merchandise or auctioneer, or any clerk or employee of any thereof shall be triable by a judge of the criminal court and punishable by not more than thirty days' imprisonment, or by a fine of not more than fifty dollars, or both.

HISTORICAL NOTE

Amended by L. L. 1947, No. 39.

Amended by L. L. 1962, No. 27.

Amended by L. L. 1969, No. 74.

Amended by L. L. 1971, No. 12.

Amended by L. L. 1977, No. 102.

CASE NOTES

¶ 1. Since, under § 436-1.0 of the Administrative Code, a cabaret license cannot be revoked or suspended without a hearing upon notice, a proceeding to review and annul a determination of the Police Commissioner which suspended a

cabaret license should be transferred to the Appellate Division under the provisions of Civil Practice Act § 1296.-Matter of Hood Restaurant, 186 Misc. 254, 58 N. Y. S. 2d 896 [1945].

¶ 2. Rules promulgated by the Police Commissioner which prohibited the employment of any person in a cabaret who did not possess an identification card and which required all employees of cabarets to be fingerprinted and prohibited the employment of any person convicted of a felony or certain offenses were valid.-Matter of Friedman (Valentine), 177 Misc. 437, 30 N. Y. S. 2d 891 [1941], aff'd 266 App. Div. 561, 42 N. Y. S. 2d 593 [1943].

¶ 3. The Police Commissioner of the City of New York has no power to make rules and regulations with reference to hotel runners in the absence of specific statutory delegation of such authority. Thus, regulations which prohibited a runner from wearing a uniform and attempting to divert any person from any indicated destination or place of stay were invalid and their enforcement was enjoined.-Levy v. Valentine, 173 Misc. 306, 17 N. Y. S. 2d 768 [1940].

¶ 4. Revocation of petitioner's license to operate a tow car and refusal to approve his renewal application because of alleged failure to cooperate with the District Attorney by refusing to sign a waiver of immunity before a grand jury, held arbitrary. Petitioner did appear and answered all questions. He was not required to waive his right to immunity.-D'Alessandro v. City of New York, 146 (7) N. Y. L. J. (7-12-61) 8, Col. 6 F.

¶ 5. Police officers maintained that their search of defendant's auto salvage yard was to gather evidence of a crime rather than to administer any regulatory scheme. When search is not undertaken as routine regulatory inspection the administrative search rationale is inapplicable. Subsequently obtained search warrant did not validate seizure of fruits of illegal entry. Evidence so obtained must be suppressed.-People v. Pace, 101 A. D. 2d 336 [1984]; reversing 111 Misc. 2d 488 [1981].

¶ 6. Search of auto repair shop was illegal since city is not authorized under § 436 to conduct a warrantless search. Auto shops are governed by state Veh & Traf L. which preempts any city legislation.-People v. Frank Salamino, 191(3) N. Y. L. J. (1-5-84) 14, Col. 1 B.

¶ 7. Neither the used car business nor the auto repair shop business in New York City fall within the scope of those businesses which are pervasively regulated and which are, therefore, subject to warrantless searches and seizures.-People v. Robles, 124 Misc. 2d 419 [1984].

¶ 8. Pursuant to this section, a warrantless administrative search of such a pervasively regulated industry as the auto junkyard industry is constitutionally permissible. An arrest resulting therefrom is valid.-People v. Burger, 125 Misc. 2d 709 [1984].

¶ 9. A warrantless inspection can be justified if the officer was seeking to administer the regulatory schemes under this section.-People v. Cusumano, 108 A. D. 2d 752 [1985].

¶ 10. A warrantless administrative inspection of a collision repair shop is not authorized by this section because it is neither a "dealer in second-hand merchandise" nor a "junkyard" within the meaning of this section.-People v. Ost, 127 Misc. 2d 183 [1985].

¶ 11. Because this section does not in any way resemble an administrative or regulatory scheme since it contains no record-keeping requirements, this section is unconstitutional in that it violates the constitutional proscription against unreasonable searches and seizures. People v. Burger, 67 N. Y. 2d 338, cert. granted-US-, 107 S. Ct. 61 [Oct. 6, 1986].

¶ 12. Warrantless "administrative searches" of automobile dismantlers authorized by § 436 of charter violate NY constitution Art 1 § 12 protection against unreasonable search and seizures.-Peope v. Keta, 142 Misc 2d 986 [1989].

¶ 13. Stolen automobile parts seized by police from secondhand car dealership and repair shop during a warrantless "administrative search" must be suppressed as product of an illegal search and seizure. Statements made by

defendant after arrest must be suppressed for the same reason. § 436 providing the Police Commissioner with powers of general supervision of dealers in secondhand merchandise with power to examine books, premises and articles and merchandise in employees' possession is unconstitutional search and seizure. *People v. Craig*, 151 Misc. 2d 561 [1991].



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NYC Charter 437

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CHAPTER 18 POLICE DEPARTMENT

§ 437. **Detail to attend court.**

The commissioner is empowered to cause some intelligent and experienced person connected with the department to attend any courts in the city in cases where there is need of assistance, who shall, to such extent as shall be permitted by the rules of the court, aid in proceedings pending in such courts.



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CHAPTER 18 POLICE DEPARTMENT

§ 438. **Maintenance and operation of telegraph and telephone lines, etc.**

The commissioner shall have power to erect, operate, supply and maintain, subject to the general laws of the state, all such lines of telegraph and telephones and other means of communication as for the purposes and business of the police the commissioner shall deem necessary. The commissioner may provide all instruments, fixtures, property and materials for the purpose above mentioned and control the same.

CASE NOTES

¶ 1. That the City Police Department had refused to approve the restoration of telephone service to a petitioner whose telephone had been removed by the police when they raided his home on suspicion that he was using his home telephone for purpose of wagering on horse races, did not warrant the telephone company's refusal to restore service, as the Public Service Commission and not the Police Department has jurisdiction with respect to telegraph and telephone corporations. Accordingly, the petition for an order against the Police Commissioner directing restoration of telephone service was dismissed, as the Commissioner had no authority over the matter of furnishing telephone service to the public, and consequently there was no duty required by law of him which could be enforced by a mandamus order.-*Shillitani v. Valentine*, 184 Misc. 77, 53 N. Y. S. 2d 127 [1945], modified 269 App. Div. 568, 56 N. Y. S. 2d 210, *aff'd* 296 N. Y. 161, 71 N. E. 2d 450 [1947].



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NYC Charter 440

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CHAPTER 18 POLICE DEPARTMENT

§ 440. **Civilian complaints against members of the police department. [Repealed]**

HISTORICAL NOTE

Section repealed L.L. 1/1993 § 1 eff. July 4, 1993.



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NYC Charter 440

New York City Charter

CHAPTER 18-A CIVILIAN COMPLAINT REVIEW BOARD

§ 440. **Public complaints against members of the police department.**

(a) It is in the interest of the people of the city of New York and the New York city police department that the investigation of complaints concerning misconduct by officers of the department towards members of the public be complete, thorough and impartial. These inquiries must be conducted fairly and independently, and in a manner in which the public and the police department have confidence. An independent civilian complaint review board is hereby established as a body comprised solely of members of the public with the authority to investigate allegations of police misconduct as provided in this section.

(b) Civilian complaint review board.

1. The civilian complaint review board shall consist of thirteen members of the public appointed by the mayor, who shall be residents of the city of New York and shall reflect the diversity of the city's population. The members of the board shall be appointed as follows: (i) five members, one from each of the five boroughs, shall be designated by the city council; (ii) three members with experience as law enforcement professionals shall be designated by the police commissioner; and (iii) the remaining five members shall be selected by the mayor. The mayor shall select one of the members to be chair.

2. No member of the board shall hold any other public office or employment. No members, except those designated by the police commissioner, shall have experience as law enforcement professionals, or be former employees of the New York city police department. For the purposes of this section, experience as a law enforcement professional shall include experience as a police officer, criminal investigator, special agent, or a managerial or supervisory employee who exercised substantial policy discretion on law enforcement matters, in a federal, state, or local law enforcement agency, other than experience as an attorney in a prosecutorial agency.

3. The members shall be appointed for terms of three years, except that of the members first appointed, four

shall be appointed for terms of one year, of whom one shall have been designated by the council and two shall have been designated by the police commissioner, four shall be appointed for terms of two years, of whom two shall have been designated by the council, and five shall be appointed for terms of three years, of whom two shall have been designated by the council and one shall have been designated by the police commissioner.

4. In the event of a vacancy on the board during the term of office of a member by reason of removal, death, resignation, or otherwise, a successor shall be chosen in the same manner as the original appointment. A member appointed to fill a vacancy shall serve for the balance of the unexpired term.

(c) Powers and duties of the board.

1. The board shall have the power to receive, investigate, hear, make findings and recommend action upon complaints by members of the public against members of the police department that allege misconduct involving excessive use of force, abuse of authority, discourtesy, or use of offensive language, including, but not limited to, slurs relating to race, ethnicity, religion, gender, sexual orientation and disability. The findings and recommendations of the board, and the basis therefor, shall be submitted to the police commissioner. No finding or recommendation shall be based solely upon an unsworn complaint or statement, nor shall prior unsubstantiated, unfounded or withdrawn complaints be the basis for any such finding or recommendation.

2. The board shall promulgate rules of procedure in accordance with the city administrative procedure act, including rules that prescribe the manner in which investigations are to be conducted and recommendations made and the manner by which a member of the public is to be informed of the status of his or her complaint. Such rules may provide for the establishment of panels, which shall consist of not less than three members of the board, which shall be empowered to supervise the investigation of complaints, and to hear, make findings and recommend action on such complaints. No such panel shall consist exclusively of members designated by the council, or designated by the police commissioner, or selected by the mayor.

3. The board, by majority vote of its members, may compel the attendance of witnesses and require the production of such records and other materials as are necessary for the investigation of complaints submitted pursuant to this section.

4. The board shall establish a mediation program pursuant to which a complainant may voluntarily choose to resolve a complaint by means of informal conciliation.

5. The board is authorized, within appropriations available therefor, to appoint such employees as are necessary to exercise its powers and fulfill its duties. The board shall employ civilian investigators to investigate all complaints.

6. The board shall issue to the mayor and the city council a semi-annual report which shall describe its activities and summarize its actions.

7. The board shall have the responsibility of informing the public about the board and its duties, and shall develop and administer an on-going program for the education of the public regarding the provisions of this chapter.

(d) Cooperation of police department.

1. It shall be the duty of the police department to provide such assistance as the board may reasonably request, to cooperate fully with investigations by the board, and to provide to the board upon request records and other materials which are necessary for the investigation of complaints submitted pursuant to this section, except such records or materials that cannot be disclosed by law.

2. The police commissioner shall ensure that officers and employees of the police department appear before and respond to inquiries of the board and its civilian investigators in connection with the investigation of complaints

submitted pursuant to this section, provided that such inquiries are conducted in accordance with department procedures for interrogation of members.

3. The police commissioner shall report to the board on any action taken in cases in which the board submitted a finding or recommendation to the police commissioner with respect to a complaint.

(e) The provisions of this section shall not be construed to limit or impair the authority of the police commissioner to discipline members of the department. Nor shall the provisions of this section be construed to limit the rights of members of the department with respect to disciplinary action, including but not limited to the right to notice and a hearing, which may be established by any provision of law or otherwise.

(f) The provisions of this section shall not be construed to prevent or hinder the investigation or prosecution of members of the department for violations of law by any court of competent jurisdiction, a grand jury, district attorney, or other authorized officer, agency or body.

HISTORICAL NOTE

Section added L.L. 1/1993 § 1 eff. July 4, 1993.

HISTORICAL NOTE TO FORMER SECTION 440

Added by L. L. 1966, No. 40.

Subd. (a) amended L. L. 55/86 § 1.

Subd. (c) amended L. L. 55/86 § 1.

Subd. d added L. L. 55/86 § 2.

Subds. e-g relettered L. L. 55/86 § 2 [formerly Subds. d-f].

Subd. (c) amended at General Election, November 7, 1989.

CASE NOTES TO FORMER § 440

¶ 1. The appointment of a commission by the Mayor to investigate alleged police corruption and the City's anti-corruption procedures was not improper under this section where the purpose of the commission was to generally explore the overall situation regarding police corruption and not merely to hear and recommend on specific civilian complaints regarding the derelictions of particular police officers.-*Kiernan v. City of N. Y.*, 64 Misc. 2d 617, 315 N. Y. S. 2d 74 [1970], *aff'd*, 306 N. Y. S. 2d 967 [1970].

¶ 2. Proceedings before the Civilian Complaint Review Board not being final intra-agency determinations, the records thereof can be exempted by the New York City Police Department from the operation of the Freedom of Information Law.-*People v. Morales*, 97 Misc. 2d 733, 412 N. Y. S. 2d 310 [1979].

¶ 3. NYC Council is vested with power to amend voter-initiated measure to eliminate the requirement that all Civilian Complaint Review Board appointees be full-time members or employees of the police department. *Caruso v. City of New York*, 136 Misc. 2d 892 [1987].

CASE NOTES

¶ 1. The Mollen Commission, established to investigate allegations of corruption and the effectiveness of police procedures, when investigating general conditions and making recommendations for reforming procedures, does not

encroach on the Civilian Complaint Review Board since under Charter § 440 the Board investigates specific complaints against individual members of the Police Department and recommends disciplinary measures. *Kelly v. Dinkins*, 155 Misc. 2d 787 [1993].

¶ 2. Police officers who testify before the Civilian Complaint Review Board (CCRB) are entitled to use immunity statements or information or evidence obtained from testimony not usable in subsequent criminal proceeding. Even though the City Charter does not specifically provide for use immunity, the right flows from the constitutional protection against self-incrimination. *Caruso v. Civilian Complaint Review Board*, 158 Misc.2d 909, 602 N.Y.S.2d 487 (Sup.Ct. New York Co. 1993).

¶ 3. The determinations as to whether a substantiated Civilian Complaint Review Board complaint should be expunged or retained, and if retained, whether it should be utilized in personnel decisions, are policy matters within the Police Commissioner's discretion. Thus, CPLR Article 78 cannot be used to compel the Commissioner to exercise discretion in any particular manner. *Johnson v. Civilian Complaint Review Board*, 30 A.D.3d 201, 817 N.Y.S.2d 17 (1st Dept. 2006).



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CHAPTER 18-B INDEPENDENT POLICE INVESTIGATION AND AUDIT BOARD*22

§ 450. **Independent police investigation and audit board; membership.**

a. There shall be an independent police investigation and audit board, which shall consist of five members of the public, appointed by the mayor, who shall be residents of the city of New York. The members of the board shall be appointed as follows: (i) two members shall be appointed by the mayor; (ii) two members shall be designated by the city council; and (iii) the chair shall be appointed by the mayor after consultation with the speaker of the council. No member of the board shall hold any other public office or employment.

b. The members of the board shall be appointed for terms of three years, except that of the members first appointed, two shall be appointed for terms of one year, of whom one shall have been designated by the council and one shall have been appointed by the mayor, two shall be appointed for terms of two years, of whom one shall have been designated by the council and one shall have been appointed by the mayor, and the chair shall be appointed for a term of three years.

c. In the event of a vacancy on the board during the term of office of a member by reason of removal, death, resignation, or otherwise, a successor shall be chosen in the same manner as the original appointment. A member appointed to fill a vacancy shall serve for the balance of the unexpired term.

HISTORICAL NOTE

Section added L.L. 91/1997 § 2, eff. Feb. 23, 1998.

FOOTNOTES

[Footnote 22]: * Former Chapter 18-B creating the Independent Police Investigation and Audit Board enacted by L.L. 13/1995 was held invalid by Supreme Court Justice Beatrice Shainswit on June 28, 1995. This Chapter 18-B re-enacting the board was vetoed by the Mayor on Oct. 30, 1997 and overridden by the Council on Nov. 25, 1997 by vote of 41 for, 6 against, becoming L.L. 91/1997 eff. Feb. 23, 1998. Note the provisions of L.L. 91/1997 § 1:

Section 1. Legislative Findings of Fact and Declaration of Policy. The Council hereby finds that it is essential to the safety and well-being of the residents of the City of New York that members of the New York City Police Department be held to the highest standard of conduct and integrity in the performance of their professional responsibilities. As a society, we confer upon police officers the power to make arrests and, where necessary, use force, in order to protect public order, prevent crime and apprehend criminals. If the trust and confidence of the public is to be maintained, members of the police force must conduct themselves honestly, in a manner commensurate with the high degree of trust placed in them.

The Council finds that the vast majority of police officers discharge their duties honestly and with integrity. A relatively small number of police officers, however, have been found to engage in serious criminal activities, particularly in connection with the illegal drug trade. This was the finding of the Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department, better known as the "Mollen Commission." In July 1994, after an extensive investigation lasting almost two years, the Mollen Commission issued its final report. Among its key findings, the Commission concluded that the Police Department's internal anti-corruption systems had been allowed to deteriorate to the point where they "minimized, ignored and at times concealed corruption, rather than root it out."

The Commission concluded that the Department must retain primary responsibility for policing itself and maintaining integrity within its ranks. To that end, the Commission recommended a "dual track approach" calling for reform of the Department's internal anti-corruption structure and the creation of an independent police monitor to insure that the structure is working effectively.

The Council finds, as did the Mollen Commission, that once the glare of publicity has dimmed, the Police Department's commitment to zealously root out corruption will eventually diminish unless an independent entity continues to closely monitor the Department's anti-corruption efforts as well as independently investigate allegations of illegal activities. The purpose of this legislation is to create such an independent mechanism based upon the model proposed by the Mollen Commission.

The Independent Police Investigation and Audit Board created herein will have both the power to audit and examine the Police Department's own anti-corruption efforts and the ability to conduct independent corruption investigations backed by the power to issue subpoenas. It is, however, the Council's intention that the Police Department continue to have the primary responsibility for detecting and preventing internal corruption. The Council is also aware of the vital role played by other offices, such as the City's District Attorneys, in exposing and prosecuting acts of official corruption. The Council recognizes the need for cooperation and coordination among the responsible agencies in order to avoid duplication of efforts and interference with ongoing investigations and other legitimate law enforcement activities. For these reasons, the legislation requires the Board to enter into protocols with the Police Commissioner, the District Attorneys and the Civilian Complaint Review Board in order to create a structure in which such cooperation and coordination will be facilitated.

On November 23, 1994, after extensive public debate and consideration, the Council adopted Int. No. 402-A, which created an Independent Police Investigation and Audit Board. The legislation was vetoed by Mayor Giuliani on December 23, 1994. On January 19, 1995, the Council overrode the Mayor's veto, and Int.

No. 402-A became Local Law 13 of 1995. Subsequently, Mayor Giuliani instituted a judicial proceeding against the City Council seeking to declare Local Law 13 invalid.

On June 28, 1995, Justice Beatrice Shainswit of the New York State Supreme Court, New York County, held Local Law 13 to be invalid on the ground that, absent a referendum, the Council's power to appoint members of the Independent Police Investigation and Audit Board unlawfully interfered with the Mayor's authority to appoint "officers of the City" pursuant to §6(a) of the Charter. The court found that the Board's authority pursuant to Local Law 13 to "assist the police department to formulate and implement policies to detect and eliminate corruption" was sufficient to confer the status of "officers of the City" upon Board members, for the purposes of Charter §6(a).

On January 9, 1997, the First Department of the Supreme Court Appellate Division affirmed the Supreme Court's ruling that Local Law 13 was invalid. The Appellate Division's sole basis for this ruling was that the law interfered with the Mayor's appointment powers under the Charter. The Appellate Division declined to sever the Council's appointment power from Local Law 13, pointing to the fact that the law was adopted without a severability clause. The Court failed to give effect to §1153 of the Charter, which expressly provides that "[i]f any provision of this charter . . . shall be held invalid or ineffective in whole or in part or inapplicable to any person or situation, it is the purpose and intent of this charter that all other provisions thereof shall nevertheless be separately and fully effective and that the application of any such provision to other persons or situations shall not be affected."

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The Council hereby reaffirms its conviction that the creation of an Independent Police Investigation and Audit Board would benefit the police force and enhance the public's trust and confidence in the Police Department. In order to address the issues raised by the courts, the five members of the Board created by this legislation shall be appointed by the Mayor; two of those members shall be designated by the City Council. The chair shall be appointed by the Mayor after consultation with the Speaker of the Council. This appointment structure is based on that of the Civilian Complaint Review Board (Charter §440(b)(1)) and the Campaign Finance Board (Charter §1052(a)(1)).

Contrary to the finding of the lower court, it was not the Council's intention to vest the Board with policy-making authority by allowing it to "assist" the Police Department to formulate and implement policies to detect and eliminate corruption. The plain language of the bill, and the statement of legislative intent, made clear that the legislation was not intended to interfere with the Police Commissioner's primary role in investigating corruption and disciplining members, nor the executive authority to manage the Police Department. In order to clarify the Council's intention in this regard, the language of the bill has been amended to permit the Board to make non-binding recommendations to the Police Department regarding the formulation and implementation of anti-corruption policies and programs, similar to its authority to make recommendations for the improvement of the Department's anti-corruption systems.

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NYC Charter 451

New York City Charter

CHAPTER 18-B INDEPENDENT POLICE INVESTIGATION AND AUDIT BOARD*22

§ 451. **Powers and duties of the board.**

a. The board shall have the power to:

1. perform assessments and audits of the police department's internal systems for detecting, investigating and preventing corruption among uniformed and civilian members of the police department, and make recommendations for the improvement of those systems;
2. make recommendations to the police department in relation to the formulation and implementation of policies and programs to detect and eliminate corruption;
3. undertake independent investigations of possible corruption within the police department; and
4. undertake investigations of possible corruption within the police department at the request of the mayor or the police commissioner.

b. If during the course of any assessment, audit or investigation undertaken pursuant to subdivision a of this section, the board forms a reasonable belief that criminal activity or other wrongdoing has occurred or is occurring, the board shall, as soon as practicable, report the facts that support such belief to the police commissioner and the appropriate prosecuting attorney.

HISTORICAL NOTE

Section added L.L. 91/1997 § 2, eff. Feb. 23, 1998.

FOOTNOTES

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[Footnote 22]: * Former Chapter 18-B creating the Independent Police Investigation and Audit Board enacted by L.L. 13/1995 was held invalid by Supreme Court Justice Beatrice Shainswit on June 28, 1995. This Chapter 18-B re-enacting the board was vetoed by the Mayor on Oct. 30, 1997 and overridden by the Council on Nov. 25, 1997 by vote of 41 for, 6 against, becoming L.L. 91/1997 eff. Feb. 23, 1998. Note the provisions of L.L. 91/1997 § 1:

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The Council finds that the vast majority of police officers discharge their duties honestly and with integrity. A relatively small number of police officers, however, have been found to engage in serious criminal activities, particularly in connection with the illegal drug trade. This was the finding of the Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department, better known as the "Mollen Commission." In July 1994, after an extensive investigation lasting almost two years, the Mollen Commission issued its final report. Among its key findings, the Commission concluded that the Police Department's internal anti-corruption systems had been allowed to deteriorate to the point where they "minimized, ignored and at times concealed corruption, rather than root it out."

The Commission concluded that the Department must retain primary responsibility for policing itself and maintaining integrity within its ranks. To that end, the Commission recommended a "dual track approach" calling for reform of the Department's internal anti-corruption structure and the creation of an independent police monitor to insure that the structure is working effectively.

The Council finds, as did the Mollen Commission, that once the glare of publicity has dimmed, the Police Department's commitment to zealously root out corruption will eventually diminish unless an independent entity continues to closely monitor the Department's anti-corruption efforts as well as independently investigate allegations of illegal activities. The purpose of this legislation is to create such an independent mechanism based upon the model proposed by the Mollen Commission.

The Independent Police Investigation and Audit Board created herein will have both the power to audit and examine the Police Department's own anti-corruption efforts and the ability to conduct independent corruption investigations backed by the power to issue subpoenas. It is, however, the Council's intention that the Police Department continue to have the primary responsibility for detecting and preventing internal corruption. The Council is also aware of the vital role played by other offices, such as the City's District Attorneys, in exposing and prosecuting acts of official corruption. The Council recognizes the need for cooperation and coordination among the responsible agencies in order to avoid duplication of efforts and interference with ongoing investigations and other legitimate law enforcement activities. For these reasons, the legislation requires the Board to enter into protocols with the Police Commissioner, the District Attorneys and the Civilian Complaint Review Board in order to create a structure in which such cooperation and coordination will be facilitated.

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402-A, which created an Independent Police Investigation and Audit Board. The legislation was vetoed by Mayor Giuliani on December 23, 1994. On January 19, 1995, the Council overrode the Mayor's veto, and Int. No. 402-A became Local Law 13 of 1995. Subsequently, Mayor Giuliani instituted a judicial proceeding against the City Council seeking to declare Local Law 13 invalid.

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NYC Charter 452

New York City Charter

CHAPTER 18-B INDEPENDENT POLICE INVESTIGATION AND AUDIT BOARD*22

§ 452. **Subpoenas.**

The board, by majority vote of its members, may compel the attendance of witnesses and require the production of such records and other materials as are necessary for the investigation of any matter within its jurisdiction pursuant to this chapter. The board may designate those of its employees it deems necessary to administer oaths and to examine persons in connection with any such matter.

HISTORICAL NOTE

Section added L.L. 91/1997 § 2, eff. Feb. 23, 1998.

FOOTNOTES

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NYC Charter 453

New York City Charter

CHAPTER 18-B INDEPENDENT POLICE INVESTIGATION AND AUDIT BOARD*22

§ 453. **Board staff.**

The board is authorized, within appropriations available therefor, to appoint such employees as are necessary to exercise its powers and fulfill its duties.

HISTORICAL NOTE

Section added L.L. 91/1997 § 2, eff. Feb. 23, 1998.

FOOTNOTES

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NYC Charter 454

New York City Charter

CHAPTER 18-B INDEPENDENT POLICE INVESTIGATION AND AUDIT BOARD*22

§ 454. **Annual report.**

The Board shall issue to the mayor and the city council an annual report which shall describe its activities and summarize its actions.

HISTORICAL NOTE

Section added L.L. 91/1997 § 2, eff. Feb. 23, 1998.

FOOTNOTES

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NYC Charter 455

New York City Charter

CHAPTER 18-B INDEPENDENT POLICE INVESTIGATION AND AUDIT BOARD*22

§ 455. **Cooperation of the police department.**

a. It shall be the duty of the police department to provide such assistance as the board may reasonably request, to cooperate fully with investigations by the board, and to provide to the board upon request records and other materials which are necessary for the investigation of any matter within its jurisdiction pursuant to this chapter, except such records or materials that cannot be disclosed by law.

b. The police commissioner shall ensure that officers and employees of the police department appear before and respond to inquiries of the board in connection with the investigation of any matter within the board's jurisdiction pursuant to this chapter, provided that such inquiries are conducted in accordance with department procedures for interrogation of members.

HISTORICAL NOTE

Section added L.L. 91/1997 § 2, eff. Feb. 23, 1998.

FOOTNOTES

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The Commission concluded that the Department must retain primary responsibility for policing itself and maintaining integrity within its ranks. To that end, the Commission recommended a "dual track approach" calling for reform of the Department's internal anti-corruption structure and the creation of an independent police monitor to insure that the structure is working effectively.

The Council finds, as did the Mollen Commission, that once the glare of publicity has dimmed, the Police Department's commitment to zealously root out corruption will eventually diminish unless an independent entity continues to closely monitor the Department's anti-corruption efforts as well as independently investigate allegations of illegal activities. The purpose of this legislation is to create such an independent mechanism based upon the model proposed by the Mollen Commission.

The Independent Police Investigation and Audit Board created herein will have both the power to audit and examine the Police Department's own anti-corruption efforts and the ability to conduct independent corruption investigations backed by the power to issue subpoenas. It is, however, the Council's intention that the Police Department continue to have the primary responsibility for detecting and preventing internal corruption. The Council is also aware of the vital role played by other offices, such as the City's District Attorneys, in exposing and prosecuting acts of official corruption. The Council recognizes the need for cooperation and coordination among the responsible agencies in order to avoid duplication of efforts and interference with ongoing investigations and other legitimate law enforcement activities. For these reasons, the legislation requires the Board to enter into protocols with the Police Commissioner, the District Attorneys and the Civilian Complaint Review Board in order to create a structure in which such cooperation and coordination will be facilitated.

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NYC Charter 456

New York City Charter

CHAPTER 18-B INDEPENDENT POLICE INVESTIGATION AND AUDIT BOARD*22

§ 456. **Authority of the police commissioner to investigate corruption to remain unimpaired; law enforcement agencies.**

The provisions of this chapter shall not be construed to limit or impair the authority of the police commissioner to investigate corruption within the department, or to discipline members of the department. Nor shall the provisions of this chapter be construed to prevent or hinder the investigation or prosecution of members of the department for violations of law or rules and regulations of the department by any court of competent jurisdiction, a grand jury, district attorney, or other authorized officer, agency or body.

HISTORICAL NOTE

Section added L.L. 91/1997 § 2, eff. Feb. 23, 1998.

FOOTNOTES

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The Council finds, as did the Mollen Commission, that once the glare of publicity has dimmed, the Police Department's commitment to zealously root out corruption will eventually diminish unless an independent entity continues to closely monitor the Department's anti-corruption efforts as well as independently investigate allegations of illegal activities. The purpose of this legislation is to create such an independent mechanism based upon the model proposed by the Mollen Commission.

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NYC Charter 457

New York City Charter

CHAPTER 18-B INDEPENDENT POLICE INVESTIGATION AND AUDIT BOARD*22

§ 457. **Protocols.**

a. Police Department. Within ninety days after the appointment of the last member of the board pursuant to section four hundred and fifty, the board and the police commissioner shall establish a protocol pursuant to which information shall be exchanged and cooperation between the board and the department facilitated in accordance with the provisions of this chapter. Such protocol shall also provide for means of avoiding and resolving potential disputes arising out of investigations independently undertaken by both the board and the department.

b. District Attorneys. Within ninety days after the appointment of the last member of the board pursuant to section four hundred and fifty, the board shall enter into a protocol with each of the city's district attorneys pursuant to which information shall be exchanged, cooperation between the board and the district attorneys facilitated, and potential disputes arising out of investigations independently undertaken by the board and a district attorney's office shall be avoided and resolved. Any investigation undertaken by the board pursuant to paragraphs three or four of subdivision a of section four hundred and fifty-one shall be conducted in accordance with the provisions of the applicable protocol, if any, entered into pursuant to this subdivision. Provided, however, that the lack of a protocol pursuant to this subdivision shall not prohibit the board from undertaking any investigation authorized by this chapter.

c. Civilian Complaint Review Board. Within ninety days after the appointment of the last member of the board pursuant to section four hundred and fifty, the board and the civilian complaint review board established pursuant to chapter eighteen-a of this charter shall establish a protocol pursuant to which (i) the board, if in the course of any assessment, audit or investigation undertaken pursuant to subdivision a of section four hundred and fifty-one, forms a reasonable belief that any act of misconduct, as defined in paragraph one of subdivision c of section four hundred and forty of this charter, has occurred or is occurring, shall as soon as practicable, report the facts that support such belief to the civilian complaint review board; (ii) the civilian complaint review board, if in the course of an investigation authorized pursuant to chapter eighteen-a of the charter, forms a reasonable belief that any act of corruption has

occurred or is occurring, shall as soon as practicable, report the facts that support such belief to the board; and (iii) information shall be exchanged and cooperation between the boards facilitated.

HISTORICAL NOTE

Section added L.L. 91/1997 § 2, eff. Feb. 23, 1998.

FOOTNOTES

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NYC Charter 458

New York City Charter

CHAPTER 18-B INDEPENDENT POLICE INVESTIGATION AND AUDIT BOARD*22

§ 458. **Severability.**

If any provision of this chapter, or the local law creating this chapter, or of any amendments thereto, shall be held invalid or ineffective in whole or in part or inapplicable to any person or situation, such holding shall not affect, impair or invalidate the remainder of this chapter or 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.

HISTORICAL NOTE

Section added L.L. 91/1997 § 2, eff. Feb. 23, 1998.

CASE NOTES

¶ 1. [This severability section was added as a result of the following court case]. The Mayor has sole power to appoint "all . . . officers not elected by the people, except as otherwise provided by law", Charter §6(a). The proposed Independent Police Investigation and Audit Board would not be a "purely investigative" body (*Henry v. NYS Comm. of Invesig.*, 141 Misc2d 849, *affd.* 143 AD2d 914) and its members would be officers. The order declaring Local Law 13 of 1995 invalid is unanimously affirmed. City Council appointments would limit the powers of the Mayor. The Mayor's veto of Local Law 13 cited objections to shared power of appointment and Council override and adopted Local Law 13 without a severability clause. For this reason the court declined to sever parts of Local Law 13 found invalid. (*Mayor of city of NY v. Council of city of NY*, 235 AD2d 230, 651 NYS2d 531)

FOOTNOTES

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NYC Charter 459

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CHAPTER 18-C PUBLIC SAFETY*23

§ 459. **Definitions.**

a. The term "school" means a public, private or parochial, day care center or nursery or pre-school, elementary, intermediate, junior high, vocational, or high school.

b. The term "school zone" means in or on or within any building, structure, athletic playing field, playground or land contained within the real property boundary line of a public, private or parochial day care center or nursery or pre-school, elementary, intermediate, junior high, vocational, or high school, or within one thousand feet of the real property boundary line comprising any such school.

c. The term "firearm" means a firearm, rifle, shotgun, or assault weapon, as such terms are defined in section 10-301 of the administrative code, or a machine gun, as defined in penal law section 265.00.

HISTORICAL NOTE

Section added at General Election, November 6, 2001 (Question 3 § 1) eff. immediately upon certification that electors have approved the amendments.

FOOTNOTES

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[Footnote 23]: * Chapter added at General Election, November 6, 2001, eff. November 6, 2001; Ballot Question Abstract:

"Gun-Free" School Safety Zones. Currently, neither the Charter nor the Administrative Code prohibits gun possession near schools. This proposal would provide for the creation of "gun-free" school safety zones by making it illegal for individuals to possess or discharge any gun (including handguns, pistols, rifles, shotguns, assault weapons, and machine guns) within 1,000 feet of any school, pre-school or day care center in the City. Violators would face criminal and civil penalties. This proposal, which would provide for certain exceptions and affirmative defenses, would not apply to police or federal law enforcement officers.



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CHAPTER 18-C PUBLIC SAFETY*23

§ 460. **Gun-free school safety zones.**

a. It shall be a crime for any individual knowingly to possess a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone.

b. Subdivision a of this section shall not apply where the firearm is:

(i) possessed and kept in such individual's home in a school zone, provided that such individual is licensed or permitted to possess such firearm; or

(ii) possessed and kept at such individual's business in a school zone, provided that such individual is licensed or permitted to possess such firearm.

c. Affirmative defenses to the crime established in subdivision a shall include possession of a firearm:

(i) carried for personal safety between such individual's business, home, or bank in a school zone, provided that such individual is licensed or permitted to possess such firearm for such purpose;

(ii) just purchased or obtained by such individual and being transported that same day for the first time to such individual's home or business in a school zone where it will be stored, provided that such individual is licensed or permitted to possess such firearm;

(iii) carried between a police department facility for inspection and an individual's business, home, bank, or point of purchase in a school zone, provided that such individual is licensed or permitted to possess such firearm;

(iv) carried by licensed or permitted individuals and being transported to or from an authorized target practice facility;

(v) carried between a gunsmith for demonstrably needed repairs and an individual's business or home in a school zone, provided that such individual is licensed or permitted to possess such firearm;

(vi) used in an athletic or safety program approved by a school in a school zone, or by the police commissioner, or in accordance with a contract entered into between a school within the school zone and the individual or an employer of the individual, provided that such individual is licensed or permitted to possess such firearm for such purpose; or

(vii) used in accordance with a contract entered into between a business within the school zone and the individual or an employer of the individual, provided that such individual is licensed or permitted to possess such firearm for such purpose.

d. It shall be a crime for any person, knowingly or with reckless disregard for the safety of another, to discharge a firearm in a school zone.

e. Affirmative defenses to the crime established in subdivision d shall include discharge of a firearm:

(i) by an individual for self-defense, provided that such individual is licensed or permitted to possess such firearm for such purpose;

(ii) for use in a special event or safety program authorized by a school in a school zone or by the police commissioner;

(iii) by an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual, provided that such individual is licensed or permitted to possess such firearm for such purpose; or

(iv) by an individual in accordance with a contract entered into between a business and the individual or an employer of the individual, provided that such individual is licensed or permitted to possess such firearm for such purpose.

f. Any person who violates this section shall be guilty of a misdemeanor, punishable by imprisonment of not more than one year or by a fine of not more than ten thousand dollars, or both.

g. In addition to the penalties prescribed in subdivision f of this section, any person who violates this section shall be liable for a civil penalty of not more than ten thousand dollars.

h. This section shall not apply to a police officer, as such term is defined in section 1.20 of the criminal procedure law, or a federal law enforcement officer, as such term is defined in section 2.15 of the criminal procedure law.

i. The police commissioner may promulgate rules implementing the provisions of this section. The police commissioner shall provide written notice of the requirements of this section to all persons who receive an official authorization to purchase a firearm and to all persons applying for a license or permit, or renewal of a license or permit. Failure to receive such notice shall not be a defense to any violation of this section.

j. The city of New York and its agencies, officers or employees shall not be liable to any party by reason of any incident or injury occurring in a gun-free school safety zone arising out of a violation of any provision of this section.

HISTORICAL NOTE

Section added at General Election, November 6, 2001 (Question 3 § 1) eff. immediately upon certification that electors have approved the amendments.

FOOTNOTES

23

[Footnote 23]: * Chapter added at General Election, November 6, 2001, eff. November 6, 2001; Ballot Question Abstract:

"Gun-Free" School Safety Zones. Currently, neither the Charter nor the Administrative Code prohibits gun possession near schools. This proposal would provide for the creation of "gun-free" school safety zones by making it illegal for individuals to possess or discharge any gun (including handguns, pistols, rifles, shotguns, assault weapons, and machine guns) within 1,000 feet of any school, pre-school or day care center in the City. Violators would face criminal and civil penalties. This proposal, which would provide for certain exceptions and affirmative defenses, would not apply to police or federal law enforcement officers.



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NYC Charter 461

New York City Charter

CHAPTER 18-D SALE, PURCHASE AND POSSESSION OF WEAPONS*24

§ 461. **Definition.**

The term "firearm" means a firearm, rifle, shotgun, or assault weapon, as such terms are defined in section 10-301 of the administrative code, or a machine gun, as defined in penal law section 265.00.

HISTORICAL NOTE

Section added at General Election, November 6, 2001 (Question 3 § 2) eff. immediately upon certification that electors have approved the amendments.

FOOTNOTES

24

[Footnote 24]: * Chapter added at General Election, November 6, 2001 eff. immediately upon certification that electors have approved the amendments; Ballot Question Abstract:

No guns for persons under the age of 21. Currently, City law permits persons under the age of 21 to purchase and possess certain guns, including rifles and shotguns. This proposal would prohibit persons under the age of 21 from purchasing or possessing any type of gun, including handguns, pistols, rifles, shotguns, assault weapons and machine guns. Persons under the age of 21 found in possession of any gun, or persons selling or otherwise providing any gun to persons under the age of 21, would face criminal and civil penalties. This proposal, which would provide for certain exceptions and affirmative defenses, would not apply to police or federal law enforcement officers.



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NYC Charter 462

New York City Charter

CHAPTER 18-D SALE, PURCHASE AND POSSESSION OF WEAPONS*24

§ 462. **Permits and licenses for the purchase and possession of firearms.**

Notwithstanding any other provision of local law, no person under the age of twenty-one shall be granted a permit or license to purchase and possess a firearm. If the applicant for a permit or license is a partnership or corporation, only those members of the partnership or corporation over the age of twenty-one may apply for a permit or license to purchase and possess a firearm on behalf of the partnership or corporation. This section shall not apply to any person under the age of twenty-one who has been issued a valid permit or license to possess a firearm on the date that this section shall become law.

HISTORICAL NOTE

Section added at General Election, November 6, 2001 (Question 3 § 2) eff. immediately upon certification that electors have approved the amendments.

FOOTNOTES

24

[Footnote 24]: * Chapter added at General Election, November 6, 2001 eff. immediately upon certification that electors have approved the amendments; Ballot Question Abstract:

No guns for persons under the age of 21. Currently, City law permits persons under the age of 21 to purchase and possess certain guns, including rifles and shotguns. This proposal would prohibit persons under the age of 21 from purchasing or possessing any type of gun, including handguns, pistols, rifles, shotguns, assault

weapons and machine guns. Persons under the age of 21 found in possession of any gun, or persons selling or otherwise providing any gun to persons under the age of 21, would face criminal and civil penalties. This proposal, which would provide for certain exceptions and affirmative defenses, would not apply to police or federal law enforcement officers.



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CHAPTER 18-D SALE, PURCHASE AND POSSESSION OF WEAPONS*24

§ 463. **Sale or disposal of firearms.**

It shall be a crime for any person to sell, offer for sale, or dispose of a firearm to any person under the age of twenty-one within the city of New York, unless such person under the age of twenty-one has a valid permit or license or is otherwise exempted by law.

HISTORICAL NOTE

Section added at General Election, November 6, 2001 (Question 3 § 2) eff. immediately upon certification that electors have approved the amendments.

FOOTNOTES

24

[Footnote 24]: * Chapter added at General Election, November 6, 2001 eff. immediately upon certification that electors have approved the amendments; Ballot Question Abstract:

No guns for persons under the age of 21. Currently, City law permits persons under the age of 21 to purchase and possess certain guns, including rifles and shotguns. This proposal would prohibit persons under the age of 21 from purchasing or possessing any type of gun, including handguns, pistols, rifles, shotguns, assault weapons and machine guns. Persons under the age of 21 found in possession of any gun, or persons selling or otherwise providing any gun to persons under the age of 21, would face criminal and civil penalties. This proposal, which would provide for certain exceptions and affirmative defenses, would not apply to police or

federal law enforcement officers.



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New York City Charter

CHAPTER 18-D SALE, PURCHASE AND POSSESSION OF WEAPONS*24

§ 464. **Carrying and possession of firearms.**

It shall be a crime for any person under the age of twenty-one to carry or otherwise have in his or her possession any firearm within the limits of the city of New York, unless such person has a valid permit or license or is otherwise exempted by law. If a partnership or corporation carries or has in its possession a firearm, no member, officer or employee of such partnership or corporation under the age of twenty-one shall carry or have in his or her possession such firearm within the limits of the city of New York.

HISTORICAL NOTE

Section added at General Election, November 6, 2001 (Question 3 § 2) eff. immediately upon certification that electors have approved the amendments.

FOOTNOTES

24

[Footnote 24]: * Chapter added at General Election, November 6, 2001 eff. immediately upon certification that electors have approved the amendments; Ballot Question Abstract:

No guns for persons under the age of 21. Currently, City law permits persons under the age of 21 to purchase and possess certain guns, including rifles and shotguns. This proposal would prohibit persons under the age of 21 from purchasing or possessing any type of gun, including handguns, pistols, rifles, shotguns, assault weapons and machine guns. Persons under the age of 21 found in possession of any gun, or persons selling or

otherwise providing any gun to persons under the age of 21, would face criminal and civil penalties. This proposal, which would provide for certain exceptions and affirmative defenses, would not apply to police or federal law enforcement officers.



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CHAPTER 18-D SALE, PURCHASE AND POSSESSION OF WEAPONS*24

§ 465. **Exemptions.**

a. Sections four hundred sixty-two and four hundred sixty-four shall not apply to:

(1) persons in the military service of the state of New York when duly authorized by regulations issued by the chief of staff to the governor to carry or possess a firearm;

(2) persons in the military or other service of the United States, in pursuit of official duty or when duly authorized by federal law, regulation or order to carry or possess a firearm;

(3) persons employed in fulfilling defense contracts with the government of the United States or agencies thereof when possession of a firearm is necessary for manufacture, transport, installation and testing under the requirements of such contract;

(4) police officers as defined by the criminal procedure law section 1.20;

(5) peace officers as defined by the criminal procedure law section 2.10, provided that such peace officers are (i) authorized pursuant to law or regulation of the state or city of New York to possess a firearm within the city of New York without a license or permit therefore; and (ii) authorized by their employer to possess such firearm; or

(6) participants in special events when authorized by the police commissioner.

b. Any person listed in subdivision a of this section may be permitted or licensed to purchase a firearm according to State law and the rules of the city of New York. Pursuant to section four hundred sixty-three, it shall be a crime for a dealer to sell any firearm to any person listed in subdivision a without securing full and secure proof of identification.

HISTORICAL NOTE

Section added at General Election, November 6, 2001 (Question 3 § 2) eff. immediately upon certification that electors have approved the amendments.

FOOTNOTES

24

[Footnote 24]: * Chapter added at General Election, November 6, 2001 eff. immediately upon certification that electors have approved the amendments; Ballot Question Abstract:

No guns for persons under the age of 21. Currently, City law permits persons under the age of 21 to purchase and possess certain guns, including rifles and shotguns. This proposal would prohibit persons under the age of 21 from purchasing or possessing any type of gun, including handguns, pistols, rifles, shotguns, assault weapons and machine guns. Persons under the age of 21 found in possession of any gun, or persons selling or otherwise providing any gun to persons under the age of 21, would face criminal and civil penalties. This proposal, which would provide for certain exceptions and affirmative defenses, would not apply to police or federal law enforcement officers.



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CHAPTER 18-D SALE, PURCHASE AND POSSESSION OF WEAPONS*24

§ 466. **Penalties.**

a. Any violation of the provisions of sections four hundred sixty-three, four hundred sixty-four or subdivision b of section four hundred sixty-five shall be a misdemeanor and punishable by not more than one year imprisonment or by a fine of not more than ten thousand dollars or by both.

b. In addition to the penalties prescribed in subdivision a of this section, any person who violates the provisions of sections four hundred sixty-three, four hundred sixty-four or subdivision b of section four hundred sixty-five shall be liable for a civil penalty of not more than ten thousand dollars.

HISTORICAL NOTE

Section added at General Election, November 6, 2001 (Question 3 § 2) eff. immediately upon certification that electors have approved the amendments.

FOOTNOTES

24

[Footnote 24]: * Chapter added at General Election, November 6, 2001 eff. immediately upon certification that electors have approved the amendments; Ballot Question Abstract:

No guns for persons under the age of 21. Currently, City law permits persons under the age of 21 to purchase and possess certain guns, including rifles and shotguns. This proposal would prohibit persons under the

age of 21 from purchasing or possessing any type of gun, including handguns, pistols, rifles, shotguns, assault weapons and machine guns. Persons under the age of 21 found in possession of any gun, or persons selling or otherwise providing any gun to persons under the age of 21, would face criminal and civil penalties. This proposal, which would provide for certain exceptions and affirmative defenses, would not apply to police or federal law enforcement officers.



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NYC Charter 481

New York City Charter

CHAPTER 19 FIRE DEPARTMENT

§ 481. **Department; commissioner.**

There shall be a fire department the head of which shall be the commissioner.

HISTORICAL NOTE

Section added L.L. 1962



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NYC Charter 482

New York City Charter

CHAPTER 19 FIRE DEPARTMENT

§ 482. **Chief may be designated as commissioner.**

The mayor may designate the chief of the fire department to serve as commissioner, and in such case he shall exercise the powers and duties of commissioner and shall continue to exercise his powers and duties as chief and shall receive the salary of the commissioner. While serving as commissioner the chief shall forfeit none of his pension rights and privileges as chief or his civil service status, and such service and the time during which he so serves shall be part of his time and service as chief. Such designation as commissioner shall be in writing filed in the office of the department and in the office of the mayor.

HISTORICAL NOTE

Section added L.L. 1962



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NYC Charter 483

New York City Charter

CHAPTER 19 FIRE DEPARTMENT

§ 483. **Deputies.**

The commissioner may appoint three deputies, one of whom may perform all the duties and exercise all of the powers of the commissioner except appointment or promotion, detail or dismissal of any member of the uniformed force when thereunto authorized by instrument in writing to be filed in the offices of the mayor and the comptroller.

HISTORICAL NOTE

Section amended by L.L. 1947, No. 8.

Section added L.L. 1962



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NYC Charter 484

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CHAPTER 19 FIRE DEPARTMENT

§ 484. **Designation of officers to act.**

The commissioner may designate a clerk or chief of a bureau, who shall have power, when thereunto authorized by the commissioner by instrument in writing to be filed in the offices of the mayor and comptroller, to sign warrants and perform such other duties incidental thereto as may be required during the absence of the commissioner, and for a period of time to be designated in the instrument.

HISTORICAL NOTE

Section added L.L. 1962



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NYC Charter 485

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CHAPTER 19 FIRE DEPARTMENT

§ 485. **Seal.**

The commissioner may adopt a seal for the department and direct its use.

HISTORICAL NOTE

Section added L.L. 1962



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NYC Charter 486

New York City Charter

CHAPTER 19 FIRE DEPARTMENT

§ 486. **Treasurer.**

The commissioner shall be the treasurer of the department and shall file in the office of the comptroller a bond for the faithful performance of his duties as such treasurer.

HISTORICAL NOTE

Section added L.L. 1962



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NYC Charter 487

New York City Charter

CHAPTER 19 FIRE DEPARTMENT

§ 487. **Powers.**

a. The commissioner shall have sole and exclusive power and perform all duties for the government, discipline, management, maintenance and direction of the fire department and the premises and property in the custody thereof, however, the commissioner shall provide written notice with supporting documentation at least forty-five days prior to the permanent closing of any firehouse or the permanent removal or relocation of any fire fighting unit to the council members, community boards and borough presidents whose districts are served by such facility or unit and the chairperson of the council's public safety committee. For purposes of this section, the term "permanent" shall mean a time period in excess of six months. In the event that the permanent closing of any firehouse or the permanent removal or relocation of any firefighting unit does not occur within four months of the date of the written notice, the commissioner shall issue another written notice with supporting documentation prior to such permanent removal or relocation. The four months during which the written notice is effective shall be tolled for any period in which a restraining order or injunction prohibiting the closing of such noticed facility or unit shall be in effect.

b. The department shall have sole and exclusive power and authority to extinguish fires at any place within the jurisdiction of the city and shall have power and authority to extinguish fires upon any vessel in the port of New York or upon any dock, wharf, pier, warehouse or other structure bordering upon or adjacent to such port.

c. The commissioner shall have power to cause any vessel moored to or anchored near any dock or pier in the city to be removed to and secured at such place in the harbor as shall be designated by the commissioner, provided that such vessel shall be on fire or in danger of catching fire or may be, by reason of its condition or the nature of its cargo, a fire menace to shipping, to property or to the water front of the city.

d. The commissioner shall have sole and exclusive jurisdiction over the approval of the installation of all containers for combustibles, chemicals, explosives, inflammables or other dangerous substances, articles, compounds or mixtures, except storage tanks and auxiliary storage tanks for oil-burning equipment and except where the location of

the container may affect the structural condition of the building, in which case the commissioner shall not give his approval without the approval of the commissioner of buildings. The commissioner shall certify his approval of all installations of containers in buildings except storage tanks and auxiliary storage tanks for oil-burning equipment to the commissioner of buildings.

e. The commissioner shall have the sole and exclusive power from time to time to designate and fix the location of all fire alarm telegraph, signal and alarm stations in the city, and shall have access to and control of the same for the purpose of the department.

f. The department shall have the power and authority to provide general ambulance services, emergency medical services and other response services necessary to preserve public health, safety and welfare, and to perform any functions relating to the provision of such services. This subdivision shall not be construed to limit or impair the powers of any other agency established pursuant to this charter.

g. The department shall have the power and authority to regulate helicopter landings and takeoffs at or from locations other than airports, heliports or other facilities approved by the commissioner of small business services, helicopter external load lift operations, seaplane landings and takeoffs at or from seaplane bases approved by the commissioner of small business services, and hot air balloon operations. This subdivision shall not be construed to limit or impair the powers of any other agency established pursuant to this charter, except to the extent that the aforementioned powers granted to the department were previously exercised by the commissioner of small business services.

HISTORICAL NOTE

Section amended by L.L. 1959, No. 24.

Subd. a amended L.L. 21/88 § 1.

Section added L.L. 1962

Subd. a amended by L.L. 1989, No. 40, § 1.

Subd. f added L.L. 20/1996 § 1, eff. Feb. 26, 1996.

Subd. g added L.L. 26/2008 § 3, eff. July 1, 2008. [See Note 1]

NOTE

1. Provisions of L.L. L.L. 26/2008:

Section 1. Legislative findings. In April 2003, the Mayor's Advisory Commission on the Adoption of the International Building Code, established by Executive Order No. 30 of 2002, recommended the adoption of a new building code and related codes based on the model codes published by the International Code Council. A new building code and other construction codes were adopted with the enactment of local law number 33 of 2007. The fire department has undertaken a three-year process of reviewing the International Fire Code and incorporating appropriate amendments that reflect the unique character of the city and existing fire code standards and requirements.

The council finds that the enactment of this fire code will serve to promote and enhance fire safety in New York city, by adopting more modern and comprehensive fire safety regulations. In addition, in enacting this code, the city joins a growing number of states and municipalities across the country that have adopted fire codes based on the International Fire Code. The increased transparency of the city's fire safety regulations will help promote both code compliance and economic development in New York city, and participation in the model code development process sponsored by the International Code Council will facilitate the ongoing evaluation and modernization of those

regulations.

CASE NOTES

¶ 1. A regulation of the Fire Department which prohibited members from permitting the use of their names and photographs in connection with any article or advertisement in any magazine or newspaper without the written approval of the chief of the Department and a directive which instructed the plaintiff as President of the Firemen's Association to make no statements concerning members of the Association were constitutional. However, the directive was arbitrary, unreasonable and in violation of Civil Rights Law § 15.-*Kane v. Walsh*, 295 N. Y. 198, 66 N. E. 2d 53 [1946].

¶ 2. The power of the Fire Commissioner to order the installation of an automatic sprinkler system in a nursing home is not affected by the provisions of the Hospital Code, nor by the fact that a certificate of occupancy had been issued.-*Matter of Aron Manor Nursing Home*, 35 Misc. 2d 1044, 231 N. Y. S. 2d 952 [1962].

¶ 3. Award of arbitrator enjoining the use of civilian inspection employees in fire department districts would not be overturned when it was not contrary to law and this section does not declare a public policy which can not be waived and which had been waived by the city.-*City of N. Y. v. Uniformed Firefighters Asso. Local 94*, 58 N. Y. 2d 957 [1983].

¶ 4. In extinguishing a fire in an abandoned vehicle on a NYC street negligence was claimed for failing to establish "fire lines" and failure to properly park the fire engine. There was no evidence of immutable procedures at a fire scene. It was a matter of professional judgment. *Kenavan v. City of NY*, 70 N. Y. 2d 558 [1987].

¶ 5. Pursuant to § 487 the Fire Commissioner sent notices to City Council members and other persons that several fire stations would be closed approximately two months later. The "supporting documentation" requirement of § 487(a) was deemed met because the notice included basic reasons for closing, namely budgetary considerations and explanation as to why responsibilities of closing units could be borne by other units as well as other general information supporting those reasons. "Supporting documentation" is nowhere defined and it is the intent of this section to allow adequate time and information for the City Council and others to respond to contemplated closings. *Brower v. Koch*, 175 AD2d 84, 572 N.Y.S.2d 329 [1991].

¶ 6. The Fire Commissioner, pursuant to NYC Charter §487, is vested with the "sole and exclusive power" with respect to the "government, discipline, management, maintenance and direction of the Fire Department and the premises and property thereof". This case involves restraining the implementation by the Fire Department of a pilot program reducing minimum staffing levels for fire alarm dispatchers at all NYC borough fire headquarters. The issues under consideration are ones the court is likely not to consider because there is no evidence to doubt the good faith of the Fire Department. The remedy sought, to mandate certain staffing levels of FADs, does not lie because Fire Department's responsibility involves the exercise of discretion by its Commissioner, under the NYC Charter, and not the performance of an act required by law. *Matter of Pedalino v. Giuliani*, 165 Misc. 2d 324, 629 N.Y.S.2d 643 [1995].

¶ 7. Under this section, the Fire Commissioner has the exclusive power to perform all duties concerning discipline of members of the Fire Department. See further discussion of this case under note 18. Admin. Code §15-113. *Von Essen v. New York City Civil Service Commission*, 4 NY3d 220, 791 N.Y.S.2d 887, 825 N.E.2d 128 (2005).



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NYC Charter 488

New York City Charter

CHAPTER 19 FIRE DEPARTMENT

§ 488. **Enforcement of fire laws.**

The commissioner shall have the power and it shall be his duty to enforce all laws and the rules and regulations of the board of standards and appeals in respect to:

1. The manufacture, storage, sale, transportation or use of combustibles, chemicals, explosives, inflammable or other dangerous substances, articles, compounds or mixtures.
2. The investigation of the cause, circumstances and origin of fires and the suppression of arson.
3. The prevention of fires or danger to life or property therefrom, excluding provisions relating to structural conditions and excluding provisions relating to the installation of oil-burning equipment and all appurtenances thereof.

The powers conferred by this section shall not extend to the enforcement of any provision of the health code or the regulations of the board of health, or of any provision of the building code relating to the construction or alteration of buildings or the installation of service equipment, except as otherwise provided therein, or interfere in any manner with the powers and duties of the board of health or the chairman of the board of health or of the department of buildings or of the commissioner of buildings.

HISTORICAL NOTE

Section amended by L.L. 1959, No. 24.

Section amended by L.L. 1967, No. 58.

Section amended by L.L. 1967, No. 127.

Section amended by L.L. 1968, No. 76.

Closing paragraph amended by L.L. 1969, No. 74.



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NYC Charter 489

New York City Charter

CHAPTER 19 FIRE DEPARTMENT

§ 489. **Regulation of combustibles, etc.**

The commissioner may make and enforce rules and regulations for the manufacture, storage, sale, transportation or use of combustibles, chemicals, explosives, inflammables or other dangerous substances, articles, compounds or mixtures.

HISTORICAL NOTE

Section added L.L. 1962

CASE NOTES

¶ 1. Sections C19-57.0(b), C19-53.0(c)(5), C19-152.0(b) N. Y. C. Ad Code and § 489 N. Y. C. Charter which prohibit transp. of flammable liquid shipments passing through N. Y. C. without a pickup or final delivery point within city limits during morning and afternoon rush hour periods do not violate the commerce clause of the U. S. Const. (Art. I, § 8, cl. 3).-People v. Dempsey & Miron, 120 Misc. 2d 1035 [1983].



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CHAPTER 19 FIRE DEPARTMENT

§ 490. **Powers of inspection of the commissioner.**

a. The commissioner is empowered to:

(1) Cause any building, structure, tunnel, enclosure, vessel, place or premises to be inspected for fire hazards by any officer or employee of the department designated for such purpose.

(2) Inspect and test any automatic or other fire alarm system or fire extinguishing equipment.

b. Whenever in any investigation or inspection carried on by the department a condition is found which in the opinion of the commissioner should be referred to any other department, he shall promptly make such reference in writing.

HISTORICAL NOTE

Section added L.L. 1962

CASE NOTES

¶ 1. The Fire Commissioner was empowered to order the installation of a sprinkling system in a building used for the storage, manufacture and processing of paper though a certificate of occupancy had previously been issued.-In re Empire Distributors, 135 N. Y. S. 2d 836 [1954].

¶ 2. Provision of section providing for inspection of "any building, structure, tunnel, enclosure, vessel, place or premises" for fire hazards is constitutional and not violative of the Fourth Amendment since statute must be construed to permit inspection only after obtaining a warrant authorizing the inspection.-Gottlieb v. Criminal Court of City of N. Y., 172 (12) N. Y. L. J. (7-17-74) 2, Col. 4 T.



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New York City Charter

CHAPTER 19 FIRE DEPARTMENT

§ 491. **Orders of the commissioner; enforcement.**

a. The commissioner shall have the power and it shall be his duty:

(1) To order in writing the remedying of any condition in violation of any rule or regulation or any provision of law which he is empowered to enforce.

(2) To cause any order of the commissioner which is not complied with within the time fixed in the order for such compliance to be enforced and to take proceedings for the enforcement thereof as may be provided by law.

b. Every order, requirement, decision or determination of the commissioner shall be in writing. The commissioner shall not vary from or take any proceeding or issue any order contrary to the Labor Law, the Multiple Dwelling Law, the building code or any other provision of law or any rule or decision of the board of standards and appeals.

HISTORICAL NOTE

Section added L.L. 1962

CASE NOTES

¶ 1. The Fire Commissioner was empowered to order the installation of a sprinkling system in a building used for the storage, manufacture and processing of paper though a certificate of occupancy had previously been issued.-In re Empire Distributors, 135 N. Y. S. 2d 836 [1954].

¶ 2. The Fire Commissioner was empowered to order the repair or restoration of an existing standpipe system where certain parts were broken or missing and where no reconstruction of the building itself was required.-People v.

Dry Dock Corlears Properties, 288 N. Y. 305, 43 N. E. 2d 55 [1942].

¶ 3. The Fire Commissioner has power to order the installation of an automatic sprinkler system in premises used for a nursing home and housing 118 bedridden patients. Such installation is not a structural change of a nature which would fall exclusively within the domain of another City department. The expense involved in the installation furnished no constitutional obstacle to the enforcement of the Commissioner's order.-Matter of Aron Manor Nursing Home, 35 Misc. 2d 1044, 231 N. Y. S. 952 [1962].

¶ 4. Because department stores have an affirmative obligation under §§ C19-161.0 and § 487e-2.0 of the Administrative Code to place interior fire alarms on their premises and keep them in proper working order, it is not required that an order of the fire department specify the defects then existing in the alarm system in order for a criminal prosecution to be maintained for violation of the order and this section does not require that the department order refer to a specific condition to be rectified.-People v. Morenberg, 107 Misc. 2d 711 [1980].



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NYC Charter 492

New York City Charter

CHAPTER 19 FIRE DEPARTMENT

§ 492. **Right of entry of officers of the department.**

The commissioner and his deputies and such other officers or employees of the department as are authorized by the commissioner may without fee or hindrance enter and inspect all vessels, premises, grounds, structures, buildings and every part thereof and all underground passages of every sort in the city or in the port of New York for compliance with the provisions of law or rules and regulations enforced by the department. Any refusal to permit such entry or inspection shall be triable by a judge of the New York city criminal court and punishable by not more than thirty days' imprisonment, or by a fine of not more than fifty dollars, or both.

HISTORICAL NOTE

Section amended by L.L. 1969, No. 74.

Section added L.L. 1962



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CHAPTER 19 FIRE DEPARTMENT

§ 493. **Member of department; no other office.**

[Became § 1130.]



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NYC Charter 494

New York City Charter

CHAPTER 19 FIRE DEPARTMENT

§ 494. **Duties of chief; restriction.**

Notwithstanding any inconsistent provision of any general, special or local law, or rule or regulation, a chief of the fire department shall not serve in any other capacity to the department during his term of office of chief. Any person violating the provisions of this section shall be deemed to have vacated the office of chief so held.

HISTORICAL NOTE

Section added by L.L. 1978, ch. 652.



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NYC Charter 495

New York City Charter

CHAPTER 19-A EMERGENCY MANAGEMENT DEPARTMENT*25

§ 495. **Department; commissioner.**

There shall be an emergency management department, which may also be known as the New York city office of emergency management, the head of which shall be the commissioner of emergency management. The commissioner shall be appointed by the mayor. The commissioner shall also serve as the local director of civil defense, with the powers of a local director of civil defense.

HISTORICAL NOTE

Section added at General Election, November 6, 2001 (Question 6 § 3) eff. November 6, 2001 with special provisions in § 1152 subd. h par (5).

FOOTNOTES

25

[Footnote 25]: * Chapter added at General Election, November 6, 2001 eff. November 6, 2001; Ballot Question Abstract:

Emergency Management Department. Currently, the Charter does not require coordination of emergency planning and response for acts of terrorism, natural disasters and other emergencies in the City. Pursuant to an executive order, the Office of Emergency Management ("OEM") was created to perform such functions. This proposal would make OEM a Charter agency by establishing it as the Emergency Management Department empowered to coordinate interagency and intergovernmental emergency planning and response in the City. In

addition, the City's authority to seek court orders allowing it to inspect properties to prevent public health or safety emergencies, or to respond to their aftermath, would be clarified.



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NYC Charter 496

New York City Charter

CHAPTER 19-A EMERGENCY MANAGEMENT DEPARTMENT*25

§ 496. **Deputies.**

The commissioner shall have the power to appoint and, at pleasure, remove deputies, one to be known as first deputy commissioner. During the absence or disability of the commissioner, the first deputy commissioner, or if the first deputy commissioner shall be absent or under disability, the deputy commissioner designated by the commissioner, shall possess all the powers and perform all the duties of the commissioner, except the power of making appointments and transfers.

HISTORICAL NOTE

Section added at General Election, November 6, 2001 (Question 6 § 3) eff. November 6, 2001 with special provisions in § 1152 subd. h par (5).

FOOTNOTES

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NYC Charter 497

New York City Charter

CHAPTER 19-A EMERGENCY MANAGEMENT DEPARTMENT*25

§ 497. **Powers and duties of the commissioner.**

The commissioner shall have cognizance and control of the government, administration, disposition and discipline of the department. The commissioner shall have the powers and duties to:

- a. coordinate the city's response to all emergency conditions and potential incidents which require a multi-agency response, including but not limited to severe weather, threats from natural hazards and natural disasters, power and other public service outages, labor unrest other than the keeping of the peace, water main breaks, transportation and transit incidents, hazardous substance discharges, building collapses, aviation disasters, explosions, acts of terrorism and such other emergency conditions and incidents which affect public health and safety;
- b. monitor on a constant basis all potential emergency conditions and potential incidents which may require a multi-agency response;
- c. coordinate and implement training programs for public safety and health, including emergency response drills, to prepare for emergency conditions and potential incidents which may require a multi-agency response;
- d. prepare plans for responding to emergency conditions and potential incidents, including but not limited to plans for the implementation of such emergency orders as may be approved by the mayor to protect public safety and facilitate the rapid response and mobilization of agencies and resources;
- e. make recommendations to the mayor concerning the city's emergency response capabilities and concerning the city's capacity to address potential emergency conditions and potential incidents;
- f. increase public awareness as to the appropriate responses by members of the public to emergency conditions and potential incidents, and review the city's systems for disseminating information to the public;

- g. operate an emergency operations center to assist the city in managing emergency conditions and potential incidents that may require a multi-agency response;
- h. hold regular and frequent meetings of designated emergency response personnel of all city agencies that are determined by the commissioner to have a direct or support role in the city's management of emergency conditions and potential incidents which may require a multi-agency response;
- i. acquire federal and other funding for emergency management, including but not limited to disaster relief, and civil defense, and assist other agencies in obtaining such funding;
- j. coordinate with all city agencies to ensure that all such agencies develop and implement emergency response plans in connection with planning major city events;
- k. coordinate with state, federal and other governmental bodies to effectuate the purposes of the department;
- l. coordinate the operation of the local emergency planning committee established pursuant to Title III of the federal Superfund Amendments and Reauthorization Act;
- m. coordinate New York city's civil defense effort in accordance with the provisions of the Defense Emergency Act of New York state and the city's civil defense emergency operations plan, as such plan may be amended from time to time;
- n. perform all other functions previously performed by the former office of emergency management and the emergency control board; and
- o. promulgate such rules and regulations as may be necessary to implement the provisions of this chapter.

HISTORICAL NOTE

Section added at General Election, November 6, 2001 (Question 6 § 3) eff. November 6, 2001 with special provisions in § 1152 subd. h par (5).

FOOTNOTES

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[Footnote 25]: * Chapter added at General Election, November 6, 2001 eff. November 6, 2001; Ballot Question Abstract:

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CHAPTER 19-A EMERGENCY MANAGEMENT DEPARTMENT*25

§ 498. **Agency cooperation.**

The department shall be the lead agency in the coordination and facilitation of resources in incidents involving public safety and health, including incidents which may involve acts of terrorism. All agencies shall provide the department promptly with all information relevant to the performance of the emergency management functions and shall collect and make available any information requested by the department for use in emergency planning. All agencies further shall promptly provide the department with all appropriate material, equipment and resources needed for emergency management functions, including personnel.

HISTORICAL NOTE

Section added at General Election, November 6, 2001 (Question 6 § 3) eff. November 6, 2001 with special provisions in § 1152 subd. h par (5).

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FOOTNOTES

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[Footnote 25]: * Chapter added at General Election, November 6, 2001 eff. November 6, 2001; Ballot Question Abstract:

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planning and response for acts of terrorism, natural disasters and other emergencies in the City. Pursuant to an executive order, the Office of Emergency Management ("OEM") was created to perform such functions. This proposal would make OEM a Charter agency by establishing it as the Emergency Management Department empowered to coordinate interagency and intergovernmental emergency planning and response in the City. In addition, the City's authority to seek court orders allowing it to inspect properties to prevent public health or safety emergencies, or to respond to their aftermath, would be clarified.



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NYC Charter 520

New York City Charter

CHAPTER 20 EDUCATION

§ 520. **Salaries of members of the board of education.**

1. Members of the board of education, other than the president, shall be compensated at the rate of one hundred sixty dollars and the president of the board at the rate of one hundred seventy-five dollars per calendar day when performing the work of the board, provided, however, that in any fiscal year a member or president shall not be compensated for more than two hundred ten calendar days for all work performed by such member or president during the fiscal year.

2. Members of the board of education shall, within the funds provided therefor in the budget of the board of education, be entitled to use an automobile limited to the performance of their public duties provided, that the cost of such automobile shall not exceed that of automobiles provided to city commissioners.

HISTORICAL NOTE

Section added by L. L. 1969, No. 32.

Section amended by L. L. 1974, No. 43.

Subd. 2 added by L. L. 1983, No. 35.



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NYC Charter 521

New York City Charter

CHAPTER 20 EDUCATION

§ 521. **Property under board of education; care and control; suits in regard thereto.**

a. The title to all property, real and personal, heretofore or hereafter acquired for school or educational purposes, and also the title to all property, real and personal, purchased for school or educational purposes with any school moneys, whether derived from the issue of bonds or raised by taxation, shall be vested in the city, but under the care and control of the board of education for the purposes of public education, recreation and other public uses.

b. Suits in relation to such property shall be brought in the name of the board of education.

c. The city shall have power to take and hold any property, real or personal, devised or bequeathed or transferred to it for the purposes of education in said city; but such property shall be under the care and control of the board of education for the purposes of public education, recreation and other public uses in the city.

d. Not later than the twenty sixth day of April, the board of education shall submit to the mayor, the borough presidents and the council an itemized statement, covering those portions of the city's capital plant, as defined in section eleven hundred ten-a, which have been committed to the care and control of the board of education or officers or employees thereof, by project type and, within project type, by personal services and other-than-personal services, of the amounts appropriated for maintenance of such portions of the capital plant in the previous and current fiscal years as originally adopted and as modified through the first nine months of the current fiscal year, and of the amounts actually expended for such maintenance in the previous fiscal year and through the first nine months of the current fiscal year and the amounts estimated to be expended for such purpose during the balance of the current fiscal year; and, an explanation of the substantive differences, if any, between the amounts actually expended for such maintenance in the previous fiscal year or projected to be expended for such purpose in the current fiscal year and the amounts originally appropriated for such purpose for such years.

e. Not later than the first day of February of the year two thousand and three and on a quarterly basis thereafter,

not later than May first, August first, November first, and February first of each year, the chancellor of the city school district shall submit to the council an itemized statement covering the status of every school capital project that was completed during the immediately preceding fiscal quarter or not completed but for which funding was appropriated. This statement shall include, but not be limited to, the following information for each such project: (1) the total amount appropriated for the school capital project; (2) the original and current total estimated cost of the school capital project, disaggregated by project phase, including, but not limited to, scope, design, and construction; (3) the projected or actual start and end date of each such project phase; (4) the total amount expended on the project as of the last day of the immediately preceding fiscal quarter, disaggregated by project phase; (5) a clear explanation of the reasons for any projected or actual cost overrun of ten percent or more of the total estimated cost of the project; (6) a clear explanation of the reasons for any delay of sixty days or longer with respect to any phase of the project and (7) the name, office phone number and e-mail address of the project manager, or person responsible for reporting on the project, within three months of appropriation for the school capital project.

f. The chancellor of the city school district shall provide additional electronic notification to the council within thirty days of learning of any of the following with respect to any school capital project: (1) any projected or actual delay of sixty days or more with respect to any phase of the project and (2) any projected or actual change of ten percent or more of the total estimated cost of the project. The chancellor of the city school district shall also provide the information required by this subdivision to the council member who represents the district in which the project is located.

g. The office of management and budget shall provide electronic notification to the council immediately upon issuing a certificate to proceed for every school capital project. The office of management and budget shall also provide the information required in this subdivision to the council member who represents the district in which the project is located.

h. For purposes of subdivisions e, f, and g, "school capital project" shall mean: (1) any project included in any current or prior five-year educational facilities capital plan; and (2) any capital project for a school facility for which funding was appropriated to the department of education or its successor pursuant to sections two hundred eleven, two hundred forty-nine, or two hundred fifty-four.

HISTORICAL NOTE

Subd. d added at General Election, November 8, 1988.

Subd. d amended at General Election, November 7, 1989.

Subd. e added L.L. 24/2003 § 1, eff. Apr. 9, 2003. [See Note 1]

Subd. f added L.L. 24/2003 § 1, eff. Apr. 9, 2003. [See Note 1]

Subd. g added L.L. 24/2003 § 1, eff. Apr. 9, 2003. [See Note 1]

Subd. h added L.L. 24/2003 § 1, eff. Apr. 9, 2003. [See Note 1]

NOTE

1. This L.L. 24/2003 was vetoed Feb. 27, 2003 overridden Apr. 9, 2003 and effective Apr. 9, 2003. Note provision of L.L. 24/2003:

§ 2. If any subsection, section, clause, phrase, or other portion of this local law is for any reason declared unconstitutional or invalid in whole or in part by any court of competent jurisdiction, such portion shall be deemed severable and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law,

which shall remain in full force and effect.

CASE NOTES

¶ 1. Although the City retains title to real property acquired for educational purposes, it is not responsible for the care, custody, control and safekeeping of schools. Thus, personal injury actions involving school property must be brought against the Board of Education. *Goldman v. City of New York*, 287 A.D.2d 689, 732 N.Y.S.2d 78 (2d Dept. 2001).

¶ 2. Chancellor may close a school for academic deficiencies as a matter of educational policy and decision is nonjusticiable. Policy determinations should be made by legislative and executive branches of government charged with oversight responsibility for education in NYC. Chancellor is vested with sole authority to establish schools and set and enforce education standards pursuant to Education Law §§ 2554, 2590-h. Chancellor made thorough investigation over 2-year period and court is powerless to review his action. *Matter of Ferrer v. Quinones*, 132 A. D. 2d 277 [1987].

¶ 3. The City has title to school property but the Board of Education is responsible for the care and control of the schools. The City and Board of Education are separate entities. Thus, where a student suing for personal injuries sustained on school property named the City but not the Board of Education, the action was dismissed. *Shuler v. City of New York*, N.Y.L.J., Sept. 5, 1997, page 26, col. 3 (Sup.Ct. Kings Co.).

¶ 4. The City of New York should not be a defendant in a case arising out of an accident at a school that took place while the schools were under the exclusive care, custody and control of the New York City Board of Education. *Bleiberg v. City of New York*, 43 A.D.3d 969, 842 N.Y.S.2d 76 (2d Dept. 2007).



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NYC Charter 522

New York City Charter

CHAPTER 20 EDUCATION

§ 522. **Reports of department.**

a. The department of education shall on or before the thirtieth day of November in each year make and transmit to the mayor a report in writing, for the year ending on the thirty-first day of July next preceding, stating the whole number of schools under its jurisdiction during the said year; the number of teachers; the total number of pupils on register, and the average attendance at each school; the number of high schools and training schools for teachers, with the number of teachers and the attendance of pupils at each; the corporate schools or societies from which reports have been made to the department of education, the length of time such schools have been kept open, and the number of teachers and of pupils taught in each such school and the total amount of money expended for the purposes of public education in the city during the preceding fiscal year. The department of education shall also make in said reports such suggestions and recommendations relative to the public schools of the city as it may deem proper.

b. Temporary and non-standard classroom reporting. The department of education shall report to the council annually, on or before October fifteenth of each year, the number of non-standard classrooms within the public school system. Such report shall provide the number of non-standard classrooms, disaggregated by: school; zip code; school district; instructional region; community district; council district; and borough, and for each non-standard classroom, the number of children who attend classes in each such non-standard classroom. For purposes of this section, the term "non-standard classrooms" shall mean any of the following spaces that are used for subject-matter instruction where students are intended to be seated at desks: a transportable classroom unit; a classroom located in a structure that was not built or renovated with the intention that such structure be a permanent educational facility; a classroom located in a multi-purpose room, also called a cluster room, and not used for the specialized instructional, administrative or other purposes for which such room was designed or intended; a classroom located in a space that was not designed for classroom use when built or when last fully renovated; and a classroom the use of which violates any New York city or state law pertaining to classroom design, location or amenity or the type of interior space that may lawfully be used as classroom space.

c. Class size reporting. The department of education shall submit a report to the city council twice annually, on or before November fifteenth and February fifteenth of each year, with respect to the following information regarding class sizes in New York city public schools:

1. For each school and, separately, for each academic program within a school or school building, including smaller schools housed within larger institutions and specialized programs, such as those for gifted students and for students with special needs, the average class size per grade of all classes in such school or program;

2. For each school district and for each region, the average class size per grade of all classes in such district and region;

3. For each borough, the average class size per grade of all classes in such borough;

4. Citywide, the average class size per grade; and

5. A detailed description of the methodologies used to calculate all such grade size data reported.

d. Presentation of class size reporting. Average class size shall be reported:

1. By the number of students, rounded to the nearest tenth; and

2. By core academic subject, in all grades in which such core academic subjects are taught in classes that vary from such grades' homeroom classes.

e. Class size reporting exceptions. The reporting required by subdivision c of this section shall:

1. Exclude classes that are composed of students who are enrolled in any school or program that exclusively serves students who are incarcerated, on probation, or otherwise under the jurisdiction of the state or federal court system;

2. Be made by category of class, such as 12-to-1 or 5-to-1 student/teacher ratio, with respect to students who attend classes exclusively for children who have individualized education plans; and

3. Exclude classes taught at vocational schools and programs, also known as career and technical schools and programs, to the extent that such classes within such schools and programs do not provide core academic content.

f. Dissemination of information. The reporting required by subdivision c of this section shall, in addition to being provided to the city council, be placed on the department's website and may be distributed by such other means as the chancellor, in his discretion, determines to be a reasonable method of providing such information to the public.

HISTORICAL NOTE

Section amended L.L. 122/2005 § 2, eff. Dec. 29, 2005. [See Note 1]

Subd. c added L.L. 125/2005 § 2, eff. June 27, 2006. [See Note 2]

Subd. d added L.L. 125/2005 § 2, eff. June 27, 2006. [See Note 2]

Subd. e added L.L. 125/2005 § 2, eff. June 27, 2006. [See Note 2]

Subd. f added L.L. 125/2005 § 2, eff. June 27, 2006. [See Note 2]

NOTE

1. Provisions of L.L. L.L. 122/2005:

Section 1. Legislative findings. New York City public schools have been overcrowded for decades. As a result, at hundreds of schools across the City, the Department of Education has installed "temporary classrooms" or "transportable classroom units." These are semi-permanent, modular buildings designed to provide classroom space cheaply and quickly. Unfortunately, many of these temporary classrooms have become permanent fixtures in their schoolyards. The Department has insufficient funds to replace them with proper school buildings, and, therefore, many of these structures have remained in use for decades.

These temporary classrooms are undesirable for many reasons. They are often poorly heated, ventilated and lit. They isolate children from their school communities and take up space that is needed for playgrounds and athletic facilities.

In addition to installing temporary classrooms, the Department, in response to overcrowding, has converted non-classroom space within existing school buildings to classroom use. As a result, many students attend class in converted offices, bathrooms, basements, and other spaces that were not designed to be classrooms. These spaces often lack sufficient natural light, and are laid out in a manner that is far from ideal. Some of these spaces likely do not meet minimal standards for appropriate classroom design. Furthermore, in the most overcrowded schools, the elimination of libraries, laboratories, art rooms, auditoriums and other spaces in order to provide classroom space deprives children of fundamental, important aspects of their education.

Although the Department of Education has for years promised to eliminate the use of temporary and non-standard classrooms, it has been slow to do so. The public is not aware of the scope of these problems, as parents are generally only familiar with their children's schools. Therefore, public pressure to improve these substandard classrooms has not reflected the level of public dissatisfaction with such facilities. The Council finds that the Department's efforts to eliminate temporary and non-standard classrooms would be aided by the annual public disclosure of the number of such classrooms.

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§ 3. If any subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of the local law that added this section, which remaining portions shall remain in full force and effect.

2. Provisions of L.L. 125/2005:

Section 1. Legislative findings. For decades, public schools in New York City have been overcrowded. Although class size varies from school to school, some elementary and middle schools have classes in excess of 30 students and some high schools have classes in excess of 35 students. Such class sizes are considered unreasonable by parents, students and educators.

Over the past decades, a variety of means have been tried to reduce class sizes, including hiring additional teachers, building additional school buildings, staggering classes over a dozen or more periods during the school day, and placing class size limitations in the contract between the Department of Education and the United Federation of Teachers. Although some of these measures have been successful, they have not succeeded in reducing class size uniformly, citywide, to acceptable levels.

The Council finds that one reason the Department of Education has been unable to reduce class size to acceptable levels citywide is that the public and policymakers do not have access to accurate and timely class size information. The Council therefore finds that legislation requiring the Department to report such information is necessary to ameliorate this deficiency.

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§ 3. If any subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of the local law that added this section, which remaining portions shall remain in full force and effect.

CASE NOTES

¶ 1. A proposed local law which would amend this section as to permit the Board of Education, in its annual reports, from making recommendations contrary to the concept of the neighborhood school was invalid as violative of Section 11 of the Municipal Home Rule Law and of the Constitution. A petition to have the local law submitted to the electors was denied.-*Reuss v. Katz*, 43 Misc. 2d 921, 252 N. Y. S. 2d 546 [1946].



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NYC Charter 523

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CHAPTER 20 EDUCATION

§ 523. **Removal by mayor after hearing.**

Any member of the board of education or of the local school board may be removed by the mayor on proof of official misconduct in office or of negligence in official duties or of conduct in any manner connected with official duties, or otherwise, which tends to discredit the office of such member or the school system, or for mental or physical inability to perform duties; but before removal such member shall receive notice in writing of the charges and copy thereof, and shall be entitled to a hearing on notice before the mayor and to the assistance of counsel at said hearing.

HISTORICAL NOTE

Section amended at General Election, November 7, 1989.

CASE NOTES

¶ 1. The Mayor in the discharge of his legal responsibilities imposed by this section has the power to direct the Commissioner of Investigation to make an investigation into the affairs, functions, accounts, methods, personnel and efficiency of the Board of Education.-*In re Karelsen (Yavner)*, 59 N. Y. S. 2d 683 [1945].

¶ 2. Since members of the Board of Education of N. Y. C. receive no compensation or tenure, the right to be a member of the Board is not a property right. The Mayor of the City had the power to nominate and appoint new members to replace those whose term of office were terminated by statute.-*Lanza v. Wagner*, 30 Misc. 2d 212, 220 N. Y. S. 2d 477 [1961]; *aff'd* 15 A. D. 2d 552, 222 N. Y. S. 2d 1019 [1961].



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NYC Charter 524

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CHAPTER 20 EDUCATION

§ 524. **School officers not to be interested in contracts; removal.**

[Became § 1131].



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NYC Charter 525

New York City Charter

CHAPTER 20 EDUCATION

§ 525. **Contributions to political funds, etc., prohibited.**

[Became § 1132].



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NYC Charter 526

New York City Charter

CHAPTER 20 EDUCATION

§ 526. **Powers of investigation.**

The board of education may investigate, of its own motion or otherwise either in the board or by a committee of its own body, any subject of which it has cognizance or over which it has legal control, including the conduct of any of its members or employees or those of any local school board; and for the purpose of such investigation, such board or its president, or committee or its chairman, shall have and may exercise all the powers which a board of education has or may exercise in the case of a trial under the Education Law or the Civil Practice Law and Rules. Any action or determination of a committee appointed under the provisions of this section shall be subject to approval or reversal by the board, which may also modify the determination of the committee in such way as the board shall deem proper and just, and the judgment of the board thereon shall be final.



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NYC Charter 526-a

New York City Charter

CHAPTER 20 EDUCATION

§ 526-a. **Powers of investigation.**

a. Statement of purpose and intent. The purpose and intent of this section is to ensure that all suspected crimes committed by an adult against a student or another adult, and all allegations of sex-offenses or other violent crimes committed by a student against another student, including any bias-related violent crime committed by any adult or student, in a public school, is reported to the police department and the special commissioner of investigation for the New York city school district. It is not the purpose and intent of this section to mandate the reporting of incidents amounting to ordinary misbehavior and "name calling" among students.

b. Where, the board, a committee of the board or officer or employee of the city school district of the city of New York has evidence or other information relating to a suspected crime, the board, committee, officer or employee which has such information shall immediately report such evidence or other information to the police department and the special commissioner of investigation, in a form and manner prescribed by rule by the police department, and to the school's principal, provided, however, that if such evidence or other information directly or indirectly involves or implicates such school principal, the report shall be made to the district superintendent as well as the police department.

c. Where there is a suspected crime against a child, the school principal or district superintendent shall promptly notify the parent or legal guardian of such child about whom a report has been made, except where, after consultation with the police department and the special commissioner of investigation, it is determined that such notification would impede a criminal investigation.

d. Any such committee or individual who in good faith reports evidence or other information relating to a suspected crime to the police department and school principal or district superintendent in accordance with the provisions of subdivision b of this section shall have immunity from any civil liability that may arise from the making of such report, and the school district or any school district employee shall not take, request or cause a retaliatory action against any such committee or individual who makes a report. Nothing herein shall abrogate obligations of

confidentiality imposed by certain privileged relationships pursuant to state law.

e. The police department shall promulgate all rules necessary to implement the provisions of this section.

f. The provisions of this section shall not be construed as either (1) limiting the authority of any agency, commission, other entity or its members to conduct any administrative, civil or criminal investigation that is within the scope of their authority, or (2) limiting any obligation to file a report with any city, state or federal agency concerning a suspected crime or other activity.

HISTORICAL NOTE

Section added at General Election, November 6, 2001 (Question 3 § 4) eff. upon certification that electors have approved the amendments. [See Note]

NOTE

Ballot Question Abstract:

School Crime Reporting. Currently, neither the Charter nor the Administrative Code requires Board of Education employees to report to the Police Department suspected crimes in the City's schools. This proposal would require Board of Education employees to report immediately to the Police Department any suspected crimes by adults, and any suspected crimes by students that are sex offenses or violent crimes, that occur in public schools. Notification of parents or legal guardians would also be required. Any person who, in good faith, reports such information to the police would receive immunity from civil liability.



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NYC Charter 527

New York City Charter

CHAPTER 20 EDUCATION

§ 527. **Changes in state law.**

This chapter shall not prevent the city from exercising any power now or hereafter conferred by law.



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NYC Charter 528

New York City Charter

CHAPTER 20 EDUCATION

§ 528. **The installation and operation of security cameras in New York City public schools.**

a. Installation of Security Cameras. The New York City department of education, in consultation with the New York City police department, shall install security cameras at schools and consolidated school locations operated by the department of education where the chancellor, in consultation with the New York City police department, deems such cameras appropriate for safety purposes. Such cameras may be placed at the entrance and exit doors of each school and may be placed in any area of the school where individuals do not have a reasonable expectation of privacy. The number, type, placement, and location of such cameras within each school shall be at the discretion of the department of education, in consultation with the principal of each school and the police department.

b. Schedule of Installation. The department of education, in consultation with the police department, shall set the priorities for installation of cameras as set forth in subdivision a to include among other appropriate factors consideration of the level of violence in schools, as determined by the police department and the department of education. By the end of 2006, the potential installation of cameras shall have been reviewed for all schools under the jurisdiction of the department of education, including elementary schools. At the end of 2006, the department of education shall submit a report to the city council indicating, for each school under its jurisdiction, the findings of the review and the reasons for the findings contained therein.

HISTORICAL NOTE

Section added L.L. 52/2004 § 2, eff. Feb. 27, 2005. [See Note 1]

NOTE

1. Provisions of L.L. 52/2004:

Section 1. Legislative intent and findings.

The City Council hereby finds and declares that it is the right of every person who attends New York City public schools to have the opportunity to learn and teach in an environment free from intimidation and physical harm. Crime in public schools, though lower in recent years, is still too high.

To foster an atmosphere free of violence, security cameras have been installed in traditional public fora, such as public parks, streets and housing facilities. These cameras provide law enforcement with additional eyes and ears and have greatly assisted in reducing crime in areas where they are placed. Additionally, it is cost-effective to have a security device in conjunction with live school security agents.

It is not the intent of this local law to interfere with the exercise of the constitutionally protected rights of freedom of expression and association, nor to infringe on students' right to privacy. This legislation therefore expresses the intent that cameras be placed at entrance and exit doors, and at other sites within schools and consolidated school locations where individuals do not have a reasonable expectation of privacy.



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NYC Charter 529

New York City Charter

CHAPTER 20 EDUCATION

§ 529. **Education department and police department school incident reporting requirements.**

a. The New York city department of education, or its successor, shall make available to the public, pursuant to subdivision d of this section, reports that reflect the environment of criminal and seriously disruptive behavior in schools operated by the department of education.

b. Such reports shall include an annual reporting, on a city-wide basis as well as for each school or co-located group of schools operated by the department of education, of information reported by the New York city police department to the department of education on the following: the total amount of major felony crime, disaggregated by felony category; the total amount of other crime, disaggregated by crimes against persons and crimes against property; and the total amount of non-criminal incidents.

c. Such reports shall also include an annual reporting, on a city-wide basis as well as for each school or co-located group of schools operated by the department of education, of incidents designated by the chancellor in the citywide standards of discipline and intervention measures (the "discipline code") as seriously disruptive, dangerous or violent behavior in schools operated by the department of education, as reported in the department of education's online occurrence reporting system, or a successor reporting system. The chancellor, in consultation with the police department, shall develop guidelines to avoid duplicative reporting pursuant to this subdivision of information already contained in reports described in subdivision b of this section.

d. The department of education shall make such reports available on its web site and shall include such information in the school report card for each school that it operates. The department shall also make such reports available in paper form at all schools and all district and regional offices, and shall provide copies to the public on request. Such annual reports shall be available by October 1st, and shall include data from the previous school year (September 1st through June 30th) of information reported by the New York city police department to the department of education and, as soon as practicable, but no later than one year after the effective date of this law, shall also include the

reports generated by the department of education described in subdivision c of this section.

HISTORICAL NOTE

Section added L.L. 4/2005 § 2, eff. Apr. 5, 2005. [See Note 1]

NOTE

1. Provisions of L.L. 4/2005:

Section 1. Legislative intent and findings.

In order to combat violence in our schools, residents of the city must have accurate information on the number and types of incidents occurring and where these incidents are taking place. This information must be made public so that parents are aware of the safety conditions within which their children learn and so that our civic leaders can institute meaningful reform.

The police department collects and reports information about criminal incidents and certain non-criminal incidents that occur in the schools. The Department of Education currently provides information to the public on its website about incidents in schools based on reports prepared by the Police Department. In addition, the Department of Education maintains the Online Occurrence Reporting System ("OORS"), in which information concerning violent and seriously disruptive incidents in the schools (in addition to other types of information not related to school safety) is recorded. The information relevant to school safety in OORS is not currently reported by the Department of Education on its website.

To help parents and the public understand and fully assess the problem of school crime and other serious disruptive incidents, the DOE must continue to post school safety data on the internet and to enhance and improve upon the information that is provided. By receiving this information, the public will be in a better position to analyze and comment upon any inconsistencies and to weigh in on proposed policy amendments.

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NYC Charter 531

New York City Charter

CHAPTER 2123 DEPARTMENT OF PARKS AND RECREATION*

§ 531. **Department; commissioner.**

There shall be a department of parks and recreation the head of which shall be the commissioner of parks and recreation.

FOOTNOTES

23

[Footnote 23]: * Added by L.L. 1976, No. 7.



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New York City Charter

CHAPTER 2123 DEPARTMENT OF PARKS AND RECREATION*

§ 532. **Deputies.**

The commissioner may appoint three deputies.

FOOTNOTES

23

[Footnote 23]: * Added by L.L. 1976, No. 7.



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New York City Charter

CHAPTER 2123 DEPARTMENT OF PARKS AND RECREATION*

§ 533. **Powers and duties of the commissioner.**

Except with respect to the functions of the board of education and except as otherwise provided by law, the commissioner shall have the power and it shall be his or her duty:

a. Parks

1. to manage and care for all parks, squares and public places, the sidewalks immediately adjoining the same and all playgrounds, playground fixtures and other recreation properties, except those within the jurisdiction of the board of education or other agencies, but such jurisdiction shall not extend to or include the buildings which are not or hereafter may be erected in parks, squares or public places for governmental purposes other than those of the department;

2. to prepare plans for the establishment and improvement of a park system for the city with due regard to proper connections with the systems of federal, state and county parks and recreation areas in the city and the counties adjacent to the city, and execute the same when authorized in accordance with the provisions of this charter;

3. to maintain the beauty and utility of all parks, squares, public places, playgrounds and other recreational properties, except those within the jurisdiction of the board of education and to institute and execute all measures for the improvement thereof for ornamental purposes and for the beneficial uses of the people of the city;

4. to plant and maintain trees and to construct, erect and establish seats, drinking fountains, statues and works of art in any place within his or her jurisdiction, and to determine when and where lamps or lighting appliances shall be placed and lighted therein and the design thereof;

5. to authorize and regulate the use of and the projections on and determine the line or curb and the surface construction of all streets and avenues lying within any park, square or public place or within a distance of three

hundred fifty feet from the outer boundaries thereof;

6. to maintain buildings and structures now or hereafter erected or established in any park, square, public place or playground under his or her jurisdiction and to carry out and perform existing contracts with corporations or institutions for the construction and maintenance of such buildings and structures;

7. to provide the necessary instruments, furniture and equipment for the several buildings and structures within his or her jurisdiction and to develop and improve the same subject to the provisions of law and existing contracts;

8. to have the management, direction and control of all real or personal property granted, devised, bequeathed or conveyed to the city for the extension, improvement or ornamentation of the parks, squares or public places in the city or for the establishment or maintenance, within the limits of any such park, square or public place, of playgrounds, other recreational properties and other facilities within the department's jurisdiction and upon such trusts and conditions as may be prescribed by the grantors or donors thereof and accepted by the commissioner, or proposed by the commissioner and accepted by the grantors or donor thereof;

9. to establish and enforce rules and regulations for the use, government and protection of public parks and of all property under the charge or control of the department, which rules and regulations so far as practicable shall be uniform in all boroughs and shall have the force and effect of law. Such rules and regulations shall apply to and shall be enforceable within public parks, recreational facilities and other property under the jurisdiction of the Hudson river park trust and the battery park city authority provided that such trust or authority have entered into agreements with the commissioner to provide for the maintenance, protection and/or government of such property by the department, except to the extent that such rules and regulations are inconsistent with specific rules and regulations of the Hudson river park trust and the battery park city authority.

(i) Any violation of such rules or regulations, except any violation of subparagraph (ii) of this paragraph, shall be a misdemeanor triable by a judge of the criminal court of the city of New York and punishable by not more than ninety days imprisonment or by a fine of not more than one thousand dollars or by both. Any violation of such rules or regulations shall also subject the violator to a civil penalty of not more than ten thousand dollars for each violation which may be recovered in a proceeding before the environmental control board. Such proceeding shall be commenced by the service of a notice of violation returnable to the environmental control board.

(ii) Any violation of a rule or regulation concerning the unlawful cutting, removal or destruction of any tree shall be a misdemeanor triable by a judge of the criminal court of the city of New York and punishable by not more than one year imprisonment or by a fine of not more than fifteen thousand dollars or by both. Any violation of a rule or regulation concerning the unlawful cutting, removal or destruction of any tree shall also subject the violator to a civil penalty of not more than ten thousand dollars for each violation which may be recovered in a proceeding before the environmental control board. Such proceeding shall be commenced by the service of a notice of violation returnable to the environmental control board. The environmental control board shall have the power to impose the civil penalties prescribed herein;

9-a. by agreement with the battery park city authority (a public benefit corporation established pursuant to title twelve of article eight of the public authorities law), to enforce the rules and regulations of such authority or of a not-for-profit corporation acting on behalf of such authority, relating to the use, government and protection of public parks and recreational facilities of and adjacent to battery park city within the jurisdiction of such authority. In addition to or as an alternative to any of the remedies or penalties provided under any other provision of law, violation of such rules and regulations shall be punishable by a civil penalty of not more than five hundred dollars for each violation, which may be recovered in a proceeding before the environmental control board. Such proceeding shall be commenced by a notice of violation returnable before such board. The procedures set forth in section one thousand forty-nine-a of this charter applicable to the adjudication by the environmental control board of violations within the jurisdiction of the commissioner shall apply to the adjudication of violations of such rules and regulations by such board and final orders

of such board imposing civil penalties for such violations shall constitute judgments that may be entered and enforced as set forth in such section.

9-b. by agreement with the Hudson river park trust (a public benefit corporation established pursuant to section five of the Hudson river park act, chapter five hundred ninety-two of the laws of nineteen hundred ninety-eight), to enforce the rules and regulations of such trust relating to the use, government and protection of the Hudson river park, created pursuant to section four of such act. In addition to or as an alternative to any of the remedies or penalties provided under any other provision of law, violation of such rules and regulations shall be punishable by a civil penalty of not more than five hundred dollars for each violation, which may be recovered in a proceeding before the environmental control board. Such proceeding shall be commenced by a notice of violation returnable before such board. The procedures set forth in section one thousand forty-nine-a of this charter applicable to the adjudication by the environmental control board of violations within the jurisdiction of the commissioner shall apply to the adjudication of violations of such rules and regulations by such board and final orders of such board imposing civil penalties for such violations shall constitute judgments that may be entered and enforced as set forth in such section.

10. to plan, conduct, supervise, coordinate and promote conservation, environmental, and nature education programs and research and demonstration projects relating thereto and to plan, acquire, design, construct, improve, alter, maintain and manage areas and facilities for conservation and the preservation of natural beauty; and subject to the approval of the mayor, undertake to enter into arrangements with other city, state or federal agencies and recommend to the mayor such arrangements with private, voluntary or commercial agencies, to be entered into subject to the provisions of law, for the performance of functions relating to conservation and the preservation of natural beauty;

11. to plan, plant and maintain trees and other plantings and to plan, acquire, design, construct, improve, alter, repair and maintain works of art,*24 as same are defined in subdivision a of section eight hundred fifty-four of the New York city charter, on or over the streets, avenues, squares, parks, docks, piers or other public places belonging to the city, except as otherwise provided by law; and, subject to the approval of the mayor, undertake to enter into arrangements with other agencies of the city, state and federal government and recommend to the mayor such arrangements with private, voluntary or commercial agencies, to be entered into subject to the provisions of law, for the performance of functions relating to neighborhood beautification.

b. Recreation

1. to plan, acquire, construct, improve and manage facilities for the recreation of the public;

2. to plan, develop, conduct and supervise recreation programs for the public including research and demonstration projects relating thereto;

3. to review and coordinate recreation activities and programs and facilities conducted by agencies of the city and the budget estimates submitted by such other agencies for such activities and make such recommendations to the mayor with respect to them as may be appropriate; and

4. to undertake, subject to the approval of the mayor, and to enter into arrangements with other agencies of the city, state or federal government and to recommend to the mayor such arrangements with private, voluntary or commercial agencies to be entered into, subject to the provisions of law, for the performance of any recreation functions conferred upon the department by this chapter or otherwise.

HISTORICAL NOTE

Subd. a par. a amended by L. L. 1982, No. 67.

Subd. a par. 11 amended by L. L. 1977, No. 102.

Subd. b par. 4 amended by L. L. 1977, No. 102.

Subd. a pars. 2, 8, 10 amended at General Election, November 8, 1988.

Open. par. subd. a pars. 4, 6, 7 amended at General Election, November 7, 1989.

Subd. a par 9 amended chap 169/2002 § 1, eff. July 23, 2002.

Subd. a par 9 amended L.L. 7/1996 § 1, eff. Feb. 11, 1996.

Subd. a pars 9-a, 9-b amended L.L. 35/2008 § 3, eff. Sept. 11, 2008. [See § 1049-a Note 1]

Subd. a pars 9-a, 9-b added chap 169/2002 § 2, eff. July 23, 2002.

CASE NOTES

¶ 1. The New York City Parks Department is the agency responsible for approval of alterations to the Metropolitan Museum of Art. *Application of Metropolitan Museum Historic District Coalition v. De Montebello*, 3 Misc.2d 1109(A), 2004 WL 1326706 (Sup.Ct. New York Co.).

¶ 2. The City ordinances, which regulate large gatherings in public parks, do not violate the First Amendment so long as they are content neutral. Thus, so long as anyone, regardless of the type of message, would be subject to the same regulations, the regulations are lawful. Thus, City officials had the right to deny a permit for a large rally in Central Park when alternate sites for the rally were available. *United for Peace and Justice v. Bloomberg*, 5 Misc.3d 845, 783 N.Y.S.2d 255 (Sup.Ct. New York Co. 2004).

FOOTNOTES

23

[Footnote 23]: * Added by L.L. 1976, No. 7.

24

[Footnote 24]: * This phrase was redefined and portions now included in "structure."



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NYC Charter 534

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CHAPTER 2123 DEPARTMENT OF PARKS AND RECREATION*

§ 534. **Landmarks preservation commission.**

[Became § 3020.]

FOOTNOTES

23

[Footnote 23]: * Added by L.L. 1976, No. 7.



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CHAPTER 21-A NEW YORK CITY SPORTS COMMISSION

§ 541. **New York city sports commission.**

a. There shall be established a New York city sports commission consisting of five members who shall serve without compensation, each for a term of three years. Two members of the commission shall be appointed by the mayor, and two members shall be appointed by the speaker of the council, and one member shall be designated as chairperson by the mayor after consultation with the speaker.

The commission may appoint an executive director to serve at its pleasure and may employ or retain other employees and consultants within appropriations for such purpose.

b. Each member may designate a representative who may vote on behalf of such member and who shall be counted as a member for the purpose of determining the existence of a quorum. The designation of a representative shall be made in prior written notice served upon the chairperson of the commission.

c. The commission shall:

(1) make recommendations to insure the continuation and growth of a healthy environment for professional, amateur and scholastic sports activities in the city;

(2) hold at least one meeting per month;

(3) issue a quarterly report to the mayor and the council detailing the commission's activities during the previous three month period;

(4) issue an annual report to the mayor and the council at the start of each fiscal year detailing the commission's goals for the upcoming year;

(5) submit a proposed annual budget to the council no later than March thirty-first of each year;

(6) seek to promote the city as a positive and profitable base for professional sports teams wishing to relocate their organizations; and

(7) perform such other duties as may be necessary as determined by the commission.

HISTORICAL NOTE

Section added L.L. 61/1991 § 4, eff. July 1, 1991.

DERIVATION

Formerly § 1315 added LL 74/1986, amended at General Election, Nov. 7, 1989, amended L.L. 76/1989, repealed LL 61/1991 § 6.



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CHAPTER 22 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*25

§ 550. **Definitions.**

When used in this chapter: the term "mentally disabled" shall mean those with mental illness, mental retardation, alcoholism, substance dependence or chemical dependence as these terms are defined in section 1.03 of the mental hygiene law; or any other mental illness or mental condition placed under the jurisdiction of the department by the mayor; the term "provider of services" shall mean an individual, association, corporation or public or private agency which provides for the mentally disabled; and the term "services for the mentally disabled" shall mean examination, diagnosis, care, treatment, rehabilitation, training, education, research, preventive services, referral, residential services or domiciliary care of or for the mentally disabled, not specifically limited by any other law. Notwithstanding the foregoing, planning and programs for persons with substance dependence or chemical dependence shall be conducted by the department, and the department may act as a "local agency" to conduct substance abuse programs and seek reimbursement therefore pursuant to provisions of the mental hygiene law relating to funding for substance abuse services, as deemed appropriate by the commissioner in recognition of the programs currently administered by the New York state office of alcoholism and substance abuse services or its successor agency under article nineteen of the mental hygiene law.

HISTORICAL NOTE

Section added at General Election, November 6, 2001 (Question 5 § 4) eff. November 6, 2001 with special provisions in § 1152 subd. h par (4).

FOOTNOTES

[Footnote 25]: * Chapter heading amended L.L. 22/2002 § 2, eff. July 29, 2002 and deemed in effect as of July 1, 2002; amended at General Election, November 6, 2001 (Question 5 § 2) eff. November 6, 2001 with special provisions in § 1152 subd. h par (4).



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CHAPTER 22 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*25

§ 551. **Department; commissioner.**

a. There shall be a department of health and mental hygiene, the head of which shall be the commissioner of health and mental hygiene who shall be appointed by the mayor. The department shall have and exercise all powers of a local health department set forth in law. Notwithstanding any other provision of this charter to the contrary, the department shall be a social services district for purposes of the administration of health-related public assistance programs to the extent agreed upon by the department, the department of social services and the department of homeless services. Appropriations to the department for mental health, mental retardation and alcoholism services shall be set forth in the expense budget in separate and distinct units of appropriation. In determining the annual amount of city funds to be appropriated by the city for mental health, mental retardation and alcoholism services, the following provision shall apply: in the event that the executive budget proposes a decrease in city funds measured against the budget for the current fiscal year, as modified in accordance with section one hundred seven, for the units of appropriation for mental health, mental retardation and alcoholism services, the executive budget shall not propose a greater percentage decrease in city funds measured against the budget for the current fiscal year, as modified in accordance with section one hundred seven, for the units of appropriation for mental health, mental retardation and alcoholism services than has been proposed for the units of appropriation for public health services. If, however, in his or her discretion, the mayor determines that it is in the city's best interest to submit an executive budget at variance with the requirements of this provision, the mayor shall include an explanation of the basis for this variation as part of the budget message.

b. The commissioner shall be a doctor of medicine and:

(1) hold a degree of master of public health or a degree of master of business administration with concentration in the health field or a degree of master of public administration with concentration in the health field or the equivalent of any one of the specified foregoing degrees received from a college or university and have had at least five years' experience in college or university public health teaching, or

(2) have had at least five years' experience in public health administration.

HISTORICAL NOTE

Subd. a amended at General Election, November 6, 2001 (Question 5 § 5) eff. November 6, 2001 with special provisions in § 1152 subd. h par (4).

Subd. a amended L.L. 22/2002 § 3, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

Subd. b amended L.L. 19/1992 § 1, eff. Mar. 9, 1992.

FOOTNOTES

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[Footnote 25]: * Chapter heading amended L.L. 22/2002 § 2, eff. July 29, 2002 and deemed in effect as of July 1, 2002; amended at General Election, November 6, 2001 (Question 5 § 2) eff. November 6, 2001 with special provisions in § 1152 subd. h par (4).



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CHAPTER 22 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*25

§ 552. **Deputy commissioners.**

The commissioner may appoint deputy commissioners, one of whom shall have the same qualifications as the commissioner. There shall be at least two executive deputy commissioners, one of whom shall have the qualifications established pursuant to the mental hygiene law for a director of community services of a local governmental unit, and shall be the director within the department of the division of mental hygiene services. Such division shall be and shall exercise the powers of a local governmental unit for purposes of the mental hygiene law, and the executive deputy commissioner heading such division shall have the powers of a director of community services of a local governmental unit as set forth in or pursuant to such law, and shall report directly to the commissioner. In the exercise of such powers, such executive deputy commissioner shall coordinate the fiscal and programmatic administration of contracts awarded by the department for mental health, mental retardation, and alcoholism services.

HISTORICAL NOTE

Section amended at General Election, November 6, 2001 (Question 5 § 6) eff. November 6, 2001 with special provisions in § 1152 subd. h par (4).

FOOTNOTES

25

[Footnote 25]: * Chapter heading amended L.L. 22/2002 § 2, eff. July 29, 2002 and deemed in effect as of July 1, 2002; amended at General Election, November 6, 2001 (Question 5 § 2) eff. November 6, 2001 with special provisions in § 1152 subd. h par (4).



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CHAPTER 22 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*25

§ 553. **Board of health.**

a. There shall be in the department a board of health, the chairperson of which shall be the commissioner. In addition to the chairperson, the board shall consist of ten members, five of whom shall be doctors of medicine who shall each have had not less than ten years experience in any or all of the following: clinical medicine, neurology or psychiatry, public health administration or college or university public health teaching. The other five members need not be physicians. However, non-physician members shall hold at least a masters degree in environmental, biological, veterinary, physical, or behavioral health or science, or rehabilitative science or in a related field, and shall have at least ten years experience in the field in which they hold such degree. One member of the board shall be the chairperson of the mental hygiene advisory board, as set forth in section 568 of the charter, provided that such chairperson shall meet the requirements for board membership of either a physician or non-physician member.

b. The nine members other than the chairperson and the member who shall be the chairperson of the mental hygiene advisory board shall serve without compensation and shall be appointed by the mayor, each for a term of six years, commencing at the expiration of the terms of the present incumbents. In case of a vacancy the mayor shall appoint a member to serve for the unexpired term.

c. The commissioner shall designate employees of the department as may be necessary to the service of the board including an employee designated by him to serve as the secretary of the board.

HISTORICAL NOTE

Amended by L. L. 1984, No. 50.

Subd. a amended at General Election, November 6, 2001 (Question 5 § 7)

eff. December 6, 2001 with special provisions in § 1152 subd. h par

(4). [See Note]

Subd. b amended at General Election, November 6, 2001 (Question 5 § 8)

eff. December 6, 2001 with special provisions in § 1152 subd. h par

(4).

NOTE

Ballot Question Abstract:

Expanding the Board of Health. Currently, the Charter provides that the Board of Health be comprised of five members (including the Commissioner of Health). This proposal would increase the Board of Health's membership from five to eleven members (including the Commissioner of Public Health) to provide for a broader diversity of health, mental health and science professionals on the Board. Five members of the Board would be required to be physicians with at least ten years experience in clinical medicine, public health administration or college or university public health teaching. The other five members would be required to hold advanced degrees in environmental, biological, veterinary, physical or behavioral health or rehabilitative science, as well as possess at least ten years of experience in their respective fields. One member of the Board would also be the chairperson of the Mental Hygiene Advisory Board.

FOOTNOTES

25

[Footnote 25]: * Chapter heading amended L.L. 22/2002 § 2, eff. July 29, 2002 and deemed in effect as of July 1, 2002; amended at General Election, November 6, 2001 (Question 5 § 2) eff. November 6, 2001 with special provisions in § 1152 subd. h par (4).



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CHAPTER 22 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*25

§ 554. **Removal of board members.**

A member of the board of health other than the chairman may be removed by the mayor on proof of official misconduct or of negligence in official duties or of conduct in any manner connected with his official duties which tends to discredit his office, or of mental or physical inability to perform his duties; provided that prior to removal he shall receive a copy of the charges and shall be entitled to a hearing before the mayor and to the assistance of counsel at such hearing.

FOOTNOTES

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[Footnote 25]: * Chapter heading amended L.L. 22/2002 § 2, eff. July 29, 2002 and deemed in effect as of July 1, 2002; amended at General Election, November 6, 2001 (Question 5 § 2) eff. November 6, 2001 with special provisions in § 1152 subd. h par (4).



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NYC Charter 555

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CHAPTER 22 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*25

§ 555. **Powers and duties of the commissioner.**

a. The commissioner shall have all the powers and duties vested in him or in the department by this chapter or otherwise, except those vested by law in the board of health and the chief medical examiner. In the performance of his functions, the commissioner shall have, in addition to such others as may be conferred upon him from time to time, the power and duty to:

(1)*26 Prepare and submit to appropriate governmental authorities short term, intermediate and long range plans and programs designed to meet the said needs of the city, including the needs for construction and operation of medical and health care facilities, and establish priorities among them, except that the commissioner may not construct or operate a new medical or health care facility until the health systems agency having jurisdiction over the institution, as recognized by the state health planning council, has received, in the case of private institutions, a copy of the application filed with the commissioner, or in the case of institutions of the city of New York, information in such form and detail as the health systems agency shall require, and it shall have given the commissioner a written decision expressing its approval or disapproval. The commissioner shall not be bound by this decision but he shall not approve any construction, addition or modification contrary to the health systems agency without first holding a public hearing. In reaching decisions pursuant to this paragraph, the commissioner and the health systems agency shall consider:

(a) The public need for the existence of the new institution or the construction, addition or modification of an existing institution at the time and place and under the circumstances proposed;

(b) The character, competence and standing in the community of the owners and licensees, in the case of private institutions;

(c) The financial resources of the institution and its sources of future revenues;

(d) The fitness and adequacy of the premises, and equipment, personnel and standards of care to be used in the operation of the proposed institution;

(e) Any decision of the local community board, on the institution in the community; and

(f) Such matters as each of them considers pertinent.

(2) At the conclusion of the second year following the establishment of the department pursuant to this section, and again at the conclusion of the fourth year following such establishment, the mayor's office of operations shall conduct a review and submit a report to the mayor comparing such periods with the period preceding such establishment with regard to the department's delivery of mental health, mental retardation and alcoholism and substance abuse services, the access of consumers and their families to such services, and the administration and oversight of contracts for the delivery of such services.

b. In the exercise of the commissioner's functions, powers and duties the commissioner may:

(1) Compel the attendance of witnesses, administer oaths and compel the production of books, papers and documents in any matter or proceeding before the commissioner.

(2) Except as otherwise provided by law, assess any penalty prescribed for a violation of or a failure to comply with any provision of this chapter or any lawful notice, order or regulation pursuant thereto, not exceeding one thousand dollars, which penalty may be assessed after a hearing or an opportunity to be heard.

HISTORICAL NOTE

Section amended at General Election, November 8, 1988.

Subd. a par (2) added at General Election, November 6, 2001 (Question 5 § 9) eff. November 6, 2001 with special provisions in § 1152 subd. h par (4).

Subd. b par (1) amended at General Election, November 6, 2001 (Question 5 § 10) eff. November 6, 2001 with special provisions in § 1152 subd. h par (4).

FOOTNOTES

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[Footnote 25]: * Chapter heading amended L.L. 22/2002 § 2, eff. July 29, 2002 and deemed in effect as of July 1, 2002; amended at General Election, November 6, 2001 (Question 5 § 2) eff. November 6, 2001 with special provisions in § 1152 subd. h par (4).

26

[Footnote 26]: * There is no paragraph (2).



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NYC Charter 556

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CHAPTER 22 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*25

§ 556. **Functions, powers and duties of the department.**

Except as otherwise provided by law, the department shall have jurisdiction to regulate all matters affecting health in the city of New York and to perform all those functions and operations performed by the city that relate to the health of the people of the city, including but not limited to the mental health, mental retardation, alcoholism and substance abuse-related needs of the people of the city. The jurisdiction of the department shall include but not be limited to the following:

a. General functions. (1) Enforce all provisions of law applicable in the area under the jurisdiction of the department for the preservation of human life, for the care, promotion and protection of health and relative to the necessary health supervision of the purity and wholesomeness of the water supply and the sources thereof;

(2) maintain an office in each borough and maintain, furnish and operate in each borough office health centers and health stations or other facilities which may be required from time to time for the preservation of health or the care of the sick;

(3) exercise its functions, powers and duties in the area extending over the city, and over the waters adjacent thereto, within the jurisdiction of the city and within the quarantine limits as established by law;

(4) receive and expend funds made available for public health purposes pursuant to law; and

(5) arrange, with the approval of the mayor, for the rendition of services and operation of facilities by other agencies of the city;

b. Review of public health services and general public health planning. (1) Develop and submit to the mayor and council a program for the delivery of services for the mentally disabled, including construction and operation of

facilities;

(2) determine the needs of the mentally disabled in the city, which determination shall include the review and evaluation of all mental hygiene services and facilities within the department's jurisdiction;

(3) engage in short-range, intermediate-range and long-range mental hygiene planning that reflects the entire array of city needs in the areas of mental health, mental retardation and developmental disabilities and alcoholism and substance abuse services within the department's jurisdiction;

(4) implement and administer an inclusive citywide planning process for the delivery of services for people with mental disabilities; and design and incorporate within that planning process, consistent with applicable law, standards and procedures for community participation and communication with the commissioner at the borough and local community level; (5) establish coordination and cooperation among all providers of services for the mentally disabled, coordinate the department's program with the program of the state department of mental hygiene so that there is a continuity of care among all providers of services, and seek to cooperate by mutual agreement with the state department of mental hygiene and its representatives and with institutions in such department and their representatives in pre-admission screening and in post-hospital care of persons suffering from mental disability;

(6) receive and expend funds made available for the purposes of providing mental health, mental retardation and developmental disability and alcoholism and substance abuse related services;

(7) administer, within the division of mental hygiene, the unit responsible for early intervention services pursuant to the public health law; and

(8) in accordance with section five hundred fifty-five of this chapter, determine the public health needs of the city and prepare plans and programs addressing such needs.

c. Supervision of matters affecting public health. (1) Supervise and control the registration of births, fetal deaths and deaths;

(2) supervise the reporting and control of communicable and chronic diseases and conditions hazardous to life and health; exercise control over and supervise the abatement of nuisances affecting or likely to affect the public health;

(3) make policy and plan for, monitor, evaluate and exercise general supervision over all services and facilities for the mentally disabled within the department's jurisdiction; and exercise general supervisory authority, through the promulgation of appropriate standards consistent with accepted professional practices for the care and treatment of patients within such services and facilities for the mentally disabled within the department's jurisdiction;

(4) except as otherwise provided by law, analyze and monitor hospitals, clinics, nursing homes, and homes for the aged, and analyze, evaluate, supervise and regulate clinical laboratories, blood banks, and related facilities providing medical and health services and services ancillary thereto;

(5) to the extent necessary to carry out the provisions of this chapter, the mental hygiene law and other applicable laws and when not inconsistent with any other law, arrange for the visitation, inspection and investigation of all providers of services for the mentally disabled, by the department or otherwise;

(6) conduct such inquiries into services and facilities for the mentally disabled as may be useful in performing the functions of the department, including investigations into individual patient care, and for such purpose the department may exercise the powers set forth in section five hundred fifty-five of this chapter and shall, consistent with the provisions of the mental hygiene law, have access to otherwise confidential patient records, provided such information is requested pursuant to the functions, powers and duties conferred upon the department by law;

(7) supervise and regulate the public health aspects of water supply and sewage disposal and water pollution;

(8) supervise and regulate the public health aspects of the production, processing and distribution of milk, cream and milk products, except for such inspection, regulation and supervision of the sanitary quality of milk and cream distributed, consumed or sold within the city as performed by the New York department of agriculture and markets pursuant to section seventy-one-l of the agriculture and markets law;

(9) supervise and regulate the food and drug supply of the city and other businesses and activities affecting public health in the city, and ensure that such businesses and activities are conducted in a manner consistent with the public interest and by persons with good character, honesty and integrity;

(10) supervise and regulate the removal, transportation and disposal of human remains;

(11) supervise and regulate the public health aspects of ionizing radiation, the handling and disposal of radioactive wastes, and the activities within the city affecting radioactive materials, excluding special nuclear materials in quantities sufficient to form a critical mass; and

(12) in furtherance of the purposes of this chapter and the mental hygiene law, make rules and regulations covering the provision of services by providers of services for the mentally disabled.

d. Promotion or provision of public health services. (1) Maintain and operate public health centers and clinics as shall be established in the department;

2. engage in or promote health research for the purpose of improving the quality of medical and health care; in conducting such research, the department shall have the authority to conduct medical audits, to receive reports on forms prepared or prescribed by the department; such information when received by the department shall be kept confidential and used solely for the purpose of medical or scientific research or the improvement of the quality of medical care;

(3) produce, standardize and distribute certain diagnostic, preventive and therapeutic products and conduct laboratory examinations for the diagnosis, prevention and control of disease;

(4) promote or provide for public education on mental disability and the prevention and control of disease;

(5) promote or provide for programs for the prevention and control of disease and for the prevention, diagnosis, care, treatment, social and vocational rehabilitation, special education and training of the mentally disabled;

(6) promote or provide diagnostic and therapeutic services for maternity and child health, family planning, communicable disease, medical rehabilitation and other diseases and conditions affecting public health;

(7) promote or provide medical and health services for school children and the ambulant sick and needy persons of the city;

(8) promote or provide medical and health services for the inmates of prisons maintained and operated by the city;

(9) within the amounts appropriated therefor, enter into contracts for the rendition or operation of services and facilities for the mentally disabled on a per capita basis or otherwise, including contracts executed pursuant to subdivision e of section 41.19 of the mental hygiene law;

(10) within the amounts appropriated therefor, execute such programs and maintain such facilities for the mentally disabled as may be authorized under such appropriations; and

(11) use the services and facilities of public or private voluntary institutions whenever practical, and encourage

all providers of services to cooperate with or participate in the program of services for the mentally disabled, whether by contract or otherwise.

e. Other functions. (1) Prior to the sale, closing, abandonment of a city hospital or transfer of a city hospital to any other hospital or facility, hold a public hearing with reference to such proposed sale, closing, abandonment or transfer; publish notice of such public hearing in the City Record and in such daily newspaper or newspapers published in the city of New York as shall be selected by the commissioner, such publication to take place not less than ten days nor more than thirty days prior to the date fixed for the hearing; and adjourn such hearing from time to time, if necessary, in order to allow persons interested to attend or express their views;

(2) submit all materials required by the mental hygiene law for purposes of state reimbursement;

(3) provide for membership on such state or federally authorized committees as may be appropriate to the discharge of the department's functions, powers and duties; and

(4) perform such other acts as may be necessary and proper to carry out the provisions of this chapter and the purposes of the mental hygiene law.

HISTORICAL NOTE

Section repealed and added at General Election, November 6, 2001 (Question 5 § 11) eff. November 6, 2001 with special provisions in § 1152 subd. h par (4). [See Note]

Subds. (l), (n) amended at General Election, November 8, 1988.

Subd. (p) amended ch. 318/1993 § 2, eff. Sept. 29, 1993.

NOTE

Provisions of ch. 318/1993

§ 3. Transfer of certain functions of New York city department of health. All functions, obligations and duties of the New York city department of health relating to the inspection, regulation and supervision of the sanitary quality of milk and cream distributed, consumed or sold within such city, are hereby transferred to and assumed by the department of agriculture and markets, and such transfer shall be deemed to be a transfer of functions for purposes of subdivision 2 of section 70 of the civil service law.

NOTE

Ballot Question Abstract:

Department of Public Health. Currently, the Charter provides for a Department of Health ("DOH") and a Department of Mental Health, Mental Retardation, and Alcoholism Services ("DMH"). This proposal would integrate the functions of these two agencies by establishing a Department of Public Health in the Charter. This new agency would have jurisdiction to regulate all matters and perform all functions that relate to the City's public health, including mental health, mental retardation, alcoholism, and substance abuse services. The existing operations of DOH and DMH would be given structural equality in the new agency. One of at least two executive deputy commissioners would have direct oversight of the new agency's mental health, mental retardation, alcoholism, and substance abuse functions, and the new agency would maintain separate budgetary units for those functions. Also, the Mayor's Office of Operations would be required to coordinate services for the mentally retarded and developmentally disabled in the City, and conduct biennial reviews of the new agency's programs for those persons.

CASE NOTES

¶ 1. It is the duty of the health commissioner to enforce the Health code regulations § 173.13 regarding the removal of lead based paint in buildings to eliminate the incidence of poisoning in children who may ingest such paint.-Coalition to End Lead Poisoning v. Edward Koch, 138 Misc 2d 188 [1987].

FOOTNOTES

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[Footnote 25]: * Chapter heading amended L.L. 22/2002 § 2, eff. July 29, 2002 and deemed in effect as of July 1, 2002; amended at General Election, November 6, 2001 (Question 5 § 2) eff. November 6, 2001 with special provisions in § 1152 subd. h par (4).



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NYC Charter 557

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CHAPTER 22 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*25

§ 557. **Chief medical examiner.**

(a) There shall be in the department an independent office of chief medical examiner, the head of which shall be the chief medical examiner, who shall be appointed by the mayor from the classified civil service and be a doctor of medicine and a skilled pathologist and microscopist. The mayor may remove the chief medical examiner upon filing in the office of the commissioner of citywide administrative services and serving upon the chief medical examiner his or her reasons therefor and allowing such officer an opportunity of making a public explanation.

(b) The commissioner with respect to the office of chief medical examiner shall exercise the powers and duties set forth in paragraph one of subdivision a of section five hundred fifty-five of this chapter, but shall not interfere with the performance by the chief medical examiner or his or her office of the powers and duties prescribed by the provisions of this section or any other law.

(c) The chief medical examiner may appoint and remove such deputy chief medical examiners, medical examiners, medical investigators, lay medical investigators, scientific experts and other officers and employees as may be provided for in the budget. The deputy chief medical examiners and medical examiners shall possess the same basic qualifications as the chief medical examiner. The medical investigators shall be physicians duly licensed to practice medicine in the state of New York and shall possess such additional qualifications as may be required by the department of citywide administrative services.

(d) The office shall be kept open every day in the year, including Sundays and legal holidays, with a clerk in attendance at all times during the day and night.

(e) The chief medical examiner or his or her designee shall have power to require the attendance and take testimony under oath of such persons as he or she may deem necessary and to require the production of books, accounts, papers and other evidence relative to any matter within the jurisdiction of the office.

(f)(1) The chief medical examiner shall have such powers and duties as may be provided by law in respect to bodies of person dying from criminal violence, by accident, by suicide, suddenly when in apparent health, when unattended by a physician, in a correctional facility or in any suspicious or unusual manner or where an application is made pursuant to law for a permit to cremate a body of a person.

(2) The chief medical examiner shall perform the functions of the city mortuary and related functions, including the removal, transportation and disposal of unclaimed or unidentified human remains and the remains of those individuals who have died outside of a medical institution.

(3) The chief medical examiner may, to the extent permitted by law, provide forensic and related testing and analysis, and ancillary services, in furtherance of investigations concerning persons both alive and deceased, including but not limited to: performing autopsies; performing deoxyribonucleic acid (DNA) testing and other forms of genetic testing and analysis; obtaining samples and exemplars; performing pathology, histology and toxicology testing and analysis; and determining the cause or manner of injuries and/or death.

(4) Notwithstanding any inconsistent provision of this section and in addition to any other powers and duties, the chief medical examiner may engage in health research in conjunction with the department consistent with paragraph two of subdivision d of section five hundred fifty six of this chapter.

(g) The chief medical examiner shall keep full and complete records in such form as may be provided by law. The chief medical examiner shall promptly deliver to the appropriate district attorney copies of all records relating to every death as to which there is, in the judgment of the medical examiner in charge, any indication of criminality. Such records shall not be open to public inspection.

HISTORICAL NOTE

Section amended by L. L. 1977, No. 102.

Subds. (a) amended L.L. 59/1996 § 13, eff. Aug. 8, 1996.

Subd. (b) amended at General Election, November 6, 2001 (Question 5 § 12) eff. November 6, 2001 with special provisions in § 1152 subd. h par (4).

Subd. (b) amended L.L. 59/1996 § 13, eff. Aug. 8, 1996.

Subd. (c) amended L.L. 25/2006 § 1, eff. July 11, 2006.

Subd. (c) amended L.L. 59/1996 § 13, eff. Aug. 8, 1996.

Subd. (e) amended at General Election, November 6, 2001 (Question 5 § 13) eff. November 6, 2001 with special provisions in § 1152 subd. h par (4).

Subd. (f) amended L.L. 53/2007 § 1, eff. Nov. 5, 2007.

Subd. (f) amended L.L. 25/2006 § 2, eff. July 11, 2006.

Subd. (f) amended at General Election, November 7, 1989.

Subd. (f) amended by L. L. 1983, No. 55.

Subd. (g) amended L.L. 59/1996 § 13, eff. Aug. 8, 1996.

CASE NOTES

¶ 1. Professional misconduct charges in the performance of autopsies were brought against Elliott Gross, chief medical examiner under Education Law § 6509(2). Autopsy was declared a part of "practice of medicine."-Matter of Gross v. Ambach, 126 AD2d 1, affirmed, 71 New York Reports, 2d, 859 [1988].

¶ 2. Sections 17-202 and 17-203 of the Administrative Code of the City of NY and NY City Charter § 557(c), require the investigation and certification of death to be the duty of the chief medical examiner and the practice by the CME of delegating the duty of signing off on investigations of the cause of death to physicians employed by the office of medical examiner without having performed the investigation themselves must be enjoined. Liebowitz v. Hirsch, 146 Misc. 2d 1065, upheld 167 AD2d 298 [1991].

¶ 3. Only licensed physicians may be employed to perform the duties which come under the jurisdiction of the Chief Medical Examiner. Physician assistants and nurse practitioners may not carry out preliminary death investigations. Matter of Liebowitz v. Hirsch, 167 AD2d 298 [1991].

¶ 4. An autopsy revealed decedent died of two gunshot wounds. Charter § 557(g) provides that records required to be kept by the Medical Examiner relating to deaths as to which there is any indication of criminality shall not be open to public inspection. Mullady v. Bogard, 153 Misc. 2d 1018 [1992].

¶ 5. The medical records and lab reports of the NYC medical examiner are not open to public inspection pursuant to Charter § 557(g). Provisions of Courts Law § 677 do not apply to Kings County, a county wholly located within a city. Matter of Assakaf v. Arden, 210 AD2d 325 [1994].

¶ 6. The office of Chief Medical Examiner is affiliated with the Department of Health and is not a law enforcement agency nor under control of the district attorney's office for **Rosario** purposes although the office is to determine the cause of death, Charter § 557(f) and maintain records and provide them to law enforcement officials and prosecutors, Ad Cd §17-205, Charter § 557(g). However this requirement to furnish information does not place the office under control of the prosecutor's office. In this case audiotapes made by the examining pathologist during autopsy do not constitute **Rosario** material since the tapes are not in the People's control. People v. Nova, 206 AD2d 132 [1994].

¶ 7. Documents, worksheets and audiotapes created in connection with autopsy of murder victim were not available to the public, since they were specifically exempted from disclosure under City Charter § 557(g). Mitchell v. Borakove, 639 N.Y.S.2d 791 (App.Div. 1st Dept. 1996).

¶ 8. Although § 557(g) required the Chief Medical Examiner (OCME) to deliver copies of records relating to deaths in which criminal activity is suspected, the OCME is not required to make an audiotape of an autopsy or even retain the audiotape. Since the District Attorney has no control over the form of records kept by OCME, or which records OCME decides to turn over to the prosecution, an audiotape of an autopsy is not "Rosario" material (People v. Rosario, 9 N.Y.2d 286, 213 N.Y.S.2d 448) which has to be turned over to the defense in a homicide case. People v. Washington, 196 A.D.2d 346, 612 N.Y.S.2d 586 (2nd Dept. 1994).

¶ 9. In one case, plaintiff was improperly accused of being responsible for his son's death. His plight resulted from the fact that even though the medical examiner had later realized that the son's death was due to natural causes for which plaintiff was not responsible, the medical examiner failed to report this finding to the authorities. However, the court held that Section 557, which describes the function of the medical examiner, does not give rise to civil liability to persons harmed by the medical examiner's failure to report accurate information. Lauer v. City of New York, 95 N.Y.2d 95 (2000).

¶ 10. The widow of a deceased man, on whom the Medical Examiner had performed an autopsy, sued the Medical Examiner to recover damages for emotional distress. She alleged that the performance of an autopsy was contrary to her religious beliefs, which she had shared with her late husband. The court, however, dismissed the action, holding that the Medical Examiner, who is authorized under the City Charter to perform an autopsy when a person in apparent health

dies suddenly, is not under an affirmative duty to seek the consent of a surviving family member or friend. Thus, unless the medical examiner had any reason to believe that an autopsy would be contrary to the religious beliefs of the family, he or she could lawfully perform the autopsy. See Public Health Law Section 4210-c. *Harris-Cunningham v. Medical Examiner of New York County*, 261 A.D.2d 285, 690 N.Y.S.2d 253 (1st Dept. 1999).

¶ 11. The family of a decedent sued the City, claiming that the Medical Examiner had performed an unauthorized autopsy upon the decedent. The decedent's body had been found at the bottom of an elevator shaft. The City contended that the autopsy was authorized pursuant to City Charter §557, which, in conjunction with Public Health Law §4210, permits the Chief Medical Examiner to perform autopsies upon ". . . the bodies of persons dying from . . . casualty, . . . suddenly when in apparent health,....or in any suspicious or unusual manner." The City sought summary judgment dismissing the claim. The court, however, said that since there were no signs of foul play-such as, for example, bullet or stab wounds, or prior complaints of physical attacks upon, or suicidal behavior by, the decedent, and there were indicia of death by accidental means, the question of whether the autopsy was authorized involved findings of fact which precluded summary judgment. *Dick v. City of New York*, 2002 WL 31844745 and N.Y.L.J., Nov. 5, 2002, page 19, col. 1 (Sup.Ct. Bronx Co.).

FOOTNOTES

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[Footnote 25]: * Chapter heading amended L.L. 22/2002 § 2, eff. July 29, 2002 and deemed in effect as of July 1, 2002; amended at General Election, November 6, 2001 (Question 5 § 2) eff. November 6, 2001 with special provisions in § 1152 subd. h par (4).



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NYC Charter 558

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CHAPTER 22 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*25

§ 558. **Health code.**

(a) The health code which is in force in the city on the date on which this chapter takes effect and all existing provisions of law fixing penalties for violation of the code and all regulations of the board of health on file with the city clerk on the date when this chapter takes effect shall continue to be binding and in force except as amended or repealed from time to time. Such code shall have the force and effect of law.

(b) The board of health from time to time may add to and alter, amend or repeal any part of the health code, and may therein publish additional provisions for security of life and health in the city and confer additional powers on the department not inconsistent with the constitution, laws of this state or this charter, and may provide for the enforcement of the health code or any orders made by the commissioner or the board of health, by such fines, penalties, forfeitures and imprisonment as may be prescribed therein or otherwise by law.

(c) The board of health may embrace in the health code all matters and subjects to which the power and authority of the department extends. The board of health shall prescribe in the health code the persons who shall be required to keep a registry of birth, fetal deaths, and deaths occurring in the city and file certifications thereof with the department and the form and manner in which such registry shall be kept and certificates filed, and, it shall provide for the recording of births which have not been recorded in accordance with law, for the change or alteration of any birth, fetal death or death certificate upon proof satisfactory, to the commissioner, for the examination and issuance of transcripts of such certificates and for fees to be charged therefor.

(d) The board of health shall prescribe in the health code that the parent with legal custody or legal guardian of any child receiving day care services as authorized in such code shall have unlimited and on demand access to such child or ward. The department of health and mental hygiene shall make unannounced visits of such day care services if such board receives a complaint that, if true, would indicate that children in such services are not receiving adequate or appropriate care. Such board shall also prescribe in such code that during the period for which day care services are

authorized upon any premises, the department shall whenever possible make at least one unannounced visit of every such premises annually.

(e) Any violation of the health code shall be treated and punished as a misdemeanor. The board of health or an administrative tribunal established by the board of health to enforce the provisions of the health code shall have the power to enforce its final decisions and orders imposing pecuniary penalties as if they were money judgments, without court proceedings, in the manner described herein. After four months from the issuance of such a final decision and order by such board or tribunal a copy of such decision and order shall be filed in the office of the clerk of any county within the city. In the event that the decision and order were issued as a result of the respondent being in default, a notice of default shall be mailed to such respondent at least seven days before such filing, and a copy of such notice and a receipt of mailing thereof shall be filed with the copy of such decision and order. Upon such filing, such county clerk shall enter and docket such decision and order, in the same manner and with the same effect as a money judgment. Upon such entry and docketing, such decision and order may be enforced as provided in article fifty-two of the civil practice law and rules. Such board or tribunal shall not enter any final decision or order pursuant to the provisions of this subdivision unless the notice of violation shall have been served in the same manner as is prescribed for service of process by article three of the civil practice law and rules or article three of the business corporation law. Such board or tribunal may apply to a court of competent jurisdiction for enforcement of any other decision, order or subpoena issued by such board or tribunal. Nothing herein contained shall be construed to limit or abridge the board's or the department's right to pursue any other remedy prescribed by law. Pecuniary penalties for violations of the health code may be recovered in a civil action before any court in the city having jurisdiction of civil actions.

(f) No amendment or addition to the health code or repeal of any provision thereof adopted by the board of health subsequent to the effective date of this chapter shall become valid and effective until a copy of such amendment, addition or repeal is duly certified by the person serving as secretary of the board.

(g) The board of health may add, amend and repeal regulations in regard to any matter contained in the health code, and such regulations shall have the same force and effect as a provision of the health code.

(h) No action shall abate, or right of action already accrued be abolished, by reason of the expiration, repeal or amendment of any provision of the health code or regulations in regard thereto.

HISTORICAL NOTE

Subd. c amended by L. L. 1979, No. 5.

Subd. (d) amended at General Election, November 6, 2001 (Question 5 § 14) eff. November 6, 2001 with special provisions in § 1152 subd. h par (4).

Subd. d amended L.L. 22/2002 § 4, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

Subd. d amended by L. 1980, ch. 221.

Subds. d, f, g amended at General Election, November 8, 1988.

Subd. (e) amended at General Election, November 7, 1989.

CASE NOTES

¶ 1. Section 181.15 of the N. Y. C. Health Code which prohibits tattooing of human beings except by a licensed medical doctor for medical purposes was upheld as constitutional as against contention that it violates the First Amendment since it is not "speech or even symbolic speech."-People v. O'Sullivan 179(118) N. Y. L. J. (6-20-78) 6,

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¶ 2. The omission of the word "willfull" in the penalty clause of subsection [e] of this section does not invalidate such clause as incompatible with State law since a violation of this section is a strict liability offense in view of the legislative intent of this section (which is a part of the NYC Health Code) and the State Sanitary Code (which is part of the Public Health Law § 229) to make any violation punishable without any necessity to show a culpable mental state.-*People v. 230 W. 54th St. Corp.*, 135 Misc. 2d 502 [1987].

¶ 3. In an administrative proceeding for a finding that petitioner's dog is vicious pursuant to NYC Health Code § 161.07 due process was complied with by the notice procedure utilized by the Department of Health pursuant to NYC Health Code § 7.05 because service was made "upon any other person of suitable age and discretion." Finding that the dog was vicious and ought to be destroyed under both subdivisions (a) and (b) of § 161.07 precludes petitioner's plea for additional time pursuant to subdivision (a).-*Reda v. Dept. of Health*, 137 Misc. 2d 61 [1987].

¶ 4. Infant was injured falling out a window while visiting an apartment. Negligence action against landlord for failing to erect window guard is not a violation of Health Code § 131.15 since that section requires window guards only in apartments where children reside not where children visit, however frequently.-*Lara v. West 109th Street Realty Corp.*, 139 Misc 2d 186 [1987].

¶ 5. Health code regulations regarding window guards are a lawful delegation of legislative authority to the Board of Health pursuant of § 558(e). Violations of public health requirements in this densely populated city could easily jeopardize lives and significant penalties are justified.-*People v. Nemadi*, 140 Misc 2d 712 [1988].

¶ 6. Window Guard Law, Health code § 131.15(a), is not unconstitutionally vague in (1) exempting windows to fire escapes or windows on the first floor as means of egress, (2) "protecting human life and health" or (3) maintaining a "nuisance" by not having window guards. This law does not unconstitutionally impose criminal liability while not publishing "specifications" for window guards. They are not rules that have to be published.-*State v. Portnoy*, 140 Misc 2d 945 [1988].

¶ 7. The Department of Health has the power to adopt amendments to the health code requiring dog license applications to persons seeking to purchase, adopt, groom, train, or board a dog and require monthly reports to the department on dogs licensed or unlicensed in the city. The department was merely filling in details of broad legislation describing overall policy. It was unnecessary for either the State Legislature or City Council to ratify these amendments. *Pet Professionals of NYC v. City of New York*, 215 AD2d 742 [1996].

¶ 8. Urinating in a public place is a misdemeanor under City Charter §558(e), and is prohibited by the New York City Health Code, §153.09. A police officer who observes the act has probable cause to arrest the offender. Thus, the court denied a motion to suppress heroin seized from the offender incident to his arrest. *Matter of Daverus McQ*, 309 A.D.2d 752, 765 N.Y.S.2d 270 (2d Dept. 2003).

FOOTNOTES

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[Footnote 25]: * Chapter heading amended L.L. 22/2002 § 2, eff. July 29, 2002 and deemed in effect as of July 1, 2002; amended at General Election, November 6, 2001 (Question 5 § 2) eff. November 6, 2001 with special provisions in § 1152 subd. h par (4).



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CHAPTER 22 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*25

§ 559. **Seal.**

The commissioner, with the concurrence of the board of health, may adopt a seal which may be used for the authentication of the orders and proceedings of the board and of the department and in commissioning the officers and agents of the department and otherwise as may be provided for by the commissioner or in the health code.

HISTORICAL NOTE

Section amended at General Election, November 8, 1988.

FOOTNOTES

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[Footnote 25]: * Chapter heading amended L.L. 22/2002 § 2, eff. July 29, 2002 and deemed in effect as of July 1, 2002; amended at General Election, November 6, 2001 (Question 5 § 2) eff. November 6, 2001 with special provisions in § 1152 subd. h par (4).



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NYC Charter 560

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CHAPTER 22 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*25

§ 560. **Temporary hospitals during epidemic or imminent peril.**

The board of health, during the prevalence of an epidemic or in the presence of great and imminent peril to the public health and when in the board's judgment it is necessary to do so, may take possession of any buildings in the city for temporary hospitals and shall pay a just compensation for any private property so taken. Such temporary hospitals shall be under the control of the commissioner.

FOOTNOTES

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[Footnote 25]: * Chapter heading amended L.L. 22/2002 § 2, eff. July 29, 2002 and deemed in effect as of July 1, 2002; amended at General Election, November 6, 2001 (Question 5 § 2) eff. November 6, 2001 with special provisions in § 1152 subd. h par (4).



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CHAPTER 22 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*25

§ 561. **Permits.**

The board of health in its discretion may grant, suspend or revoke permits for businesses or other matters in respect to any subject dealt with in the health code and regulated by the department and may prescribe reasonable fees for the issuance of said permits. Whenever the board of health in the health code authorizes the issuance, suspension or revocation of a permit by the commissioner, his action shall be subject to review by the board of health upon an appeal by the party aggrieved under such rules as the board may provide. Such rules may provide in what cases an appeal may stay the action of the commissioner until final determination by the board of health, but notwithstanding any such rule the board of health shall have power to grant or refuse a stay in any particular case.

FOOTNOTES

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[Footnote 25]: * Chapter heading amended L.L. 22/2002 § 2, eff. July 29, 2002 and deemed in effect as of July 1, 2002; amended at General Election, November 6, 2001 (Question 5 § 2) eff. November 6, 2001 with special provisions in § 1152 subd. h par (4).



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NYC Charter 562

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CHAPTER 22 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*25

§ 562. **Failure to observe order; penalty.**

Except in cases where it is otherwise provided by law, every violation, neglect or refusal by any person to comply with any order of the commissioner or the board of health shall be triable by a judge of the New York city criminal court and shall be treated and punished as a misdemeanor.

FOOTNOTES

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[Footnote 25]: * Chapter heading amended L.L. 22/2002 § 2, eff. July 29, 2002 and deemed in effect as of July 1, 2002; amended at General Election, November 6, 2001 (Question 5 § 2) eff. November 6, 2001 with special provisions in § 1152 subd. h par (4).



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CHAPTER 22 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*25

§ 563. **Declaration of imminent peril.**

In the presence of great and imminent peril to the public health, the board of health, having first taken and filed among its records what it regards as sufficient proof to authorize a declaration of such peril, shall take such measures, and order the department to do such acts beyond those duly provided for the preservation of the public health, including the power to take possession of and occupy as a hospital any building or buildings in the city, as the board, in good faith may declare the public safety and health to demand, and the mayor shall in writing approve. No expenditure shall be incurred in the exercise of such extraordinary power, however, unless provision is made therefor in the budget or unless such expenditures are financed pursuant to sections one hundred seven or section 29.00 of the local finance law. Such peril shall exist when and for such period of time as the board of health and mayor declare.

HISTORICAL NOTE

Section amended at General Election, November 7, 1989.

FOOTNOTES

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[Footnote 25]: * Chapter heading amended L.L. 22/2002 § 2, eff. July 29, 2002 and deemed in effect as of July 1, 2002; amended at General Election, November 6, 2001 (Question 5 § 2) eff. November 6, 2001 with special provisions in § 1152 subd. h par (4).



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NYC Charter 564

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CHAPTER 22 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*25

§ 564. **Suits and service of papers.**

The department may sue and be sued in and by the proper name of "Department of Health and Mental Hygiene of the City of New York", and service of all process in suits and proceedings against or affecting the department, or other papers, may be made upon the commissioner or official designated by him, and not otherwise; except that, according to usual practice in other suits, papers in suits to which the department is a party may be served on the corporation counsel or such assistant as may be assigned by him to the department.

HISTORICAL NOTE

Section amended L.L. 22/2002 § 5, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

Section amended at General Election, November 6, 2001 (Question 5 § 15) eff. November 6, 2001 with special provisions in § 1152 subd. h par (4).

FOOTNOTES

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[Footnote 25]: * Chapter heading amended L.L. 22/2002 § 2, eff. July 29, 2002 and deemed in effect as of July 1, 2002; amended at General Election, November 6, 2001 (Question 5 § 2) eff. November 6, 2001 with special provisions in § 1152 subd. h par (4).



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CHAPTER 22 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*25

§ 566. **Right of entry of officers of department.**

The commissioner and such officers or employees of the department as are designated by him may, at reasonable times, and pursuant to a search warrant when required by law, without fee or hindrance enter, examine and inspect all vessels, premises, grounds, structures, buildings and every part thereof and all underground passages of every sort in the city for compliance with the provisions of law enforced by the department and its rules and regulations and may make plans, drawings and descriptions thereof, according to the regulations of the department. The owner or his agent or representative and the lessee or occupant of any such premises, grounds, structures, buildings and every part thereof and all underground passages of every sort in the city and every part thereof and every person having the care and management thereof, shall at all reasonable times, when required by any such officers or employees, give them free access thereto, and refusal so to do shall be triable by a judge of the New York city criminal court and shall be treated and punished as a misdemeanor.

FOOTNOTES

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[Footnote 25]: * Chapter heading amended L.L. 22/2002 § 2, eff. July 29, 2002 and deemed in effect as of July 1, 2002; amended at General Election, November 6, 2001 (Question 5 § 2) eff. November 6, 2001 with special provisions in § 1152 subd. h par (4).



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NYC Charter 567

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CHAPTER 22 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*25

§ 567. **Acceptance of private funds.**

No grant, gift, devise, legacy or bequest made to the city or to the department for work to be done within the jurisdiction of the department shall be accepted, and no work or research paid for from private sources shall be carried on under the jurisdiction of the department except with the approval of the commissioner.

FOOTNOTES

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[Footnote 25]: * Chapter heading amended L.L. 22/2002 § 2, eff. July 29, 2002 and deemed in effect as of July 1, 2002; amended at General Election, November 6, 2001 (Question 5 § 2) eff. November 6, 2001 with special provisions in § 1152 subd. h par (4).



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NYC Charter 568

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CHAPTER 22 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*25

§ 568. **Mental hygiene advisory board.**

a. (1) There shall be a mental hygiene advisory board which shall be advisory to the commissioner and the deputy commissioner for mental hygiene services in the development of community mental health, mental retardation, alcoholism and substance abuse facilities and services and programs related thereto. The board shall have separate subcommittees for mental health, for mental retardation and developmental disabilities, and for alcoholism and substance abuse. The board and its subcommittees shall be constituted and their appointive members appointed and removed in the manner prescribed for a community services board by the provisions of the mental hygiene law. Pursuant to the provisions of such law, such members may be reappointed without limitation on the number of consecutive terms which they may serve.

(2) Members of the mental hygiene advisory board and its subcommittees shall serve thereon without compensation except that each member shall be allowed actual and necessary expenses to be audited in the same manner as other city charges.

(3) No person shall be ineligible for membership on the board or its subcommittees because such person holds any other public office, employment or trust, nor shall any person be made ineligible to or forfeit such person's right to any public office, employment or trust by reason of such appointment.

b. (1) Contracts for services and facilities under this chapter may be made with a public or private voluntary hospital, clinic, laboratory, health, welfare or mental hygiene agency or other similar institution, notwithstanding that any member of the board or its subcommittees is an officer or employee of such institution or agency or is a member of the medical or consultant staff thereof.

(2) If any matter arises before the board or any of its subcommittees directly involving a public or private voluntary hospital, clinic, laboratory, health, welfare or mental hygiene agency or other similar institution of which any

member of the board or such subcommittee is an officer, employee or on the medical or consultant staff thereof, that member shall participate in the deliberations of the board or of such subcommittee on the matter only insofar as to provide any information requested of such person by the other members of the board or subcommittee, and that member shall not participate further in the deliberations of the board or subcommittee on the matter after having provided the required information.

HISTORICAL NOTE

Section repealed and added at General Election, November 6, 2001 (Question 5 § 16) eff. November 6, 2001 with special provisions in § 1152 subd. h par (4).

FOOTNOTES

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[Footnote 25]: * Chapter heading amended L.L. 22/2002 § 2, eff. July 29, 2002 and deemed in effect as of July 1, 2002; amended at General Election, November 6, 2001 (Question 5 § 2) eff. November 6, 2001 with special provisions in § 1152 subd. h par (4).



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CHAPTER 22 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*25

§ 569. **Construction clause.**

The provisions of this chapter relating to services for the mentally disabled shall be carried out subject to and in conjunction with the provisions of the mental hygiene law.

HISTORICAL NOTE

Section added at General Election, November 6, 2001 (Question 5 § 17) eff. November 6, 2001 with special provisions in § 1152 subd. h par (4).

FOOTNOTES

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[Footnote 25]: * Chapter heading amended L.L. 22/2002 § 2, eff. July 29, 2002 and deemed in effect as of July 1, 2002; amended at General Election, November 6, 2001 (Question 5 § 2) eff. November 6, 2001 with special provisions in § 1152 subd. h par (4).



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NYC Charter 601

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CHAPTER 24 DEPARTMENT OF SOCIAL SERVICES

§ 601. **Department; commissioner.**

There shall be a department of social services the head of which shall be the commissioner of social services.

HISTORICAL NOTE

Section amended L.L. 19/1999 § 1, eff. May 18, 1999.

Section amended L.L. 57/1998 § 1, eff. Dec. 17, 1998 and deemed in force June 30, 1998.



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NYC Charter 602

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CHAPTER 24 DEPARTMENT OF SOCIAL SERVICES

§ 602. **Deputies.**

The commissioner may appoint three deputies.

HISTORICAL NOTE

Section amended L.L. 19/1999 § 1, eff. May 18, 1999.

Section amended L.L. 57/1998 § 1, eff. Dec. 17, 1998 and deemed in force June 30, 1998.



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CHAPTER 24 DEPARTMENT OF SOCIAL SERVICES

§ 603. **Powers and duties.**

Except as otherwise provided in chapters 24-A and 24-B, the commissioner shall have the powers and perform the duties of a commissioner of social services under the social services law, provided that no form of outdoor relief shall be dispensed by the city except under the provisions of a state or local law which shall specifically provide the method, manner and conditions of dispensing the same.

HISTORICAL NOTE

Section amended at General Election, November 6, 2001 (Question 2 § 1) eff. November 6, 2001 or as soon thereafter as a transfer of agency functions may be effectuated.

Section amended L.L. 19/1999 § 1, eff. May 18, 1999.

Section amended L.L. 57/1998 § 1, eff. Dec. 17, 1998 and deemed in force June 30, 1998.

Section amended L.L. 51/1993 § 2, eff. June 30, 1993 and expiring Sept. 6, 1995 per L.L. 61/1995.



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CHAPTER 24 DEPARTMENT OF SOCIAL SERVICES

§ 604. **Public institutions under the commissioner.**

The commissioner shall control, maintain and operate such institutions as are now or may be put under his or her control.

HISTORICAL NOTE

Section amended L.L. 52/2003 § 4, eff. July 1, 2003.



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NYC Charter 605

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CHAPTER 24 DEPARTMENT OF SOCIAL SERVICES

§ 605. **Powers and duties of the commissioner of homeless services. [Repealed]**

HISTORICAL NOTE

Section repealed L.L. 19/1999 § 2, eff. May 18, 1999. Substance
transferred to ch. 24-A §§ 610-614.

Section added L.L. 57/1998 § 2, eff. Dec. 17, 1998 and deemed in force June 30, 1998.



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NYC Charter 610

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CHAPTER 24-A DEPARTMENT OF HOMELESS SERVICES

§ 610. **Department; commissioner.**

There shall be a department of homeless services, the head of which shall be the commissioner of homeless services.

HISTORICAL NOTE

Section added L.L. 19/1999 § 3, eff. May 18, 1999.

DERIVATION

Section added as § 610 by L.L. 51/1993 § 3; amended L.L. 75/1995 § 1



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CHAPTER 24-A DEPARTMENT OF HOMELESS SERVICES

§ 611. **Deputies.**

The commissioner shall appoint at least one deputy.

HISTORICAL NOTE

Section added L.L. 19/1999 § 3, eff. May 18, 1999.

DERIVATION

Section added as § 611 by L.L. 51/1993 § 3; amended L.L. 75/1995 § 1



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CHAPTER 24-A DEPARTMENT OF HOMELESS SERVICES

§ 612. **Powers and duties.**

a. The commissioner shall have the powers and perform the duties of a commissioner of social services under the social services law for the purpose of fulfilling his or her responsibilities under this chapter. In the performance of his or her functions, the commissioner shall:

1. be responsible for transitional housing and services provided by the city for eligible homeless families and individuals. The commissioner shall encourage the participation of and receive proposals from the public and private sectors for the development of transitional housing and services for homeless families and individuals. In performing such duties, the commissioner may develop and issue requests for proposals and evaluate responses thereto, negotiate, award, enter into and administer contracts, loans or other agreements, award and administer grants and obtain all necessary approvals. For-profit and not-for-profit entities shall be eligible to submit proposals, bid on contracts and other agreements, and apply for grants and loans;

2. develop, maintain and, where necessary, strengthen the system for the provision of transitional housing and services for homeless families and individuals;

3. in consultation with other appropriate governmental agencies, plan housing for homeless families and individuals;

4. maintain, repair and rehabilitate transitional housing owned, operated or managed by the department;

5. establish performance criteria, goals and objectives with respect to contract providers and monitor and evaluate such performance;

6. participate in the development of prevention programs to assist families and individuals who are in imminent

danger of becoming homeless;

7. in consultation with other appropriate governmental agencies, develop and operate outreach programs to identify and assist families and individuals who are homeless and living in public spaces. Notwithstanding any outreach programs developed or operated by other city agencies, and outreach programs developed or operated by any entity pursuant to a contract with the department, the commissioner shall retain a substantial outreach workforce within the department's full-time staff. Beginning on the first day of September, 1998 and on the first day of each succeeding calendar quarter thereafter, the commissioner shall report to the speaker of the council in writing on the outreach programs operated by the department, by other city agencies or by entities contracting with the department. Such report shall include, but not be limited to, the number of contacts during the reporting period, the number of placements in transitional housing resulting from such contacts during the reporting period and the number of referrals of persons so contacted to programs or services during the reporting period;

8. direct and supervise the management, operations, budget and funding of services for homeless individuals and families;

9. work directly with the mayor's office of management and budget with regard to the funding and administration of the city's budget for services to homeless families and individuals; and

10. advise and assist the mayor with respect to matters pertaining to homeless families and individuals.

b. In addition to the duties set forth in subdivision a of this section, the commissioner is authorized, in consultation with appropriate agencies, to provide any other services he or she deems necessary to implement and effectuate the provisions of this chapter.

HISTORICAL NOTE

Section added L.L. 19/1999 § 3, eff. May 18, 1999.

DERIVATION

Section added as § 612 by L.L. 51/1993 § 3; amended L.L. 75/1995 § 1



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CHAPTER 24-A DEPARTMENT OF HOMELESS SERVICES

§ 613. **Transitional housing inventory.**

Beginning on May 1, 1999 and on May first of each succeeding year thereafter, the commissioner shall report to the speaker of the council in writing on the transitional housing maintained by the department and such transitional housing operated by any entity pursuant to a contract with the department. Such report shall include, but not be limited to, the percentage and types of transitional housing disaggregated by the borough in which they are located.

HISTORICAL NOTE

Section added L.L. 19/1999 § 3, eff. May 18, 1999.

DERIVATION

Section added as § 613 by L.L. 75/1995 § 1



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CHAPTER 24-A DEPARTMENT OF HOMELESS SERVICES

§ 614. **Permanent housing needs, annual report.**

Beginning on May 1, 1999 and on May first of each succeeding year thereafter, the commissioner shall report to the speaker of the council in writing on the permanent housing and the transitional housing and services, respectively, projected to be needed to house homeless families and individuals expected to be housed within the system during the fiscal year to begin on each July first thereafter. Such annual report shall include, but not be limited to, the sources, including, but not being limited to, the department of housing preservation and development and the New York city housing authority, from which the commissioner of homeless services projects to meet the permanent housing identified in such report as needed during such fiscal year and the number of permanent housing to be provided by each source.

HISTORICAL NOTE

Section added L.L. 19/1999 § 3, eff. May 18, 1999.

DERIVATION

Section added as § 614 by L.L. 75/1995 § 1



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CHAPTER 24-B ADMINISTRATION FOR CHILDREN'S SERVICES*27

§ 615. **Administration; commissioner.**

There shall be an administration for children's services, the head of which shall be the commissioner of children's services.

HISTORICAL NOTE

Section added at General Election, November 6, 2001 (Question 2 § 2) eff. November 6, 2001 or as soon thereafter as a transfer of agency functions may be effectuated.

FOOTNOTES

27

[Footnote 27]: * Chapter added at General Election, November 6, 2001, eff. November 6, 2001; Ballot Question Abstract:

Administration for Children's Services ("ACS"). Currently, the Charter provides that the City Department of Social Services generally performs social services functions, including children's services. Pursuant to an executive order, ACS was created to provide services related solely to the care and protection of children. This proposal would establish ACS as a Charter agency empowered to receive and investigate reports of child abuse and neglect, to assist families at risk by addressing the causes of abuse and neglect, to provide children and families with day care and preventative services to avert the impairment or dissolution of families, to place children in temporary foster care or permanent adoption when preventative services cannot redress causes of

family neglect, to provide pre-school services, and to ensure that parents who are legally required to provide child support do so.



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CHAPTER 24-B ADMINISTRATION FOR CHILDREN'S SERVICES*27

§ 616.. **Deputies.**

The commissioner shall appoint at least one deputy commissioner.

HISTORICAL NOTE

Section added at General Election, November 6, 2001 (Question 2 § 2) eff. November 6, 2001 or as soon thereafter as a transfer of agency functions may be effectuated.

FOOTNOTES

27

[Footnote 27]: * Chapter added at General Election, November 6, 2001, eff. November 6, 2001; Ballot Question Abstract:

Administration for Children's Services ("ACS"). Currently, the Charter provides that the City Department of Social Services generally performs social services functions, including children's services. Pursuant to an executive order, ACS was created to provide services related solely to the care and protection of children. This proposal would establish ACS as a Charter agency empowered to receive and investigate reports of child abuse and neglect, to assist families at risk by addressing the causes of abuse and neglect, to provide children and families with day care and preventative services to avert the impairment or dissolution of families, to place children in temporary foster care or permanent adoption when preventative services cannot redress causes of family neglect, to provide pre-school services, and to ensure that parents who are legally required to provide

child support do so.



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NYC Charter 617

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CHAPTER 24-B ADMINISTRATION FOR CHILDREN'S SERVICES*27

§ 617. **Powers and duties.**

a. The commissioner shall have the powers and perform the duties of a commissioner of social services under the social services law for the purpose of fulfilling his or her responsibilities under this chapter. The commissioner shall have the power to perform functions related to the care and protection of children including, but not limited to:

1. performing the functions of a child protective service, including without limitation, the receipt and investigation of reports of child abuse and maltreatment;
2. providing children and families with preventative services for the purpose of averting the impairment or disruption of families which could result in the placement of children in foster care; enabling children placed in foster care to return to their families; and reducing the likelihood that a child who has been discharged from foster care may return to such care;
3. providing suitable and appropriate care for children who are in the care, custody, or guardianship of the commissioner;
4. providing appropriate daycare, Head Start and other child-care services; and
5. providing services to ensure that legally responsible parents provide child support.

b. Wherever the powers and duties of an agency other than the administration for children's services as set forth in the charter or administrative code confer any authority over the areas of child welfare, child development or child support enforcement within the jurisdiction of the commissioner of children's services pursuant to section six hundred seventeen of this chapter, such powers and duties shall be deemed to be within the jurisdiction of the administration for children's services and shall be exercised by such administration; provided that such other agency may exercise such powers and duties where required by state or federal law, or, with respect to child support enforcement or determinations of eligibility for subsidized child care, by the department of social services as directed by the mayor.

c. No agency practice, including but not limited to any tracking system, record keeping or reporting system or data collection system or device, may prejudice the rights of, stigmatize or otherwise harm a person because of his or her gender or relationship to a child or children involved in a child protective matter. To the extent that requirements of this subdivision are subject to state approval, the agency will request permission to make any changes in policy necessary to comply with the provisions of this subdivision within ninety days of the effective date of the local law that added this subdivision. The agency shall promulgate such rules as are necessary for the purposes of implementing and carrying out the provisions of this subdivision.

HISTORICAL NOTE

Section added at General Election, November 6, 2001 (Question 2 § 2) eff. November 6, 2001 or as soon thereafter as a transfer of agency functions may be effectuated.

Subd. b amended L.L. 52/2003 § 1, eff. July 1, 2003. [See Charter § 1301 Note 1]

Subd. c added L.L. 25/2005 § 1, eff. June 26, 2005.

FOOTNOTES

27

[Footnote 27]: * Chapter added at General Election, November 6, 2001, eff. November 6, 2001; Ballot Question Abstract:

Administration for Children's Services ("ACS"). Currently, the Charter provides that the City Department of Social Services generally performs social services functions, including children's services. Pursuant to an executive order, ACS was created to provide services related solely to the care and protection of children. This proposal would establish ACS as a Charter agency empowered to receive and investigate reports of child abuse and neglect, to assist families at risk by addressing the causes of abuse and neglect, to provide children and families with day care and preventative services to avert the impairment or dissolution of families, to place children in temporary foster care or permanent adoption when preventative services cannot redress causes of family neglect, to provide pre-school services, and to ensure that parents who are legally required to provide child support do so.



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NYC Charter 621

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CHAPTER 25 DEPARTMENT OF CORRECTION

§ 621. **Department; commissioner.**

There shall be a department of correction the head of which shall be the commissioner of correction.



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NYC Charter 622

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CHAPTER 25 DEPARTMENT OF CORRECTION

§ 622. **Deputies.**

The commissioner may appoint two deputies.



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NYC Charter 623

New York City Charter

CHAPTER 25 DEPARTMENT OF CORRECTION

§ 623. **Powers of commissioner.**

The commissioner shall have:

1. Charge and management of all institutions of the city, including all hospital wards therein for the care and custody of felons, misdemeanants, all prisoners under arrest awaiting arraignment who require hospital care, including those requiring psychiatric observation or treatment and violators of ordinances or local laws and for the detention of witnesses who are unable to furnish security for their appearance in criminal proceedings, except such places for the detention of prisoners or persons charged with crime as are by law placed under the charge of some other agency.
2. Sole power and authority concerning the care, custody and control of all court pens for the detention of prisoners while in the criminal courts of the city of New York, the family court of the state of New York within the city of New York, the supreme court in the counties of New York, Bronx, Kings, Queens and Richmond and of all vehicles employed in the transportation of prisoners who have been sentenced, are awaiting trial or are held for any other cause.
3. Charge and management of persons or any other institution of the city placed under his jurisdiction by law.
4. All authority, except as otherwise provided by law, concerning the care and custody of felons, misdemeanants and violators of local laws held in the institutions under his charge.
5. All authority in relation to the custody and transportation of persons held for any cause in criminal proceedings and all prisoners under arrest awaiting arraignment who require hospital care, including those requiring psychiatric observation or treatment, in any county within the city.
6. General supervision and responsibility for the planning and implementation of re-training, counseling and rehabilitative programs for felons, misdemeanants and violators of local laws who have been sentenced and are held in

institutions under his charge.

HISTORICAL NOTE

Subd. 1 amended by L. 1962, ch. 998, § 32.

Subd. 1 amended by L. 1963, ch. 672.

Subd. 2 added by L. 1946, ch. 644.

Subd. 2 amended by L. L. 1969, No. 74.

Subd. 2 amended by L. L. 1977, No. 102.

Subd. 3 amended by L. 1977, ch. 189.

Subd. 5 amended by L. 1962, ch. 998, § 32.

Subd. 5 amended by L. 1963, ch. 672.

Subd. 6 added by L. 1971, ch. 1004.

CASE NOTES

¶ 1. In action to recover for death of plaintiff's husband as result of an accident which occurred while, as an assistant deputy sheriff in Queens County, he was acting as guard of prisoners being transported in a prison van which was driven by another deputy sheriff, a judgment of the Appellate Division dismissing the complaint as to the sheriff of Queens County and reinstating a verdict against the City on grounds that, under the Charter imposing on the City the duty of transporting prisoners and giving the City sole legal custody and control of vehicles employed in transportation of prisoners, the driver of the van was at the time of the accident performing a municipal function of the City, and hence the City and not the sheriff was liable for the death, was affirmed by the Court of Appeals without opinion.-*Miller v. New York City*, 292 N. Y. 571, 54 N. E. 2d 690 [1944], aff'g 266 App. Div. 565, 43 N. Y. S. 2d 79 [1943].

¶ 2. Motion by petitioner, who was on eligible list for appointment to position of warden, for order directing respondent commissioners to appoint him to position of warden in Department of Correction of City of New York inasmuch as the New York City Reformatory at New Hampton was now in charge of merely a deputy warden, was denied, as there is no provision in law compelling the Commissioner of Correction to appoint a warden where he deems the institution too small to warrant it.-*Noble v. Williams*, 128 (117) N. Y. L. J. (12-18-52) 1535, Col. 5 F.

¶ 3. Gives the Commissioner of Correction all authority with respect to the custody and transportation of persons held in criminal proceedings in any county within the City of New York. Hence, the Commissioner had full authority to transfer adolescents from one house of detention to another house and the exercise of that authority did not violate any constitutional rights of the adolescents or their attorney and mere inconvenience relating to visitation which may be caused to adolescents or their attorney was not sufficient to condemn the transfer, which was based on enlightened policy with respect to youthful offenders.-*Bach v. Kross*, 8 Misc. 2d 257, 165 N. Y. S. 2d 1014 [1957]; aff'd 4 A. D. 1017, 169 N. Y. S. 2d 416 [1958].

¶ 4. Where police report concerning a probationary correction officer showed various improprieties, the Commissioner of Correction was not arbitrary in dismissing such officer at the end of his probationary period.-*Hamilton v. Kross*, 140 (39) N. Y. L. J. (8-25-58) 3, Col. 2 F.

¶ 5. After petitioner satisfactorily served as a correction officer for nearly a year, the Commissioner disqualified him on the ground that he was the father of an illegitimate child. In view of petitioner's support of the child and

subsequent marriage to the mother, the matter was remanded to the Commissioner for further consideration.-In re Hartfield (Schechter), 141 (95) N. Y. L. J. (5-18-59) 11, Col. 6 T.

¶ 6. The petitioner was appointed on June 9 to the position of Correction officer subject to investigation of his character. On December 8, he was dismissed, since it was shown that in his prior employment under the housing authority he had been charged with drunkenness and undue absences. The dismissal was not arbitrary, since the position in the Correction Department required a high degree of sobriety and regularity.-In re Ford, (Kross), 143 (69) N. Y. L. J. (4-11-60) 9, Col. 4 M.

¶ 7. Petitioner employed for probation period as a correction officer was entitled to a hearing before he could be discharged by the Commissioner. His record showed three minor traffic violations, a discharge from a job when 18, and debts totaling \$1,800 but which had been reduced to \$800.-Matter of Davis (Kros), 142 (3) N. Y. L. J. (7-3-59) 4, Col. 5 F.

¶ 8. Where the realtor was convicted by the Domestic Relations Court for failing to post a security bond and the Commissioner of Correction selected the workhouse on Harts Island as the place for commitment, the action of the Commissioner was within his discretionary powers vested in him by law. Even if the workhouse were not a proper place, habeas corpus was not the proper remedy to cure the error.-Schildhaus v. Dros, 144 (28) N. Y. L. J. (8-10-60) 7, Col. 1 F.

¶ 9. Prison officials were within their rights in confiscating the strip of metal and rings attached of the kind usually found in a looseleaf binder which they found in the possession of a prisoner on a routine check and returning the papers attached to the prisoner.-Robertson v. Kross, 145 (43) N. Y. L. J. (3-6-61) 15, Col. 3 T.

¶ 10. Commissioner of Correction had duty and authority to supervise all members of the Department and her order that plaintiff, an officer in the Department surrender his gun because he had not achieved qualified status, would not be interfered with by the court nor would the court interfere with the disciplinary hearing for failure to obey the order to surrender.-Anemone v. Kross, 143 (94) N. Y. L. J. (5-16-60) 13, Col. 4 T.

¶ 11. Control, management, and care of prisoners detained for sentence or those awaiting trial, come under the supervision of the Department of Correction. And unless regulations promulgated by the Department are contrary to law, or it is shown that the Warden has acted in bad taste or in an arbitrary manner, the court will not substitute its judgment for that of the Correction Administrator who is the duly responsible official.-People v. Del Rio, 25 Misc. 2d 444, 207 N. Y. S. 2d 186 [1960], cert. den., 379 U. S. 939 [1961].

¶ 12. Where Commissioner of Correction terminated petitioner's services as a correction officer at the end of a probationary period because of unfavorable rating reports, and the rating reports supported the determination of the Commissioner, held, not arbitrary and the court would not interfere.-Matter of Howard (Kross) 143 (110) N. Y. L. J. (6-8-60) 14, Col. 4 F.

¶ 13. The Commissioner acted within his power and was not arbitrary when he terminated the services of a correction officer at the end of his probationary period on the basis of reports of unsatisfactory service made by the officer's supervisor.-Woods v. Kross, 148 (19) N. Y. L. J. (7-18-62) 4, Col. 7 T.

¶ 14. Theory that "improper" administration of the Manhattan House of Detention was not governmental function of the city and therefore defendants could not be guilty of obstructing governmental administration was rejected as specious.-People v. Brown, 70 Misc. 2d 224, 333 N. Y. S. 2d 342 [1972].



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NYC Charter 624

New York City Charter

CHAPTER 25 DEPARTMENT OF CORRECTION

§ 624. **Cleaning and maintenance of buildings.**

The commissioner shall maintain and operate buildings and structures under his jurisdiction. The commissioner may construct such additions and repairs to buildings under his jurisdiction as can be accomplished by the use of the labor of persons under his care and custody and with materials in the possession of the department.



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NYC Charter 625

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CHAPTER 25 DEPARTMENT OF CORRECTION

§ 625. **Labor of prisoners.**

Every inmate of an institution under the authority of the commissioner shall be employed in some form of industry, in farming operations or other employment, and products thereof shall be utilized in the institutions under the commissioner or in any other agency. Those persons held for trial may be employed in the same manner as sentenced prisoners, provided they give their consent in writing. Such inmates or prisoners held for trial may be detailed by the commissioner to perform work or service on the grounds and buildings or on any public improvement under the charge of any other agency.



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NYC Charter 626

New York City Charter

CHAPTER 25 DEPARTMENT OF CORRECTION

§ 626. **Board of correction.**

a. There shall be a city board of correction to consist of nine members. Members shall be appointed for a term of six years. Vacancies shall be filled for the remainder of the unexpired term. Three members shall be appointed by the mayor, three by the council, and three by the mayor on the nomination jointly by the presiding justices of the appellate division of the supreme court for the first and second judicial departments. Appointments shall be made by the three respective appointing authorities on a rotating basis to fill any vacancy occurring on or after the effective date of this charter. Members of the board may be reimbursed for expenses incurred in the performance of their duties. The chairman of the board shall be designated from time to time by the mayor from among its members. Members of the board may be removed by the mayor for cause and after a hearing at which they shall be entitled to representation by counsel.

b. The board shall adopt rules to govern its own proceedings. The board may appoint an executive director to serve at its pleasure with such duties and responsibilities as the board may assign, and other professional, clerical, and support personnel within appropriations for such purpose. The commissioner shall designate such of the department's stenographic, clerical and other assistance to the board as may be necessary for the proper performance of its functions. The commissioner may attend meetings of the board but shall not be a member of it.

c. The board, or by written designation of the board, any member of it, the executive director, or other employee, shall have the following powers and duties:

1. The inspection and visitation at any time of all institutions and facilities under the jurisdiction of the department;

2. The inspection of all books, records, documents, and papers of the department;

3. The preparation for submission to the mayor, the council, and the commissioner of proposals for capital planning and improvements; studies and reports concerned with the development of the department's correctional program planning; and studies and reports in regard to methods of promoting closer cooperation of custodial, probation, and parole agencies of government and the courts; and

4. The evaluation of departmental performance.

d. The board, annually and at such other times as it may determine, shall submit to the mayor, the council, and the commissioner reports, findings and recommendations in regard to the matters within its jurisdiction.

e. The board shall establish minimum standards for the care, custody, correction, treatment, supervision, and discipline of all persons held or confined under the jurisdiction of the department; and it shall promulgate such minimum standards in rules and regulations after giving the mayor and commissioner an opportunity to review and comment on the proposed standards, or amendments or additions to such standards.

f. The board shall establish procedures for the hearing of grievances, complaints or requests for assistance (1) by or on behalf of any person held or confined under the jurisdiction of the department or (2) by any employee of the department. The board, or by written designation, a member of the board or the executive director, may conduct hearings, or study or investigate any matter within the jurisdiction of the department, and the board may make recommendations and submit reports of its findings to the appropriate authorities.

g. Within the scope of its authority pursuant to this section, the board may compel the attendance of witnesses, require the production of books, accounts, papers and other evidence, administer oaths, examine persons, and conduct public or private hearings, studies and investigations. The board may institute proceedings in a court of appropriate jurisdiction to enforce its subpoena power and other authority pursuant to this section.

HISTORICAL NOTE

Amended at General Election, November 4, 1975.

Amended by L. L. 1977, No. 102.

CASE NOTES

¶ 1. Board of Corrections does not have power to grant an employee of the Legal Aid Society an access pass to city correctional facilities by rendering an appellate decision binding on the Commissioner of Corrections.-Legal Aid Society v. Ward, 91 A. D. 2d 532 [1982].

¶ 2. Court in exercise of its discretion declined to issue an order of mandamus to compel the Commissioner of Corrections, who is charged with the security of the institutions under his control, to restore a general access pass to a person who had been convicted in another state of attempted murder, who was sentenced to twenty years imprisonment on that conviction and was presently on parole on that conviction and who at the time of his arrest was in a car in which was found the stolen service revolver of a murdered New York police officer, since the commissioner in good faith and on reasonable grounds believed that the restoration of such a pass compromised or endangered the security of those institutions.-Legal Aid Society v. Ward, 91 A. D. 2d 532 [1982]; affirmed, 61 N. Y. 2d 744 [1984].



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CHAPTER 25 DEPARTMENT OF CORRECTION

§ 627. **Council members authorized to visit correctional facilities.**

Any council member is authorized to inspect and visit at any time the institutions and facilities under the jurisdiction of the department.

HISTORICAL NOTE

Added by L. L. 1981, No. 3.



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NYC Charter 641

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CHAPTER 26 DEPARTMENT OF BUILDINGS*29

§ 641. **Department; commissioner.**

There shall be a department of buildings, the head of which shall be the commissioner of buildings. The commissioner or the first deputy commissioner shall be a registered architect or a licensed professional engineer in good standing under the education law.

HISTORICAL NOTE

Section amended L.L. 39/2008 § 1, eff. Sept. 3, 2008. [See § 642 Note 1]

FOOTNOTES

29

[Footnote 29]: * Chapter 26 added by L.L. 1977, No. 29.



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CHAPTER 26 DEPARTMENT OF BUILDINGS*29

§ 642. **Deputies.**

The commissioner shall appoint two deputies, one of whom shall be the first deputy commissioner. The commissioner may, by instrument in writing filed with the department, designate a deputy commissioner who is a registered architect or a licensed professional engineer to possess any of the powers granted to the commissioner by subdivision (b) or (d) of section six hundred forty-five of this chapter. The deputy commissioner so designated shall possess such powers in addition to any other powers that may be assigned to him or her by the commissioner pursuant to any other provision of law.

HISTORICAL NOTE

Section amended L.L. 39/2008 § 1, eff. Sept. 3, 2008. [See Note 1]

NOTE

1. Provisions of L.L. L.L. 39/2008:

§ 3. Nothing in this local law shall be construed to affect the power of the commissioner of buildings under section eleven hundred one of this charter.

FOOTNOTES

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[Footnote 29]: * Chapter 26 added by L.L. 1977, No. 29.



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CHAPTER 26 DEPARTMENT OF BUILDINGS*29

§ 643. **Department; functions.**

The department shall enforce, with respect to buildings and structures, such provisions of the building code, zoning resolution, multiple dwelling law, labor law and other laws, rules and regulations as may govern the construction, alteration, maintenance, use, occupancy, safety, sanitary conditions, mechanical equipment and inspection of buildings or structures in the city, and shall perform the functions of the city of New York relating to

(1) the designation of buildings and structures as unsafe and the necessary legal action in relation thereto prior to the removal of the unsafe condition through demolition or sealing except as provided in section eighteen hundred two of this charter;

(2) the shoring of hazardous and unsafe buildings and structures;

(3) the testing and approval of power-operated cranes and derricks used for construction, alteration, demolition, excavation and maintenance purposes, including such uses in highways or sewers, or used to hoist or lower any article on the outside of any building, excluding cranes and derricks used in industrial plants or yards;

(4) the location, construction, alteration and removal of signs, illuminated or non-illuminated, attached to the exterior of any building or structure;

(5) (i) all surface and subsurface construction within the curb line, including curb cuts and driveways, the covering thereof and entrances thereto and the issuance of permits in reference thereto, (ii) in conjunction with the issuance of permits for surface and subsurface construction within the curbline, such surface and subsurface construction outside the curbline as shall be expressly delegated to the department in the administrative code and the issuance of permits in relation thereto and, (iii) notwithstanding any inconsistent provision of section fourteen hundred three of this charter, in conjunction with the issuance of a permit for the construction of a building, the commissioner

may approve the installation of and issue a permit for the construction of an individual on site private sewage disposal system for the premises. Such permit shall be issued in accordance with standards and specifications prescribed by the commissioner, in consultation with the commissioner of environmental protection, for the installation of individual on site private sewage disposal systems;

(6) the regulation, inspection and testing of gas and electricity used for light, heat and power purposes, electric, gas and steam meters, electric wires and all lights furnished to the city; and

(7) the regulation, inspection and testing of electric wires and wiring apparatus and other appliances used or to be used for the transmission of electricity for electric light, heat, power, signaling, communication, alarm and data transmission in or on any building or structure in the city; provided, however, that the jurisdiction of the department, except for the testing and approval of power-operated cranes and derricks used for construction, alteration, demolition, excavation and maintenance purposes and the licensing of the operators of such equipment, the regulation, inspection and testing of gas and electricity used for light, heat and power purposes, electric, gas and steam meters, electric wires and lights and the regulation, inspection and testing of wiring and appliances for electric light, heat and power, shall not extend to waterfront property owned by the city and under the jurisdiction of the department of ports, international trade and commerce, or to the following structures on any such waterfront property; wharves, piers, docks, bulkheads, structures wholly or partly thereon, or to such other structures used in conjunction with or in furtherance of waterfront commerce or navigation, or to bridges, tunnels or subways or structures appurtenant thereto.

HISTORICAL NOTE

Amended by L. L. 1977, No. 102.

Subd. (7) amended L.L. 64/2001 § 1, eff. Jan. 1, 2003.

Subd. 7 amended at General Election, November 8, 1988.

Subd. (1) amended at General Election, November 7, 1989.

Subd. (5) amended L.L. 65/1996 § 1, eff. Oct. 10, 1996.

CASE NOTES

¶ 1. The Department of Buildings and not the Department of Ports and Terminals is the proper agency to issue a summons for violations of zoning regulations by operation of a retail business in an area zoned for manufacturing on land bounded by Shell Bank Basin.-People v. Weinstein, 99 Misc. 2d 103, 415 N. Y. S. 2d 617 [1979].

FOOTNOTES



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CHAPTER 26 DEPARTMENT OF BUILDINGS*29

§ 644. **Department; powers.**

[Bracketed out of law at General Election, November 8, 1988.]

FOOTNOTES

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[Footnote 29]: * Chapter 26 added by L.L. 1977, No. 29.



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CHAPTER 26 DEPARTMENT OF BUILDINGS*29

§ 645. **Offices of the department; powers and duties.**

(a) There shall be a main office of the department and in each borough at least one branch office and a borough superintendent. Persons appointed as inspectors to perform functions of the department shall have such qualifications as shall be prescribed by the commissioner of citywide administrative services after consultation with the commissioner; provided however that such qualifications shall include:

(1) a minimum of five years acceptable experience working at a construction trade; or

(2) a license as a professional engineer or architect issued pursuant to the education law; or

(3) a minimum of three years of acceptable experience working at a construction trade and a minimum of two years of formal training or education in an acceptable construction program, with an emphasis on construction, in a college, technical school or trade school; or

(4) a minimum of two years of acceptable experience working at a construction trade or a minimum of two years of formal training or education in an acceptable construction program, with an emphasis on construction, at a college, trade school or technical school and a minimum of three years participation in an apprentice inspection program approved by the commissioner and the commissioner of citywide administrative services.

(b) With respect to buildings and structures, the commissioner shall have the following powers and duties exclusively, subject to review only by the board of standards and appeals as provided by law:

(1) to examine and approve or disapprove plans for the construction or alteration of any building or structure, including the installation or alteration of any service equipment therein, and to direct the inspection of such building or structure, and the service equipment therein, in the course of construction, installation or alteration;

(2) to require that the construction or alteration of any building or structure, including the installation or alteration of any service equipment therein, shall be in accordance with the provisions of law and the rules, regulations and orders applicable thereto; but where there is a practical difficulty in the way of carrying out the strict letter of any provision of law relating to buildings in respect to the use of prescribed materials, or the installation or alteration of service equipment, or methods of construction and where equally safe and proper materials or forms of construction may be employed in a specific case, he may permit the use of such materials or of such forms of construction, provided that the spirit of the law shall be observed, safety secured and substantial justice done, but he shall have no power to allow any variance from the provisions of any law in any respect except as expressly allowed therein, or from any appellate ruling of the board of standards and appeals;

(3) to issue certificates of occupancy for any building or structure situated in the city, provided that:

a. no building or structure hereafter constructed may be occupied or used in whole or in part for any purpose until a certificate of occupancy has been issued;

b. no building or structure or part thereof for which a certificate of occupancy has not been previously issued or required shall be occupied or used for any purpose whatever in case such building shall hereafter be altered or converted so as to decrease or increase the number of living rooms or apartments, until a certificate of occupancy has been issued, except that this requirement shall not apply to any old law or new law tenement wherein two or more apartments are combined creating larger residential units, the total legal number of families within the building is being decreased, and the bulk of the building is not being increased;

c. no buildings hereafter altered or converted from one class to another class shall be occupied or used for any purpose whatever in case such building was vacant during the progress of the work, until a certificate of occupancy has been issued; in case such an alteration does not necessitate the vacating of the building during the progress of the work, the occupancy or use of the building shall not continue more than thirty days after the completion of such alteration, unless a certificate of occupancy has been issued;

d. a certificate of occupancy of a building or structure shall certify that such building or structure conforms to the requirements of all laws, rules, regulations and orders applicable to it and shall be in such form as the commissioner shall direct;

e. every certificate of occupancy shall, unless and until set aside, vacated or modified by the board of standards and appeals or a court of competent jurisdiction, be and remain binding and conclusive upon all agencies and officers of the city, and shall be binding and conclusive upon the department of labor of the state of New York, as to all matters therein set forth, and no order, direction or requirement affecting or at variance with any matter set forth in any certificate of occupancy shall be made or issued by any agency or officer of the city, or by the department of labor of the state of New York, or any commission, board, officer or member thereof, unless and until the certificate is set aside, vacated or modified by the board of standards and appeals or a court of competent jurisdiction upon the application of the agency, department, commission, officer or member thereof seeking to make or issue such order, direction or requirement. All such applications shall be made in writing and filed with the board or court for hearing thereon; and copies of the application and order, direction or requirement sought to be made or issued shall be served upon the owner of the building or structure and upon the commissioner of buildings, if he is not the applicant, and upon such terms and conditions as to service, notice, time and place of hearing as the board or court shall direct;

f. the commissioner may, on request of the owner of a building or structure or his authorized representative, issue a temporary certificate of occupancy for any part of such building or structure provided that such temporary occupancy or use would not in any way jeopardize life or property;

g. the commissioner may permit in specific cases experimental or demonstration construction not in compliance with the building code in order to obtain knowledge and information not supplied from other experiments within the

city; the owner of such construction shall conduct such periodic tests and evaluations as the commissioner may specify and submit results and reports to the department of buildings as the commissioner may require; except as otherwise specifically permitted by the commissioner, the construction shall be erected and maintained in accordance with all provisions of applicable laws, rules and regulations.

(c) The commissioner may, by instrument in writing filed in the department, designate a borough superintendent of the department to possess within a borough any of the powers granted to the commissioner by subdivision (b) of this section and to exercise the same within such borough in the name of the commissioner for such times and under such conditions as he may specify. The borough superintendent shall also perform such other duties as the commissioner may direct.

(d) The commissioner shall review and certify any proposed subdivision of a zoning lot with any building thereon, in order to ensure that the subdivision will not result in any violation of the applicable zoning laws. For such purposes, the subdivision applicant shall file with the commissioner, prior to recordation with the city register or the county clerk in the case of Staten Island the following:

(1) a subdivision map of the entire original zoning lot with any building thereon; and

(2) a statement by the subdivision applicant assuring compliance of the proposed subdivision with applicable zoning laws.

HISTORICAL NOTE

Subd. a added by L. L. 1981, No. 50.

Subd. b par. 3 subpar. c amended by L. L. 1977, No. 102.

Subd. b par. 3 subpar. c amended by L. L. 1979, No. 29.

Subd. b par. 3 subpar. e amended by L. L. 1977, No. 102.

Subd. b par. 3 subpar. e amended by L. L. 1979, No. 29.

Subd. b par. 3 subpar. g amended by L. L. 1977, No. 102.

Subd. b par. 3 subpar. g amended by L. L. 1979, No. 29.

Subd. d added by L. L. 1981, No. 7.

Subd. (a) amended L.L. 59/1996 § 14, eff. Aug. 8, 1996.

CASE NOTES

¶ 1. Section 645(b)(3)e is constitutional even though it does not mandate notice of the possible revocation of a certificate of occupancy to mortgages who have vested rights under Multiple Dwelling Law section 301(5).-Schultz Management v. Bd. of Standards and Appeals of the City of N. Y., 103 A. D. 2d 687 [1984], 477 N.Y.S.2d 351, aff'd 64 N.Y.2d 1057, 489 N.Y.S.2d 902 (1985).

¶ 2. The language of a valid certificate of occupancy determines the legal use and occupancy of a building. City of New York v. 330 Continental, LLC, 2007 WL 3147223 (Sup.Ct. New York Co.).

FOOTNOTES

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[Footnote 29]: * Chapter 26 added by L.L. 1977, No. 29.



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NYC Charter 646

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CHAPTER 26 DEPARTMENT OF BUILDINGS*29

§ 646. **Conduct of investigations.**

The commissioner shall have the power and duty to conduct such inquiries as may assist him in the performance of the functions of the department where the public safety is involved and for such purpose he shall have subpoena power to compel the attendance of witnesses, to administer oaths, examine witnesses and to compel the production of books, papers and documents.

FOOTNOTES

29

[Footnote 29]: * Chapter 26 added by L.L. 1977, No. 29.



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CHAPTER 26 DEPARTMENT OF BUILDINGS*29

§ 647. **Definition of "class".**

The term "class" as used in this chapter refers to the classification of buildings in the building code or other applicable laws and shall be deemed to refer also to the terms "class" or "kinds" as used in the multiple dwelling law where such law is applicable.

FOOTNOTES

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[Footnote 29]: * Chapter 26 added by L.L. 1977, No. 29.



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CHAPTER 26 DEPARTMENT OF BUILDINGS*29

§ 648. **Appeals.**

Appeals may be taken from decisions of the commissioner and of a deputy commissioner or the borough superintendent acting under a written delegation of power filed in accordance with the provisions of section six hundred forty-two or subdivision (c) of section six hundred forty-five of this chapter, to the board of standards and appeals as provided by law.

HISTORICAL NOTE

Section amended L.L. 39/2008 § 1, eff. Sept. 3, 2008. [See § 642 Note 1]

CASE NOTES

¶ 1. Petitioners failed to exhaust their administrative remedies by not presenting the matter to the Board of Standards and Appeals pursuant to § 648 N. Y. C. Charter, after Dept. of Buildings refused to issue a vacate order. The court therefore did not have jurisdiction under § C26-85.5 to issue a temporary vacate order. Matter referred back to Board of Standards and Appeals.-Matter of Alan B. Weissman, et al. v. N. Y. C., 96 A. D. 2d 454 [1983].

FOOTNOTES

29

[Footnote 29]: * Chapter 26 added by L.L. 1977, No. 29.



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CHAPTER 26 DEPARTMENT OF BUILDINGS*29

§ 649. **Inspection.**

The commissioner, any deputy commissioner, borough superintendents, inspectors, or any officer of the department authorized in writing by the commissioner or a borough superintendent to act in his borough may, in accordance with law, for the purpose of performing their respective official duties, enter and inspect any building, structure, enclosure, premises or any part thereof or anything therein or attached thereto; and any refusal to permit such entry or inspection shall be a misdemeanor triable in criminal court and punishable upon conviction by not more than thirty days imprisonment or by a fine of not more than one hundred dollars, or both.

FOOTNOTES

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[Footnote 29]: * Chapter 26 added by L.L. 1977, No. 29.



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NYC Charter 659

New York City Charter

CHAPTER 27 BOARD OF STANDARDS AND APPEALS

§ 659. **Constitution and appointment.**

a. There shall be an independent board of standards and appeals located within the office of administrative trials and hearings. The board of standards and appeals shall consist of five members to be termed commissioners to be appointed by the mayor each for a term of six years.

b. One of the members shall be a planner with professional qualifications and at least ten years' experience as a planner. One of the members shall be a registered architect and shall have had at least ten years' experience as an architect. One of the members shall be a licensed professional engineer and shall have had at least ten years' experience as an engineer. The mayor shall designate one of the members, who shall have the required experience as an architect, planner or as an engineer, to serve as chair and shall designate one of the members to serve as vice-chair, who shall act as chair in the absence of the chair or in the event that a vacancy exists in the office of chair. Of the members, no more than two shall be residents of any one borough.

c. Every member of the board shall receive a salary, which shall not be reduced during his or her term of office except in case of general reduction of salaries and in proportion to reductions of salaries of other officers with similar salaries. A member shall not engage in any other occupation, profession or employment. Members shall attend the hearings and executive sessions of the board, and shall perform such other duties as may be required by the chair.

d. Vacancies shall be filled by the mayor for the unexpired term of the member whose place has become vacant and with a person having his or her qualifications.

HISTORICAL NOTE

Section added L.L. 49/1991 § 2, eff. October 15, 1991.

DERIVATION

Formerly § 661 repealed LL 49/1991 § 3, eff. July 1, 1991, amended LL 94/1957, amended at General Election, Nov. 4, 1975, subds. b, c, d amended at General Election, Nov. 7, 1989.

CASE NOTES

¶ 1. The Board of Standards and Appeals, a five member body that includes at least one planner, is vested with exclusive jurisdiction to determine appeals from Department of Buildings decisions. *Beekman Hill Ass'n., Inc. v. Chin*, 274 A.D.2d 161, 712 N.Y.S.2d 471 (1st Dept. 2000).



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NYC Charter 660

New York City Charter

CHAPTER 27 BOARD OF STANDARDS AND APPEALS

§ 660. **Executive director of standards and appeals.**

a. There shall be an executive director of standards and appeals who shall be appointed by and shall hold office at the pleasure of the board of standards and appeals.

b. The executive director shall have had at least five years' experience in administrative or supervisory positions dealing with administration and personnel. The executive director shall devote his or her entire time to the performance of his or her duties and shall not engage in any other occupation, profession or employment.

HISTORICAL NOTE

Amended by L. L. 1972, No. 31.

Subd. b amended at General Election, November 7, 1989.

Section renumbered (former § 659) L.L. 49/1991 § 1, eff. July 1, 1991.



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NYC Charter 661

New York City Charter

CHAPTER 27 BOARD OF STANDARDS AND APPEALS

§ 661. **Staff, powers and duties.**

a. The executive director may appoint such engineers, architects, and experts and other officers and employees as may be required to perform the duties of his or her office, with the approval of the board and within the appropriation provided thereof.

b. The executive director shall assign and supervise all members of his or her staff. The executive director shall have prepared and presented matters before the board of standards and appeals in accordance with the rules, regulations and directives of such board, and shall prepare the calendar of such board.

HISTORICAL NOTE

Amended by L. L. 1972, No. 31.

Section amended at General Election, November 7, 1989.

Section renumbered and amended L.L. 49/1991 § 4, eff. July 1, 1991

(formerly § 660)



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NYC Charter 662

New York City Charter

CHAPTER 27 BOARD OF STANDARDS AND APPEALS

§ 662. **Removal by mayor after hearing.**

Any member may be removed by the mayor on proof of official misconduct, or of negligence in official duties, or of conduct in any manner connected with his or her official duties which tends to discredit his or her office, or of mental or physical inability to perform his or her duties; but before removal he or she shall receive a copy of the charges and shall be entitled to a hearing before the mayor and to the assistance of counsel at such hearing.

HISTORICAL NOTE

Amended by L. L. 1957, No. 94.

Amended at General Election, November 7, 1989.



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NYC Charter 663

New York City Charter

CHAPTER 27 BOARD OF STANDARDS AND APPEALS

§ 663. **Meetings.**

Meetings of the board shall be held at the call of the chair and at such other times as the board may determine. The chair, or in his or her absence the vice-chair may administer oaths and compel the attendance of witnesses. All hearings before the board shall be open to the public and shall be before at least three members of the board, and a concurring vote of at least three members shall be necessary to a decision to grant an application or an appeal, to revoke or modify a variance, special permit or other decision of the board, or to make, amend or repeal a rule or regulation. The board shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official action. Such minutes and such records shall be public records.

HISTORICAL NOTE

Amended at General Election, November 4, 1975.

Amended at General Election, November 7, 1989.

Section amended L.L. 49/1991 § 5, eff. October 15, 1991.

CASE NOTES

¶ 1. Under § 663 of the Charter, the denial of an application for a variance, **held** to require three concurring votes, just as does the grant of a variance, and hence where the board divided 2-2 on an application, no relief could be granted.-In re Donner (Murdock), 126 (115) N. Y. L. J. (12-17-51) 1673, Col. 3 F.



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NYC Charter 665

New York City Charter

CHAPTER 27 BOARD OF STANDARDS AND APPEALS

§ 665. **Rules and regulations; bulletin.**

a. Every rule or regulation and every amendment or repeal thereof, and every order, requirement, decision or determination of the board shall immediately be filed in the office of the board and shall be a public record.

b. Repealed.

c. Repealed.

HISTORICAL NOTE

Section amended by L. L. 1957, No. 94.

Subd. d added by L. L. 1984, No. 19, § 2, May 15.

Subds. b, c amended at General Election, November 8, 1988.

Subds. b, c repealed L.L. 49/1991 § 6, eff. July 1, 1991.

CASE NOTES

¶ 1. Contention that Board of Standards and Appeals should have adopted rules with respect to the business of dry cleaning generally, as to definition of what is "dry cleaning" and as to general rules governing the term "accessory," were matters presently not properly before the court, as § 665 of the Charter provides for adoption of rules by the Board after giving of notice and the holding of a public hearing.-In re Kent Stores, Inc. (Murdock), 123 (41) N. Y. L. J. (3-2-50) 766, Col. 3 F.



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NYC Charter 666

New York City Charter

CHAPTER 27 BOARD OF STANDARDS AND APPEALS

§ 666. **Jurisdiction.**

The board shall have power:

1. To make, amend and repeal rules and regulations for carrying into effect the provisions of the laws, resolutions, rules and regulations in respect to any subject-matter jurisdiction whereof is conferred by law upon the board, and to include in such rules and regulations provisions applying to specific conditions and prescribing means and methods of practice to effectuate such provisions and for carrying into effect the powers of the board.
2. To make, amend and repeal rules and regulations for the enforcement of those provisions of the labor law and other laws which relate to the construction or alteration of, structural changes in plumbing and drainage of, elevators in, fire escapes on, adequacy and means of exit from, or fire protection in, all buildings within the city, which shall take the place of the industrial code and of any rules and regulations of the department of labor of the state of New York relating to the same subject-matter.
3. To make, amend and repeal rules, regulations and directives governing the preparation and presentation by the director of matters before the board.
4. To exercise exclusively with respect to buildings situated within the city, the same powers as are exercised by the department of labor of the state of New York elsewhere in the state.
5. To determine and vary the application of the zoning resolution as may be provided in such resolution and pursuant to section six hundred sixty-eight.
6. To hear and decide appeals from and review,

(a) except as otherwise provided by law, any order, requirement, decision or determination of the commissioner of buildings or of a deputy commissioner of buildings or any borough superintendent of buildings acting under a written delegation of power from the commissioner of buildings filed in accordance with the provisions of section six hundred forty-two or section six hundred forty-five of this charter, or

(b) any order, requirement, decision or determination of the fire commissioner or any rule or regulation or amendment or repeal thereof made by the fire commissioner, or

(c) any order, requirement, decision or determination of the commissioner of transportation or the commissioner of ports and trade made in relation to the structures or uses on water front property under his or her jurisdiction in connection with the application or enforcement of the provisions of the zoning resolution of the city of New York, the labor law and such other laws, rules and regulations as may govern the construction, alteration, maintenance, use, occupancy, safety, sanitary conditions, mechanical equipment and inspection of structures in the city, under the authority conferred upon them by law, by reversing or affirming in whole or in part, or modifying the order, regulation, decision or determination appealed from, and to make such order, requirement, decision or determination as in its opinion ought to be made in the premises, and to that end shall have the power of the officer from whose ruling the appeal is taken, and of any officer under whose written delegation of power such ruling was made.

7. In passing upon appeals, to vary or modify any rule or regulation or the provisions of any law relating to the construction, use, structural changes, equipment, alteration or removal of buildings or structures, or vaults in sidewalks appurtenant thereto, where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of the law, so that the spirit of the law shall be observed, public safety secured and substantial justice done, provided that the provisions of the housing maintenance code and of any regulation or order issued under such code may be varied or modified only to the extent permitted by such code and only in the manner and subject to the conditions therein specified.

8. To review, upon motion of any member of the board, any rule, regulation, amendment or repeal thereof, and any order, requirement, decision or determination from which an appeal may be taken to the board under the provisions of this chapter or of any law, or of any rule, regulation or decision of the board; but no such review shall prejudice the rights of any person who has in good faith acted thereon before it is reversed or modified. The provisions of this chapter relating to appeals to the board shall be applicable to such review.

9. To afford an equal right to the city planning commission, community boards, and borough boards and lessees and tenants as well as owners to appear before it for the purpose of proposing arguments or submitting evidence in respect of any matter brought before it pursuant to the zoning resolution of the city of New York.

10. To issue such special permits as the board is authorized to issue under the zoning resolution.

11. To revoke or modify, upon due notice and hearing, variances and special permits previously granted under the zoning resolution if the terms and conditions of such grants have been violated.

HISTORICAL NOTE

Section amended by L. L. 1955, No. 112.

Section amended by L. L. 1957, No. 94.

Section amended by L. L. 1971, No. 31.

Section amended at General Election, November 4, 1975.

Subd. 1 amended by L. L. 1977, No. 102.

Subd. 2 amended by L. L. 1977, No. 102.

Subd. 3 amended by L. L. 1977, No. 102.

Subd. 6 amended by L. L. 1977, No. 102.

Subd. 6 par (a) amended L.L. 39/2008 § 2, eff. Sept. 3, 2008. [See § 642 Note 1]

Subd. 7 amended by L. L. 1977, No. 102.

Subd. 11 amended by L. L. 1977, No. 102.

Subd. 7 par c amended at General Election, November 8, 1988.

Subd. 8 amended at General Election, November 8, 1988.

Subd. 7 par. (c), subds. 8, 11 amended at General Election, November 7, 1989.

Subd. 12 added at General Election, November 7, 1989.

Subd. 1 renumbered L.L. 49/1991 § 7, eff. July 1, 1991 (formerly subd. 2)

Subd. 1 repealed L.L. 49/1991 § 7, eff. July 1, 1991.

Subds. 2-5 renumbered L.L. 49/1991 § 7, eff. July 1, 1991 (formerly subds. 3-6)

Subd. 6 renumbered L.L. 49/1991 § 7, eff. July 1, 1991 (formerly subd. 7)

Subd. 6 par (a) amended L.L. 107/1993 § 11, eff. Dec. 28, 1993.

Subds. 7-11 renumbered L.L. 49/1991 § 7, eff. July 1, 1991 (formerly subds. 8-12)

CASE NOTES

¶ 1. The rules relating to the erection, repair or demolition of buildings promulgated by the City Board of Standards and Appeals must take preference over the State rules relating to the same matter and the enforcement of such rules is exclusively within the province of the city authorities.-*People v. 20 E. 74th Street Corporation*, 188 Misc. 488, 68 N. Y. S. 2d 73 [1947].

¶ 2. A party aggrieved by a ruling of the Department of Buildings cannot take its case direct to court, but must first exhaust its administrative remedy by appealing the determination to the Board of Standards and Appeals, which is the ultimate authority charged with enforcing the Zoning Resolution. *Wilkins v. Babbar*, 742 N.Y.S.2d 224 (App.Div. 1st Dept. 2002).

¶ 3. Plaintiff was convicted in 1959 of failure to comply with a departmental order issued for a 1951 violation. The conviction was affirmed and plaintiff was not permitted to show that the order was issued under a Rule not applicable to its premises. **Held:** the plaintiff could maintain an action for a declaratory judgment that the 1951 order was invalid. The availability of the administrative remedy of appeal to the Board of Standards and Appeals did not preclude the action for a declaratory judgment.-*Namro Holding Corp. v. City of New York*, 17 App. Div. 2d 431, 235 N. Y. S. 2d 744 [1962], *aff'd*, 14 N. Y. 2d 688, 198 N. E. 2d 414, 249 N. Y. S. 2d 888 [1964].

¶ 4. A determination of the Commissioner of Buildings is final, and is not subject to court review where no appeal was taken to the Board of Standards and Appeals.-*Valentino v. O'Connell*, 33 Misc. 2d 224, 225 N. Y. S. 2d 997 [1962].

¶ 5. The validity of an order of the Building Department cannot be attacked in court in a criminal prosecution for violation of the order. If the defendant felt aggrieved, his remedy was to appeal to the Board of Standards and Appeals.-*People v. Gutterman*, 36 Misc. 2d 795, 233 N. Y. S. 2d 417 [1962].

¶ 6. Property owners who objected to the grant to defendant of a permit to erect a proprietary nursing home, were not precluded from prosecuting an action for an injunction by their failure to exhaust administrative remedies. Plaintiffs were not parties aggrieved within meaning of the Charter, and even if they had intervened in the proceeding to prevent issuance of the permit their failure to appeal would not bar the instant action for injunctive relief.-*Unger v. Lewis*, 150 (56) N. Y. L. J. (9-18-63) 14, Col. 5 F.

¶ 7. Although report to the Board of Standards and Appeals to review an order of the Fire Commissioner is ordinarily the remedy of an aggrieved party in the first instance, it does not necessarily follow that this is his exclusive first remedy in every case, such as where a statute is unconstitutional or where there is no statute at all, or where the statute by its own terms does not apply in a given case.-*In re 109 Beach St. Corp. (Archer)*, 188 Misc. 769, 67 N. Y. S. 2d 916 [1946].

¶ 8. Petition to amend certificate of occupancy dismissed where the papers showed that no final appealable determination had been made by the Commissioner of Housing.-*Nioucel v. Gilroy*, 133 (13) N. Y. L. J. (1-19-55) 8, Col. 3 T.

¶ 9. Question whether petitioner's building came within purview of sections of the Administrative Code upon which were based orders requiring installation of a fire alarm system and other fire protective devices in petitioner's summer rooming house were matters which should be determined in the first instance, at least, in accordance with the administrative procedure outlined in **Matter of Towers Management Corp. v. Thatcher**, 271, N. Y. 94, which procedure contemplates a review by a specialized administrative body with an ultimate review by the courts as to whether such body acted upon substantial evidence. Accordingly, application of owner of building for an order directing the Deputy Fire Commissioner to rescind his orders was denied without prejudice to an application to the Board of Standards and Appeals and for a review of its determination before the court.-*In re Sacer Realty Corp. (Archer)*, 68 N. Y. S. 2d 277 [1946].

¶ 10. Petitioner was not entitled to an order requiring Borough Superintendent of the Department of Housing and Buildings to revoke a certificate of occupancy and reinstate prior certificates, where it had failed to exhaust its administrative remedy of appeal to the Board of Standards and Appeals.-*Built by Glick, Inc. v. Saltzman*, 116 (35) N. Y. L. J. (8-19-46) 292, Col. 4 M.

¶ 11. Where the City of New York had served an order on plaintiff directing her to rebuild and repair defective parts of a wall and the plaintiff had not taken an appeal under subdivision 6 of this section, she could not thereafter maintain an action to compel the City to remove existing violations on the ground that the wall had been erected between her property and that of her neighbors by the latter's predecessor in title.-*Breuel v. Rohan*, 181 Misc. 635, 42 N. Y. S. 2d 291 [1943].

¶ 12. Even if the Superintendent of the Department of Housing and Buildings had an alternative, but denied the application for a certificate of occupancy in the erroneous belief that he had not, petitioner, before making application for an order compelling issuance of a certificate of occupancy, was required to appeal to the Board of Appeals.-*Application of Braunsdorf*, 202 Misc. 471, 111 N. Y. S. 2d 507 [1952].

¶ 13. Although generally the Board of Standards and Appeals has no power to reopen and review its decisions, it may do so where there has been a material change in the factual situation.-*In re Ducon Realty Corp. (Murdock)*, 124 (34) N. Y. L. J. (8-18-50) 273, Col. 4 F.

¶ 14. Neither the Board of Standards and Appeals nor the courts have jurisdiction to entertain an application or proceeding seeking an opinion which would be essentially of an advisory nature.-*Kent Stores, Inc. v. Murdock*, 278

App. Div. 946, 105 N. Y. S. 2d 111 [1951].

¶ 15. In a proceeding to review the determination of the Board of Standards and Appeals denying an application for a change of occupancy for a 2-story brick building to a 3-family dwelling under § 9, sub 9 of the Multiple Dwelling Law the property owner was not entitled to an order directing the Board to serve a bill of particulars where such information was not necessary or material in connection with petitioner's application. There is no provision in this section or section 668 for such relief.-*Seinfeld v. Murdock*, 148 N. Y. S. 2d 359 [1955].

¶ 16. The power of the Board of Standards and Appeals to grant individual variances in hardship and other cases is not in conflict with the power of the Board of Estimate to pass a zoning ordinance which is individual in its application.-*Congregation Beth Israel v. Board of Estimate*, 285 App. Div. 629, 139 N. Y. S. 2d 645 [1955].

¶ 17. So much of a new Comprehensive Zoning Resolution of the Planning Commission (11-34(e)) as provided that in any pending variance, no use which would previously have been prohibited which is now zoned in a Residence District, was held valid as section provides for the amendment and repeal of zoning regulations including provisions applicable to the Board of Standards and Appeals.-*Ruiz v. Foley*, 223 App. Div. 2d 493, 255 N. Y. S. 2d 964 [1965].

¶ 18. The Board of Standards and Appeals has jurisdiction of an appeal from the refusal of the Building Commissioner to issue a tax abatement exemption certificate.-*In re 534 E. 88th St. Corp. (Crinnion)* 140 (122) N. Y. L. J. (12-26-58) 4, Col. 3 M.

¶ 19. An erroneous pleading by the plaintiff of inapplicable state rules instead of applicable city rules of New York City Board of Standards and Appeals was not fatal. The Court could permit an amendment so as to conform the proof to the pleading, in view of the fact that, the amendment did not materially alter the plaintiff's theory and the defendants were not surprised.-*Gorlin v. Master Construction Corporation*, 15 Misc. 2d 1, 180 N. Y. S. 2d 84 [1958].

¶ 20. Where petitioner failed to appeal Fire Commissioner's order to install a sprinkler system to the Board of Standards, his appeal to the Supreme Court would be dismissed.-*Matter of 20 Catherine St., Inc. (Cavaugh)*, 145 (122) N. Y. L. J. (6-26-61) 8, Col. 7 F.

¶ 21. Where a property owner is convicted of violating an order of the Commissioner of Buildings to discontinue the use of his property as a trailer camp, no appeal lies from the decision of the Magistrate. Only the judgment of conviction may be appealed. Furthermore the propriety of the Commissioner's order may not be reviewed on such an appeal. The correct procedure is to review the order by an appeal to the Board of Standards and Appeals.-*People v. Gillman*, 6 A. D. 2d 899, 177 N. Y. S. 2d 623 [1958].

¶ 22. A criminal prosecution against the petitioner, instituted by the City's Department of Housing and Buildings for alleged violations of the Department's rules or regulations was dismissed on the ground that petitioner's building did not violate any rule or regulation. This dismissal or acquittal constituted res judicata in any subsequent criminal prosecution for the same violation. Hence, petitioner was granted an order directing the Commissioner of the Department of Housing and Buildings to remove such alleged violation from his records. A motion for dismissal by the respondent, on the grounds that the petitioner had not first exhausted her administrative remedies, was denied. Petitioner was not relegated to applying to the Board of Standards and Appeals.-*Matter of Wilk*, 11 Misc. 2d 106, 169 N. Y. S. 2d 473 [1957].

¶ 23. Where the Board of Standards and Appeals has the power under a zoning resolution to grant a variance without a showing of unique hardship, the variation may be made to meet the specific case in order to enable the owner to make a reasonable and profitable use of his business if it can be done without violence to the general zoning plan and without causing substantial inconvenience to the immediate neighborhood, although the applicant has no right to insist upon a decision in his favor.-*Matter of St. Nicholas Russian Orthodox Church*, 25 Misc. 2d 380, 201 N. Y. S. 2d 424 [1960].

¶ 24. The Board of Standards and Appeals is made up of men with special qualifications of training and experience with power to vary the application of a zoning resolution.-Matter of St. Nicholas Russian Orthodox Church, 25 Misc. 2d 380, 201 N. Y. S. 2d 424 [1960].

¶ 25. Where plaintiff did not exhaust its administrative remedy, it was not entitled to a declaratory judgment declaring an order or directive of the Department of Buildings as unlawful and void.-Namro Holding Corp. v. City of N. Y., 31 Misc. 2d 480, 221 N. Y. S. 2d 67 [1961].

¶ 26. The Court would not entertain an Article 78 proceeding to review a determination of the N. Y. C. Building Department issuing a building permit for construction of a go-kart amusement ride.-In re Romon (Bldg. Dept. of N. Y. C.) 147 (55) N. Y. L. J. (3-21-62) 15, Col. 5 M.

¶ 27. In an action by an owner and lessee to enjoin the construction on adjoining premises of a building allegedly in violation of zoning ordinances, the action was not barred by the plaintiff's failure to appeal to the Board of Standards and Appeals from the granting of the building permit.-Lesron, Jr., Inc. v. Feinberg, 13 A. D. 2d 90, 213 N. Y. S. 2d 602 [1961].

¶ 28. The propriety of order of the Commissioner of the Department of Buildings and the Superintendent of Buildings of Queens County which directed discontinuance of coin operated "Grocerette" refrigerated vending machine in the basement of a high rise multiple dwelling situated in a zone restricted to residential use which was regular and proper on its face could not be reviewed in a criminal prosecution for disobedience of the order. Review of such orders could be had before the Board of Standards and Appeals under § 666(7) of the Charter.-People v. Looe, 51 Misc. 2d 835, 274 N. Y. S. 2d 480 [1966].

¶ 29. Board of Standards and Appeals has jurisdiction to hear appeals of orders issued by the fire commissioner.-Street of Ships, Inc. v. O'Hagan, 89 Misc. 2d 548, 392 N. Y. S. 2d 531 [1977].

¶ 30. The scope of review of the Board of Estimate in reviewing actions of Board of Standards and Appeals, which had granted petitioner's application for a special permit to allow construction of a radio tower on his property, was no greater than that provided as to variances and is limited to the traditional standard of whether the determination was supported by substantial evidence.-Matter of Highpoint Enterprises v. Board of Estimate of City of N. Y., 67 A. D. 2d 914, 413 N. Y. S. 2d 155 [1979].

¶ 31. Art. 78 proceeding to reinstate variance granted by Board of Standards and Appeals that was overturned by the Board of Estimate. Court granted relief and held that Board of Estimate had lost jurisdiction since it did not decide the matter within 30 days of accepting jurisdiction as required by § 668 N. Y. C. Charter.-Albert v. Board of Estimate of N. Y. C., 189(120) N. Y. L. J. (6-22-83) 14, Col. 1 T.

¶ 32. The propriety of an administrative order issued by the Department of Buildings cannot be collaterally reviewed in the criminal proceeding for its disobedience. Such review can be sought only by a direct appeal of the order to the Board of Standards and Appeals, as prescribed by City Charter § 666(6). People v. J & L Landscaping, 12 Misc.3d 1187(A), 824 N.Y.S.2d 765 (Crim.Ct. Kings Co. 2006).



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NYC Charter 667

New York City Charter

CHAPTER 27 BOARD OF STANDARDS AND APPEALS

§ 667. **Inspections.**

Any member of the board or any subordinate thereof shall, when authorized in writing by the chair, and the director or any officer or employee designated by the chair in writing shall have power at any time to enter, inspect and examine any premises, buildings, structures, vehicles or vessels for the purpose of carrying out the duties of the board and shall report his or her findings in writing to the board. Refusal to permit such entry shall be triable by a judge of the New York city criminal court and punishable by not more than thirty days' imprisonment, or by a fine of not more than fifty dollars, or both.

HISTORICAL NOTE

Amended by L. L. 1957, No. 94.

Amended by L. L. 1969, No. 74.

Amended at General Election, November 7, 1989.



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NYC Charter 668

New York City Charter

CHAPTER 27 BOARD OF STANDARDS AND APPEALS

§ 668. **Variances and special permits.**

a. Community boards and borough boards shall review applications to vary the zoning resolution and applications for special permits within the jurisdiction of the board of standards and appeals under the zoning resolution pursuant to the following procedures:

1. Each proposal or application shall be filed with the board of standards and appeals, which shall forward a copy within five days to the community board for each community district in which the land involved, or any part thereof, is located, and to the borough board if the proposal or application involves land located in two or more districts in a borough.

2. Each such community board shall, not later than sixty days after the receipt of the proposal or application, either notify the public of the proposal or application, in the manner specified by the city planning commission pursuant to subdivision i of section one hundred ninety-seven-c, conduct a public hearing thereon and prepare and submit a written recommendation thereon directly to the board of standards and appeals, or waive the conduct of such public hearing and the preparation of such written recommendation.

3. A copy of a recommendation or waiver by a community board pursuant to paragraph two of this subdivision that involves land located within two or more community districts in a borough shall also be filed with the borough board within the same time period specified in that paragraph. Not later than thirty days after the filing of such a recommendation or waiver with the borough board by every community board in which the land involved is located or after the expiration of the time allowed for such community boards to act, the borough board may hold a public hearing on the proposal or application and any such recommendation and may submit a written recommendation or a waiver thereof to the board of standards and appeals.

4. The receipt of such a recommendation or waiver from every community or borough board involved, or the

expiration of the time allowed for such boards to act, shall constitute an authorization to the board of standards and appeals to review the application and to make a decision.

5. If after the receipt of such a recommendation or waiver from every community or borough board involved, or the expiration of the time allowed for such boards to act, the applicant for a special permit or variance submits to the board of standards and appeals any additional documents or plans, he or she shall at the same time forward copies of such documents or plans to the city planning commission, the council member involved and to the community or borough board involved.

6. Copies of any written information submitted by an applicant for purposes of determining whether an environmental impact statement will be required by law in connection with an application under this section, and any documents or records intended to define or substantially redefine the overall scope of issues to be addressed in any such draft environmental impact statement shall be delivered to all affected community boards and borough boards.

7. If a meeting involving a city agency and an applicant is convened to define or substantially redefine the overall scope of issues to be addressed in any draft environmental impact statement required by law for an application subject to review under this section, each community board involved and each borough president involved shall receive advance notice of such meeting, and each shall have the right to send one representative to the meeting.

b. The recommendation of a community board or borough board pursuant to subdivision a of this section shall be filed with the board of standards and appeals and a copy sent to the city planning commission. The board of standards and appeals shall conduct a public hearing and act on the proposed application. A decision of the board shall indicate whether each of the specific requirements of the zoning resolution for the granting of variances has been met and shall include findings of fact with regard to each such requirement.

c. Copies of a decision of the board of standards and appeals and copies of any recommendation of the affected community board or borough board shall be filed with the city planning commission. Copies of the decision shall also be filed with the affected community or borough boards.

d. Any decision of the board of standards and appeals pursuant to this section may be reviewed as provided by law.

e. The city planning commission shall be a party to any proceeding to determine and vary the application of the zoning resolution. The commission may appear and be heard on any application pursuant to this section before the board of standards and appeals if, in the judgment of the city planning commission, the granting of relief requested in such application would violate the requirements of the zoning resolution relating to the granting of variances. The commission shall have standing to challenge the granting or denial of a variance in a proceeding brought pursuant to article seventy-eight of the civil practice law and rules, or in any similar proceeding.

HISTORICAL NOTE

Added at General Election, November 4, 1975.

Amended by L. L. 1977, No. 102.

Subd. a par. 5 added L. L. 19/87 § 1.

Subd. a par. 2 amended at General Election, November 7, 1989.

Subd. a pars. 6, 7 added at General Election, November 7, 1989.

Subds. c, d, e amended at General Election, November 7, 1989.

CASE NOTES

¶ 1. This section does not require review of denial of a variance by the Board of Standards and Appeals in the first instance by appeal to the Board of Estimate but allows direct review through an Article 78 proceeding without a previous appeal to the Board of Estimate.-*Cotroneo v. Klein*, 62 A. D. 2d 493, 405 N. Y. S. 2d 483 [1978].

¶ 2. The scope of review of the Board of Estimate in reviewing actions of Board of Standards and Appeals, which had granted petitioner's application for a special permit to allow construction of a radio tower on its property, was no greater than that provided as to variances and is limited to the traditional standard of whether the determination was supported by substantial evidence.-*Matter of Highpoint Enterprises v. Board of Estimate of City of N. Y.*, 67 A. D. 2d 914, 413 N. Y. S. 2d 155 [1979].

¶ 3. Board of Estimate has jurisdiction to review a decision of the Board of Standards and Appeals granting the issuance of a special permit as well as a variance.-*Id.*

¶ 4. An application to enlarge a pre-existing variance made to the Board of Standards and Appeals could be reviewed under subdivision (a) by the Board of Estimate where this constituted a variation from a zoning resolution.-*Matter of Armil Realty Corp. v. Bd. of Estimate of City of N. Y.*, 66 A. D. 2d 888 [1978], *aff'd*, 48 N. Y. 2d 741 [1979].

¶ 5. In reviewing special permits the Board of Estimate does not have a broader scope of review than for the varying of zoning ordinances and is limited to an administrative determination of whether the decision of the Board of Standards and Appeals was supported by substantial evidence.-*Matter of Peter Pan Games of Bayside v. Bd. of Estimate of City of N. Y.*, 67 A. D. 2d 925, 413 N. Y. S. 2d 164 [1979].

¶ 6. Provision for discretionary review by the Board of Estimate over decisions of the Board of Standards and Appeals as contained in this section is constitutional.-*Victory Boulevard Associates v. City of N. Y.*, 85 App. Div. 2d 725 [1981].

¶ 7. The Community Board does not have standing under subdivision 4 of this section to bring an Article 78 proceeding to annul a decision of the Board of Estimate which after public hearings affirmed the Board of Standards and Appeals in granting a zoning variance, such standing being expressly confined to the City Planning Commission and hence implicitly denied to other entities.-*Community Board No. 4 (Manhattan) v. Bd. of Estimate of City of N. Y.*, 88 A. D. 2d 832 [1982], *aff'd*, 57 N. Y. 2d 846 [1982].

¶ 8. Board of Estimate was not justified in overturning a grant of a variance by the Board of Standards and Appeals to permit the construction of a two-story commercial building in an area that was zoned residential where petitioner established that there were unique physical characteristics to the lot that would create unnecessary hardship in complying with zoning provisions, there would be no reasonable rate of return from the permitted use, a variance would not alter the essential character of the neighborhood, the hardship was not self-created and the variance was the minimum necessary to afford relief.-*Victory Boulevard Associates v. City of N. Y.*, 58 N. Y. 2d 900 [1983], *reversing*, 85 A. D. 2d 725.

¶ 9. The thirty day time period contained in subsection [c] for the board of estimate to accept jurisdiction of an appeal from a decision of the board of standards and appeals is directory only, and does not cause the board of estimate to lose its jurisdiction if it does not act strictly within such thirty day period.-*Marchese v. Koch*, 120 A. D. 2d 590 [1986].

¶ 10. Pursuant to subsection [c] of this section, the board of estimate's review powers are limited to whether there is substantial evidence to support the determination of the board of standards and appeals. A review of the record demonstrates there is substantial evidence, therefore the decision of the board of estimate overturning the board of standards and appeals is annulled and the petitioner is granted a zoning variance.-*Matter of 97 Columbia Hgts. Hous.*

Corp. v. Board of Estimate of City of NY, 67 N. Y. 2d 725 [1986].



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NYC Charter 669

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CHAPTER 27 BOARD OF STANDARDS AND APPEALS

§ 669. **Procedure on appeals.**

a. An appeal may be taken by any person aggrieved or by the head of any agency.

b. Such appeal may be taken within such time as shall be prescribed by the board by general rule, by filing with the officer from whom the appeal is taken and with the board a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

c. The board shall fix a reasonable time for the hearing of appeals, and give due notice thereof to the parties, and decide the same within a reasonable time. If the appeal is from an order revoking a permit or approval, the hearing shall be had no later than at the third scheduled hearing of the board following the date of filing of the appeal, or five weeks following such date, whichever is sooner, and the decision of the board shall be rendered expeditiously. Upon the hearing any party may appear in person or by agent or attorney.

d. Any decision of the board under this section may be reviewed in accordance with section 25-207 of the administrative code of the city of New York.

HISTORICAL NOTE

Section amended by L. L. 1969, No. 73.

Subd. c amended by L. L. 1977, No. 102.

Subd. c repealed by L. L. 1988, No. 11, § 1.

Subd. c relettered and amended by L. L. 1988, No. 11, §§ 1, 2.

Subd. d relettered by L. L. 1988, No. 11, § 1 (formerly subd. e).

Subd. d amended L.L. 49/1991 § 8, eff. July 1, 1991.

CASE NOTES

¶ 1. Petition to amend certificate of occupancy dismissed where the papers showed that no final appealable determination had been made by the Commissioner of Housing.-*Nioucel v. Gilroy*, 133 (13) N. Y. L. J. (1-19-55) 8, Col. 3 T.

¶ 2. Application for an order reviewing and annulling respondent's determination which denied petitioner's application for certificate of occupancy **denied** where petitioners failed to first exhaust their remedies before the Board of Standards and Appeals.-*Green v. Gillroy*, 133 (13) N. Y. L. J. (1-19-55) 8, Col. 1 M.

¶ 3. Petition to court for review of the decision of the Board of Standards and Appeals denying application for variance was dismissed where the proceeding was not instituted within 30 days after publication of the decision in the Board's bulletin.-*In re Fleischer (Murdock)*, 62 N. Y. S. 2d 417 [1946].

¶ 4. The 30-day period within which the applicant for a variance was required to present his petition to the Supreme Court for review of decision of the Board of Standards and Appeals did not begin to run from the time petitioner's attorney received a copy of the Board's bulletin, to which he was a yearly subscriber, but from the time of the filing of the decision in the office of the Board, or its publication in the bulletin.-*Id.*

¶ 5. C. P. A. § 1286, providing for a four-months' period within which to institute proceedings to review a determination, was not controlling with respect to a petition for review of a decision of the Board of Standards and Appeals of the City of New York denying an application for a variance.-*Id.*

¶ 6. The pendency of an appeal from the refusal of the Board of Standards and Appeals to approve plans for the alteration of a building so as to make cellar occupancy lawful was not grounds for staying the prosecution of the owner-applicant for violating the Multiple Dwelling Law by permitting the occupancy of cellar space for living purposes.-*Friedman v. Department of Buildings*, 148 (15) N. Y. L. J. (7-23-62) 7, Col. 8 T.

¶ 7. Where property owners did not appeal to the Board of Standards and Appeals from an order of the Borough Superintendent granting a permit for the construction of an apartment house, but did appeal from the denial of their application for the revocation of the permit so granted, the persons constructing the apartment house were not stayed from proceeding with the construction.-*Brunschwig v. Long Island Railroad Company*, 41 Misc. 2d 24, 244 N. Y. S. 2d 708 [1963].

¶ 8. In certiorari proceeding to review determination of Board of Standards and Appeals, usual course is for the court to examine into validity of the Board's determination upon a motion based upon a petition for the order of certiorari and the return thereto. Court has no power to try the question de novo or to substitute its discretion for that of the Board.-*In re Times Sq. Realty Corp. (Murdock)*, 121 (57) N. Y. L. J. (3-23-49) 1052, Col. 3 M.

¶ 9. A certificate of occupancy was issued in 1939 for a gasoline station. Thereafter, the station was leased and used as a gasoline station until 1942 when operations were discontinued because of wartime restrictions. In 1944, the tenant sought permission to re-install its tanks and pumps and appealed from an order denying such permission. On the appeal, the Board affirmed the denial of permission to re-install the tanks and revoked the certificate of occupancy which had previously been obtained by the owner. Held: the revocation was effective without any proceedings invoking such relief being instituted by any public official and without notice to the owner, who was thus deprived of the benefit of its certificate without a chance to be heard.-*Matter of Robitzek Investing Co., Inc.*, 271 App. Div. 250, 62 N. Y. S. 2d N. E. 2d 32 [1947].

¶ 10. In a proceeding to review the determination of the Board of Standards and Appeals denying an application for a change of occupancy for a 2-story brick building to a 3-family dwelling under § 9, sub 9 of the Multiple Dwelling Law the property owner was not entitled to an order directing the Board to serve a bill of particulars where such information was not necessary or material in connection with petitioner's application. There is no provision in this section or section 666 for such relief.-*Seinfeld v. Murdock*, 148 N. Y. S. 2d 359 [1955].

¶ 11. Article 78 of the Civil Practice Act applies to certiorari proceedings to review determinations of the Board of Standards and Appeals. Consequently, where a Special Term order remitted to the Board a matter involving a zoning variance for a rehearing in accordance with the views expressed by the Court, the order was intermediate and not subject to appeal except by permission of the Special Term.-*North American Holding Corp. v. Murdock*, 6 A. D. 2d 596, 180 N. Y. S. 2d 436 [1958]; *aff'd* 6 N. Y. 2d 902, 190 N. Y. S. 2d 708, 160 N. E. 2d 926 [1959].

¶ 12. A criminal prosecution against the petitioner, instituted by the City's Department of Housing and Buildings for alleged violations of the Department's rules or regulations was dismissed on the ground that petitioner's building did not violate any rule or regulation. This dismissal or any subsequent criminal prosecution acquittal constituted res judicata in the same violation. Hence, petitioner was granted an order directing the Commissioner of the Department of Housing and Buildings to remove such alleged violation from his records. A motion for dismissal by the respondent, on the grounds that the petitioner had not first exhausted her administrative remedies, was denied. Petitioner was not relegated to applying to the Board of Standards and Appeals.-*Matter of Wilk*, 11 Misc. 2d 106, 169 N. Y. S. 2d 473 [1957].

¶ 13. A property owner in a residentially zoned district could maintain suit against another property owner to restrain him from erecting a nursing home for which the Department of Buildings had issued a permit under the old Zoning Resolution. The property owner need not first seek a remedy from the Board of Standards and Appeals.-*Unger v. Lewis*, 40 Misc. 2d 292, 243 N. Y. S. 2d 141 [1963], *aff'd*, 21 App. Div. 2d 854, 252 N. Y. S. 2d 258 [1964], *aff'd*, 15 N. Y. 2d 786, 205 N. E. 2d 685, 257 N. Y. 2d 587 [1965].

¶ 14. A proceeding to review and annul a determination of the Board of Standards and Appeals was not untimely where a copy of the petition and a notice of motion was served within the 30-day period after publication of the Board's determination. It made no difference that the petition was not returnable until after the 30-day period expired.-*Matter of Satin*, 12 App. Div. 2d 526, 208 N. Y. S. 2d 518 [1960].

¶ 15. In an action by an owner and lessee to enjoin the construction on adjoining premises of a building allegedly in violation of zoning ordinances, the action was not barred by the plaintiff's failure to appeal to the Board of Standards and Appeals from the granting of the building permit.-*Lesron, Jr., Inc. v. Feinberg*, 13 App. Div. 2d 90, 213 N. Y. S. 2d 602 [1961].

¶ 16. Approval of building plans and issuance of permit were not stayed by appeal from intermediate ruling of Superintendent of Buildings to the Board of Standards and Appeals. Since, at the time the appeal was taken, the Superintendent had not made a determination upon the application.-*Fleming v. Foley*, 43 Misc. 2d 280, 250 N. Y. S. 2d 834 [1964].



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NYC Charter 675

New York City Charter

CHAPTER 28 DEPARTMENT OF JUVENILE JUSTICE

§ 675. **Department; commissioner.**

There shall be a department of juvenile justice, the head of which shall be the commissioner of juvenile justice.



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NYC Charter 676

New York City Charter

CHAPTER 28 DEPARTMENT OF JUVENILE JUSTICE

§ 676. **Deputies.**

The commissioner may appoint two deputies.



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NYC Charter 677

New York City Charter

CHAPTER 28 DEPARTMENT OF JUVENILE JUSTICE

§ 677. **Powers and duties of the commissioner.**

The commissioner shall:

a. establish, initiate, control, maintain and operate secure and nonsecure facilities for the temporary care and maintenance away from their own homes only of children alleged to be or adjudicated as juvenile delinquents and only of children alleged, adjudicated or convicted as juvenile offenders in detention as defined in subdivision one of section five hundred ten-a of the executive law,

b. have the power to contract with other public and private agencies for such services, in order to ensure that adequate, suitable, and conveniently accessible accommodations and proper care will be available when required for detention, within the appropriations available therefor,

c. establish such regulations for the operation of secure and non-secure detention facilities as may be necessary and not inconsistent with state and local law or with applicable rules and regulations of any state or city agency having jurisdiction. Notwithstanding any other provision of law, the commissioner shall provide or secure the availability of conveniently accessible and adequate non-secure detention facilities, certified by the state division for youth, as resources for the courts in the city of New York pursuant to provisions of the family court act, the criminal procedure law, and section five hundred ten-a of the executive law,

d. develop, implement and maintain systems to collect, store and disseminate data concerning juvenile delinquency, juvenile crime and the juvenile justice system,

e. participate with other city agencies in the development, implementation and maintenance of a juvenile justice information system, to include (i) an index of records of the Family Court and Department of Probation related to proceedings conducted pursuant to Article 3 of the Family Court Act, and (ii) other information, including but not

limited to age, sex, race, date of birth, charges, dispositions, warrants, calendar information and case management data connected with such cases, such records to be made available to the Family Court, the Probation Department, and an agency with which the child is placed or committed upon request, and otherwise to be kept confidential except as provided by law,

f. plan, develop, conduct and supervise programs, including diversion and aftercare for previously detained juveniles, for the prevention of juvenile delinquency and juvenile crime and for youths arrested, charged, adjudicated or convicted of having committed delinquent or criminal acts, and to conduct research and demonstration projects related thereto.

HISTORICAL NOTE

Subd. g amended by L. L. 1983, No. 53.

Section amended by L. 1987, ch. 419, § 25.

Subds. g, h bracketed out of law at General Election, November 8, 1988.



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NYC Charter 678

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CHAPTER 28 DEPARTMENT OF JUVENILE JUSTICE

§ 678. **Advisory board.**

- a. There shall be in the department an advisory board consisting of eleven members.
- b. It shall be the duty of the board to advise the commissioner and make recommendations. The board shall submit an annual report of its activities to the mayor.
- c. The members of the board shall be appointed by the mayor and shall serve at the pleasure of the mayor. Five of the members, one resident from each of the five boroughs of New York city, shall be recommended for appointment by a majority vote of the council members of the respective borough.
- d. The mayor shall designate one of the members of the board to be chairman and one to be vice chairman, neither of whom shall be employees of the city of New York.
- e. The members of the board shall serve without compensation.



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NYC Charter 731

New York City Charter

CHAPTER 30 DEPARTMENT OF YOUTH AND COMMUNITY DEVELOPMENT*31

§ 731. **Department; commissioner.**

There shall be a department of youth and community development, the head of which shall be the commissioner of youth and community development.

HISTORICAL NOTE

Section amended L.L. 81/1996 § 1, eff. Oct. 26, 1996.

Section added L.L. 18/1989 § 2

FOOTNOTES

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[Footnote 31]: * Chapter heading and chapter amended L.L. 81/1996 § 1, eff. Oct. 26, 1996. Chapter added by L. L. 18/1989 § 2. Note other provisions in L. L. 18/1989 § 1.

Section one. Declaration of legislative intent and findings. The Council finds that the city of New York expends millions of dollars annually on programs for youth. Funds earmarked for youth programs are currently distributed among numerous and diverse agencies and organizations in both the public and private sectors, and consequently there is a need for improved, centralized coordination of youth programming in order to avoid duplication of services and allow effective monitoring of both the apportionment of funds and program operations.

The Council finds it appropriate to create a department of youth services to coordinate the large number of youth programs provided by both the city of New York and the private sector. It is the intent of the Council that after the new department is created, youth coordinators will continue to work with youth services planning committees, community boards and the new department with regard to the planning and provision of neighborhood youth services.

§ 3. a. Wherever by any provision of this local law there are functions, powers or duties assigned to the department of youth services or any of its officers or employees which have been heretofore exercised by any other agency, officer or employee, all officers and employees in the classified municipal civil service who at the time when such provision shall take effect are engaged in the performance of such functions, powers or duties, shall be transferred to the department of youth services to which such functions, powers or duties are assigned by this chapter, without examination and without affecting existing collective bargaining agreements, existing compensation or pension or retirement rights, privileges or obligations of such officers and employees. (§ 3 amended by L. L. 44/1989 § 1.)

b. The department of youth services, the interagency coordinating council, and any officer or employee thereof shall continue to exercise those functions, powers and duties assigned pursuant to this local law which had heretofore been exercised by another agency or officer and shall be authorized to continue any business, proceeding or other matter commenced by such agency or officer. The department of youth services and the interagency coordinating council shall be bound by the provisions of any law, rule, regulation, contract, grant or other document relating to the subject matter of such functions, powers and duties applicable to the agency or officer formerly exercising the same in so far as they are not inconsistent with the provisions of this local law.

c. All rules and regulations of an agency or officer whose functions, powers and duties are transferred by this local law to the department of youth services, the interagency coordinating council or any officer or employee thereof, shall continue as the rules of the department of youth services, the coordinating council or any officer thereof, provided however that such department, council, officer or may hereafter duly amend, supersede, or repeal such rules and regulations.

d. All records, property and equipment whatsoever of any agency or part thereof, whose functions, powers and duties are assigned by this local law to the department of youth services or the interagency coordinating council, shall be transferred and delivered to such department or council. If a portion of the functions, powers and duties of any agency or part thereof is by this local law assigned to another agency, all records, property and equipment relating thereto shall be transferred and delivered to the agency to which such functions, powers and duties are so assigned.



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NYC Charter 732

New York City Charter

CHAPTER 30 DEPARTMENT OF YOUTH AND COMMUNITY DEVELOPMENT*31

§ 732. **Deputies.**

The commissioner shall appoint at least one deputy for youth services who shall be responsible for youth services programs and one deputy for community services who shall be responsible for community development programs.

HISTORICAL NOTE

Section amended L.L. 81/1996 § 1, eff. Oct. 26, 1996.

Section added L.L. 18/1989 § 2

FOOTNOTES

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[Footnote 31]: * Chapter heading and chapter amended L.L. 81/1996 § 1, eff. Oct. 26, 1996. Chapter added by L. L. 18/1989 § 2. Note other provisions in L. L. 18/1989 § 1.

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The Council finds it appropriate to create a department of youth services to coordinate the large number of youth programs provided by both the city of New York and the private sector. It is the intent of the Council that after the new department is created, youth coordinators will continue to work with youth services planning committees, community boards and the new department with regard to the planning and provision of neighborhood youth services.

§ 3. a. Wherever by any provision of this local law there are functions, powers or duties assigned to the department of youth services or any of its officers or employees which have been heretofore exercised by any other agency, officer or employee, all officers and employees in the classified municipal civil service who at the time when such provision shall take effect are engaged in the performance of such functions, powers or duties, shall be transferred to the department of youth services to which such functions, powers or duties are assigned by this chapter, without examination and without affecting existing collective bargaining agreements, existing compensation or pension or retirement rights, privileges or obligations of such officers and employees. (§ 3 amended by L. L. 44/1989 § 1.)

b. The department of youth services, the interagency coordinating council, and any officer or employee thereof shall continue to exercise those functions, powers and duties assigned pursuant to this local law which had heretofore been exercised by another agency or officer and shall be authorized to continue any business, proceeding or other matter commenced by such agency or officer. The department of youth services and the interagency coordinating council shall be bound by the provisions of any law, rule, regulation, contract, grant or other document relating to the subject matter of such functions, powers and duties applicable to the agency or officer formerly exercising the same in so far as they are not inconsistent with the provisions of this local law.

c. All rules and regulations of an agency or officer whose functions, powers and duties are transferred by this local law to the department of youth services, the interagency coordinating council or any officer or employee thereof, shall continue as the rules of the department of youth services, the coordinating council or any officer thereof, provided however that such department, council, officer or may hereafter duly amend, supersede, or repeal such rules and regulations.

d. All records, property and equipment whatsoever of any agency or part thereof, whose functions, powers and duties are assigned by this local law to the department of youth services or the interagency coordinating council, shall be transferred and delivered to such department or council. If a portion of the functions, powers and duties of any agency or part thereof is by this local law assigned to another agency, all records, property and equipment relating thereto shall be transferred and delivered to the agency to which such functions, powers and duties are so assigned.



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NYC Charter 733

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CHAPTER 30 DEPARTMENT OF YOUTH AND COMMUNITY DEVELOPMENT*31

§ 733. **Powers and duties.**

a. The department shall have all the powers and duties of a youth bureau as prescribed in article nineteen-a of the executive law and the regulations promulgated thereunder, and shall in addition have the following powers and duties:

1. to advise and assist the mayor and the city council in developing policies designed to meet the needs of youth;
2. to initiate youth programs and coordinate youth programs and activities sponsored by other city agencies and responsible organizations in the private sector;
3. to plan for and coordinate neighborhood youth services in conjunction with community boards and youth services planning committees;
4. to stimulate community interest in the problems of youth;
5. to promote public awareness of resources available for youth, and to refer the public to appropriate departments, agencies and organizations for advice, assistance and services available to youth;
6. to make such studies and reports regarding needs of youth as the commissioner, the city council or the mayor may deem appropriate;
7. to serve as the central source of information relating to services and programs available to youth;
8. to enter into contracts with individuals, organizations and institutions as may be necessary to implement policies and programs consistent with the provisions of this chapter;
9. to disburse available city, state and federal funds to programs throughout the city and, when practical,

coordinate such funds with available funding from the private sector;

10. to maintain, operate and control such programs and facilities as may be necessary or required for the proper administration of the department; and

11. to promulgate rules for the operation of facilities, services and programs under the department's jurisdiction.

b. The department shall have all the powers and duties of a designated community action agency for the community services block grant program established pursuant to chapter 106 of title 42 of the United States code (the "omnibus budget reconciliation act of 1981"; 42 U.S.C. §§9901-9912), and any amendments thereto.

c. The department shall be authorized to carry out programs and activities for eligible youths pursuant to chapter 30 of title 29 of the United States Code (title 1 of the "workforce investment act of 1998"; 29 U.S.C. §§ 2801-2945), and any amendments thereto.

HISTORICAL NOTE

Section amended L.L. 81/1996 § 1, eff. Oct. 26, 1996.

Section added L.L. 18/1989 § 2

Subd. c added L.L. 52/2003 § 5, eff. July 1, 2003. [See Charter § 1301

Note 1]

FOOTNOTES

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[Footnote 31]: * Chapter heading and chapter amended L.L. 81/1996 § 1, eff. Oct. 26, 1996. Chapter added by L. L. 18/1989 § 2. Note other provisions in L. L. 18/1989 § 1.

Section one. Declaration of legislative intent and findings. The Council finds that the city of New York expends millions of dollars annually on programs for youth. Funds earmarked for youth programs are currently distributed among numerous and diverse agencies and organizations in both the public and private sectors, and consequently there is a need for improved, centralized coordination of youth programming in order to avoid duplication of services and allow effective monitoring of both the apportionment of funds and program operations.

The Council finds it appropriate to create a department of youth services to coordinate the large number of youth programs provided by both the city of New York and the private sector. It is the intent of the Council that after the new department is created, youth coordinators will continue to work with youth services planning committees, community boards and the new department with regard to the planning and provision of neighborhood youth services.

§ 3. a. Wherever by any provision of this local law there are functions, powers or duties assigned to the department of youth services or any of its officers or employees which have been heretofore exercised by any other agency, officer or employee, all officers and employees in the classified municipal civil service who at the time when such provision shall take effect are engaged in the performance of such functions, powers or duties, shall be transferred to the department of youth services to which such functions, powers or duties are assigned by this chapter, without examination and without affecting existing collective bargaining agreements, existing

compensation or pension or retirement rights, privileges or obligations of such officers and employees. (§ 3 amended by L. L. 44/1989 § 1.)

b. The department of youth services, the interagency coordinating council, and any officer or employee thereof shall continue to exercise those functions, powers and duties assigned pursuant to this local law which had heretofore been exercised by another agency or officer and shall be authorized to continue any business, proceeding or other matter commenced by such agency or officer. The department of youth services and the interagency coordinating council shall be bound by the provisions of any law, rule, regulation, contract, grant or other document relating to the subject matter of such functions, powers and duties applicable to the agency or officer formerly exercising the same in so far as they are not inconsistent with the provisions of this local law.

c. All rules and regulations of an agency or officer whose functions, powers and duties are transferred by this local law to the department of youth services, the interagency coordinating council or any officer or employee thereof, shall continue as the rules of the department of youth services, the coordinating council or any officer thereof, provided however that such department, council, officer or may hereafter duly amend, supersede, or repeal such rules and regulations.

d. All records, property and equipment whatsoever of any agency or part thereof, whose functions, powers and duties are assigned by this local law to the department of youth services or the interagency coordinating council, shall be transferred and delivered to such department or council. If a portion of the functions, powers and duties of any agency or part thereof is by this local law assigned to another agency, all records, property and equipment relating thereto shall be transferred and delivered to the agency to which such functions, powers and duties are so assigned.



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NYC Charter 734

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CHAPTER 30 DEPARTMENT OF YOUTH AND COMMUNITY DEVELOPMENT*31

§ 734. **Youth board.**

- a. There shall be in the department a youth board, which shall serve as a forum for representatives of disciplines directly concerned with the welfare of youth.
- b. The youth board shall be representative of the community, and shall include persons representing the areas of social service, health care, education, business, industry and labor.
- c. The youth board shall consist of up to twenty-eight members, appointed by the mayor, fourteen of whom shall be appointed upon recommendation of the city council.
- d. The mayor shall designate one of the members of the youth board to be chair.
- e. The members of the youth board shall serve without compensation.
- f. The youth board shall meet at least quarterly.

HISTORICAL NOTE

Section amended L.L. 81/1996 § 1, eff. Oct. 26, 1996.

Section added L.L. 18/1989 § 2

FOOTNOTES

[Footnote 31]: * Chapter heading and chapter amended L.L. 81/1996 § 1, eff. Oct. 26, 1996. Chapter added by L. L. 18/1989 § 2. Note other provisions in L. L. 18/1989 § 1.

Section one. Declaration of legislative intent and findings. The Council finds that the city of New York expends millions of dollars annually on programs for youth. Funds earmarked for youth programs are currently distributed among numerous and diverse agencies and organizations in both the public and private sectors, and consequently there is a need for improved, centralized coordination of youth programming in order to avoid duplication of services and allow effective monitoring of both the apportionment of funds and program operations.

The Council finds it appropriate to create a department of youth services to coordinate the large number of youth programs provided by both the city of New York and the private sector. It is the intent of the Council that after the new department is created, youth coordinators will continue to work with youth services planning committees, community boards and the new department with regard to the planning and provision of neighborhood youth services.

§ 3. a. Wherever by any provision of this local law there are functions, powers or duties assigned to the department of youth services or any of its officers or employees which have been heretofore exercised by any other agency, officer or employee, all officers and employees in the classified municipal civil service who at the time when such provision shall take effect are engaged in the performance of such functions, powers or duties, shall be transferred to the department of youth services to which such functions, powers or duties are assigned by this chapter, without examination and without affecting existing collective bargaining agreements, existing compensation or pension or retirement rights, privileges or obligations of such officers and employees. (§ 3 amended by L. L. 44/1989 § 1.)

b. The department of youth services, the interagency coordinating council, and any officer or employee thereof shall continue to exercise those functions, powers and duties assigned pursuant to this local law which had heretofore been exercised by another agency or officer and shall be authorized to continue any business, proceeding or other matter commenced by such agency or officer. The department of youth services and the interagency coordinating council shall be bound by the provisions of any law, rule, regulation, contract, grant or other document relating to the subject matter of such functions, powers and duties applicable to the agency or officer formerly exercising the same in so far as they are not inconsistent with the provisions of this local law.

c. All rules and regulations of an agency or officer whose functions, powers and duties are transferred by this local law to the department of youth services, the interagency coordinating council or any officer or employee thereof, shall continue as the rules of the department of youth services, the coordinating council or any officer thereof, provided however that such department, council, officer or may hereafter duly amend, supersede, or repeal such rules and regulations.

d. All records, property and equipment whatsoever of any agency or part thereof, whose functions, powers and duties are assigned by this local law to the department of youth services or the interagency coordinating council, shall be transferred and delivered to such department or council. If a portion of the functions, powers and duties of any agency or part thereof is by this local law assigned to another agency, all records, property and equipment relating thereto shall be transferred and delivered to the agency to which such functions, powers and duties are so assigned.



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NYC Charter 735

New York City Charter

CHAPTER 30 DEPARTMENT OF YOUTH AND COMMUNITY DEVELOPMENT*31

§ 735. **Interagency coordinating council.**

a. There shall be an interagency coordinating council established by the mayor which shall consist of representatives of each city agency providing services to youth, representatives from the youth board established pursuant to section seven hundred thirty-four of this chapter and a representative of the city council who shall be appointed by the speaker of the city council. The mayor, or his or her designee, shall serve as chairperson of the interagency coordinating council and shall preside over all meetings. The commissioner shall serve as director of the interagency coordinating council.

b. The interagency coordinating council shall:

1. prepare and include in the report required by paragraph ten of this subdivision an annual breakdown for the immediately preceding fiscal year of each member agency's allocations for services to youth and the number of youth served;

2. recommend, in consultation with the office of operations, means for improving member agencies' delivery, management and supervision of services to youth;

3. recommend means by which the duplication and fragmentation of service delivery to youth may be reduced and the efficiency, effectiveness and economy of service delivery may be enhanced;

4. consider proposals from member agencies, the city council and the youth board for the improvement of service delivery to youth;

5. recommend to the mayor joint agency projects or programs which could make more efficient use of existing resources;

6. plan and develop a comprehensive information service for the benefit of youth, their families, service providers and school and government personnel, which shall include citywide, boroughwide and community board program directories, hotlines and other such services designed to facilitate public accessibility to such information;

7. conduct an annual comprehensive youth services needs assessment on a citywide, boroughwide and community district basis;

8. formulate an integrated, comprehensive plan for the delivery of community-based services to youth;

9. compile, collect and develop periodically, and make available, information and data relating to youth and youth services in New York city; and

10. issue an annual report, in October of each year, to the city council and the mayor summarizing its activity during the previous fiscal year and detailing recommendations for improving service delivery and coordination, reducing duplication and fragmentation and facilitating the more efficient use of existing resources. Such report shall also include an annual breakdown of member agencies' allocations for services to youth and the number of youth served as prescribed in paragraph one of this subdivision, an annual comprehensive youth services needs assessment as prescribed in paragraph seven of this subdivision, and a two-year proposed agenda consisting of specific issues that the interagency coordinating council plans to address during the current and subsequent fiscal years.

c. The interagency coordinating council shall meet at least quarterly and shall hold at least one public hearing annually, at which public testimony shall be taken.

HISTORICAL NOTE

Section amended L.L. 81/1996 § 1, eff. Oct. 26, 1996.

Section amended L.L. 1/1992 § 1, eff. Jan. 3, 1992.

Subd. a amended L.L. 27/1994 § 2, eff. July 7, 1994. [See Note]

Subd. b par 10 added (as subd. d) L.L. 67/1991 § 1, eff. July 18, 1991.

Section added L.L. 18/1989 § 2

NOTE

Provisions of L.L. 27/1994 § 1

Section 1. Declaration of legislative findings and intent. The Council finds that the Interagency Coordinating Council ("ICC") has repeatedly failed to fulfill all of its charter-mandated responsibilities, such as compiling an annual breakdown of each member agency's allocations for services to youth during each fiscal year. Although the ICC is required to hold quarterly meetings and one public hearing each year, only two such meetings and no hearings were held in fiscal year 1993. In addition, although the ICC is required to issue a comprehensive annual report in October of each year, the last annual report was issued for fiscal year 1992.

The Council finds that the repeated failure of the ICC to meet its charter-mandated requirements has compromised its effectiveness as well as the intent and goals behind its creation. At the same time, however, the Council recognizes the significant potential for cross-agency collaboration that still remains in the structure of the ICC. Such collaboration has the potential to reduce the duplication and fragmentation of service delivery to youth that currently exists among the twenty-four agencies that provide youth-related services, which can result in an integrated, comprehensive and cost-effective youth services system in the City of New York.

It is the desire of the Council to make the ICC a more viable and responsive entity that will more fully serve its intended function. Accordingly, this legislation would include a representative of the Council of the City of New York, to be appointed by the Speaker, as a member of the ICC.

FOOTNOTES

31

[Footnote 31]: * Chapter heading and chapter amended L.L. 81/1996 § 1, eff. Oct. 26, 1996. Chapter added by L. L. 18/1989 § 2. Note other provisions in L. L. 18/1989 § 1.

Section one. Declaration of legislative intent and findings. The Council finds that the city of New York expends millions of dollars annually on programs for youth. Funds earmarked for youth programs are currently distributed among numerous and diverse agencies and organizations in both the public and private sectors, and consequently there is a need for improved, centralized coordination of youth programming in order to avoid duplication of services and allow effective monitoring of both the apportionment of funds and program operations.

The Council finds it appropriate to create a department of youth services to coordinate the large number of youth programs provided by both the city of New York and the private sector. It is the intent of the Council that after the new department is created, youth coordinators will continue to work with youth services planning committees, community boards and the new department with regard to the planning and provision of neighborhood youth services.

§ 3. a. Wherever by any provision of this local law there are functions, powers or duties assigned to the department of youth services or any of its officers or employees which have been heretofore exercised by any other agency, officer or employee, all officers and employees in the classified municipal civil service who at the time when such provision shall take effect are engaged in the performance of such functions, powers or duties, shall be transferred to the department of youth services to which such functions, powers or duties are assigned by this chapter, without examination and without affecting existing collective bargaining agreements, existing compensation or pension or retirement rights, privileges or obligations of such officers and employees. (§ 3 amended by L. L. 44/1989 § 1.)

b. The department of youth services, the interagency coordinating council, and any officer or employee thereof shall continue to exercise those functions, powers and duties assigned pursuant to this local law which had heretofore been exercised by another agency or officer and shall be authorized to continue any business, proceeding or other matter commenced by such agency or officer. The department of youth services and the interagency coordinating council shall be bound by the provisions of any law, rule, regulation, contract, grant or other document relating to the subject matter of such functions, powers and duties applicable to the agency or officer formerly exercising the same in so far as they are not inconsistent with the provisions of this local law.

c. All rules and regulations of an agency or officer whose functions, powers and duties are transferred by this local law to the department of youth services, the interagency coordinating council or any officer or employee thereof, shall continue as the rules of the department of youth services, the coordinating council or any officer thereof, provided however that such department, council, officer or may hereafter duly amend, supersede, or repeal such rules and regulations.

d. All records, property and equipment whatsoever of any agency or part thereof, whose functions, powers and duties are assigned by this local law to the department of youth services or the interagency coordinating council, shall be transferred and delivered to such department or council. If a portion of the

functions, powers and duties of any agency or part thereof is by this local law assigned to another agency, all records, property and equipment relating thereto shall be transferred and delivered to the agency to which such functions, powers and duties are so assigned.



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NYC Charter 736

New York City Charter

CHAPTER 30 DEPARTMENT OF YOUTH AND COMMUNITY DEVELOPMENT*31

§ 736. **Community action board.**

There shall be in the department a community action board which shall be constituted so as to assure that it is in compliance with applicable federal and state requirements.

HISTORICAL NOTE

Section added L.L. 81/1996 § 1, eff. Oct. 26, 1996.

FOOTNOTES

31

[Footnote 31]: * Chapter heading and chapter amended L.L. 81/1996 § 1, eff. Oct. 26, 1996. Chapter added by L. L. 18/1989 § 2. Note other provisions in L. L. 18/1989 § 1.

Section one. Declaration of legislative intent and findings. The Council finds that the city of New York expends millions of dollars annually on programs for youth. Funds earmarked for youth programs are currently distributed among numerous and diverse agencies and organizations in both the public and private sectors, and consequently there is a need for improved, centralized coordination of youth programming in order to avoid duplication of services and allow effective monitoring of both the apportionment of funds and program operations.

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of youth programs provided by both the city of New York and the private sector. It is the intent of the Council that after the new department is created, youth coordinators will continue to work with youth services planning committees, community boards and the new department with regard to the planning and provision of neighborhood youth services.

§ 3. a. Wherever by any provision of this local law there are functions, powers or duties assigned to the department of youth services or any of its officers or employees which have been heretofore exercised by any other agency, officer or employee, all officers and employees in the classified municipal civil service who at the time when such provision shall take effect are engaged in the performance of such functions, powers or duties, shall be transferred to the department of youth services to which such functions, powers or duties are assigned by this chapter, without examination and without affecting existing collective bargaining agreements, existing compensation or pension or retirement rights, privileges or obligations of such officers and employees. (§ 3 amended by L. L. 44/1989 § 1.)

b. The department of youth services, the interagency coordinating council, and any officer or employee thereof shall continue to exercise those functions, powers and duties assigned pursuant to this local law which had heretofore been exercised by another agency or officer and shall be authorized to continue any business, proceeding or other matter commenced by such agency or officer. The department of youth services and the interagency coordinating council shall be bound by the provisions of any law, rule, regulation, contract, grant or other document relating to the subject matter of such functions, powers and duties applicable to the agency or officer formerly exercising the same in so far as they are not inconsistent with the provisions of this local law.

c. All rules and regulations of an agency or officer whose functions, powers and duties are transferred by this local law to the department of youth services, the interagency coordinating council or any officer or employee thereof, shall continue as the rules of the department of youth services, the coordinating council or any officer thereof, provided however that such department, council, officer or may hereafter duly amend, supersede, or repeal such rules and regulations.

d. All records, property and equipment whatsoever of any agency or part thereof, whose functions, powers and duties are assigned by this local law to the department of youth services or the interagency coordinating council, shall be transferred and delivered to such department or council. If a portion of the functions, powers and duties of any agency or part thereof is by this local law assigned to another agency, all records, property and equipment relating thereto shall be transferred and delivered to the agency to which such functions, powers and duties are so assigned.



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NYC Charter 751

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CHAPTER 31 DEPARTMENT OF SANITATION*32

§ 751. **Department; commissioner.**

There shall be a department of sanitation the head of which shall be the commissioner of sanitation.

FOOTNOTES

32

[Footnote 32]: * Chapter 31 added by L.L. 1977, No. 24.



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NYC Charter 752

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CHAPTER 31 DEPARTMENT OF SANITATION*32

§ 752. **Deputies.**

The commissioner may appoint three deputies.

FOOTNOTES

32

[Footnote 32]: * Chapter 31 added by L.L. 1977, No. 24.



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CHAPTER 31 DEPARTMENT OF SANITATION*32

§ 753. **Powers and duties of the commissioner.**

a. Except as otherwise provided by law, the commissioner shall have charge and control of and be responsible for all those functions and operations of the city relating to the cleanliness of the streets and the disposal of waste, including, without limitation, the following:

- (1) the sweeping, cleaning, sprinkling, flushing, washing and sanding of the streets;
- (2) the removal and disposition of ashes, street sweepings, garbage, refuse, rubbish and waste;
- (3) the removal of ice and snow from the streets;
- (4) the removal of encumbrances from the streets and the storage or disposal of such encumbrances;

(5) plans, design, construction, operation, alteration, repair, maintenance, replacement, enlargement and regulation of the use of incinerators, landfills and other plants, facilities and equipment necessary for or useful for performing the functions and exercising the powers and duties enumerated in this section; and

(6) the powers and duties of the commissioner with respect to the resource recovery task force set forth in subdivision f of section fourteen hundred and three, of this charter.

b. The commissioner may adopt regulations specifying the kind of ashes, garbage, refuse, rubbish or other material or substance that will be collected by the city, from whom it will be taken, the manner in which it shall be arranged or sorted, the time when it will be collected and the place at which it shall be deposited for collection, and may prescribe civil penalties for violations thereof.

c. Such regulations shall be enforced by order of the commissioner. Such order shall be addressed to the owner

or owners, lessees or premises affected thereby. It shall not be necessary to designate such owner or owners, lessees or occupants by name in such order, however, the premises shall be designated in the address so that the same may be readily identified. Service of any such order may be made by delivery of a copy thereof to the owner or any one of several owners, to a lessee or any one of several lessees, or to any person of suitable age or discretion in charge of the premises, or if no person be found in charge of the premises, then by affixing a copy of such order prominently upon the premises. If such order is not complied with within the time specified therein, the commissioner shall prosecute the person or corporation liable therefor for the penalty prescribed by the regulation violated in furtherance of which such order shall have been issued and served.

d. The commissioner may adopt regulations controlling the use of sidewalks and gutters by abutting owners and occupants for the disposition of sweepings, garbage, refuse or rubbish, and may provide that the violation thereof shall be punishable by civil penalty, fine or imprisonment. Such regulations shall be submitted to the council and when approved by it shall be published and enforced in like manner as local laws.

HISTORICAL NOTE

Subd. a par. (4) amended at General Election, November 7, 1989.

Subd. a par (4) amended L.L. 59/1996 § 15, eff. Aug. 8, 1996.

FOOTNOTES

32

[Footnote 32]: * Chapter 31 added by L.L. 1977, No. 24.



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New York City Charter

CHAPTER 31 DEPARTMENT OF SANITATION*32

§ 754. **Duties and obligations of property owner with respect to keeping vacant lots clean.**

Notwithstanding any provision of law, the owner of any property at such owner's own cost shall keep any vacant lot or lots on such property in a clean and sanitary manner and free of debris and other litter. The department of sanitation shall be responsible for the enforcement of this section and may issue rules and regulations in furtherance of such authority. In the event that an owner of property fails to comply with the provisions of this section, or the rules and regulations of such department, the department may provide for the cleaning of a vacant lot at the expense of the property owner in the manner to be provided by local law.

HISTORICAL NOTE

Section amended at General Election, November 7, 1989.

FOOTNOTES

32

[Footnote 32]: * Chapter 31 added by L.L. 1977, No. 24.



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New York City Charter

CHAPTER 31 DEPARTMENT OF SANITATION*32

§ 755. **Definition.**

When used in this chapter "street" includes street, avenue, road, alley, lane, highway, parkway, boulevard, concourse, driveway, culvert and crosswalk, and every class of public road, square and place, except a wharf, pier, bulkhead or slip by law committed to the custody and control of any other agency.

FOOTNOTES

32

[Footnote 32]: * Chapter 31 added by L.L. 1977, No. 24.



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NYC Charter 801

New York City Charter

CHAPTER 34 DEPARTMENT OF INVESTIGATION

§ 801. **Department; commissioner.**

There shall be a department of investigation the head of which shall be the commissioner of investigation. The commissioner shall be a member of the bar of the state of New York in good standing and shall have had at least five years of law enforcement experience. The mayor may remove the commissioner upon filing in the office of the commissioner of citywide administrative services and serving upon the commissioner of investigation the reasons therefor and allowing such officer an opportunity of making a public explanation.

HISTORICAL NOTE

Amended at General Election, November 4, 1975.

Amended at General Election, November 7, 1989.

Section amended L.L. 59/1996 § 16, eff. Aug. 8, 1996.



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NYC Charter 802

New York City Charter

CHAPTER 34 DEPARTMENT OF INVESTIGATION

§ 802. **Deputies.**

The commissioner may appoint two deputies, either of whom may, subject to the direction of the commissioner, conduct or preside at any investigations authorized by this chapter.



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NYC Charter 803

New York City Charter

CHAPTER 34 DEPARTMENT OF INVESTIGATION

§ 803. **Powers and duties.**

- a. The commissioner shall make any investigation directed by the mayor or the council.
- b. The commissioner is authorized and empowered to make any study or investigation which in his opinion may be in the best interests of the city, including but not limited to investigations of the affairs, functions, accounts, methods, personnel or efficiency of any agency.
- c. For any investigation made pursuant to this section, the commissioner shall prepare a written report or statement of findings and shall forward a copy of such report or statement to the requesting party, if any. In the event that the matter investigated involves or may involve allegations of criminal conduct, the commissioner, upon completion of the investigation, shall also forward a copy of his written report or statement of findings to the appropriate prosecuting attorney, or, in the event the matter investigated involves or may involve a conflict of interest or unethical conduct, to the board of ethics.
- d. the jurisdiction of the commissioner shall extend to any agency, officer, or employee of the city, or any person or entity doing business with the city, or any person or entity who is paid or receives money from or through the city or any agency of the city.
- e. The commissioner shall forward to the council and to the mayor a copy of all reports and standards prepared by the corruption prevention and management review bureau, upon issuance by the commissioner.

HISTORICAL NOTE

Amended at General Election, November 4, 1975.

Subd. (e) added L.L. 79/1990 § 1, eff. Dec. 19, 1990.

CASE NOTES

¶ 1. Charter § 803, authorizing Commissioner of Investigation to make any "investigation which in his opinion may be in the best interests of the City, including but not limited to investigations of the affairs, functions, accounts, methods, personnel or efficiency of any agency,"-"agency" being defined in former § 981 (now § 1150) as city, county, borough or other office, position, . . . or agency of government, the expenses of which are paid in whole or in part from the city treasury"-**held** not to authorize the Commissioner, in the course of a survey of the methods of clerks of the Supreme Court in Kings County, to subpoena and examine the general clerk of that court, since the power given was as to "city, county and borough" institutions whereas any examination into the methods of court clerks would be an inquiry into methods of the court, and even if an "agency in government" were to include courts an examination of the Supreme Court, which is an agency covering the entire state and whose judges are state officers, would violate the limitations of former § 981 (now § 1150), which authorizes examination of "city, county and borough" officers. Actually, "agency of government" could not be deemed to include state agencies, but was construable as meaning certain units which perform state functions and which either by delegation of authority or other means have come to have definite connection with the city. Furthermore, the unlimited discretion given the Commissioner to conduct any examination which he deemed for the best interests of the City embraced only those subjects similar to those enumerated, to the end that inquiries intended, but not expressly mentioned, should not be cut off.-Applications of Herlands, 170 Misc. 131, 9 N. Y. S. 2d 956 [1939], *aff'd* without opinion, 257 App. Div. 935, 13 N. Y. S. 2d 279 [1939], *aff'd* without opinion, 288 N. Y. 708, 43 N. E. 2d 91 [1942].

¶ 2. Under Charter § 803, the investigations which the Commissioner of Investigation is authorized to make are limited to such as have a legitimate and reasonable relation to the operation of the executive branch of the City government, of which branch the Commissioner was an administrative officer.-In re Ellis, 176 Misc. 887, 28 N. Y. S. 2d 988 [1941].

¶ 3. Insertion of words "but not limited to" investigations of "the affairs, functions, accounts, methods, personnel or efficiency of any agency" did not render meaningless the words "the affairs, functions," etc., as those words were illustrative of the type of investigation the Commissioner was authorized to conduct.-Id.

¶ 4. The power of legislatures to make investigations is limited to such investigations as are in fact auxiliary to and in aid of the legislative function, and does not extend to general investigations into private affairs of citizens.-Id.

¶ 5. The Commissioner of Investigation's powers of investigation are limited to such investigations as are a means to the end of a better discharge of some duty imposed upon, or a better exercise of some power that lawfully may be exercised by the executive branch of the City government, and investigations by him are lawful only when they have a legitimate and reasonable relation to the performance of some such duty.-Id.

¶ 6. Commissioner of Investigation **held** to have been without authority to issue subpoenas duces tecum requiring two certain banks to appear and be examined relative to an executive inquiry and to produce all data since 1935 to date concerning a bank account of an attorney who was acting as counsel for a committee of the Council examining into the affairs of the Municipal Civil Service Commission, on the ground that the attorney had allegedly been connected with a membership corporation organized for purpose of legalizing lotteries, and the commissioner desired to investigate the attorney as to his integrity and qualifications to act as counsel to the councilmanic committee, as to any connections of the Police Department with the membership corporation and whether any legislator or employee was the beneficiary of any money received by the attorney therefrom. An administrative officer of the executive branch of the City government might not investigate as to whether the Council had made a wise choice in engaging an attorney in connection with its investigation, the subpoenas were not issued for purpose of aiding the exercise of any lawful power of the executive branch of the City government, and the evidence was desired as an end in itself, with the mere suggestion that it might turn up something discreditable to some one, which sort of official inquisition is judicially

condemned.-Id.

¶ 7. Also, the power of the Commissioner to subpoena documents is conferred by Civil Practice Act § 406, and the court has power to determine what is a proper case for subpoenaing documents. In the immediate case the subpoenas were not issued in aid of an investigation having a legitimate and reasonable relation to the discharge of a duty or exercise of a power lawfully possessed by the executive branch of the City government, and the scope of the subpoenas was so broad as to require complete disclosure respecting the attorney's transactions with other clients, as disclosed by his bank account.-Id.

¶ 8. Petitioner, appearing individually and as president of the New York State Compensation Representatives Association, **held** entitled to the quashing of a subpoena directing him to appear before the Commissioner of Investigation of the City of New York and to produce all records relating to Workmen's Compensation cases "handled by you" during a certain period. The administration of the Workmen's Compensation Law, which is statewide in character, was not included in the term "agency" as defined by the New York City Charter former § 981 (now § 1150), and as used in § 803 of the Charter authorizing the Commissioner of Investigation to make any investigation he deemed for the best interests of the City, including investigations of the affairs of any agency, (170 Misc. 131, aff'd 257 App. Div. 935, aff'd 288 N. Y. 708; 176 Misc. 887). However, the Commissioner's right to investigate frauds practiced upon the City in Workmen's Compensation cases, where it is the insurer, might receive judicial approval if investigation were confined to those cases, but the wording of the subpoena issued to petitioner would permit examination of records relating to Workmen's Compensation cases handled by petitioner on behalf of claimants against other employers.-Curtis v. Herlands, 38 N. Y. S. 2d 964 [1942].

¶ 9. Motion to adjudge respondent bookmaker in contempt for refusing to answer questions of Commissioner of Investigation in connection with an investigation of the Comptroller's Office for purpose of learning whether bookmakers were enjoying an immunity from the payment of the gross business tax upon returns from bookmaking, was denied, on ground that bookmaking is taboo by constitutional provision (Constitution, Art. 1, § 9), and that City agencies could not be held to have been recreant in their duties in failing to collect gross business taxes from bookmakers operating illegally in New York City. If there is doubt as to whether the Commissioner had the right to proceed in the manner adopted, or whether defendant's conduct amounted to contempt, such doubt should be resolved in favor of the respondent.-In re Bromberger (Erickson), 187 Misc. 593, 62 N. Y. S. 2d 47 [1946].

¶ 10. The right to collect gross business taxes from bookmakers should be decided in a proper proceeding by the taxing authorities who may levy a tax and then proceed to collect it. The circuitous method adopted by the Commissioner of Investigation through seeking to examine a bookmaker as a witness in the course of an investigation of the Comptroller's Office for purpose of learning whether bookmakers were enjoying an immunity from the payment of gross business taxes upon returns from bookmaking, was without legal sanction.-Id.

¶ 11. Order denying motion to quash subpoena duces tecum served on petitioner, who operated a check-cashing establishment, directing him to attend at the office of the Department of Investigation to be examined under oath and to produce certain records in connection with an investigation of "gambling" and whether check-cashing establishments were operating as so-called "fronts" for gamblers, was affirmed without opinion.-Blitzer v. Bromberger, 295 N. Y. 596, 64 N. E. 2d 290 [1945].

¶ 12. In affirming a conviction of perjury for giving false testimony at a hearing before the Commissioner of Investigations conducting an inquiry into the affairs of check cashing corporation, the Court of Appeals affirmed the conviction without opinion. Defendants contention that the Commissioner was limited to an investigation to the transactions of the City offices or agencies and of the acts of the officers, subordinates and employees of these offices and agencies and had no right to investigate the acts or transactions of private individuals or corporations was rejected.-People v. Kornblith, 296 N. Y. 738, 70 N. E. 2d 547 [1946].

¶ 13. Investigation instituted by Commissioner of Investigation, at direction of the Mayor, into the affairs,

functions, accounts, methods, personnel and efficiency of the Board of Education, **held** to constitute a proper exercise by the Commissioner of the powers and duties vested in him by law, particularly in view of charges made by members of the Board of Education's Advisory Committee on Human Relations to effect that there had been an administrative breakdown in the Board of Education (227 N. Y. 297). Furthermore, a holding that the Commissioner was without power to conduct an inquiry with respect to the Board of Education would hamper the Mayor in the discharge of his legal responsibilities imposed by § 523 of the Charter, which confers upon him the power to hear charges and remove members of the board.-In re Karelsen (Yavner), 59 N. Y. S. 2d 683 [1945].

¶ 14. Commissioner of Investigation had jurisdiction to make an inquiry into blockbusting activities and fact that Secretary of State of New York was conducting investigation of blockbusting did not affect his power to investigate where the state investigation was directed to the disciplining of real estate brokers and the investigation by the Commissioner was not concerned with this matter.-Sherman v. Ruskin, 162 (14) N. Y. L. J. (12-15-69) 14, Col. 1 M.

¶ 15. Subject matter of Commissioner of Investigation's inquiry to ascertain whether those doing business in the milk industry in the City employed practices having the effect of increasing the price of milk purchased by the City and the general public and whether there was a tendency to restrict competition or fix and maintain prices at artificial levels, with the ultimate purpose of the investigation being to determine whether legislation and regulation were needed, **held** within the proper authority of the Commissioner.-Application of Dairymen's League Co-Op. Ass'n, 299 N. Y. 634, 86 N. E. 2d 509 [1949], aff'g, 274 App. Div. 591, 84 N. Y. S. (2d) 749 [1948].

¶ 16. Contention that powers of Commissioner of Investigation are limited to examination of City departments and do not extend to an inquiry into methods of those who do business with the City, was rejected.-Application of Dairymen's League Co-Op. Ass'n, 299 N. Y. 634, 86 N. E. 2d 509 [1949]. aff'g 274 App. Div. 591, 84 N. Y. S. (2d) 749 [1948].

¶ 17. The Commissioner properly acted within his powers in issuing a subpoena duces tecum against milk distributor calling for production of its books and records showing the names and addresses of all its retail and chain store customers in New York City who had purchased milk from it at less than listed prices, the price charged each such store and the quantity of milk sold there, and the names and addresses of all such store customers who had received rebates in connection with sales of milk and the amounts of rebate paid each. The prices paid for milk by the City and its inhabitants were of concern to both, and the practice of granting rebates may have an important bearing upon the prices paid for milk by the City and its people. There was no showing that the subpoenas were irrelevant to the inquiry. Furthermore, that the information sought was confidential and involved trade secrets, would not excuse a refusal to produce the records.-Application of Dairymen's League Co-Op. Ass'n, 299 N. Y. 634, 86 N. E. 2d 509 [1949], aff'g. 274 App. Div. 591, 84 N. Y. S. (2d) 749 [1948].

¶ 18. Application of eight citizen taxpayers of the City of New York for a Court inquiry into alleged violations and neglect of duty by the City Collector's Office in the handling of tax liens, was denied, where neither in the petition nor elsewhere did petitioners set forth a single fact showing any violation, irregularity or neglect. A series of newspaper articles which were sought to be incorporated in the petition likewise failed to disclose any sources of information or grounds of belief for charges made upon information and belief. Moreover, the City Commissioner of Investigation had already conducted an inquiry in regard to sales of transfers of tax liens, copies of the Commissioner's report to the Mayor and the evidence taken in the investigation had been submitted to the District Attorney of New York County and he was presently in process of pursuing his own investigation, and any inquiry by the Court at the present time might prejudice the steps being taken by the District Attorney.-In re Marlow (Frontera), 122 (113) N. Y. L. J. (12-14-49) 1640, Col. 6 T.

¶ 19. Application for order prohibiting respondent, a county judge in the County of Kings in his capacity as magistrate, from proceeding under an information charging petitioner with neglect of duty in failing to report to the Mayor of the City of New York the results of an investigation conducted by petitioner as Commissioner of Investigation into the Police Department of the City, was granted, as the neglect of duty charged to the Commissioner of Investigation

could be committed only where the duty was required to be performed, which in the instant case was New York County. The failure to report was a single act of omission, not divisible into several parts, and therefore the Kings County magistrate was assuming to deal with a crime which could not have been committed in Kings County.-*Murtagh v. Leibowitz*, 303 N. Y. 311, 101 N. E. 2d 753 [1951], reversing 278 App. Div. 512, 105 N. Y. S. 2d 752, which affirmed 106 N. Y. S. 2d 372.

¶ 20. There is no valid reason why information obtained by the Commissioner of Investigations should not be available to an investigative body of the City Council nor is there any reason why such an investigative body should not have the legal right to obtain such information as soon as it deems necessary. Thus, where the Commissioner of Investigations was subpoenaed by a special committee of the City Council for the purpose of producing information it had obtained in its investigation of welfare payments in the City, the Court refused to quash the subpoenas.-*Matter of Herlands (Surpless)*, 258 App. Div. 275, 16 N. Y. S. 2d 454 [1939], *aff'd*, 282 N. Y. 647, 26 N. E. 2d 800 [1940].

¶ 21. In an investigation by the Department of Investigation into bribery, extortion and collusion in the Department of Water Supply, Gas and Electricity where employees were questioned and then instructed to complete and return on a subsequent day a 23-page questionnaire containing 70 questions, some with subdivisions, and covering the activities, not only of the witness but also his wife, brothers, sisters, parents, parents-in-law, brothers-in-law, and sisters-in-law, dependent and emancipated children and other dependents for a period of about six years, **held**, although the investigation was a proper one and a proper questionnaire could include inquiry into assets, bank accounts and property of the employee examined, wives and children, the questionnaire in issue is oppressive and the application to restrain Commission from requiring them to complete the questionnaire is granted, without prejudice to the direction to complete a proper questionnaire.-*Matter of Abrahams* (N. Y. C. Dept. of Investigation), 144 (47) N. Y. L. J. (9-7-60) 12, Col. 1 F.

¶ 22. Where a subpoena duces tecum was served by the Department of Investigation upon the Building Department Inspector Association in an investigation into complaints that persons having business with the Building Department were solicited to buy tickets to affairs sponsored by the employee's association, **held**, the court would not say that the subpoena served upon the Association was not within the power of the Commissioner of Investigations.-*Matter of Dept. of Investigation of City of New York*, 143 (111) N. Y. L. J. (6-9-60) 12, Col. 1 F.

¶ 23. Motion to quash subpoena issued in connection with an investigation in collusive arrangements between City employees and others regarding installations of gasoline tanks in violation of the Fire Prevention Code, was denied. The investigation was in the public interest and disclosures might, among other things, result in corrective legislation.-*Matter of Vic Construction Corp. (Dept. Investigation)*, 144 (96) N. Y. L. J. (11-18-60) 13, Col. 8 F.

¶ 24. Commissioner of Investigation could investigate the use of City funds by Mobilization for Youth, Inc. a non-profit organization, when so empowered by the Mayor.-*Ferrante v. City of New York*, 153 (10) N. Y. L. J. (1-22-65) 16, Col. 1 T.

¶ 25. Where there is no indication that person subject to subpoena had any connection with matter under investigation until April 1967, effectiveness of subpoena calling for records should commence from that date.-*Weintraub v. Fraiman*, 30 A. D. 2d 784, 291 N. Y. S. 2d 438 [1968], *aff'd*, 24 N. Y. 2d 918, 249 N. E. 2d 762, 301 N. Y. S. 2d 483 [1969].

¶ 26. During inquiry conducted by Department of Investigation after receiving complaints that sanitation department personnel of a particular district were collecting wastes from commercial enterprises for remuneration sanitation men assigned to that district were required to have their photographs taken at their garage so they could be shown to complainants for identification purposes. Such photographing does not violate the self-incrimination privilege nor constitute an invasion of their right of privacy.-*DeLury v. Kretchmer*, 66 Misc. 2d 897, 322 N. Y. S. 2d 517 [1971].

¶ 27. The Family Court in a juvenile delinquency proceeding may direct that its opinion be forwarded to the New

York City Commissioner of Investigation for further investigation pursuant to subdivision b of this section where there has been an egregious mishandling of the case and blatant disregard of the law, a court order and generally accepted social work standards.-Matter of Browning, 125 Misc.2d 896, 480 N.Y.S.2d 671 (Fam.Ct. Queens Co. 1984).

¶ 28. The Department of Investigation (DOI) has the power to investigate private businesses that are licensed by the City Department of Consumer Affairs. In other words, DOI's investigative power is not limited to cases involving City contracts. *New York Shredding Corp. v. New York City Dept. of Investigation*, 184 Misc.2d 174, 708 N.Y.S.2d 548 (Sup.Ct. New York Co. 2000).

¶ 29. The Department of Investigation is given wide latitude under the statute to investigate wrongdoing by municipal employees. Thus, public policy bars arbitration of a dispute over whether the employee rights of a collective bargaining agreement can be invoked to limit or restrict the procedures of criminal investigation commenced by the Department. *City of New York v. Uniformed Firefighters Ass'n.*, 95 N.Y.2d 273, 713 N.Y.S.2d 384 (2000).

¶ 30. *Parkhouse v. Stringer*, 17 Misc.3d 1119(A) 2007 WL 3101922, contains a discussion of the powers of the Department of Investigation (DOI). The commissioner of the DOI is authorized to make any investigation which, in his opinion, may be in the best interests of the City, including but not limited to investigations of the affairs, functions, methods, personnel or efficiency of any agency. See *New York City DOI v. Passannante*, 148 A.D.2d 101, 544 N.Y.S.2d 1 (1st Dept. 1989). DOI's power to investigate extends to anyone, even though the person is not a City employee, when the commissioner has grounds to believe that the person has information relevant to the subject matter under investigation. See *Weintraub v. Fraiman*, 30 A.D.2d 784, 291 N.Y.S.2d 438 (1st Dept. 1968), *aff'd* 24 N.Y.2d 918, 301 N.Y.S.2d 983 (1969). DOI's power, however, has limitations. It may not conduct an unlimited and general inquisition into the affairs of a person under its jurisdiction solely on the prospect of possible violations of law being discovered. See *A'Hearn v. Committee on Unlawful Practice of Law of New York County Lawyers Ass'n*, 23 N.Y.2d 916, 298 N.Y.S.2d 315 (1969). Instead, the investigations it is authorized to make are limited to ones which have a legitimate and reasonable relationship to the operation of the executive branch of City government. See *New York Shredding Corp. v. DOI*, 184 Misc.2d 174, 708 N.Y.S.2d 548 (Sup.Ct. New York Co. 2000). In *Parkhouse*, the court held that where petitioner voluntarily testified at a public hearing before the Landmarks Preservation Commission (LPC), the DOI had the power to investigate whether petitioner testified falsely concerning the contents of a letter from a public official stating the official's position on a matter being considered by the LPC. Moreover, even persons who are not in contractual privity with the City can be subject to DOI's jurisdiction. See *C.S.A. Contracting Corp. v. Stancik*, 259 A.D.2d 318, 686 N.Y.S.2d 424 (1st Dept. 1999)(subcontractor on Board of Education project was subject to DOI's investigation). In *Parkhouse*, DOI's investigation related to the affairs and functions of a City agency, the LPC, and the conduct of its hearing. It was investigating the manner in which petitioner identified herself, and the viewpoint she was purporting to represent at the hearing. The investigation had a legitimate and reasonable relation to LPC's function of determining whether a particular property should be landmarked and what the view of the public officials, as well as others, are with regard to such landmarking. The investigation also bears a reasonable relation to the public purpose of assuring that parties appearing before the LPC do not misrepresent the views of public officials. It is vital in a free society that persons testifying at a public hearing testify truthfully. Where such persons purport to read a letter or statement of a public official, it is important that no unauthorized alterations, especially those that change the import of the letter or statement, be made (petitioner allegedly read the letter in such a manner as to give the impression that the official urged the LPC to go ahead with the landmarking of a building, when in fact the official merely urged the LPC to place on the calendar the question of whether the building should or should not be landmarked). Furthermore, the fact that the DOI investigation could possibly lead to criminal charges, regarding petitioner's representations at the hearing does not warrant the quashing of a DOI subpoena; petitioner must appear, although she can invoke the Fifth Amendment privilege as to specific questions. She cannot invoke the Fifth Amendment prior to questions actually having been asked. *Application of Waterfront Commission of New York Harbor*, 245 A.D.2d 63, 665 N.Y.S.2d 82 (1st Dept. 1997), *leave dismissed*, 93 N.Y.2d 921, 691 N.Y.S.2d 385 (1999).

¶ 31. *Parkhouse v. Stringer*, 2009 WL 1789128 (Ct. of Appeals) illustrates the delicate balance between the need to protect the First Amendment rights of speakers at public meetings and the legitimate need for the Department of

Investigation (DOI) to investigate fraud or criminal wrongdoing. Petitioner, Virginia Parkhouse and another person, Lindsey Miller, were members of a group known as Landmark West, which supports historic preservation of historic properties located on the Upper West Side of Manhattan. Landmark West supported the designation of the Mason Dakota Stables and the New York City Cab Co. Stables as landmarks.

Manhattan Borough President Scott Stringer wrote a letter to the Landmarks Preservation Commission (LPC) which expressed interest in the possibility of landmarking the properties and urged the LPC to calendar the matter for a public hearing. However, the letter DID NOT expressly support the designation of the properties as landmarks (emphasis supplied by editor).

On the day of the hearing, Parkhouse and Miller were present. Parkhouse registered as a speaker on behalf of Landmark West. In her presentation, she purported to read the Stringer letter, verbatim. However, what she actually read was a version of the letter that she altered to make it appear that Stringer unqualifiedly supported the landmarking designation for the properties. It turned out that, subsequent to writing the letter, Stringer changed his mind and expressly opposed the landmarking designation. Stringer sent a representative to monitor the meeting, but the representative was silent. It is not clear whether Parkhouse knew that Stringer had changed his position. However, she did know that she was adding her own words to the Stringer letter to reflect things that Stringer had never said.

Meanwhile, Miller, instead of identifying herself as a member of Landmark West, registered as a speaker, purportedly representing Assembly Member Linda Rosenthal. However, Rosenthal had never authorized Miller to speak on her behalf. To make matters worse, an actual authorized representative of Rosenthal was denied the right to speak, because the LPC erroneously believed that Rosenthal was already being represented by Miller (the LPC has limits on the number of people from any one organization who can speak). Miller spoke at the hearing and read a purported letter from Rosenthal which she (Miller) had altered in a manner similar to what Parkhouse had done.

When Stringer learned what had occurred, he complained to the DOI and asked that an investigation be launched. He suggested, among other things, that there was a possible violation of Penal Law 190.25, impersonation of a public officer. The DOI served a subpoena on Parkhouse, seeking to question her about her own conduct and about whatever she knew about Miller's conduct (note-the court said it was unclear whether Parkhouse had any role in setting up Miller to impersonate a representative of an Assembly Member). Parkhouse moved to quash the subpoena.

In deciding the case, the court had to consider two issues-Parkhouse's own conduct and Parkhouse's knowledge, if any, of possible criminal wrongdoing on the part of Miller.

At the outset, the Court of Appeals said that Section 803 has broad application, so that the DOI's investigatory powers reach any person, whether or not employed by or doing business with the City, where there are grounds to present to sustain a belief that such person has information relative to the subject matter of the investigation. The court recognized the need to protect speakers at public meetings from harassment by government officials. Thus, the court placed stringent limits on the ability of DOI to question people who speak at public hearings. However, under the particular facts of the case, the court found that there were sufficient grounds for the issuance of the subpoena.

To the extent that DOI sought to question Parkhouse about Miller's activities, the court had little difficulty in holding that the subpoena did not impinge upon free speech. DOI sought to ask Parkhouse not about speech but about Miller's alleged impersonation of a public official; no one could seriously argue that impersonating a public official was a form of free speech.

To the extent that DOI sought to question Parkhouse about her own speech, the question for the court was more difficult. The court expressed great reluctance to allow DOI to examine citizens about their statements at public meetings or hearings. Had Parkhouse spoken generally about, or just summarized the statements made by Stringer in his letter, the court might have quashed the subpoena. However, Parkhouse allegedly did much more than summarize Stringer's comments; she purported to read the letter verbatim. If in fact she inserted her own language to reflect things

that Stringer had never said, then she made a false statement. Free speech does not extend to the making of false statements. Thus, under the unique facts presented here, the court found that the subpoena was justified, and denied the motion to quash.



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CHAPTER 34 DEPARTMENT OF INVESTIGATION

§ 804. **Complaint bureau.**

There shall be a complaint bureau in the department which shall receive complaints from the public.



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CHAPTER 34 DEPARTMENT OF INVESTIGATION

§ 805. **Conduct of investigations.**

a. For the purpose of ascertaining facts in connection with any study or investigation authorized by this chapter, the commissioner and each deputy shall have full power to compel the attendance of witnesses, to administer oaths and to examine such persons as he may deem necessary.

b. The commissioner or any agent or employee of the department duly designated in writing by him for such purposes may administer oaths or affirmations, examine witnesses in public or private hearing, receive evidence and preside at or conduct any such study or investigation.

CASE NOTES

¶ 1. Under § 805 of the Charter granting the Commissioner of Investigation the right to require the attendance of witnesses in connection with an investigation, the Commissioner possesses power to subpoena documents.-In re Weiner, 183 Misc. 267, 49 N. Y. S. 2d 199 [1944].

¶ 2. Inquiry by Commissioner of Investigation into the affairs, accounts, personnel and efficiency of the Department of Hospitals with respect to the admittance of patients into City Hospitals, related to the affairs of the City. Also, a reasonable basis existed to compel the appearances and testimony of petitioner, who was the owner of an ambulance and oxygen service, and the subpoenaing of his books of accounts relative to the selection, hiring and use of ambulances for transportation of patients to City hospitals, where reasonable ground was shown to believe that admitting physicians at Queens Hospital were recommending, for a fee, the use by prospective patients of certain private ambulance service, specifically that of petitioner.-Id.

¶ 3. That petitioner, who was chairman of an Advisory Committee on Human Relations of the Board of Education, was not an employee of the City, did not preclude the Commissioner of Investigation from subpoenaing him in

connection with an inquiry into the affairs of the Board of Education.-In re Karelsen (Yavner), 59 N. Y. S. 2d 683 [1945].

¶ 4. Order affirming conviction of defendant for perjury in the second degree, predicated upon false testimony given by defendant in an investigation conducted by Commissioner of Investigation into the affairs of a check cashing corporation to determine whether it was used as a front for a gambling organization and to determine whether either the check cashing corporation or the gambling organization were defrauding the City of taxes or enjoying improper relationships with any City department, and to cooperate with the State Banking Department in its efforts to revoke the corporation's license, **was affirmed** without opinion, notwithstanding the defendant's contention that the Commissioner was unauthorized to conduct the investigation.-People v. Kornblith, 296 N. Y. 738, 70 N. E. 2d 546 [1946].

¶ 5. This section gives the Commissioner power to require the attendance of witnesses but does not give him the power to subpoena documents.-Matter of Ellis, 176 Misc. 887, 28 N. Y. S. 2d 988 [1941].

¶ 6. Records of investigation made of the milk industry by the Commissioner of Investigation could not be subpoenaed in civil action against leading milk companies to recover damages for alleged conspiracy to sell milk at excessive prices. Public press report by Commissioner did not waive immunity from disclosure.-Blaike v. Borden Co., 47 Misc. 2d 180 262 N. Y. S. 2d 8 [1965].

¶ 7. Subpoena issued by Commissioner of Investigation to an attorney in connection with its inquiry regarding the office of City Marshall and concerning a cash contribution which the attorney was alleged to have received from a marshall in behalf of his client, a political leader, and said to have been for the purpose of obtaining the marshall's reappointment, which called for his general diary and desk calendar and all bank records of himself and his wife exceeded the proper scope of inquiry in that it not only concerned the attorney's private and professional affairs relating to the investigation but also touched the affairs of his clients.-In re Weintraub, 159 (20) N. Y. L. J. (1-29-68) 17, Col. 4 F.

¶ 8. Subpoena duces tecum issued by Commissioner of Investigation of City of New York is valid if served anywhere within the state.-Ruskin v. Brenner, 60 Misc. 2d 545, 303 N. Y. S. 2d 826 [1969], aff'd, 305 N. Y. S. 2d 966 [1969].

¶ 9. Subpoenas which bore a reasonable relationship to an investigation of the Housing and Development Administration authorized by Charter § 803 was properly issued by the Commissioner of Investigation.-Ruskin v. Racklin, 167 (45) N. Y. L. J. (3-7-72) 2, Col. 2 F.

¶ 10. The Mollen Commission, established to investigate allegations of corruption and the effectiveness of police procedures, was properly empowered to hold hearings, receive evidence and examine witnesses to perform its tasks, as well as subpoena witnesses pursuant to Charter §§ 802, 805. Kelly v. Dinkins, 155 Misc. 2d 787, 590 N.Y.S.2d 166 [1993].

¶ 11. The Department of Investigation (DOI) commissioner has the power to compel witnesses to testify for the purpose of ascertaining facts in connection with any study or investigation authorized by the City Charter. Parkhouse v. Stringer, 2009 WL 1789128 (Ct. of Appeals), reported as note 31, City Charter Sec. 803.



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CHAPTER 34 DEPARTMENT OF INVESTIGATION

§ 806. **Interference with investigation.**

[Became § 1128].



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CHAPTER 34 DEPARTMENT OF INVESTIGATION

§ 807. **Inspectors general of agencies.**

No person shall be appointed as an inspector general of a city agency unless such appointment is approved by the commissioner of investigation. The commissioner of investigation shall promulgate standards of conduct and shall monitor and evaluate the activities of inspectors general in the agencies to assure uniformity of activity by them.

HISTORICAL NOTE

Adopted at General Election, November 4, 1975.



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NYC Charter 810

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CHAPTER 35 DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES*33

§ 810. **Department, commissioner.**

There shall be a department of citywide administrative services, the head of which shall be the commissioner of citywide administrative services. The commissioner may appoint deputies within available appropriations.

HISTORICAL NOTE

Section amended out of law and added L.L. 59/1996 § 1, eff. Aug. 8, 1996. Former § 810 transferred to § 812.
[See Note]

NOTE

Provisions of L.L. 59/1996:

§ 107. Any agency or officer to which are assigned by or pursuant to this local law any functions, powers and duties shall exercise such functions, powers and duties in continuation of their exercise by the agency or officer by which the same were heretofore exercised and shall have power to continue any business, proceeding or other matter commenced by the agency or officer by which such functions, powers and duties were heretofore exercised. Any provision in any law, rule, regulation, contract, grant or other document relating to the subject matter of such functions, powers or duties, and applicable to the agency or officer formerly exercising the same shall, so far as not inconsistent with the provisions of this local law, apply to the agency or officer to which such functions, powers and duties are assigned by or pursuant to this local law.

§ 108. Any rule or regulation in force on the effective date of this local law, and promulgated by an agency or officer whose power to promulgate such type of rule or regulation is assigned by or pursuant to this local law to some other agency or officer, shall continue in force as the rule or regulation of the agency or officer to whom such power is

assigned, except as such other agency or officer may hereafter duly amend, supersede or repeal such rule or regulation.

§ 109. If any of the functions, powers or duties of any agency or part thereof is by or pursuant to this local law assigned to another agency, all records, property and equipment relating to such transferred function, power or duty shall be transferred and delivered to the agency to which such function, power or duty is so assigned.

§ 110. No existing right or remedy of any character accruing to the city shall be lost or impaired or affected by reason of the adoption of this local law.

§ 111. No action or proceeding, civil or criminal, pending at the time when this local law shall take effect, brought by or against the city or any agency or officer, shall be affected or abated by the adoption of this local law or by anything herein contained; but all such actions or proceedings may be continued notwithstanding that functions, powers and duties of any agency or officer party thereto may by or pursuant to this local law be assigned or transferred to another agency or officer, but in that event the same may be prosecuted or defended by the head of the agency or the officer to which such functions, powers and duties have been assigned or transferred by or pursuant to this local law.

§ 112. Whenever by or pursuant to any provision of this local law, functions, powers or duties may be assigned to any agency or officer which have been heretofore exercised by any other agency or officer, officers and employees in the classified city civil service who are engaged in the performance of such functions, powers or duties may be transferred to the agency to which such functions, powers or duties may be assigned by or pursuant to this local law.

§ 113. Any license, permit or other authorization in force on the effective date of this local law, and issued by an agency, where the power of such agency to issue such license, permit or authorization is assigned by or pursuant to this local law to another agency or officer, shall continue in force as the license, permit or authorization of such other agency, or officer, except as such license, permit or authorization may expire or be altered, suspended or revoked by the appropriate agency or office pursuant to law. Such license, permit or authorization shall be renewable in accordance with the applicable law by the agency or officer with such power pursuant to law, including this local law.

§ 114. The provisions of this local law shall be severable and if any phrase, clause, sentence, paragraph, subdivision or section of this local law, or the applicability thereof to any person or circumstance, shall be held invalid, the remainder of this local law and the application thereof shall not be affected thereby.

§ 115. This local law shall take effect thirty days after its enactment into law.

FOOTNOTES

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[Footnote 33]: * Chapter heading amended LL 59/1996 § 1, eff. Aug. 8, 1996; amended at General Election, November 8, 1988.



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CHAPTER 35 DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES*33

§ 811. **Powers and duties of the commissioner; general.**

The commissioner shall be responsible for citywide personnel matters, as set forth in this chapter, and shall have all the powers and duties of a municipal civil service commission provided in the civil service law or in any other statute or local law other than such powers and duties as are by this chapter assigned to the mayor, the city civil service commission or the heads of the city agencies; the commissioner shall in addition have the power to perform all the functions and operations of the city of New York relating to the maintenance and care of public buildings and facilities; the procurement of goods and other personal property; the disposition of surplus property; the provision to city agencies of services other than personal services; the acquisition, disposition and management by the city of real property other than housing; and the provision of automotive, communication, energy, and data processing services.

HISTORICAL NOTE

Section amended L.L. 59/1996 § 1, eff. Aug. 8, 1996.

Section amended at General Election, November 4, 1975.

CASE NOTES

¶ 1. The Department of Personnel could not be enjoined from moving from premises they had occupied for 22 years even though it was alleged by owner that new space was not as desirable as present space and that move was to show favoritism to new landlord.-Duane Board Co. v. Wagner, 151 (34) N. Y. L. J. (2-19-64) 16, Col. 5 F.

¶ 2. N. Y. C. personnel director has standing to maintain CPLR Art. 78 proceeding challenging decision of N. Y. C. Civil Service Commission awarding vets' preference credits to cert. police officers who were summoned, as Armed Forces reservists, to active duty for a few hours to help maintain mail service during postal strike. N. Y. C. Personnel

director has both policy-making authority and functional responsibility for civ. serv. matters in N. Y. C. (§ 811), whereas powers reserved to N. Y. C. Civ. Serv. Comn. are those of an appeals bd. (§ 812). Fact that such comn. may serve as appeal bd. to director's determinations does not preclude him from seeking review of decisions by which he is aggrieved.-N. Y. C. v. City Civil Service Comn. and N. Y. C. Personnel Dept. v. City Civil Service Commission, 60 N. Y. 2d 436 [1983].

FOOTNOTES

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[Footnote 33]: * Chapter heading amended LL 59/1996 § 1, eff. Aug. 8, 1996; amended at General Election, November 8, 1988.



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CHAPTER 35 DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES*33

§ 812. **Personnel management, declaration of intent.**

a. The personnel policies and practices of the city government, in furtherance of this charter, the civil service law and rules and other applicable law, shall: (1) preserve and promote merit and fitness in city employment, (2) ensure that appointments and promotions in city service are made, and that wages are set, without regard to political affiliation, and without unlawful discrimination based on sex, race, color, religion, religious observance, national origin, disability, age, marital status, citizenship status or sexual orientation; and promote and support the efficient and effective delivery of services to the public.

b. Consistent with subdivision a of this section, the heads of city agencies shall have such powers, duties and responsibilities for personnel management as they shall require to administer their agencies effectively and to supervise, evaluate, motivate, discipline, provide incentives for and improve the skills of employees of the city.

HISTORICAL NOTE

Section added L.L. 59/1996 § 1, eff. Aug. 8, 1996.

DERIVATION

Formerly § 810 added at General Election, November 4, 1975; Section amended at General Election, November 8, 1988; Subd. a amended at General Election, November 7, 1989.

FOOTNOTES

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[Footnote 33]: * Chapter heading amended LL 59/1996 § 1, eff. Aug. 8, 1996; amended at General Election, November 8, 1988.



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CHAPTER 35 DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES*33

§ 813. **City civil service commission.**

a. There shall be a city civil service commission, consisting of five members, not more than three of whom shall be members of the same political party. Members shall be appointed by the mayor, from a list of nominations provided by the screening committee established pursuant to subdivision b of this section, for overlapping terms of six years. Of the members first appointed, two shall serve for two years and two for four years and one for six years. The members shall be removable in the manner provided for members of a municipal civil service commission in the civil service law. A vacancy in such commission shall be filled in the same manner as regular appointments for the balance of the unexpired term. The mayor shall designate a member as chair and vice chair, respectively, for one-year terms. Within appropriations for such purposes, the members of the commission shall be reimbursed on a per diem basis for attendance at regularly scheduled meetings and hearings of the commission.

b. There shall be a screening committee which shall submit to the mayor a list of nominees, which shall include persons with knowledge or experience of the civil service system, or personnel management, or compensation practices, from which the mayor shall make appointments to the city civil service commission. Such screening committee shall consist of six members, of whom four shall be appointed by the mayor and two shall be appointed by the municipal labor committee. The screening committee shall submit the list of nominees upon the occurrence of any vacancy on the commission or at least three months prior to the expiration of the term of any incumbent member.

c. The commission shall appoint a counsel, who shall not be employed or retained by any other city agency, and may appoint a secretary and such other subordinates as may be necessary within the appropriation therefor.

d. The civil service commission shall have the power to hear and determine appeals by any person aggrieved by any action or determination of the commissioner made pursuant to paragraphs three, four, five, six, seven and eight of subdivision a or paragraph five of subdivision b of section eight hundred fourteen of this chapter and may affirm, modify, or reverse such action or determination. Any such appeal shall be taken by application in writing to the

commission within thirty days after the action or determination appealed from. The commission shall also have the powers and responsibilities of a municipal civil service commission under section seventy-six of the state civil service law. In accordance with the requirements of chapter forty-five, the commission shall promulgate rules of procedure, including rules establishing time schedules, for the hearings and determinations authorized by this section.

e. The commission, on its own initiative, or upon request of the mayor, council, or commissioner, shall have the power and duty to conduct reviews, studies, or analyses of the administration of personnel in the city, including the classification of titles by the commissioner.

f. The commission shall prepare and transmit directly to the mayor departmental estimates as required by section two hundred thirty-one. The mayor shall include such proposed appropriations for the commission as a separate agency in the preliminary and executive budgets as are sufficient for the commission to fulfill the obligations assigned to it by this charter or other law.

HISTORICAL NOTE

Section renumbered and amended L.L. 59/1996 § 1, eff. Aug. 8, 1996, formerly § 812.

Section amended L.L. 8/1963.

Section amended at General Election, November 4, 1975.

Section amended at General Election, November 7, 1989.

Subds. a, c amended at General Election November 8, 1988.

CASE NOTES FROM FORMER SECTION

¶ 1. Where it did not appear whether the ground for rejection of petitioner as probationary patrolman was the fact of Communist petition signed by applicant's mother or was based on the number of applicant's traffic violations, Court **ordered** disclosure by Police Commissioner to determine whether rejection was arbitrary and capricious.-*Forde v. Adams*, 207 Misc. 577, 138 N. Y. S. 2d 603 [1955].

¶ 2. N. Y. C. personnel director has standing to maintain CPLR Art. 78 proceeding challenging decision of N. Y. C. Civil Service Commission awarding vets preference credits to cert. police officers who were summoned, as Armed Forces reservists, to active duty for a few hours to help maintain mail service during postal strike. N. Y. C. Personnel director has both policy-making authority and functional responsibility for civ. serv. matters in N. Y. C. (§ 811), whereas powers reserved to N. Y. C. Civ. Serv. Comn. are those of an appeals bd. (§ 812). Fact that such comn. may serve as appeal bd. to director's determinations does not preclude him from seeking review of decisions by which he is aggrieved.-*N. Y. C. v. City Civil Service Comn. and N. Y. C. Personnel Dept. v. City Civil Service Commission*, 60 N. Y. 2d 436 [1983].

¶ 3. Respondent claims she was improperly disqualified from her provisional position as eligibility specialist with the Human Resources Administration by the Department of Personnel without a hearing. City civil service commission overturned DOP determination pursuant to § 812(c) is rational, not arbitrary or capricious, and prior conviction record has no bearing on duties to be performed or create unreasonable risk to other employees.-*City of NY v. Civ. Serv. Comn.*, 141 Misc 2d 276 [1988].

¶ 4. NYC civil service commission is an administrative agency having only those powers expressly or impliedly given it namely the power to hear appeals of persons aggrieved by determinations of the NYC Personnel Department, Charter § 812(c). It does not have the power to grant back pay to an improperly discharged police officer. *Dep't of Personnel v. NYC Civ. Serv. Comm.*, 169 AD2d 597 reversed 79 NY2d 806 [Dec. 1991].

¶ 5. The Civil Service Commissioner had a rational basis for reinstating an employee to his position as a Watershed Maintainer within the Department of Environmental Protection. Although the employee had prior criminal convictions for attempted robbery, sexual abuse, criminal possession of a weapon and theft of transportation services, those convictions were long in the past and the employee had kept a clean record since that time. Moreover, there was no direct relationship between the past offenses and the position of Watershed Maintainer. The Commission was also rational in its finding that the employee did not pose a risk to public safety. *City of New York v. New York City Civil Service Commission*, 30 A.D.3d 277, 817 N.Y.S.2d 254 (1st Dept. 2006).

FOOTNOTES

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[Footnote 33]: * Chapter heading amended LL 59/1996 § 1, eff. Aug. 8, 1996; amended at General Election, November 8, 1988.



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New York City Charter

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***** Current through December 2009 *****

NYC Charter 814

New York City Charter

CHAPTER 35 DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES*33

§ 814. **Personnel management; powers and duties of the commissioner.**

a. The commissioner shall have the following powers and duties in addition to the powers and duties of a municipal civil service commission provided in the civil service law, and those vested in the commissioner as head of the department, except where any specific power or duty is assigned to the mayor, heads of city agencies or the civil service commission pursuant to this chapter:

- (1) To recruit personnel;
- (2) To make studies in regard to the grading and classifying of positions in the civil service, establish criteria and guidelines for allocating positions to an existing class of positions, and grade and establish classes of positions;
- (3) To schedule and conduct examinations for positions in the civil service;
- (4) To establish, promulgate and certify eligible lists in the manner provided in the civil service law, and the rules of the commissioner;
- (5) To determine the appropriateness of eligible lists for the filing of vacancies in the manner provided in the civil service law and the rules of the commissioner;
- (6) To investigate applicants for positions in the civil service; to review their qualifications, and to revoke or rescind any certification or appointment by reason of the disqualification of the applicant or appointee under the provisions of the civil service law, and the rules of the commissioner or any other law;
- (7) To review any appointment of persons as provisional employees within sixty days after appointment to assure compliance with this chapter, the civil service law, and any rule or regulation issued pursuant to this charter or

civil service law;

(8) To certify payrolls in accordance with the provisions of the civil service law and the rules of the commissioner;

(9) To keep records regarding candidates for appointment to the civil service and officers and employees in the civil service;

(10) To develop and recommend to the mayor standard rules governing working conditions, vacations and leaves of absence; and career, salary and wage plans providing for the creation, abolition and modification of positions and grades and fixing salaries of persons paid from the city treasury, subject to the provisions of this charter, the civil service law, other applicable statutes and collective bargaining agreements;

(11) To administer the city-wide safety incentive, training and development, and other such personnel programs of the city;

(12) To establish and enforce uniform procedures and standards to be utilized by city agencies in establishing measures, programs and plans to ensure a fair and effective affirmative employment plan for equal employment opportunity plan for equal employment opportunity for minority group members and women who are employed by, or who seek employment with, city agencies. Such procedures shall include a time schedule for the development of such plans which provides for the preparation by each agency of a draft plan, the review of such draft plan by the department of citywide administrative services, the equal employment practices commission, and such other agency as the mayor requires, and the consideration by the agency of any comments received on such draft plans prior to the adoption of a final plan as required by paragraph nineteen of subdivision a of section eight hundred fifteen;

(13) To establish a uniform format to be utilized by all city agencies in the preparation of the quarterly reports required by subdivision i of section eight hundred fifteen. Such format shall provide for the presentation of statistical information regarding total employment, including provisional, seasonal, per-diem and part-time employees, new hiring and promotions in a manner which facilitates understanding of an agency's efforts to provide fair and effective equal opportunity employment for minority group members, women and members of other groups who are employed by, or who seek employment with, city agencies;

(14) To develop, in conjunction with other city agencies, a clearinghouse for information on employment and educational programs and services for minority group members and women; and

(15) To provide assistance to minority group members and women employed by, or interested in being employed by, city agencies to ensure that such minority group members and women benefit, to the maximum extent possible, from city employment and educational assistance programs.

b. The commissioner shall have the following powers and duties with respect to the personnel management functions assigned to city agencies pursuant to subdivisions a, b, c, and d of section eight hundred fifteen.

(1) To aid in the development of effective and efficient personnel programs and professional personnel staffs in the agencies of the city; and to convene the personnel officers of the agencies from time to time as a personnel council to consider personnel matters of inter-agency or of city-wide concern;

(2) To approve agency plans and programs pursuant to paragraphs seven, nine and thirteen of subdivision a of section eight hundred fifteen; (3) To establish and enforce standards, guidelines and criteria for the personnel management functions assigned to the agencies and to audit performance by the agencies of such personnel functions;

(4) To reverse or rescind any agency personnel action or decision pursuant to an assignment or delegation of authority in this chapter, upon a finding of abuse after notification to the agency and an opportunity to be heard;

(5) To hear and determine appeals by any person aggrieved by any action or determination of the head of an agency made pursuant to paragraphs three, five, seven and eleven of subdivision a of section eight hundred fifteen, subject to review by the civil service commission as provided in subdivision c of section eight hundred thirteen;

(6) To delegate to the head of an agency personnel management functions assigned to the commissioner where such delegation is not otherwise prohibited by the civil service law, and pursuant to terms and conditions prescribed by the commissioner;

(7) To administer personnel programs of a city-wide nature or common to two or more departments where administration by separate agencies would be impracticable and uneconomical;

(8) To annually publish and submit to the mayor, council and the commission on equal employment practices a report on the activities of the department of citywide administrative services and city agencies to provide fair and effective affirmative employment practices to ensure equal employment opportunity for minority group members and women who are employed by, or who seek employment with, city agencies. Such report shall include, but not be limited to, an analysis of the city government workforce and applicants for such employment by agency, title and classification; a description of each agency's employment practices, policies and programs; an analysis of the effectiveness of the city's efforts to provide fair and effective affirmative employment practices to ensure equal employment opportunity for minority group members and women who are employed by, or who seek employment with, city agencies; and such legislative, programmatic and budgetary recommendations for the development, implementation or improvement of such activities as the commissioner deems appropriate.

c. The commissioner shall promulgate rules and regulations relating to the personnel policies, programs and activities of city government in furtherance of and consistent with the state civil service law and this chapter. The commissioner shall transmit to the state civil service commission each proposed rule which must be submitted to such commission, including any which establishes or reclassifies titles in the non-competitive or exempt class, within sixty days after the public hearing has been held on such rule.

d. The commissioner shall, at the time requested by the city civil service commission or the equal employment practices commission, provide each commission with all the information which such commission deems necessary to fulfill the duties assigned to it by the charter. The provisions of this subdivision shall not apply to any information which is required by law to be kept confidential or which is protected by the privileges for attorney-client communications, attorney work products, or material prepared for litigation.

e. The commissioner shall submit a quarterly report to the mayor, the council, the civil service commission and the equal employment practices commission. Such report shall specify, by agency and by title, including temporary titles:

(1) the number of provisional employees at the end of the second month of the quarter;

(2) the length of time such provisional employees have served in their positions; and

(3) the actions taken by the city to reduce the number of such provisional employees and the length of their service in such positions. Such reports shall be submitted by the last day of March, June, September, and December of each year.

HISTORICAL NOTE

Section renumbered and amended L.L. 59/1996 § 1, eff. Aug. 8, 1996, formerly § 813.

Section amended by L. 1954, ch. 354.

Section amended by L. 1962, ch. 998, § 36.

Section amended at General Election, November 4, 1975.

Subd. a par. 10 amended by L. L. 1977, No. 102.

Subd. a open par. amended at General Election, November 8, 1988.

Subd. a par. 11 amended by L. L. 1987, No. 60.

Subd. a par (13) amended L.L. 75/2001 § 1, eff. Dec. 27, 2001.

Subd. a par. (11) amended, pars. (12)-(15) added at General Election, November 7, 1989.

Subd. b open par., par. 2 amended at General Election, November 8, 1988.

Subd. b par. 5 amended by L. L. 1977, No. 102.

Subd. b par. (7) amended, par. (8) added at General Election, November 7, 1989.

Subd. c amended at General Election, November 7, 1989.

Subds. d, e added at General Election, November 7, 1989.

CASE NOTES FROM FORMER SECTION

¶ 1. A probationary patrolman passed pre-appointment medical examinations by the Civil Service Commission and the Police Department. His probationary period expired July 31. Prior thereto, two departmental physical examinations showed him to be suffering from hypertension. Under such circumstances, the Police Commissioner had the right to dismiss him at the end of the probationary period. The notice of dismissal, dated July 30 and effective July 31, was not served until August 1, because of petitioner's absence from the City. Such service was a substantial compliance with statutory requirements.-*Going v. Kennedy*, 5 A. D. 2d 173, 170 N. Y. S. 2d 234 [1958], *aff'd* 5 N. Y. 2d 900, 183 N. Y. S. 2d 81, 156 N. E. 2d 711 [1954]. See also *Myricks v. Kennedy*, 6 Misc. 2d 584, 161 N. Y. S. 2d 956 [1957].

¶ 2. Upon the creation of a new position of assistant deputy warden in the Department of Correction, the deputy warden eligible list was properly used for certifying applicants for the new position, that one being the most nearly appropriate for the purpose.-*In re Cafaro (Schechter)*, 7 Misc. 2d 518, 162 N. Y. S. 2d 642 [1957].

¶ 3. A proceeding under Art. 78 of the C. P. A. to compel reinstatement of petitioner's name upon an eligible list for patrolman is not one which should be transferred to the Appellate Division for disposition. It appearing from the record that the Commission's decision was neither unfounded nor arbitrary, the petition is dismissed.-*Tutora v. Civil Service Commission*, 6 Misc. 2d 1076, 166 N. Y. S. 2d 35 [1957].

¶ 4. City employees under the "career and salary plan" are not entitled to paid holidays falling on days when they are not required to work. Department of Hospital employees regularly required to work on a Saturday which was Columbus Day are entitled to compensatory time. However, an employee may not demand a day's pay in lieu of compensatory time.-*Osborne v. Board of Estimate*, 15 Misc. 2d 250, 181 N. Y. S. 2d 593 [1958].

¶ 5. Public health inspectors who, after reclassification, were doing the work of public health sanitarians although qualified for the position of senior public health sanitarian could not complain, since their new duties were the same as their former ones.-*In re Reich (Baumgartner)*, 140 (113) N. Y. L. J. (12-12-58) 12, Col. 2 T.

¶ 6. The reclassification of a personal property appraiser in an unlimited salary grade to be an "appraiser (personal property), Grade XVI," which grade bore a maximum salary, will not be upset by the Court. The "career and salary plan" provides that persons in unlimited salary grades shall not, upon reclassification, be subject to maximum salary limitations.-Matter of Greenwald, 17 Misc. 2d 611, 188 N. Y. S. 2d 751 [1959].

¶ 7. In an Article 78 proceeding where the papers presented an issue as to whether the reclassification of accountants' positions in the Comptroller's office corresponded with the realities of the situation, the matter was set down for trial.-In re Rainbow (Schechter), 141 (87) N. Y. L. J. (5-6-59) 11, Col. 3 F.

¶ 8. The determination by the Civil Service commission classifying the positions of the petitioners, was upheld, since the classification had been made as the result of a careful study and analysis on the part of the Commissioner.-Matter of Hogans (Schechter), 142 (13) N. Y. L. J. (7-17-59) 4, Col. 6 F.

¶ 9. Petitioner charged with large responsibility in the supervision of 50 employees in the City's collector's office in Brooklyn was entitled to classification as administrative associate, Salary Grade 16.-In re Fuller, (Schechter), 143 (53) N. Y. L. J. (3-18-60) 13, Col. 5 T.

¶ 10. Petitioner employed in the real estate department of the Transit Authority and its predecessor since 1922 was entitled to classification as Senior Administrative Assistant, Salary Grade 18, in view of the fact that he had complete and independent authority.-Myerson v. Schechter, 20 Misc 2d 749, 205 N. Y. S. 2d 591 [1960].

¶ 11. An attorney engaged in the trial of paternity cases was classified as attorney Grade 18. He was not entitled to an order changing such classification to senior attorney Grade 23 since he did not supervise any other attorneys and his work did not involve complicated questions of law.-Matter of Schatkin (Felix), 142 (111) N. Y. L. J. (12-9-59) 13, Col. 2 T.

¶ 12. Nonsupervisory senior public health sanitarians were entitled to a temporary injunction restraining Commissioner from filling positions of senior public health sanitarians, since such a program would impair the right of petitioner to advancement under promotional examinations.-Matter of Edelman (Baumgartner), 143 (6) N. Y. L. J. (1-11-60) 15, Col. 2 T.

¶ 13. Petitioner, formerly classified as a housing inspector grade 4 with unlimited salary rights, and reclassified as a supervising housing inspector grade 17 under the Career and Salary Plan reclassification, had no basis for claiming that the inclusion of the title of principal housing inspector as part of the same reclassification violated any constitutional or statutory mandate. His complaint that he was bypassed in favor of other former grade 4 personnel in making assignments to the position of principal housing inspector was met by the City's contention that the higher position was given to personnel performing those duties falling within the higher classification. **Held:** the City action was not arbitrary nor did it violate any of petitioner's rights.-Matter of Motto (Lang), 145 (13) N. Y. L. J. (1-19-61) 14, Col. 4 M.

¶ 14. The reclassification of Supervisors of Park Operations as Assistant Park Directors, pursuant to the Career and Salary Plan, was an invalid attempt to validate "out-of-title" work.-Roche v. Wagner, 34 Misc. 2d 920, 229 N. Y. S. 2d 594 [1962], aff'd. 18 App. Div. 2d 647, 235 N. Y. S. 2d 325 [1962], aff'd. 12 N. Y. 2d 314, 189 N. E. 2d 805, 239 N. Y. S. 2d 537 [1963].

¶ 15. The Career and Salary Classification Board is a creature of the Civil Service Commission and can only make advisory recommendations. The Commission, and not the Board, was a proper party in a judicial proceeding to review the Board's denial of petitioner's appeal for a reclassification of his title.-In re Neenan, 147 (121) N. Y. L. J. (6-22-62) 10, Col. 2 M.

¶ 16. A determination of the Civil Service Commission and the Director of Personnel that social welfare workers could compete with assistant supervisors for the position of supervisor was not arbitrary. The social welfare workers

were within the related or collateral lines of promotion within the meaning of Civil Service Law § 52.-Giogio v. Lang, 37 Misc. 2d 1006, 235 N. Y. S. 2d 137 [1962], *aff'd*, 238 N. Y. S. 2d 506 [1963].

¶ 17. Petitioner was arrested in a gambling raid, and \$2,606 was seized from his person. Thereafter, evidence of the seizure was suppressed by a magistrate and gambling charges against petitioner were dismissed. The District Attorney issued a so-called release of the money to the Property Clerk. Petitioner commenced an Article 78 proceeding to compel the magistrate to order the Property Clerk to release the money to petitioner. **Held:** proceeding dismissed. The Property Clerk is the proper person to determine whether the money is subject to "lawful detention." And a proceeding should be directed against him, not against the court.-*In re Pinta*, 36 Misc. 2d 386, 232 N. Y. S. 2d 336 [1962].

¶ 18. The eligible promotion list of Motor Vehicle Dispatcher was not appropriate to fill position of foreman in the Department of Sanitation. Training, experience and background of dispatchers did not qualify them for position as foremen. Sanitation foremen assigned to district garages were not performing improper or out-of-title work where dispatching of vehicles was only incidental to duties of supervision.-*In re Reich* 151 (39) N. Y. L. J. (2-26-64) 16, Col. 8 T.

¶ 19. Petitioner's civil service position was reclassified on July 1, 1954 when the Career and Salary Plan became effective. A proceeding to direct the City Civil Service Commission to reclassify the position, was dismissed. It was essentially a proceeding to review the 1954 reclassification, and had to be instituted within four months after the determination became final (112) N. Y. S. 2d 9; & c.).-*In re Gravina (Lang)*, 150 (122) N. Y. L. J. (12-24-63) 8, Col. 3 M.

¶ 20. Shifting of positions between the Rule X title of clerk grade 5 and the Rule XI position of administrative assistant was illegal. However probationary appointments could continue until promulgation of promotion list.-*Green v. Lang*, 153 (40) N. Y. L. J. (3-2-65) 15, Col. 6 F.

¶ 21. Determination of Civil Service Commission that the Turnstile Maintainer's eligible list was "most nearly appropriate" to fill vacancies for Car Inspector was proper where there were not a sufficient number of eligibles in any appropriate title in the car maintainer department and the requirements for Turnstile Maintainer were in judgment of the Civil Service Commission equivalent to examination requirements for the open competition examinations for Car Inspector and rates of pay for both positions were the same.-*In re Kopitowsky (Hoberman)* 157 (60) N. Y. L. J. (3-29-67) 19, Col. 3 F.

FOOTNOTES

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[Footnote 33]: * Chapter heading amended LL 59/1996 § 1, eff. Aug. 8, 1996; amended at General Election, November 8, 1988.



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New York City Charter

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NYC Charter 815

New York City Charter

CHAPTER 35 DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES*33

§ 815. **Agency heads; powers and duties concerning personnel management.**

a. Subject to the civil service law and applicable provisions of this charter, heads of city agencies shall have the following powers and duties essential for the management of their agencies in addition to powers and duties vested in them pursuant to this charter or other applicable law:

- (1) To recruit personnel;
- (2) To participate with the department of citywide administrative services in job analyses for the classification of positions;
- (3) To allocate individual positions to existing civil service titles;
- (4) To allocate individual managerial or executive positions to managerial assignment levels;
- (5) To assist the department of citywide administrative services in the determination of minimum qualifications for classes of positions and to review and evaluate qualifications of candidates for positions in the civil service;
- (6) To assist the commissioner in the planning and preparation of open competitive examinations;
- (7) To schedule and conduct tests other than written tests for promotion to competitive class positions;
- (8) To determine whether to hold an open competitive or promotion examination to fill positions in the civil service subject to disapproval of the commissioner within thirty days;
- (9) To plan and administer employee incentive and recognition programs;

(10) To fill vacant positions within quarterly spending allotments and personnel controls pursuant to section one hundred six;

(11) To administer and certify eligible lists for classes of positions unique to the agency;

(12) To make appointments to competitive positions from eligible lists pursuant to subsection one of section sixty-one of the state civil service law, which authority shall not be abridged or modified by local law or in any other manner;

(13) To establish and administer performance evaluation programs to be used during the probationary period and for promotions, assignments, incentives and training;

(14) To conduct training and development programs to improve the skills, performance and career opportunities of employees;

(15) To ensure and promote equal opportunity for all persons in appointment, payment of wages, development and advancement;

(16) To administer employee safety programs;

(17) To maintain personnel records;

(18) To perform such other personnel management functions as are delegated by the commissioner pursuant to this chapter or that are not otherwise assigned by this chapter;

(19) To establish measures and programs to ensure a fair and effective affirmative employment plan to provide equal employment opportunity for minority group members and women who are employed by, or who seek employment with, the agency and, in accordance with the uniform procedures and standards established by the department of citywide administrative services for this purpose, to adopt and implement an annual plan to accomplish this objective. Copies of such plans shall be filed with the mayor, council, department of citywide administrative services, equal employment practices commission, and city civil service commission and shall be made available for reasonable public inspection; and

(20) To provide assistance to minority group members and women interested in being employed by city agencies to ensure that such minority group members and women benefit, to the maximum extent possible, from city employment and educational assistance programs.

b. Within one year from the effective date of this chapter, the head of each agency shall prepare and submit to the mayor and the commissioner a plan and schedule for the discharge of the powers and duties assigned in this section. No such plan shall take effect until approved by the mayor.

c. The mayor may modify, suspend, or withdraw for cause any power or duty assigned or delegated to the head of an agency pursuant to paragraphs three, four, seven, eight, and eleven of subdivision a of this section.

d. Notification prior to each action or decision of an agency pursuant to this chapter which changes the status of an individual employee, a position, or a class of positions shall be provided to the commissioner. The head of each agency shall certify on each payroll that all personnel actions and transactions of the agency conform with the provisions of the civil service law and this chapter, the rules of the commissioner and other applicable law.

e. Before any new position in the city service shall be created, the agency head shall furnish the commissioner of finance with a certificate stating the title of the class of positions to which the position is to be allocated. If the position is to be allocated to a new class of positions, the agency head shall request of the commissioner, and the commissioner shall furnish to the agency head and the commissioner of finance, a certificate stating the appropriate civil service title

for the proposed position, the range of salary of comparable civil service positions and a statement of the class specifications and line of promotion into which such new position will be placed and any such new position shall be created only with the title approved by the commissioner,

f. The heads of all agencies shall, except as otherwise provided by law, have power to appoint and remove, subject to the provisions of the civil service law, all chiefs of bureaus and all other officers, employees and subordinates in their respective administrations, departments or offices, without reference to the tenure of office of any appointee and to assign them their duties. Nothing herein shall be construed to preclude the mayor from entering into a collective bargaining agreement which provides for a procedure governing the discipline of employees, including their removal, pursuant to section 12-312 of the administrative code of the city of New York for employees of agencies the heads of which are appointed by the mayor.

g. The heads of city agencies or their designated representatives shall fulfill the requirements for agency participation in matters affecting the management of the agency in advance of collective bargaining negotiations affecting employees of any agency contained in section eleven hundred seventy-seven.

h. The head of each city agency shall ensure that such agency does not discriminate against employees or applicants for employment as prohibited by federal, state and local law.

i. The head of each city agency shall quarterly publish and submit to the mayor, council, department of citywide administrative services, and the equal employment practices commission a report on the agency's efforts during the previous quarter to implement the plan adopted pursuant to paragraph nineteen of subdivision a of section eight hundred fifteen.

j. The head of each city agency shall include in all employment retention, recruitment, training and promotional program literature, advertisements, solicitations and job applications, such language as may be necessary to effectuate the purpose of this chapter.

k. The head of each city agency shall require each employment agency, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding and which is involved in the performance of recruitment and retention with the agency to furnish a written statement that such employment agency, labor union or representative shall not discriminate against employees or applicants for employment pursuant to federal, state or local law and that such union or representative will cooperate in the implementation of the agency's obligations pursuant to this chapter.

HISTORICAL NOTE

Section renumbered and amended 854L.L. 59/1996 § 1, eff. Aug. 8, 1996, formerly § 814.

Section adopted at the General Election, November 4, 1975.

Subd. b amended by L. L. 1977, No. 102.

Subd. c amended at General Election, November 8, 1988.

Subds. e, f, g added at General Election, November 8, 1988.

(Subd. e formerly § 820.)

(Subds. f, g formerly § 1103.)

Subd. a pars. (10), (15), (17), (18) amended, pars. (19), (20) added at General Election, November 7, 1989.

Subds. h, i, j, k added at General Election, November 7, 1989.

CASE NOTES FROM FORMER SECTION

¶ 1. Once a position is established and an appropriation made by the Board of Estimate, the appointing officer or body may select the persons who are to fill the various positions and receive the salaries attached thereto, from among those declared by the Municipal Civil Service Commission to be eligible therefor. The rights of a civil service employee to be given a position are dependent upon the existence of the position and an appropriation of salary therefor, and when the position and salary are authorized by the Board of Estimate the individual then enjoys certain rights of priority as against other contenders.-*Ross v. La Guardia*, *Lewin v. La Guardia*, 287 N. Y. 28, 38 N. E. 2d 117 [1941], *aff'd* 261 App. Div. 940, 26 N. Y. S. 2d 493 [1941].

¶ 2. The chief probation officer of the Magistrate's Court was not a proper person against which to commence an Article 78 proceeding to require a hearing and restoration to the payroll of a probation officer even though the petitioner had been informed by the chief officer at the end of her probationary period that he would recommend the termination of her services.-*Clardy v. Clarke*, 135 (49) N. Y. L. J. (3-13-56) 6, Col. 3 F.

¶ 3. Although the petitioner was the only remaining eligible for the position of deputy medical superintendent in the Department of Hospitals, he was not, *ipso facto*, entitled to appointment. The power to make the appointment rested, without power of delegation, solely in the Commissioner of Hospitals.-*D'Oronzio v. Rappleye*, 105 (102) N. Y. L. J. (5-2-41) 1958, Col. 6 F.

¶ 4. A rule promulgated by the Fire Commissioner prohibiting members of fire department from engaging in outside employment was a proper measure for the efficient administration of the fire department. The rule is applicable to a member of the department who, prior to appointment as fireman, had received training in mechanical engineering and, in an effort to aid the war effort, had taken outside employment in a war plant averaging over 100 hours a week on both jobs. Whether, in view of petitioner's laudible motive in accepting outside employment, the Commissioner should mitigate his penalty of dismissal was a matter of discretion.-*Calfapietra v. Walsh*, 183 Misc. 6, 49 N. Y. S. 2d 829 [1944], *aff'd* without opinion 269 App. Div. 734, 54 N. Y. S. 2d 231 (1945), *aff'd*, 294 N. Y. 867, 62 N. E. 2d 490 [1945].

¶ 5. The plaintiff was employed as a blacksmith in the Department of Sanitation and was also employed, outside his regular working hours in a private plant. He had been advised that he would be dismissed from his position in the Department of Sanitation unless he immediately gave up his outside employment. The plaintiff could enjoin the Commissioner from suspending or dismissing him on account of his outside employment and his complaint for such relief was sufficient. A regulation prohibiting outside employment adopted by a city department exceeds the powers conferred upon such a department by the Charter and inasmuch as plaintiff did not possess an adequate remedy at law he was entitled to the equitable relief of an injunction.-*Putkowski v. Carey*, 182 Misc. 1023, 52 N. Y. S. 2d 42 [1944].

¶ 6. The Charter contains no provisions which vest in the Mayor or the Board of Estimate the power to remove Civil Service employees for violating a regulation prohibiting any employee from performing private employment, whether outside working hours, at home or any other place, or to make such a regulation which is legislative in nature. The Commissioner of Welfare may not incorporate such a regulation in a notice to his staff as a departmental regulation.-*Matter of Natilson v. Hodson*, 264 App. Div. 384, 35 N. Y. S. 2d 537 [1942], *aff'd* without opinion, 289 N. Y. 842, 47 N. E. 2d 442 [1943].

¶ 7. Where a petitioner had been passed over by Police Commissioner in three instances while on the eligible list for the position of patrolman and papers in certiorari proceedings did not indicate whether he had been passed over because his mother had signed a Communist party petition or because of his violations of Traffic and Hack Bureau Regulations, the matter was remitted to the Commissioner for further appropriate action. A rejection based upon the petition would be arbitrary and subject to judicial correction.-*Matter of Nathanson (Adams)*, 207 Misc. 572 [1955].

¶ 8. An appointing officer has a nonreviewable discretion to make appointments, otherwise within his capacity, from among eligibles certified to him by the Civil Service Commission. Rules requiring that appointments be made from among qualified people are not intended to dictate the selection but to limit the group from which the selection may be made. The Police Commissioner does not have to explain his action in passing over the petitioner's name on three occasions where the petitioner failed to show in any way that the Commissioner's action was arbitrary or capricious.-*Matter of Delicati v. Schechter*, 3 A. D. 2d 19, 157 N. Y. S. 2d 715 [1956].

¶ 9. The Police Commissioner was justified, in the exercise of sound discretion, in refusing to appoint the petitioner as a probationary policeman upon the ground that the latter had been subjected to disciplinary action upon four occasions while serving in the Navy. The fact that the petitioner had been honorably discharged did not preclude consideration of his record.-*Matter of Verbiest v. Kennedy*, 4 Misc. 2d 855, 158 N. Y. S. 2d 142 [1956]; *aff'd* 3 A. D. 2d 994, 163 N. Y. S. 2d 944 [1957].

¶ 10. In a class action for declaratory judgment by patrolmen in New York City Police Department and for an injunction restraining Mayor and Police Commissioner from enforcing a police department order which established a Civilian Complaint Review Board and called for appointments to board by the Mayor, court rejected argument that this section bars appointments by anyone other than the Police Commissioner on the ground that such section does not apply to the establishment of a purely "advisory" board whose existence depends on the Commissioner's wish to use such assistance. Moreover, such members are not "officers, employees and subordinates" within the meaning of this section.-*Cassese v. Lindsay*, 51 Misc. 2d 59, 272 N. Y. S. 2d 324 [1966].

¶ 11. Student legal specialist employed by Law Department took leave of absence from law school for lack of child care. Claimant was terminated for violating a condition of her employment. Employee did not provoke discharge and is entitled to benefits. *Bookhard v. NYC Law Dept.* 131 A. D. 2d 912 [1987].

FOOTNOTES

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[Footnote 33]: * Chapter heading amended LL 59/1996 § 1, eff. Aug. 8, 1996; amended at General Election, November 8, 1988.



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NYC Charter 816

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CHAPTER 35 DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES*33

§ 816. **Management service.**

a. The commissioner, in consultation with the heads of agencies, shall develop and submit to the mayor a city-wide plan and schedule for the development of qualified and competent technical, professional, management, administrative, and supervisory personnel in the civil service to meet the managerial needs of city government. The mayor shall approve, disapprove or modify the plan within one year after the effective date of this chapter.

b. The city-wide plan shall establish a management service for city agencies and shall provide for:

(1) Membership in the service of employees with significant policy, administrative, supervisory, managerial or professional duties that require the exercise of independent judgment in the scheduling and assignment of work, program management or planning, evaluation of performance or allocation of resources; and including the ranking officials assigned to the local service districts of agencies within community districts and boroughs;

(2) Opportunities for entry into the service by qualified civil servants and qualified persons not employed by the city consistent with requirements of the civil service law;

(3) A city-wide qualifying test for entry into the service;

(4) Assessments of capacity and potential to perform managerial duties as part of competitive tests for entry into the service and assignments within the service;

(5) A single managerial class of positions for each occupational series within the service with assignment levels within each such class; (6) A plan for achieving equitable pay scales for members of the service consonant with their duties and responsibilities;

- (7) Merit increases, incentive awards, and recognition programs for members of the service;
 - (8) Performance evaluations for members of the service to be used for assignments, incentive awards, probationary period review, and disciplinary action;
 - (9) A probationary period not to exceed one year for members of the service;
 - (10) Management intern programs, and,
 - (11) Training and career development programs.
- c. The commissioner shall conduct city-wide programs and functions related to the management service; assist agencies in the implementation of the management service plan; and review and evaluate agency performance under the plan.

HISTORICAL NOTE

Section renumbered and amended L.L. 59/1996 § 1, eff. Aug. 8, 1996, formerly § 815.

Section adopted at General Election, November 4, 1975.

FOOTNOTES

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[Footnote 33]: * Chapter heading amended LL 59/1996 § 1, eff. Aug. 8, 1996; amended at General Election, November 8, 1988.



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CHAPTER 35 DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES*33

§ 817. **Appointments and promotions.**

a. All appointments, promotions and changes in status of persons in the public service of the city shall be made in the manner prescribed by the constitution of the state and in accordance with the provisions of the civil service law and other provisions of law not inconsistent therewith nor with this charter.

b. Whenever qualifications for the appointment of persons to public office are prescribed by law, the appointing officer shall, upon making such appointment, file with the civil service commission a certificate that such appointment complies with such law.

HISTORICAL NOTE

Section renumbered and amended L.L. 59/1996 § 1, eff. Aug. 8, 1996, formerly § 816.

Section amended by L. 1954, ch. 354.

Section amended by L. L. 1974, No. 14.

Section amended at General Election, November 4, 1975.

Section amended by L. L. 1976, No. 28.

Subds. a designated, b added at General Election, November 8, 1988.

FOOTNOTES

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[Footnote 33]: * Chapter heading amended LL 59/1996 § 1, eff. Aug. 8, 1996; amended at General Election, November 8, 1988.



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CHAPTER 35 DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES*33

§ 818. **Power of investigation.**

The commissioner shall have the power to make investigations concerning all matters touching the enforcement and effect of the provisions of the civil service law insofar as it applies to the city and the rules and regulations prescribed thereunder, or concerning the actions of any examiner or subordinate of the department, or of any officer or employee of the city or of any county within the city, in respect to the execution of the civil service law; and in the course of such investigations the commissioner shall have the power to administer oaths, to compel the attendance of witnesses, and to examine such persons as deemed necessary.

HISTORICAL NOTE

Section renumbered and amended L.L. 59/1996 § 1, eff. Aug. 8, 1996, formerly § 817.

Section amended by L. 1954, ch. 354.

Section amended at General Election, November 4, 1975.

Section amended by L. L. 1977, No. 102.

CASE NOTES FROM FORMER SECTION

¶ 1. Where policeman who was refused certification could not file petition within statutory period because the predecessor of the present Civil Service Commission was abolished in the interim, and petitioner thereafter sought reconsideration but such request was refused, the present Civil Service Commission was ordered to answer in order that the matter should be heard on the merits.-*Gentile v. Civil Service Comm'sr.*, 133 (16) N. Y. L. J. (1-24-55) 7, Col. 4 M.

¶ 2. An application for reconsideration of determination of Commissioner to certify petitioner as a patrolman was

invalid where it was not made within three months of the date of the determination. The intervening change-over from the Municipal Civil Service Commission to the Civil Service Commission of the City of New York did not extend petitioner's time to make application.-Gentile v. Civil Service Commission, 133 (115) N. Y. L. J. (6-14-55) 8, Col. 1 F.

FOOTNOTES

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[Footnote 33]: * Chapter heading amended LL 59/1996 § 1, eff. Aug. 8, 1996; amended at General Election, November 8, 1988.



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CHAPTER 35 DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES*33

§ 819. **No compensation to unauthorized employee.**

No officer of the city whose duty is to sign or countersign warrants shall draw, sign or issue, or authorize the drawing, signing or issuing of any warrant on the commissioner of finance or other disbursing officer of the city for payment of salary to any person in its service whose appointment or retention has not been in accordance with the civil service law and the valid rules in force thereunder.

HISTORICAL NOTE

Section renumbered and amended L.L. 59/1996 § 1, eff. Aug. 8, 1996, formerly § 818.

Section amended L.L. 30/1977.

Section amended L.L. 10/1968.

FOOTNOTES

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[Footnote 33]: * Chapter heading amended LL 59/1996 § 1, eff. Aug. 8, 1996; amended at General Election, November 8, 1988.



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CHAPTER 35 DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES*33

§ 820. **Examination for licenses.**

The commissioner shall, unless otherwise provided by law, have power, upon request of any person charged with the duty of issuing licenses or permits, to conduct, under rules and regulations to be established by the commissioner, examinations and tests to determine the qualifications of persons applying for such licenses or permits. The commissioner shall certify to the person having power to issue the license or permit the result of any such examination or test.

HISTORICAL NOTE

Section renumbered and amended L.L. 59/1996 § 1, eff. Aug. 8, 1996, formerly § 819.

Section amended L.L. 102/1977.

Section amended ch. 354/1954.

CASE NOTES FROM FORMER SECTION

¶ 1. Because of the Buildings Department's delegation of authority pursuant to this section, the Personnel Director had the authority to determine the qualifications of respondent who was applying for a license as a master plumber. *Reinglod v. Koch*, 111 A. D. 2d 688 [1986].

FOOTNOTES

[Footnote 33]: * Chapter heading amended LL 59/1996 § 1, eff. Aug. 8, 1996; amended at General Election, November 8, 1988.



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CHAPTER 35 DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES*33

§ 821. **Officers or employees designated to serve in exempt civil service positions.**

a. Notwithstanding any provision in this charter to the contrary, the mayor or head of an agency may designate any officer or employee occupying a position in the competitive class of the civil service to serve in a position in the exempt class, and in such case, the officer or employee so designated shall thereupon enter upon and exercise all the powers and duties and receive the salary of such exempt position, and shall retain all the rights, privileges and status of such officer or employee's position in the competitive class.

b. The appointment of any person chosen to fill the position thus left vacant shall be temporary and shall terminate upon the return of such officer or employee to such position as provided in subdivision e of this section.

c. Such designation shall be in writing and shall be filed and remain of record in the office of such agency, in the office of the commissioner and in the office of the mayor and shall remain in force until revoked by the mayor or head of such agency, as the case may be.

d. Service in such position in the exempt class shall be credited as service in the competitive class and the status of such officer or employee in respect to pensions or otherwise shall not be adversely affected by such designation.

e. Upon the termination of the officer or employee's services in such exempt position, except by dismissal for cause in the manner provided in section seventy-five of the civil service law, such officer or employee shall immediately and without further application return to the position in the competitive class with the status, rights, privileges and salary enjoyed immediately prior to the designation to the position in the exempt class.

HISTORICAL NOTE

Section renumbered and amended L.L. 59/1996 § 1, eff. Aug. 8, 1996, formerly § 820.

Section amended by L. L. 1939.

Section amended by L. L. 1969, No. 74.

Section amended at General Election, November 4, 1975.

Section added at General Election, November 8, 1988 (formerly § 1104).

CASE NOTES FROM FORMER SECTION

¶ 1. On the same day that petitioner is appointed to a competitive civil service title he is granted a leave of absence without pay to continue to serve in an exempt class title pursuant to § 1104 (now § 820). Terminal leave payments must be calculated from competitive class title because retirement status is not affected by designation in the exempt class. The terms "occupy" and "serve" are not equal.-Matter of Irving Genn v. Schwarz, 138 Misc 2d 154 [1987].

FOOTNOTES

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[Footnote 33]: * Chapter heading amended LL 59/1996 § 1, eff. Aug. 8, 1996; amended at General Election, November 8, 1988.



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CHAPTER 35 DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES*33

§ 822. **Public buildings and facilities.**

With respect to public buildings and facilities, the commissioner shall have the following powers and duties:

(a) to manage, alter, repair, operate, maintain and clean buildings, facilities and offices leased or occupied for public use by more than one city agency whose management, alteration, repair, operation, maintenance or cleaning is paid for in whole or in part from the city treasury, and as directed by the mayor, to perform services in space occupied for public use by a single city agency;

(b) except for the provisions of chapter nine of this charter, to employ, when in the commissioner's opinion such services are necessary or desirable, qualified consultants in private practice to aid the commissioner in carrying out his or her duties and responsibilities with respect to public buildings or facilities; such consulting or advisory services shall be performed under the supervision of the commissioner;

(c) to exercise and perform such other powers and duties as may be prescribed by law or delegated to him or her in relation to laboratory testing of commodities and construction materials.

Notwithstanding the provisions of this section, the exercise of the powers and duties set forth herein shall be subject to the jurisdiction of any city agency performing urban renewal and public and publicly-aided housing functions to the extent, and in such areas, as directed by the mayor.

HISTORICAL NOTE

Section added L.L. 59/1996 § 1, eff. Aug. 8, 1996.

FOOTNOTES

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[Footnote 33]: * Chapter heading amended LL 59/1996 § 1, eff. Aug. 8, 1996; amended at General Election, November 8, 1988.



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CHAPTER 35 DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES*33

§ 823. **Procurement of goods, other personal property and services.**

With respect to the procurement and disposal of goods and other personal property and the procurement of services other than personal services, the commissioner shall have the following powers and duties: (a) to purchase, inspect, store and distribute all goods, supplies, materials, equipment and other personal property required by any city agency, except as otherwise provided by law, or by any office of any county wholly included in the city for which supplies, materials or equipment are required, payment for which is made from the city treasury;

(b) to establish and maintain one or more city storehouses, operating therein a modern system of stores control, to supply the estimated current needs of the agencies for which the commissioner is authorized to purchase. All purchases other than such purchases for stock for estimated needs and all deliveries from such stock shall be upon justified requisitions. The commissioner shall also oversee the establishment of efficient and economical systems of stores control in other city agencies and review the operations of such storehouses to assure their efficient and economical management;

(c) to receive all surplus and obsolete personal property not required by any agency for which the commissioner has the power to make purchases and all such agencies shall surrender such property to the commissioner who shall dispose thereof pursuant to rules promulgated by him or her governing its redistribution, exchange, transfer, sale or other disposition;

(d) to procure, supply and manage contractual services other than personal or professional services for the use of city agencies;

(e) to promulgate rules governing the purchase, payment, storage, and delivery of goods, supplies, materials and equipment by agencies of the city and the disposal of surplus and obsolete materials, and to supervise their enforcement;

(f) to classify all goods, supplies, materials and equipment; to adopt as standards the minimum number of qualities, sizes and types of commodities consistent with efficient operation and life cycle costs; and to promulgate and enforce written specifications for all such standard commodities.

HISTORICAL NOTE

Section added L.L. 59/1996 § 1, eff. Aug. 8, 1996.

FOOTNOTES

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[Footnote 33]: * Chapter heading amended LL 59/1996 § 1, eff. Aug. 8, 1996; amended at General Election, November 8, 1988.



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CHAPTER 35 DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES*33

§ 824. **Real property.**

With respect to real property, the commissioner shall have the following powers and duties:

(a) to purchase, lease condemn or otherwise acquire real property for the city, subject to the approval of the mayor, and to sell, lease, exchange or otherwise dispose of real property of the city, subject to the requirements of section three hundred eighty-four and subject to review and approval either pursuant to section one hundred ninety-five, if applicable, or pursuant to sections one hundred ninety-seven-c and one hundred ninety-seven-d. No such purchase, lease, condemnation or other acquisition shall be authorized until a public hearing has been held with respect to such acquisition after the publishing of notice in the City Record at least ten days but not more than thirty days in advance of such hearing; provided, however, that in the case of an acquisition by purchase or condemnation, no such hearing shall be required if a public hearing is held with respect to such purchase or condemnation pursuant to any other requirement of law. In the case of a lease in which the city is to be the tenant, the notice for the hearing required in this subdivision shall include a statement of the location and proposed use of the premises, and the term and annual rent of the proposed lease. Before submitting an application pursuant to section one hundred ninety-seven-c for an acquisition or a disposition pursuant to this section, the commissioner shall take into consideration the criteria for location of city facilities established pursuant to section two hundred three. If two years, not including time spent in litigation, have elapsed between (1) the final approval of a disposition or acquisition pursuant to section one hundred ninety-seven-c and section one hundred ninety-seven-d and (2) execution of an agreement in connection with such disposition or acquisition, a public hearing shall be held on the proposed acquisition or disposition after the publishing of notice in the City Record at least forty-five days in advance of such hearing;

(b) to assign and reallocate to city agencies space and real property owned or leased by the city, to establish comprehensive and continuing programs and standards for utilization of space owned or leased by the city and to conduct surveys of space utilization;

(c) to manage all real property of the city not used for public purposes, including real property acquired for a public purpose and not being currently utilized for such purpose, except wharf property or other real property under the jurisdiction of the department of small business services, the department of housing preservation and development, the New York city transit authority, and the New York city housing authority by virtue of an authorization granted by the mayor pursuant to the provisions of subdivision three of section one hundred twenty-five of the public housing law, or except as otherwise provided by law, real property under the jurisdiction of the triborough bridge and tunnel authority; provided, that the commissioner shall be responsible for the management, leasing or permitting of any parcels of wharf property and water front property as provided in any designation made by the commissioner of small business services pursuant to paragraph b of subdivision two of section thirteen hundred one of this charter;

(d) to exercise and perform such other powers and duties as may be prescribed by law or delegated to the commissioner in relation to the acquisition, disposition, management, site selection, assignment, demolition or other treatment of real property of the city;

(e) to employ, where desirable, managing agents to manage city properties and collect rents therefrom and pay bills;

(f) to keep, maintain and annually update a master list of leases wherein the city or its agencies is a tenant. Such master list shall contain at least the following information: name and address of lessor, location wherein lease property is situated, base rent, square footage, escalation provisions, and any other information which the department deems necessary and appropriate.

HISTORICAL NOTE

Section added L.L. 59/1996 § 1, eff. Aug. 8, 1996.

Subd. c amended L.L. 34/2002 § 2, eff. Nov. 7, 2002.

FOOTNOTES

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[Footnote 33]: * Chapter heading amended LL 59/1996 § 1, eff. Aug. 8, 1996; amended at General Election, November 8, 1988.



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CHAPTER 35 DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES*33

§ 825. **Communications and energy.**

With respect to communications and energy, the commissioner shall have the following powers and duties:

(a) WNYC Communications Group: to maintain, operate and administer in conformance with all federal, state and local laws and to use the facilities of such group to assist any agency which shall require and use such service and also for the instruction, enlightenment, entertainment, recreation and welfare of the inhabitants of the city by the broadcast of any matters which are deemed appropriate and necessary for the public interest and advantage and to connect such facilities with any broadcasting station to unite in the broadcasting of such matters and activities;

(b) Gas and electricity: to have charge and control of furnishing the city or any part thereof, by contract or otherwise, with gas, electricity, steam, hot water or other energy source, except such functions as are exercised by the public utility service of the city.

HISTORICAL NOTE

Section added L.L. 59/1996 § 1, eff. Aug. 8, 1996.

FOOTNOTES

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[Footnote 33]: * Chapter heading amended LL 59/1996 § 1, eff. Aug. 8, 1996; amended at General Election, November 8, 1988.



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CHAPTER 35 DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES*33

§ 826. **Data processing services.**

The commissioner shall provide data processing support, programming, and computer systems analysis services for city agencies when necessary or desirable, in accordance with executive orders promulgated by the mayor.

HISTORICAL NOTE

Section added L.L. 59/1996 § 1, eff. Aug. 8, 1996.

FOOTNOTES

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[Footnote 33]: * Chapter heading amended LL 59/1996 § 1, eff. Aug. 8, 1996; amended at General Election, November 8, 1988.



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CHAPTER 35 DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES*33

§ 827. **Automotive services.**

The commissioner shall acquire by purchase, lease or otherwise, vehicles and other automotive equipment for the use of city agencies; manage, maintain, store and operate a fleet of motor vehicles; assign fleets to agencies in accordance with the direction of the mayor and ensure the effective operation of all shops, yards, garages, fuel depots and other facilities required for the maintenance of fleets operated by agencies; and ensure the maintenance of records for all city-owned vehicles.

HISTORICAL NOTE

Section added L.L. 59/1996 § 1, eff. Aug. 8, 1996.

FOOTNOTES

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[Footnote 33]: * Chapter heading amended LL 59/1996 § 1, eff. Aug. 8, 1996; amended at General Election, November 8, 1988.



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CHAPTER 35 DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES*33

§ 828. **Right of entry.**

The commissioner, officers and employees of the department may, in accordance with law, enter upon public or private property for the purpose of making surveys, borings or other investigations necessary for the exercise of the powers or the performance of the duties of the commissioner and the department. Refusal to permit such entry shall be a misdemeanor punishable by not more than thirty days' imprisonment or by a fine of not more than fifty dollars, or both.

HISTORICAL NOTE

Section added L.L. 59/1996 § 1, eff. Aug. 8, 1996.

FOOTNOTES

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[Footnote 33]: * Chapter heading amended LL 59/1996 § 1, eff. Aug. 8, 1996; amended at General Election, November 8, 1988.



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CHAPTER 35 DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES*33

§ 829. Performing administrative functions for the office of administrative trials and hearings and the board of standards and appeals.

The mayor may designate the department to perform specified administrative functions for the office of administrative trials and hearings and the board of standards and appeal when the mayor determines that such a designation will reduce costs or result in more effective performance of such functions. Such functions may include personnel services, labor relations, facilities management, purchasing, management information systems, budget administration, and internal auditing.

HISTORICAL NOTE

Section added L.L. 59/1996 § 1, eff. Aug. 8, 1996.

FOOTNOTES

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[Footnote 33]: * Chapter heading amended LL 59/1996 § 1, eff. Aug. 8, 1996; amended at General Election, November 8, 1988.



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NYC Charter 830

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CHAPTER 36 EQUAL EMPLOYMENT PRACTICES COMMISSION

§ 830. **[Equal employment practices commission.]*34**

- a. There shall be an equal employment practices commission which shall review, evaluate and monitor the employment procedures, practices and programs of any city agency and the department of citywide administrative services to maintain an effective affirmative employment program of equal employment opportunity for minority group members and women who are employed by or who seek employment with city agencies.
- b. The commission shall consist of five members who, shall be compensated on a per diem basis. The mayor and the council shall each appoint two members. In addition, the mayor and the speaker of the council shall appoint a fifth member to serve as the chair of the commission for a term of four years.
- c. A vacancy in the commission shall not impair the right of the remaining members to exercise all the powers of the commission and three members thereof shall constitute a quorum.
- d. Members shall be appointed for four-year terms except that of the members first appointed, one of those appointed by the mayor and one of those appointed by the council shall serve for terms expiring on the thirtieth day of June, nineteen hundred ninety-two, one of those appointed by the mayor and one of those appointed by the council shall serve for terms expiring on the thirtieth day of June nineteen hundred ninety-five; and the chair shall serve for a term expiring on the thirtieth day of June, nineteen hundred ninety-four.
- e. The commission may, within the appropriations available therefor, appoint an executive director and such deputies, assistants, and other employees as may be needed for the performance of the duties prescribed herein.
- f. The commission may meet as necessary to implement the provisions of this chapter provided that the commission shall meet at least once every eight weeks.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

Subd. a amended L.L. 59/1996 § 17, eff. Aug. 8, 1996.

FOOTNOTES

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[Footnote 34]: * Section heading supplied by editor.



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NYC Charter 831

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CHAPTER 36 EQUAL EMPLOYMENT PRACTICES COMMISSION

§ 831. **Duties and powers of the New York city equal employment practices commission.**

a. The commission: (i) shall monitor the employment policies, programs and practices of each city, county, borough or other office, administration, board, department, division, commission, bureau, corporation, authority, or other agency of government, where the majority of the board members of such agency are appointed by the mayor or serve by virtue of being city officers or the expenses of which are paid in whole or in part from the city treasury, including the board of education, city and community colleges, the financial services corporation, the health and hospital corporation, the public development corporation, and the city housing authority; and (ii) monitor the coordination and implementation of any city affirmative employment program of equal employment opportunity for minority group members and women who are employed by or who seek employment with city agencies, including the activities of the department of citywide administrative services, and the civil service commission, pursuant to chapter thirty-five, and any other agency designated by the mayor to assist in the implementation or coordination of such efforts, and all city agencies required by section eight hundred fifteen to establish agency programs

b. The commission may request and shall receive from any city agency such information, other than information which is required by law to be kept confidential or which is privileged as attorney-client communications, attorney work products or material prepared for litigation, and such assistance as may be necessary to carry out the provisions of this chapter.

c. The commission shall communicate to the commission on human rights any information regarding suspected or alleged violations of chapter one of title eight of the administrative code.

d. The commission shall have the following powers and duties:

1. to review the uniform standards, procedures, and programs of the department of citywide administrative services pursuant to paragraphs twelve and fourteen of subdivision a of section eight hundred, fourteen, and to review

the plans adopted by city agencies in accordance with the provisions of paragraph nineteen of subdivision a of section eight hundred fifteen, and to provide any such agency or the department of citywide administrative services with such comments and suggestions as the commission deems necessary and appropriate; 2. to recommend to the department of citywide administrative services, all city agencies, or any one or more particular agencies, procedures, approaches, measures, standards and programs to be utilized by such agencies in their efforts to ensure a fair and effective affirmative employment program of equal employment opportunity for minority group members and women who are employed by or seek employment with city agencies;

3. to recommend to any city agency actions which such agency should consider including in its next annual plan as required by paragraph nineteen of subdivision a of section eight hundred fifteen;

4. to advise and, if requested, assist city agencies in their efforts to increase employment of minority group members and women who are employed by or who seek employment with city agencies;

5. to audit and evaluate the employment practices and procedures of each city agency and their efforts to ensure fair and effective equal employment opportunity for minority group members and women at least once every four years and whenever requested by the civil service commission or the human rights commission or whenever otherwise deemed necessary by this commission;

6. to make such policy, legislative and budgetary recommendations to the mayor, council, the department of citywide administrative services or any city agency as the commission deems necessary to ensure equal employment opportunity for minority group members and women;

7. to publish by the fifteenth of February of each year a report to the mayor and the council on the activities of the commission and the effectiveness of each city agency's affirmative employment efforts and the efforts by the department of citywide administrative services to ensure equal employment opportunity for minority group members and women who are employed by or seek to be employed by city agencies;

8. to establish appropriate advisory committees;

9. to serve with such other agencies or officials as shall be designated by the mayor as the city liaison to federal, state and local agencies responsible for compliance with equal employment opportunity for minority group members and women who are employed by or who seek to be employed by city agencies; and

10. to take such other actions as are appropriate to effectuate the provisions and purposes of this chapter.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

Subd. a amended L.L. 59/1996 § 18, eff. Aug. 8, 1996.

Subd. d pars 1, 2, 3, 6, 7 amended L.L. 59/1996 § 19, eff. Aug. 8, 1996.



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NYC Charter 832

New York City Charter

CHAPTER 36 EQUAL EMPLOYMENT PRACTICES COMMISSION

§ 832. **Compliance Procedures.**

a. The commission shall conduct such study or investigations and hold such hearings as may be necessary to determine whether agencies are in compliance with the equal employment opportunity requirements of this chapter and chapter thirty-five.

b. For the purpose of ascertaining facts in connection with any study or investigation authorized by this chapter, the commission shall have power to compel the attendance of witnesses, to administer oaths and to examine such persons as they may deem necessary. The commission or any agent or employee thereof duly designated in writing by them for such purposes may administer oaths or affirmations, examine witnesses in public or private hearing, receive evidence and preside at or conduct any such study or investigation.

c. If the commission makes a preliminary determination pursuant to subdivision d of section eight hundred thirty-one, that any plan, program, procedure, approach, measures or standard adopted or utilized by any city agency or the department of citywide administrative services does not provide equal employment opportunity; and/or if the commission makes a preliminary determination pursuant to this chapter and chapter thirty-five, that an agency has not provided equal employment opportunity, the commission shall notify the agency in writing of this determination and provide an opportunity for the agency to respond. If the commission, after consideration of any such response and after consulting with the agency, concludes that the corrective actions, if any, taken or planned by the agency are not sufficient to correct the non-compliance identified in the preliminary determination, it should make a final determination in writing, including such recommended corrective action as the commission may deem appropriate. The agency shall within thirty days thereafter respond to the commission on any corrective action it intends to make and shall make monthly reports to such commission on the progress of such corrective action. If the commission, after a period not to exceed six months, determines that the agency has not taken appropriate and effective corrective action, the commission shall notify the agency in writing of this determination and the commission may thereafter publish a

report and recommend to the mayor whatever appropriate corrective action the commission deems necessary to ensure compliance with equal employment opportunity pursuant to the requirements of this chapter and chapter thirty-five. Within thirty days of such determination the agency shall submit a written response to the commission and the mayor. The mayor after reviewing the commission's findings and the agency's response, if any, shall order and publish such action as he or she deems appropriate.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

Subd. c amended L.L. 59/1996 § 20, eff. Aug. 8, 1996.



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NYC Charter 851

New York City Charter

CHAPTER 37 ART COMMISSION

§ 851. **Constitution and appointment.**

a. There shall be an art commission the members of which shall be the mayor, who may appoint a person to represent him and replace such representative at his pleasure, the president of the Metropolitan Museum of Art, the president of the New York Public Library (Astor, Lenox and Tilden foundations), the president of the Brooklyn Museum, one painter, one sculptor, one architect, and one landscape architect, all of whom shall be residents of the city, and three other residents of the city no one of whom shall be a painter, sculptor, architect, landscape architect or active member of any other profession in the fine arts.

b. All the members of the commission shall serve without compensation for their service on the commission. Those whose service is not ex officio shall be appointed by the mayor from a list of not less than three times the number to be appointed, such list to be submitted by the Fine Arts Federation of New York. In case the Fine Arts Federation shall fail to present a list of nominees within three months from the time when a vacancy occurs, the mayor shall appoint without such nomination. In case the mayor shall fail to appoint within one year from the time when a vacancy occurs, such vacancy shall be filled by the commission for any balance of the unexpired term.

c. In all matters which come before the commission pertaining to work under the special charge of an agency, the head of such agency may act as a member of the commission. Each president of an institution who is an ex officio member may, by a writing filed with the executive director of the commission, appoint a trustee of the institution of which he is president to serve in his place as member of the commission. Such appointment shall be revocable at any time by such president and shall terminate whenever he ceases to be president.

HISTORICAL NOTE

Section amended by L. L. 52/88 § 1.



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CHAPTER 37 ART COMMISSION

§ 852. **Terms of members; vacancies.**

All appointments of members of the commission whose service is not ex officio shall be for a term of three years commencing at the expiration of the terms of the present incumbents, except that appointments to fill vacancies shall be for the unexpired term. All vacancies shall be filled in accordance with the provisions of section eight hundred fifty-one.

HISTORICAL NOTE

Section amended by L. L. 52/88 § 2.



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CHAPTER 37 ART COMMISSION

§ 853. **Officers; procedure; expenses.**

a. The commission shall elect a president, vice-president and secretary from its own members, whose terms of office shall be for one year and until their successors are elected and have qualified. The commission shall keep minutes of its proceedings and adopt its own rules of procedure, which shall be public documents. Six commissioners, excluding any who may be acting temporarily as representatives of an agency pursuant to subdivision c of section eight hundred fifty-one, shall constitute a quorum.

b. The offices and staff necessary for the commission to fulfill its obligations shall be provided for the commission, and the amount of its necessary expenses shall annually be provided in the budget.

HISTORICAL NOTE

Subd. a amended by L. L. 1977, No. 102.

Section amended by L. L. 52/88 § 3.



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NYC Charter 854

New York City Charter

CHAPTER 37 ART COMMISSION

§ 854. **Approvals by the commission.**

a. The term "works of art" as used in this chapter shall apply to and include all sculptures, paintings, mural decorations, mosaics, stained glass, statues, carvings or castings in high or low relief, inscriptions, monuments, and fountains installed or erected or to be installed or erected upon or over land belonging to the city whether the works of art be the property of the city itself or of an institution, corporation or private individual, and whether intended for ornament, commemoration or actual use.

b. The term "structure" as used in this chapter shall apply to and include all buildings, walks, bridges and viaducts and their approaches, exterior walls, arches, docks, piers, gates, fences, steps, curbing, distinctive pavings, benches, lamps, posts, traffic signals, and signage other than signage guiding, directing or otherwise regulating and controlling traffic erected pursuant to chapter seventy-one of the charter.

c. On request or on its own initiative, the art commission may consult with and advise any such agency as to the suitability of preliminary plans for any work of art under consideration for acquisition or the design or location of any work of art or any structure under consideration for installation or erection in, on or over any property of the city.

d. No work of art shall hereafter become the property of the city by gift or otherwise, or be purchased, commissioned, contracted for, accepted, erected or placed in or upon any public building, or allowed to be placed on or extend into or over any public street, avenue, highway, square, park, dock or pier or other public place belonging to the city, unless such work of art or a design of the same, accompanied by a specification and an estimate of the cost thereof, a plan showing its proposed location, and, if the commission deems it necessary or desirable, also a model, and any other pertinent information as may be required by the commission including a plan in such detail as the commission may require for the maintenance or conservation thereof, shall first have been submitted to the commission by the agency having jurisdiction, and such work of art or the design thereof, its location, and the plan for its maintenance or conservation, shall have been approved in writing by the commission. The commission shall have authority to bar final

payment for the purchase or erection of any such work of art if the president or executive director of the commission certifies that the work of art has not been completed substantially in accordance with the approval of the commission.

e. No structure, except as provided in subdivision f or h, shall be erected or placed upon land belonging to the city, and no arch, bridge, structure or approach which is the property of any corporation or private individual shall extend over or upon any street, avenue, highway, park or public place belonging to the city, and no new lines, grades or plotting or layout of public ways and grounds shall be accepted or work in pursuance thereof commenced unless the design thereof, accompanied by an estimate of cost and a plan showing the proposed location, shall have been submitted to the commission and the design, and in the case of a building or other structure its location in relation to existing or projected developments in the vicinity, shall have been approved in writing by it. If exterior wall, fences, gates, steps, curbing, distinctive paving, benches, lamps, posts, signage, traffic signals or other structures of the same type and design are considered for installation at various locations, the commission may approve the type and design with specifications as to the types of location for which they would be approved as suitable without passing on each individual installation. In addition, replacements-in-kind need not be approved by the commission. The commission shall have the authority to bar final payment for such structure, or for such lines, grades or plotting or layout of public ways and grounds if the president or executive director of the commission certifies that the work has not been erected or placed substantially in accordance with the approval of the commission.

f. In the case of any building or other structure that is part of a construction or other project, where the total estimated cost of such project shall not exceed one million dollars, the approval of the commission pursuant to this section shall not be required if the mayor or the council shall in writing request the commission not to act. Nothing in this section shall be construed as intended to impair the concurrent power of the commissioner of parks and recreation to refuse his or her consent to the erection or acceptance of any public monument or memorial or other work of any sort within any park, square or other public place under his jurisdiction.

g. Designs for all works of art or structures intended for temporary use in a fixed location during a period of more than one year, shall be subject to the same forms of procedure as those adopted for permanent use; but the approval of such designs shall be for a period to be determined by the commission, not to exceed three years, after which the commission shall either extend the period or order the removal of the work of art or structure.

h. Notwithstanding any inconsistent provision of this chapter, if an approval of a structure pursuant to subdivision e of this section primarily concerns a landmark, landmark site, landmark interior, an existing building within a scenic landmark, or an action within an historic district, and also requires a report or determination by the landmarks preservation commission pursuant to chapter three of title twenty-five of the administrative code of the city of New York, then, in that event, the powers and duties of the art commission with respect to such structures pursuant to such subdivision e and subdivisions f and g of this section shall instead be exercised by the landmarks preservation commission pursuant to its own rules and procedures. If such commission shall fail to take action upon any matter legally submitted to it within sixty days after such submission, its action shall be deemed unnecessary. Any action taken by such commission pursuant to this subdivision shall be filed with the art commission.

HISTORICAL NOTE

Subd. d amended by L. L. 1968, No. 22.

Section amended by L. L. 52/88 § 4.

Subd. e amended L.L. 77/1995 § 7, eff. Nov. 23, 1995 and does not apply to matters submitted prior to that date.

Subd. f amended L.L. 77/1995 § 8, eff. Nov. 23, 1995 and does not apply to matters submitted prior to that date.

Subd. h added L.L. 77/1995 § 9, eff. Nov. 23, 1995 and does not apply to matters submitted prior to that date.

CASE NOTES

¶ 1. The remains of the Aquarium at Battery Park, or of the walls of old Fort Clinton, or Castle Clinton, which preceded it, **held** not to constitute a "monument" or a "work of art" within purview of § 854 of the Charter, and therefore the Board of Estimate, without approval of the City Art Commission, could proceed with the demolition of such structure in connection with the reconstruction of the Battery Park area to accommodate the Brooklyn-Battery vehicular tunnel. The use of the Fort had been abandoned and the Fort dismantled over a hundred years ago, and it had suffered a complete loss of identity and was incorporated, with many changes, into other structures of entirely different types. Moreover, it was not sought to preserve the remaining walls of the old Fort but merely to use them as part of the restoration and construction of the old Fort at an estimated cost of \$200,000.-*Hamilton v. Moses*, 275 App. Div. 76, 87 N. Y. S. 2d 717 [1949], rev'g 194 Misc. 112, 85 N. Y. S. (2d) 886.



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CHAPTER 37 ART COMMISSION

§ 855. **Time for decision limited.**

If the commission shall fail to take action upon any matter legally submitted to it within sixty days after such submission, its action shall be deemed unnecessary.



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NYC Charter 856

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CHAPTER 37 ART COMMISSION

§ 856. **Maintenance, repair, removal, relocation or alteration of works of art.**

a. The commission shall periodically examine all works of art belonging to the city, shall make, request or approve detailed recommendations for their cleaning, maintenance and repair, and shall have general and curatorial supervision over such works of art belonging to the city and their cleaning, maintenance and repair. Except as provided in subdivision d, no cleaning, restoration, repair, alteration, removal or relocation of any work of art shall be contracted for, commenced, or prosecuted, unless approved in writing by the commission. Except as provided in subdivision d, the commission shall have the authority to bar final payment for such work if the president or the executive director of the commission certifies that the work has not been completed substantially in accordance with the commission's approval.

b. If a city agency fails to expend funds allocated for the proper maintenance of works of art, or allows undue deterioration to occur which threatens the visual and structural integrity of any work of art under its jurisdiction, the commission shall be authorized to review the procedures governing the care of said work and may request the agency to relocate such work to a suitable location approved by the commission.

c. Before any work of art is repaired, altered, demolished, removed, or relocated, the art commission shall be notified and given an opportunity, not to exceed sixty days, to pass on the disposition of such work of art. The commission may, with the consent of the mayor, order the work of art to be preserved. Except as provided in subdivision d, no work of art shall be altered, demolished, removed or relocated without the written approval of the commission.

d. In case the immediate removal, repair or relocation of any existing work of art shall be deemed necessary by the mayor, he may require the commission to pass on its disposition within an emergency period, which shall be not less than three business days after the receipt of written notice from him. In case of the commission's failure to act within such period, he may authorize the removal, repair or relocation without such action.

HISTORICAL NOTE

Section amended by L. L. 52/88 § 5.



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CHAPTER 37 ART COMMISSION

§ 857. **Advisory oversight of works of art.**

a. The art commission shall have general advisory oversight over all works of art belonging to the city. It shall advise the agencies having jurisdiction over them as to methods and procedures for their proper maintenance.

b. The commission shall maintain and make available for inspection a register of (i) works of art in the city's collection which have been preserved and (ii) works of art in the city's collection which are available, as determined by either the agency or the commission, for a new use or relocation. Every agency shall maintain a list of works of art installed in or erected upon city property assigned for use by the agency and shall notify the commission whenever a work of art becomes available, in its judgment, for a new use or relocation.

HISTORICAL NOTE

Subd. b amended by L. L. 52/88 § 6.



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CHAPTER 37 ART COMMISSION

§ 858. **Notice of agenda.**

A printed calendar of items to be heard, which may be subject to later amendment, shall be made available to the public and forwarded to members of the council at least three days in advance of the meeting.

HISTORICAL NOTE

Section added by L. L. 52/88 § 7.



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NYC Charter 860

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CHAPTER 38 FINANCIAL INFORMATION SERVICES AGENCY

§ 860. **Financial information services agency.**

There shall be a financial information services agency which shall be headed by three directors appointed by the mayor, one of whom shall be appointed upon the recommendation of the comptroller, and one of whom shall be appointed upon the recommendation of the other two. The directors may be city employees. They shall receive no compensation for their services to the agency (except that a city employee may continue to receive regular compensation) but shall be compensated for expenses actually and necessarily incurred in the performance of their duties.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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NYC Charter 861

New York City Charter

CHAPTER 38 FINANCIAL INFORMATION SERVICES AGENCY

§ 861. **Powers and duties.**

a. The agency shall have the power and duty to:

- (1) implement and manage the integrated financial management system;
- (2) control and exercise responsibility for all data processing functions and operations of the city which support the activities of those officers, employees, and agencies of the city responsible for organizing, compiling, coordinating and reporting upon the city's central financial records, data and other related information;
- (3) provide efficient, coordinated and rapid access to such information for the use of those officers, employees, and agencies of the city responsible for the determination and administration of the estimated and actual expenditures of the city; the receipt, investment and disbursement of city funds; the issuance and payment of principal and interest on obligations of the city; and for the use of such other officers, employees, or agencies as may require such information;
- (4) render services to, and receive information and assistance from, such other bodies defined as "covered organizations" in the New York state financial emergency act for the city of New York, as amended, upon such terms and conditions as may be agreed to by the agency and each such body.

b. All agencies shall furnish such information or equipment in their possession as shall be necessary and proper to carry out the functions of the financial information services agency as determined by its executive director with the approval of its directors.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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NYC Charter 862

New York City Charter

CHAPTER 38 FINANCIAL INFORMATION SERVICES AGENCY

§ 862. **Staff.**

The directors shall recommend and the mayor shall appoint an executive director of financial information services. Within the appropriations therefor, the agency shall employ such other officers and employees as may be required to perform its duties.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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NYC Charter 870

New York City Charter

CHAPTER 39 OFFICE OF PAYROLL ADMINISTRATION

§ 870. **Office of payroll administration.**

There shall be an office of payroll administration which shall be headed by two directors appointed by the mayor, one of whom shall be appointed upon the recommendation of the comptroller. The directors may be city employees. They shall receive no compensation for their services to the office (except that a city employee may continue to receive regular compensation) but shall be compensated for expenses actually and necessarily incurred in the performance of their duties.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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NYC Charter 871

New York City Charter

CHAPTER 39 OFFICE OF PAYROLL ADMINISTRATION

§ 871. **Powers and duties.**

- a. The office of payroll administration shall have the power and duty to:
 - (1) support the implementation of a computerized payroll management system,
 - (2) maintain the integrity and accuracy of the payroll system,
 - (3) develop uniform procedures for payroll processing and development,
 - (4) distribute and account for payroll and administer payroll deductions,
 - (5) render services to, and receive information and assistance from, public corporations upon such terms and conditions as may be agreed to by the office and each such corporation.
- b. All city agencies shall cooperate with the office as may be necessary and proper to ensure efficient operation of the payroll management system.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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NYC Charter 872

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CHAPTER 39 OFFICE OF PAYROLL ADMINISTRATION

§ 872. **Staff.**

Upon the recommendation of the directors, the mayor shall appoint an executive director of payroll administration. Within the appropriations therefor, the office shall employ such other officers and employees as may be required to perform its duties.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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NYC Charter 900

New York City Charter

CHAPTER 40 NEW YORK CITY HUMAN RIGHTS COMMISSION*38

§ 900. **Declaration of intent.**

It is hereby declared as the public policy of the city of New York to promote equal opportunity and freedom from unlawful discrimination through the provisions of the city's human rights law, chapter 1 of title 8 of the administrative code of the city of New York.

HISTORICAL NOTE

Section added at General Election, November 6, 2001 (Question 4 § 4) eff. November 6, 2001 with special provisions in § 1152 subd. h par (3).

FOOTNOTES

38

[Footnote 38]: * Chapter added at General Election, November 6, 2001 eff. November 6, 2001; Ballot Question Abstract:

Commission on Human Rights. Currently, the Charter does not contain any provisions regarding the establishment of a City Commission on Human Rights to protect civil rights. The Administrative Code, however, provides for such a commission to enforce the City's Human Rights Law, which prohibits unlawful discrimination based on race, color, religion, creed, national origin, alienage, citizenship, gender, sexual orientation, disability, marital status, age, status as a victim of domestic violence, and other protected classes. This proposal would establish the City's Commission on Human Rights as a Charter agency empowered to

enforce the provisions of the City's Human Rights Law.



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NYC Charter 901

New York City Charter

CHAPTER 40 NEW YORK CITY HUMAN RIGHTS COMMISSION*38

§ 901. **[Enforcement by executive order.*]**

The mayor may issue such executive orders as he or she deems appropriate to provide for city agencies and contractors to act in accordance with the policy set forth in this chapter.

HISTORICAL NOTE

Section added at General Election, November 6, 2001 (Question 4 § 4) eff. November 6, 2001 with special provisions in § 1152 subd. h par (3).

FOOTNOTES

38

[Footnote 38]: * Chapter added at General Election, November 6, 2001 eff. November 6, 2001; Ballot Question Abstract:

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CHAPTER 40 NEW YORK CITY HUMAN RIGHTS COMMISSION*38

§ 902. [Commission continued; powers.*]

a. The New York city commission on human rights is hereby established and continued.

b. The commission shall have the power to eliminate and prevent unlawful discrimination by enforcing the provisions of the New York city human rights law, and shall have general jurisdiction and power for such purposes. It may, in addition, take such other actions as may be provided by law against prejudice, intolerance, bigotry and unlawful discrimination.

HISTORICAL NOTE

Section added at General Election, November 6, 2001 (Question 4 § 4) eff. November 6, 2001 with special provisions in § 1152 subd. h par (3).

FOOTNOTES

38

[Footnote 38]: * Chapter added at General Election, November 6, 2001 eff. November 6, 2001; Ballot Question Abstract:

Commission on Human Rights. Currently, the Charter does not contain any provisions regarding the establishment of a City Commission on Human Rights to protect civil rights. The Administrative Code, however, provides for such a commission to enforce the City's Human Rights Law, which prohibits unlawful

discrimination based on race, color, religion, creed, national origin, alienage, citizenship, gender, sexual orientation, disability, marital status, age, status as a victim of domestic violence, and other protected classes. This proposal would establish the City's Commission on Human Rights as a Charter agency empowered to enforce the provisions of the City's Human Rights Law.



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CHAPTER 40 NEW YORK CITY HUMAN RIGHTS COMMISSION*38

§ 903. [Membership; chair; appointment; vacancy.*]

The commission shall consist of fifteen members, to be appointed by the mayor, one of whom shall be designated by the mayor as its chairperson and shall serve as such at the pleasure of the mayor. The chairperson shall devote his or her entire time to the chairperson's duties and shall not engage in any other occupation, profession or employment. Members other than the chairperson shall serve without compensation for a term of three years. In the event of the death or resignation of any member, his or her successor shall be appointed to serve for the term for which such member had been appointed.

HISTORICAL NOTE

Section added at General Election, November 6, 2001 (Question 4 § 4) eff. November 6, 2001 with special provisions in § 1152 subd. h par (3).

FOOTNOTES

38

[Footnote 38]: * Chapter added at General Election, November 6, 2001 eff. November 6, 2001; Ballot Question Abstract:

Commission on Human Rights. Currently, the Charter does not contain any provisions regarding the establishment of a City Commission on Human Rights to protect civil rights. The Administrative Code, however, provides for such a commission to enforce the City's Human Rights Law, which prohibits unlawful

discrimination based on race, color, religion, creed, national origin, alienage, citizenship, gender, sexual orientation, disability, marital status, age, status as a victim of domestic violence, and other protected classes. This proposal would establish the City's Commission on Human Rights as a Charter agency empowered to enforce the provisions of the City's Human Rights Law.



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CHAPTER 40 NEW YORK CITY HUMAN RIGHTS COMMISSION*38

§ 904. **Functions.**

The functions of the commission shall be:

- a. to foster mutual understanding and respect among all persons in the city of New York;
- b. to encourage equality of treatment for, and prevent discrimination against, any group or its members;
- c. to cooperate with governmental and non-governmental agencies and organizations having like or kindred functions; and
- d. to make such investigations and studies in the field of human relations as in the judgment of the commission will aid in effectuating its general purposes.

HISTORICAL NOTE

Section added at General Election, November 6, 2001 (Question 4 § 4) eff. November 6, 2001 with special provisions in § 1152 subd. h par (3).

FOOTNOTES

38

[Footnote 38]: * Chapter added at General Election, November 6, 2001 eff. November 6, 2001; Ballot Question Abstract:

Commission on Human Rights. Currently, the Charter does not contain any provisions regarding the establishment of a City Commission on Human Rights to protect civil rights. The Administrative Code, however, provides for such a commission to enforce the City's Human Rights Law, which prohibits unlawful discrimination based on race, color, religion, creed, national origin, alienage, citizenship, gender, sexual orientation, disability, marital status, age, status as a victim of domestic violence, and other protected classes. This proposal would establish the City's Commission on Human Rights as a Charter agency empowered to enforce the provisions of the City's Human Rights Law.



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CHAPTER 40 NEW YORK CITY HUMAN RIGHTS COMMISSION*38

§ 905. **Powers and duties.**

The powers and duties of the commission shall be:

a. to work together with federal, state and city agencies in developing courses of instruction, for presentation to city employees and in public and private schools, public libraries, museums and other suitable places, on techniques for achieving harmonious inter-group relations within the city of New York, and engage in other anti-discrimination activities;

b. to enlist the cooperation of various groups and organizations, in mediation efforts, programs and campaigns devoted to eliminating group prejudice, intolerance, hate crimes, bigotry and discrimination;

c. to study the problems of prejudice, intolerance, bigotry, discrimination and disorder occasioned thereby in all or any fields of human relationship;

d. (1) to receive, investigate and pass upon complaints and to initiate its own investigation of: (i) group-tensions, prejudice, intolerance, bigotry and disorder occasioned thereby, and (ii) unlawful discrimination against any person or group of persons, provided, however, that with respect to discrimination alleged to be committed by city officials or city agencies, such investigation shall be commenced after consultation with the mayor. Upon its own motion, to make, sign and file complaints alleging violations of the city's human rights law;

(2) in the event that any such investigation discloses information that any person or group of persons may be engaged in a pattern or practice that results in the denial to any person or group of persons of the full enjoyment of any right secured by the human rights law, in addition to making, signing and filing a complaint upon its own motion pursuant to paragraph a*40 of this subdivision, to refer such information to the corporation counsel for the purpose of commencing a civil action pursuant to chapter four of title eight of the administrative code;

e. 1. to issue subpoenas in the manner provided for in the civil practice law and rules compelling the attendance of witnesses and requiring the production of any evidence relating to any matter under investigation or any question before the commission, and to take proof with respect thereto;

2. to hold hearings, administer oaths and take testimony of any person under oath; and

3. in accordance with applicable law, to require the production of any names of persons necessary for the investigation of any institution, club or other place or provider of accommodation.

4. in accordance with applicable law, to require any person or persons who are the subject of an investigation by the commission to preserve such records as are in the possession of such person or persons and to continue to make and keep the type of records that have been made and kept by such person or persons in the ordinary course of business within the previous year, which records are relevant to the determination whether such person or persons have committed unlawful discriminatory practices with respect to activities in the city;

5. to issue publications and reports of investigation and research designed to promote good will and minimize or eliminate prejudice, intolerance, bigotry, discrimination and disorder occasioned thereby;

6. to appoint such employees and agents as it deems to be necessary to carry out its functions, powers and duties: provided, however, that the commission shall not delegate its power to adopt rules, and provided further, that the commission's power to order that records be preserved or made and kept and the commission's power to determine that a respondent has engaged in an unlawful discriminatory practice and to issue an order for such relief as is necessary and proper shall be delegated only to members of the commission. The expenses for the carrying on of the commission's activities shall be paid out of the funds in the city treasury. The commission's appointment and assignment powers as set forth in this subdivision may be exercised by the chairperson of the commission;

7. to recommend to the mayor and to the council legislation to aid in carrying out the purposes of this chapter;

8. to submit an annual report to the mayor and the council which shall be published in City Record; and

9. to adopt rules to carry out the provisions of this chapter and the policies and procedures of the commission in connection therewith.

HISTORICAL NOTE

Section added at General Election, November 6, 2001 (Question 4 § 4) eff. November 6, 2001 with special provisions in § 1152 subd. h par (3).

FOOTNOTES

38

[Footnote 38]: * Chapter added at General Election, November 6, 2001 eff. November 6, 2001; Ballot Question Abstract:

Commission on Human Rights. Currently, the Charter does not contain any provisions regarding the establishment of a City Commission on Human Rights to protect civil rights. The Administrative Code, however, provides for such a commission to enforce the City's Human Rights Law, which prohibits unlawful discrimination based on race, color, religion, creed, national origin, alienage, citizenship, gender, sexual orientation, disability, marital status, age, status as a victim of domestic violence, and other protected classes. This proposal would establish the City's Commission on Human Rights as a Charter agency empowered to

enforce the provisions of the City's Human Rights Law.
40

[Footnote 40]: * "section" should be "paragraph"



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NYC Charter 906

New York City Charter

CHAPTER 40 NEW YORK CITY HUMAN RIGHTS COMMISSION*38

§ 906. **Relations with city departments and agencies.**

So far as practicable and subject to the approval of the mayor, the services of all other city departments and agencies shall be made available by their respective head to the commission for the carrying out of the functions herein stated. The head of any department or agency shall furnish information in the possession of such department or agency when the commission so requests. The corporation counsel, upon request of the chairperson, may assign counsel to assist the commission in the conduct of its investigative or prosecutorial functions.

HISTORICAL NOTE

Section added at General Election, November 6, 2001 (Question 4 § 4) eff. November 6, 2001 with special provisions in § 1152 subd. h par (3).

FOOTNOTES

38

[Footnote 38]: * Chapter added at General Election, November 6, 2001 eff. November 6, 2001; Ballot Question Abstract:

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orientation, disability, marital status, age, status as a victim of domestic violence, and other protected classes. This proposal would establish the City's Commission on Human Rights as a Charter agency empowered to enforce the provisions of the City's Human Rights Law.



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NYC Charter 1041

New York City Charter

CHAPTER 45 CITY ADMINISTRATIVE PROCEDURE ACT*36

§ 1041. **Definitions.**

As used herein, the term

1. "Adjudication" means a proceeding in which the legal rights, duties or privileges of named parties are required by law to be determined by an agency on a record and after an opportunity for a hearing.

2. "Agency" means any one or more of the elected or appointed officers provided for in this charter and any other official or entity which is acting (1) under the direction of one or more of such officers, (2) under the direction of one or more other officials who are appointed by, or appointed on the recommendation of, such officers, or (3) under the direction of a board, the majority of whose members are appointed by, or appointed upon the recommendation of, one or more of such officers, but shall not include the city council.

3. "Compilation" means the Compilation of city rules required to be published under section one thousand forty-five.

4. "Law" means federal, state and local law, this charter, and rules issued pursuant thereto.

5. "Rule" means the whole or part of any statement or communication of general applicability that (i) implements or applies law or policy, or (ii) prescribes the procedural requirements of an agency including an amendment, suspension, or repeal of any such statement or communication.

a. "Rule" shall include, but not be limited to, any statement or communication which prescribes (i) standards which, if violated, may result in a sanction or penalty; (ii) a fee to be charged by or required to be paid to an agency; (iii) standards for the issuance, suspension or revocation of a license or permit; (iv) standards for any product, material, or service which must be met before manufacture, distribution, sale or use; (v) standards for the procurement of goods

and services; (vi) standards for the disposition of public property or property under agency control; or (vii) standards for the granting of loans or other benefits.

b. "Rule" shall not include any (i) statement or communication which relates only to the internal management or personnel of an agency which does not materially affect the rights of or procedures available to the public; (ii) form, instruction, or statement or communication of general policy, which in itself has no legal effect but is merely explanatory; (iii) statement or communication concerning the allocation of agency resources or personnel; (iv) statement or communication for guiding, directing or otherwise regulating vehicular and pedestrian traffic, including but not limited to any statement or communication controlling parking, standing, stopping or a construction detour, the contents of which is indicated to the public in signs, signals, markings and similar devices, the determination and installation of which is based on engineering or other technical considerations not involving substantial policy considerations; (v) statement or communication effecting a non-continuous closing of a street; or (vi) statement or communication adopted pursuant to sections fifty-one, one hundred ninety-seven-a except pursuant to the first sentence of subdivision b or the third sentence of subdivision c of section one hundred ninety-seven-a, one hundred ninety-seven-c except pursuant to subdivisions i and l of section one hundred ninety-seven-c, one hundred ninety-nine, two hundred, two hundred one, two hundred two and seven hundred five of this charter.

HISTORICAL NOTE

Section added at General Election, November 8, 1988.

Section amended by L. L. 1989, No. 42, § 2.

Section amended by General Election, November 7, 1989.

Subd. 5 par b clauses (v), (vi) amended L.L. 33/2007 § 1, eff. July 1, 2008.

Subd. 5 par b clause (vii) repealed L.L. 33/2007 § 1, eff. July 1, 2008. [See Note 1]

Subd. 5 par b subpar (vii) amended L.L. 49/1991 § 11, eff. July 1, 1991.

NOTE

1. Provisions of L.L. L.L. 33/2007:

§ 21. The repeal of item (vii) of paragraph b of subdivision 5 of section 1041 of the New York city charter as set forth in section one of this local law shall not affect the validity of reference standards amended, revised or added by the commissioner of buildings prior to the effective date of this local law and in force on the effective date of this local law.

CASE NOTES

¶ 1. The New York City Department of Health interpreted its regulation 24 RCNY § 161.01, which prohibits the harboring of wild animals, to prohibit the keeping of ferrets. However, in one case in which a landlord claimed that the tenant's harboring of a ferret in the apartment was illegal, the court held that the regulation was unenforceable because it was not promulgated under the procedures set forth in §1-41 (notice, opportunity for public comment and hearing). 1700 York Assocs. v. Kaskel, 182 Misc.2d 586, 701 N.Y.S.2d 233 check (Civ.Ct. New York Co. 1999).

¶ 2. See Singh v. Taxi and Limousine Commission of City of New York, 723 N.Y.S.2d 476 (1st Dept. 2001), under notes for City Charter § 1043.

¶ 3. The City Watershed Memorandum of Agreement provided for the establishment of a pilot program permitted a limited number of surface discharge sewage treatment plants with phosphorous restricted basins. The City Department

of Environmental Protection issued a "Guidance for Phosphorous Offset Pilot Program" which gave applicants 90 days to submit proposals to participate in the pilot program. An aggrieved party (who, ironically, never submitted an application) alleged that the 90-day deadline was promulgated in violation of the City Administrative Procedures Act ("CAPA, City Charter § 1041). The court, however, held that the 90-day period was not a "rule" subject to the requirements of CAPA. The court noted that the application period was flexible and, in fact, was extended so that more proposals could be received. *Baldwin Place Partnership v. City of New York*, N.Y.L.J., Jan. 5, 2001, page 26, col. 5 (Sup.Ct. New York Co.).

¶ 4. The rule making process under the City Administrative Procedures Act ("CAPA") is mandated only when an agency establishes precepts that remove its discretion by dictating specific results in specific circumstances. Only a fixed general principle to be applied by an administrative agency without regard to other facts and circumstances relevant to the regulatory scheme of the statute it administers. Rules are not mandated for ad hoc decisions based on individual facts and circumstances. Thus, the City was not required to set forth in formal rules its policy of deciding whether to place a particular building in the Asset Sales or Tenant Interim Lease (TIL) program. *De Jesus v. Roberts*, 296 A.D.2d 307, 746 N.Y.S.2d 1 (1st Dept. 2002).

¶ 5. See *Great Northern Site Corp. v. NYC Dept. of Design and Construction*, N.Y.L.J., May 1, 2003, page 20, col. 5 (Sup.Ct. New York Co.), reported in Case Note 20, City Charter §1043.

¶ 6. In light of the indictment of two persons for paying bribes to City assessors, the Tax Commission instituted a "supplemental policy and process" of refusing to review assessments of properties located in Manhattan, where the bribes had taken place, unless property owners seeking review disclosed whether they had any dealings with the two named masterminds of the bribery scheme. If the owner admitted having dealings with the two persons, or refused to answer at all, the City automatically denied review of the assessment. The court held that since this policy dictated a specific result in particular circumstances without regard to any other factors, it constituted a "rule" within the meaning of the City Administrative Procedures Act. The City was then required to publish notices, have hearings, and arrange review of the proposed rule by the Corporation Counsel (City Charter §1043). In light of the failure of the Tax Commission to comply with the rule making provisions of the law, the court granted an injunction against the enforcement of the policy. *439 East 88 Owners Corp. v. Tax Commission of the City of New York*, 307 A.D.2d 203, 763 N.Y.S.2d 12 (1st Dept. 2003).

FOOTNOTES



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NYC Charter 1042

New York City Charter

CHAPTER 45 CITY ADMINISTRATIVE PROCEDURE ACT*36

§ 1042. **Regulatory agenda.**

a. Each agency shall publish by the first day of May annually, a regulatory agenda which shall contain:

1. a brief description of the subject areas in which it is anticipated that rules may be promulgated during the next fiscal year, including a description of the reasons why action by the agency is being considered;
2. a summary, to the extent known, of the anticipated contents of each such proposed rule, its objectives and legal basis;
3. a description of the types of individuals and entities likely to be subject to the rule;
4. an identification, to the extent practicable, of all relevant federal, state, and local laws and rules, including those which may duplicate, overlap or conflict with the proposed rule; and
5. an approximate schedule for adopting the proposed rule, and the name and telephone number of an agency official knowledgeable about each subject area involved.

b. Each agency the single head of which is appointed by the mayor shall forward to the mayor its regulatory agenda. The mayor shall review such regulatory agenda to determine whether regulations contemplated by city agencies are consistent with the policy objectives of the administration.

c. Failure to include an item in a regulatory agenda shall not preclude action thereon. If rulemaking is undertaken on a matter not included in the regulatory agenda the agency shall include in the notice of proposed rulemaking the reason the rule was not anticipated. The inadvertent failure to provide the reason such rule was not included in the regulatory agenda shall not serve to invalidate the rule.

HISTORICAL NOTE

Section added at General Election, November 8, 1988.

FOOTNOTES

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[Footnote 36]: * Chapter added at General Election, November 8, 1988.



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NYC Charter 1043

New York City Charter

CHAPTER 45 CITY ADMINISTRATIVE PROCEDURE ACT*36

§ 1043. **Rulemaking.**

a. Authority. Each agency is empowered to adopt rules necessary to carry out the powers and duties delegated to it by or pursuant to federal, state or local law. No agency shall adopt a rule except pursuant to this section. Each such rule shall be simply written, using ordinary language where possible.

b. Notice. 1. Each agency shall publish the full text of the proposed rule in the City Record at least thirty days prior to the date set for a public hearing to be held pursuant to the requirements of subdivision d of this section or the final date for receipt of written comments, whichever is earlier. A proposed rule amending an existing rule shall contain in brackets any part to be deleted and shall have underlined or italicized any new part to be added. A proposed rule repealing an existing rule shall contain in brackets the rule to be repealed, or if the full text of the rule was published in the Compilation required to be published pursuant to section one thousand forty-five, shall give the citation of the rule to be repealed and a summary of its contents. Such published notice shall include a draft statement of the basis and purpose of the proposed rule, the statutory authority, including the particular sections and subdivisions upon which the action is based, the time and place of public hearing, if any, to be held or the reason that a public hearing will not be held, and the final date for receipt of written comments. If the proposed rule was not included in the regulatory agenda, such notice shall also include the reason the rule was not anticipated, as required in subdivision c of section one thousand forty-two of this chapter.

2. Copies of the full text of the proposed rule shall be electronically transmitted to the office of the speaker of the council, the council's office of legislative documents, the corporation counsel, each council member, the chairs of all community boards, the news media and civic organizations no later than the date the proposed rule is transmitted to the City Record for publication pursuant to paragraph one of subdivision b of this section; provided that an inadvertent failure to fully comply with the notice requirements of this paragraph shall not serve to invalidate any rule.

3. (a) News media, for the purposes of this subdivision, shall include (i) all radio and television stations

broadcasting in the city of New York, all newspapers published in the city of New York having a city-wide or borough-wide circulation, and any newspaper of any labor union or trade association representing an industry affected by such rule, and (ii) any community newspaper or any other publication that requests such notification on an annual basis.

(b) Civic organizations, for the purposes of this subdivision, shall include any city-wide or borough-wide organization or any labor union, trade association or other group that requests such notification on an annual basis.

c. Review of statutory authority. The corporation counsel shall review the proposed rule to determine whether it is within the authority delegated by law to the agency proposing the rule. If the corporation counsel determines that the proposed rule is not within the agency's delegated authority, the corporation counsel shall notify the agency in writing prior to the publication of the final rule in the City Record.

d. Opportunity for and consideration of agency and public comment. The agency shall provide the public an opportunity to comment on the proposed rule (i) through submission of written data, views, or arguments, and (ii) at a public hearing unless it is determined by the agency in writing, which shall be published in the notice of proposed rulemaking in the City Record, that such a public hearing on a proposed rule would serve no public purpose. All written comments and a summary of oral comments concerning a proposed rule received from the public or any agency shall be placed in a public record and be made readily available to the public as soon as practicable and in any event within a reasonable time, not to be delayed because of the continued pendency of consideration of the proposed rule. After consideration of the relevant comments presented, the agency may adopt a final rule pursuant to subdivision e of this section. Such final rule may include revisions of the proposed rule, and such adoption of revisions based on the consideration of relevant agency or public comments shall not require further notice and comment pursuant to this section.

e. Effective date. 1. No rule shall be effective until

(a) the rule is filed by the agency with the corporation counsel for publication in the Compilation,

(b) the rule and a statement of basis and purpose is transmitted to the council for its information, and

(c) the rule and a statement of basis and purpose have been published in the City Record and thirty days have elapsed after such publication. The requirement that thirty days shall first elapse after such publication shall not apply where a finding that a substantial need for the earlier implementation of a program or policy has been made by the agency in writing and has been approved by the mayor prior to the effective date of the rule and such finding and approval is contained in the notice.

2. A rule shall be void if it is not published in the next supplement to the Compilation in which its publication is practicable; provided, however, that in the case of an inadvertent failure to publish a rule in such supplement, the rule shall become effective as of the date of its publication, if it is published within six months of the date the corporation counsel receives notice of its omission; and further provided that any judicial or administrative action or proceeding, whether criminal or civil, commenced under or by virtue of any provision of a rule voided pursuant to this section and pending prior to such voidance, may be prosecuted and defended to final effect in the same manner as they might if such rule had not been so voided.

f. Petition for rules. Any person may petition an agency to consider the adoption of any rule. Within sixty days after the submission of a petition, the agency shall either deny such petition in writing, stating the reasons for denial, or state the agency's intention to initiate rulemaking, by a specified date, concerning the subject of such petition. Each agency shall prescribe by rule the procedure for submission, consideration and disposition of such petitions. In the case of a board, commission or other body that is not headed by a single person, such rules of procedure may authorize such body to delegate to its chair the authority to reject such petitions. Such decision shall be within the discretion of the agency and shall not be subject to judicial review.

g. Maintenance of comments. Each agency shall establish a system for maintaining and making available for public inspection all written comments received in response to each notice of rulemaking.

h. Emergency procedures. 1. Notwithstanding any other provision of this section, an agency may adopt a rule prior to the notice and comment otherwise required by this section if the immediate effectiveness of such rule is necessary to address an imminent threat to health, safety, property or a necessary service. A finding of such imminent threat and the specific reasons for the finding must be made in writing by the agency adopting such rule and shall be approved by the mayor before such rule may be made effective. In the event that an elected official other than the mayor has the authority to promulgate rules, such official may make such findings without prior mayoral approval. The rule and accompanying finding shall be made public forthwith and shall be published in the City Record as soon as practicable. Agencies shall also electronically transmit all emergency rules adopted pursuant to this paragraph to the office of the speaker of the council, the council's office of legislative documents, the corporation counsel, each council member, the chairs of all community boards, the news media and civic organizations, as such term is defined in subdivision b of this section, no later than the date the emergency rules are transmitted to the City Record for publication pursuant to this paragraph.

2. A rule adopted on an emergency basis shall not remain in effect for longer than sixty days unless the agency has initiated notice and comment otherwise required by this section within such sixty day period and publishes with such notice a statement that an extension of such rule on an emergency basis is necessary for an additional sixty days to afford an opportunity for notice and comment and to adopt a final rule as required by this section; provided that no further such finding of an emergency may be made with respect to the same or a substantially similar rule.

HISTORICAL NOTE

Section added at General Election, November 8, 1988.

Section amended by L. L. 1989, No. 42, § 2.

Subd. b par. 1 amended at General Election, November 7, 1989.

Subd. b par 2 amended L.L. 6/2008 § 1, eff. May 19, 2008.

Subd. c amended L.L. 18/1991 § 1, eff. Feb. 28, 1991.

Subd. h par 1 amended L.L. 6/2008 § 2, eff. May 19, 2008.

CASE NOTES

¶ 1. The action of the Commissioner of Licenses in sending a letter to newsstands to the effect that they might lose their licenses if they continue to sell certain nudist magazines constituted a prior restraint upon publication and amounted to censorship.-*Sunshine Book Co. v. McCaffrey*, 4 A. D. 2d 643, 168 N. Y. S. 2d 268 [1957].

¶ 2. Action of Department of Welfare in placing petitioner, who was employed as a social investigator in the Department, on medical leave of absence on May 13, 1949, on the opinion of the Department's medical staff that her behavior indicated mental disorder, and upon exhaustion of her sick leave credit and vacation allowance granting her an extended leave of absence to December 31, 1949, **held** without sanction in law. There was no statutory provision authorizing placing petitioner on leave of absence status without pay in the absence of written charges, and where such illegal action is taken, there is no jurisdiction conferred upon the department head to direct the employee to undergo a medical examination as a condition to reinstatement. If petitioner were mentally incompetent to continue her duties, charges might be made against her seeking her dismissal or she might, upon compliance with the statute, be retired if she were incapable of continuing performance of her duties for either physical or mental incapacity.-*Smith v. McNamara*, 277 App. Div. 580, 101 N. Y. S. 2d 375 [1950].

¶ 3. The Charter contains no provisions which vest in the Mayor or the Board of Estimate the power to remove Civil Service employees for violating a regulation prohibiting any employee from performing private employment, whether outside working hours, at home or any other place, or to make such a regulation which is legislative in nature. The Commissioner of Welfare may not incorporate such a regulation in a notice to his staff as a departmental regulation.-*Matter of Natilson v. Hodson*, 264 App. Div., 384, 35 N. Y. S. 2d 537 [1942], *aff'd* without opinion, 289 N. Y. 842, 47 N. E. 2d 442 [1943].

¶ 4. The Commissioner of the Fire Department was authorized by this section to enact a regulation prohibiting members of the uniformed force from engaging in any other business or employment and could dismiss a member who violated the regulation.-*Matter of Calfapietra*, 183 Misc. 6, 49 N. Y. S. 2d 829 [1944], *aff'd* 269 App. Div. 734, 54 N. Y. S. 2d 231 [1945], *aff'd*, 294 N. Y. 867, 62 N. E. 2d 490 [1945].

¶ 5. Regulations of the Commissioner of Docks requiring the payment of ten cents to the City by driver or owner of a taxicab each time it entered the feeder taxi lines or passenger pick up points at La Guardia Airport and providing for a refund if the space was surrendered without the driver having received a fare was a valid regulation within the authority of the Commissioner of Docks to promulgate. The Commissioner had exclusive control of airports and under this section was authorized, as the head of an agency, to make regulations for the conduct of his office.-*Weinstein v. McKenzie*, 177 Misc. 451, 30 N. Y. S. 2d 733 [1941].

¶ 6. Under the provisions of this section the Police Commissioner was authorized to make regulations for the making and keeping of speedometer test cards, and under the provisions of Administrative Code § 982-8.0 the courts are required to take judicial notices of all rules and regulations of New York City administrative board and agencies. Hence, the introduction into evidence of a speedometer test card to prove the accuracy of a police car's speedometer was proper and it was not necessary for the People to produce in addition to the summoning officer in a motor vehicle violation case, a second witness who either tested or witnessed the testing of the summoning officer's vehicle.-*People v. Jones*, 10 Misc. 2d 1067, 171 N. Y. S. 2d 325 [1958].

¶ 7. This section did not empower the Commissioner of Licenses to issue a regulation which stated that self-service automatic laundries must be adequately attended at all times. There was no existing legislative policy on having self-service laundromats unattended and the Commissioner of Licenses had no power to declare such a policy or create such a legislative standard.-*Thrift Wash, Inc. v. O'Connell*, 11 Misc. 2d 318, 174 N. Y. S. 2d 70 [1958].

¶ 8. Section 2/47.0 of the Police Department Rules and Regulations is valid and was authorized by this section of the Charter and other sections. The rule requires that a policeman devote his full time and attention to the service of the department. It states that a policeman shall not engage in any other occupation except when suspended from duty without pay or when on vacation or other leave.-*Flood v. Kennedy*, 12 N. Y. 2d 345, 190 N. E. 2d 13, 239 N. Y. S. 2d 665 [1963].

¶ 9. Resolution of Board of Examiners need not be filed in the office of the City Clerk and published in the City Record to be effective since the Board being established pursuant to statute is not subject to the provisions of the city charter.-*Stewart v. Bd. of Examiners*, 164 (124) N. Y. L. J. (12-30-70) 16, Col. 7 F.

¶ 10. Requirement that no rule or regulation shall be adopted unless interested persons are afforded an opportunity to comment thereon in writing after due notice in the City Record cannot be circumvented by terming the regulation at directive.-*Edenwald Contracting Co. v. City of N. Y.*, 86 Misc. 2d 711 [1974], *affirmed*, 47 A. D. 2d 610, 366 N. Y. S. 2d 363 [1975].

¶ 11. Rules established by Finance Commission should be designed to properly and reasonably implement the legislative policy of the state and where they are unreasonable or in derogation of statutes they will not be judicially enforced; hence for purposes of the statute of limitations initial application for refund of tax need not comply with requirement that it be accompanied by substantiation of payment.-*860 West Tower, Inc. v. Levy*, 416 N. Y. S. 2d 457

[1979].

¶ 12. Requirement adopted by president of tax commission that petition in tax certiorari proceeding must have a Supreme Court index number in order to be accepted for filing was without authority of law when not adopted as a regulation of the tax commission pursuant to subdivision b of this section.-Acme Folding Box Co. v. Finance Administration of City of N. Y., 67 A. D. 2d 690, 412 N. Y. S. 2d 392 [1979].

¶ 13. Restructuring of rents in housing acquired by N.Y.C. pursuant to in rem tax foreclosure does not constitute "fixing of charges" under § 1105(b) such as would require the promulgation of rules and regulations in respect thereto, through the hearing and notice process prescribed by that section; therefore it was not a denial of the process or an abuse of discretion for Department of Housing Preservation and Development to impose rent increases on in rem tenants without first promulgating rules and regulations with respect thereto.-Matter of Maria Laureano v. Edward I. Koch, Mayor, et al., 100 A. D. 2d 192; reverses 116 Misc. 2d 287 [1984].

¶ 14. Resolutions promulgated by the Personnel Director of the City of New York purporting to reclassify civil service titles are invalid where they are not adopted in accordance with the requirements of this section.-Joyce v. Ortiz, 108 A. D. 2d 158 [1958].

¶ 15. Decision was made to regulate bicycles in midtown Manhattan on certain streets at certain times by erecting signs. Publication and notice provisions of § 1105 allows public opportunity to comment on a proposal before it becomes effective. Here a decision was made to regulate conduct of a large number of people. Legal enactment required formal adoption as a regulation. Ban is unenforceable.-Messenger Services Inc. v. City of NY, 136 Misc. 2d 869 [1987].

¶ 16. Window Guard Law requires installation of approved window guards in apartments and hallways of building where children under 11 years of age live in NYC. "Specifications" of types of acceptable window guards are not rules that must be published but are available on request.-State v. Portnoy, 140 Misc 2d 945 [1988].

¶ 17. Emergency rule making involving an "imminent threat to health, safety, property or a necessary service" is justified by CAPA § 1043(b)(1). Garbage disposal is an essential service. At issue is a minor rate adjustment not clearly of an emergency nature. Challenged rate adjustment should remain in effect until rate is recalculated using other formal procedures.-Presidents Council of Trade Waste Assoc. v. Koch, 143 Misc. 2d 607, 1989.

¶ 18. Petitioners, who were low income tenants, sought a declaratory judgment that respondents' operation of the Private Ownership Management Program (POMP) violated their rights to due process and violated the City Charter. Essentially, they contended that the sale of City owned residential buildings to private investors without appropriate notice and a chance to be heard deprived them of the opportunity to seek ownership of the buildings themselves. The court held that the tenants were entitled to due process protection (notice and opportunity to be heard) in that they had a protected interest in decent, safe and adequate low-rent housing, which could be jeopardized by the sale of the buildings. Union of City Tenants v. Koch, 177 A.D.2d 328, 574 N.Y.S.2d 695 (1st Dept. 1991).

¶ 19. The Department of Health has the power to adopt amendments to the health code requiring dog license applications to persons seeking to purchase, adopt, groom, train, or board a dog and require monthly reports to the department on dogs licensed or unlicensed in the city. The department was merely filling in details of broad legislation describing overall policy. It was unnecessary for either the State Legislature or City Council to ratify these amendments. Pet Professionals of NYC v. City of New York, 215 AD2d 742 [1996].

¶ 20. The New York City Department of Design and Construction (DDC) hired construction managers in connection with the performance of rescue and recovery operations at the World Trade Center site. One of those construction managers leased excavating machines from a subsidiary of plaintiff. Plaintiff brought suit when DDC attempted to tighten requirements for approval of lease rates beyond a defined level, contending that the setting of rates was a "rule," and that under City Charter §1043, the City would first have to publish the text of the proposed rule in the City Record, and holding a public hearing. Plaintiff cited City Charter §1041(5), which defined a rule as a "statement . . .

. of general applicability." The court, however, held that the setting of rates was not a matter of general applicability, citing appellate authority that only a fixed general principle to be applied by an agency without regard to other facts and circumstances relevant to the regulatory scheme would constitute a rule or regulation. Where, as here, the City sought to determine rental rates, giving due regard to the unique circumstances of the World Trade Center recovery project, this was not a principle of general applicability, and the rule-making procedures of the Charter did not apply. *Great Northern Site Corp. v. NYC Dept. of Design and Construction*, N.Y.L.J., May 1, 2003, page 20, col. 5 (Sup.Ct. New York Co.).

¶ 21. See *439 East 88 Owners Corp. v. Tax Commission of the City of New York*, 307 A.D.2d 203, 763 N.Y.S.2d 12 (1st Dept. 2003), discussed in note 6 of City Charter §1041.

FOOTNOTES

36

[Footnote 36]: * Chapter added at General Election, November 8, 1988.



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NYC Charter 1044

New York City Charter

CHAPTER 45 CITY ADMINISTRATIVE PROCEDURE ACT*36

§ 1044. **Review of previously adopted rules.**

a. Submission of previously adopted rules. 1. By the tenth day of August, nineteen hundred eighty-nine, each agency shall send to the corporation counsel a copy of each rule, as defined in subdivision five of section one thousand forty-one, in force as of the first day of January of nineteen hundred eighty-nine. Each such rule shall be identified by the agency as one of the following:

- (a) a rule which should be continued in its present form;
- (b) a rule which should be continued with amendments; or
- (c) a rule which should be repealed.

2. Any amendment or repeal of a rule described in paragraph one of this subdivision, shall be subject to the provisions set forth in section one thousand forty-three.

b. In regard to all rules submitted pursuant to subdivision a of this section, the corporation counsel shall

1. include such rules in the Compilation required to be published pursuant to section one thousand forty-five; provided, however, that each rule which the agency identifies as a rule which should be continued but with amendments, and each rule which the agency identifies as a rule which should be repealed, shall be published in the Compilation with an appropriate notation as to the agency's comments and intentions. Such notations shall be provided for informational purposes only and such rule in its present form shall remain in full force and effect until and unless such rule is amended or repealed pursuant to the procedures set forth in section one thousand forty-three, and

2. submit to the City Record for publication by the first day of September, nineteen hundred ninety, a list of

rules submitted pursuant to subdivisions a and e of this section, except for rules contained in the health code. Such list shall include for each rule a short descriptive title, as well as any available identifying names, numbers, adoption dates or similar information regarding such rule; and an indication of the agency's intention to continue such rule without amendments, to continue it with amendments or to repeal it.

c. No rule, as defined in subdivision five of section one thousand forty-one, which is in force as of the first day of January, nineteen hundred eighty-nine shall have any force or effect on or after the tenth day of August, nineteen hundred and eighty-nine unless it is submitted by the agency to the corporation counsel by such date.

d. Except as provided in subdivision e, no rule adopted by any agency prior to the effective date of this chapter shall have any force or effect after the first day of July, nineteen hundred ninety-one unless it is included in the Compilation required to be published by that date pursuant to section one thousand forty-five; provided however that in the case of an inadvertent failure to publish a rule in such Compilation, the rule shall become effective as of the date of its publication, if it is published within six months from the date the corporation counsel received notice of its omission, and further provided that any judicial or administrative action or proceeding, whether criminal or civil, commenced under or by virtue of any provision of a rule voided pursuant to this section and pending prior to such voidance, may be prosecuted and defended to final effect in the same manner as they might if such rule had not been so voided.

e. On or before a date one hundred eighty days after the publication date of the Compilation required to be published pursuant to section one thousand forty-five, any person may submit to the agency involved a copy or a description of a rule which such person believes to be in force as of the effective date of this chapter. Upon the receipt of a description or copy of such a rule, the agency shall endeavor to verify the existence of such rule and upon identifying such rule, if such rule was in force and effect as of the effective date of this chapter and has not been submitted to the corporation counsel pursuant to subdivision a of this section, the agency shall take the actions required pursuant to subdivision a of this section, and notwithstanding the provisions of subdivisions c and d of this section, such rule shall remain in force and effect until or unless amended or repealed pursuant to section one thousand forty-three.

HISTORICAL NOTE

Section added at General Election, November 8, 1988.

Section amended by L. L. 1989, No. 42 § 2.

Section amended at General Election, November 7, 1989.

Subds. d, e amended L.L. 18/1991 § 2, eff. Feb. 28, 1991.

FOOTNOTES

36

[Footnote 36]: * Chapter added at General Election, November 8, 1988.



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NYC Charter 1045

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CHAPTER 45 CITY ADMINISTRATIVE PROCEDURE ACT*36

§ 1045. **Compilation of city rules.**

a. The corporation counsel shall publish a Compilation of city rules and thereafter keep such Compilation up to date through supplements issued at least every six months and at such other times as the corporation counsel shall determine. The Compilation and its supplements shall be certified by the corporation counsel and shall include every rule currently in effect. The Compilation and its supplements may contain such other information as the corporation counsel deems necessary and appropriate for full understanding of any rule or which the corporation counsel in his or her discretion determines may be of interest or assistance to the public. The Compilation and its supplements shall be organized by agency and indexed by subject matter. An indexed edition of the Compilation shall be published by the first day of July, nineteen hundred and ninety-one, which date shall be deemed the publication date of the Compilation, and shall be updated and republished by the first day of March of every fourth year thereafter.

b. The rules contained within the Compilation and its supplements shall be certified by the corporation counsel and shall be the rules of the city unless added to, amended or repealed in accordance with section ten hundred forty-three of the charter. Materials included in the Compilation may be edited, rearranged and updated for clarity, accuracy and reorganization without change in substance. Section numbers, stylistic and organizational formats and other non-substantive revisions to the rules effected by the law department pursuant to this subdivision shall become effective on the publication date of the Compilation and upon the publication of each supplement.

c. Documents submitted by an agency pursuant to subdivision a of section ten hundred forty-four of the charter which were not formally adopted by the agency as rules pursuant to section eleven hundred five of the charter as in effect prior to November eighth, nineteen hundred eighty-eight shall either be included in the Compilation or filed in the municipal reference and research center in the manner provided below. All documents which the corporation counsel, in his or her discretion, determines should not be included in the Compilation shall be organized by agency and subject matter in a form which shall be easily accessible to the public and filed by the corporation counsel in the municipal

reference and research center on or prior to July first nineteen hundred ninety-one. Notice of such filing and a list of the documents filed shall be published in the City Record. Notwithstanding any inconsistent provision of section ten hundred forty-four of the charter, any of such documents so filed shall, if otherwise valid, continue to be effective provided, however, that the amendment or repeal of any document which is within the definition of rule set forth in subdivision five of section ten hundred forty-one of the charter shall be in accordance with section ten hundred forty-three of the charter.

HISTORICAL NOTE

Section added at General Election, November 8, 1988.

Section amended by L. L. 1989, No. 42 § 2.

Section amended by L. L. 1989, No. 120, § 1.

Subds. a, b, c amended L.L. 18/1991 § 3, eff. Feb. 28, 1991. [See Note.]

NOTE

Provisions of L.L. 18/1991

§ 4. On and after the publication date of the Compilation and until the first day of July, nineteen hundred and ninety-two, any rule contained in the Compilation or its supplements may be cited by the number or other designation in effect prior to the publication date of the Compilation, and such citation shall be deemed to be a citation to the corresponding section of the Compilation in any judicial or administrative proceeding or for any other purpose.

FOOTNOTES

36

[Footnote 36]: * Chapter added at General Election, November 8, 1988.



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NYC Charter 1046

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CHAPTER 45 CITY ADMINISTRATIVE PROCEDURE ACT*36

§ 1046. **Adjudication.**

Where any agency is authorized to conduct an adjudication, it shall act, at a minimum, in accordance with the provisions set forth below. The parking violations bureau shall not be subject to the requirements of this section.

a. Notice. All parties shall be given reasonable notice of such hearing, which shall include:

1. a statement of the nature of the proceeding and the time and place it will be held, if applicable;
2. a statement of the legal authority and jurisdiction under which the hearing is to be held, and a reference to the particular sections of the law and rules involved; and
3. a short and plain statement of the matters to be adjudicated, including reference to the particular sections of law and rule involved.

b. Notice of agency procedures. Agencies shall adopt rules governing agency procedures for adjudications and appeals. Agencies shall make a copy of any such rule available, upon request, to any party who has received notice of violation of the laws, rules or orders enforced by the agency.

c. Hearing. 1. All parties shall be afforded an opportunity for a hearing within a reasonable time. At the hearing the parties shall be afforded due process of law, including the opportunity to be represented by counsel, to issue subpoenas or request that a subpoena be issued, to call witnesses, to cross-examine opposing witnesses and to present oral and written arguments on the law and facts. Adherence to formal rules of evidence is not required. No ex parte communications relating to other than ministerial matters regarding a proceeding shall be received by a hearing officer, including internal agency directives not published as rules.

2. Findings of fact shall be based exclusively on the record of the proceeding as a whole. Except as otherwise provided for by state or local law, the party commencing the adjudication shall have the burden of proof.

3. The hearing shall be transcribed or recorded and a copy of the transcript or record, or any part thereof, shall be made available to any party to the hearing upon request therefor. A typed or recorded copy of such transcript shall be provided upon request for a reasonable cost.

d. Informal disposition. Unless precluded by law, informal disposition may be made of any matter which is the subject of an adjudication by methods of alternative dispute resolution, stipulation, agreed settlement, or consent order.

e. Hearing officer. Except as otherwise provided for by this charter the person presiding at a hearing shall be assigned solely to adjudicative and related duties. Except as otherwise provided for by the rules of the agency, such hearing officer shall make final findings of fact and shall not make any final decision, determination, or order, but shall only recommend such, and shall forward such recommendation and the record of the adjudication to the agency, who may adopt, reject or modify any such recommended decision, determination or order.

f. Recommendation or decision. Any recommended decision, final decision, determination or order shall be in writing, or stated in the record if the parties are present, and shall include findings of fact and conclusions of law. A copy of any written recommended decision, final decision, determination, or order shall be delivered or mailed forthwith to each party.

HISTORICAL NOTE

Section added at General Election, November 8, 1988.

FOOTNOTES

36

[Footnote 36]: * Chapter added at General Election, November 8, 1988.



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NYC Charter 1047

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CHAPTER 45 CITY ADMINISTRATIVE PROCEDURE ACT*36

§ 1047. **Declaratory ruling.**

On the written petition of any person, an agency may issue a written declaratory ruling on the applicability of any rule adopted by it, to any person, property, or state of facts. A declaratory ruling shall be binding only with respect to the person who makes the petition and only with respect to the stated facts contained in the petition.

HISTORICAL NOTE

Section added at General Election, November 8, 1988.

FOOTNOTES

36

[Footnote 36]: * Chapter added at General Election, November 8, 1988.



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NYC Charter 1048

New York City Charter

CHAPTER 45-A OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS*37

§ 1048. **Office.**

There shall be an office of administrative trials and hearings which shall conduct adjudicatory hearings for all agencies of the city unless otherwise provided for by executive order, rule, law or pursuant to collective bargaining agreements. The office shall be directed by the chief administrative law judge, who shall be an attorney admitted to practice for at least five years in the state of New York. The chief administrative law judge shall be appointed by the mayor.

HISTORICAL NOTE

Section repealed & added L.L. 49/1991 § 10, eff. July 1, 1991.

Formerly § 1048 added at General Election, November 8, 1988.

FOOTNOTES

37

[Footnote 37]: * Formerly § 1048 added at General Election, November 8, 1988, repealed L.L. 49/1991 § 9.



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NYC Charter 1049

New York City Charter

CHAPTER 45-A OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS*37

§ 1049. **Powers of the chief administrative law judge.**

1. The chief administrative law judge shall have authority to direct the office established pursuant to section one thousand forty-eight with respect to its management and structure and to appoint a staff of administrative law judges. Each administrative law judge shall be an attorney admitted to practice in the state of New York for at least five years. Each administrative law judge shall be appointed for a term of five years removable only for cause after notice and opportunity for a hearing on a record.

2. (a) The chief administrative law judge shall establish rules for the conduct of hearings, in accordance with the requirements of chapter forty-five of the charter.

(b) In conjunction with the mayor and in accordance with the requirements of section thirteen-a of the charter, the chief administrative law judge shall promulgate and may from time to time amend rules establishing a code or codes of professional conduct governing the activities of all administrative law judges and hearing officers in city tribunals.

3. In the conduct of an adjudication, an administrative law judge may:

(a) hold conferences for the settlement or simplification of the issues;

(b) administer oaths and affirmations, examine witnesses, rule upon offers of proof, receive evidence, and oversee and regulate discovery procedures;

(c) upon the request of an agency or any party, or upon the administrative law judge's own volition, subpoena the attendance of witnesses and the production of books, records, or other information;

(d) regulate the course of the hearing in accordance with agency rules and chapter forty-five of the charter,

provided that if agency rules are silent as to a particular matter, the rules of the office of administrative trials and hearings shall apply;

- (e) dispose of procedural requests or similar matters;
- (f) make recommended or final findings of fact or decisions, determinations or orders, as authorized by law;
- (g) take any other action authorized by law or agency rule consistent therewith.

HISTORICAL NOTE

Section added L.L. 49/1991 § 10, eff. July 1, 1991.

Subd. 2 amended at General Election November 8, 2005. Ballot Question 3 § 2, eff. Nov. 8, 2005 as per Charter § 1152(j)(1). [See Charter § 13-a Note 1]

CASE NOTES

¶ 1. OATH's Chief Administrative Law Judge has the power to appoint an acting administrative law judge to cure a disqualification of OATH administrative law judges. *Human Resources Admin. v. Man-of-Jerusalem*, OATH Index No. 1021/91, mem. dec. (Sept. 6, 1991).

¶ 2. OATH does not have jurisdiction to provide an evidentiary hearing before or after removal of an employee for not maintaining city residence. *Gajwani v. Dep't of Design & Construction*, OATH Index No. 1498/99, mem. dec. (Mar. 15, 1999).

FOOTNOTES

37

[Footnote 37]: * Formerly § 1048 added at General Election, November 8, 1988, repealed L.L. 49/1991 § 9.



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NYC Charter 1049-a

New York City Charter

CHAPTER 45-A OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS*37

§ 1049-a. **Environmental control board.**

a. There shall be in the office of administrative trials and hearings an environmental control board consisting of the commissioner of environmental protection, the commissioner of sanitation, the commissioner of buildings, the commissioner of health and mental hygiene, the police commissioner, the fire commissioner and the chief administrative law judge of the office of administrative trials and hearings, who shall be chair, all of whom shall serve on the board without compensation and all of whom shall have the power to exercise or delegate any of their functions, powers and duties as members of the board, and six persons to be appointed by the mayor, with the advice and consent of the city council, who are not otherwise employed by the city, one to be possessed of a broad general background and experience in the field of air pollution control, one with such background and experience in the field of water pollution control, one with such background and experience in the field of noise pollution control, one with such background and experience in the real estate field, one with such background and experience in the business community, and one member of the public, and who shall serve for four-year terms. Such members shall be compensated at the rate of one hundred fifty dollars per day when performing the work of the board. Within its appropriation, the board may appoint an executive director and such hearing officers, including nonsalaried hearing officers and other employees as it may from time to time find necessary for the proper performance of its duties.

b. The environmental control board may adopt and amend regulations not inconsistent with any provision of law:

(1) regulating or prohibiting the emission into the open air from any source, whether fixed or movable, and whether on land or waters of any harmful or objectionable substances including, but not limited to, smoke, soot, dust, fumes, flyash, gas vapors and odors, and the installation, construction or alteration of equipment giving forth such emissions into the open air insofar as such emissions are effected thereby; and

(2) regulating or prohibiting the emission into the waters within and about the city of New York from any source

whether fixed or movable and whether on land or water of any harmful or objectionable substances, contaminants and pollutants.

b-1. The environmental control board shall promulgate rules or regulations not inconsistent with any provision of law:

(1) providing that appropriate language assistance services are afforded respondents whose primary languages are not English to assist such respondents in communicating meaningfully with hearing officers;

(2)(a) providing that if a notice of violation sets forth a specific hearing date and hearing office and the respondent timely appears on such date at such office pursuant to that notice of violation, then the hearing officer may exercise his or her discretion to adjourn the hearing only: (i) if a representative of the petitioning agency appears at the hearing; (ii) if, due to extraordinary circumstances, a representative of the petitioning agency is not present at the hearing; or (iii) if the respondent consents to the adjournment;

(b) notwithstanding any other provision of this charter, for the purpose of making an appearance under this paragraph, any city agency that issues notices of violations returnable to the environmental control board may delegate authority to appear on its behalf to any representative authorized to appear on behalf of any other city agency that issues notices of violation returnable to the environmental control board; and

(3) providing that if (i) a hearing has been adjourned by a hearing officer solely for the purpose of obtaining the presence and testimony of the officer of the petitioning agency who issued the subject notice of violation, (ii) the respondent timely appears on the adjourned hearing date, and (iii) such officer of such agency fails to timely appear on the adjourned hearing date, then the hearing shall not be further adjourned solely to obtain the presence and testimony of such officer of such agency, unless the respondent consents to the adjournment or the hearing officer determines that extraordinary circumstances warrant the adjournment.

c. (1) The environmental control board shall enforce the provisions of the charter and the administrative code, and any rules and regulations made thereunder, which relate to:

(a) the cleanliness of the streets;

(b) the disposal of wastes;

(c) the provision of a pure, wholesome and adequate supply of water;

(d) the prevention of air, water and noise pollution;

(e) the regulation of street peddling;

(f) the prevention of fire and danger to life and property therefrom which are within the jurisdiction of the fire department and which the fire commissioner shall designate by rule or regulation;

(g) the construction, alteration, maintenance, use, occupancy, safety, sanitary condition, mechanical equipment and inspection of buildings or structures and the regulation, inspection and testing of wiring and appliances for electric light, heat and power in or on buildings or structures in the city which are within the jurisdiction of the department of buildings or the department of small business services and which the commissioner of buildings or the commissioner of small business services shall designate by rule or regulation;

(h) the response to emergencies caused by releases or threatened releases of hazardous substances;

(i) the use and regulation of all property subject to the jurisdiction of the department of parks and recreation;

(j) the reporting of information relating to the amount, location and nature of hazardous substances, and the labeling of hazardous substances; (k) the construction, maintenance and repair and obstruction or closure of public roads, streets, highways, parkways, bridges and tunnels which are within the jurisdiction of the department of transportation and the department of information technology and telecommunications;

(l) the use and regulation of all property subject to the jurisdiction of the department of small business services;

(m) the defacement of property; and

(n) landmarks and historic districts within the jurisdiction of the landmarks preservation commission.

(2) The board shall have concurrent jurisdiction with the board of health to enforce those provisions of the health code and the rules and regulations relating thereto which the board of health shall designate.

(3) The board shall have authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under this subdivision.

d. (1) (a) The environmental control board shall conduct proceedings for the adjudication of violations of the laws, rules and regulations enforced by it pursuant to the provisions of subdivision c of this section or of any other law providing for enforcement by the environmental control board in accordance with this paragraph (1) and with rules and regulations promulgated by the board, and shall have the power to render decisions and orders and to impose the civil penalties provided under law for such violations.

(b) The form and wording of notices of violation shall be prescribed by the board. The notice of violation or copy thereof when filled in and served shall constitute notice of the violation charged, and, if sworn to or affirmed, shall be prima facie evidence of the facts contained therein. (c) The notice of violation shall contain information advising the person charged of the manner and the time in which such person may either admit or deny the violation charged in the notice. Such notice of violation shall also contain a warning to advise the person charged that failure to plead in the manner and time stated in the notice may result in a default decision and order being entered against such person. The original or a copy of the notice of violation shall be filed and retained by the board and shall be deemed a record kept in the ordinary course of business.

(d) Where a respondent has failed to plead within the time allowed by the rules of the board or has failed to appear on a designated hearing date or a subsequent date following an adjournment, such failure to plead or appear shall be deemed, for all purposes, to be an admission of liability and shall be grounds for rendering a default decision and order imposing a penalty in the maximum amount prescribed under law for the violation charged.

(e) Where a proceeding has been referred by the board to a hearing officer, upon the failure of any party to respond properly to a lawful discovery order or request made pursuant to rules of the board governing discovery, or upon any party's wrongful refusal to answer questions or produce documents, the hearing officer may take whatever action he or she deems appropriate including, but not limited to, preclusion of evidence or witnesses, or striking the pleadings or defenses of such party. It shall not be necessary for a party to have been subpoenaed to appear or produce documents at any properly ordered discovery proceeding for such sanctions to be applicable.

(f) Where the rules of the board permit exceptions to be filed with the board from a recommended decision and order issued pursuant to this subdivision and such exceptions are filed pursuant to the rules of the board, if no final decision and order has been issued by the board to the parties after the expiration of one hundred eighty days from the filing of the exceptions, a respondent who filed such exceptions may seek, at any time after the expiration of the one hundred eighty days, judicial review pursuant to article seventy-eight of the New York civil practice law and rules, and if a respondent does so, the recommended decision and order issued pursuant to this subdivision shall be deemed the final decision and order of the board, provided that no respondent may rely upon this subparagraph to have a recommended decision and order deemed a final decision and order of the board unless: (i) at least forty-five days

before the filing of any petition pursuant to article seventy-eight of the New York civil practice law and rules, such respondent shall have filed with the board written notice, pursuant to its rules, of the respondent's intention to file such petition; and (ii) such respondent has served such petition on the board pursuant to the New York civil practice law and rules. The board may issue a final decision and order at any time after the respondent has filed with the board written notice of his or her intention to file such petition, provided that the respondent has not filed such petition on a day prior to the board's issuance of its final decision.

(g) Any final order of the board imposing a civil penalty, whether the adjudication was had by hearing or upon default or otherwise, shall constitute a judgment rendered by the board which may be entered in the civil court of the city of New York or any other place provided for the entry of civil judgments within the state, and may be enforced without court proceedings in the same manner as the enforcement of money judgments entered in civil actions; provided, however, that no such judgment shall be entered which exceeds the sum of twenty-five thousand dollars for each respondent.

(h) Notwithstanding the foregoing provision, before a judgment based upon a default may be so entered the board must have notified the respondent by first class mail in such form as the board may direct: (i) of the default decision and order and the penalty imposed; (ii) that a judgment will be entered in the civil court of the city of New York or any other place provided for the entry of civil judgments within the state of New York; and (iii) that entry of such judgment may be avoided by requesting a stay of default for good cause shown and either requesting a hearing or entering a plea pursuant to the rules of the board within thirty days of the mailing of such notice.

(i) A judgment entered pursuant to this paragraph shall remain in full force and effect for eight years.

(j) Notwithstanding any inconsistent provision of section fifteen hundred four of the New York city civil court act, an execution with respect to a judgment of the board arising out of any violation of a provision of chapter one of title sixteen of the administrative code of the city of New York shall be directed only to the sheriff.

(k) The board shall develop and implement technology to enable electronic case management, including but not limited to: online adjudication and payments in appropriate cases; more efficient administration of case conferences, hearings and appeals; electronic case scheduling; and generation of data and other reports to enhance the efficiency and increase public accountability of board adjudication functions. Not later than December 1, 2008, the board shall report to the city council on its plans and progress in fulfilling the requirements of this subparagraph and shall include in its report a projected schedule for implementation.

(2) (a) The environmental control board shall not enter any final decision or order pursuant to the provisions of paragraph one of this subdivision unless the notice of violation shall have been served in the same manner as is prescribed for service of process by article three of the civil practice law and rules or article three of the business corporation law, except that:

(i) service of a notice of violation of any provisions of the charter or administrative code the enforcement of which is the responsibility of the fire commissioner, the commissioner of buildings, the commissioner of environmental protection, the commissioner of transportation, the commissioner of small business services, the landmarks preservation commission or the commissioner of the department of information technology and telecommunications and over which the environmental control board has jurisdiction, may be made by delivering such notice to a person employed by the respondent on or in connection with the premises where the violation occurred, provided however, that the department of buildings and the fire department may not utilize the procedures set forth in this item to serve a notice of violation relating to commercial premises or residential premises with a legal occupancy of four or more dwelling units; and

(ii) service of a notice of violation of any provision of the charter or administrative code, the enforcement of which is the responsibility of the commissioner of sanitation, the commissioner of buildings or the commissioner of the fire department and over which the environmental control board has jurisdiction, may be made by affixing such notice

in a conspicuous place to the premises where the violation occurred; and

(iii) service of a notice of violation of any provision of the administrative code relating to the prevention of noise pollution caused by an audible motor vehicle burglar alarm and over which the environmental control board has jurisdiction may be served upon the owner of a motor vehicle by affixing such notice to said vehicle in a conspicuous place; and

(iv) service of a notice of violation of any of the provisions of section 10-119 or 10-120 of the administrative code of the city of New York and over which the environmental control board has jurisdiction, may be made by certified mail, return receipt requested, to the respondent's last known residence or business address, provided that delivery of such notice shall be restricted to the respondent. Service by certified mail shall be deemed complete upon mailing of the notice of violation unless the notice of violation is returned to the sender by the United States postal service for any reason other than refusal of delivery.

(b) Such notice may only be affixed or delivered pursuant to items (i) and (ii) of subparagraph (a) of this paragraph where a reasonable attempt has been made to deliver such notice to a person in such premises upon whom service may be made as provided for by article three of the civil practice law and rules or article three of the business corporation law. When a copy of such notice has been affixed or delivered, pursuant to items (i) and (ii) of subparagraph (a) of this paragraph, a copy shall be mailed to the respondent at the address of such premises. In addition to the foregoing mailing, if the respondent is neither the owner nor the managing agent nor the occupying tenant of such premises, then a copy of the notice shall also be mailed to the respondent at such respondent's last known residence or business address, and, if the respondent is the owner or agent of the building with respect to which such notice was issued and the identity of and an address for such person is contained in any of the files specified in items (i), (ii) and (iii) of this subparagraph, a copy of the notice shall also be mailed:

(i) to the person registered with the department of housing preservation and development as the owner or agent of the premises, at the address filed with such department in compliance with article two of subchapter four of chapter two of title twenty-seven of the administrative code; or

(ii) to the person designated as owner or agent of the building or designated to receive real property tax or water bills for the building at the address for such person contained in one of the files compiled by the department of finance for the purpose of the assessment or collection of real property taxes and water charges or in the file compiled by the department of finance from real property transfer forms filed with the city register upon the sale or transfer of real property; or

(iii) to the person described as owner or agent of the premises, at the address for such person contained in the files of the agency which issued such notice of violation compiled and maintained for the purpose of the enforcement of the provisions of the charter or administrative code or other law over which such agency has jurisdiction.

(c) Proof of such service made pursuant to item (i) or (ii) of subparagraph (a) of this paragraph and subparagraph (b) of this paragraph shall be filed with the environmental control board within twenty days; service shall be complete ten days after such filing.

(3) The environmental control board may apply to a court of competent jurisdiction for enforcement of any other decision or order issued by such board or of any subpoena issued by such board.

HISTORICAL NOTE

Section renumbered (former § 1404) L.L. 35/2008 § 2, eff. Sept. 11, 2008. [See Note 1]

Section added L.L. 24/1977 § 1.

Subd. a amended L.L. 35/2008 § 2, eff. Sept. 11, 2008. [See Note 1]

Subd. b amended L.L. 35/2008 § 2, eff. Sept. 11, 2008. [See Note 1]

Subd. b-1 added L.L. 35/2008 § 2, eff. Sept. 11, 2008. [See Note 1]

Subd. c amended L.L. 35/2008 § 2, eff. Sept. 11, 2008. [See Note 1]

Subd. d par (1) amended L.L. 35/2008 § 2, eff. Sept. 11, 2008. [See Note 1]

Subd. d par (2) amended chap 720/1991 § 2, eff. Jan. 30, 1992.

Subd. d par (2) subpar (a) amended chap 569/1997 § 2, eff. Sept. 10, 1997.

Subd. d par (2) subpar (a) clause (i) amended L.L. 34/2002 § 5, eff. Nov. 7, 2002.

Subd. d par (2) subpar (a) clause (iii) amended chap 163/2000 § 1, eff. July 18, 2000.

Subd. d par (2) subpar (a) clause (iv) added chap 163/2000 § 1, eff. July 18, 2000.

Subd. d par (2) subpar (b) open par amended chap 569/1997 § 2, eff. Sept. 10, 1997.

DERIVATION

Formerly § Section amended by L. L. 1969, No. 74.

Section amended by L. L. 1971, No. 49.

Section amended by L. L. 1972, No. 57.

Subd. 3 added by L. 1975, ch. 329.

Subd. 3 amended by L. L. 1972, No. 57.

Section amended by L. 1984, ch. 944, eff. 180 days thereafter.

Subd. a amended at General Election, November 6, 2001 (Question 5 § 23) eff. November 6, 2001 with special provisions in § 1152 subd. h par (4).

Subd. d, par. (2) subpar. (a) amended at General Election, November 8, 1988.

Subd. c par. 1 subpar. (f) amended L. L. 42/1987 § 4.

Subd. c par. 1 subpar. (g) separately amended ch. 393/1988 § 1 and L. L. 26/1988 § 4.

Subd. c par. 1 subpars. (f), (g) amended L. L. 42/1987 § 4.

Subd. c par. 1 subpar. (h) separately amended ch. 393/1988 § 1 and L. L. 26/1988 § 4.

Subd. c par. 1 subpar. (h) added L. L. 42/1987 § 5.

Subd. c par. 1 subpar. (i) laid out first added L. L. 26/1988 § 5.

Subd. c par. 1 subpar. (i) laid out second added ch. 393/1988 § 2.

Subd. d par. 1 subpars. (c), (f), (h) amended at General Election, November 7, 1989.

Subd. d par (2) subpar (a) clause (i) amended L.L. 34/2002 § 5, eff. Nov. 7, 2002.

Subd. c par (1) subpar (g)-(j) amended ch. 720/1991 § 1, eff. Jan. 30, 1992.

Subd. c par (1) subpar (k) amended L.L. 68/1995 § 3, eff. Mar. 2, 1996.

Subd. c par (1) subpar (k) added ch. 720/1991 § 1, eff. Jan. 30, 1992.

Subd. c par (1) subpar (l) added ch. 720/1991 § 1, eff. Jan. 30, 1992.

Subd. c par (1) subpar (m) added ch. 311/1992 § 2, eff. Nov. 1, 1992.

Subd. c par (1) subpar (n) added ch. 593/1999 § 1, eff. Nov. 1, 1999.

Subd. d par (1) subpar (e) amended chap 569/1997 § 1, eff. Sept. 10, 1997.

Subd. d par (2) subpar (a) amended ch. 419/1992 § 2, eff. Aug. 31, 1992.

Subd. d par (2) subpar (a) clause (i) amended ch. 593/1999 § 2, eff. Nov. 1, 1999.

Subd. d par (2) subpar (a) clause (i) amended L.L. 68/1995 § 4, eff. Mar. 2, 1996.

Subd. a amended at General Election, November 6, 2001 (Question 5 § 23) eff. November 6, 2001 with special provisions in § 1152 subd. h par (4).

NOTE

1. Provisions of L.L. L.L. 35/2008:

Section 1. Declaration of legislative findings and intent. The Council finds and declares that the environmental control board is an administrative tribunal that annually processes over 700,000 notices of violation and conducts over 175,000 hearings; that for many individuals who appear before the board, a board hearing represents one of such individuals' most significant direct interactions with governmental authority; that more efficient board procedures would enhance fair enforcement of the city's laws; that significant improvements in the board's hearing procedures and practices for handling notices of violation can be made, especially through more widespread and effective use of technology, which holds considerable promise for simplifying the hearing process; that the office of administrative trials and hearings is the city's central administrative tribunal and has the greatest institutional expertise of any city agency in administrative tribunal management; and that consolidation of the environmental control board with the office of administrative trials and hearings, as provided for herein, will establish the management structure that will best serve to increase the efficiency, fairness and professionalism of the environmental control board's hearing processes.

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§ 9. Notwithstanding the provisions of sections 1048 and 1049 of the New York city charter, the environmental control board shall exercise all the functions, powers and duties set forth in section 1049-a of the New York city charter and hearing officers of the environmental control board shall not be subject to the provision of section 1049 that requires administrative law judges in the office of administrative trials and hearings to be appointed for a term of five years.

§ 10. No existing right or remedy of the city of any character shall be lost, impaired or affected by reason of the adoption of this local law.

§ 11. No action or proceeding, administrative, civil or criminal, pending at the time when this local law shall take effect, brought by or against the city or any agency or officer of the city, shall be affected or abated by the adoption of this local law or by anything contained herein.

§ 12. Whenever pursuant to any provision of this local law functions, powers or duties are assigned to officers or employees of the environmental control board in the office of administrative trials and hearings that were exercised by any officer or employee of the environmental control board in the department of environmental protection, all such officers or employees in the classified city civil service who were engaged in the performance of such functions, powers or duties shall be transferred to the environmental control board in the office of administrative trials and hearings, without further examination or qualification, in accordance with section 70 of the civil service law. Provided, however, that officers or employees who are subject to pending disciplinary charges on the date of the functional transfer, or against whom a disciplinary penalty has been assessed but not yet served or paid on or prior to such date, may be retained in the employment of the department of environmental protection until the resolution of the adjudicative or administrative proceedings and until any outstanding disciplinary penalty has been served or paid.

§ 13. This local law shall take effect thirty days after it shall have become a law, or as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of section 70 of the civil service law; provided, however, that any rules or regulations required to be promulgated pursuant to subdivision b-1 of section 1049-a of the New York city charter, as added by section two of this local law, shall be promulgated no later than one hundred eighty days after the effective date of this local law.

CASE NOTES FROM FORMER SECTION

¶ 1. For purposes of subsection [d][2] of this section which provides that service may be made by affixing the notice in a conspicuous place to the premises, the occupancy of which has caused such violation, the requirement of "occupancy" is not synonymous with "residency." As long as an owner is in possession or control of the premises, that owner is in occupancy within the meaning of this section.-*Matter of DeFay v. City of NY Envir. Control Board*, 114 A.D. 2d 1 [1986].

¶ 2. The personal service requirement of Charter § 1404(d)(2) applies only to the administrative docketing of judgments and that the Environmental Control Board may use service by mail pursuant to Ad Code § 24-115, so long as it then proceeds for entry and enforcement to another court pursuant to Charter § 1404(d)(3). *City of New York Env'tl. Control Bd. v. H.S.C. Mgt. Corp.*, 191 AD2d 267 [1993].

¶ 3. For purpose of service of a notice of environmental violation, the owner and the managing agent are in effect treated as a single person or entity. Thus, if the managing agent directs or controls the owner's employees on the premises, the service of the violation upon a person employed "on or in connection with the premises" will be deemed sufficient service on the managing agent. *Langsam Property Services v. McCarthy*, 261 A.D.2d 208, 690 N.Y.S.2d 208 (1st Dept. 1999).

¶ 4. In support of a claim that notice of an environmental violation had been served upon the property owner, the agency submitted an affirmation stating that "it is in the regular course of business for the (Sanitation Department) to file with the (Environmental Control Board) an affidavit of mailing proving the requirements of § 1404(d)(2)(b) were met," concluding that, based on a review of the affidavits of service, the specified mailing had been made. The court, however, held that this was not a substitute for proof in the form of an actual affidavit of service.

There was also an issue as to whether service had been made to the proper address. While the City Charter does not specify that a notice of violation be mailed to a "current" address, the statute shows a legislative intent that actual notice be received, the court said. The mailing of a notice to an out-of-date address, which the Environmental Control Board obtained from old tax records, is not sufficient. *In Re 72A Realty Assoc. v. Environmental Control Board*, 275 A.D.2d 284, 713 N.Y.S.2d 26 (1st Dept. 2000).

FOOTNOTES

37

[Footnote 37]: * Formerly § 1048 added at General Election, November 8, 1988, repealed L.L. 49/1991 § 9.



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NYC Charter 1051

New York City Charter

CHAPTER 4638 ELECTIONS AND VOTER ASSISTANCE*

§ 1051. **Department; board.**

There shall be a department of campaign finance.

HISTORICAL NOTE

Section added at General Election, November 8, 1988.

Section amended at General Election, November 7, 1989.

FOOTNOTES

38

[Footnote 38]: * Chapter added at General Election, November 8, 1988 (formerly § 1061, Permanent personal registration).



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NYC Charter 1052

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CHAPTER 4638 ELECTIONS AND VOTER ASSISTANCE*

§ 1052. **Campaign finance board.**

a. 1. There shall be a campaign finance board consisting of five members. Two members of the board shall be appointed by the mayor, provided that not more than one such member shall be enrolled in any one political party, and two members shall be appointed by the speaker of the council, provided that not more than one such member shall be enrolled in any one political party, and one member, who shall be the chairperson, shall be appointed by the mayor after consultation with the speaker. The members shall first be appointed to serve as follows:

- (a) one member appointed by the speaker for a term of one year;
- (b) one member appointed by the mayor for a term of two years;
- (c) one member appointed by the speaker for a term of three years;
- (d) one member appointed by the mayor for a term of four years; and
- (e) the chairperson for a term of five years.

Each term shall commence on April first, nineteen hundred eighty-eight. Thereafter, each member shall be appointed for a term of five years by the mayor or the speaker, according to the original manner of appointment. Upon expiration of the term of a member, if the mayor or the speaker, as appropriate, shall fail to appoint a member within one hundred twenty days of the expiration of such term, the member whose term has expired shall be deemed appointed for an additional term of five years, provided, however, that if the expiration of such term occurs in a year in which elections, except special elections, covered by the voluntary system of campaign finance reform are scheduled, the member whose term has expired shall be deemed appointed for an additional term of five years if the mayor or the speaker, as appropriate, shall fail to appoint a member within ninety days of the expiration of such term. In case of a

vacancy in the office of a member, a member shall be appointed to serve the remainder of the unexpired term by the mayor or the speaker, according to the original manner of appointment. If the mayor or the speaker, as appropriate, shall fail to appoint a member within one hundred eighty days of such vacancy, then a member shall be appointed by the board to serve for the remainder of the unexpired term, if additional time remains in such term, provided, however, that if such vacancy occurs in a year, or within ninety days prior to a year, in which elections, except special elections, covered by the voluntary system of campaign finance reform are scheduled, then a member shall be appointed by the board to serve for the remainder of the unexpired term, if additional time remains in such term, if the mayor or the speaker, as appropriate, shall fail to appoint a member within ninety days of such vacancy. Except for the chairperson, such member shall not be enrolled in the same political party as the other member appointed by the official who failed to so appoint. Each member shall be a resident of the city, registered to vote therein. Each member shall agree not to make contributions to any candidate for nomination for election, or election, to the office of mayor, public advocate, comptroller, borough president, or member of the council which in the aggregate are in excess of the maximum contribution applicable to such office pursuant to any local law establishing a voluntary system of campaign finance reform. No member shall serve as an officer of a political party, or be a candidate, or participate in any capacity in a campaign by a candidate, for nomination for election or election to the office of mayor, public advocate, comptroller, borough president or member of the city council. Officers and employees of the city or any city agency, lobbyists required to file a statement of registration under section 3-213 of the administrative code and the employees of such lobbyists shall not be eligible to be members of the board. In appointing members to the board, the mayor and the speaker shall consider campaign experience in general and particularly campaign experience with the New York city campaign finance system. Members of the board shall be required to undergo training developed pursuant to paragraph 14 of this section.

2. The members of the board shall be compensated at the rate of one hundred dollars per calendar day when performing the work of the board.

3. The board may employ necessary staff, including an executive director and a counsel, and make necessary expenditures subject to appropriation.

4. No member of the campaign finance board shall be removed from office except for cause and upon notice and hearing.

5. The board shall have the power to investigate all matters relating to the performance of its functions and any other matter relating to the proper administration of any voluntary system of campaign finance reform established by local law and for such purposes shall have the power to require the attendance and examine and take the testimony under oath of such persons as it shall deem necessary and to require the production of books, accounts, papers and other evidence relative to such investigation. Notwithstanding any other provision of law, the investigative and adjudicatory powers and functions of the staff to the board shall be separate and no staff member of the board shall perform both investigative and adjudicatory tasks or functions.

6. The board shall publicize, as it deems appropriate, the names of candidates for nomination or election to the office of the mayor, public advocate, comptroller, borough president, or city council who violate any of the provisions of any voluntary system of campaign finance reform established by local law.

7. The board may render advisory opinions with respect to questions arising under any local law establishing a voluntary system of campaign finance reform. Such advisory opinions may be rendered on the written request of a candidate, an officer of a political committee or member of the public, or may be rendered on its own initiative. The board shall make public its advisory opinions. The board shall develop a program for informing candidates and the public as to the purpose and effect of the provisions of any voluntary system of campaign finance reform established by local law.

8. The board shall have the authority to promulgate such rules and provide such forms as it deems necessary for

the administration of any voluntary system of campaign finance reform established by local law. The board shall promulgate regulations concerning the form in which contributions and expenditures are to be reported, the periods during which such reports must be filed and the verification required. The board shall require the filing of reports of contributions and expenditures for purposes of determining compliance with any contribution or expenditure limitations provided in any local law establishing a voluntary system of campaign finance reform, provided that the schedule established by the board for such filings shall be in accordance with the schedule specified by the state board of elections for the filing of campaign receipt and expenditure statements.

9. The board shall develop a computer data base that shall contain all information necessary for the proper administration of this chapter including information on contributions to and expenditures by candidates and their authorized committees and distributions of moneys from the campaign finance funds. Such data base shall be accessible to the public.

10. The board may take such other actions as are necessary and proper to carry out the purposes of any local law establishing a voluntary system of campaign finance reform. If at any time, the board determines that the amount of money in any special fund or funds established by any such local law, establishing a voluntary system of campaign finance reform, to fund a system of optional public campaign financing for candidates abiding by the requirements of such law, is insufficient, or is likely to be insufficient, for payment to such participating candidates pursuant to such law, it shall report this determination to the commissioner of finance, along with its estimate of the additional amount which will be necessary to provide such participating candidates with financing pursuant to such law and a detailed statement of the assumptions and methodologies on which such estimate is based. Not more than four days after receiving such estimate and supporting materials, the commissioner of finance shall transfer an amount equal to such estimate from the general fund to such special fund or funds. All monies transferred to such special fund or funds shall not be considered revenues of the city and payments from such fund or funds shall be made without appropriation and shall not be included in the expense budget of the city. The comptroller shall have custody of such fund or funds on behalf of the board and shall have the power to invest the monies of such fund or funds in the manner in which the city is authorized to invest its funds and shall deposit the monies of the fund or funds in such deposit banks as have been designated by the banking commission pursuant to section fifteen hundred twenty-four of this charter. The comptroller shall submit monthly reports to the board regarding the status of the fund or funds and more frequent reports when the board requires. Monies of the fund or funds shall be paid out by the comptroller only on warrant of the board.

11. The board shall have the authority to implement any system established for the regulation of inauguration and transition donations and expenditures including the promulgation of rules and regulations and the imposition of any penalties related thereto, as required by local law.

12. (a) The board shall require that candidates participating in the voluntary system of campaign finance reform or candidates who otherwise file disclosure reports with the board shall disclose to the board the acceptance of campaign contributions from individuals and entities doing business with the city. The board shall promulgate such rules as it deems necessary to implement and administer this provision and provide that information regarding such contributions shall be accessible to the public. The board shall also promulgate such rules as it deems necessary to regulate the acceptance by candidates participating in the voluntary system of campaign finance reform of campaign contributions from individuals and entities doing business with the city, including rules that determine which business dealings shall be covered by such rules. Elected officials, city agencies, boards and commissions, including the mayor, comptroller, public advocate, borough presidents, the city council and members of the city council shall cooperate with the board to provide to the board such information about such individuals and entities as the board shall require.

(b) The board shall promulgate such rules as it deems necessary to attribute expenditures that indirectly assist or benefit a candidate participating in the voluntary system of campaign finance reform as in-kind contributions to such candidate.

(c) In promulgating rules pursuant to this paragraph, the board shall consider the following criteria: (1) the

effectiveness of the voluntary system of campaign finance reform, (2) the costs of such system, (3) the maintenance of a reasonable balance between the burdens of such system and the incentives to candidates to participate in such system.

(d) Any rules promulgated pursuant to this paragraph shall apply only with respect to nomination for election, or election, to the office of mayor, public advocate, comptroller, borough president, or member of the city council.

(e) Proposed rules promulgated pursuant to this paragraph shall be published in accordance with subdivision b of section one thousand forty-three of this charter no later than December thirty-first, nineteen hundred ninety-nine. Final rules promulgated pursuant to this paragraph shall be adopted in accordance with such section as soon as practicable thereafter. Final rules adopted in the initial promulgation of rules pursuant to this paragraph shall supersede any inconsistent provisions of the administrative code that are in effect on the effective date of such final rules.

13. Notwithstanding any other provision of law, the board shall prohibit candidates for offices covered by the voluntary system of campaign finance reform from accepting, either directly or indirectly, a campaign contribution, loan, guarantee or other security for such loan, from any corporation. The board shall promulgate such rules as it deems necessary to implement and administer this provision.

14. a. The council and the mayor, in conjunction with the campaign finance board, shall develop a curriculum to be used to train members of the campaign finance board and staff. Such curriculum shall include the issues and problems confronted by campaigns for covered office and how the application and enforcement of the city's campaign finance laws impacts these campaigns.

b. The board shall take such actions as it deems necessary and appropriate to improve public awareness of the candidates, proposals or referenda in all elections in which there are contested elections for the offices of mayor, public advocate, borough presidents, comptroller, or city council or ballot proposals or referenda pursuant to this charter or the municipal home rule law, including but not necessarily limited to the publication of a non-partisan, impartial voters guide providing information on candidates, ballot proposals and referenda, and the distribution of one copy of such guide to each household in which there is at least one registered voter eligible to vote in the election involved. In any year in which the board publishes a voters guide, if the board determines that the amount of money in its budget is insufficient or likely to be insufficient for the publication and distribution of the voters guide, it shall report such determination to the director of the office of management and budget, who, after consultation with the board, shall, without an appropriation, transfer to the board a reasonable amount, as the director shall determine, to cover the cost of publishing and distributing the voters guide.

c. The board shall, not later than March tenth of each year, approve and submit to the mayor detailed itemized estimates of the financial needs of the campaign finance board for the ensuing fiscal year. Such estimates shall be comprised of at least one personal service unit of appropriation and at least one other than personal service unit of appropriation. The mayor shall include such estimates in the executive budget without revision, but with such recommendations as the mayor may deem proper. Upon inclusion in the executive budget, the budget submitted by the campaign finance board shall be adopted pursuant to such provisions of chapter ten of this charter as are applicable to the operating budget of the council.

d. The board may take such other actions as are necessary and proper to carry out any other authority the city council shall give to the board in any local law, including the promulgation of any rules and the provision of any forms.

HISTORICAL NOTE

Section added at General Election, November 8, 1988.

Subd. a par 1 amended L.L. 34/2007 § 13, eff. Jan. 1, 2008 as per § 40 of such L.L. and shall apply only to elections held on or after Jan. 1, 2008. [See § 3-702 Note 2]

Subd. a par 1 amended by referendum at General Election Nov. 3, 1998 § 1, eff. Jan. 1, 1999.

Subd. a par 1 amended at General Election, November 7, 1989.

Subd. a par 1 amended L.L. 68/1993 § 9, eff. Jan. 1, 1994.

Subd. a par 5 amended L.L. 34/2007 § 15, eff. Jan. 1, 2008 as per § 40 of such L.L. and shall apply only to elections held on or after Jan. 1, 2008. [See § 3-702 Note 2]

Subd. a par 6 amended L.L. 68/1993 § 10, eff. Jan. 1, 1994.

Subd. a par 10 amended at General Election, November 7, 1989.

Subd. a par 11 (laid out first in main volume) amended L.L. 58/2004 § 18, eff. Dec. 15, 2004. [See Administrative Code § 3-703 Note 3]

Subd. a par 11 added (laid out first) L.L. 39/1998 § 2, eff. Sept. 25, 1998.

Subd. a par 11 added (laid out second) by referendum at General Election Nov. 3, 1998 § 2, eff. Jan. 1, 1999.

Subd. a par 12 renumbered and amended (former par 11 laid out second in main volume) L.L. 58/2004 § 18, eff. Dec. 15, 2004. [See Administrative Code § 3-703 Note 3]

Subd. a par 12 added by referendum at General Election Nov. 3, 1998 § 3, eff. Jan. 1, 1999.

Subd. a par 13 renumbered and separately amended (former par 12) L.L. 58/2004 § 18, eff. Dec. 15, 2004. [See Administrative Code § 3-703 Note 3] and amended (as par 12) L.L. 60/2004 § 14, eff. Dec. 15, 2004. [See Administrative Code § 3-703 Note 5]

Subd. a par 14 added L.L. 34/2007 § 14, eff. Jan. 1, 2008 as per § 40 of such L.L. and shall apply only to elections held on or after Jan. 1, 2008. [See § 3-702 Note 2]

Subd. b amended by referendum at General Election Nov. 3, 1998 § 4, eff. Jan. 1, 1999.

Subd. b amended L.L. 68/1993 § 11, eff. Jan. 1, 1994.

Subd. c added by referendum at General Election Nov. 3, 1998 § 5, eff. Jan. 1, 1999.

Subd. d separately added L.L. 58/2004 § 18, eff. Dec. 15, 2004 [See

Administrative Code § 3-703 Note 3] and L.L. 59/2004 § 14, eff. Dec. 15, 2004 [See Administrative Code § 3-703 Note 4] and L.L. 60/2004 § 14, eff. Dec. 15, 2004 [See Administrative Code § 3-703 Note 5]

FOOTNOTES

38

[Footnote 38]: * Chapter added at General Election, November 8, 1988 (formerly § 1061, Permanent personal registration).



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NYC Charter 1053

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CHAPTER 4638 ELECTIONS AND VOTER ASSISTANCE*

§ 1053. **Voters guide.**

Each voters guide published by the board shall contain: (a) material explaining the date and hours during which the polls will be open for that election; when, where, and how to register to vote; when a citizen is required to reregister; when, where, and how absentee ballots are obtained and used; instructions on how to vote; maps showing the boundaries of council districts; and any other general information on voting deemed by the board to be necessary or useful to the electorate or otherwise consistent with the goals of this charter; (b) such tables of contents, graphics, and other materials which the board determines will make the voters guide easier to understand or more useful for the average voter; (c) biographical information on each candidate, including but not limited to name, party affiliation, present and previous public offices held, present occupation and employer, prior employment and other public service experience, educational background, and a listing of major organizational affiliations and endorsements; (d) concise statements by each candidate of his or her principles, platform or views; and (e) where there is a ballot proposal or referendum, concise statements explaining such proposal or referendum and an abstract of each such proposal or referendum. The guide shall be prepared in plain language using words with common and everyday meanings. No later than the first day of January of nineteen hundred eighty nine, the board shall promulgate such rules as it deems necessary for the preparation and publication of the guide in English, Spanish and any other languages the board determines to be necessary and appropriate, and for the distribution of the guide. The purpose of such rules shall be to ensure that the guide and its distribution will serve to fully, fairly and impartially inform the public about the issues and candidates appearing on the ballot.

HISTORICAL NOTE

Section added at General Election, November 8, 1988.

FOOTNOTES

38

[Footnote 38]: * Chapter added at General Election, November 8, 1988 (formerly § 1061, Permanent personal registration).



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CHAPTER 4638 ELECTIONS AND VOTER ASSISTANCE*

§ 1054. **Voter assistance commission.**

a. There shall be a voter assistance commission, the head of which shall be elected by the members of the commission from among their membership which shall consist of sixteen members and which shall advise all appropriate officials on matters relating to voter participation in New York city. The commission shall include the first deputy mayor, or if there is no first deputy mayor, such other deputy mayor as the mayor shall designate to serve on this commission, the director of the office of management and budget, the president of the board of education, the public advocate, the executive director of the board of elections, the corporation counsel and the chair of the campaign finance board. In addition there shall be nine members broadly representative of (1) groups that are underrepresented among those who vote and/or among those who are registered to vote, (2) community, voter registration, civil rights, and disabled groups, and (3) the business community. Each of these members shall serve for a three year term, with three to be appointed by the mayor and the remaining six to be appointed by the council. Of the three members initially appointed by the mayor, one shall serve for a term which expires on June thirtieth, nineteen hundred ninety-one, and one shall serve for a term which expires on June thirtieth nineteen hundred ninety-two. Of the six members initially appointed by the council, two shall serve for terms expiring June thirtieth nineteen hundred ninety-one, and two shall serve for terms expiring on June thirtieth nineteen hundred ninety-two. The members of the commission shall serve without compensation.

b. The commission, with the advice and assistance of the coordinator, shall:

1. monitor the performance of the voter assistance program established by this chapter.
2. make such recommendations as it deems appropriate to the mayor, the council, the borough presidents, and the board of elections for steps that could and should be taken by such officials or bodies or by city agencies to encourage and facilitate voter registration and voting by all residents of New York City who are eligible to vote;

3. undertake, by itself or in cooperation with other public or private entities, activities intended to encourage and facilitate voter registration and voting by all residents of New York City who are eligible to vote;

4. receive and review the annual report of the coordinator of voter assistance, and, together with such comments as the commission deems necessary and appropriate, forward copies of such report to the mayor, the council, the borough presidents, and all other public officials with responsibilities for policies, programs and appropriations related to voter registration and voting in New York City and to private entities that are currently or potentially involved in activities intended to increase voter registration and voting; and

5. hold public hearings, at least once annually, between the day following the general election and December twenty-first, regarding voter registration and participation in New York City;

HISTORICAL NOTE

Section added at General Election, November 8, 1988.

Subd a, subd. b, pars. 2, 4 amended at General Election, November 7, 1989.

Subd. a amended L.L. 68/1993 § 12, eff. Jan. 1, 1994.

FOOTNOTES

38

[Footnote 38]: * Chapter added at General Election, November 8, 1988 (formerly § 1061, Permanent personal registration).



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NYC Charter 1055

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CHAPTER 4638 ELECTIONS AND VOTER ASSISTANCE*

§ 1055. **Coordinator of voter assistance.**

The commission shall appoint, upon nomination of the mayor, a coordinator of voter assistance. The coordinator shall:

1. encourage and facilitate voter registration and voting by all residents of New York City who are eligible to vote and recommend methods to increase the rate of registration and voting by such residents;
2. identify groups or categories of such residents who are underrepresented among those registered and those voting and recommend methods to increase the rate of voter registration and voting among such groups and categories;
3. adopt rules establishing the content and format for city agencies to follow in preparing the annual voter assistance plans required by section one thousand fifty-six of this chapter;
4. consistent with all state and local laws, coordinate the activities of all city agencies in general and specialized efforts to increase registration and voting including, but not limited to, the distribution of forms for citizens who use or come in contact with the services of city agencies and institutions; mailings by city agencies to reach citizens; cooperative efforts with non-partisan voter registration groups, community boards, agencies of city, state and federal governments, and entities doing business in the city; and publicity and other outreach programs.
5. monitor voter registration and voting in New York City, and receive citizen complaints regarding such processes;
6. submit annually, no later than July thirtieth in each year, to the voter assistance commission a public report on the state of voter registration and participation in the city. Such report shall include, but not be limited to (a) a description of the activities of the voter assistance program and the effectiveness of those activities in achieving the

goals of the program; (b) the number of voter registration forms distributed by the program, the manner in which those forms were distributed and the estimated number of persons registered through the activities of the program; (c) the number and characteristics of citizens registered and unregistered to vote during the previous primary, general and special elections and for the most recent time period for which such information is available; (d) the number and characteristics of citizens who voted during the previous primary, general and special elections; (e) a review and analysis of the voter registration and voting processes in New York City during the previous year; (f) recommendations for increasing voter registration and participation; and (g) any other information or analysis the commission deems necessary and appropriate; and

7. prepare and publish studies and reports on issues of relevance to voter registration and participation in New York City.

HISTORICAL NOTE

Section added at General Election, November 8, 1988.

Subd. 6 amended at General Election, November 7, 1989.

FOOTNOTES

38

[Footnote 38]: * Chapter added at General Election, November 8, 1988 (formerly § 1061, Permanent personal registration).



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NYC Charter 1056

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CHAPTER 4638 ELECTIONS AND VOTER ASSISTANCE*

§ 1056. **Cooperation of mayoral agencies.**

Heads of mayoral agencies shall cooperate with the board of elections and the coordinator of voter assistance to encourage voter registration and voting by all residents of the city of New York eligible to vote, and shall prepare annually, in accordance with rules, and guidelines of the coordinator of voter assistance, plans specifying the resources, opportunities, and locations the agency can provide for voter assistance activities.

HISTORICAL NOTE

Section added at General Election, November 8, 1988.

Section heading added at General Election, November 7, 1989.

FOOTNOTES

38

[Footnote 38]: * Chapter added at General Election, November 8, 1988 (formerly § 1061, Permanent personal registration).



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CHAPTER 4638 ELECTIONS AND VOTER ASSISTANCE*

§ 1057. **Non-partisanship in program operations.**

The board, commission and coordinator shall conduct all their activities in a strictly non-partisan manner.

HISTORICAL NOTE

Section added at General Election, November 8, 1988.

FOOTNOTES

38

[Footnote 38]: * Chapter added at General Election, November 8, 1988 (formerly § 1061, Permanent personal registration).



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NYC Charter 1057-a

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CHAPTER 4638 ELECTIONS AND VOTER ASSISTANCE*

§ 1057-a. **Agency based voter registration.**

Each agency designated as a participating agency under the provisions of this section shall implement and administer a program of distribution of voter registration forms pursuant to the provisions of this section. The following offices are hereby designated as participating voter registration agencies: The administration for children's services, the city clerk, the civilian complaint review board, the commission on human rights, community boards, the department of small business services, the department of citywide administrative services, the department of consumer affairs, the department of correction, the department of environmental protection, the department of finance, the department of health and mental hygiene, the department of homeless services, the department of housing preservation and development, the department of parks and recreation, the department of probation, the taxi and limousine commission, the department of transportation and the department of youth and community development. Participating agencies shall include a mandate in all new or renewed agreements with those subcontractors having regular contact with the public in the daily administration of their business to follow the guidelines of this section. Such participating agencies shall be required to offer voter registration forms to all persons together with written applications for services, renewal or recertification for services and change of address relating to such services; provided however that this section shall not apply to services that must be provided to prevent actual or potential danger to the life, health, or safety of any individual or of the public. Such agencies may provide assistance to applicants in completing voter registration forms, if so requested. Such agencies may also, in their discretion, receive and transmit the completed application form from any applicants who wish to have such form transmitted to the board of elections for the city of New York.

1. Participating agencies shall adopt such rules and regulations as may be necessary to implement this section. The New York city voter assistance commission shall prepare and distribute to participating agencies written advisory agency guidelines as to the implementation of this section and may establish training programs for employees of participating agencies. Participating agencies may consider such advisory agency guidelines in the promulgation of their rules and regulations.

2. Participating agencies shall provide and distribute voter registration forms to all persons together with written applications for services, renewal or recertification for services and change of address relating to such services; provided however that this section shall not apply to services that must be provided to prevent actual or potential danger to life, health or safety of any individual or of the public. Participating agency staff may provide assistance in completing these distributed voter registration forms, if so requested. Participating agencies shall also include a voter registration form with any agency communication sent through the United States mail for the purpose of supplying clients with application, renewal or recertification for services and change of address relating to such services materials. Participating agencies shall also incorporate an opportunity to request a voter registration application into any application for services, renewal or recertification for services and change of address relating to such services provided on computer terminals, the World Wide Web or the Internet. Any person indicating that they wish to be sent a voter registration form, via computer terminals, the World Wide Web or the Internet shall be sent such a form by the participating agency, or directed to a bank on that system where such a form may be downloaded.

3. Participating agencies shall also:

a. at the earliest practicable or next regularly scheduled printing of their forms, physically incorporate the voter registration forms with their own application forms in a manner that permits the voter registration portion to be detached therefrom. Until such time when the agency amends its form, each agency should affix or include a postage paid board of elections for the city of New York voter registration form to or with its application, renewal, recertification and change of address forms;

b. use the board of elections of the city of New York coded voter registration forms which designate such forms as originating from participating agencies: and

c. transmit any completed forms collected in their discretion to the board of elections of the city of New York within two weeks of the receipt of such completed forms at the participating agency. If a completed form is accepted within five days before the last day for registration to vote in a citywide election, such completed form shall be transmitted by the participating agency to the board of elections of the city of New York not later than five days after the date of acceptance.

4. All persons seeking voter registration forms and information shall be advised in writing together with other written materials provided by agencies or by appropriate publicity that government services are not conditioned on being registered to vote. No statement shall be made nor any action taken by an agency employee to discourage the applicant from registering to vote or to enroll in any particular political party.

5. The completion of the voter registration form by an applicant is voluntary.

6. Employees of a participating agency who provide voter registration assistance shall not:

a. seek to influence an applicant's political preference or party designation; b. display any political preference or party allegiance;

c. make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

d. make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

7. Each participating agency, department, division and office that makes available voter registration forms shall prominently display promotional materials designed and approved by the board of elections for the city of New York or state board of elections for use in state agency programs.

HISTORICAL NOTE

Section renumbered (formerly § 1058) at General Election, November 6, 2001 (Question 5 § 19) eff. November 6, 2001 with special provisions in § 1152 subd. h par (4).

Section added L.L. 29/2000 § 2, eff. Aug. 23, 2000. [See Note]

Open par amended L.L. 52/2003 § 6, eff. July 1, 2003. [See Charter

§ 1301 Note 1]

Open par separately amended L.L. 22/2002 § 6, eff. July 29, 2002 and deemed in effect as of July 1, 2002 and L.L. 34/2002 § 3, eff. Nov. 7, 2002.

Open par amended at General Election, November 6, 2001 (Question 5 § 20) eff. November 6, 2001 with special provisions in § 1152 subd. h par (4).

NOTE

Provisions of L.L. 29/2000

Section 1. Legislative intent and findings. Current federal and state law requires that a sophisticated computerized voter registration plan be put in place in motor vehicle agencies. However, while more than 91% of New York State residents eighteen and over outside of New York City hold driver's licenses, less than 50% of City residents do. In order to ensure that application forms be as widely and freely distributed as possible, this legislation requires certain City agencies to distribute voter registration forms to clients when they first apply for services or when they recertify or change their address. This procedure has been found to be highly effective in registering new voters and updating voter registration rolls in places across the country that have implemented similar programs. This program will serve to facilitate public access to voter registration forms, but not actually register anyone because only the Board of Elections may register a voter pursuant to State Election Law.

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§ 3. Severability. Should any provision or application of this local law be determined to be unlawful or unenforceable, all other provisions and applications of this local law shall nevertheless continue in full force and effect.

FOOTNOTES

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[Footnote 38]: * Chapter added at General Election, November 8, 1988 (formerly § 1061, Permanent personal registration).



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NYC Charter 1058

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CHAPTER 47 PUBLIC ACCESS TO MEETINGS AND INFORMATION*40

§ 1058. **Heads of departments to furnish copies of papers on demand.**

The heads of all administrations and departments, except the police and law departments, and the chiefs of each and every division or bureau thereof, and all borough presidents shall, with reasonable promptness, furnish to any taxpayer desiring the same, a true and certified copy of any book, account or paper kept by such administration, department, bureau or office, or such part thereof as may be demanded, upon payment in advance of ten cents for every hundred words thereof by the person demanding the same. The provisions of this section shall not apply to any papers prepared by or for the comptroller for use in any proceeding to adjust or pay a claim against the city or any agency, or by or for counsel for use in actions or proceedings to which the city or any agency is a party, or for use in any investigation authorized by this charter.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

FOOTNOTES

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[Footnote 40]: * Chapter added at General Election, November 7, 1989.



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CHAPTER 47 PUBLIC ACCESS TO MEETINGS AND INFORMATION*40

§ 1059. **Inspection by taxpayers of books and papers.**

All books, accounts and papers in the office of any borough president or any division or bureau thereof, or in any city administration or department or any division or bureau thereof, except the police and law departments, shall at all times be open to the inspection of any taxpayer, subject to such reasonable rules and regulations in regard to the time and manner of such inspection as the borough president, administration, department, office, division or bureau may make; in case such inspection shall be refused, such taxpayer, on his sworn petition, describing the particular book, account or paper that he desires to inspect, may, upon notice of not less than one day, apply to any justice of the supreme court for an order that he be allowed to make such inspection as such justice shall by his order authorize. The provisions of this section shall not apply to any papers prepared by or for the comptroller for use in any proceedings to adjust or pay a claim against the city or any agency, or by or for counsel for use in actions or proceedings to which the city or any agency is a party, or for use in any investigation authorized by this charter.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

FOOTNOTES

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[Footnote 40]: * Chapter added at General Election, November 7, 1989.



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CHAPTER 47 PUBLIC ACCESS TO MEETINGS AND INFORMATION*40

§ 1060. **Public attendance at executive sessions.**

a. Except as otherwise provided pursuant to subdivision b of this section, the public may attend all sessions or meetings of the following agencies whenever items on the calendar of such agency are to be considered and acted upon in a preliminary or final manner; art commission, conciliation and appeals board, environmental control board, board of health, landmarks preservation commission, city planning commission, board of standards and appeals, tax commission, youth board, and the council and its committees.

b. Any agency specified pursuant to subdivision a of this section may convene an executive session closed to the public by a three-fourths vote of all of its members, but shall not take final action at any such meeting.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

FOOTNOTES

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[Footnote 40]: * Chapter added at General Election, November 7, 1989.



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CHAPTER 47 PUBLIC ACCESS TO MEETINGS AND INFORMATION*40

§ 1061. **Commission on public information and communication.**

a. There shall be a commission on public information and communication which shall consist of the public advocate, as chair, the corporation counsel or the delegate of such officer, the director of operations or the delegate of such officer, the commissioner of the department of records and information services or the delegate of such officer, the commissioner of information technology and telecommunications or the delegate of such officer, the president of the WNYC communications group or the delegate of such officer, and one council member elected by the council, all of whom shall serve on the board without compensation. In addition, there shall be four other members, each appointed for a four-year term, who shall not hold or seek public or political party office or be public employees in any jurisdiction, except the representative of the community board as set forth herein, to be appointed as follows: two by the mayor, one of whom is or has been a representative of the news media and one of whom shall be a member of a community board; one by the public advocate; and one by the borough presidents acting as a group. Such members shall receive a per diem compensation for each calendar day they perform the work of the commission. No such members shall serve for more than two consecutive four-year terms. All initial appointments shall be made by the first day of March, nineteen hundred ninety.

b. Members may be removed by the mayor for cause after notice and opportunity to be heard. Members shall serve until their successors have been appointed.

c. The commission shall appoint an executive director, a general counsel and such other officers, employees, and consultants as are necessary to fulfill its duties, within appropriations available therefor.

d. The commission shall:

(1) undertake, by itself, or in cooperation with other entities, activities to educate the public about the availability and potential usefulness of city produced or maintained information and assist the public in obtaining access

to such information;

(2) review (i) all city information policies, including but not limited to, policies regarding public access to city produced or maintained information, particularly, computerized information; (ii) the quality, structure, and costs to the public of such information; (iii) agency compliance with the various notice, comment, and hearing provisions of the charter and other laws applicable to city agencies; and (iv) the usefulness and availability of city documents, reports, and publications;

(3) assist city agencies in facilitating public access to their meetings, transcripts, records, and other information, and monitor agency compliance with the provisions of the charter, and other laws which require such public access;

(4) hold at least one public hearing each year on city information policies and issue at least one report each year with such recommendations as the commission deems advisable;

(5) on the request of any member of the public, elected official, or city agency, render advisory opinions regarding the application of those provisions of the charter or other laws which require public access to meetings, transcripts, records and other information. Such advisory opinions shall be indexed by subject matter and maintained on a cumulative basis;

(6) make recommendations regarding: (i) the application of new communications technology to improve public access to city produced or maintained information; (ii) the distribution of information to the public about the purposes and locations of the city's service delivery facilities; and (iii) programming for the municipal cable channels and broadcasting system.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

Subd. a amended L.L. 24/1994 § 3, eff. July 5, 1994.

Subd. a amended L.L. 68/1993 § 13, eff. Jan. 1, 1994.

FOOTNOTES

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[Footnote 40]: * Chapter added at General Election, November 7, 1989.



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CHAPTER 47 PUBLIC ACCESS TO MEETINGS AND INFORMATION*40

§ 1062. **Public data directory.**

a. The commission shall publish annually a directory of the computerized information produced or maintained by city agencies which is required by law to be publicly accessible. Such directory shall include specific descriptions of the contents, format and methods of accessing such information, and the name, title, office address, and office telephone number of the official in each agency responsible for receiving inquiries about such information.

b. The mayor shall transmit to the commission such information as the commission requires to compile and update the public data directory. The mayor shall also ensure that all agencies provide the commission with such assistance and information as the commission requires.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

FOOTNOTES

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[Footnote 40]: * Chapter added at General Election, November 7, 1989.



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CHAPTER 47 PUBLIC ACCESS TO MEETINGS AND INFORMATION*40

§ 1063. **Cablecasting and broadcasting the public proceedings of city government.**

a. All future cable franchises and franchise renewals shall require (i) that channels be designated for governmental use and (ii) that the franchisee provide the interconnections necessary to allow the cablecasting of the public proceedings of the council and its committees and the city planning commission.

b. The council and its committees and the city planning commission shall make their public meetings and hearings available for cablecasting and broadcasting. The council, on the recommendation of the commission on public information and communication, may by local law require that other agencies of city government be subject to the requirements of this subdivision.

c. On or before the thirtieth day of June, nineteen hundred ninety-one, the commission on public information and communication shall submit to the council a proposal for cablecasting the public proceedings of the council and its committees and the city planning commission. Such proposal shall include the commission's recommendations regarding (i) the organization or organizations to be responsible for obtaining such cablecasting and (ii) funding the start-up and ongoing costs of such cablecasting.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

FOOTNOTES

[Footnote 40]: * Chapter added at General Election, November 7, 1989.



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CHAPTER 47 PUBLIC ACCESS TO MEETINGS AND INFORMATION*40

§ 1064. **Centralized contract and contractor information.**

a. The mayor shall maintain, in a central place which is accessible to the public, standard information regarding each city contract and contractor. Such information shall include: (1) a copy of the contract; (2) information regarding the method by which the contract was let; (3) such standard documents as the contractor is required to submit, which documents shall be updated regularly in accordance with rules of the procurement policy board; (4) information regarding the contractor's qualifications and performance; (5) any evaluations of the contractor and any contractor responses to such evaluations; (6) any audits of the contract and any contractor responses to such audits; and (7) any decisions regarding the suspension or debarment of the contractor.

b. The procurement policy board shall regularly review the scope and form of all information maintained pursuant to this section and shall promulgate rules regarding its contents, organization and management.

c. The mayor shall ensure adequate public access to the information on contracts and contractors, which shall be maintained in a manner to facilitate public review, with due consideration for the need to protect, where appropriate, the confidentiality of any such information.

d. The information on contracts and contractors shall be computerized to the extent feasible. The computerized information shall be stored in a manner which allows for meaningful read-only access to such information by the agency name, contractor name, contract category, and contract number included in prior notices published in the City Record pursuant to section three hundred twenty-five. At least one computer terminal shall be available for such access in the central place established by the mayor pursuant to subdivision a of this section.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

FOOTNOTES

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[Footnote 40]: * Chapter added at General Election, November 7, 1989.



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CHAPTER 47 PUBLIC ACCESS TO MEETINGS AND INFORMATION*40

§ 1065. **Budget documents.**

Each budget document required by chapters ten, six, or nine of the charter shall be a public document. The official or agency responsible for preparing each such document shall file a copy in the municipal reference and research center, in the principal branch library of each borough and, for the various geographic based budget documents, in the relevant branch library. Copies of each such required budget document shall also be made available for reasonable public inspection in the office of the official or agency responsible for preparing it.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

FOOTNOTES

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[Footnote 40]: * Chapter added at General Election, November 7, 1989.



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CHAPTER 47 PUBLIC ACCESS TO MEETINGS AND INFORMATION*40

§ 1066. **City Record.**

a. There shall be published daily, except Saturdays, Sundays and legal holidays, under contract or by the department of citywide administrative services, a paper to be known as the City Record.

b. There shall be inserted in the City Record nothing aside from such official matters as are expressly authorized.

c. All advertising required to be done for the city, except as otherwise provided by law, shall be inserted at the public expense in the City Record and a publication therein shall be sufficient compliance with any law requiring publication of such matters or notices.

d. Nothing herein contained shall prevent the publication elsewhere of any advertisement required by law to be so published.

e. The commissioner of citywide administrative services shall cause a continuous series of the City Record to be bound as completed quarterly and to be deposited with his or her certificate thereon in the office of the city register, in the county clerk's office of each county and in the office of the city clerk; and copies of the contents of any part of the same, certified by such register, county clerk or city clerk, shall be received in judicial proceedings as prima facie evidence of the truth of the contents thereof.

f. The commissioner of citywide administrative services shall provide copies of each issue of the City Record to the municipal reference and research center where they shall be available without charge to any member of the public requesting a copy on the publication date or within a reasonable period of time thereafter, to be determined by the commissioner of records and information services. The commissioner shall also provide free subscriptions to the City Record to each borough president, council member, community board, and branch of the public library and to the news

media as defined in paragraph three of subdivision b of section one thousand forty-three of the charter. The commissioner of citywide administrative services, each borough president, council member and community board shall, upon receipt, make copies of each issue of the City Record available in their respective offices for reasonable public inspection without charge.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

Subds. a, e, f amended L.L. 59/1996 § 21, eff. Aug. 8, 1996.

FOOTNOTES

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[Footnote 40]: * Chapter added at General Election, November 7, 1989.



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CHAPTER 47 PUBLIC ACCESS TO MEETINGS AND INFORMATION*40

§ 1067. **Organization of the agency; notice.**

In January, nineteen hundred ninety and every year thereafter, in accordance with the notice procedures of subdivision b of section one thousand forty-three of this charter, the head of each agency shall cause to be published in the City Record and shall give notice of a written plan or chart describing the organization of the agency.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

FOOTNOTES

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[Footnote 40]: * Chapter added at General Election, November 7, 1989.



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CHAPTER 47 PUBLIC ACCESS TO MEETINGS AND INFORMATION*40

§ 1068. **[Resolutions amending or extending charter.]**

The text of each resolution or similar action provided for by this charter which has the force of law or which amends or extends the charter shall appear as part of the administrative code or of the compilation of city rules required by section one thousand forty-five, as the mayor deems appropriate.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

FOOTNOTES

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[Footnote 40]: * Chapter added at General Election, November 7, 1989.



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CHAPTER 47 PUBLIC ACCESS TO MEETINGS AND INFORMATION*40

§ 1069. **Access to public insurance coverage information.**

a. Pursuant to the provisions of this section, each agency designated as a participating agency under the provisions of this section shall implement and administer a program of distribution of the public health insurance program options pamphlet published by the department of health and mental hygiene pursuant to section 17-183 of the administrative code of the city of New York. The following offices are hereby designated as participating agencies: the administration for children's services, the board of education, the city clerk, the commission on human rights, the department for the aging, the department of correction, the department of employment, the department of homeless services, the department of housing preservation and development, the department of juvenile justice, the department of health and mental hygiene, the department of probation, the department of social services/human resources administration, the taxi and limousine commission, the department of youth and community development, the office to combat domestic violence, and the office of immigrant affairs; provided, however, that the department of health and mental hygiene, as it deems appropriate, may designate additional agencies to be participating agencies.

b. Participating agencies shall be required to: (i) distribute such public health insurance program options pamphlet to all persons requesting a written application for services, renewal or recertification of services or request for a change of address relating to the provision of services by such agency; provided, however, that this section shall not apply to services that must be provided to prevent actual or potential danger to the life, health or safety of any individual or to the public (ii) include a public health insurance program options pamphlet with any agency communication sent through the United States mail for the purpose of supplying an individual with a written application for services, renewal or recertification of services or with a request for a change of address form relating to the provision of services by such agency; and (iii) provide an opportunity for an individual requesting a written application for services, renewal or recertification for services or change of address form relating to the provision of services by such agency via the Internet to request a public health insurance program options pamphlet, and provide such pamphlet, by United States mail or an Internet address where such pamphlet may be viewed or downloaded, to any person who indicates via the

Internet that they wish to be sent a public health insurance program options pamphlet; provided, however, that the taxi and limousine commission shall only be required to distribute to public health insurance program options pamphlet to those persons applying for or renewing a driver's license or vehicle license as those terms are defined in section 19-502 of this code; and provided further, that the board of education shall be required only to ensure that the public health insurance program options pamphlet is distributed to those individuals who appear in person to register a child in the public school system.

c. Participating agencies shall ensure that the employees of such agency do not make any statement to an applicant for services or client or take any action the purpose or effect of which is to lead the applicant or client to believe that a decision to request public health insurance or a public health insurance program options pamphlet has any bearing on their eligibility to receive or the availability of services or benefits provided by such agency.

d. Each participating agency shall request that any contractor of such agency operating pursuant to a contract which (i) is in excess of two hundred and fifty thousand dollars and (ii) requires such contractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of their contractual obligation to such participating agency, fulfill the obligations of participating agencies under this section.

e. Each participating agency may establish procedures as they deem necessary to implement the local law that added this section. The commissioner or head of a participating agency, with the concurrence of the commissioner of the department of health and mental hygiene, may exclude a program in whole or in part from the requirements of this section upon determining that the inclusion of such a program would not substantially further the purpose of the local law that added this section. The commissioner or head of each participating agency that administers programs receiving funds under the workforce investment act of 1998, as codified at 29 U.S.C. § 2801 et seq., shall, with the concurrence of the commissioner of the department of health and mental hygiene, determine which workforce investment act offices providing workforce development services, including core and intensive services or substantive training funded in whole or in part by the city's share of funds provided under such workforce investment act, shall be required to fulfill the obligations of participating agencies under this section; such determination shall be based upon whether the inclusion of such offices would substantially further the purpose of the local law that added this section. A copy of each determination made pursuant to this subdivision shall be forwarded to the council and the mayor within thirty days of such determination.

HISTORICAL NOTE

Section added L.L. 1/2002 § 3, eff. Sept. 29, 2002. [See Note below and Note after Administrative Code § 17-183]

Subds. a, e amended L.L. 22/2002 § 7, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

NOTE

Provisions of L.L. 1/2002:

§ 4. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this local law, which remaining portions shall continue in full force and effect.

§ 5. Effective date. This local law shall take effect one hundred and eighty days after its enactment. Actions necessary to prepare for the implementation of this local law may be taken prior to its effective date. [§ 5 amended L.L. 109/2005 § 1, eff. Dec. 19, 2005]

FOOTNOTES

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[Footnote 40]: * Chapter added at General Election, November 7, 1989.



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NYC Charter 1069

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CHAPTER 47 PUBLIC ACCESS TO MEETINGS AND INFORMATION*40

§ 1069.1. **Distribution of pamphlet on public health insurance program options in day care centers.**

Each day care center shall be required to distribute the pamphlet on public health insurance program options provided to it by the department of health and mental hygiene pursuant to subdivision b of section 17-183 of the administrative code of the city of New York to those individuals who appear in person to register a child in such day care center. Day care centers shall also be required to ensure that pamphlets on public health insurance program options are made available to parents and/or guardians on the premises of such centers throughout the year. For the purposes of this section, "day care center" shall mean any child day care facility operating in New York city that is required to obtain a license from, or to register with, the department of health and mental hygiene pursuant to section 47.05 of the New York city health code and/or the New York state department of social services pursuant to section 390 of the New York state social services law.

HISTORICAL NOTE

Section added L.L. 4/2008 § 1, eff. July 1, 2008. [See Note 1]

NOTE

1. Provisions of L.L. L.L. 4/2008:

§ 3. Effect of invalidity; severability. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this local law, which remaining portions shall continue in full force and effect.

FOOTNOTES

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[Footnote 40]: * Chapter added at General Election, November 7, 1989.



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NYC Charter 1070

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CHAPTER 48 DEPARTMENT OF INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS*47

§ 1070. **Department; commissioner.**

There shall be a department of information technology and telecommunications the head of which shall be the commissioner of information technology and telecommunications and the chief information officer of the city.

HISTORICAL NOTE

Section so designated and amended L.L. 24/1994 § 4, eff. July 5, 1994 (formerly § 1070 subd. a)

Section amended L.L. 71/1990 § 1, eff. July 1, 1990.

Section added at General Election, Nov. 7, 1989.

FOOTNOTES

47

[Footnote 47]: * Chapter amended L.L. 24/1994 § 4, eff. July 5, 1994; chapter amended L.L. 71/1990 § 1, eff. July 1, 1990, chapter added at General Election, November 7, 1989.



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NYC Charter 1071

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CHAPTER 48 DEPARTMENT OF INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS*47

§ 1071. **Deputies.**

The commissioner may appoint four deputies, one of whom may be designated the first deputy commissioner.

HISTORICAL NOTE

Section so designated and amended L.L. 24/1994 § 4, eff. July 5, 1994 (formerly § 1070 subd. a)

Section amended L.L. 71/1990 § 1, eff. July 1, 1990.

Section added at General Election, Nov. 7, 1989.

FOOTNOTES

47

[Footnote 47]: * Chapter amended L.L. 24/1994 § 4, eff. July 5, 1994; chapter amended L.L. 71/1990 § 1, eff. July 1, 1990, chapter added at General Election, November 7, 1989.



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NYC Charter 1072

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CHAPTER 48 DEPARTMENT OF INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS*47

§ 1072. **Powers and duties of the department.**

Except as otherwise provided by law, the department shall have the following powers and duties:

- a. to plan, formulate, coordinate and advance information technology and telecommunications policies for the city;
- b. to develop, maintain and implement a long range telecommunications strategy;
- c. to administer all franchises and revocable consents relating to telecommunications pursuant to the provisions of chapter fourteen, including, without limitation, proposing authorizing resolutions for telecommunications franchises, developing and issuing requests for proposals or other solicitations of proposals for telecommunications franchises, selecting telecommunications franchisees, reviewing and approving petitions for revocable consents relating to telecommunications, negotiating the terms of contracts or other agreements relating to telecommunications franchises and revocable consents, and enforcing the terms and conditions of such agreements;
- d. to develop municipal uses of cable television and coordinate interagency uses of cable television and other telecommunications;
- e. to ensure that priority is given on at least one municipal channel to the cable casting of the public proceedings of the council and its committees, the city planning commission and other state and city agencies;
- f. to provide to city agencies such land-based and wireless voice, data, video or other communications facilities, and technical assistance or other assistance with respect to such facilities, as they may require for the effective discharge of their responsibilities;

g. to participate in developing, maintaining and implementing a long-range computer system and data communications strategy for the city of New York;

h. to assist in providing interagency coordination on matters related to data communications activities and interfacing of computers;

i. to provide appropriate, reliable, cost-effective and responsive computer and data communications services to agencies that require such services by purchasing and maintaining hardware, software and such other goods and services as may be necessary to effectively discharge the powers and duties of the department;

j. to provide assistance to agencies in meeting their data processing and data communications objectives;

k. to provide agencies using or proposing to use the services of this department with technical assistance in determining feasibility and resource requirements;

l. to simplify access to shared information, reduce communication costs and provide access to multiple computer systems by connecting computers and terminals of various city agencies, and of other public entities requesting such connection where such provision to such other entities would in the judgment of the commissioner be in the city's interests;

m. to plan and provide telecommunications coordination in support of disaster recovery;

n. to ensure security for data and other information handled by this department;

o. to institute procedures to assure restrictions of access to information to the appropriate individuals, where such restrictions is required by law; and

p. to perform such other responsibilities with respect to information technology and telecommunications matters, including responsibilities delegated elsewhere by the charter, as the mayor shall direct.

HISTORICAL NOTE

Section so designated and amended L.L. 24/1994 § 4, eff. July 5, 1994 (formerly § 1070 subd. b)

Section amended L.L. 71/1990 § 1, eff. July 1, 1990.

Section added at General Election, Nov. 7, 1989.

NOTE

1. Provisions of L.L. L.L. 126/2005 eff. Dec. 29, 2005:

A LOCAL LAW

To establish a temporary advisory committee to advise the mayor and the speaker of the council on issues pertaining to access to broadband technologies within the city of New York.

Be it enacted by the Council as follows:

Section 1. Legislative findings and intent. Access to broadband, a high-speed connection to the Internet, is becoming increasingly essential to New York City's residents, not-for-profit organizations, and businesses. Such high-speed connections enable the fast relay of voice and data that many have come to expect. Additionally, broadband connections are necessary for conveying images, sounds and video, all of which require large amounts of bandwidth.

Broadband connections are improving the quality of life across all ages and sectors. Schoolchildren can communicate with their teachers quickly and easily, as well as complete homework projects that involve on-line multi-media educational resources. Home-bound seniors may use broadband to connect with doctors who can relay test results in real time. Broadband also benefits businesses and not-for-profit organizations.

Due to the important role of broadband in the city, the council of the city of New York deems it useful to create a broadband advisory committee to advise the mayor and the speaker of the council on issues pertaining to access to broadband technologies and to gather information and data regarding the needs of residents that access to broadband might be able to address. This local law is in support of the mayor's telecommunications plan and seeks to supplement and not duplicate the findings in the mayor's telecommunications plan or the work of the mayor's telecommunications policy advisory group. The findings of this committee shall be used to inform the agencies implementing the recommendations of the mayor's telecommunications plan and the mayor's telecommunications policy advisory group.

§ 2. Broadband Advisory Committee. a. There shall be an advisory committee, to be known as the Broadband Advisory Committee, which shall review the ways and methods of using municipal resources to accelerate the build-out of current, emerging and any newly developed broadband technologies and other advanced telecommunications and information services, such as cable, digital subscriber line ("DSL"), broadband over power lines ("BPL"), any other wire-based methods, Wi-Fi, WiMAX, and any other wireless technologies, within the city of New York.

b. The broadband advisory committee shall be comprised of fifteen members, seven of whom shall be appointed by the speaker of the council, and eight of whom shall be appointed by the mayor. The committee shall select a chairperson from among the members of the committee. The members shall be appointed within thirty days of the enactment of this local law and shall serve without compensation. Each member may be removed for cause at any time by the original appointing authority and any vacancy shall be filled in the same manner as the appointment of the departing member was made.

c. The committee shall be deemed established upon the appointment of seven of its members and shall continue until December 31, 2008.

d. The committee shall meet as many times as it deems necessary but in no event shall it meet less often than two times in the first calendar year. The committee shall also hold at least one public hearing in the first year in each borough to educate the public on new technologies and policies and to accept public comment. The committee shall also accept comments received through email and regular mail. Any comments accepted by the committee shall also be made available to the general public by being posted on the city's website. Thereafter, the committee shall meet as many times as it deems necessary but in no event shall it meet less often than two times in the next two years. The committee shall hold at least one public hearing in each borough in the next two years to educate the public on new technologies and policies and to accept public comment. The committee shall continue to accept comments received through email or regular mail, and comments accepted by the committee shall also be made available to the general public by being posted on the city's website.

e. For the purposes of this local law, the presence of seven members shall be deemed a quorum. In the presence of a quorum, any act taken by a majority of those present shall be deemed an act of the committee.

f. The committee shall be comprised of, but not limited to, persons with expertise in the following areas:

1. Business, technology, industrial organization, and economics;
2. The not-for-profit and philanthropic communities;
3. Technology, telecommunications, privacy, antitrust, and information law and regulation; and
4. Such other areas as the appointing authorities deem appropriate.

g. The committee shall report its findings and recommendations to the mayor and the speaker of the council at least once a year. Such findings shall be used to inform the agencies implementing the recommendations of the mayor's telecommunications plan and the mayor's telecommunications policy advisory group. The findings and recommendations shall also be made available to the general public by being posted on the city's website. Such report shall contain, but not be limited to:

1. An identification of the geographic areas of the city where the committee deems broadband technologies and telecommunications and information services are needed and which technologies will best serve these areas;
2. An analysis of the current broadband and other advanced telecommunications and information services market, including, but not limited to, an assessment of current providers' and intermodal competitors' offerings, levels of competition, pricing, innovation, customer service and overall responsiveness to consumer demand; and
3. Recommendations that the mayor and the speaker of the council may implement regarding the mandate set forth in subdivision a of section two of this local law, including, but not limited to, possible incentives for telecommunications companies and broadband service providers to deploy affordable access to broadband technologies and other advanced telecommunications and information services in areas of the city where such technologies are needed.

h. The department of information technology and telecommunications and any other city agency may make available to the committee any relevant information concerning broadband technologies and telecommunications and information services.

§ 3. This local law shall take effect immediately upon its enactment.

CASE NOTES

¶ 1. Under City Charter § 1072, the agency had the power to enact regulations restricting advertising on public telephones. See 67 R.C.N.Y. Sec. 6-06. *Coastal Communication Service, Inc. v. New York City Dept. of Information Technology and Communications*, 12 Misc.3d 1179(A), 824 N.Y.S.2d 761, 2006 WL 1879115 (Sup.Ct. New York Co.).

FOOTNOTES

47

[Footnote 47]: * Chapter amended L.L. 24/1994 § 4, eff. July 5, 1994; chapter amended L.L. 71/1990 § 1, eff. July 1, 1990, chapter added at General Election, November 7, 1989.



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NYC Charter 1073

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CHAPTER 48 DEPARTMENT OF INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS*47

§ 1073. **[Emergency communications systems of other agencies.]**

With respect to emergency communications systems and emergency communications facilities administered by another agency, the department shall exercise its powers and duties only as the mayor shall direct pursuant to subdivision p of section 1072 of this chapter, or at the request of such agency.

HISTORICAL NOTE

Section designated and amended L.L. 24/1994 § 4, eff. July 5, 1994

(formerly § 1070 subd. c)

Section amended L.L. 71/1990 § 1, eff. July 1, 1990.

Section added at General Election, Nov. 7, 1989.

FOOTNOTES

47

[Footnote 47]: * Chapter amended L.L. 24/1994 § 4, eff. July 5, 1994; chapter amended L.L. 71/1990 § 1, eff. July 1, 1990, chapter added at General Election, November 7, 1989.



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NYC Charter 1074

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CHAPTER 48 DEPARTMENT OF INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS*47

§ 1074. **Telecommunications.**

"Telecommunications" shall mean the transmission of writings, signals, pictures, numbers and sounds or intelligence of all kinds by aid of wire, cable, optical fiber, radio, satellite, electromagnetic wave, microwave or other like connection between points of origin and reception of such transmission, including all instrumentalities, facilities, apparatus and services incidental to such transmission.

HISTORICAL NOTE

Section renumbered and amended L.L. 24/1994 § 4, eff. July 5, 1994

(formerly § 1071)

Section amended L.L. 71/1990 § 1, eff. July 1, 1990.

Section added at General Election, Nov. 7, 1989.

FOOTNOTES

47

[Footnote 47]: * Chapter amended L.L. 24/1994 § 4, eff. July 5, 1994; chapter amended L.L. 71/1990 § 1, eff. July 1, 1990, chapter added at General Election, November 7, 1989.



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NYC Charter 1075

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CHAPTER 48 DEPARTMENT OF INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS*47

§ 1075. **"311 citizen service center reports."**

(a)* Definitions.⁴⁸ For the purposes of this section, the term "department" shall mean the department of information technology and telecommunications. The term "directory assistance call" shall mean any call received by the 311 citizen service center that is entered into the 311 computer system in the directory assistance category. The term "request for service" shall mean any call received by the 311 citizen service center that is entered into the 311 computer system in the request for service category.

b. Within seven business days from the end of each month, the department shall submit in electronic format to the speaker of the council, the public advocate and each community board, and shall make available on the city's official website, a report regarding requests for service received by the 311 citizen service center since April 1, 2004, disaggregated on a month-by-month and fiscal year-by-year basis. Such report shall include, but not be limited to, the following information: (1) the total number of requests for service received in each request for service category by each agency or agencies to which the requests for service were directed; (2) the total number of requests for service received in each resolution status category by each request for service category and by each agency or agencies to which the requests for service were directed, where such information can be directly accessed by the 311 citizen service system; and (3) the average resolution time for each request for service category by the agency or agencies to which requests for service were directed, where such information can be directly accessed by the 311 citizen service system. The data contained in the report shall be provided citywide and disaggregated by zip code, community district, council district and borough.

c. Within seven business days from the end of each month, the department shall submit in electronic format to the speaker of the council, the public advocate and each community board and shall make available on the city's official website a report regarding directory assistance calls received by the 311 citizen service center since April 1, 2004, disaggregated on a month-by-month and fiscal year-by-year basis. Such report shall include, but not be limited to, the

following information: the total number of directory assistance calls received for each directory assistance category by each agency or agencies to which the directory assistance calls were directed.

d. Within seven business days from the end of each month, the department shall submit in electronic format to each community board a list setting forth all requests for service that were identified to have occurred in the respective community district received by the 311 citizen service center during the immediately preceding month, as well as all unresolved requests for service from prior months. Such report shall include, but not be limited to, the following information for each request for service: (1) the request for service category; (2) the agency or agencies to which the request for service was directed; and, (3) the current status of the request for service, where such information can be directly accessed by the 311 citizen service system.

e. The department shall convene a quarterly meeting of representatives from each of the community boards within the city to discuss the content and format of the reports required to be prepared pursuant to this chapter.

HISTORICAL NOTE

Section added L.L. 47/2005 § 1, eff. Aug. 17, 2005. [See Note 1]

NOTE

1. Provisions of L.L. 47/2005:

§ 2. This local law shall take effect ninety days after its enactment into law, except that the commissioner of information technology and telecommunications shall take such actions as are necessary for its implementation, including the promulgation of rules, prior to such effective date.

FOOTNOTES

47

[Footnote 47]: * Chapter amended L.L. 24/1994 § 4, eff. July 5, 1994; chapter amended L.L. 71/1990 § 1, eff. July 1, 1990, chapter added at General Election, November 7, 1989.

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[Footnote 48]: * (a) should be a.



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NYC Charter 1100

New York City Charter

CHAPTER 49 OFFICERS AND EMPLOYEES

§ 1100. **Head of department; whole time.**

Every head of an administration or department or elected officer except council members who receives a salary from the city shall give his whole time to the duties of the office and shall not engage in any other occupation, profession or employment.

HISTORICAL NOTE

Amended by L. L. 1967, No. 58.

Amended at General Election, November 4, 1975.

Amended at General Election, November 8, 1988.

CASE NOTES

¶ 1. There is no provision in the Charter which vests in the Mayor or the Board of Estimate the power to remove Civil Service employees for violating a regulation prohibiting any employee from performing private employment outside working hours. Thus, petitioner was ordered restored to his position as social investigator in the Department of Welfare where he had been dismissed for working after office hours in outside employment in violation of a regulation of the Board of Estimate that every employee must give his whole time to his duty.-*Natilson v. Hodson* 264 App. Div. 384, 33 N. Y. S. 2d 537 [1942], *aff'd* 289 N. Y. 643, 47 N. E. 2d 442 [1943].

¶ 2. This section which requires officer of city to give his whole time to his duties and not to engage in any other occupation, profession or employment does not preclude an incumbent city official from devoting a portion of his time to campaigning for election either to the same office or another office.-*Rattray v. Lindsay*, 61 Misc. 2d 39, 304 N. Y. S.

2d 645 [1969].

¶ 3. Action for judgment directing the mayor to discharge the corporation counsel on the ground that he was engaged in the private practice of law was dismissed where it was not alleged that said practice continued and no details of the practice were furnished except that the name of the defendant appeared on an office door under the legend "Law Office" and appeared as an attorney in the telephone directory and there was no allegation of present waste, injury or burden upon the municipality.-*Blaikie v. Lindsay*, 66 Misc. 2d 668, 321 N. Y. S. 2d 388 [1971].

¶ 4. Requirement that Mayor devote his whole time to his duties does not forbid him from campaigning for the presidency nor does his absence from the city by itself constitute a violation of this provision.-*Thomas v. Lindsay*, 69 Misc. 2d 369 [1972].



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NYC Charter 1101

New York City Charter

CHAPTER 49 OFFICERS AND EMPLOYEES

§ 1101. **Deputies.**

a. Any head of a department established by this charter may appoint, and at pleasure, remove so many deputies as may be provided for by law and determine their relative rank, and may appoint and at pleasure remove a secretary to the department if so provided, and, except as otherwise provided by law, shall assign to them their duties and may by instrument in writing filed in the department designate any deputy to possess any of the powers and exercise such of the duties of the head of the department and for such times and under such conditions as such head of a department may specify.

b. During a vacancy in the office of the head of an administration or a department established by this charter, or whenever by reason of illness or absence from the city such official shall be prevented from attending to the duties of office, the highest ranking deputy not absent of under disability shall act as the head of the administration or department.

c. The head of each mayoral department, including each such department within an administration, shall designate a deputy commissioner of the department or a senior officer reporting directly to the head of the department who shall be responsible for the personnel, management and budget administration functions of the department and for financial planning and management in the areas of payroll, purchasing, vouchering, accounting and related areas assigned by the head of the department.

HISTORICAL NOTE

Amended by L. L. 1967, No. 58.

Amended by L. L. 1969, No. 74.

Amended at General Election, November 4, 1975.

Subds. a, b amended at General Election, November 7, 1989.

CASE NOTES

¶ 1. Welfare Commissioner's delegation of power to remove to a deputy commissioner was not a violation of law where the delegation was made in writing in accordance with New York City Charter former § 1101 (254 N. Y. 397).-*Apicella v. Hodson*, 103 (38) N. Y. L. J. (2-15-40) 720, Col. 2 F.

¶ 2. Alleged campaign promises by the candidate for mayor that, if he were elected, plaintiff would be appointed to the position of deputy commissioner in certain departments, were against public policy and gave rise to no cause of action against the City. However, the mayor had no authority to make such appointments in any event, that being the prerogative of the particular department head.-*Brill v. Wagner*, 5 Misc. 2d 768, 161 N. Y. S. 2d 490 [1957].

¶ 3. Site selection board was not properly composed where meeting in which it designated petitioner's property as the site for a power substation to service a subway line was attended by a representative of the director of city planning, the director of the budget, the administrator of municipal service, the comptroller and the borough president and there was no proof that the required designation of deputies was filed with the appropriate boards.-*Knickerbocker Field Club v. Site Selection Board of City of N. Y.*, 41 A. D. 2d 539, 339 N. Y. S. 2d 485 [1973].

¶ 4. Deputy Commissioner of Trials of New York City police department had authority to enter into police settlements in disciplinary proceedings.-*Brown v. Codd*, 62 A. D. 2d 547, 405 N. Y. S. 2d 687 [1978].



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CHAPTER 49 OFFICERS AND EMPLOYEES

§ 1102. **Organization of department.**

a. Any head of an administration or a department established by this charter, to the extent to which the organization of the administration or department is not prescribed by law, shall by instrument in writing filed in the agency organize the administration or department into such divisions, bureaus or offices and make such assignments of powers and duties among them, and from time to time change such organization or assignments, as the head of the administration or department may consider advisable.

b. Except as provided in section eleven, where divisions, bureaus or offices have been established by law, the mayor may consolidate any two or more divisions, bureaus or offices in any agency under the jurisdiction of the mayor and change the duties of any such division, bureau or office and in like manner reverse or modify any such action.

HISTORICAL NOTE

Section amended at General Election, November 4, 1975.

Subd. a amended by L. L. 1967, No. 58.

Subd. a amended by L. L. 1969, No. 74.

Subd. a amended at General Election, November 8, 1988.

Section amended at General Election, November 7, 1989.



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CHAPTER 49 OFFICERS AND EMPLOYEES

§ 1109. **Summary inquiry.**

A summary inquiry into any alleged violation or neglect of duty in relation to the property, government or affairs of the city may be conducted under an order to be made by any justice of the supreme court in the first, second or eleventh judicial district on application of the mayor, the comptroller, the public advocate, any five council members, the commissioner of investigation or any five citizens who are taxpayers, supported by affidavit to the effect that one or more officers, employees or other persons therein named have knowledge or information concerning such alleged violation or neglect of duty. Such inquiry shall be conducted before and shall be controlled by the justice making the order or any other justice of the supreme court in the same district. Such justice may require any officer or employee or any other person to attend and be examined in relation to the subject of the inquiry. Any answers given by a witness in such inquiry shall not be used against such witness in any criminal proceeding, except that for all false answers on material points such witness shall be subject to prosecution for perjury. The examination shall be reduced to writing and shall be filed in the office of the clerk of such county within the first, second or eleventh judicial district as the justice may direct, and shall be a public record.

HISTORICAL NOTE

Amended at General Election, November 4, 1975.

Amended by L. L. 1977, No. 102.

Amended at General Election, November 7, 1989.

Section amended L.L. 68/1993 § 14, eff. Jan. 1, 1994.

CASE NOTES

¶ 1. Application signed by five taxpayers seeking summary inquiry into failure of Department of Marine to fence an allegedly dangerous area was denied for failure to show sufficient warrant for the inquiry.-In re City of New York, 151 (25) N. Y. L. J. (2-5-64) 14, Col. 1 F.

¶ 2. A summary inquiry into an agreement between the Commission on Human Rights and a landlord which committed the landlord to make efforts to increase the number of nonwhite and Puerto Rican tenants in certain of its houses would not be ordered where papers of petitioners revealed no violation or neglect of duty by commission. Moreover, this section was not intended to be used "to thwart public officials who are reasonably and conscientiously performing their duty."-Application of Larkin, 58 Misc. 2d 206, 295 N. Y. S. 2d 113 [1968].

¶ 3. An application for a summary inquiry pursuant to this section into official conduct of the mayor and the commissioner of corrections and the Health Services Administrator regarding their failure to implement a local law dealing with narcotics problems was denied as the sole purpose of this section is to bring acts of corruption to public attention by an investigation that would thereafter become a public record and this section does not confer jurisdiction on the Supreme Court to investigate the implementation of this local law.-In re Moskowitz (Lindsay) 164 (4) N. Y. L. J. (7-7-70) 10, Col. 6 T.

¶ 4. Since Administrative Code § D26-54.01 provides only that the department may cause a building to be repaired under certain circumstances petition filed by five taxpayers for a summary inquiry under this section into an alleged neglect of duty arising out of the failure of the Emergency Repair Service to make repairs or supply fuel until after an Article 78 proceeding was commenced was dismissed.-In re Anderson, 162 (83) N. Y. L. J. (10-28-69) 2, Col. 1 F.

¶ 5. Plaintiffs who were five citizen taxpayers were entitled to state a claim for summary inquiry into conditions in the city zoos.-Jones v. Beame, 86 Misc. 2d 832, 382 N. Y. S. 2d 1004 [1976].

¶ 6. Taxpayers and citizens of N. Y. C. sought an order directing that a summary inquiry be conducted pursuant to § 1109 into improper actions by City Council member. Court denied application because it could not make findings or determinations of fact or law as could be done in a plenary judicial action, that a hearing would be repetitious since the matter had already been "fully disclosed and argued by both sides," and that other forums were proper for hearing petitioners' complaints.-Matter of Goldstein (Dryfoos), 189(9) N. Y. L. J. (1-13-83) 11, Col. 5 M.



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CHAPTER 49 OFFICERS AND EMPLOYEES

§ 1110. **Trusteeship of public property.**

The council and the council members and all other officers and employees of the city are hereby declared respectively trustees of the property, funds and effects of the city, so far as such property, funds and effects are or may be committed to their management or control. Such trustees are hereby made subject to all the duties and responsibilities imposed by law on trustees, and such duties and responsibilities may be enforced by the city or by any officer thereof.

HISTORICAL NOTE

Amended at General Election, November 4, 1975.

Section heading amended at General Election, November 8, 1988.



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CHAPTER 49 OFFICERS AND EMPLOYEES

§ 1110-a. **Capital plant inventory and maintenance estimates.**

a. For the purposes of this section:

1. "Maintenance" or "maintain" shall denote those activities necessary to keep the relevant portion of the capital plant in good repair so as to preserve its structural integrity and to prevent its deterioration.

2. "Major portion of the capital plant" shall mean (a) any capital asset (1) which is a capital facility or system comprising a component of the public domain or infrastructure general fixed assets of the city or a building comprising a component of the general fixed assets of the city and (2) which, as of December thirty-first, nineteen hundred eighty-eight, or, as the result of any reconstruction or expansion after such date, has a replacement cost of at least ten million dollars and a useful life of at least ten years, or if purchased or constructed after such date, has an original cost of at least ten million dollars, and an original useful life of at least ten years; and (b) any other capital asset of the city designated by the mayor for the purposes of this section; provided, however, that it shall not include any asset which is leased to or otherwise under the cognizance and control of a public benefit corporation or which is otherwise covered, pursuant to state law, by requirements which are substantially similar to the requirements of this section.

b. Not later than October first of nineteen hundred eighty-nine, the head of each agency shall submit to the mayor, for each major portion of the capital plant for which the agency or any officer or employee thereof is responsible, the following information: the date of original acquisition or construction, the dates of any significant alterations or reconstructions, the original cost and original useful life, and the current replacement cost and remaining useful life. Such information shall be categorized by project type.

c. Not later than October first of nineteen hundred ninety, the head of each agency shall submit to the mayor an agency capital plant inventory presenting, for each major portion of the capital plant for which the agency or any officer or employee thereof is responsible, an update of the information required by subdivision b of this section as well as an

assessment of its condition and a schedule, by year, of maintenance activities. The head of each agency shall submit amendments of such agency capital plant inventory to the mayor as necessary to ensure that such inventory, including the condition assessments and maintenance schedules, is complete, current and accurate. Such inventory and amendments thereto shall be categorized by project type.

d. Such maintenance schedules and amendments thereto, other than amendments reflecting the disposition or demolition of any portion of the capital plant, shall be prepared or reviewed by professional engineers or architects registered in the state of New York and such engineers or architects shall set forth in writing (1) their opinions as to the reasonableness and sufficiency of the activities set forth in such schedules for maintaining such portions of the capital plant and (2) their recommendations, if any, for changes in such schedules. Such opinions and recommendations shall be based upon commonly used standards for acceptable levels of maintenance, the performance and other specifications to which such portions of the capital plant were designed, and such other engineering or architectural standards as may be appropriate. Such professional engineers or architects may be officers or employees of the city of New York.

e. The mayor shall transmit copies of such agency capital plant inventories, and all amendments thereto, to the council, the comptroller and the city planning commission and shall ensure that all information from such inventories as amended, including the condition assessments and maintenance schedules, and the opinions and recommendations related to such maintenance schedules are centrally stored and accessible to such officials, the agencies involved and other interested parties.

f. Not later than the first day of October of each year, commencing in nineteen hundred ninety, the mayor shall transmit to the council estimates for the ensuing fiscal year and for each of the three succeeding fiscal years of the amounts, by agency and project type and, within project type, by personal services and other-than-personal services, necessary to maintain all major portions of the capital plant, consistent with the maintenance schedules on file with the mayor pursuant to subdivision e of this section. Such estimates shall be prepared or reviewed by the professional engineers or architects who prepared or reviewed such maintenance schedules or by professional engineers or architects registered in the State of New York and employed by the office of management and budget or the agencies involved. Such architects or engineers shall set forth in writing (1) their opinions as to the reasonableness of such estimates and whether such estimates have been logically derived from such maintenance schedules and (2) their recommendations, if any, for changes in such estimates. Such opinions and recommendations shall be centrally stored and accessible to any interested party.

HISTORICAL NOTE

Section added at General Election, November 8, 1988.

Subds. e, f amended at General Election, November 7, 1989.



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§ 1111. **Authorization to incur liabilities; expenses not to exceed appropriation.**

The head of each agency shall establish the procedure by which charges and liabilities may be incurred on behalf of the agency. Such procedures shall ensure that no officer or employee, on behalf of or in the name of the agency, shall incur a liability or an expense for any purpose in excess of the amount appropriated or otherwise authorized therefor; and no charge, claim or liability shall exist or arise against the city, or any of the counties contained within its territorial limits, for any sum in excess of the amount appropriated or otherwise authorized for the particular purpose.

HISTORICAL NOTE

Section amended at General Election, November 8, 1988.

Section heading amended at General Election, November 7, 1989.

CASE NOTES

¶ 1. In an action by court stenographers to recover the reasonable value of stenographic services furnished during the course of investigations conducted by the City Council to determine the eligibility of persons to membership in the Council the defense that the City was not liable for any expense incurred by an "agency" in the absence of an appropriation therefor was untenable and the plaintiffs were entitled to summary judgment.-Chambers v. City of New York, 173 Misc. 769, 19 N. Y. S. 2d 79 [1940].

¶ 2. In an action by an attorney to recover for professional services rendered to a special committee of the City Council in an investigation of civil service abuses, the City's defense that it was not liable because there was no prior appropriation made by the Board of Estimate for such expenditures was untenable.-Gruss v. City of New York, 179 Misc. 1053, 40 N. Y. S. 2d 816 [1943].

¶ 3. This section does not prevent payment from being made to plaintiff, a former civil service employee, in dollars and cents for overtime for which he was never compensated and for which he now seeks recovery.-Grossman v. City of N. Y., 64 Misc. 2d 962 [1970].

¶ 4. Where plaintiff sought over \$165,000 for extra work, labor, services and materials allegedly rendered in connection with a contract to develop and maintain an electronic payroll system for the comptroller's office pursuant to a contract in which the agreed price was \$91,600 but which provided for an equitable adjustment if the comptroller made any change in the work, this section did not bar claim in excess of \$92,000 on ground that mayor had limited the amount payable on the contract to that amount and consequently the comptroller had no authority to commit more than \$92,000 to the contract since the phrase such sums as are "appropriate or otherwise authorized" refers to sums made available for payment of designated obligations.-Decision Systems v. City of N. Y., 54 A. D. 2d 869, 388 N. Y. S. 2d 590 [1976].



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§ 1112. **Reports to mayor.**

The heads of administrations and departments established by this charter, borough presidents and such officers as the mayor may require shall in addition to any other reports required by this charter, once in each year and at such other times as the mayor may direct, make to the mayor, in such form and under such rules as the mayor may prescribe, reports of their operations and action. Notice of the availability of copies of each of such annual reports shall be published in the City Record within thirty days of the publication of the report involved. The heads of all agencies shall, when required by the mayor, furnish to him or her such information as the mayor may demand, within such reasonable time as he or she may direct.

HISTORICAL NOTE

Amended by L. L. 1967, No. 58.

Amended by L. L. 1977, No. 102.

Amended at General Election, November 8, 1988.

Amended at General Election, November 7, 1989.



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§ 1115. **Officer not to hold any other civil office.**

Any person holding office, whether by election or appointment, who shall, during such person's term of office, accept, hold or retain any other other civil office of honor, trust or emolument under the government of the United States, except commissioners for the taking of bail, or of the state, except the office of notary public or commissioner of deeds or officer of the national guard, or who shall hold or accept any other office connected with the government of the city, or who shall accept a seat in the legislature, shall be deemed thereby to have vacated any office held by such person under the city government; except that the mayor may accept, or may in writing authorize any other person holding office to accept, a specified civil office in respect to which no salary or other compensation is provided. No person shall hold two city or county offices, except as expressly provided in this charter or by statute; nor shall any officer under the city government hold or retain an office under a county government, except when such officer holds such office ex officio by virtue of an act of the legislature, and in such case shall draw no salary for such ex officio; provided, however, that any member of the police force or any member of the fire department may hold office as a member of a board of education outside of the city of New York if otherwise qualified to serve thereon.

HISTORICAL NOTE

Amended by L. 1973, ch. 1040.

Amended by L. L. 1977, No. 102.

Amended at General Election, November 7, 1989.

CASE NOTES

¶ 1. Act of member of lunacy commission appointed to inquire into mental condition of defendant charged with

first degree murder, in accepting office of county clerk of New York County, **held** not to have disqualified him from membership on the commission, since duties of membership on the commission were not inconsistent with or repugnant to those of office of county clerk, nor were the positions so incompatible for reasons of public policy as to result in one office being ipso facto vacated by acceptance of the other.-*People v. Irwin*, 166 Misc. 751, 46 N. Y. S. 2d 548 [1938].

¶ 2. Commissioner of Parks and Commissioner of Public Works **held** not to have vacated their respective offices when they accepted appointment to positions as associate members of the City Planning Commission, inasmuch as the positions were not incompatible, the new positions were unsalaried offices and former §§ 531 and former 895 (now § 1115) of the Charter authorized appointment to another civil office for which no compensation was provided. Furthermore, § 881 of the Charter, requiring the head of a department to give his whole time to his duties, must be read in conjunction with §§ 531 and former 895 (now § 1115), which expressly authorize the acceptance of the other office.-*Childs v. Moses*, 265 App. Div. 353, 38 N. Y. S. 2d 704 [1942], *aff'd* 178 Misc. 828, 36 N. Y. S. 2d 574; *aff'd* without opinion, 290 N. Y. 828, 50 N. E. 2d 235.

¶ 3. The recently appointed commissioners of the New York City Tunnel Authority are permitted to serve as such under provisions of §§ 531 and former 895 (now § 1115) of the Charter, which sections were enacted subsequent to Public Authorities Law, § 628. The conflict between the two statutes was to be resolved in favor of the provisions last adopted by the legislature.-*In re Kantor (Jones)*, 115 (14) N. Y. L. J. (1-17-46) 222, Col. 4 M.



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CHAPTER 49 OFFICERS AND EMPLOYEES

§ 1116. **Fraud; neglect of duty; willful violation of law relative to office.**

a. Any council member or other officer or employee of the city who shall wilfully violate or evade any provision of law relating to such officer's office or employment, or commit any fraud upon the city, or convert any of the public property to such officer's own use, or knowingly permit any other person so to convert it or by gross or culpable neglect of duty allow the same to be lost to the city, shall be deemed guilty of a misdemeanor and in addition to the penalties imposed by law and on conviction shall forfeit such office or employment, and be excluded forever after from receiving or holding any office or employment under the city government.

b. Any officer or employee of the city or of any city agency who shall knowingly make a false or deceptive report or statement in the course of duty shall be guilty of a misdemeanor and, upon conviction, forfeit such office or employment.

HISTORICAL NOTE

Amended at General Election, November 4, 1975.

Amended at General Election, November 8, 1988.

CASE NOTES

¶ 1. That petitioner, a city sanitation employee, while employed by the city as a parking meter collector stole a sum of money from the city and pleaded guilty to petty larceny did not mandate termination of his employment where he had obtained a certificate of relief from disabilities under Correction Law which removes any bar to employment automatically imposed by law by reason of conviction and which only bar eligibility for public office.-*DePaolo v. Bronstein*, 45 A. D. 2d 691, 356 N. Y. S. 2d 631 [1974].

¶ 2. A sanitation worker's conviction for insurance fraud in the third degree, standing alone, did not mandate the employee's dismissal from the department. The department would have to conduct a factual inquiry to determine whether the underlying acts were a fraud upon the city or violated any law relating to the worker's employment, or whether the worker converted any public property to his own use. Thus, the court held that the department could not summarily terminate the worker upon the conviction. *Maldarelli v. Doherty*, 777 N.Y.S.2d 95 (1st Dept. 2004); 7 A.D.3d 384, leave to appeal denied 4 N.Y.3d 703, 790 N.Y.S.2d 650, 824 N.E.2d 51 (2005).

¶ 3. Petitioner's conviction for the criminal possession of a forged or counterfeit Department of Environmental Protection parking placard, standing alone, without factual inquiry, did not show that petitioner perpetrated a fraud upon the city or violated any law relating to employment. Thus petitioner's employment could not be terminated solely because of this conviction. *Johnson v. New York City Dept. of Environmental Protection*, 776 N.Y.S.2d 464 (1st Dept. 2004).



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§ 1117. Pensioner not to hold office.

If a person receiving a pension or a retirement allowance made up of such pension and an annuity purchased by the pensioner from the city or any agency, or out of any fund under the city or any agency, by reason of such person's own prior employment by the city or any agency, shall hold and receive any compensation from any office, employment or position under the state or city or any of the counties included within the city or any municipal corporation or political subdivision of the state, except the offices of inspector of election, poll clerk or ballot clerk under the election law or commissioner of deeds or notary public or jury duty, the payment of said pension only shall be suspended and forfeited during and for the time such person shall hold and receive compensation from such office, position or employment; but this section shall not apply where the pension and the salary or compensation of the office, employment or position amount in the aggregate to less than one thousand eight hundred dollars annually.

HISTORICAL NOTE

Amended by L. 1945, ch. 630.

Amended by L. 1949, ch. 606.

Amended by L. 1949, ch. 642.

Amended by L. 1952, ch. 645.

Amended at General Election, November 7, 1989.

CASE NOTES

¶ 1. City employee who, in filing his application for retirement on December 7, 1937, had intended to make the

application effective as of December 31, 1937, but was persuaded to make the effective date January 3, 1938 by representations of defendant's employee that he could thus secure two extra days at full pay without adversely affecting his pension rights, **held** entitled to reformation of his application so as to make it effective as of December 31, 1937, with result that his retirement was governed by the old Charter and did not come within former § 897 (now § 1117) of the former Charter, which became effective January 1, 1938, and would have caused a forfeit of his pension during 1941 and 1942 when he was employed by the Federal and was paid in excess of \$1200 annually.-*Breithut v. Teachers' Retirement Board*, 114 (149) N. Y. L. J. (12-29-45) 1908, Col. 1 F, aff'd 271 App. Div. 822, 66 N. Y. S. 2d 617 [1946], aff'd, 296 N. Y. 1031, 73 N. E. 2d 907 [1941].

¶ 2. Qualification in resolution suspending widow's pension during term of her employment by the Board of Education, was proper.-*Woods v. Wallander*, 121 (86) N. Y. L. J. (5-3-49) 1580, Col. 5 M.

¶ 3. Member of Police Department who upon his own application retired from the Police Department and was granted a pension, and on the same day entered employ of the U. S. Government as a civilian adviser to the War Department, at a substantial salary, forfeited his pension allowance during the period of such employment pursuant to former § 897 (now § 1117) of the Charter. Former § 897 was in force when petitioner's right to a pension became contractual, as well as when he applied for a pension.-*Fay v. O'Brien*, 195 Misc. 865, 91 N. Y. S. 2d 137 (1949), aff'd without opinion, 300 N. Y. 750, 92 N. E. 2d 457 [1950].

¶ 4. A pensioner could not be deemed to have been serving in the Armed Forces where he was not inducted as part of the ordinary military personnel nor did he receive a military rank, but rather served as a civilian employee with the Armed Forces.-*McCrystal v. Sampson*, 136 N. Y. S. 2d 703 [1954].

¶ 5. Member of New York City Fire Department who, after his retirement on pension in 1942, had enrolled as a member of the United States Maritime Service, **held** not entitled to have his pension payments continued during his period of employment with the Maritime Service on the theory that employment in such service did not constitute employment by a federal agency within meaning of former § 897 (now § 1117) of the Charter, but constituted service in the "Armed Forces of the United States," within the exceptions of former § 897. The functions and services of the Maritime Service are exclusively civilian in nature and are paid for with government funds, enrollment in the Service is voluntary, and severance therefrom is at will.-*In re Goodell (Walsh)*, 185 Misc. 897, 57 N. Y. S. 2d 754 [1945].

¶ 6. Provisions of Military Law § 246, as amended in 1944 and 1945 to bring members of the Maritime Service within its benefits, did not result in an implied partial repeal of former § 897 of the Charter, as § 246, subd. 9, by its terms applies only to a public employee who is a member of a pension or retirement system and therefore did not apply to petitioner who ceased to be such on the effective day of his retirement. Moreover, the provisions of § 246 confer upon a "public employee" on military duty no greater rights with respect to membership in a retirement system than he already possessed and had he been present and continuously engaged in performance of the duties of his position, and merely safeguards such right only to the point of retirement.-*Id.*

¶ 7. Under former § 897 (now § 1117) of the Charter, the City of New York was entitled to recover the amount of pension payments made to defendant as widow of a former employee of the City Department of Sanitation during the period that the defendant was employed by the State of New York in its Department of Mental Hygiene and receiving a salary in excess of \$1,200 annually. Payment of public or trust funds by municipal agents is not subject to the general rule that money paid under a mistake of law may not be recovered back.-*Powell v. Lawlor*, 197 Misc. 521, 95 N. Y. S. 2d 193 [1950].

¶ 8. Upon his retirement, a Justice of the Municipal Court, had elected pursuant to Greater New York City Charter § 1720 to receive an annual retirement allowance of an annuity and an annual pension but upon day of his retirement had been appointed an official referee and continued in such capacity until his death with no part of his retirement allowance being paid to him in the meantime. Deceased, under § 5060 of the Greater New York Charter prohibiting pensioners from holding office, forfeited, during his term in office as official referee, that portion of his retirement

allowance falling within classification of a pension. However, deceased's estate was entitled to recover from the trustees of the retirement system the value of the annuity, including payments which accrued more than 6 years prior to the commencement of the present proceeding. Since the retirement system occupied a relationship to the retired member similar to that of a depository, the statute of limitations did not commence to run until demand was made for payment.-*Ferguson v. Laguardia*, 131 Misc. 270, 11 N. Y. S. 2d 590 [1939], *aff'd* to extent appealed from without opinion, 257 App. Div. 1048, 13 N. Y. S. 2d 647 [1939], *aff'd* 281 N. Y. 678, 23 N. E. 2d 14 [1939].

¶ 9. Although this section requires suspension of pension benefits regardless of whether pension stems from full time service or from earlier retirement based on disability it is overridden by Retirement and Social Security Law § 210 which allows those retired for age to accept public employment without loss of services upon approval of civil service commission and this statute is not discriminatory against the disabled.-*Kahnle v. N. Y. State Div. of Human Rights*, 40 N. Y. 2d 720, 389 N. Y. S. 2d 824 [1976].

¶ 10. Plaintiff, who had instituted an article 78 proceeding in April 1976 directing defendants to allow him to retire as of January 1, 1976 after 25 years employment in a "physically taxing" position with the N.Y.C. Housing Authority which petition was granted in September 1976 and the judgment resettled so that his pension was based on his 1975 earnings, and who had continued to work during the period of litigation could not recover pension benefits for the period January 1, 1976 to January 6, 1977, the period in which he was still employed.-*Viola v. N.Y.C. Housing Authority*, 179(121) N. Y. L. J. (6-23-78) 6, Col. 5 T.

¶ 11. Fees collected by city marshalls constitute compensation so as to require suspension of their pension benefits as retired New York City employees.-*Mersereau v. McGuire*, 77 A. D. 2d 849 [1980], *aff'd* 53 N. Y. 2d 960 [1981].

¶ 12. The decision in *Mersereau v. McGuire*, 53 N. Y. 2d 960 [1981] (See casenote 11 above), is to be applied retroactively to all litigation in process; therefore, the defendant is entitled to recoup pension benefits paid to the plaintiffs prior to September 30, 1979 and during their tenure as City Marshalls.-*Hughes v. City of NY*, 119 A. D. 2d 631 [1986].

¶ 13. Petitioner, a New York City Transit Authority employee who was retired on ordinary disability, accepted a part-time position with the City of New York after being told by his supervisor that his pension would not be affected. Petitioner worked for the City for ten years, when the City suddenly took the position that he had to return pension benefits by reason of his work with the City. The court held that it was arbitrary and capricious for the City to recoup past disability payments from a pensioner who had relied on years of prior consistent contrary city policy. Moreover, the City's position was inconsistent with City Charter § 1117. In other words, the pension is jeopardized only where the pension was received by reason of prior service with the City or a city agency. The City and the Transit Authority are separate and distinct. Thus, a retired Transit employee may be able to work for the City without jeopardizing his pension benefits. *Barbera v. New York City Employees Retirement System*, 211 A.D.2d 406, 621 N.Y.S.2d 46 (1st Dept. 1995).



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CHAPTER 49 OFFICERS AND EMPLOYEES

§ 1118. **Officers and employees not to be ordered to work outside public employment.**

No officer or employee of the city or of any of the counties within its limits shall detail or cause any officer or employee of the city or of any of such counties to do or perform any service or work outside of the public office, work or employment of such officer or employee; and any violation of this section shall constitute a misdemeanor.

HISTORICAL NOTE

Amended by L. 1978, ch. 763.

Amended at General Election, November 7, 1989.



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§ 1119. **Action of boards.**

Except as otherwise provided by law:

1. Whenever any act is authorized to be done or any determination or decision made by any commission, board or other body, the act, determination or decisions of the majority of the commission, board or other body shall be held to be the act, determination or decision of the commission, board or other body.
2. A majority of the members of any commission, board or other body shall constitute a quorum of such commission, board or other body.
3. Each commission, board or other body may choose at its own pleasure one of its members who shall be its president and one who shall be its treasurer and may appoint a secretary or chief clerk within the appropriation therefor.

CASE NOTES

¶ 1. Powers conferred upon a special committee appointed by the council to investigate municipal civil service commission might validly be exercised by a single member of the committee, where the council itself expressly vested each member of the committee with the authority of the entire committee. Former § 899 (now § 1119) of the Charter providing that whenever any act was authorized to be done by any board or other body, the action of the majority of the board or body should be deemed the action of the entire board or body and that a majority of the board or body should constitute a quorum thereof, applied only to situations where confusion might otherwise result as to the number of members of the board or body necessary to constitute a quorum, and as to the number necessary to act on behalf of the city.-*Smith v. Kern*, 175 Misc. 937, 26 N. Y. S. 2d 56 [1940], *aff'd* without opinion, 260 App. Div. 1003, 24 N. Y. S. 2d 992 [1940], *aff'd*, 285 N. Y. 632, 33 N. E. 2d 556 [1941].



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§ 1120. **Additional powers and duties.**

Any elected or appointed officer of the city or any board or commission or any member thereof shall, in addition to the powers and duties vested in such officer, board or commission by this charter, perform any duties and exercise any powers vested in such officer or in such board or commission by any other provision of law and any power necessary to carry out the powers and duties vested in such officer, board or commission.

HISTORICAL NOTE

Amended at General Election, November 7, 1989.



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§ 1122. **Bonds.**

Unless otherwise provided by law, each officer of the city who has possession of or control over any funds of the city shall give bond for the faithful performance of the duties of such officer in such sum as may be fixed and with sureties to be approved by the comptroller. Such bonds shall run to the city of New York, and in case there is another officer who is responsible for the officer giving the bond, shall run also to such officer.

HISTORICAL NOTE

Amended at General Election, November 7, 1989.

CASE NOTES

¶ 1. Inasmuch as the duties prescribed for an accountant by the Civil Service Commission might not be interpreted to include authority to receive or take custody of monies payable to the City from sources entirely disconnected with his prescribed duties, the defendant, who was employed by the City as an accountant at La Guardia Airport, was not within the condition of the fidelity bond given to the City pursuant to former § 902 (now § 1122) of the Charter when he received \$140 cash representing monies due the City of landing fees, and accordingly no liability attached to the surety when the money was stolen from his desk drawer.-Id.



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§ 1123. **Failure to testify.**

If any council member or other officer or employee of the city shall, after lawful notice or process, wilfully refuse or fail to appear before any court or judge, any legislative committee, or any officer, board or body authorized to conduct any hearing or inquiry, or having appeared shall refuse to testify or to answer any question regarding the property, government or affairs of the city or of any county included within its territorial limits, or regarding the nomination, election, appointment or official conduct of any officer or employee of the city or of any such county, on the ground that the answer of such council member, officer or employee would tend to incriminate him or her, or shall refuse to waive immunity from prosecution on account of any such matter in relation to which he or she may be asked to testify upon any such hearing or inquiry, the term or tenure of office or employment of such council member, officer or employee shall terminate and such office or employment shall be vacant, and he or she shall not be eligible to election or appointment to any office or employment under the city or any agency.

HISTORICAL NOTE

Amended at General Election, November 7, 1989.

CASE NOTES

¶ 1. The summary dismissal of a city college professor for refusing to answer questions as to his communistic affiliations while before a congressional investigating committee was unwarranted under the provisions of this section which terminate the office or employment of any city employee who utilizes the privilege against self-incrimination to avoid answering a question relative to his official conduct. Such a dismissal was violative of due process.-*Slochower v. Board of Education*, 350 U. S. 551, 100 L. E. 692, 76 S. C. 637 [1956].

¶ 2. Petitioner, who was employed by the Board of Education as an assistant mechanical engineer, **held** to be an

employee of the City of New York within meaning of former § 903 (now § 1123) of the Charter.-In re Koral (Bd. of Educ.), 197 Misc. 221, 94 N. Y. S. (2d) 378 [1950].

¶ 3. Petitioner-teachers in public schools and in public colleges in City of New York were employees of the City of New York within meaning of former § 903 (now § 1123) of the Charter. Section 981-1.0 of the Administrative Code defines an employee as any person whose salary in whole or in part is paid out of the City Treasury, and petitioners were paid by check signed by the City Treasurer with funds from the City Treasury.-Daniman v. Board of Education; Shlakman v. Board of Education, 306 N. Y. 532 [1954], rev'd on other grounds, Slochower v. Board of Education, 350 U. S. 551, 100 L. E. 692, 76 S. C. 637 [1956].

¶ 3.1 It was immaterial whether the removal of school teachers by the Board of Higher Education was the result of an exercise of discretion by the Board (calling for reinstatement by the way of certiorari) or was the result of an automatic operation of this section involving no discretion (calling for reinstatement by way of mandamus). In either case, their right to the position from which they were discharged, was required to be determined promptly in an Article 78 proceeding. Therefore, a suit filed for back pay by the teachers 4 years after their removal came too late.-Austin v. The Board of Higher Education, 5 (N. Y. 2d 430, 186 N. Y. S. 2d 1 [1959].

¶ 4. There is no inconsistency between Education Law § 2523, which provides that a regular employee of the Board of Education may not be dismissed without a hearing, and former § 903 (now § 1123) of the Charter, since with respect to the subject matter covered by former § 903, that section supersedes the provisions of the Education Law requiring a hearing on charges. In any event, a requirement for a hearing under former § 903, where the facts are not disputed, would be a useless formality.-Id.

¶ 5. Petitioner, who was employed as assistant mechanical engineer by the Board of Education of the City of New York, **held** properly dismissed under former § 903 (now § 1123) of the Charter for his refusal to answer questions asked him at a hearing by the Committee on UnAmerican Activities of the House of Representatives, and for asserting a privilege against self-incrimination as a basis for not answering questions as to whether he was a member of the Communist Party and had participated in certain acts of espionage against the U. S. Government in behalf of Russia.-Id.

¶ 6. Transit Authority's action in dismissing subway conductor following his refusal to testify as to whether or not he was a Communist, and his invocation of the Fifth Amendment **held** not to be arbitrary or unreasonable.-Lerner v. Casey, 2 N. Y. 2d 355, 161 N. Y. S. 2d, 141 N. E. 2d 533 [1957], aff'g 2 A. D. 2d 1, 138 N. Y. S. 2d 777 [1955].

¶ 7. Police officer properly refused to sign a waiver of immunity which would include testimony given by him not only in the pending grand jury investigation but also "in any other investigation or other proceeding before any judge or justice, court or other tribunal conducting an inquiry or legal proceeding relating to the acts of said John Doe or any other person."-Casey v. Murphy, 125 (117) N. Y. L. J. (6-18-51) 2251. Col. 4 F.

¶ 7.1. The provision of this section which provides for termination of employment of city officer or employee who refuses to waive immunity was declared invalid in Gardner v. Broderick, 392 U. S. 273 [1968], revg. 20 N. Y. 2d 227, 229 N. E. 2d 184, 282 N. Y. S. 2d 487 [1967].

¶ 8. Where grand jury which was conducting an inquiry into the affairs of the Uniformed Firemen's Association of Greater New York had called as a witness the petitioner, who was president of the association, and he had refused to sign a waiver of immunity when requested by an assistant district attorney and without having been brought before the grand jury, petitioner **held** not to have violated former § 903 (now § 1123) of the Charter, which covers a situation where the witness is brought before the grand jury or other authorized investigative body and refuses before that body to sign a waiver of immunity.-Matter of Crane, 124 N. Y. S. 2d 26 [1953], aff'd 127 N. Y. S. 2d 679 [1953]. On appeal, the Appellate Department declined to pass upon this question but held that the provisions of this section were clearly violated when the petitioner at a later date and in the actual presence of the grand jury refused to waive

immunity.-*Matter of Crane*, 283 App. Div. 785, 129 N. Y. S. 2d 229 [1959], *aff'd* without opinion, 308 N. Y. 880, 126 N. E. 2d 312 [1955].

¶ 9. Former § 903 (now § 1123) of the Charter becomes applicable only if the teacher witness refuses to answer upon the ground that the answer would tend to incriminate him. It is inoperative if the teacher gives either an affirmative or negative answer to the question posed-even though the answer be false. The teacher alone possesses the power to bring the statute into play, and the insertion of the privilege against self-incrimination is equivalent to a resignation.-*Daniman v. Board of Education*; *Shlakman v. Board of Education*, 306 N. Y. 532, 119 N. E. 2d 373 [1954], *rev'd* on other grounds, *Slochow v. Board of Education*, 350 U. S. 551, 100 L. E. 692, 76 S. C. 637 [1956].

¶ 10. Former § 903 (now § 1123) is applicable to a hearing before a legislative committee-*Daniman v. Board of Education*; *Shlakman v. Board of Education*, 306 N. Y. 532, 119 N. E. 2d 373 [1954], *rev'd* on other grounds, *Slochow v. Board of Education*, 350 U. S. 551, 100 L. E. 692, 76 S. C. 637 [1956].

¶ 11. Police officers charged with misconduct in office could not refuse to testify on the ground that their testimony would tend to expose them to a penalty or forfeiture as provided in Civil Practice Act § 355. That section did not and was not intended to nullify the purpose and policy of this section. The police officers were properly committed to jail until such time as they would testify.-*Matter of Delehanty*, 280 App. Div. 542, 115 N. Y. S. 2d 614 [1952], *aff'd* 304 N. Y. 727, 108 N. E. 2d 46 [1952].

¶ 12. That the position of one of the teachers who had been served with a subpoena issued by a joint legislative committee investigating subversive activities in the New York City educational system had been declared vacated by reason of his refusal to sign a waiver of immunity before testifying, was no ground for vacation of the subpoena, inasmuch as Charter former § 903 (now § 1123) required vacating of the office when an employee or public officer refused to sign a waiver of immunity.-*Withrow v. Joint Legislative Committee, &c.*, 176 Misc. 597, 28 N. Y. S. 2d 223 [1941].

¶ 13. Execution of waiver of immunity by public officer in order to protect his position did not constitute violation of Fifth Amendment privilege against self incrimination nor Fourteenth Amendment. Hence where defendant waived rights he was proper witness before grand jury and when he testified he had obligation to do so truthfully.-*People v. Wheatman*, 48 Misc. 2d 85, 264 N.Y.S. 2d 292 (1965). After the Supreme Court in *Garrity v. N. J.* (385 U. S. 493) held that a governmental employee is not required to waive immunity when "the stewardship of his public position is involved" the defendant moved to dismiss the indictments on the ground that they violated his constitutional rights under the Fourth, Fifth and Fourteenth Amendments of the Constitution. The motion was denied on the ground that *Garrity* was not retroactive.-*People v. Wheatman*, 53 Misc. 2d 730, 279 N. Y. S. 2d 565 [1967].

¶ 14. A policeman injured in 1963, applied for disability retirement on April 29, 1964. On June 9 the medical board certified his disability to the Board of Trustees of the Police Pension Fund. Before the Board could act the Police Commissioner suspended the policeman because of his refusal to answer questions before a grand jury. The policeman was not afforded a hearing regarding his refusal to testify before the grand jury. The court rejected the contention of petitioner that his right to be retired on a pension vested automatically on June 9 since he had not requested retirement until July 1. Moreover as no regular meeting of the Board of Trustees was held before July 15 when petitioner's employment was terminated the Board did not fail to act "forthwith" as provided in § B18-43.0 of the Administrative Code. However, before dismissal petitioner should have been given a hearing at which he could have explained his refusal to answer questions before the grand jury. Absence of such notice and hearing constituted a denial of due process of law. The proceeding was remanded to determine upon due notice and opportunity to petitioner to be heard, whether his employment in the police department should be terminated.-*Conlon v. Murphy*, 24 App. Div. 2d 737, 263 N. Y. S. 2d 360 [1965].

¶ 15. Petitioner, a Lieutenant in the Police Department was discharged from the police force when he refused to sign a limited waiver of immunity and filed his resignation after being subpoenaed to appear before the grand jury in

connection with an inquiry as to bribery of certain police officers. His refusal to sign came after receiving the advice of counsel and with full knowledge of the nature of the investigation and of the consequences that would follow his refusal to sign the waiver. Distinguishing *Conlon v. Murphy*, 24 App. Div. 2d 737, 263, N. Y. S. 2d 360 [1965], the court held that a dismissal pursuant to § 1123 of the City Charter without prior notice and hearing did not constitute arbitrary conduct under the circumstances of this case and stated that an exception exists when the following factors are present: "The discharge is in accord with statutory provision; the person discharged has an adequate opportunity to test the validity of the discharge, equal both in extent and convenience to the hearing he would be accorded prior to discharge; it appears prima facie that a good reason exists for expeditious procedure in the discharge; and lastly, the person discharged has failed to advance any tenable grounds for holding that after a fair hearing he would not have been discharged."-*Matter of Koutnik v. Murphy*, 25 App. Div. 2d 197, 268 N. Y. S. 2d 265 [1966].

¶ 16. Where policeman subpoenaed by city commission investigating police corruption would not be automatically fined under the provisions of this section should he exercise his privilege against self incrimination subpoena would not be quashed as violative of his rights.-*Fahy v. Comm. to Investigate Allegations of Police Corruption*, 65 Misc. 2d 781 [1971].

¶ 17. Although waiver of immunity signed by city employee when called before grand jury under compulsion of losing his job was void under *Garritty v. N. J.* (385 U. S. 493) employee could be sworn and compelled to testify and if he testified falsely could be convicted of perjury.-*People v. Goldman*, 21 N. Y. 2d 152, 234 N. E. 2d 194, 287 N. Y. S. 2d 7 [1967], aff'g, 27 A. D. 2d 903, 280 N. Y. S. 2d 525 [1966]; *People v. Jones*, 53 Misc. 2d 838, 279 N. Y. S. 2d 892 [1967].

¶ 18. Where testimony of police officer who testified before grand jury under a waiver of immunity was used only to impeach and he explained away inconsistencies in testimony, any error which resulted from use of testimony on trial was harmless.-*People v. Leo*, 23 N. Y. 2d 556, 245 N. E. 2d 745, 297 N. Y. S. 2d 937 [1969].

¶ 19. Refusal of civilian electrical inspector to waive his privilege against self incrimination before the grand jury in 1967 was not ground for his removal by Fire Commissioner as *Gardner v. Broderick*, 392 U. S. 273 [1968] is retroactive. *In re Fein (Lowery)*, 161 (77) N. Y. L. J. (4-21-69) 17, Col. 3 M.



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NYC Charter 1124

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CHAPTER 49 OFFICERS AND EMPLOYEES

§ 1124. **Civil rights protected.**

Nothing in this charter contained shall affect any rights given or secured by section fifteen of the civil rights law, including the right of officers and employees, as citizens, to appeal to the legislature or to any public officer, board, commission or other public body for the redress of their grievances as such officers and employees.

HISTORICAL NOTE

Amended by L. L. 1977, No. 102.



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NYC Charter 1125

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CHAPTER 49 OFFICERS AND EMPLOYEES

§ 1125. **Salaries of the district attorneys.**

Each of the district attorneys of the counties of New York, Bronx, Kings, Queens and Richmond shall receive an annual salary equal to the compensation received by a justice of the supreme court in the county in which such district attorney has been elected and is serving, or one hundred ninety thousand dollars a year, whichever is greater.

HISTORICAL NOTE

Added by L. L. 1983, No. 32.

Amended by L. L. 1987, No. 25.

Amended at General Election, November 8, 1988.

Amended at General Election, November 7, 1989.

Section amended L.L. 51/2006 § 5, eff. Jan. 19, 2007 and deemed in full force and effect as of Nov. 1, 2006.
[See Charter § 4 Note 1]

Section amended L.L. 41/1999 § 5, eff. Sept. 18, 1999 and retroactive to July 1, 1999.

Section amended L.L. 92/1995 § 5, eff. Feb. 2, 1996 and retroactive to July 1, 1995.

Section amended L.L. 3/1992 § 1, eff. Jan. 3, 1992.



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§ 1126. **Political activities forbidden.**

No officer or employee of the department of citywide administrative services subject to this provision pursuant to a designation of the commissioner of citywide administrative services, and no member, officer, or employee of the civil service commission shall hold office or serve as a member of any committee in any political organization or association, nor shall such member, officer or employee serve as a delegate to any political convention. Any member, officer or employee violating this provision shall forfeit such office or employment. The commissioner of citywide administrative services shall designate all employees in the department of citywide administrative services who perform functions relating to citywide personnel issues to be subject to this provision.

HISTORICAL NOTE

Section added at General Election, November 8, 1988 (formerly § 821).

Section amended L.L. 59/1996 § 22, eff. Aug. 8, 1996.



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CHAPTER 49 OFFICERS AND EMPLOYEES

§ 1127. **Condition precedent to employment.**

a. Notwith- standing the provisions of any local law, rule or regulation to the contrary, every person seeking employment with the city of New York or any of its agencies regardless of civil service classification or status shall sign an agreement as a condition precedent to such employment to the effect that if such person is or becomes a nonresident individual as that term is defined in section 11-1706 of the administrative code of the city of New York or any similar provision of such code, during employment by the city, such person will pay to the city an amount by which a city personal income tax on residents computed and determined as if such person were a resident individual, as defined in such section, during such employment, exceeds the amount of any city earnings tax and city personal income tax imposed on such person for the same taxable period.

b. Whenever any provision of this charter, the administrative code of the city of New York or any rule or regulation promulgated pursuant to such charter or administrative code employs the term "salary", "compensation", or any other word or words having a similar meaning, such terms shall be deemed and construed to mean the scheduled salary or compensation of any employee of the city of New York, undiminished by any amount payable pursuant to subdivision a of this section.

HISTORICAL NOTE

Added by L. L. 1973, No. 2.

Section added at General Election, November 8, 1988 (formerly § 822).

CASE NOTES

¶ 1. Provision in section that as a condition precedent to employment all city employees must agree that if they are

nonresidents of city they will pay to the city an amount equal to the N. Y. C. resident income tax less any city earnings or personal income tax imposed on them is not unconstitutional as violating contract obligations and rights or the requirement that civil service appointment be made according to merit and fitness.-Watts v. McGuire, 102 Misc. 2d 711, 424 N. Y. S. 2d 327 [1979].

¶ 2. Police commissioner was not bound by definition of compensation set forth in this section as scheduled salary or compensation of city employee in determining whether fees collected by city marshalls constitute compensation so as to require suspension of their pension benefits under § 1117, since subdivision (a) of § 822 does not define compensation for all purposes whenever it appears in the Charter or Administrative Code.-Mersereau v. McGuire, 77 A. D. 2d 849 [1980], aff'd, 53 N. Y. 2d 960 [1981].

¶ 3. Agreement signed by a former New York City employee pursuant to this section as a condition of his employment that if he was or later became a nonresident he would pay city an amount by which the city resident personal income tax computed and determined as if he were a resident individual exceeded the amount of any city earnings tax and city personal income tax imposed on him for the same taxable period was valid, such agreement not constituting a tax but a debt owed to the city.-Matter of Legum v. Goldin, 55 N.Y.2d 104, 447 N.Y.S.2d 900 [1982].

¶ 4. A grievance was filed by United Probation Officers Association that the city violated the collective bargaining agreement by unilaterally making deductions from wages pursuant to Charter § 1127. The Court ruled that the applicability of Charter § 1127 does not involve the interpretation of any collective bargaining agreement or the asserted violation by the Probation Department of any of its rules, regulations or policies. This is a legal issue for the courts, not an arbitrator. NYC Probation Dep't v. MacDonald, 205 AD2d 372 [1994], 613 NYS2d 378.

¶ 5. The statute, whose constitutionality has previously been upheld, allows the City to require new non-resident employees, as a condition of starting employment, to sign an agreement stating that they will pay City income taxes at the same rate as that paid by resident employees. However, the Court of Appeals has held that emergency medical service personnel of the New York City Health and Hospitals Corporation, New York City Transit Authority police officers and New York City Housing Authority police officers, who had not previously been subject to the residency agreement and whose jobs were transferred to the City of New York, could not be compelled to sign agreements making them subject to tax at New York City resident rates. These were not new employees but were tenured employees who were involuntarily transferred to City employment. Ganley v. Giuliani, 94 NY2d 207, 701 N.Y.S.2d 324 (1999).

¶ 6. Police officers are not subject to the New York City residency requirement and, theoretically, are not subject to New York City income taxes. However, by contract, the officers have agreed to pay the City the difference between the actual tax and the tax that would have been applicable if the officer had been City residents. The nonresident employees file an 1127 form and are entitled to itemize deductions. If deductible expenses more than offset the amount previously paid by the officer under Sec. 1127, he or she may be entitled to a refund. The City instituted procedures under which officers desiring refunds had to provide receipts of canceled checks within 30 days of the City's request. Officers were told that if they failed to meet this 30-day deadline, the refund could be delayed or denied. A court, however, held that the City could not unilaterally impose the verification procedure described above, but had to make its verification proposal a subject of collective bargaining. City of New York v. Lieutenants Benevolent Assn, 285 A.D.2d 329, 730 N.Y.S.2d 78 (1st Dept. 2001).

¶ 7. The requirement that non-resident city employees pay taxes at resident rates, applies not only to income earned from city service but also to income earned from sources other than city service. The statute was intended to equalize the take-home pay of city employees, and to avoid a tax structure that would give city employees an incentive to live outside the City. Moreover, the statute does not violate the constitution; it is not a tax imposed by a sovereign but is a contract voluntarily entered into by persons choosing to work for the City. Fleming v. Giuliani, 3 N.Y.3d 544, 788 N.Y.S.2d 655, 821 N.E.2d 959 (2004).



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CHAPTER 49 OFFICERS AND EMPLOYEES

§ 1128. **Interference with investigation.**

a. No person vent, seek to prevent, interfere with, obstruct, or otherwise hinder any study or investigation being conducted pursuant to the charter. Any violation of this section shall constitute cause for suspension or removal from office or employment.

b. Full cooperation with the commissioner of investigation shall be afforded by every officer or employee of the city or other persons.

HISTORICAL NOTE

Section added at General Election, November 8, 1988 (formerly § 806).



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§ 1129. **Members of police department; no other office.**

Any police commissioner or any member of the police force who shall accept any additional place of public trust or civil emolument except as a member of a community board, or who shall during his or her term of office be nominated for any office elective by the people, except a member of the police force appointed, nominated or elected to a board of education outside of the city of New York, and shall not, within ten days succeeding same, decline the said nomination, shall be deemed thereby to have resigned his or her commission and to have vacated his or her office, and all votes cast at any election for any person holding the office of police commissioner, or within thirty days after he or she shall have resigned such office, shall be void.

The foregoing provisions shall not apply to any member of the police force who, with the written authorization of the mayor, shall accept any additional place of public trust or civil emolument while on leave of absence without pay from the department.

HISTORICAL NOTE

Amended by L. 1973, ch. 1040.

Amended at General Election, May 4, 1975.

Amended by L. L. 1977, No. 45.

Amended by L. L. 1980, No. 23.

Section added at General Election, November 8, 1988 (formerly § 433).

Open. par. amended at General Election, November 7, 1989.



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NYC Charter 1130

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CHAPTER 49 OFFICERS AND EMPLOYEES

§ 1130. **Members of fire department; elective office.**

Any commissioner or any member of the uniformed force of the fire department may accept any additional place of public trust or civil emolument or may be elected to public office. Provided, however, if the fire commissioner determines that serving in such capacity interferes with his or her performance as a member of the department, the commissioner may require that such member be on a leave of absence without pay from the department during the time that such member holds such office.

HISTORICAL NOTE

Section repealed and added ch. 573/1998 § 1, eff. Aug. 5, 1998.

Amended by L. 1973, ch. 1040.

Amended by L. L. 1977, No. 45.

Amended by L. L. 1980, No. 23.

Amended by L. L. 1983, No. 14.

Section added at General Election, November 8, 1988 (formerly § 493).

Open. par. amended at General Election, November 7, 1989.

CASE NOTES

¶ 1. In enacting this section and section 487a-2.0 of the Administrative Code, the New York City Council

explicitly limited the Fire Commissioner's discretion in the selection of the Chief of the Department.-Joyce v. Ortiz, 108 A. D. 2d 158 [1985].



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CHAPTER 49 OFFICERS AND EMPLOYEES

§ 1131. **School officers not to be interested in contracts; removal.**

The board of education shall have the power to remove from office any school officer who shall have been directly or indirectly interested in the furnishing of any supplies or materials, or in the doing of any work or labor, or in the sale or leasing of any real estate, or in any proposal, agreement or contract for any of these purposes, in any case in which the price or consideration is to be paid, in whole or in part, directly or indirectly, out of any school moneys, or who shall have received from any source whatever any commission or compensation in connection with any of the matters aforesaid; and any school officer who shall violate the preceding provisions of this section shall be deemed guilty of a misdemeanor, and shall also forfeit such office and be ineligible to any office or employment under the board of education or under the city or any agency. The provisions of this section shall not apply to authors of school books used in any of the public schools because of any interest they may have as authors in such books.

HISTORICAL NOTE

Section added at General Election, November 8, 1988 (formerly § 524).



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CHAPTER 49 OFFICERS AND EMPLOYEES

§ 1132. **Contributions to political funds, etc., prohibited.**

Neither the city superintendent of schools, nor any associate or assistant superintendent of schools, nor any member of the board of examiners, nor any member of the supervising or teaching staff of the board of education of the city shall be permitted to contribute any moneys directly or indirectly to any fund intended to affect legislation increasing their emoluments, but nothing herein shall be construed to deny any right afforded by section eleven hundred twenty-four.

HISTORICAL NOTE

Section added at General Election, November 8, 1988 (formerly § 525).



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§ 1133. **Transmission of reports; disposal of records; destruction of other materials.**

a. The head of each agency shall transmit to the municipal reference and research center at least four copies of each report, document, study or publication of such agency immediately after the same shall have been published or issued. The head of each agency shall also transmit to the department of records and information services or its successor agency, in electronic format, each report, document, study and publication required by local law, executive order, or mayoral directive to be published, issued, or transmitted to the council or mayor, within ten business days of such publication, issuance or transmittal to the council or mayor, which materials shall be made available to the public on or through the department's website, or its successor's website, within ten business days of such publication, issuance or transmittal to the council or mayor. The agency shall further transmit to the municipal reference and research center four copies of each report, document, study or publication prepared by consultants, or other independent contractors, as soon as such report or study is released, and shall further transmit within ten business days of release by the agency, in electronic format, to the department of records and information services each such report, document, study or publication. Such materials shall further be made available to the public on or through the department's website, or its successor's website, within ten business days of release by the agency. Where practicable, each agency shall also transmit, in electronic format, to the department of records and information services or its successor agency any report, document, study and publication required to be published by any state or federal law, rule or regulation within ten business days of publication. Such materials shall further be made available to the public on or through the department's website, or its successor's website, within ten business days of such publication.

b. No records shall be destroyed or otherwise disposed of by an agency, officer or employee of the city unless approval has been obtained from the commissioner of records and information services, the corporation counsel and the head of the agency which created or has jurisdiction over the records who shall base their determinations on the potential administrative, fiscal, legal, research or historical value of the record. Approval for records disposal shall be contained in an approved records disposal schedule and remain in force until the status of the records changes. The

commissioner of records and information services or the head of the agency which created or has jurisdiction over the records may initiate action to eliminate records eligible for disposal. The commissioner of records and information services shall insure the destruction of disposable records within six months of the date of eligibility.

c. Records of historical, research, cultural or other important value shall be transferred to the municipal archives for permanent custody pursuant to a records disposition schedule approved by the commissioner of records and information services and, if applicable, the head of the agency which created or has jurisdiction over the records. Such schedule is subject to the conditions set forth herein. The city shall reserve and retain ownership, possession, and control of all records of historical, research, cultural or other important value in accordance with the provisions of this section and subdivision five of section 3003.

d. Other materials not included within the definition of records in this charter may be destroyed, if not otherwise prohibited by law, at any time by the agency in possession of such materials without the approval of the commissioner of records and information services. Such commissioner may, however, formulate procedures and interpretations to guide in the disposition of such materials.

HISTORICAL NOTE

Section added at General Election, November 8, 1988 (formerly §§ 3005, 3006).

Subd. a amended L.L. 11/2003 § 2, eff. June 18, 2003 except that community boards are subject to this amendment June 18, 2004. [See Note 1]

Subd. b amended L.L. 22/2003 § 2, eff. Mar. 26, 2003. [See Note 2]

Subd. c added L.L. 22/2003 § 2, eff. Mar. 26, 2003. [See Note 2]

Subd. d relettered & amended (former subd. c) L.L. 22/2003 § 2, eff. Mar. 26, 2003. [See Note 2]

NOTE

1. Provisions of L.L. 11/2003:

Section 1. Declaration of legislative findings and intent. The Council finds and declares that the City of New York should lead the nation in using information technologies to improve the efficiency and accessibility of municipal government. Recognizing that the Internet offers a powerful means of accomplishing these twin goals, and recognizing further that reducing government's use of paper benefits the environment, the Council finds that City agencies should aggressively expand their presence on the City's award-winning website, NYC.GOV, by posting vital documents and publications in a timely fashion for public use.

Pursuant to this legislation, and recognizing that the Department of Records and Information Services currently serves as the New York City Charter mandated repository and disseminator of City documents, City agencies will be required to transmit to the Department, in an electronic format, all documents required by law to be published or transmitted to the Mayor or Council. Such transmittal shall occur within ten business days after the date upon which any such document is required by law to be published or transmitted to the Mayor or Council. The Department of Records and Information Services shall further make any such document transmitted to the Department in this manner available on its website within ten business days after the date upon which any such document is required by law to be published or transmitted to the Mayor or Council. With these requirements, the City will make municipal information more readily accessible to the public and will, most importantly, encourage the increasing use of information technology resources as a means of improving government.

2. Provisions of L.L. 22/2003:

Section 1. Declaration of Intent and Findings. The Council finds that the professional and unbiased preservation of the City's historical records is necessary in order to capture the accurate recording of history. The professional archiving of and accessibility to these records are cornerstones of a free society. The City's Department of Records and Information Services (the "Department") is responsible for the professional administration and permanent preservation of historically valuable, public records of the City of New York. Through its municipal archives, the Department acts to preserve the City's "collective memory," and to make "possible the transmission of our democratic cultural heritage from generation to generation." See [www.NYC.gov.html.doris](http://www.NYC.gov/html.doris) (message from the commissioner). Individually and collectively, these records are priceless, unique, and are among the richest of our City's legacies.

In order to ensure that the City does not lose public control of such vital, City-owned records, it is important to clearly outline how the City may maintain the custody and control of public records produced during the administrations of city officials. The legislation defines and prohibits arrangements that may compromise or appear to compromise the professional and unbiased archiving of records. The legislation also creates a review board, which will have access to review any archiving processes with any archival entities the City contracts with, including private entities the City has contracted with in the past. The violation or appearance of violation of the integrity of these records constitutes an injury to the public, who rely on the City to maintain an accurate account of its history and operations. Such injury could occur, for example, when the custody of the original and only set of historical records is turned over to a non-public entity, and could leave the public to question its accuracy and completeness. Only those public entities that have no more than the City's interest in mind should be entrusted to handle these records.

The Council proposed this legislation after hearing testimony from expert historians, archivists, and good government advocates regarding the proper handling of important historical documents so as to maintain their integrity and avoid any selective denial of access to such records, or any appearance thereof. It is important that, when others look back at any period in history, they have, to whatever extent possible, access to the complete and accurate record of the City's public office holders and their administrations.

The measures instituted by this legislation also seek to better ensure equal access to all members of the public by keeping historical records in the custody of a public entity dedicated to the service of the City of New York. In so doing, the Council expects to facilitate the Department's Charter-mandated mission to "ensure that all significant research material pertaining to the operations of the City as well as other municipalities shall be preserved and readily available for use" New York City Charter §3003(2).

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§ 6. This law shall take effect immediately, and the responsibilities of the board created by section four of this local law shall pertain to all papers of any city administration to date and any contracts with any entity, including private entities as defined herein, heretofore entered into for the purposes specified in subdivision five of section 3003.



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CHAPTER 49 OFFICERS AND EMPLOYEES

§ 1134. **[Copies of agency reports, audits or evaluations to council.]**

The head of each agency shall promptly transmit to the council copies of all final reports or studies which the charter or other law requires the agency or any official thereof to prepare. The head of each agency shall also promptly transmit to the council copies of all final audits, audit reports and evaluations of such agency prepared by state or federal officials or by private parties.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.



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CHAPTER 49 OFFICERS AND EMPLOYEES

§ 1135. Restriction on community board membership of employees of council members and borough presidents.

No person who is employed by a borough president or a council member may be appointed to serve on a community board to which such borough president may make appointments or to which such council member may make recommendations for appointment.

HISTORICAL NOTE

Section added at General Election, November 8, 1988.

Section renumbered at General Election, November 7, 1989 (formerly

§ 1134).



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CHAPTER 49 OFFICERS AND EMPLOYEES

§ 1136. **Certification of officers and employees.**

a. On or before the tenth day after an individual becomes a public servant, such individual shall file a written statement with the city clerk that such individual has read and shall conform to the provisions of this chapter.

b. On or before the tenth day after the head of any mayoral agency commences the performance of official duties, such agency head shall, in addition, file a written statement with the city clerk that such agency head has read and shall conform to the provisions of chapter sixteen.

c. The department of citywide administrative services shall make available such copies of chapters sixteen and forty-nine as are necessary to fulfill the requirements of this section.

HISTORICAL NOTE

Section added at General Election, November 8, 1988.

Section renumbered at General Election, November 7, 1989 (formerly § 1135).

Subd. c amended L.L. 59/1996 § 23, eff. Aug. 8, 1996.



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NYC Charter 1136

New York City Charter

CHAPTER 49 OFFICERS AND EMPLOYEES

§ 1136.1. **Prohibitions on the use of government funds and resources.**

1. Definitions. As used in this section:

(a) "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.

(b) "Candidate" means an individual who seeks nomination for election, or election, to any elective 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 office at any time whether in the year in which such contributions or expenditures are made or at any other time.

(c) "Electioneering message" means a statement designed to urge the public to elect or defeat a certain candidate for elective office, or support or oppose a particular political party, or support or oppose a particular referendum question.

(d) "Elective office" means any elective office, including federal, state, and local offices.

(e) "Mass mailing" means identical or nearly identical pieces of literature or other mass communication totaling more than one hundred items, 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 specific inquiries or

requests made by members of the public.

(f) "Participate" means to authorize, request, suggest, foster, cooperate, and encompasses actions and omissions of both the candidate for elective office and any agent acting on behalf of the candidate, including a political committee authorized by the candidate.

(g) "Public servant" means all officials, officers and employees of the city, including members of community boards and members of advisory committees, except unpaid members of advisory committees shall not be public servants.

2. (a) No public servant who is a candidate for nomination or election to any elective office or the spouse of such public servant shall appear or otherwise participate in any advertisement or commercial on television, radio, in print 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 office shall be held through the day of the last election that year for that office, in which the candidate seeks nomination or election.

(b) No public servant who is a candidate for nomination or election to any elective office or the spouse of such public servant shall use, cause another person to use, or participate in the use of governmental funds or resources for a mass mailing that is postmarked, if mailed, or delivered, if by other means, less than ninety days prior to any primary or general election for any elective office for which office such person is a candidate for nomination or election; provided, however, that a candidate may send one mass mailing, which shall be postmarked, if mailed, or delivered, if by other means, no later than twenty-one days after the adoption of the executive budget pursuant to section two hundred fifty-four. No such mass mailing shall be intentionally sent to individuals outside the particular council district, borough, or other geographic area represented by such candidate.

(c) No public servant shall use governmental funds or resources for a public communication that contains an electioneering message, including but not limited to information placed by electronic means on the Internet.

(d) In the case of a candidate in a special election to fill a vacancy in an elective office, the prohibitions set forth in paragraphs (a) and (b) of this subdivision shall apply from the day the special election is declared through the day of the special election.

3. (a) Nothing in this section shall prohibit appearances or participation by public servants 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 public servants and members of 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.

(b) 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.

(c) Nothing in this section shall be deemed to permit any interest or conduct prohibited by chapter sixty-eight of this charter or by any rule, regulation, opinion, or determination of the conflicts of interest board issued pursuant thereto or to restrict in any way the powers and obligations of the conflicts of interest board.

4. The intentional or knowing violation of this section shall be punishable as a misdemeanor in addition to any other penalty as may be provided under law. Additionally, the campaign finance board shall have the power to investigate and determine whether any use of governmental funds or resources pursuant to paragraph (b) of subdivision two of this section is a violation of such paragraph and, if such violation is found, whether such use of government resources also violates or constitutes a contribution and/or expenditure under chapter seven of title three of the administrative code of the city of New York or any rule promulgated thereunder. The campaign finance board may assess civil penalties, upon giving written notice and the opportunity to appear before the board, against candidates for offices covered by the system of campaign finance reform, in an amount not in excess of ten thousand dollars for each such violation.

HISTORICAL NOTE

Section amended L.L. 58/2004 § 19, eff. Dec. 15, 2004. [See Administrative Code § 3-703 Note 3]

Section added L.L. 40/1998 § 1, eff. Sept. 25, 1998.



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NYC Charter 1137

New York City Charter

CHAPTER 50 TERM LIMITS

§ 1137. **Public policy.**

It is hereby declared to be the public policy of the city of New York to limit the time elected officials can serve as mayor, public advocate, comptroller, borough president and council member so that elected representatives are "citizen representatives" who are responsive to the needs of the people and are not career politicians. It is further declared that this policy is most appropriately served by limiting the time such officials can serve to not more than three full consecutive terms.

HISTORICAL NOTE

Section amended L.L. 51/2008 § 1, eff. Nov. 3, 2008. [See §1138 Note 1]

Section added L.L. 94/1993 § 1, eff. Jan. 1, 1994.

Section added by vote of electors at General Election held on Nov. 2, 1993.

CASE NOTES

¶ 1. In *Molinari v. Bloomberg*, 564 F.3d 587 (2d Cir. 2009), a group of elected officials and private citizens, including the current Comptroller, Public Advocate of NYC and several current members of the City Counsel, challenged the enactment of Local Law 51. The defendants included the leaders of the City Council, who pushed for the enactment of the law, and the Mayor, who signed it. The challenged law modified the two-term limit for certain public offices; it increased the limit to three terms for Mayor, Council Member, Public Advocate, Comptroller and Borough President. What the new law did was to change term limits by legislative enactment even though the term limits had originally been enacted in 1993 by City-wide referendum.

Plaintiffs claimed the following:

- 1) Defendants violated their First Amendment rights because the City voters will be less likely to engage in First Amendment speech if laws enacted by referendum can be amended by City Council legislation;
- 2) Defendants violated their substantive due process guaranteed by the Fourteenth Amendment of the U.S. Constitution because the sole purpose of Local Law 51 is to extend defendants own political careers by entrenching incumbents;
- 3) Defendants violated NY Municipal Home Rule Law Sec. 23(2)(b), which they contend requires a referendum to enact the provisions of Local Law 51;
- 4) Defendants violated the City Charter's conflict of interest provisions by enacting legislation conferring upon themselves a political benefit.

In upholding the law, the court rejected all four of the above arguments. At the outset, the court pointed out that the City Council and Mayor are given broad power to enact local laws, including amendments to the City Charter, so long as they relate to property, affairs or government and are not inconsistent with the New York State Constitution or general laws. See NY Mun. Home Rule Law Sec. 10(l)(i)-(ii). Sections 36 and 37 of the NY Municipal Home Rule Law allows voters to enact such laws directly by means of referendum. This can be directly initiated by voters through a voter initiative process. See Sec. 37. If voters who are qualified file with the City Clerk a petition containing a certain number of signatures requesting that a proposed local law amending the City Charter be put to referendum, the proposed local law will appear on the ballot at the next general election. A referendum proposing a local law amending the City Charter may also be initiated by a Charter Commission. See Section 36. Thus, a charter commission can be created either by a voter's petition, the City Council or the Mayor. This happened in 1993 where the City voters put a referendum on the ballot by voter initiative proposing term limits for certain elected officials. This was ultimately adopted by a vote of more than 59%.

Before the enactment of Local Law 51, City Charter 1137 stated that a mayor was limited to eight consecutive years (also includes public advocate, comptroller, borough president and council members so that elected representatives represent the citizens and can therefore be responsive to the needs of the people and are not career politicians. Moreover, before Local Law 51, Section 1138 stated that no person shall be eligible to be elected to or serve in the offices referenced above except if one full four year term has elapsed after the person has held office.

In October 2008, the Mayor announced that he was going to work with the Speaker of the City Council to introduce legislation to extend the City's term limits because it was his belief that experienced leadership in a time of deep financial crisis was needed. Bill 845-A was introduced and if signed into law, would amend the above sections of the City Charter to change the term limits for no more than two consecutive terms to no more than three consecutive terms. Plaintiffs claimed that the Mayor planned to initiate this change as early as 2007, but delayed this announcement so that voters could not put the issue of term limits on the ballot through a voter initiative prior to the November 2009 election. Under Sec. 37 of the NY Municipal Home Rule Law, if qualified voters were to have filed a petition following the introduction of the bill in October 2008 putting the term limits issue to a referendum, it would appear on the November 2009 election ballot at the earliest. See Municipal Home Rule Law Sec. 37(6)-(7). The bill was signed into law on Nov. 3, 2008 and is known as Local Law 51. The plaintiffs commenced suit a week later.

The court addressed each of plaintiffs arguments.

Argument #1-First Amendment. Court agreed with defendants and agreed with Appellee's that Local Law 51 does not implicate plaintiffs' First Amendment rights. The First Amendment was created for the exchange of ideas leading to political and social change, as desired by the people. Here, plaintiffs have not been restricted from engaging in First Amendment activity. Plaintiffs were free to exercise their First Amendment rights in connection with the prior referendums (1993 and 1996). Plaintiffs simply claim that their First Amendment rights have been violated by Local

Law 51 because voters will be less likely in the future to engage in the referendum process if a law enacted by that process can be amended or repealed through City Council legislation. As noted in other circuit courts, plaintiff's First Amendment rights are not implicated by referendum schemes in and of themselves, but by the regulation of advocacy with this process (i.e. Petition circulating, discourse and other protected forms of advocacy). What is important is that the communication of ideas associated with the referendum process is not affected, even if plaintiffs are correct in their assumption that it will be more difficult for plaintiffs to organize voter initiatives and referenda in the future. The fact that a process may be difficult is insufficient to implicate the First Amendment, the court held.

Argument #2-Substantive Due Process. The appellants believe that the purpose of Local Law 51 was an "incumbency re-employment program" to allow "those in power to have the opportunity to remain in power." Appellants do not point to a fundamental right nor a suspect classification in connection with this legislation, and there is a rational relationship between the legislation and its purpose. The City's reason for enacting the law is to provide voters with an opportunity to elect experienced public officials in a time of financial crisis, which is rationally related to a legitimate objective. The fact that a politician wishes to remain in office is not consequential. Therefore, the legislation stands. There is nothing unconstitutional per se about incumbents shaping the electoral process to their advantage, and is an aspect of the American political scene.

Argument #3-NYS Referendum Law. Plaintiffs argued before the District court that under Municipal Home Rule Law §23(2)(b)(e)(f), the substance of Local Law 51 could be enacted only by referendum. On appeal, the appellants have abandoned their arguments under (e) and (f), as well as NYC Charter §38. They argue here that Local Law 51 changes the membership of the legislative body pursuant to §23(2)(b). Section 10 of the Municipal Home Rule Law provides that city governments have the power to adopt and amend local laws relating to the powers, duties, qualifications, terms of office, compensation, welfare and safety of its officers and employees, among other considerations. Mun. Home Rule Law §10(1)(a)(1). Plaintiffs argued that Local Law 51 changes the composition of the City Council because it will result in re-electing incumbents who were not previously eligible to seek re-election under the previous term limit law. There is no case law interpreting §23(2)(b) although there is case law interpreting its predecessor, City Home Rule Law Sec. 15(1), which states that an act of the legislature is subject to a mandatory referendum except as otherwise noted or under authority. In any event, the NYS legislature did not intend to make a substantive change in the meaning of the provision, but wanted to establish uniformity among various governmental bodies. It was not intended to abolish or curtail any rights, privileges or powers. NY Municipal Home Rule Law Sec. 50(3). While Local Law 51 now uses the word "membership" where section 15(1) used the word "form" the law remains unchanged with respect to the types of local laws subject to referenda, and the restrictions and prohibitions have not changed. While the law can change the composition of a legislative body, this does not mean that it can change the form or composition of that body. Membership, as used in the revised Municipal Home Rule Law, §23(2)(b) refers to the structural characteristics of the legislative body. Local law affects only an incumbent's eligibility for re-election and does not alter the number of seats in the legislative body. Local Law 51 does not trigger Municipal Home Rule Law Sec. 23(2)(b) because it does not directly change the membership. (City Charter 22 provides that the size of the council may be increased by local law without approval by the voters in a referendum.)

Argument #4-Conflict of Interest. Plaintiffs allege that defendants violated conflict of interest provisions under Chapter 68 of the City Charter Sec. 2604(b)(2)(3) and Conflicts Board Rule 1-13(d) (Rule 1-13(d)). Under Sec. 2604(b)(2)-no public servant shall engage in any business, transaction, private employment, or have a financial or private interest, whether direct or indirect, which conflicts with his or her official duties. Under Sec. 2604(b)(3)-No public servant shall use or attempt to use his or her position as a public servant to obtain financial gain, contract, license, privilege, either directly or indirectly, from a person or firm associated with the public servant. Prior to voting on Local Law 51, an advisory opinion was sought from the Conflict of Interest Board, who concluded that it is within the proper discharge of Council Members' official duties as legislators for them to vote upon and participate in the legislative process in connection with a bill that is lawfully pending before the council. While term limited elected officials may have a personal political interest in what happens, that interest does not fall under Chapter 68, and would not be disqualified from participating in the enactment of this legislation. Agreeing with the District Court, the Appeals Court

gives considerable deference and validity to these advisory opinions, absent a clear showing to the contrary. There is no personal or private interest shown.



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NYC Charter 1138

New York City Charter

CHAPTER 50 TERM LIMITS

§ 1138. **Term limits.**

Notwithstanding any provision to the contrary contained in this charter, no person shall be eligible to be elected to or serve in the office of mayor, public advocate, comptroller, borough president or council member if that person had previously held such office for three or more full consecutive terms, unless one full term or more has elapsed since that person last held such office; provided, however, that in calculating the number of consecutive terms a person has served, only terms commencing on or after January 1, 1994 shall be counted.

HISTORICAL NOTE

Section amended L.L. 51/2008 § 1, eff. Nov. 3, 2008. [See Note 1]

Section added L.L. 94/1993 § 1, eff. Jan. 1, 1994.

Section added by vote of electors at General Election held on Nov. 2, 1993.

NOTE

1. Provisions of L.L. L.L. 51/2008:

§ 2. If any section, subdivision, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable and such constitutionality or invalidity shall not affect the validity of the remaining portions of this local law, which remaining portions shall remain in full force and effect.

§ 3. This local law shall take effect immediately and shall apply to elections held on or after the date of its enactment, provided that this local law shall be deemed repealed upon the effective date of a lawful and valid proposal

to amend the charter to set term limits at two, rather than three, full consecutive terms, as such limits were in force and effect prior to the enactment of this local law, where such proposal has been submitted for the approval of the qualified electors of the city and approved by a majority of such electors voting thereon.

CASE NOTES

¶ 1. A former city council member, who sought to be run for a city council seat, claimed that City Charter §1138 was unconstitutional. He challenged Local Law 27, which amended Section 1138. Although the Appellate Division, First Department of the New York State Supreme Court had upheld the constitutionality of the statute, and that decision had a res judicata effect, the federal court stated that even without res judicata or collateral estoppel, it would have upheld the constitutionality of the statute. The court explained that Local Law 27, which had amended Section 1138, was designed to address the anomalies created by New York's decennial redistricting and the two consecutive two-year terms of office that accompany this process every 20 years. Local Law 27 merely clarifies that Charter §1138 was not intended to apply different term restrictions to council members affected by redistricting. State laws on term limits have generally been upheld. Courts have identified the significant interest states have in enacting term limits to open up the political process and insure competitive elections, and have determined that those interests outweigh any constitutional burdens to candidates and voters. Local Law 27 does not forever bar former City Council members from running again. It merely levels the waiting period for term-limited former council members to four years, a period already approved by the voters of the City in a referendum. The court also rejected plaintiff's claim that the statute violated the Equal Protection Clause, stating that the statute was neutral in its application. *Dear v. Board of Elections*, 2003 WL 22077679 (U.S. Dist. Ct. E.D.N.Y).

¶ 2. In *Molinari v. Bloomberg*, 564 F.3d 587 (2d Cir. 2009), a group of elected officials and private citizens, including the current Comptroller, Public Advocate of NYC and several current members of the City Council, challenged the enactment of Local Law 51. The defendants included the leaders of the City Council, who pushed for the enactment of the law, and the Mayor, who signed it. The challenged law modified the two-term limit for certain public offices; it increased the limit to three terms for Mayor, Council Member, Public Advocate, Comptroller and Borough President. What the new law did was to change term limits by legislative enactment even though the term limits had originally been enacted in 1993 by City-wide referendum.

Plaintiffs claimed the following:

- 1) Defendants violated their First Amendment rights because the City voters will be less likely to engage in First Amendment speech if laws enacted by referenda can be amended by City Council legislation;
- 2) Defendants violated their substantive due process guaranteed by the Fourteenth Amendment of the U.S. Constitution because the sole purpose of Local Law 51 is to extend defendants own political careers by entrenching incumbents;
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In upholding the law, the court rejected all four of the above arguments. At the outset, the court pointed out that the City Council and Mayor are given broad power to enact local laws, including amendments to the City Charter, so long as they relate to property, affairs or government and are not inconsistent with the New York State Constitution or general laws. See NY Mun. Home Rule Law Sec. 10(1)(i)-(ii). Sections 36 and 37 of the NY Municipal Home Rule Law allows voters to enact such laws directly by means of referendum. This can be directly initiated by voters through a voter initiative process. See Sec. 37. If voters who are qualified file with the City Clerk a petition containing a certain number of signatures requesting that a proposed local law amending the City Charter be put to referendum, the

proposed local law will appear on the ballot at the next general election. A referendum proposing a local law amending the City Charter may also be initiated by a Charter Commission. See Section 36. Thus, a charter commission can be created either by a voter's petition, the City Council or the Mayor. This happened in 1993 where the City voters put a referendum on the ballot by voter initiative proposing term limits for certain elected officials. This was ultimately adopted by a vote of more than 59%.

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Argument #2-Substantive Due Process. The appellants believe that the purpose of Local Law 51 was an "incumbency re-employment program" to allow "those in power to have the opportunity to remain in power." Appellants do not point to a fundamental right nor a suspect classification in connection with this legislation, and there is a rational relationship between the legislation and its purpose. The City's reason for enacting the law is to provide voters with an opportunity to elect experienced public officials in a time of financial crisis, which is rationally related to a legitimate objective. The fact that a politician wishes to remain in office is not consequential. Therefore, the legislation stands. There is nothing unconstitutional per se about incumbents shaping the electoral process to their advantage, and is an aspect of the American political scene.

Argument #3-NYS Referendum Law. Plaintiffs argued before the District court that under Municipal Home Rule Law §23(2)(b)(e)(f), the substance of Local Law 51 could be enacted only by referendum. On appeal, the appellants have abandoned their arguments under (e) and (f), as well as NYC Charter §38. They argue here that Local Law 51 changes the membership of the legislative body pursuant to §23(2)(b). Section 10 of the Municipal Home Rule Law

provides that city governments have the power to adopt and amend local laws relating to the powers, duties, qualifications, terms of office, compensation, welfare and safety of its officers and employees, among other considerations. Mun. Home Rule Law §10(l)(a)(l). Plaintiffs argued that Local Law 51 changes the composition of the City Council because it will result in re-electing incumbents who were not previously eligible to seek re-election under the previous term limit law. There is no case law interpreting §23(2)(b) although there is case law interpreting its predecessor, City Home Rule Law Sec. 15(l), which states that an act of the legislature is subject to a mandatory referendum except as otherwise noted or under authority. In any event, the NYS legislature did not intend to make a substantive change in the meaning of the provision, but wanted to establish uniformity among various governmental bodies. It was not intended to abolish or curtail any rights, privileges or powers. NY Municipal Home Rule Law Sec. 50(3). While Local Law 51 now uses the word "membership" where section 15(l) used the word "form" the law remains unchanged with respect to the types of local laws subject to referenda, and the restrictions and prohibitions have not changed. While the law can change the composition of a legislative body, this does not mean that it can change the form or composition of that body. Membership, as used in the revised Municipal Home Rule Law, §23(2)(b) refers to the structural characteristics of the legislative body. Local law affects only an incumbent's eligibility for re-election and does not alter the number of seats in the legislative body. Local Law 51 does not trigger Municipal Home Rule Law Sec. 23(2)(b) because it does not directly change the membership. (City Charter 22 provides that the size of the council may be increased by local law without approval by the voters in a referendum.)

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NYC Charter 1140

New York City Charter

CHAPTER 51 TRANSITORY PROVISIONS

§ 1140. **Relation of this charter to existing law.**

It is the purpose and intent of this charter to set forth the structure of the city government and the manner in which it is to operate, in accordance with the provisions of chapter six hundred thirty-four of the laws of nineteen hundred seventy-two, as amended, and to continue in force all provisions of the New York City Charter adopted on November seventh, nineteen hundred sixty-one, as amended, and all other provisions of law affecting the city and the counties within the city, not inconsistent with the provisions of this charter, in force at the time when this charter shall take effect, until repealed or amended or until continued in the revision, simplification, consolidation, codification, restatement and annotation of the administrative code of the City of New York.

HISTORICAL NOTE

Amended at General Election, November 4, 1975.

CASE NOTES

¶ 1. Even if the Board of Estimate and Apportionment had the power to pass a resolution prohibiting a stoop line stand within 100' of a subway entrance under the Greater New York Charter § 242 (L. 1901, Ch. 466), the resolution was intended to apply only in those cases where the entrances to or exits from subway or elevated railroads were along or adjacent to curb lines of streets. Thus, the petitioner was entitled to maintain an Article 78 proceeding to compel the issuance of a license permitting him to maintain a fruit and vegetable stand in front of his premises where the entrance to the subway involved was not placed along or adjacent to a curb line.-Matter of Chiapperni, 143 N. Y. S. 2d 735 [1955].

¶ 2. Section 166 of the Charter providing that an application to review a determination of the Tax Commission must be brought before October 25, applied only to tax assessments made in the future for a fiscal year beginning July

1, 1939, and proceeding to review assessments for the year 1938 and the first half of 1939 were governed by the time schedule prescribed by the old charter, since both in the old and new charters the period of the lapsed time to review assessments was five months and it was clearly not intended to grant nine months in which to bring proceedings to review assessments for 1938 and the first half of 1939. Furthermore, there was nothing inconsistent in applying the limitation date provided in the 1938 Charter to review assessments made under the time schedule of that charter.-People (Kaydal Realty Co.) v. Miller; People (Vandalia Realty Corp.) v. Miller, 255 App. Div. 449, 7 N. Y. S. 2d 963 [1938] aff'd without opinion, 280 N. Y. 652, 20 N. E. 2d 1016 [1939].



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NYC Charter 1141

New York City Charter

CHAPTER 51 TRANSITORY PROVISIONS

§ 1141. **Rights of officers and employees preserved.**

Nothing in this charter contained shall affect or impair the rights or privileges of officers or employees of the city or of any agency existing at the time when this charter shall take effect, or any provision of law in force at the time when this charter shall take effect and not inconsistent with the provisions of this charter, in relation to the personnel, appointment, ranks, grades, tenure of office, promotion, removal, pension and retirement rights, civil rights or any other rights or privileges of officers or employees of the city generally or officers or employees of any agency.

CASE NOTES

¶ 1. The propriety of the action of the Fire Commissioner as sole trustee of the Fire Department Pension Fund in retiring a member of the Department at an allowance greatly in excess of one-half pay was not triable by the court notwithstanding the charge that the application for retirement was granted in the anticipation of the effect of new pension laws and that the Commissioner had not theretofore granted any pension in excess of one-half pay. There was no showing that the Commissioner in fixing the pension acted in bad faith or in fraud of the rights of the city or other beneficiaries of the pension fund.-Hefferman v. McGoldrick, 259 App. Div. 671, 20 N. Y. S. 2d 341 [1940].



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NYC Charter 1142

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CHAPTER 51 TRANSITORY PROVISIONS

§ 1142. **Continuity of powers and duties.**

Any agency or officer to whom are assigned by this charter any powers and duties shall exercise such powers and duties in continuation of their exercise by the agency or officer by which the same were heretofore exercised and shall have power to continue any business, proceeding or other matter commenced by the agency or officer by which such powers and duties were heretofore exercised. Any provision in any law, rule, regulation, contract, grant or other document relating to the subject-matter of such powers or duties and applicable to the agency or officer formerly exercising such powers and duties shall, so far as not inconsistent with the provisions of this charter, apply to the agency or officer to which such powers and duties are assigned by this charter.



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NYC Charter 1143

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CHAPTER 51 TRANSITORY PROVISIONS

§ 1143. **Transfer of officers and employees in case of transfer of functions.**

Wherever by any provision of this charter functions, powers or duties are assigned to any agency or officer which have been heretofore exercised by any other agency or officer, all officers and employees in the classified municipal civil service who at the time when such charter provisions shall take effect are engaged in the performance of such functions, powers or duties shall be transferred to the agency to which such functions, powers or duties are assigned by this charter, without examination and without affecting existing compensation or pension or retirement rights, privileges or obligations of such officers and employees.

HISTORICAL NOTE

Amended by L. L. 1977, No. 102.



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NYC Charter 1144

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CHAPTER 51 TRANSITORY PROVISIONS

§ 1144. **Transfer of records and property.**

All records, property and equipment whatsoever of any agency or part thereof, all the powers and duties of which are assigned to any other agency by this charter, shall be transferred and delivered to the agency to which such powers and duties as so assigned. If part of the powers and duties of any agency or part thereof are by this charter assigned to another agency, all records, property and equipment relating thereto shall be transferred and delivered to the agency to which such powers and duties are so assigned.



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CHAPTER 51 TRANSITORY PROVISIONS

§ 1145. **Continuity of agencies.**

a. Any agency provided for in this charter with a name the same or substantially the same as that of an agency heretofore existing shall be deemed to be a continuation of such agency heretofore existing and shall exercise its powers and duties in continuation of their exercise by the agency by which the same were heretofore exercised and shall have power to continue any business, proceeding or other matter commenced by the agency by which such powers and duties were heretofore exercised. Any provision in any law, rule, regulation, contract, grant or other document relating to such formerly existing agency shall, so far as not inconsistent with the provisions of this charter, apply to such agency provided for by this charter.

b. The commissioner of finance shall have and exercise all the functions, powers and duties exercised by the treasurer and all the functions, powers and duties exercised by the comptroller in respect of excise and non-property taxes prior to the first day of January, nineteen hundred sixty-three.

c. The commissioner of finance shall have and exercise all the functions, powers and duties exercised by the tax department prior to the first day of January, nineteen hundred sixty-three other than the function, power and duty to hear and determine applications for the correction of assessments on real property and for the exemption of such property from taxation.

HISTORICAL NOTE

Section amended by L. L. 1968, No. 10.

Section amended at General Election, November 4, 1975.

Subd. b amended by L. L. 1976, No. 28.

Subd. c amended by L. L. 1976, No. 28.



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CHAPTER 51 TRANSITORY PROVISIONS

§ 1146. **Pending actions and proceedings.**

No action or proceeding, civil or criminal, pending at the time when this charter shall take effect, brought by or against the city or any agency or officer, shall be affected or abated by the adoption of this charter or by anything therein contained; but all such actions or proceedings may be continued notwithstanding that functions, powers and duties of any agency or officer party thereto may by this charter be assigned or transferred to another agency or officer, but in that event the same may be prosecuted or defended by the head of the agency to which such functions, powers and duties have been assigned or transferred by this charter.



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CHAPTER 51 TRANSITORY PROVISIONS

§ 1147. **Existing rights and remedies preserved.**

No existing right or remedy of any character shall be lost or impaired or affected by reason of the adoption of this charter.



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NYC Charter 1150

New York City Charter

CHAPTER 52 GENERAL PROVISIONS

§ 1150. **Definitions.**

For the purposes of this charter:

1. The term "city" shall mean the city of New York, and unless the context otherwise requires, shall include the several boroughs.
2. The term "agency" shall mean a city, county, borough, or other office, position, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the city treasury.
3. The term "law" or "laws" shall include the constitution, this charter, any statute, the administrative code, any local law, and any ordinance, rule or regulation having the force of law.
4. The term "statute" shall mean an act of the legislature.
5. The term "maintenance" shall include minor repairs, and in case of doubt the mayor or an officer designated by him shall decide whether a repair is a minor repair.
6. The term "intercepting sewer" shall mean a sewer the principal purpose of which is the interception from other sewers and conveyance of sewage to treatment plants. In case of doubt the council shall decide whether a sewer is an intercepting sewer.
7. a. The term "wharf property" shall mean wharves, piers, docks and bulkheads and structures thereon and slips and basins, the land beneath any of the foregoing, and all rights, privileges and easements appurtenant thereto and land under water in the port of New York, and such upland or made land adjacent thereto as was vested in the department of

docks on January first, nineteen hundred thirty-eight or thereafter was or may be assigned to it or its successor agencies.

b. "Water front property" shall mean all property fronting on all the tidal waters in the port and city of New York and extending inshore to the property line of the first adverse owner and shall include such land under water extending outshore to the pierhead line or the property line, whichever extends furthest outshore.

c. "Water front commerce" shall mean the activity on water front property which encompasses the receipt of cargo or goods at the wharves, piers, docks or bulkheads from ships and their delivery to points inland or the receipt of such cargo or goods at such wharves, piers, docks or bulkheads from points inland for shipment by ships and shall include the temporary storage of such cargo or goods in the sheds or warehouses on such property pending their delivery or shipment.

d. "Furtherance of navigation" shall mean the activity on water front property which involves ship building, ship repairing, boating, dry dock facilities and similar uses.

8. The term "the port of New York" shall include all the waters of the North river, the East river and the Harlem river and all the tidal waters embraced within or adjacent to or opposite to the shores of the city.

9. The terms "three-fourths vote" and "two-thirds vote" when they apply to the council shall mean respectively three-fourths and two-thirds of all the members of the council are entitled to cast.

10. The term "administrative code" shall mean the administrative code of the city.

11. The term "budget" shall mean the expense budget unless the context otherwise requires.

12. Except as in this charter otherwise provided, the term "real property" shall include real estate, lands, tenements and hereditaments, corporeal or incorporeal.

13. The term "domestic partner" shall mean persons who have a registered domestic partnership pursuant to section 3-240 of the administrative code, a domestic partnership registered in accordance with executive order number 123, dated August 7, 1989, or a domestic partnership registered in accordance with executive order number 48, dated January 7, 1993.

HISTORICAL NOTE

Section amended by L. 1962, ch. 998, § 41.

Subd. 2 amended by L. L. 1967, No. 58.

Subd. 2 amended by L. L. 1969, No. 74.

Subd. 2 amended at General Election, November 4, 1975.

Subd. 2 amended by L. L. 1977, No. 102.

Subd. 7 amended by L. L. 1962, No. 71.

Section amended by L. 1985, ch. 374.

Subds. 6, 8, 9 amended at General Election, November 7, 1989.

Subd. 13 added L.L. 27/1998 § 3, eff. Sept. 5, 1998.

CASE NOTES

¶ 1. Although Charter former § 891 (now § 1150) provides that the City shall not be liable for any expense incurred by an "agency" of the City for any purpose unless there has been an appropriation therefor, it was not necessary to determine whether the Council for the City of New York was an "agency" within the purview of that section where it was conceded that the plaintiffs, pursuant to a contract with the council, rendered services to its designated committees which were necessary to the operation of the council.-Chambers v. City of New York, 173 Misc. 769, 19 N. Y. S. 2d 79 [1940].

¶ 2. New York City Health and Hospitals Corporation is an agency within the meaning of subdivision 2 of this section because it performs a governmental function and must be funded by the city in an amount not less than \$175,000,000.-People v. Butt, 113 Misc. 2d 538 [1981], aff'd, 58 N. Y. 2d 846 [1983].



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NYC Charter 1151

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CHAPTER 52 GENERAL PROVISIONS

§ 1151. **Effect of this charter on existing law.**

a. All laws and parts of laws relating to or affecting the city of New York or the municipalities consolidated therein in force when this charter as amended shall take effect are hereby repealed and superseded to the extent that the same are inconsistent with the provisions of this charter and no further.

b. All other laws and parts of laws shall continue in force until repealed, amended, modified or superseded.

c. Insofar as the provisions of this charter are the same in terms or in substance and effect as provisions of law in force when this charter shall take effect, relating to or affecting the city of New York, the provisions of this charter are intended to be not a new enactment but a continuation of such provisions of law, and this charter shall be so construed and applied.

CASE NOTES

¶ 1. Former § 982 (now § 1151) of the Charter, which effects the repeal of certain statutes, is limited in its scope by the saving clause in former § 962, (now § 1146).-In re Avenue L., B'klyn, 258 App. Div. 808, 15 N. Y. S. 2d 980 [1939].

¶ 2. Former § 565 provided that an action against a city should be commenced within six months after the cause of action arose. This section was enacted in 1938 as part of the 1938 Charter but in 1937 General Municipal Law § 50-d provided a one year time limitation for the commencement of malpractice actions. The City's contention that Charter former § 565 was a new section was rejected where there were similar provisions in the old charter and former § 982 (now § 1151) provides that a new charter shall not be deemed a new enactment but rather a continuation of existing law.-Grimaldi v. City of New York, 177 Misc. 492, 30 N. Y. S. 2d 366 [1941].

¶ 3. Chapter 12 of 1938 Charter which authorized the levying of special assessment on benefited property owners is inconsistent with the present Charter which completely eliminates the mechanism for local assessments.-*Acea v. Bureau of Assessors*, 73 Misc. 2d 50, 340 N. Y. S. 2d 476 [1972], affirmed, 45 A. D. 2d 1005, 358 N. Y. S. 2d 213 [1974].



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NYC Charter 1152

New York City Charter

CHAPTER 52 GENERAL PROVISIONS

§ 1152. **Time of taking effect.**

a. This charter shall take effect on the first day of January, nineteen hundred sixty-three and thereafter shall control in respect to all the powers, functions and duties of all officers, agencies, and employees of the city as provided herein, except that chapter twelve hereof shall take effect on January first, nineteen hundred sixty-two.

b. The amendments to the charter approved by the electors on November fourth, nineteen hundred seventy-five shall take effect on January first, nineteen hundred seventy-seven, and thereafter shall control as provided in respect to all the powers, functions and duties of all offices, agencies, and employees except as further specifically provided in other sections of this revised charter and except:

(1) that existing community districts and community boards shall continue in force and effect until the new community districts and community boards pursuant to chapters sixty-nine and seventy are established pursuant to this revised charter;

(2) that powers and duties of community boards and borough boards pursuant to chapters six, eight, nine, fourteen, fifteen, twenty-seven, sixty-nine and seventy shall be assumed by the existing community boards and borough boards on July first, nineteen hundred seventy-six and such boards shall continue to have such powers and duties until new community boards and borough boards are established within the new community districts and the boroughs pursuant to chapters sixty-nine and seventy, which boards shall assume the powers and duties specified in this charter at such time; and

(3) that the other amended provisions of this charter requiring any act to be done prior to January first, nineteen hundred seventy-seven shall take effect immediately upon adoption.

c. The amendments to the charter approved by the electors on November eighth, nineteen hundred eighty-eight

shall take effect immediately, and thereafter shall control as provided in respect to all the powers, functions and duties of all offices, agencies, and employees except as further specifically provided in other sections of this revised charter and except:

(1) that, with respect to the tax appeals tribunal established in section one hundred sixty-eight,

(a) the mayor shall appoint the first three commissioners, and shall designate one of them as president, no later than the first day of July, nineteen hundred eighty-nine;

(b) the tribunal shall adopt rules of procedure pursuant to section one hundred sixty-nine no later than the first day of December, nineteen hundred eighty-nine; and

(c) the tribunal shall begin accepting, hearing and determining appeals on the first day of January, nineteen hundred ninety;

(2) that the effective date of section one thousand forty-six shall be the first day of July nineteen hundred ninety, and

(3) that the provisions of the new chapter sixty-eight, entitled conflicts of interest, shall take effect on the first day of January, nineteen hundred ninety, and the provisions of chapter sixty-eight heretofore in effect, entitled ethics, shall remain in effect up to and including the thirty-first day of December of nineteen hundred and eighty-nine, at which time they shall be repealed, provided, however, that:

(a) section twenty-six hundred eight of chapter sixty-eight heretofore in effect shall not be repealed but shall be renumbered as section one hundred thirty-one and shall continue in effect;

(b) section twenty-six hundred two shall take effect immediately and subdivisions a, b, c, d, i, j and k of section twenty-six hundred three of the new chapter sixty-eight shall become effective upon confirmation of the members nominated by the mayor pursuant to subdivision c of such section twenty-six hundred two;

(c) section twenty-six hundred of chapter sixty-eight heretofore in effect, shall only remain in effect until the confirmation of the members nominated by the mayor pursuant to subdivision c of section twenty-six hundred two of the new chapter sixty-eight;

(d) the powers vested in the board of ethics by chapter sixty-eight heretofore in effect shall, upon the expiration of section twenty-six hundred of such chapter, be transferred, assigned and devolved upon the conflicts of interest board established by section twenty-six hundred two of the new chapter sixty-eight of the charter;

(e) the provisions of sections twenty-six hundred four, twenty-six hundred five, twenty-six hundred six, and twenty-six hundred seven of chapter sixty-eight heretofore in effect shall govern the conduct of officers or employees of the city or of any city agency and former officers or employees of the city or of any city agency engaged in prior to the effective date of section twenty-six hundred four of the new chapter sixty-eight;

(f) the provisions of subdivision h of section twenty-six hundred four of chapter sixty-eight heretofore in effect shall govern the conduct of former officers or employees of the city or of any city agency who leave city employ prior to the effective date of subdivision d of section twenty-six hundred four of the new chapter sixty-eight, engaged in on or after such date, and shall be enforceable pursuant to subdivisions j, k and l of such section.

(g) for any officer or employee of the city who is in city employ as of the thirty-first day of December, nineteen hundred eighty-nine, the provisions of subdivisions g, h and i of section twenty-six hundred four of chapter sixty-eight heretofore in effect shall remain in effect up to and including the thirty-first day of March, nineteen hundred ninety and shall be enforceable pursuant to subdivisions j, k and l of such section, and the provisions of paragraphs one, two, four,

six and seven of subdivision d of section twenty-six hundred four of the new chapter sixty-eight shall become effective on the first day of April, nineteen hundred ninety, provided, however, that this subparagraph shall not apply to elected officials, members of the city planning commission, including the chair, and employees of the department of city planning.

(h) for members of the city planning commission, including the chair, and employees of the department of city planning, the provisions of subdivisions g, h and i of section twenty-six hundred four of chapter sixty-eight heretofore in effect shall remain in effect up to and including the thirtieth day of June, nineteen hundred ninety and shall be enforceable pursuant to subdivisions j, k and l of such section, and the provisions of paragraphs one, two, three, four, six, and seven of subdivision d of section twenty-six hundred four of the new chapter sixty-eight shall become effective on the first day of July, nineteen hundred ninety.

d. The amendments to the charter approved by the electors on November seventh, nineteen hundred eighty-nine shall take effect on the first day of January, nineteen hundred ninety, and thereafter shall control as provided in respect to all the powers, functions and duties of all officers, agencies and employees, except as further specifically provided in other sections of this charter and except:

(1) that, except for the new section three hundred eleven which shall take effect on the first day of January, nineteen hundred ninety, the amendments of chapter thirteen shall take effect on the first day of September, nineteen hundred ninety, provided, however, that:

(a) the appointments required to be made by the mayor and the comptroller to the procurement policy board pursuant to section three hundred eleven shall be made by the fifteenth day of January, nineteen hundred ninety;

(b) the procurement policy board, upon its creation, shall be authorized to exercise the authority granted to it by the remaining sections of chapter thirteen otherwise not to take effect until the first day of September, nineteen hundred ninety, to promulgate rules prior to the effective date of those sections as are necessary to implement the provisions of the chapter. Such rules required by the chapter to be promulgated shall be proposed in accordance with the requirements of subdivision b of section one thousand forty-three of this charter by the first day of June, nineteen hundred ninety; and

(c) contract solicitations initiated prior to the first day of September, nineteen hundred ninety which would otherwise require the approval of the board of estimate that are not submitted to the board of estimate for approval by such date shall be awarded by the agency in accordance with the provisions of chapter thirteen otherwise not to take effect until the first day of September, nineteen hundred ninety and, to the extent practicable, with the rules of the procurement policy board; and

(d) all other contract solicitations for which the contract will be executed on or after the first day of September, nineteen hundred ninety shall be awarded in accordance with the provisions of chapter thirteen otherwise not to take effect until the first day of September, nineteen hundred ninety, and, to the extent practicable, with the rules of the procurement policy board;

(e) notwithstanding anything to the contrary herein, the proceedings of any contractor board of responsibility pending as of the thirty-first day of August, nineteen hundred ninety may be continued after such date until final determination.

(2) that chapter eleven of the charter shall take effect on the first day of January, nineteen hundred ninety-six and the provisions of subdivision b of section two hundred fifty-nine of such chapter shall apply with respect to the fiscal year beginning on the first day of July, nineteen hundred ninety-six and that, pursuant to the requirements of such chapter, the comptroller and the public advocate shall appoint the independent budget office advisory committee no later than the fifteenth day of February of nineteen hundred ninety-six; such advisory committee shall make its recommendations, to the special committee convened to appoint the director of the independent budget office, no later than the fifteenth day of June of nineteen hundred ninety-six; and such special committee shall make its appointment of

a director no later than the first day of August nineteen hundred ninety-six;

(3) that, effective immediately, no appointment to the civil service commission shall be made except upon the recommendation of the screening committee required by section eight hundred twelve of the charter;

(4) that, the provisions of subdivision b of section one hundred and four of the charter shall not apply to the contract budget submitted by the mayor for the fiscal year beginning the first day of July, nineteen hundred ninety nor to the contract budget adopted by the council for such year;

(5) that, the amendments to sections one hundred ninety-two, one hundred ninety-six, one hundred ninety-eight and to chapters twenty-seven and seventy-one, and the provisions of section two hundred three shall take effect immediately upon certification that the electors have approved the amendments to the charter, provided, however, that the amendments to subdivision a of section one hundred ninety-two (other than the portions thereof requiring appointments of the members of the city planning commission on or before the first day of March, nineteen hundred ninety and providing for the length of the terms of the first appointees to the commission) shall take effect on the first day of July, nineteen hundred ninety;

(6) that, the amendments to sections one hundred ninety-one, one hundred ninety-three, one hundred ninety-seven-a, one hundred ninety-seven-b, one hundred ninety-seven-c, one hundred ninety-nine, two hundred, two hundred one and two hundred two; the provisions of sections one hundred ninety-five, one hundred ninety-seven-d and two hundred four (except for subdivisions (g) and (h) thereof); the amendments to chapters fourteen, fifteen, twenty-one, twenty-nine, fifty-nine and sixty-one; and the provisions of chapters forty-eight and seventy-four shall take effect on the first day of July, nineteen hundred ninety, provided, however, that:

(a) notwithstanding anything to the contrary herein, the board of estimate shall continue to review and approve applications pursuant to sections one hundred ninety-seven-c and two hundred as heretofore in effect that have been acted upon by the city planning commission on or before the thirtieth day of June, nineteen hundred ninety;

(b) notwithstanding anything to the contrary herein, subdivisions b, d, e, f and g of section one hundred ninety-seven-c shall take effect on the second day of May, nineteen hundred ninety; and the period for review of applications by the borough presidents provided for in such subdivision g shall extend until the thirtieth day of June, nineteen hundred ninety in the case of all applications referred to the borough presidents in the month of May, nineteen hundred ninety;

(c) notwithstanding anything to the contrary herein, any application pursuant to sections one hundred ninety-seven-c or two hundred heretofore in effect that requires borough board review and is acted on by the affected borough board after the second day of May, nineteen hundred ninety shall be forwarded to the affected borough president for review pursuant to subdivision g of section one hundred ninety-seven-c in accordance with paragraph (b) of this subdivision; and

(d) notwithstanding anything to the contrary herein, the board of estimate shall continue up to and including the thirty-first day of August, nineteen hundred ninety, to review designations by the landmarks preservation commission, pursuant to section 25-303 of the administrative code, which have been approved by the landmarks preservation commission on or before the first day of May, nineteen hundred ninety; and designations by the landmarks preservation commission made after the first day of May and on or before the thirtieth day of June, nineteen hundred ninety, shall be subject to subdivisions eight and nine of section three thousand twenty, provided that the period for any reviews by the city planning commission and the council under such subdivisions eight and nine shall commence on the first day of July, nineteen hundred ninety;

(7) that, subdivisions g and h of section two hundred four shall take effect on the first day of July, nineteen hundred ninety-one;

(8) that, an elected city official who, as of the first day of January nineteen hundred ninety, holds both an elected city office and a party office, shall not be subject to the requirements of paragraph fifteen of subdivision b of section twenty-six hundred four in regard to such offices until the earlier of (i) the expiration of the term of the city office to which such official was elected prior to such date or (ii) the expiration of the term of the party office to which such official was elected or appointed prior to such date;

(9) that, notwithstanding the provisions of section twenty-five, the council members elected at the general election in the year nineteen hundred eighty-nine shall serve for a term of two years and an additional election of council members shall be held at the general election in the year nineteen hundred ninety-one. The council members elected at such election shall serve for a term of two years.

(10) that, notwithstanding the provisions of paragraph two of subdivision b, and subdivision c, of section fifty, a districting commission shall be appointed to prepare a districting plan for the nineteen hundred ninety-one additional election of council members in accordance with all of the requirements of chapter two-A except that such appointments shall be made in accordance with the following schedule: (a) between the tenth and twentieth days of January nineteen hundred ninety, the mayor shall convene the meeting or meetings required by paragraph two of subdivision b of section fifty;

(b) on or before the fifteenth day of March of nineteen hundred ninety, each council delegation authorized to make appointments to the districting commission shall make such appointments, and each chairperson of a county committee of a political party authorized to submit nominations to the mayor shall submit such nominations; and

(c) following the actions required by subparagraph (b) of this paragraph but no later than the fifteenth day of April of nineteen hundred ninety, the mayor shall make the remaining appointments to the districting commission.

(d) The commission's term shall end sixty days after the day of the general election of the council in the year nineteen hundred ninety-one.

(11) that, notwithstanding the provisions of chapter two-A, the districting commission appointed pursuant to paragraph ten of ten of this subdivision shall prepare a districting plan for the nineteen hundred ninety-one additional election of council members in accordance with the provisions of this paragraph and in accordance with the provisions of chapter two-A, to the extent that the provisions of such chapter are not inconsistent with the provisions of this paragraph.

(a) Following its appointment, the districting commission appointed pursuant to paragraph ten of this subdivision shall meet at least once each month during nineteen hundred ninety and at least once every two weeks during nineteen hundred ninety-one until such time as it has completed its duties pursuant to this paragraph and chapter two-A.

(b) In carrying out its responsibilities under this paragraph and chapter two-A, the commission shall utilize the final count results of the nineteen hundred ninety census delivered to the governor no later than the first day of April, nineteen hundred ninety-one in accordance with the provisions of section one hundred forty-one of title thirteen of the United States code.

(c) As soon as practicable, the commission shall (i) establish liaison with the United States census bureau and relevant New York state agencies to facilitate the orderly and timely receipt of the results of the nineteen hundred ninety census in a format that will facilitate the commission's completion of its responsibilities and (ii) obtain such equipment, software, services and personnel as are necessary for it to effectively carry out its responsibilities under this paragraph and chapter two-A.

(d) On or before the fifteenth day of May, nineteen hundred ninety, the director of city planning shall present to the commission an analysis of the demographic changes that have occurred in the city of New York since the nineteen

hundred eighty census, a summary of the various estimates that have been made of the nineteen hundred ninety population of the city and various subdivisions of the city, an analysis of the implications of such forecasts for the establishment of districts for the nineteen hundred ninety-one council elections, and estimates of the nineteen hundred ninety population and population characteristics of existing council, assembly, community and congressional districts, to the extent such information is available. The director of city planning shall periodically thereafter provide the commission with any revisions of such information and any such additional information that will be of assistance to the commission in carrying out its responsibilities under chapter two-A. The director of city planning shall, to the maximum extent practicable, provide the commission with such technical assistance as it may require to carry out its responsibilities.

(e) On or before the fifteenth day of June of nineteen hundred ninety, the director of city planning and the corporation counsel shall provide the commission with all information, available to them, regarding the status of the nineteen hundred ninety census and the schedule for the release of the results of such census, as will assist the commission in developing the work plan and schedule required by this paragraph.

(f) On or before the fifteenth day of June, nineteen hundred ninety, the director of city planning and the commissioner of computer and data communications services shall provide the commission with as complete a listing as possible of the computer software products available for the utilization of census data in the establishment of districts and the analysis of the demographic characteristics of such districts; a comparative evaluation of the strengths, weaknesses, costs and benefits of the various products available including information as to the quantity and type of staff necessary to utilize the various products; an identification and description of the relevant professional services available from public and private entities; including information regarding the rates at which such services are likely to be available; and a description of the assistance which the department of city planning and the computer and data communications services agency can provide to the commission.

(g) On or before the fifteenth day of September, nineteen hundred ninety, the commission shall adopt a work plan and time schedule for the establishment of council districts for the nineteen hundred ninety-one elections in accordance with the provisions of this paragraph and chapter two-A.

(h) Between the first day of October and the tenth day of December, nineteen hundred ninety, the commission shall hold at least one public hearing in each borough to obtain (i) information regarding demographic trends and conditions and suggestions regarding the factors that interested parties believe the commission should consider and the procedures that it should utilize in the establishment of council districts for the nineteen hundred ninety-one elections.

(i) On or before the first day of February, nineteen hundred ninety-one, the commission shall produce, and make available for public inspection, prototype fifty-one district plans for the purpose of testing and demonstrating the analytical and technical capabilities necessary to meet the deadlines set forth in subparagraph j of this paragraph.

(j) Notwithstanding the provisions of section fifty-one, the commission shall complete the following steps in accordance with the following schedule:

(i) on or before the first day of May, nineteen hundred ninety-one, the commission shall make its plan available to the public and the council for review and comment; and on or before the tenth day of such month the commission shall hold one or more public hearings on such plan;

(ii) on or before the twentieth day of May, nineteen hundred ninety-one, the commission, after consideration of all comments received from the public and the council by the fourteenth day of May of such year, shall make a revised plan and supporting data available for public inspection and shall give public notice that comments on such revised plan may be submitted through the twenty-seventh day of May, nineteen hundred ninety-one; and on or before such latter date, the commission shall hold one or more public hearings on such plan; and

(iii) on or before the seventh day of June, nineteen hundred ninety-one, the commission shall adopt its final plan

in accordance with subdivision g of section fifty-one.

(k) After the commission files its final plan with the city clerk pursuant to clause (iii) of subparagraph (j) of paragraph (10) of subdivision (d) of this section, the commission shall make such adjustments in its plan as may be required by court order or upon a determination of the United States Department of Justice.

(12) that the amendments to chapter forty-six shall take effect immediately;

(13) that the provisions of subdivision a of section twenty eight hundred shall take effect immediately and:

(a) that for the purpose of appointing members of community boards for terms commencing on the first day of April, nineteen hundred ninety and on the first day of April, nineteen hundred ninety-one pursuant to such subdivision, the city planning commission shall, by the first day of January, nineteen hundred ninety, determine the proportion of the community district's population represented by each council member on the basis of data available as of such date and file the determination with the appropriate borough president, community board and council member; and

(b) that the terms of community board members which would expire on the thirty-first day of December, nineteen hundred eighty nine, pursuant to the charter heretofore in effect, shall expire on the thirty-first day of March, nineteen hundred ninety and that the terms of community board members which would expire on the thirty-first day of December, nineteen hundred ninety, pursuant to the charter heretofore in effect, shall expire on the thirty-first day of March, nineteen hundred ninety-one.

(14) that the repeal of sections sixty-one through sixty-six of chapter three, the amendment of subdivision nine of section eleven hundred fifty and the amendments to subdivisions one and sixteen of section thirty-eight, as renumbered by these amendments, deleting references to the Board of Estimate shall take effect on the first day of September of nineteen hundred ninety.

(15) that, subdivisions a, b, and c and the first sentence of subdivision d of section one hundred ninety-five shall take effect upon the first to occur of (a) November 1, 1990 or (b) the effective date of the criteria for the location of city facilities promulgated pursuant to section two hundred three. Any agency proposing an acquisition pursuant to section one hundred ninety-five prior thereto shall, upon receiving approval of such acquisition from the commissioner of general services, file a notice of intent to acquire with the Council, which may consider and act upon the acquisition pursuant to the last sentence of subdivision d of such section.

(16) that the provisions of paragraph a of subdivision three of section sixteen hundred two requiring the commissioner of general services to consider the criteria for location of city facilities prior to submitting an application pursuant to section one hundred ninety-seven-c for an acquisition or disposition of property shall take effect upon the effective date of such criteria pursuant to section two hundred three.

e. On and after the first day of September of nineteen hundred ninety the powers and responsibilities of the board of estimate, set forth in any state or local law, that are not otherwise devolved by the terms of such law, upon another body, agency or officer shall devolve upon the body, agency or officer of the city charged with comparable and related powers and responsibilities under this charter, consistent with the purposes and intent of this charter, provided specifically that the council shall succeed to the powers and responsibilities exercised by the board of estimate pursuant to article sixteen of the general municipal law.

f. Officers and employees of the city may take any actions as are necessary and appropriate to prepare for the implementation of the provisions of amendments to the charter approved by the electors on November seventh, nineteen hundred eighty-nine prior to such effective dates as are prescribed by subdivision d of this section.

g. The amendments to the charter approved by the electors on November third, nineteen hundred ninety-eight shall take effect on the first day of January, nineteen hundred ninety-nine, and thereafter shall control as provided in

respect to all the powers, functions and duties of all officers, agencies and employees, except as further specifically provided in other sections of this charter.

h. (1)(a) The amendments to the charter, amending section six hundred three and adding a new chapter twenty-four-B, approved by the electors on November sixth, two thousand-one, shall take effect immediately, or as soon thereafter as a transfer of agency functions may be effectuated, and thereafter shall control as provided in respect to all the powers, functions and duties of all officers, agencies and employees, except as further specifically provided in other sections of this charter.

(b) Officers and employees of the city shall take any actions as are necessary and appropriate to prepare for the implementation of the provisions of the amendments to the charter, approved by the electors on November sixth, two thousand-one, prior to the effective dates prescribed in subparagraph a of this section.*44

(2) The amendments to the charter, adding new chapters eighteen-C and eighteen-D, and a new section five hundred twenty-six-a, approved by the electors on November sixth, two thousand-one, shall take effect immediately upon certification that the electors have approved the amendments to the charter, and thereafter shall control as provided in respect to all the powers, functions and duties of all officers, agencies and employees, except as further specifically provided in other sections of this charter.

(3) The amendments to the charter, adding a new subdivision g to section eight, a new section eighteen, and a new chapter forty, approved by the electors on November sixth, two thousand-one, shall take effect immediately, and thereafter shall control as provided in respect to all the powers, functions and duties of all officers, agencies and employees, except as further specifically provided in other sections of this charter.

(4)(a) The amendments to the charter, amending section fifteen and chapter twenty-two, repealing chapter twenty-three, renumbering section one thousand fifty-eight, amending renumbered section one thousand fifty-seven-a and sections fourteen hundred three, fourteen hundred four, and twenty-nine hundred three, approved by the electors on November sixth, two thousand-one, shall take effect immediately, or as soon thereafter as a transfer of agency functions may be effectuated, and thereafter shall control as provided in respect to all the powers, functions and duties of all officers, agencies and employees, except as further specifically provided in other sections of this charter, except that the amendments to the charter, amending section five hundred fifty-three of such chapter twenty-two, shall take effect June 1, 2002 or the date upon which the ten members of the reconstituted and expanded board other than the chairperson have been duly appointed and qualified, whichever is earlier, provided, however, that of the first nine members of the board of health appointed on or after the effective date of these amendments, three members shall serve for two years, three members shall serve for four years, and the remainder shall serve for six years, provided further, however, that the term of any member of the board of health serving on the date of the approval of these amendments shall be deemed expired on such effective date.

(b) Officers and employees of the city shall take any actions as are necessary and appropriate to prepare for the implementation of the provisions of the amendments to the charter, approved by the electors on November sixth, two thousand-one, prior to the effective dates prescribed in subparagraph a of this section.*

(5)(a) The amendments to the charter, adding new chapters nineteen-A and sixty-three, and new sections nineteen, three hundred thirty-five, and three hundred ninety-eight, approved by the electors on November sixth, two thousand-one, shall take effect immediately, or as soon thereafter as a transfer of agency functions may be effectuated, and thereafter shall control as provided in respect to all the powers, functions and duties of all officers, agencies and employees, except as further specifically provided in other sections of this charter.

(b) Officers and employees of the city shall take any actions as are necessary and appropriate to prepare for the implementation of the provisions of the amendments to the charter, approved by the electors on November sixth, two thousand-one, prior to the effective dates prescribed in subparagraph a of this section.*45

i. (1) The amendments to the charter, amending sections ten, twenty-four, and forty-four, approved by the electors on November fifth, two thousand two, shall take effect immediately, provided that any vacancy that occurs in the office of the mayor on or after September twentieth, two thousand two, and before the effective date of the amendments referenced in this subdivision, shall be governed by such amendments, and any such vacancy shall be deemed to have occurred on such effective date.

(2) Notwithstanding the provisions of section 1153, in the event that the amendment set forth in paragraph 10 of the new subdivision c of section 10 is finally adjudicated to be invalid or otherwise cannot be implemented, all of the amendments referenced in this subdivision shall be without any further force and effect and, at such time, sections ten, twenty-four, and forty-four as they existed immediately prior to the effective date of such amendments shall be reinstated and shall be deemed to have always remained in full force and effect and unamended by such amendments.

j. (1) The amendments to the charter, adding a new section thirteen-a and amending subdivision two of section one thousand forty-nine, approved by the electors on November eighth, two thousand five, shall take effect immediately, and thereafter shall control as provided with respect to all the powers, functions and duties of officers, agencies and employees, except as further specifically provided in other sections of this charter.

(2) The amendments to the charter, repealing and reenacting section two hundred fifty-eight and amending sections ninety-five, one hundred one, two hundred thirteen, two hundred thirty-three and two hundred sixty-six and subdivision six of section two hundred fifty, approved by the electors on November eighth, two thousand five, shall take effect immediately, and thereafter shall control as provided with respect to all the powers, functions and duties of officers, agencies and employees, except as further specifically provided in other sections of this charter.

HISTORICAL NOTE

Amended at General Election, November 4, 1975.

Amended by L. L. 1977, No. 102.

Subds. a, b designated at General Election, November 8, 1988.

Subds. c, d added at General Election, November 8, 1988.

Subd. d added at General Election, November 7, 1989.

Subd. c par. (2) amended by L. L. 1989, No. 42 § 3.

Subd. c par. (3) amended L. L. 95/89 § 1.

Subd. c par. (3) subpars. (g), (h) added L. L. 99/89 § 1.

Subd. c par (1) subpar (c) amended ch. 808/1992 § 137, eff. Oct. 1, 1992.

Subd. d par (1) subpar (e) added L.L. 51/1990 § 1, eff. July 27, 1990.

Subd. d par (2) amended L.L. 30/1994 § 1, eff. July 7, 1994.

Subd. d par (10) subpar (d) added L.L. 42/1991 § 1, eff. June 18, 1991.

Subd. d par (11) subpar (k) added L.L. 42/1991 § 2, eff. June 18, 1991.

Subd. d pars (15), (16) added L.L. 51/1990 § 2, eff. July 27, 1990.

Subd. g added by referendum at General Election Nov. 3, 1998 § 6, eff. Jan. 1, 1999.

Subd. h par (1) added at General Election, November 6, 2001 (Question 2 § 3) eff. November 6, 2001 or as soon thereafter as a transfer of agency functions may be effectuated.

Subd. h par (2) added at General Election, November 6, 2001 (Question 3 § 5) eff. upon certification that electors have approved the amendments.

Subd. h par (3) added at General Election, November 6, 2001 (Question 4 § 4) eff. November 6, 2001

Subd. h par (4) subpar (a) amended L.L. 77/2001 § 2, eff. Dec. 27, 2001

and deemed in effect Dec. 6, 2001. [See Note]

Subd. h par (4) added at General Election, November 6, 2001 (Question 5 § 21) eff. November 6, 2001

Subd. h par (5) added at General Election, November 6, 2001 (Question 6 § 7) eff. November 6, 2001

Subd. i added at General Election, November 5, 2002 §5, eff. November 5, 2002.

Subd. j added at General Election November 8, 2005. Ballot Question 3 § 3 and Ballot Question 4 § 8, eff. Nov. 8, 2005.

NOTE

Provisions of L.L. 77/2001 § 1:

Section 1. Legislative Findings. The Council hereby finds that it is critically important that the Board of Health be capable of functioning continuously in the coming months, during which there will be a transition to a reconstituted and expanded Board of Health in accordance with Charter amendments adopted by the electorate at the 2001 general election. The Council further finds that the Mayor will need to screen carefully the candidates for membership on the Board of Health in order to identify the most qualified and appropriate appointees, and the Council will need a sufficient period to perform its advice and consent function pursuant to section 31 of the Charter. Therefore, the Council hereby determines that the thirty-day period provided for transition to the reconstituted and expanded Board of health in the effective date provisions of the recently adopted Charter amendments should be extended to June 1, 2002 or the date upon which the ten members of the reconstituted and expanded board other than the chairperson have been duly appointed and qualified, whichever is earlier.

CASE NOTES

¶ 1. The New York City Districting Commission is not prohibited from splitting a census tabulation block in creating a new City Council district by Charter § 1152(d)(11)(b). Any interpretation of § 1152 must be secondary to interpretation of the criteria contained in Charter § 52 which mandates neighborhoods and communities of common interest and association be kept together. Minor deviations of population resulting from splitting census blocks are permissible to allow for other objectives. *Brooklyn Hgts. Assn. v. Macchiarola*, 192 AD2d 22 [1993].

¶ 2. The New York City Districting Commission, which was required to redraw City Council Districts, made a reasonable decision not to split tabulation blocks (which were the smallest geographic units for which official census figures are available). The action was consistent with the Charter's requirement that census data be used in creating districts. Thus, the court upheld a districting plan even though an area of waterfront piers, near to Brooklyn Heights, was placed in a Manhattan district and though this, according to the challengers, separated the disputed waterfront area from the rest of the Brooklyn Heights neighborhood. *Brooklyn Heights Association v. Macchiarola*, 82 N.Y.2d 101, 603 N.Y.S.2d 790 (1993).

¶ 3. The City Council has a role in deciding whether a New York City Health and Hospitals Corporation health

care facility, which had provided services for indigent persons, can be surrendered to the City and demolished. That power was originally vested in the Board of Estimate. When the Board of Estimate was abolished, City Charter Section 1152 was enacted to provide that the powers of the former Board of Estimate, if not otherwise provided for in the law, would be vested in the body of officer charged with "comparable or related power." The newly constituted City Council thus became the body vested with the relevant power, the court said. *Council of the City of New York v. Giuliani*, 705 N.Y.S.2d 801 (Sup.Ct. New York Co. 1999).

FOOTNOTES

44

[Footnote 44]: * "section" should be "paragraph"

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[Footnote 45]: * "section" should be "paragraph"



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NYC Charter 1153

New York City Charter

CHAPTER 52 GENERAL PROVISIONS

§ 1153. **Separability clause.**

If any provisions of this charter or of any amendments thereto shall be held invalid or ineffective in whole or in part or inapplicable to any person or situation, it is the purpose and intent of this charter that all other provisions thereof shall nevertheless be separately and fully effective and that the application of any such provision to other persons or situations shall not be affected.

HISTORICAL NOTE

Section amended at General Election, November 8, 1988.

CASE NOTES

¶ 1. Laws of 1934, ch. 867, creating the New York City Charter Revision Commission, the members thereof to be appointed by the Mayor, for purpose of drafting and submitting to the City electors a proposed new Charter, **held** not unconstitutional on ground that under City Home Rule Law § 20 the legislative body of the City had the right to submit a new Charter to the electorate and that the Legislature of the state had no authority to authorize a Charter Commission to do it, since § 20 was changed by the Local Law, and this was within the power of the Legislature to do under Constitution, Art. 12, §§ 2, 3 and 5.-Mooney v. Cohen, 272 N. Y. 33, 4 N. E. 2d 73 [1936].



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NYC Charter 1154

New York City Charter

CHAPTER 52 GENERAL PROVISIONS

§ 1154. **Short title.**

This charter shall be known and may be cited as "The New York city charter."

HISTORICAL NOTE

Amended at General Election, November 4, 1975.

Amended at General Election, November 7, 1989.



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NYC Charter 1170

New York City Charter

CHAPTER 54 COLLECTIVE BARGAINING

§ 1170. **Office of collective bargaining; director.**

There shall be an office of collective bargaining, the head of which shall be the director of such office, who shall be the person holding the office of chairman of the board of collective bargaining. The director may appoint, and at pleasure remove, two deputies.



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NYC Charter 1171

New York City Charter

CHAPTER 54 COLLECTIVE BARGAINING

§ 1171. **Board of collective bargaining.**

There shall be in the office of collective bargaining a board of collective bargaining, which shall consist of seven members. Two members of the board shall be city members, two members of the board shall be labor members, and three members of the board, of whom one shall be chairman, shall be impartial members. The mayor shall have the power to appoint the city members of the board to serve at his pleasure, and the labor members of the board from designations by the municipal labor committee. Each labor and city member shall have an alternate, who shall be appointed and removed in the same manner as the member for whom he is the alternate. The chairman and other impartial members shall be elected by the unanimous vote of the city and labor members, and shall serve for three year terms, provided, that of the impartial members first elected, the chairman shall serve for a term ending on January first, nineteen hundred seventy, one member shall serve for a term ending on January first nineteen hundred sixty-nine, and one member shall serve for a term ending on January first, nineteen hundred sixty-eight.

Notwithstanding any other provision of law, a labor member may not be removed from the board except upon request of the municipal labor committee, or except for cause, as hereinafter provided. Any member may be removed for cause by a majority of the entire board, including at least one city member and one labor member, after having been given a copy of the charges against him and an opportunity to be heard in person or by counsel in his defense upon not less than ten days' notice. Vacancies in the office of a city member or a labor member shall be filled in the same manner as herein provided for appointment. Vacancies in the office of an impartial member occurring otherwise than by expiration of term shall be filled by unanimous vote of the city and labor members for the unexpired balance of the term.

HISTORICAL NOTE

Amended by L. L. 1972, No. 1.



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CHAPTER 54 COLLECTIVE BARGAINING

§ 1172. **Board of certification.**

There shall be in the office of collective bargaining a board of certification, which shall consist of the impartial members of the board of collective bargaining. The chairman of the board of certification shall be the person who is chairman of the board of collective bargaining.



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NYC Charter 1173

New York City Charter

CHAPTER 54 COLLECTIVE BARGAINING

§ 1173. **Powers and duties.**

The office of collective bargaining, the board of collective bargaining and the board of certification shall have such powers and duties with respect to labor relations and collective bargaining as shall be prescribed by law.



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NYC Charter 1174

New York City Charter

CHAPTER 54 COLLECTIVE BARGAINING

§ 1174. **Compensation.**

a. Board of collective bargaining; board

of certification; director. The city members and the labor members of the board of collective bargaining and their alternates shall serve without compensation. The director shall be salaried for his or her services as director, chair of the board of collective bargaining, and chair of the board of certification. The impartial members, excluding the director, shall be paid a per diem fee to be determined by the city members and labor members of the board of collective bargaining. The director and all members of both such boards and their alternates shall be entitled to receive reimbursement for their actual and necessary expenses incurred in the performance of their duties. Fifty per cent of the salary, fees, and expenses provided for in this subdivision shall be paid by members of the municipal committee, under rules and regulations issued by the board of collective bargaining, which rules may provide how such costs shall be distributed among such members.

b. Members of mediation and impasse panels; arbitrators. Members of mediation and impasse panels, and arbitrators, shall be paid a per diem fee to be determined by the board of collective bargaining, unless the parties to the particular dispute shall have agreed to a different fee, and shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties. The public employer and public employee organization which are parties to the particular negotiation or grievance shall each pay fifty percent of such fees and expenses and related expenses incidental to the handling of deadlocked negotiations and unresolved grievances.

c. Appointment of counsel and attorneys. The director may appoint a counsel and attorneys, who, at the direction of the board of certification or the board of collective bargaining may appear for and represent the office of collective bargaining or either of the aforesaid boards in any legal proceeding.

HISTORICAL NOTE

Section added by L. L. 1967, No. 53.

Section amended by L. L. 1969, No. 55.

Subd. a amended L.L. 28/2001 § 2, eff. May 21, 2001. [See Note]

Subd. a amended by L. L. 1972, No. 1.

Subd. a amended by L. L. 1980, No. 51.

Subd. a amended L.L. 28/2001 § 2, eff. May 21, 2001. [See Note]

NOTE

Provisions of L.L. 28/2001 §§ 1, 3:

Section 1. Declaration of legislative findings and intent. In nineteen hundred eighty, the Council enacted local law No. 51, which amended section 1174 of the city charter so as to increase the per diem fees to be paid to the impartial members of the board of collective bargaining, other than the director, to two hundred dollars commencing the first day of July, nineteen hundred eighty, and increasing these fees to two hundred fifty dollars commencing on the first day of January, nineteen hundred eighty-one.

This fee level has not been increased since 1981, although the demands placed upon the board members have steadily increased. At the same time, the rates that arbitrators are paid to adjudicate cases under the direction of the board have steadily increased.

Therefore, in recognition of their dedicated service, it is the purpose of this law to permit the impartial members, other than the director, to receive fees equal to the fees paid to arbitrators.

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§ 3. This local law shall take effect immediately; provided, however, that the per diem fees for the impartial members of the board of collective bargaining shall remain two hundred fifty dollars until the city members and labor members of such board determine the rate to be paid to the impartial members.



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NYC Charter 1175

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CHAPTER 54 COLLECTIVE BARGAINING

§ 1175. **Publication of collective bargaining agreements.**

Not later than sixty calendar days after the execution of a collective bargaining agreement, a copy shall be published in the City Record together with a statement by the mayor (1) of the total costs and current and future budgetary and economic consequences of the agreement and (2) of the implications and likely impact of the agreement on the efficient management of city agencies and the productivity of city employees.

HISTORICAL NOTE

Adopted at General Election, November 4, 1975.

Amended at General Election, November 8, 1988.



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NYC Charter 1176

New York City Charter

CHAPTER 54 COLLECTIVE BARGAINING

§ 1176. **Budgeting for agreements.**

a. So far as practicable, each collective bargaining agreement covering city employees shall be executed prior to the commencement of the fiscal year during which its provisions shall first be in effect.

b. No part of any retroactive wage or salary settlement shall be charged to the capital budget.

HISTORICAL NOTE

Adopted at General Election, November 4, 1975.



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CHAPTER 54 COLLECTIVE BARGAINING

§ 1177. **Agency participation.**

The heads of city agencies or their designated representatives shall participate in the development of the city's position with respect to work rules and practices and other matters affecting the management of each agency in advance of collective bargaining negotiations affecting employees of an agency.



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NYC Charter 1200

New York City Charter

CHAPTER 55 DEPARTMENT OF DESIGN AND CONSTRUCTION*44

§ 1200. **Department; commissioner.**

There shall be a department of design and construction, the head of which shall be the commissioner of design and construction.

HISTORICAL NOTE

Section added L.L. 77/1995 § 1, eff. Nov. 23, 1995.

FOOTNOTES

44

[Footnote 44]: * Chapter added L.L. 77/1995 § 1, eff. Nov. 23, 1995, note other provisions of such local law: § 18. Any agency or officer to which are assigned by or pursuant to sections one through six and sections thirteen through sixteen of this local law any functions, powers and duties shall exercise such functions, powers and duties in continuation of their exercise by the agency or officer by which the same were heretofore exercised and shall have power to continue any business, proceeding or other matter commenced by the agency or officer by which such functions, powers and duties were heretofore exercised. Any provision in any law, rule, regulation, contract, grant or other document relating to the subject matter of such functions, powers or duties, and applicable to the agency or officer formerly exercising the same shall, so far as not inconsistent with the provisions of this local law, apply to the agency or officer to which such functions, powers and duties are assigned by or pursuant to this local law.

§ 19. Any rule or regulation in force on the effective date of this local law, and promulgated by an agency or officer whose power to promulgate such type of rule or regulation is assigned by or pursuant to sections one through six and sections thirteen through sixteen of this local law to some other agency or officer, shall continue in force as the rule or regulation of the agency or officer to whom such power is assigned, except as such other agency or officer may hereafter duly amend, supersede or repeal such rule or regulation.

§ 20. If any of the functions, powers or duties of any agency or part thereof is by or pursuant to sections one through six and sections thirteen through sixteen of this local law assigned to another agency, all records, property and equipment relating to such transferred function, power or duty shall be transferred and delivered to the agency to which such function, power or duty is so assigned.

§ 21. No existing right or remedy of any character accruing to the City shall be lost or impaired or affected by reason of the adoption of this local law.

§ 22. No action or proceeding, civil or criminal, pending at the time when this local law shall take effect, brought by or against the city or any agency or officer, shall be affected or abated by the adoption of this local law or by anything herein contained; but all such actions or proceedings may be continued notwithstanding that functions, powers and duties of any agency or officer party thereto may by or pursuant to this local law be assigned or transferred to another agency or officer, but in that event the same may be prosecuted or defended by the head of the agency or the officer to which such functions, powers and duties have been assigned or transferred by or pursuant to this local law.

§ 23. Whenever by or pursuant to any provision of sections one through six and sections thirteen through sixteen of this local law functions, powers or duties may be assigned to any agency or officer which have been heretofore exercised by any other agency or officer, officers and employees in the classified city civil service who are engaged in the performance of such functions, powers or duties may be transferred to the agency to which such functions, powers or duties may be assigned by or pursuant to this local law.

§ 24. Any license, permit or other authorization in force on the effective date of this local law, and issued by an agency, where the power of such agency to issue such license, permit or authorization is assigned by or pursuant to sections one through six and sections thirteen through sixteen of this local law to another agency or officer, shall continue in force as the license, permit or authorization of such other agency, or officer, except as such license, permit or authorization may expire or be altered, suspended or revoked by the appropriate agency or office pursuant to law. Such license, permit or authorization shall be renewable in accordance with the applicable law by the agency or officer with such power pursuant to law, including this local law.

§ 25. The provisions of this local law shall be severable and if any phrase, clause, sentence, paragraph, subdivision or section of this local law, or the applicability thereof to any person or circumstance, shall be held invalid, the remainder of this local law and the application thereof shall not be affected thereby.

§ 26. a. No later than eighteen months from the effective date of this local law, the department of design and construction shall assume jurisdiction over design and construction work now performed by the division of design and construction services of the department of general services, design and construction work relating to streets and highways now performed by the department of transportation, and design and construction work relating to sewers and water mains now performed by the department of environmental protection, and no later than thirty-six months from the effective date of this local law, the department of design and construction shall assume jurisdiction over design and construction work relating to buildings now performed by the department of parks and recreation and design and construction work relating to garages now performed by the department of sanitation.

b. Notwithstanding subdivision a of this section, if the mayor, pursuant to subdivision b of section 1202

of the New York city charter, assigns to any agency other than the department of design and construction work described in subdivision a of this section, the mayor shall notify the council at least thirty days prior to the later of (1) the date by which the department of design and construction would otherwise have assumed such jurisdiction pursuant to subdivision a of this section, or (2) the date that the assignment is to take effect.

§ 27. This local law shall take effect thirty days after its enactment into law, provided that: (1) the mayor may confer jurisdiction over pending construction projects or over categories of construction projects to the agency that had jurisdiction over such projects prior to the effective date of this local law to the extent and for the period the mayor deems appropriate except as provided in section twenty-six of this local law;

(2) that sections seven, eight, nine and twelve of this local law shall not apply to matters submitted to the art commission prior to the effective date of this local law; and

(3) that section ten of this local law shall not apply to matters submitted to a community board prior to the effective date of this local law.



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NYC Charter 1201

New York City Charter

CHAPTER 55 DEPARTMENT OF DESIGN AND CONSTRUCTION*44

§ 1201. **Deputies.**

The commissioner may appoint five deputies.

HISTORICAL NOTE

Section added L.L. 77/1995 § 1, eff. Nov. 23, 1995.

FOOTNOTES

44

[Footnote 44]: * Chapter added L.L. 77/1995 § 1, eff. Nov. 23, 1995, note other provisions of such local law: § 18. Any agency or officer to which are assigned by or pursuant to sections one through six and sections thirteen through sixteen of this local law any functions, powers and duties shall exercise such functions, powers and duties in continuation of their exercise by the agency or officer by which the same were heretofore exercised and shall have power to continue any business, proceeding or other matter commenced by the agency or officer by which such functions, powers and duties were heretofore exercised. Any provision in any law, rule, regulation, contract, grant or other document relating to the subject matter of such functions, powers or duties, and applicable to the agency or officer formerly exercising the same shall, so far as not inconsistent with the provisions of this local law, apply to the agency or officer to which such functions, powers and duties are assigned by or pursuant to this local law.

§ 19. Any rule or regulation in force on the effective date of this local law, and promulgated by an

agency or officer whose power to promulgate such type of rule or regulation is assigned by or pursuant to sections one through six and sections thirteen through sixteen of this local law to some other agency or officer, shall continue in force as the rule or regulation of the agency or officer to whom such power is assigned, except as such other agency or officer may hereafter duly amend, supersede or repeal such rule or regulation.

§ 20. If any of the functions, powers or duties of any agency or part thereof is by or pursuant to sections one through six and sections thirteen through sixteen of this local law assigned to another agency, all records, property and equipment relating to such transferred function, power or duty shall be transferred and delivered to the agency to which such function, power or duty is so assigned.

§ 21. No existing right or remedy of any character accruing to the City shall be lost or impaired or affected by reason of the adoption of this local law.

§ 22. No action or proceeding, civil or criminal, pending at the time when this local law shall take effect, brought by or against the city or any agency or officer, shall be affected or abated by the adoption of this local law or by anything herein contained; but all such actions or proceedings may be continued notwithstanding that functions, powers and duties of any agency or officer party thereto may by or pursuant to this local law be assigned or transferred to another agency or officer, but in that event the same may be prosecuted or defended by the head of the agency or the officer to which such functions, powers and duties have been assigned or transferred by or pursuant to this local law.

§ 23. Whenever by or pursuant to any provision of sections one through six and sections thirteen through sixteen of this local law functions, powers or duties may be assigned to any agency or officer which have been heretofore exercised by any other agency or officer, officers and employees in the classified city civil service who are engaged in the performance of such functions, powers or duties may be transferred to the agency to which such functions, powers or duties may be assigned by or pursuant to this local law.

§ 24. Any license, permit or other authorization in force on the effective date of this local law, and issued by an agency, where the power of such agency to issue such license, permit or authorization is assigned by or pursuant to sections one through six and sections thirteen through sixteen of this local law to another agency or officer, shall continue in force as the license, permit or authorization of such other agency, or officer, except as such license, permit or authorization may expire or be altered, suspended or revoked by the appropriate agency or office pursuant to law. Such license, permit or authorization shall be renewable in accordance with the applicable law by the agency or officer with such power pursuant to law, including this local law.

§ 25. The provisions of this local law shall be severable and if any phrase, clause, sentence, paragraph, subdivision or section of this local law, or the applicability thereof to any person or circumstance, shall be held invalid, the remainder of this local law and the application thereof shall not be affected thereby.

§ 26. a. No later than eighteen months from the effective date of this local law, the department of design and construction shall assume jurisdiction over design and construction work now performed by the division of design and construction services of the department of general services, design and construction work relating to streets and highways now performed by the department of transportation, and design and construction work relating to sewers and water mains now performed by the department of environmental protection, and no later than thirty-six months from the effective date of this local law, the department of design and construction shall assume jurisdiction over design and construction work relating to buildings now performed by the department of parks and recreation and design and construction work relating to garages now performed by the department of sanitation.

b. Notwithstanding subdivision a of this section, if the mayor, pursuant to subdivision b of section 1202 of the New York city charter, assigns to any agency other than the department of design and construction work

described in subdivision a of this section, the mayor shall notify the council at least thirty days prior to the later of (1) the date by which the department of design and construction would otherwise have assumed such jurisdiction pursuant to subdivision a of this section, or (2) the date that the assignment is to take effect.

§ 27. This local law shall take effect thirty days after its enactment into law, provided that: (1) the mayor may confer jurisdiction over pending construction projects or over categories of construction projects to the agency that had jurisdiction over such projects prior to the effective date of this local law to the extent and for the period the mayor deems appropriate except as provided in section twenty-six of this local law;

(2) that sections seven, eight, nine and twelve of this local law shall not apply to matters submitted to the art commission prior to the effective date of this local law; and

(3) that section ten of this local law shall not apply to matters submitted to a community board prior to the effective date of this local law.



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NYC Charter 1202

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CHAPTER 55 DEPARTMENT OF DESIGN AND CONSTRUCTION*44

§ 1202. **Powers and duties of the commissioner.**

a. Except as otherwise required by state or federal law or by direction of the mayor pursuant to subdivision b of this section, and notwithstanding any inconsistent provision of this charter or the administrative code, the commissioner shall have charge and control of and be responsible for functions and operations and shall exercise powers of the city relating to city construction projects. Such projects shall include but not be limited to the design, construction and alteration of streets and highways, bridges and tunnels, parks and recreational facilities, sewers and sewage disposal plants, water supply and distribution structures, waste management facilities, correctional facilities and all other public buildings, structures and facilities. The commissioner shall also perform responsibilities as the mayor shall direct with respect to the acquisition of real or personal property in connection with construction or a capital project, including responsibilities delegated elsewhere by the charter or the administrative code, provided that the acquisition of real property shall be made in the same manner as acquisitions made pursuant to subdivision three of section sixteen hundred two of this charter.

b. Notwithstanding any inconsistent provision of this section, the mayor may assign in whole or in part operations and functions related to a particular construction project or particular category or class of construction projects to an agency other than the department of design and construction, if the mayor determines that it is appropriate for such other agency to perform such operations and functions.

HISTORICAL NOTE

Section added L.L. 77/1995 § 1, eff. Nov. 23, 1995.

CASE NOTES

¶ 1. The New York City Department of Design and Construction (DDC) hired construction managers in

connection with the performance of rescue and recovery operations at the World Trade Center site. One of those construction managers leased excavating machines from a subsidiary of plaintiff. Plaintiff brought suit when DDC attempted to reduce the lease rates. The court held that DDC had the authority, under City Charter §1202, to regulate the rates charged by subcontractors such as plaintiff. The court rejected plaintiff's argument that DDC had no authority to act with respect to property not owned by the City of New York (the World Trade Center site was owned by the Port Authority). Section 1202 gives DDC the authority to act in regard to "city construction projects." The September 11, 2001 tragedy affected an area far beyond the site of the Port Authority's property alone, and the activities in which DDC was engaged, by order of the City's Office of Emergency Management and the Federal Emergency Management Agency (FEMA) were clearly a "city" project within the meaning of the Charter, the court said. *Great Northern Site Corp. v. NYC Dept. of Design and Construction*, N.Y.L.J., May 1, 2003, page 20, col. 5 (Sup.Ct. New York Co.).

FOOTNOTES

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[Footnote 44]: * Chapter added L.L. 77/1995 § 1, eff. Nov. 23, 1995, note other provisions of such local law: § 18. Any agency or officer to which are assigned by or pursuant to sections one through six and sections thirteen through sixteen of this local law any functions, powers and duties shall exercise such functions, powers and duties in continuation of their exercise by the agency or officer by which the same were heretofore exercised and shall have power to continue any business, proceeding or other matter commenced by the agency or officer by which such functions, powers and duties were heretofore exercised. Any provision in any law, rule, regulation, contract, grant or other document relating to the subject matter of such functions, powers or duties, and applicable to the agency or officer formerly exercising the same shall, so far as not inconsistent with the provisions of this local law, apply to the agency or officer to which such functions, powers and duties are assigned by or pursuant to this local law.

§ 19. Any rule or regulation in force on the effective date of this local law, and promulgated by an agency or officer whose power to promulgate such type of rule or regulation is assigned by or pursuant to sections one through six and sections thirteen through sixteen of this local law to some other agency or officer, shall continue in force as the rule or regulation of the agency or officer to whom such power is assigned, except as such other agency or officer may hereafter duly amend, supersede or repeal such rule or regulation.

§ 20. If any of the functions, powers or duties of any agency or part thereof is by or pursuant to sections one through six and sections thirteen through sixteen of this local law assigned to another agency, all records, property and equipment relating to such transferred function, power or duty shall be transferred and delivered to the agency to which such function, power or duty is so assigned.

§ 21. No existing right or remedy of any character accruing to the City shall be lost or impaired or affected by reason of the adoption of this local law.

§ 22. No action or proceeding, civil or criminal, pending at the time when this local law shall take effect, brought by or against the city or any agency or officer, shall be affected or abated by the adoption of this local law or by anything herein contained; but all such actions or proceedings may be continued notwithstanding that functions, powers and duties of any agency or officer party thereto may by or pursuant to this local law be assigned or transferred to another agency or officer, but in that event the same may be prosecuted or defended by the head of the agency or the officer to which such functions, powers and duties have been assigned or transferred by or pursuant to this local law.

§ 23. Whenever by or pursuant to any provision of sections one through six and sections thirteen

through sixteen of this local law functions, powers or duties may be assigned to any agency or officer which have been heretofore exercised by any other agency or officer, officers and employees in the classified city civil service who are engaged in the performance of such functions, powers or duties may be transferred to the agency to which such functions, powers or duties may be assigned by or pursuant to this local law.

§ 24. Any license, permit or other authorization in force on the effective date of this local law, and issued by an agency, where the power of such agency to issue such license, permit or authorization is assigned by or pursuant to sections one through six and sections thirteen through sixteen of this local law to another agency or officer, shall continue in force as the license, permit or authorization of such other agency, or officer, except as such license, permit or authorization may expire or be altered, suspended or revoked by the appropriate agency or office pursuant to law. Such license, permit or authorization shall be renewable in accordance with the applicable law by the agency or officer with such power pursuant to law, including this local law.

§ 25. The provisions of this local law shall be severable and if any phrase, clause, sentence, paragraph, subdivision or section of this local law, or the applicability thereof to any person or circumstance, shall be held invalid, the remainder of this local law and the application thereof shall not be affected thereby.

§ 26. a. No later than eighteen months from the effective date of this local law, the department of design and construction shall assume jurisdiction over design and construction work now performed by the division of design and construction services of the department of general services, design and construction work relating to streets and highways now performed by the department of transportation, and design and construction work relating to sewers and water mains now performed by the department of environmental protection, and no later than thirty-six months from the effective date of this local law, the department of design and construction shall assume jurisdiction over design and construction work relating to buildings now performed by the department of parks and recreation and design and construction work relating to garages now performed by the department of sanitation.

b. Notwithstanding subdivision a of this section, if the mayor, pursuant to subdivision b of section 1202 of the New York city charter, assigns to any agency other than the department of design and construction work described in subdivision a of this section, the mayor shall notify the council at least thirty days prior to the later of (1) the date by which the department of design and construction would otherwise have assumed such jurisdiction pursuant to subdivision a of this section, or (2) the date that the assignment is to take effect.

§ 27. This local law shall take effect thirty days after its enactment into law, provided that: (1) the mayor may confer jurisdiction over pending construction projects or over categories of construction projects to the agency that had jurisdiction over such projects prior to the effective date of this local law to the extent and for the period the mayor deems appropriate except as provided in section twenty-six of this local law;

(2) that sections seven, eight, nine and twelve of this local law shall not apply to matters submitted to the art commission prior to the effective date of this local law; and

(3) that section ten of this local law shall not apply to matters submitted to a community board prior to the effective date of this local law.



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NYC Charter 1203

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CHAPTER 55 DEPARTMENT OF DESIGN AND CONSTRUCTION*44

§ 1203. **Consultation with other agencies.**

In preparing and considering plans and specifications and in carrying out such plans or specifications, the department shall consult with agencies for whose use the building, structure or facility is intended and shall consider any recommendations made by such agencies.

HISTORICAL NOTE

Section added L.L. 77/1995 § 1, eff. Nov. 23, 1995.

CASE NOTES

¶ 1. The City Charter gives the Commissioner of Consumer Affairs wide authority to enact consumer protection regulations relating to funeral homes. The regulations deal with contracts, disclosure of prices, and disclosure of the persons or entities having ownership interest in funeral homes. See annotations under 6 RCNY §§ 5-162, 5-164, 5-165 and 5-166 for details. *Metropolitan Funeral Directors Assn. v. City of New York*, 702 N.Y.S.2d 526 (Sup.Ct. New York Co. 1999).

FOOTNOTES

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[Footnote 44]: * Chapter added L.L. 77/1995 § 1, eff. Nov. 23, 1995, note other provisions of such local law: § 18. Any agency or officer to which are assigned by or pursuant to sections one through six and

sections thirteen through sixteen of this local law any functions, powers and duties shall exercise such functions, powers and duties in continuation of their exercise by the agency or officer by which the same were heretofore exercised and shall have power to continue any business, proceeding or other matter commenced by the agency or officer by which such functions, powers and duties were heretofore exercised. Any provision in any law, rule, regulation, contract, grant or other document relating to the subject matter of such functions, powers or duties, and applicable to the agency or officer formerly exercising the same shall, so far as not inconsistent with the provisions of this local law, apply to the agency or officer to which such functions, powers and duties are assigned by or pursuant to this local law.

§ 19. Any rule or regulation in force on the effective date of this local law, and promulgated by an agency or officer whose power to promulgate such type of rule or regulation is assigned by or pursuant to sections one through six and sections thirteen through sixteen of this local law to some other agency or officer, shall continue in force as the rule or regulation of the agency or officer to whom such power is assigned, except as such other agency or officer may hereafter duly amend, supersede or repeal such rule or regulation.

§ 20. If any of the functions, powers or duties of any agency or part thereof is by or pursuant to sections one through six and sections thirteen through sixteen of this local law assigned to another agency, all records, property and equipment relating to such transferred function, power or duty shall be transferred and delivered to the agency to which such function, power or duty is so assigned.

§ 21. No existing right or remedy of any character accruing to the City shall be lost or impaired or affected by reason of the adoption of this local law.

§ 22. No action or proceeding, civil or criminal, pending at the time when this local law shall take effect, brought by or against the city or any agency or officer, shall be affected or abated by the adoption of this local law or by anything herein contained; but all such actions or proceedings may be continued notwithstanding that functions, powers and duties of any agency or officer party thereto may by or pursuant to this local law be assigned or transferred to another agency or officer, but in that event the same may be prosecuted or defended by the head of the agency or the officer to which such functions, powers and duties have been assigned or transferred by or pursuant to this local law.

§ 23. Whenever by or pursuant to any provision of sections one through six and sections thirteen through sixteen of this local law functions, powers or duties may be assigned to any agency or officer which have been heretofore exercised by any other agency or officer, officers and employees in the classified city civil service who are engaged in the performance of such functions, powers or duties may be transferred to the agency to which such functions, powers or duties may be assigned by or pursuant to this local law.

§ 24. Any license, permit or other authorization in force on the effective date of this local law, and issued by an agency, where the power of such agency to issue such license, permit or authorization is assigned by or pursuant to sections one through six and sections thirteen through sixteen of this local law to another agency or officer, shall continue in force as the license, permit or authorization of such other agency, or officer, except as such license, permit or authorization may expire or be altered, suspended or revoked by the appropriate agency or office pursuant to law. Such license, permit or authorization shall be renewable in accordance with the applicable law by the agency or officer with such power pursuant to law, including this local law.

§ 25. The provisions of this local law shall be severable and if any phrase, clause, sentence, paragraph, subdivision or section of this local law, or the applicability thereof to any person or circumstance, shall be held invalid, the remainder of this local law and the application thereof shall not be affected thereby.

§ 26. a. No later than eighteen months from the effective date of this local law, the department of design and construction shall assume jurisdiction over design and construction work now performed by the division of

design and construction services of the department of general services, design and construction work relating to streets and highways now performed by the department of transportation, and design and construction work relating to sewers and water mains now performed by the department of environmental protection, and no later than thirty-six months from the effective date of this local law, the department of design and construction shall assume jurisdiction over design and construction work relating to buildings now performed by the department of parks and recreation and design and construction work relating to garages now performed by the department of sanitation.

b. Notwithstanding subdivision a of this section, if the mayor, pursuant to subdivision b of section 1202 of the New York city charter, assigns to any agency other than the department of design and construction work described in subdivision a of this section, the mayor shall notify the council at least thirty days prior to the later of (1) the date by which the department of design and construction would otherwise have assumed such jurisdiction pursuant to subdivision a of this section, or (2) the date that the assignment is to take effect.

§ 27. This local law shall take effect thirty days after its enactment into law, provided that: (1) the mayor may confer jurisdiction over pending construction projects or over categories of construction projects to the agency that had jurisdiction over such projects prior to the effective date of this local law to the extent and for the period the mayor deems appropriate except as provided in section twenty-six of this local law;

(2) that sections seven, eight, nine and twelve of this local law shall not apply to matters submitted to the art commission prior to the effective date of this local law; and

(3) that section ten of this local law shall not apply to matters submitted to a community board prior to the effective date of this local law.



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CHAPTER 55 DEPARTMENT OF DESIGN AND CONSTRUCTION*44

§ 1204. **Right of entry.**

The commissioner, officers and employees of the department may, in accordance with applicable law, enter upon public or private property for the purpose of making surveys, test pits and borings or other investigations necessary for the exercise of the powers or the performance of the duties of the department. Refusal by the owner or the agent of such owner to permit such entry shall be a misdemeanor and punishable by not more than thirty days' imprisonment or a fine of not more than five hundred dollars, or both.

HISTORICAL NOTE

Section added L.L. 77/1995 § 1, eff. Nov. 23, 1995.

FOOTNOTES

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[Footnote 44]: * Chapter added L.L. 77/1995 § 1, eff. Nov. 23, 1995, note other provisions of such local law: § 18. Any agency or officer to which are assigned by or pursuant to sections one through six and sections thirteen through sixteen of this local law any functions, powers and duties shall exercise such functions, powers and duties in continuation of their exercise by the agency or officer by which the same were heretofore exercised and shall have power to continue any business, proceeding or other matter commenced by the agency or officer by which such functions, powers and duties were heretofore exercised. Any provision in any law, rule, regulation, contract, grant or other document relating to the subject matter of such functions, powers or duties, and applicable to the agency or officer formerly exercising the same shall, so far as not inconsistent with the

provisions of this local law, apply to the agency or officer to which such functions, powers and duties are assigned by or pursuant to this local law.

§ 19. Any rule or regulation in force on the effective date of this local law, and promulgated by an agency or officer whose power to promulgate such type of rule or regulation is assigned by or pursuant to sections one through six and sections thirteen through sixteen of this local law to some other agency or officer, shall continue in force as the rule or regulation of the agency or officer to whom such power is assigned, except as such other agency or officer may hereafter duly amend, supersede or repeal such rule or regulation.

§ 20. If any of the functions, powers or duties of any agency or part thereof is by or pursuant to sections one through six and sections thirteen through sixteen of this local law assigned to another agency, all records, property and equipment relating to such transferred function, power or duty shall be transferred and delivered to the agency to which such function, power or duty is so assigned.

§ 21. No existing right or remedy of any character accruing to the City shall be lost or impaired or affected by reason of the adoption of this local law.

§ 22. No action or proceeding, civil or criminal, pending at the time when this local law shall take effect, brought by or against the city or any agency or officer, shall be affected or abated by the adoption of this local law or by anything herein contained; but all such actions or proceedings may be continued notwithstanding that functions, powers and duties of any agency or officer party thereto may by or pursuant to this local law be assigned or transferred to another agency or officer, but in that event the same may be prosecuted or defended by the head of the agency or the officer to which such functions, powers and duties have been assigned or transferred by or pursuant to this local law.

§ 23. Whenever by or pursuant to any provision of sections one through six and sections thirteen through sixteen of this local law functions, powers or duties may be assigned to any agency or officer which have been heretofore exercised by any other agency or officer, officers and employees in the classified city civil service who are engaged in the performance of such functions, powers or duties may be transferred to the agency to which such functions, powers or duties may be assigned by or pursuant to this local law.

§ 24. Any license, permit or other authorization in force on the effective date of this local law, and issued by an agency, where the power of such agency to issue such license, permit or authorization is assigned by or pursuant to sections one through six and sections thirteen through sixteen of this local law to another agency or officer, shall continue in force as the license, permit or authorization of such other agency, or officer, except as such license, permit or authorization may expire or be altered, suspended or revoked by the appropriate agency or office pursuant to law. Such license, permit or authorization shall be renewable in accordance with the applicable law by the agency or officer with such power pursuant to law, including this local law.

§ 25. The provisions of this local law shall be severable and if any phrase, clause, sentence, paragraph, subdivision or section of this local law, or the applicability thereof to any person or circumstance, shall be held invalid, the remainder of this local law and the application thereof shall not be affected thereby.

§ 26. a. No later than eighteen months from the effective date of this local law, the department of design and construction shall assume jurisdiction over design and construction work now performed by the division of design and construction services of the department of general services, design and construction work relating to streets and highways now performed by the department of transportation, and design and construction work relating to sewers and water mains now performed by the department of environmental protection, and no later than thirty-six months from the effective date of this local law, the department of design and construction shall assume jurisdiction over design and construction work relating to buildings now performed by the department of parks and recreation and design and construction work relating to garages now performed by the department of

sanitation.

b. Notwithstanding subdivision a of this section, if the mayor, pursuant to subdivision b of section 1202 of the New York city charter, assigns to any agency other than the department of design and construction work described in subdivision a of this section, the mayor shall notify the council at least thirty days prior to the later of (1) the date by which the department of design and construction would otherwise have assumed such jurisdiction pursuant to subdivision a of this section, or (2) the date that the assignment is to take effect.

§ 27. This local law shall take effect thirty days after its enactment into law, provided that: (1) the mayor may confer jurisdiction over pending construction projects or over categories of construction projects to the agency that had jurisdiction over such projects prior to the effective date of this local law to the extent and for the period the mayor deems appropriate except as provided in section twenty-six of this local law;

(2) that sections seven, eight, nine and twelve of this local law shall not apply to matters submitted to the art commission prior to the effective date of this local law; and

(3) that section ten of this local law shall not apply to matters submitted to a community board prior to the effective date of this local law.



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CHAPTER 55 DEPARTMENT OF DESIGN AND CONSTRUCTION*44

§ 1205. **Powers and duties of other agencies.**

a. Where state or federal law designates an agency other than the department of design and construction to perform a function that would otherwise be within the jurisdiction of the department of design and construction pursuant to subdivision a of section twelve hundred two of this chapter, such agency shall delegate such function to the department of design and construction if such delegation may be made consistent with applicable provisions of state or federal law.

b. Wherever the powers and duties of an agency other than the department of design and construction as set forth in the charter or the administrative code include city construction projects within the jurisdiction of the commissioner of design and construction pursuant to subdivision a of section twelve hundred two of this chapter, such powers and duties shall be deemed to be within the jurisdiction of the department of design and construction and shall be exercised by such department; provided that such other agency may exercise such powers and duties pursuant to subdivision b of such section or where required by state or federal law.

HISTORICAL NOTE

Section added L.L. 77/1995 § 1, eff. Nov. 23, 1995.

FOOTNOTES

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[Footnote 44]: * Chapter added L.L. 77/1995 § 1, eff. Nov. 23, 1995, note other provisions of such local law: § 18. Any agency or officer to which are assigned by or pursuant to sections one through six and

sections thirteen through sixteen of this local law any functions, powers and duties shall exercise such functions, powers and duties in continuation of their exercise by the agency or officer by which the same were heretofore exercised and shall have power to continue any business, proceeding or other matter commenced by the agency or officer by which such functions, powers and duties were heretofore exercised. Any provision in any law, rule, regulation, contract, grant or other document relating to the subject matter of such functions, powers or duties, and applicable to the agency or officer formerly exercising the same shall, so far as not inconsistent with the provisions of this local law, apply to the agency or officer to which such functions, powers and duties are assigned by or pursuant to this local law.

§ 19. Any rule or regulation in force on the effective date of this local law, and promulgated by an agency or officer whose power to promulgate such type of rule or regulation is assigned by or pursuant to sections one through six and sections thirteen through sixteen of this local law to some other agency or officer, shall continue in force as the rule or regulation of the agency or officer to whom such power is assigned, except as such other agency or officer may hereafter duly amend, supersede or repeal such rule or regulation.

§ 20. If any of the functions, powers or duties of any agency or part thereof is by or pursuant to sections one through six and sections thirteen through sixteen of this local law assigned to another agency, all records, property and equipment relating to such transferred function, power or duty shall be transferred and delivered to the agency to which such function, power or duty is so assigned.

§ 21. No existing right or remedy of any character accruing to the City shall be lost or impaired or affected by reason of the adoption of this local law.

§ 22. No action or proceeding, civil or criminal, pending at the time when this local law shall take effect, brought by or against the city or any agency or officer, shall be affected or abated by the adoption of this local law or by anything herein contained; but all such actions or proceedings may be continued notwithstanding that functions, powers and duties of any agency or officer party thereto may by or pursuant to this local law be assigned or transferred to another agency or officer, but in that event the same may be prosecuted or defended by the head of the agency or the officer to which such functions, powers and duties have been assigned or transferred by or pursuant to this local law.

§ 23. Whenever by or pursuant to any provision of sections one through six and sections thirteen through sixteen of this local law functions, powers or duties may be assigned to any agency or officer which have been heretofore exercised by any other agency or officer, officers and employees in the classified city civil service who are engaged in the performance of such functions, powers or duties may be transferred to the agency to which such functions, powers or duties may be assigned by or pursuant to this local law.

§ 24. Any license, permit or other authorization in force on the effective date of this local law, and issued by an agency, where the power of such agency to issue such license, permit or authorization is assigned by or pursuant to sections one through six and sections thirteen through sixteen of this local law to another agency or officer, shall continue in force as the license, permit or authorization of such other agency, or officer, except as such license, permit or authorization may expire or be altered, suspended or revoked by the appropriate agency or office pursuant to law. Such license, permit or authorization shall be renewable in accordance with the applicable law by the agency or officer with such power pursuant to law, including this local law.

§ 25. The provisions of this local law shall be severable and if any phrase, clause, sentence, paragraph, subdivision or section of this local law, or the applicability thereof to any person or circumstance, shall be held invalid, the remainder of this local law and the application thereof shall not be affected thereby.

§ 26. a. No later than eighteen months from the effective date of this local law, the department of design and construction shall assume jurisdiction over design and construction work now performed by the division of

design and construction services of the department of general services, design and construction work relating to streets and highways now performed by the department of transportation, and design and construction work relating to sewers and water mains now performed by the department of environmental protection, and no later than thirty-six months from the effective date of this local law, the department of design and construction shall assume jurisdiction over design and construction work relating to buildings now performed by the department of parks and recreation and design and construction work relating to garages now performed by the department of sanitation.

b. Notwithstanding subdivision a of this section, if the mayor, pursuant to subdivision b of section 1202 of the New York city charter, assigns to any agency other than the department of design and construction work described in subdivision a of this section, the mayor shall notify the council at least thirty days prior to the later of (1) the date by which the department of design and construction would otherwise have assumed such jurisdiction pursuant to subdivision a of this section, or (2) the date that the assignment is to take effect.

§ 27. This local law shall take effect thirty days after its enactment into law, provided that: (1) the mayor may confer jurisdiction over pending construction projects or over categories of construction projects to the agency that had jurisdiction over such projects prior to the effective date of this local law to the extent and for the period the mayor deems appropriate except as provided in section twenty-six of this local law;

(2) that sections seven, eight, nine and twelve of this local law shall not apply to matters submitted to the art commission prior to the effective date of this local law; and

(3) that section ten of this local law shall not apply to matters submitted to a community board prior to the effective date of this local law.



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CHAPTER 56 DEPARTMENT OF SMALL BUSINESS SERVICES*45

§ 1300. **Department; commissioner.**

There shall be a department of business services, the head of which shall be the commissioner of small business services. The commissioner may appoint deputies within available appropriations.

HISTORICAL NOTE

Section added L.L. 61/1991 § 6, eff. July 1, 1991.

Section amended L.L. 34/2002 § 4, eff. Nov. 7, 2002.

FOOTNOTES

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[Footnote 45]: * Chapter heading amended L.L. 34/2002 § 4, eff. Nov. 7, 2002; added by L. L. 61/1991 § 6. Former Chap. 56 Office for Economic Development added L. L. 28/1977 and amended in part L. L. 37/1978, L. L. 67/1984, L. L. 74/1969, L. L. 76/1989, and at General Election, November 7, 1989.



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NYC Charter 1301

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CHAPTER 56 DEPARTMENT OF SMALL BUSINESS SERVICES*45

§ 1301. **Powers and duties of the commissioner.**

Except as otherwise provided by law, the commissioner shall have charge and control of and be responsible for all functions and operations of the city relating to business and economic development, the enhancement of economic development and financial opportunity for minority and women owned business enterprises, and ensuring equal employment opportunity by city contractors. Such powers and functions shall include, without limitation, the following:

1. With respect to business and economic development generally the commissioner shall have the power and duty:

a. to establish business, industrial and commercial policies, programs and projects which affect the business, industrial, commercial or economic well-being, development, growth and expansion of the economic life of the city;

b. to serve as liaison for the city with local development corporations, other not-for-profit corporations and all other entities involved in economic development within the city. In furtherance of this function, the department shall include in any contract with a local development corporation under which such local development corporation is engaged in providing or administering economic development benefits on behalf of the city and expending city capital appropriations in connection therewith, a requirement that such local development corporation submit to the mayor, the council, the city comptroller, the public advocate and the borough presidents by January 31 of each year, a report for the prior year in the form prescribed hereunder with regard to projected and actual jobs created and retained in connection with any project undertaken by such local development corporation for the purpose of the creation or retention of jobs, whether or not such project involves the expenditure of city capital appropriations, if in connection with such project assistance to a business entity was provided by such local development corporation in the form of a loan, grant or tax benefit in excess of one hundred fifty thousand dollars, or a sale or lease of land where the project is estimated to retain or create not less than twenty-five jobs. With regard to any project for which the project agreement and any other documents applicable to such project have been executed on or after July 1, 2005, the report shall be for the period

commencing on the date that the project agreement and any other documents applicable to such project have been executed through the final year that such entity receives assistance for such project, except that, as to projects consisting of a lease or sale of city-owned land, the report shall commence from the date of the lease or conveyance of title by the city and shall continue for seven years or such longer period as is deemed appropriate by the department. For projects in existence prior to July 1, 2005, the report shall be made with regard to each such project for the first seven years from the date when any project agreement or other document applicable to the project is executed by the entity receiving such assistance with such local development corporation and the report shall contain, for the current reporting year, the following information with respect thereto: (i) the project's name; (ii) its location; (iii) the time span over which the project is to receive any such assistance; (iv) the type of such assistance provided, including the name of the program or programs through which assistance is provided; (v) for projects that involve a maximum amount of assistance, a statement of the maximum amount of assistance available to those projects over the duration of the project agreement, and for those projects that do not have a maximum amount, the current estimated amount of assistance over the duration of the project agreement, the amount of tax exempt bonds issued during the current reporting year and the range of potential cost of those bonds; project assistance to be reported shall include, but shall not be limited to, PILOT savings, which shall be defined for the purposes of this paragraph as the difference between the PILOT payments made and the property tax that would have been paid in the absence of a PILOT agreement, the amount of mortgage recording fees waived, related property tax abatements, sales tax abatements, the dollar value of energy benefits and an estimated range of costs to the city of foregone income tax revenues due to the issuance of tax exempt bonds; (vi) the total number of employees at all sites covered by the project at the time of the project agreement including the number of permanent full-time jobs, the number of permanent part-time jobs, the number of full-time equivalents, and the number of contract employees where contract employees may be included for the purpose of determining compliance with job creation or retention requirements; (vii) the number of jobs that the entity receiving benefits is contractually obligated to retain and create over the life of the project, except that such information shall be reported on an annual basis for project agreements containing annual job retention or creation requirements, and, for each reporting year, the base employment level the entity receiving benefits agrees to retain over the life of the project agreement, any job creation scheduled to take place as a result of the project, and where applicable, any job creation targets for the current reporting year; (viii) the estimated amount, for that year and cumulatively to date, of retained or additional tax revenue derived from the project, excluding real property tax revenue other than revenue generated by property tax improvements; (ix) the amount of assistance received during the year covered by the report, the amount of assistance received since the beginning of the project period, and the present value of the future assistance estimated to be given for the duration of the project period; (x) for the current reporting year, the total actual number of employees at all sites covered by the project, including the number of permanent full-time jobs, the number of permanent part-time jobs, the number of contract jobs, and, for entities receiving benefits that employ two hundred fifty or more persons, the percentage of total employees within the "exempt" and "non-exempt" categories, respectively, as those terms are defined under the United States fair labor standards act, and for employees within the "non-exempt" category, the percentage of employees earning up to twenty-five thousand dollars per year, the percentage of employees earning more than twenty-five thousand per year up to forty thousand dollars per year and the percentage of employees earning more than forty thousand dollars per year up to fifty thousand dollars per year; (xi) whether the employer offers health benefits to all full-time employees and to all part-time employees; (xii) for the current reporting year, with respect to the entity or entities receiving assistance and their affiliates, the number and percentage of employees at all sites covered by the project agreement who reside in the city of New York. For the purposes of this subparagraph, "affiliate" shall mean (i) a business entity in which more than fifty percent is owned by, or is subject to a power or right of control of, or is managed by, an entity which is a party to an active project agreement, or (ii) a business entity that owns more than fifty percent of an entity that is party to an active project agreement or that exercises a power or right of control of such entity; (xiii) a projection of the retained or additional tax revenue to be derived from the project for the remainder of the project period; (xiv) a list of all commercial expansion program benefits, industrial and commercial incentive program benefits received through the project agreement and relocation and employment assistance program benefits received and the estimated total value of each for the current reporting year; (xv) a statement of compliance indicating whether, during the current reporting year, the local development corporation has reduced, cancelled or recaptured benefits for any company, and, if so, the total amount of the reduction, cancellation or recapture, and any penalty assessed and the

reasons therefore; (xvi) for business entities for which project assistance was provided by such local development corporation in the form of a loan, grant or tax benefit of one hundred fifty thousand dollars or less, or a sale or lease of city-owned land where the project is estimated to retain or create less than twenty-five jobs, the data should be included in such report in the aggregate using the format required for all other loans, grants or tax benefits; and (xvii) an indication of the sources of all data relating to numbers of jobs.

The report shall be submitted by the statutory due date and shall bear the actual date that the report was submitted. Such report shall include a statement explaining any delay in its submission past the statutory due date. Upon its submission, the report shall simultaneously be made available in electronic form on the website of the local development corporation or, if no such website is maintained, on the website of the city of New York. Reports with regard to projects for which assistance was rendered prior to July 1, 2005, need only contain such information required by this subdivision as is available to the local development corporation, can be reasonably derived from available sources, and can be reasonably obtained from the business entity to which assistance was provided.

b-1. By March 1, 2007, and by March 1 every two years thereafter, the local development corporation, in consultation with the speaker of the city council and other persons selected jointly by the mayor and the speaker of the city council, who have extensive experience and knowledge in the fields of finance, economics, and public policy analysis, shall evaluate the methodology employed for making the determinations required for this report and generate recommendations, where appropriate, on the methodology by which projects receiving economic development subsidies are evaluated. The department shall present to the mayor and the speaker no later than October 1 of every year in which such evaluation is required, a report containing such recommendations as are presented as a result of this review.

c. to study, organize, promote, coordinate and carry out within or without the city, activities, projects and programs designed to encourage, stimulate and foster the well-being, development, growth and expansion of business, industry and commerce in the city, and the enhancement and protection of the economic life of the city;

d. to assist, encourage and promote broadened employee ownership, particularly through the use of employee stock ownership plans and producer cooperatives, by conducting research, outreach and public informational programs pertaining to employee ownership and employee stock ownership plans; by providing technical assistance to employee groups exploring an employee buyout, where such an action might be instrumental in retaining a business within the city of New York; and by ensuring that firms applying for financial assistance from any entity involved with economic development in the city of New York shall be correctly advised as to the potential advantages of forming an employee stock ownership plan;

e. to serve as a clearinghouse in connection with efforts to devise solutions for problems affecting business, industry and commerce in the city;

f. to promote and encourage the expansion and development of markets for city products;

g. to promote and encourage the location and development of new business and industry in the city, as well as the maintenance and expansion of existing business and industry, and for this purpose to cooperate with public and private agencies, organizations and individuals;

h. to promote, coordinate and implement activities, projects and programs designed to attract foreign direct investment and promote overseas sales by firms in the city and to otherwise encourage, stimulate and foster the well-being, development, growth, and expansion of international business, commerce, and trade in the city;

i. to administer and promote the development of foreign trade zones within the city;

j. to study conditions affecting business, industry and commerce in the city, and to collect and disseminate such information, make such studies and carry on such educational activities as may be necessary or useful in relation to the promotion and development of business, industry and commerce in the city;

k. to maintain a business information service in order to assist business and industry in the city, and to encourage business and industry outside of the city to patronize the business and industrial establishments of the city;

l. to make, from time to time, recommendations to the mayor concerning steps deemed advisable for the promotion and advancement of business and industrial prosperity in the city and the elimination of restrictions, burdens and handicapping factors having an adverse effect on business, industry and commerce in the city;

m. to publicize the economic advantages and other factors which make the city a desirable location for business and industry;

n. to collect information and compile and distribute literature and publicity material dealing with the facilities, advantages and attractions of the city and the historic and scenic points and places of interest therein;

o. to plan and conduct publicity and information programs designed to attract tourists, vacationers, visitors and other interested persons to the city, and to encourage, coordinate and cooperate with the efforts of public and private agencies, organizations and groups to publicize the advantages and attractions of the city for such purposes;

p. to encourage and cooperate with the efforts of public and private agencies, organizations and groups in publicizing the business, industrial and commercial advantages of the city;

q. to cooperate with and assist any corporation, organization, agency or instrumentality, whether public or private, the objects of which include, or which is authorized to act for, the advancement of the business and industrial prosperity and economic welfare of the city, or the furnishing of assistance in the location of new business and industry therein, or the rehabilitation or expansion of existing business and industry therein, or the creation of job opportunities or additional employment therein, so as to provide support for any action, efforts or activities for the accomplishment of any such purposes in the city on the part of any such corporation, organization, agency or instrumentality; and

r. to issue permits for the taking of motion pictures, and for the taking of photographs and for the use or operation of television cameras and/or any other transmitting television equipment in or about city property, or in or about any street, park, marginal street, pier, wharf, dock, bridge or tunnel within the jurisdiction of any city department or agency or involving the use of any city owned or maintained facilities or equipment.

2. The commissioner shall have the power and duty to exercise the functions of the city relating to the development, redevelopment, construction, reconstruction, operation, maintenance, management, administration and regulation of public markets, wharf property, water front property and airports within the city of New York including, without limitation, the following:

a. to have exclusive charge and control of the public markets of the city, to fix fees for services, licenses and privileges in connection therewith, to rent space therein and to enter into leases therefor, and to regulate all facilities in use as public markets for the public health, safety and welfare;

b. to have exclusive charge and control of the wharf property and water front owned by the city and of the building, rebuilding, repairing, altering, maintaining, strengthening, protecting, cleaning, dredging, and deepening of such wharf property and water front property; provided, that the commissioner may, subject to the approval of the mayor, designate parcels of wharf property and water front property to be managed pursuant to this paragraph and leased or permitted pursuant to paragraphs g and h of this subdivision by the commissioner of citywide administrative services. Any such designation shall be made in writing and may be withdrawn by the commissioner subject to the approval of the mayor;

c. to have the exclusive power to enforce with respect to public markets, water front property and any structures on water front property under its jurisdiction, the labor law and such other laws, rules and regulations as may govern the dredging, filling, removal, construction, alteration, maintenance, use, occupancy, safety, sanitary conditions, mechanical

equipment and inspection of structures in the city, and the issuance of permits and certificates of completion in reference thereto, and to establish and amend fees to be charged for the issuance of such permits or certificates of completion, which fees shall be established by the rules of the commissioner;

d. to have exclusive power to regulate water front property and the following structures on any water front property: wharves, piers, docks, bulkheads, structures wholly or partly therein, and such other structures used in conjunction with and in furtherance of water front commerce and/or navigation;

e. to have exclusive power to regulate the use of marginal streets so that they may be used to the best advantage in connection with wharf property and to regulate by license or otherwise the transfer of goods and merchandise upon, over or under all such marginal streets; f. to lease, subject to the approval of the council, any wharf property belonging to the city primarily for purposes of water front commerce or in furtherance of navigation. Such leases may be sold at public auction duly advertised in the City Record for at least ten days prior thereto, and if not so sold the terms of any lease must be approved by the council by a three-fourths vote after a public hearing, notice of which shall be published in the City Record for the six days of publication of the City Record immediately prior thereto. All such leases shall be for such terms and shall contain such conditions as may be provided by law. The council shall act within forty-five days of the filing of the proposed terms and conditions of any such lease with the council. Failure of the council to act on a lease within such forty-five day period shall be deemed an approval of such lease. All votes of the council pursuant to this subdivision shall be filed by the council with the mayor and shall be final unless disapproved by the mayor within five days of such filing except that there shall be no right of mayoral disapproval if a three-fourths vote of the council is required pursuant to this subdivision. Any such mayoral disapproval shall be filed by the mayor with the council and shall be subject to override by a two-thirds vote of the council within ten days of such filing;

g. to lease, pursuant to review and approval pursuant to sections one hundred ninety-seven-c and one hundred ninety-seven-d, any wharf property belonging to the city for purposes other than water front commerce or in furtherance of navigation, including, without limitation, commercial, industrial, residential or recreational purposes. All such leases shall be for such terms and shall contain such conditions as may be provided by law. No such lease may be authorized by the commissioner until a public hearing has been held with respect thereto after the publication of notice in the City Record at least thirty days in advance of such hearing;

h. to grant temporary permits terminable at will for a period not exceeding three years for the purposes of water front commerce or in furtherance of navigation and not exceeding one year for other purposes to use and occupy any wharf property belonging to the city;

i. to set aside by order any wharf property belonging to the city, which has not been leased, for general wharfage purposes or for the use of any special kind of commerce, or of any class of vessel, or of any agency, and to revoke or modify such order as to any such wharf property at any time;

j. to regulate the charges for wharfage, crantage and dockage of all vessels or floating structures using any wharf property set aside under paragraph i of this subdivision, provided that the rates which it shall be lawful to charge for wharfage, crantage and dockage from any vessel or floating structure which makes use of any other wharf property within the port of New York shall be fixed by rules of the commissioner;

k. to sell buildings, structures and other improvements on market property and wharf property to a person leasing such property pursuant to paragraphs a, f and g of this subdivision; provided, however, that any such sale of improvements shall be subject to the procedure for review and approval applicable to the lease related to the improvements;

l. to manage and promote the economic development of all airports, airplane landing sites, seaplane bases and heliports owned by the city, and to lease such property, subject to review and approval pursuant to sections one hundred ninety-seven-c and one hundred ninety-seven-d. No such lease may be authorized by the commissioner until a public

hearing has been held with respect thereto after the publication of notice in the City Record at least thirty days in advance of such hearing;

m. except as provided in section 487, to have charge and control of the regulation for the health and safety of the general public of all airports, airplane landing sites, seaplane bases, heliports, marginal streets and parking facilities appurtenant thereto owned by the city;

n. except as provided in section 487, to establish, amend and enforce rules for the proper care and use of all public markets, wharf property, water front property and all airports, airplane landing sites, seaplane bases and heliports owned by the city and placed in his or her charge or over which he or she shall have power of regulation, and to issue such orders as may be necessary for such enforcement. The violation of or the failure to comply with any such order or rule shall be triable in criminal court and punishable, upon conviction, by not more than thirty days imprisonment or by a fine of not less than one hundred dollars nor more than five thousand dollars, or both;

o. except as provided in section 487, to have the exclusive power to regulate all privately owned airports, airplane landing sites, seaplane bases and heliports and the operation out of and into such bases as well as the control of ground effect craft and aircraft operations to or from other sites within the city not so designated as airports, heliports, airplane landing sites or seaplane bases;

p. to promote and encourage the expansion and development of the city as a center for intrastate, interstate and international overland freight transportation; and

q. to administer and enforce the provisions of the zoning resolution of the city of New York in respect to the following structures on any water front property: wharves, piers, docks, bulkheads, structures wholly or partly thereon, and such other structures used in conjunction with and in furtherance of water front commerce and/or navigation in the same manner and in accordance with the same procedure as is prescribed therein.

3. With respect to energy matters, the commissioner shall have the power and duty:

a. to plan, formulate, coordinate and advance energy policy for the city;

b. to analyze the energy and fuel needs of the city with respect to all kinds of energy, to prepare intermediate and long-range plans, goals and programs designed to meet such needs, and to establish priorities among them;

c. to develop, implement and manage energy-related programs for economic development and other purposes, including, without limitation, the administration of the public utility service established by section 22-301 of the administrative code, and to exercise all of the functions, powers and duties of such public utility service; and

d. to perform such other responsibilities with respect to energy matters, including responsibilities delegated elsewhere by the charter, as the mayor shall direct.

4. For purposes of subdivision three of this section, "energy" shall include work or heat that is, or may be, produced from any fuel or source, including but not limited to electrical, fossil, geothermal, wind, hydro, solid waste, tidal, solar and nuclear.

5. The commissioner shall have the power and duty to:

a. advise and assist the mayor in developing policies designed to meet the job training and employment needs of the economically disadvantaged and unemployed residents of the city of New York, as well as the labor needs of private industry;

b. provide job training and employment services for economically disadvantaged and unemployed residents of the city of New York;

- c. disburse available city, state and federal funds for job training and employment programs throughout the city, and, when practical, to coordinate such funds with available funding from the private sector;
- d. maintain, operate and control such programs as may be necessary or required to achieve the objectives of the department;
- e. promote cooperation among business, labor and community organizations in response to labor market conditions; and
- f. promote public awareness of resources available for the economically disadvantaged and unemployed, and to refer the public to appropriate job training and employment services.

HISTORICAL NOTE

Section added L.L. 61/1991 § 6, eff. July 1, 1991.

Subd. 1 par b amended L.L. 48/2005 § 1, eff. May 19, 2005.

Subd. 1 par b amended L.L. 69/1993 § 1, eff. Aug. 17, 1993.

Subd. 1 par b-1 added L.L. 48/2005 § 2, eff. May 19, 2005.

Subd. 2 par b amended L.L. 59/1996 § 24, eff. Aug. 8, 1996.

Subd. 2 pars m, n, o amended L.L. 26/2008 § 2, eff. July 1, 2008. [See § 487 Note 1]

Subds. 3, 4 added L.L. 24/1994 § 5, eff. July 5, 1994.

Subd. 5 added L.L. 52/2003 § 3, eff. July 1, 2003. [See Note 1]

DERIVATION

Formerly § 1313 added by LL 1977, No. 28

Formerly § 1303 renumbered by LL 1978, No. 37

Sub d added by LL 1984, No. 67

Sub 13 amended by LL 1969, No. 74

Sub 1 par d amended at General Election, Nov. 7, 1989

NOTE

1. Provisions of L.L. 52/2003:

§ 13. Any agency or officer to which is assigned by this local law any functions, powers and duties shall exercise such functions, powers and duties in continuation of their exercise by the agency or officer by which the same were heretofore exercised and shall have power to continue any business, proceeding or other matter commenced by the agency or officer by which such functions, owners and duties were heretofore exercised. Any provision in any law, rule, regulation, contract, grant or other document relating to the subject matter of such functions, powers or duties, and applicable to the agency or officer formerly exercising the same shall, so far as not inconsistent with the provisions of this local law, apply to the agency or officer to which such functions, powers and duties are assigned by this local law.

§ 14. Any rule in force on the effective date of this local law, promulgated by an agency or officer whose power to promulgate such rule is assigned by this local law to some other agency or officer shall continue in force as the rule of the agency or officer, to whom such power is assigned, and such agency or officer may hereafter duly amend, supersede, or repeal such rule.

§ 15. All records, property and equipment whatsoever of any agency, the functions, powers and duties of which are assigned to any other agency by this local law, shall be transferred and delivered to the agency to which such functions, powers and duties are so assigned.

§ 16. No existing right or remedy of any character shall be lost, impaired or affected by reason of the adoption of this local law.

§ 17. No action or proceeding, civil or criminal, ending at the time when this local law shall take effect, brought by or against the city or any agency or officers, shall be affected or abated by the adoption of this local law or by anything herein contained; but all such actions or proceedings may be continued notwithstanding that functions, powers and duties of any agency or officer party thereto may by this local law be assigned or transferred to another agency or officer, but in that event the same may be prosecuted or defended by the head of the agency or the officer to which such functions, powers and duties have been assigned or transferred by this local law.

§ 18. Whenever by any provision of this local law functions, powers or duties are assigned to any agency or officer which have been heretofore exercised by any other agency or officer, all officers and employees in the classified city civil service who at the time that this local law shall take effect are engaged in the performance of such function, powers or duties shall be transferred to the agency to which such functions, powers or duties are assigned by this local law, without examination and without affecting existing compensation or pension or retirement rights, privileges or obligations of such officers and employees.

§ 19. Nothing contained in this local law shall affect or impair the rights or privileges of officers or employees of the city or of any agency existing at the time when this local law shall take effect and not inconsistent with the provisions of this local law in relation to the personnel, appointment, ranks, grades, tenure of office, promotion, removal, pension and retirement plans rights and any other rights or privileges of officers or employees of the city generally or officers of any agency.

§ 20. Effective date. This local law shall take effect on July 1, 2003, or as soon thereafter as a transfer of agency functions may be effectuated.

FOOTNOTES

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[Footnote 45]: * Chapter heading amended L.L. 34/2002 § 4, eff. Nov. 7, 2002; added by L. L. 61/1991 § 6. Former Chap. 56 Office for Economic Development added L. L. 28/1977 and amended in part L. L. 37/1978, L. L. 67/1984, L. L. 74/1969, L. L. 76/1989, and at General Election, November 7, 1989.



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NYC Charter 1302

New York City Charter

CHAPTER 56 DEPARTMENT OF SMALL BUSINESS SERVICES*45

§ 1302. **Waterfront plans.**

a. No marginal street, bulkhead line, pierhead line or other similar line demarcating the extent of waterfront development may be delineated, established or changed by the commissioner except in accordance with sections one hundred ninety-eight and one hundred ninety-nine of this charter. Any existing waterfront plan containing such lines shall be continued in effect and may similarly be changed only in accordance with sections one hundred ninety-eight and one hundred ninety-nine. The commissioner may apply to the city planning commission to incorporate such existing plans for the water front or any portion thereof into the city map pursuant to the procedure for review and approval of a change to the city map. Any plans for the water front or portions thereof so incorporated shall thereafter be discontinued as separate plans.

b. No wharf, pier, bulkhead, basin, dock, slip, marginal street or other structure shall be laid out, built, or rebuilt in the port of New York in the area subject to the jurisdiction of the commissioner except in accordance with such plans as changed from time to time, provided, that the commissioner, with the approval of the council, may from time to time change the width or location of any of the piers laid down on such plans and build or rebuild temporary wharf structures or license or permit the building or rebuilding thereof as may be provided by law.

c. The commissioner may widen, open, construct, abandon or close any marginal street or avenue included in such plans and shall maintain the widened portion of such street or avenue, or the new street or avenue as a marginal street, and such new street, or such a widened street to the extent of the portion so widened, shall not be a public street. Before acting under this subdivision, the commissioner shall make a report to the city planning commission including a map showing any proposed change and such other information as the chair of the city planning commission shall require. If the city planning commission makes a finding that the proposed change is in accordance with the water front plan or approves the change, the commissioner may proceed with it, but if the city planning commission makes a finding that it is not in accordance with such plan and disapproves the change, then the commissioner shall not proceed

unless the council by a two-thirds vote authorizes the commissioner to proceed. The city planning commission shall act on such change within six weeks from the time when it is filed in the office of the commission and if it does not act within such six weeks period the commissioner may proceed with the change.

HISTORICAL NOTE

Section added L.L. 61/1991 § 6, eff. July 1, 1991.

FOOTNOTES

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[Footnote 45]: * Chapter heading amended L.L. 34/2002 § 4, eff. Nov. 7, 2002; added by L. L. 61/1991 § 6. Former Chap. 56 Office for Economic Development added L. L. 28/1977 and amended in part L. L. 37/1978, L. L. 67/1984, L. L. 74/1969, L. L. 76/1989, and at General Election, November 7, 1989.



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CHAPTER 56 DEPARTMENT OF SMALL BUSINESS SERVICES*45

§ 1303. **Waterfront management advisory board.**

a. There shall be a waterfront management advisory board, which shall consist of the deputy mayor for economic development, as chairperson; the commissioner of small business services, as vice chairperson; the chairperson of the city planning commission; the commissioner of environmental protection; one city council member to be designated by the city council; and twelve members to be appointed by the mayor with the advice and consent of the city council, provided that there is at least one appointed member from each borough. Appointed members shall include representatives of labor, the maritime industries, the transportation industries, the real estate industry, the hospitality industries, as well as environmental advocates and community advocates.

b. Appointed members of the board shall not hold any other public office or employment and shall be appointed for terms of three years without compensation, except that of the members first appointed, four shall be appointed for terms of one year, four shall be appointed for terms of two years and four shall be appointed for terms of three years. No appointed member may be removed other than for cause to be determined after a hearing before the office of administrative trials and hearings.

c. In the event of a vacancy on the board during the term of office of an appointed member, the mayor shall appoint a successor with the advice and consent of the city council to serve the balance of the unexpired term.

d. The ex officio and council members of the board may designate a representative who shall be counted as a member for the purpose of determining the existence of a quorum and who may vote on behalf of such member. The designation of a representative shall be made by a written notice of the ex officio or council member served upon the chairperson of the board prior to the designee participating in any meeting of the board, but such designation may be rescinded or revised by the member at any time. The commissioner of small business services may designate as his or her representative the president of the economic development corporation or the designee of the president.

e. The board shall (1) hold at least one meeting every six months; (2) consult with and advise the deputy mayor for economic development, the commissioner of small business services and the city planning commission on any matter relating to the industrial, commercial, residential, recreational or other use or development of wharves, waterfront property and waterfront infrastructure in the city, and on other matters as may be requested by the chairperson of the board; (3) create any committees or subcommittees consisting of at least one board member or their designated representative as the board deems appropriate to carry out the board's responsibilities, provided that there shall be a committee on recreational uses of the waterfront; and (4) issue a report by March first, two thousand ten, and every two years thereafter, to the mayor, the city council, and borough presidents regarding the development of wharves, and waterfront property and infrastructure in the city during the immediately preceding two calendar years, provided that the report due March first, two thousand ten shall relate to calendar year two thousand nine only.

HISTORICAL NOTE

Section amended L.L. 20/2009 § 1, eff. July 16, 2009.

Section added L.L. 61/1991 § 1, eff. July 1, 1991.

DERIVATION

Formerly § 1314 added LL 28/1977, formerly § 1304 renumbered LL 37/1978, amended at General Election, Nov. 4, 1975, amended LL 74/1979, amended at General Election, Nov. 8, 1988, amended at General Election, Nov. 7, 1989.

FOOTNOTES

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[Footnote 45]: * Chapter heading amended L.L. 34/2002 § 4, eff. Nov. 7, 2002; added by L. L. 61/1991 § 6. Former Chap. 56 Office for Economic Development added L. L. 28/1977 and amended in part L. L. 37/1978, L. L. 67/1984, L. L. 74/1969, L. L. 76/1989, and at General Election, November 7, 1989.



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CHAPTER 56 DEPARTMENT OF SMALL BUSINESS SERVICES*45

§ 1304. **Division of Economic and Financial Opportunity.**

There shall be a division of economic and financial opportunity within the department.

a. The purpose of the division shall be to enhance the ability of minority and women owned business enterprises and emerging business enterprises to compete for city contracts, to enhance city agencies' awareness of such business enterprises, and to ensure their meaningful participation in city procurement.

b. The commissioner shall administer, coordinate, and enforce a citywide program established by local law for the identification, recruitment, certification and participation in city procurement of minority and women owned business enterprises and emerging business enterprises.

c. The commissioner shall be authorized to promulgate rules necessary to implement the purposes of such local law. The commissioner shall consult with the procurement policy board in drafting and adopting such rules. Such rules shall define sanctions, consistent with local law, which are appropriate to remedy violations or penalize contractors for failure to comply with the provisions of local law or with any program or rule established pursuant to local law.

d. The commissioner shall monitor the implementation of all financial, technical, managerial, and bonding assistance programs operated by city agencies to enhance participation by minority and women owned business enterprises and emerging business enterprises in city procurement.

e. The commissioner shall have the following powers and duties to implement the purposes of this section:

1. to direct and assist agencies in their efforts to increase participation by minority and women owned business enterprises and emerging business enterprises as contractors and subcontractors in city procurement;

2. to develop standardized forms and reporting documents;
3. to conduct, coordinate and facilitate technical assistance and educational programs;
4. to periodically review the compliance of city agencies with the provisions of local law for the identification, recruitment, certification and participation in city procurement of minority and women owned business enterprises and emerging business enterprises;
5. to annually report to the mayor and the council, as required by such local law, on the activities of the division and efforts by agencies to comply with the provisions of such local law;
6.
 - a. to establish and operate, on behalf of the city, a centralized program for the certification of minority owned business enterprises, women owned business enterprises and emerging business enterprises for the purposes of establishing the eligibility of such businesses for participation in the programs and processes established pursuant to local law to ensure their meaningful participation in city procurement.
 - b. For the purposes of such certification, "minority owned business enterprise" and "women owned business enterprise" shall mean business enterprises authorized to do business in this state, including sole proprietorships, partnerships and corporations, in which (i) at least fifty-one percent of the ownership interest is held by United States citizens or permanent resident aliens who are either minority group members or women, (ii) the ownership interest of such persons is real, substantial and continuing, and (iii) such persons have and exercise the authority to control independently the day to day business decisions of the enterprise;
 - c. For the purposes of such certification, "emerging business enterprise" shall mean a business enterprise authorized to do business in this state, including sole proprietorships, partnerships and corporations, in which (i) at least fifty-one percent of the ownership interest is held by United States citizens or permanent resident aliens; (ii) the ownership interest of such persons is real, substantial and continuing, (iii) such persons have and exercise the authority to control independently the day to day business decisions of the enterprise; and (iv) such persons have demonstrated, in accordance with regulations promulgated by the commissioner, that they are socially and economically disadvantaged. A person who is "socially and economically disadvantaged" shall mean a person who has experienced social disadvantage in American society as a result of causes not common to persons who are not socially disadvantaged, and whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. A person's race, national origin, or gender by itself, shall not qualify the person as "socially disadvantaged." In drafting such regulations, the commissioner shall consider criteria developed for federal programs established to promote opportunities for businesses owned by persons who are socially and economically disadvantaged, including criteria for determining initial and continued eligibility in relation to the net worth of persons claiming to be economically disadvantaged, provided that the net worth of a person claiming disadvantage pursuant to this section must be less than one million dollars. In determining such net worth, the department shall exclude the ownership interest in the business enterprise and the equity in the primary personal residence.
 - d. To be eligible for certification, a business enterprise shall have a real and substantial business presence in the market for the city of New York, as defined by the commissioner pursuant to local law.
7. to audit such business enterprises and periodically review and in appropriate cases recertify their eligibility for participation in programs established pursuant to local law;
8. to direct and assist city agencies in their efforts to increase participation by minority owned business enterprises, women owned business enterprises and emerging business enterprises in any city-operated financial, technical, and management assistance program;
9. to assist all business enterprises certified pursuant to this section in becoming prequalified for all categories of

procurement for which they may be eligible and for which contracting agencies utilize prequalification in the procurement process;

10. to prepare and periodically update a directory of such city certified business enterprises for use by city agencies and contractors and develop a clearinghouse of information on programs and services available to such business enterprises; and

11. to provide such assistance to business enterprises interested in being certified as is needed to ensure that such businesses benefit from city technical, managerial, and financial assistance, and other business development programs.

f. Responsibilities of the city agencies. The head of each city agency shall:

1. establish and implement reasonable measures and procedures to secure the meaningful participation of city certified business enterprises in the agency's (1) procurement of goods, services and construction and (2) financial, technical and managerial assistance programs for such business enterprises;

2. monitor all city contracts under the agency's jurisdiction for compliance with programs and policies established pursuant to local law, and refer and recommend appropriate matters to the division of economic and financial opportunity and the law department;

3. designate a deputy commissioner or other executive officer to advise the commissioner concerning the activities of the agency in carrying out its responsibilities pursuant to local law;

4. cooperate with and furnish to the division such information and assistance as may be required in the performance of the division's functions under this section and local law and the rules promulgated thereunder;

5. make available to prospective bidders a current copy of the directory of city certified businesses; and

6. periodically report to the division on activities undertaken to promote and increase participation by city-certified businesses in its procurement and any financial, technical, or management assistance program which it administers.

g. Small and locally-based business enterprises. In addition to the purposes provided in this section, the division of economic and financial opportunity, or such other bureau or division of the department as the commissioner may designate, shall administer any programs for small or locally-based business enterprise programs as may be established by law. The division of economic and financial opportunity or such other bureau or division shall, pursuant to applicable local laws, certify such enterprises as are eligible to participate in such programs, periodically review and recertify their eligibility, audit business enterprises that participate in such programs, and publish a directory of participating enterprises.

HISTORICAL NOTE

Section amended L.L. 129/2005 § 1, eff. Dec. 29, 2005. [See Note 1]

Section added L.L. 61/1991 § 6, eff. July 1, 1991.

Subd. a amended L.L. 12/2006 § 1, eff. May 23, 2006. [See Note 2]

Subd. b amended L.L. 12/2006 § 1, eff. May 23, 2006. [See Note 2]

Subd. d amended L.L. 12/2006 § 1, eff. May 23, 2006. [See Note 2]

Subd. e amended L.L. 12/2006 § 1, eff. May 23, 2006. [See Note 2]

DERIVATION

Formerly Chapter 13-A §§ 340-343 added at General Election, Nov. 7, 1989, repealed LL 61/1991 § 3.

NOTE

1. Provisions of L.L. L.L. 129/2005:

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§ 4. Severability. If any section, subsection, paragraph, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 5. Effective date. a. Sections 1 and 2 of this local law shall take effect upon enactment [Dec. 29, 2005]. Section 3 of this local law shall take effect 120 days after enactment except for subdivision g of section 6-129 which shall be effective upon enactment and further provided that any agency, including, but not limited to, the procurement policy board, may take actions necessary, including rulemaking, to implement the requirements of this local law prior to its effective date.

b. The council shall review the annual reports prepared pursuant to this local law and take action to repeal provisions for participation goals upon finding that such provisions are no longer necessary to address the impact of discrimination on the city's procurement.

2. Provisions of L.L. 12/2006:

§ 5. Severability. If any section, subsection, paragraph, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 6. Effective date. a. Sections 1, 2, 3 and 5 of this local law shall take effect immediately [May 23, 2006], and section 4 of this local law shall take effect 180 days after the date of enactment of this local law; provided that any agency, including, but not limited to, the procurement policy board, may take actions necessary, including rulemaking, to implement the requirements of this local law prior to its effective date.

b. The council shall review the annual reports prepared pursuant to this local law and take action to repeal provisions for participation goals upon finding that such provisions are no longer necessary to address the impact of discrimination on the city's procurement.

FOOTNOTES

45

[Footnote 45]: * Chapter heading amended L.L. 34/2002 § 4, eff. Nov. 7, 2002; added by L. L. 61/1991 § 6. Former Chap. 56 Office for Economic Development added L. L. 28/1977 and amended in part L. L. 37/1978, L. L. 67/1984, L. L. 74/1969, L. L. 76/1989, and at General Election, November 7, 1989.



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NYC Charter 1305

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CHAPTER 56 DEPARTMENT OF SMALL BUSINESS SERVICES*45

§ 1305. **Division of Labor Services.**

There shall be a division of labor services within the department.

a. The commissioner shall administer the provisions of this section and enforce a citywide program to ensure that city contractors and subcontractors take appropriate action to ensure that women and minority group members are afforded equal employment opportunity, and that all persons are protected from discrimination prohibited under the provisions of federal, state and local laws and executive orders with regard to recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay and other forms of compensation. The commissioner may request and shall receive from any contracting agency of the city such assistance as may be necessary to carry out the provisions of this section. "Minority group member" shall mean a United States citizen or permanent resident alien who is a member of a racial or language minority group in New York city protected by the voting rights act of 1965, as amended, or such other groups as may be covered by rule of the agency.

b. The commissioner shall promulgate such rules as are necessary to implement the purposes of this section. The commissioner shall consult with the procurement policy board in drafting and adopting such rules.

c. The commissioner shall have the following powers and duties:

1. to implement, monitor compliance with, and enforce this section and programs established pursuant to local, state and federal law and executive order requiring contractors to provide equal employment opportunity;
2. to implement, monitor compliance with, and enforce on-the-job training requirements on construction projects;
3. to monitor compliance by contractors with state and federal prevailing wage requirements;

4. to advise and assist contractors, subcontractors and labor unions with respect to their obligations to provide equal employment opportunity;

5. to establish appropriate advisory committees;

6. to serve as a city liaison to federal, state and local agencies responsible for contractors' and subcontractors' compliance with equal employment opportunity; and

7. such other powers and duties as may be conferred on the division by law or executive order for the purpose of ensuring that persons or businesses which benefit from doing business with the city provide equal employment opportunity.

d. The commissioner shall develop appropriate language for inclusion in city contracts regarding the subject matter of this section. Such contract language shall be reviewed by the corporation counsel. Such contract language shall require that a contractor:

1. shall not discriminate against any individual in violation of any federal, state or local law;

2. shall inform any employee representatives authorized to bargain collectively for its employees of the contractor's obligations pursuant to this section, and negotiate with such representatives to obtain their cooperation in the implementation of such obligations;

3. shall require that any subcontractor it employs in the performance of the contract comply with the requirements of this section.

e. 1. The commissioner shall require employment reports to be submitted in such form and containing such information as the commissioner may prescribe, by contractors to whom agencies propose to award city contracts and their proposed subcontractors, when such contracts or subcontracts have a value above a monetary threshold that the commissioner shall by rule establish. The commissioner may by rule provide for appropriate exemptions from such requirements.

2. An employment report shall include, but not be limited to, employment practices, policies, procedures, statistics and collective bargaining agreements. The contracting agency shall transmit the employment report to the commissioner after the selection of a proposed contractor or subcontractor. The commissioner shall review all employment reports to determine whether such contractors and subcontractors are in compliance with the equal employment opportunity requirement of local, state and federal law and executive orders.

3. Except as provided in paragraphs 4, 5 and 6 of this subdivision, a contracting agency may award the contract or approve a subcontractor upon receiving the approval of the division, or after a number of days to be specified by rule have passed since it submitted the employment report of the proposed contractor to the division, whichever is sooner.

4. If the commissioner notifies the contracting agency that a proposed contractor or subcontractor has failed to submit a complete employment report, the commissioner shall require the contracting agency not to award the contract or approve the subcontractor until after a complete employment report has been submitted to the division for its review.

5. If the commissioner notifies the contracting agency that the division has reason to believe that the contractor or subcontractor is not in substantial compliance with the requirements of this section, the commissioner may require the contracting agency not to award the contract or approve the subcontractor until the contractor has agreed to take appropriate action to come into compliance with such requirements.

6. The commissioner may by rule provide for circumstances when a contract or subcontract may be awarded without the prior approval of the division, which shall include but not be limited to requirements contracts which may

be awarded prior to the approval of an employment report, subject to the condition that a purchase shall not be made under the contract until the division has approved the employment report, emergency contracts, and contracts with contractors or subcontractors for which the division has previously approved an employment report.

7. The time schedules for actions required to be taken pursuant to this section shall be defined by rule of the procurement policy board in accordance with the provisions of section three hundred eleven.

f. Periodic review. The commissioner may require contractors or subcontractors to file periodic employment reports after the award of a contract in such form and with such frequency as the commissioner may direct by rule to determine whether such contractors or subcontractors are in compliance with applicable legal requirements and the provisions of this section.

g. Responsibilities of city agencies. The head of each city, county, borough or other office, position, administration, board, department, division, commission, bureau, corporation, authority, or other agency of government, where the majority of board members are appointed directly or indirectly by the mayor or serve by virtue of being city officers, or the expenses of which are paid in whole or in part from the city treasury, including the board of education, city and community colleges, the financial services corporation, the health and hospitals corporation, the public development corporation, school boards, and the city housing authority, shall:

1. assist the division in monitoring compliance with the equal employment opportunity requirements of contracts under its jurisdiction and refer and recommend matters to the division with respect to non-compliance with the provisions of this section;

2. designate a deputy commissioner or other executive officer to advise the commissioner concerning the activities and progress of the agency in carrying out its responsibilities pursuant to this section; and

3. in accordance with the provisions of section three hundred thirty-five, impose remedies and sanctions for failure to comply with the requirements included in city contracts pursuant to this section.

h. Enforcement, remedies and sanctions. Upon receiving a complaint or at its own instance, the commissioner may conduct such investigation as may be necessary to determine whether contractors and subcontractors are in compliance with the equal employment opportunity requirements of federal, state and local laws and executive orders. If the commissioner has reason to believe that a contractor or subcontractor is not in compliance with the provisions of this section, the commissioner shall seek the contractor's or subcontractor's agreement to adopt and adhere to an employment program designed to ensure equal employment opportunity, including but not limited to measures designed to remedy underutilization of minorities and women in the contractor's or subcontractor's workforce, and may, in addition, recommend to the contracting agency that payments to the contractor be suspended pending a determination of the contractor's or subcontractor's compliance with such requirements. If the contractor or subcontractor does not agree to adopt or does not adhere to such a program, the commissioner shall make a determination as to whether the contractor or subcontractor is in compliance with the provisions of this section, and shall notify the head of the contracting agency of such determination and any sanctions, including withholding of payment, imposition of an employment program, or other sanction or remedy provided by law or by contract, which the executive director believes should be imposed. The head of the contracting agency shall impose such sanction unless he or she notifies the commissioner in writing that the agency head does not agree with the recommendation, in which case the commissioner and the head of the contracting agency shall jointly determine any sanction to be imposed. If the agency head and the commissioner do not agree on the sanction to be imposed, the matter shall be referred to the mayor, who shall determine any sanction to be imposed.

i. Confidentiality. To the extent permitted by law and consistent with the proper discharge of the division's responsibilities under this section all information provided by a contractor to the division shall be confidential.

j. This section shall not apply:

1. to contracts for financial or other assistance between the city and a government or governmental agency;
2. to contracts, resolutions, indentures, declarations of trust, or other instruments authorizing or relating to the authorization, issuance, award, and sale of bonds, certificates of indebtedness, notes or other fiscal obligations of the city, or consisting thereof, except as otherwise provided by law or executive order; or
3. to employment by the city of its officers and employees which is subject to equal employment opportunity requirements of applicable law.

HISTORICAL NOTE

Section added L.L. 61/1991 § 6, eff. July 1, 1991.

DERIVATION

Formerly Chapter 13-B §§ 350-354 added General Election, Nov. 7, 1989, repealed LL 61/1991 § 3.

FOOTNOTES

45

[Footnote 45]: * Chapter heading amended L.L. 34/2002 § 4, eff. Nov. 7, 2002; added by L. L. 61/1991 § 6. Former Chap. 56 Office for Economic Development added L. L. 28/1977 and amended in part L. L. 37/1978, L. L. 67/1984, L. L. 74/1969, L. L. 76/1989, and at General Election, November 7, 1989.



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CHAPTER 56 DEPARTMENT OF SMALL BUSINESS SERVICES*45

§ 1306. **The New York city public utility service.**

The commissioner or his or her designee shall serve as the director of the public utility service established by section 22-301 of the administrative code.

HISTORICAL NOTE

Section added L.L. 24/1994 § 6, eff. July 5, 1994.

FOOTNOTES

45

[Footnote 45]: * Chapter heading amended L.L. 34/2002 § 4, eff. Nov. 7, 2002; added by L. L. 61/1991 § 6. Former Chap. 56 Office for Economic Development added L. L. 28/1977 and amended in part L. L. 37/1978, L. L. 67/1984, L. L. 74/1969, L. L. 76/1989, and at General Election, November 7, 1989.



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NYC Charter 1401

New York City Charter

CHAPTER 57 DEPARTMENT OF ENVIRONMENTAL PROTECTION*46

§ 1401. **Department; commissioner.**

There shall be a department of environmental protection, the head of which shall be the commissioner of environmental protection.

HISTORICAL NOTE

Section added by L. L. 1977, No. 24.

FOOTNOTES

46

[Footnote 46]: * Chapter 57 added by L. L. 1977, No. 24.



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NYC Charter 1402

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CHAPTER 57 DEPARTMENT OF ENVIRONMENTAL PROTECTION*46

§ 1402. **Deputies.**

The commissioner may appoint three deputies.

HISTORICAL NOTE

Section added by L. L. 1977, No. 24.

FOOTNOTES

46

[Footnote 46]: * Chapter 57 added by L. L. 1977, No. 24.



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NYC Charter 1403

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CHAPTER 57 DEPARTMENT OF ENVIRONMENTAL PROTECTION*46

§ 1403. **Powers and duties of the commissioner.**

Except as otherwise provided by law, the commissioner shall have charge and control of and be responsible for all those functions and operations of the city relating to the provision of a pure, wholesome and adequate supply of water, the disposal of sewage and the prevention of air, water and noise pollution, and shall be authorized to respond to emergencies caused by releases or threatened releases of hazardous substances and to collect and manage information concerning the amount, location and nature of hazardous substances. The powers and duties of the commissioner shall include, without limitation, the following:

a. Water resources control.

(1) The commissioner shall have charge and control of:

(a) All structures and property connected with the supply and distribution of water for public use not owned by private corporations, including all fire and drinking hydrants and all water meters;

(b) Furnishing the water supply and maintaining its quality, and of the investigation for and the construction of all works necessary to deliver the proper and required quality of water with ample reserve for contingencies and future demands; and

(c) Making and enforcing rules and regulations governing and restricting the use and supply of water;

(2) The commissioner shall examine into the sources of water supply of any private companies supplying the city or any portion thereof or its inhabitants with water to see that the same is wholesome and the supply is adequate, to establish such rules and regulations in respect thereof as are reasonable and necessary for the convenience of the public and to exercise superintendence, regulation and control in respect to the supply of water by such water companies;

(3) Except as otherwise provided by law and subject to the provisions of this chapter, the commissioner shall regulate and control emissions into water within and about the city of New York of harmful or objectionable substances, contaminants and pollutants; enforce all laws, rules and regulations with respect to such emissions; make such investigations and studies as may be desirable for the purpose of such enforcement and of controlling and eliminating pollution of such waters, and for such purpose shall have the power to compel the attendance of witnesses and to take their testimony under oath.

b. Sewage control.

(1) The commissioner shall have charge and control over the location, construction, alteration, repair, maintenance and operation of all sewers including intercepting sewers and sewage disposal plants, and of all matters in the several boroughs relating to public sewers and drainage, and shall initiate and make all plans for drainage and shall have charge of all public and private sewers in accordance with such plans; and shall have charge of the management, care and maintenance of sewer and drainage systems therein. In addition, the commissioner shall have the authority to supervise and adopt rules regarding private sewage disposal systems, other than community private sewage disposal systems, and to prescribe civil penalties for the violation of such rules of no more than ten thousand dollars per violation, and, except as otherwise provided in section six hundred forty-three of this charter, to issue permits pursuant to such rules for the construction and maintenance of such private sewage disposal systems. With regard to community private sewage disposal systems, the commissioner shall have the authority to perform inspections, and to issue notices of violation for violations of any provision of the New York city health code relating to private sewage disposal, which shall be served and returnable as provided by law for violations of the New York city health code, and the power to perform such other duties with regard to the supervision and regulation of such systems as may be lawfully delegated to him or her by the board of health or department of health and mental hygiene.

(2) The commissioner may adopt regulations requiring the discharge of sewage, refuse, factory waste and trade waste into the public sewers of the city, or regulating, restricting or prohibiting the use of public sewers for the discharge therein of any material or substance and may prescribe civil penalties for the violation thereof.

(3) Nothing in this subdivision shall be construed to limit the authority or powers of the commissioner of health and mental hygiene, the department of health and mental hygiene, or the board of health relating to the declaration or abatement of nuisances, or the enforcement of applicable public health laws or rules.

c. Air resources control.

The commissioner shall regulate and control the emission into the open air of harmful or objectionable substances, including, but not limited to, smoke, soot, dust, fumes, flyash, gas vapors, odors and any products of combustion or incomplete combustion resulting from the use of fuel burning equipment or from the heating of fuels or refuse. The commissioner shall enforce all laws, rules and regulations with respect to such emissions and shall make such investigations and studies as may be desirable for the purpose of such enforcement and of controlling and eliminating air pollution, and for such purpose shall have the power to compel the attendance of witnesses and to take their testimony under oath.

d. Noise pollution control.

The commissioner shall enforce all laws, rules and regulations to eliminate noise pollution. The commissioner shall make investigations and studies to develop permissible sound levels and to correct problems related to noise control, and, for such purposes, shall have power to compel the attendance of witnesses and to take their testimony under oath.

e. Review of environmental consequences of certain activities. The commissioner shall review and comment upon the environmental consequences of any activity requiring the approval of any agency of the city where such activity may have a significant impact on the physical aspects of the environment of the city, and shall be responsible

for investigating, evaluating and reporting upon activities related to fuel supply and demand, alternative sources of energy, and resource recovery.

f. Resource recovery task force.

(1) There shall be a resource recovery task force, which shall consist of no more than twelve employees, as well as such clerical and secretarial staff as may be necessary, all of whom shall be assigned by the commissioners of the department of environmental protection and the department of sanitation. The commissioners shall jointly appoint an executive director who shall report directly to both commissioners.

(2) The task force shall advise and make recommendations to both commissioners with respect to planning and implementation of programs of energy and materials recovery for the city's solid and liquid wastes.

(3) The approval of both commissioners shall be required prior to the adoption of any plan, action or regulation recommended by the task force except as to environmental impact determinations which shall be the sole responsibility of the commissioner of environmental protection.

g. Energy conservation and alternative fuels. The commissioner shall participate in formulating an energy policy for the city, including assessing the environmental costs and factors associated with all kinds of energy use and programs developed to meet energy needs. The commissioner shall study, establish, organize, promote, coordinate and carry out policies, activities, projects and programs designed to encourage fuel and energy conservation, alternate sources of fuel and energy and encourage, stimulate and and foster others to participate in such projects, programs and activities.

h. Emergency response. The commissioner shall have the power to respond to emergencies caused by releases or threatened releases of hazardous substances into the environment. The commissioner may (1) implement any response measures deemed to be necessary to protect the public health or welfare or the environment from a release or threat of release, (2) order responsible persons to undertake response measures, and (3) recover the costs of response measures incurred by the department from the responsible persons.

i. Community right-to-know. The commissioner shall have the power to collect, compile and manage information concerning the amount, location and nature of hazardous substances present in the city. This information shall be made available to city personnel responsible for responding to emergencies involving hazardous substances and the public.

HISTORICAL NOTE

Open par. amended L. L. 26/88 § 2; open par. amended L. L. 42/87 § 2.

Subd. a par. (1); subds. c, d amended at General Election, November 7, 1989.

Subd. b par 1 amended L.L. 22/2002 § 8, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

Subd. b par 1 amended at General Election, November 6, 2001 (Question 5 § 22) eff. Nov. 6, 2001 with special provisions in § 1152 subd. h par (4).

Subd. b par (1) amended at General Election, November 6, 2001 (Question 5 § 22) eff. November 6, 2001 with special provisions in § 1152 subd. h par (4).

Subd. b par (1) amended L.L. 50/1991 § 1, eff. July 1, 1991. [See Note.]

Subd. b par 3 amended L.L. 22/2002 § 8, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

Subd. b par 3 amended at General Election, November 6, 2001 (Question 5 § 22) eff. Nov. 6, 2001 with special provisions in § 1152 subd. h par (4).

Subd. b par (3) amended at General Election, November 6, 2001 (Question 5 § 22) eff. November 6, 2001 with special provisions in § 1152 subd. h par (4).

Subd. b par (3) added L.L. 50/1991 § 2, eff. July 1, 1991.

Subd. g amended L.L. 71/1990 § 2, eff. July 1, 1990.

Subd. b par (1) amended L.L. 65/1996 § 2, eff. Oct. 10, 1996.

Subd. h added L. L. 42/87 § 3.

Subd. i added L. L. 26/88 § 3.

NOTE

Provisions of L.L. 50/1991

§ 3. Notwithstanding any other provisions of this local law, any permit issued to construct a private sewage disposal system by the commissioner of health pursuant to article one hundred forty-three or one hundred forty-five of the New York city health code that is in full force and effect on the effective date of this local law, shall continue in full force and effect on and after such date; and, except for a permit for a community private sewage disposal system in a residential realty subdivision, such permit shall be deemed to constitute a permit issued by the commissioner of environmental protection, and shall continue to be so deemed on and after the effective date of rules promulgated by the commissioner of environmental protection regarding private sewage disposal systems, and shall remain in full force and effect until such time as the commissioner of environmental protection suspends or revokes such permit pursuant to law. In addition, until the effective date of such rules, the commissioner of environmental protection shall have the power to issue permits to construct and/or maintain such private sewage disposal systems, other than community private sewage disposal systems in residential realty subdivisions, pursuant to the New York city health code, and shall further have the power to issue notices of violation for violations of any provisions of the New York city health code relating to private sewage disposal, and such notices of violation shall be served and returnable as provided by law for violations of the New York city health code. § 4. For purposes of this local law:

(a) "Private sewage disposal system" means a water-flushed facility for the disposition of sewage which does not connect either with the municipal sewage disposal system or with a sewer or other facility connecting with such municipal system;

(b) "Community private sewage disposal system" means a private sewage disposal system which services fifteen or more dwellings; and

(c) "Residential realty subdivision" means any tract of land which is divided into five or more parcels along any existing or proposed street, highway, easement or right-of-way for sale or for rent as residential lots or residential building plots, regardless of whether the lots or plots are to be sold or offered for sale or are leased for any period of time, or are described by metes and bounds or by reference to a map or survey of the property or by any other method of description, and regardless of whether the lots or plots are contiguous. A tract of land shall constitute a subdivision upon the sale, rental or offer for sale or lease of the fifth residential lot or building plot therefrom.

§ 5.* The permits⁴⁷ issued by the commissioner for the construction and maintenance of private sewage disposal systems pursuant to paragraph one of subdivision b of section 1403 of the city charter and the fees therefor shall be as follows:

Permit Type	Fee	Date of Expiration
PRIVATE SEWAGE DISPOSAL SYSTEM- Evaluation of site and sub-soil	\$725 for original application	Good for two years after date of issuance
	\$150 for renewal	Good for two years after date of issuance
	\$375 for new application covering a site for which a permit had been issued by the department of health under the New York City health code on or after January 1, 1987 and before July 1, 1991, which permit or renewal thereof has expired.	Good for two years after date of issuance
COMMUNITY PRIVATE SEWAGE DISPOSAL SYSTEM- Fee for evaluation of application for permit to construct and maintain a private drain.	\$730	Good for two years after date of issuance
COMMUNITY PRIVATE SEWAGE DISPOSAL SYSTEM-Fee for evaluation of application for permit to construct and maintain and for annual evaluation of maintenance: - for a treatment plant of over 100,000 gallons/day capacity		
-initial permit	\$1,310	December 31
-annual renewal	\$1,870	December 31
-for a treatment plant of 100,000 gallons/day or lower capacity		
-initial permit	\$1,155	December 31
-annual renewal	\$1,300	December 31
-for a pumping station of over 100,000 gallons/day capacity		
-initial permit	\$ 975	December 31
-annual renewal	\$ 710	December 31
-for a pumping station of over 100,000 gallons/day or lower capacity		
-initial permit	\$ 975	December 31
-annual renewal	\$ 710	December 31

FOOTNOTES

46

[Footnote 46]: * Chapter 57 added by L. L. 1977, No. 24.

47

[Footnote 47]: * Section 5 amended L.L. 97/1993 § 1.



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CHAPTER 57 DEPARTMENT OF ENVIRONMENTAL PROTECTION*46

§ 1404. **Environmental control board.**

[Renumbered-See § 1049-a]

FOOTNOTES

46

[Footnote 46]: * Chapter 57 added by L. L. 1977, No. 24.



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NYC Charter 1501

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CHAPTER 58 DEPARTMENT OF FINANCE*48

§ 1501. **Department; commissioner.**

There shall be a department of finance, the head of which shall be the commissioner of finance.

HISTORICAL NOTE

Section added by L. L. 1977, No. 30.

FOOTNOTES

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[Footnote 48]: * Chapter 58 added by L. L. 1977, No. 30.



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§ 1502. **Deputies.**

The mayor may appoint three deputy commissioners. In addition, the mayor shall appoint one deputy commissioner whose function shall be to serve as the city sheriff. The commissioner and deputy commissioners shall provide a bond. The first deputy commissioner shall supervise and be responsible for the operations of the parking violations bureau.

HISTORICAL NOTE

Section added by L. L. 1977, No. 30.

Section amended L.L. 53/1995 § 2, eff. July 27, 1995.

Section amended L.L. 25/1994 § 1, eff. July 1, 1994.

FOOTNOTES

48

[Footnote 48]: * Chapter 58 added by L. L. 1977, No. 30.



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§ 1503. **Powers and duties of the commissioner.**

In the performance of his or her functions, the commissioner shall have, in addition to such others as may be conferred upon such commissioner from time to time by law, the power and duty to prepare and disburse payroll checks upon a master warrant prepared by the comptroller as prescribed in the administrative code.

HISTORICAL NOTE

Section added by L. L. 1977, No. 30.

Section amended at General Election, November 8, 1988.

Section amended at General Election, November 7, 1989.

FOOTNOTES

48

[Footnote 48]: * Chapter 58 added by L. L. 1977, No. 30.



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§ 1504. **Functions of the department.**

Except as otherwise provided by law, the department shall perform those functions and operations of the city which relate to the administration and collection of all taxes, assessments and charges imposed by the city, the collection of arrears due the city and all other sums due the city, including state and federal aid, the receipt and safekeeping of all moneys paid into the city treasury and payment of money out of the treasury, and the administration and management of certain trust funds held by the city, including, without limitation, the following:

1. Real property assessment. With respect to real property tax assessment, the department shall assess for taxation all the taxable real property in the city and prepare the assessment rolls. The commissioner shall appoint, within the appropriation therefor, as many assessors as shall be necessary for the performance of such functions in accordance with the provisions of this chapter.

2. Tax collection. a. The department shall administer all excise and non-property taxes imposed or administered by the city. With respect to such taxes, the department shall have the power to settle and adjust all claims in favor of or against the city and, except with respect to cases within the jurisdiction of the tax appeals tribunal established by section one hundred sixty-eight of this charter, to make determinations in contested cases. For such purposes, the commissioner or his delegate may, except with respect to cases within the jurisdiction of such tax appeals tribunal, hold hearings and administer oaths.

b. The department shall collect all real property taxes, water and sewer charges, other assessments and arrears against real property and all other taxes, assessments and arrears payable to the city.

c. Notwithstanding the provisions of any general, special or local law to the contrary, the commissioner shall have the exclusive authority to compromise any excise or nonproperty taxes or annual vault charges or any warrant or judgment for excise or nonproperty taxes or annual vault charges administered by the commissioner, and the civil

penalties, interest and additions to tax or charge in connection therewith, if the tax debtor has been discharged in bankruptcy, or is shown by proofs submitted to be insolvent, but the amount payable in compromise shall in no event be less than the amount, if any, recoverable through legal proceedings, and provided that where the amount owing for excise or nonproperty taxes or annual vault charges, exclusive of any civil penalties, interest and additions to tax or charge, or the warrant or judgment, exclusive of any civil penalties, interest and additions to tax or charge, is more than one hundred thousand dollars, such compromise shall be effective only when approved by a justice of the supreme court.

d. Notwithstanding the provisions of any general, special or local law to the contrary, the commissioner shall have the exclusive authority to compromise civil liability, with such qualifications and limitations as may be established pursuant to such rules as the commissioner may prescribe, where such liability arises in connection with an excise or nonproperty tax or annual vault charge administered by the commissioner, at any time prior to the time the tax or administrative action becomes finally and irrevocably fixed and no longer subject to administrative review. Upon acceptance of an offer in compromise by the commissioner, the matter may not be reopened except upon a showing of fraud, malfeasance or misrepresentation of a material fact. The corporation counsel may compromise any such liability after reference to the law department for prosecution or defense at any time prior to the time the tax or administrative action taken by the department is no longer subject to administrative or judicial review. Whenever a compromise is made by the department of any such liability, there shall be placed on file in the office of the commissioner the opinion of the commissioner or a deputy commissioner, with reasons therefor, with a statement of: (i) the amount of excise or nonproperty tax or annual vault charge and any other issues that may be the subject of such compromise, (ii) the amount of interest, additions to the tax or penalty imposed by law on the taxpayer or other persons against whom the administrative action was taken by the department, and (iii) the amount actually paid in accordance with the terms of the compromise. Notwithstanding the preceding sentence, no such opinion shall be required with respect to the compromise of any civil liability in which the unpaid amount of the excise or nonproperty tax or annual vault charge that was the subject of the administrative action (including any interest, additions to tax, or penalty) is less than twenty-five thousand dollars.

e. Nothing in paragraph c or d of this subdivision shall be construed to diminish or otherwise impair any power of the department exercised pursuant to any other provision of law.

3. Deposit and payment of moneys in the city treasury; trust funds. a. The department shall have the power and duty to provide for the reception and safekeeping of all moneys paid into the treasury of the city and for the payment of all moneys on warrants drawn by the comptroller and countersigned by the commissioner.

b. The department shall administer and manage all trust funds received or held by the city pursuant to a judgment, decree or order of any court or under section eleven hundred twenty-three of the surrogate's court procedure act, section ninety-nine-m of the general municipal law, sections eighty-seven and three-h*49 of the social services law, sections four hundred twenty-six and four hundred thirty-two of the real property law, section two hundred four of the lien law, and section five hundred fifty-three of the county law, and in such administration it shall be deemed to be acting in a fiduciary capacity. The department shall provide for the receipt and safekeeping of all such moneys of the trust funds held by the city and disburse the same on warrants signed by the comptroller.

c. (i) Notwithstanding any provision of law to the contrary and unless otherwise determined by the court which directed payment of the funds in the first instance, for purposes of administering and managing the trust funds, other than cemetery trust funds, enumerated in paragraph b of this subdivision, whenever the department is permitted or required by law to deposit such funds in a savings bank, trust company, bank, or banking association, or to invest such funds in its discretion or in legal investments for trustees or savings banks, the department may combine all such trust funds into one or more common trust funds, which may be deposited in such savings banks, trust companies, banks or banking associations as are designated by the state comptroller pursuant to section one hundred eighty-two of the state finance law, or invested in legal investments for trustees or savings banks. Such funds, when deposited in a savings bank, trust company, bank or banking association, may be placed in demand or time deposit accounts, including time

certificates of deposit, and such deposits shall be either insured by a federal deposit insurance corporation or full collateralized by securities acceptable to the state comptroller.

(ii) The department may retain trust funds temporarily pending investment or deposit or to meet cash requirements in connection with the deposit or withdrawal of such funds, but such temporary retention of trust funds shall not deprive any owner or beneficiary of any income therefrom to which the owner or beneficiary would otherwise be entitled by law.

(iii) When trust funds are received by the department it shall forthwith open and maintain a separate ledger account for each action, proceeding or matter and shall keep an exact accounting of all such funds and all income earned thereon in such manner as the state comptroller may prescribe.

4. Parking violations bureau. The department shall operate and control the parking violations bureau. The commissioner shall appoint the director of the bureau, deputy director and all other officers and employees of the bureau, and hearing examiners.

HISTORICAL NOTE

Section added by L. L. 1977, No. 30.

Subd. c added by L. 1980, ch. 408.

Open. par; subd. 2; subd. 3 par. b; par c. subpar. (ii) amended at General Election, November 7, 1989.

Subd. 2 par a amended ch. 808/1992 § 138, eff. Oct. 1, 1992.

Subd. 2 pars c, d, e added chap 513/2002 § 23, eff. Sept. 17, 2002.

Subd. 4 added L.L. 25/1994 § 2, eff. July 1, 1994.

FOOTNOTES

48

[Footnote 48]: * Chapter 58 added by L. L. 1977, No. 30.

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[Footnote 49]: * There is no section 3-h in the Social Services Law.



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§ 1504-a. **Tribunal for tax appeals. [Repealed]**

HISTORICAL NOTE

Section repealed L.L. 59/2007 § 6, eff. Jan. 20, 2008. [See § 150 Note 1]

Section added ch. 808/1992 § 139, eff. Oct. 1, 1992.

FOOTNOTES

48

[Footnote 48]: * Chapter 58 added by L. L. 1977, No. 30.



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§ 1505. **Real property tax assessment.**

The department shall have those powers and duties with respect to the assessment of real property for taxation as are prescribed by this chapter and, in addition such other powers and duties as may be conferred upon it by law. The department shall maintain in each borough an office for the performance of such powers and duties.

HISTORICAL NOTE

Section added by L. L. 1977, No. 30.

FOOTNOTES

48

[Footnote 48]: * Chapter 58 added by L. L. 1977, No. 30.



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§ 1506. **Duties of the assessors.**

The assessors, under the direction of the commissioner, shall assess all the real property in the several districts that may be assigned to them by the commissioner and shall prepare the assessment rolls. The term "assessment" shall mean a determination by the assessors of (a) the taxable status of real property as of the taxable status date; and (b) the valuation of real property, including the valuation of exempt real property, and where such property is partially exempt, the valuation of both the taxable and exempt portions.

HISTORICAL NOTE

Added by L. L. 1977, No. 30.

Amended by L. L. 1984, No. 76, November 21.

FOOTNOTES

48

[Footnote 48]: * Chapter 58 added by L. L. 1977, No. 30.



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§ 1507. **Taxable status of property.**

The taxable status of all real property assessable for taxation in the city shall be fixed for the succeeding fiscal year on the fifth day of January in each year.

HISTORICAL NOTE

Added by L. L. 1981, No. 82.

FOOTNOTES

48

[Footnote 48]: * Chapter 58 added by L. L. 1977, No. 30.



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§ 1508. **Assessment of real property.**

The assessors shall commence to assess real estate on the first day of July in each year, not a Saturday, Sunday or legal holiday.

HISTORICAL NOTE

Amended by L. L. 1981, No. 82.

Amended at General Election, November 7, 1989.

FOOTNOTES

48

[Footnote 48]: * Chapter 58 added by L. L. 1977, No. 30.



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§ 1509. **Statement of assessed valuation.**

An assessor or other person designated by the commissioner shall compute from the annual record of the assessed valuation of real estate in each borough the total aggregate amount of the assessed valuation of real property appearing on such annual record for such borough, and shall transmit a statement of such aggregate amount to the commissioner on or before the fifth day of January in each year.

HISTORICAL NOTE

Amended by L. L. 1981, No. 82.

FOOTNOTES

48

[Footnote 48]: * Chapter 58 added by L. L. 1977, No. 30.



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§ 1510. **Annual record of assessed valuation; public inspection.**

The books of the annual record of the assessed valuation of real estate shall be opened to the public not later than the fifteenth day of January in each year, not a Saturday, Sunday or legal holiday, and remain open during the usual business hours for public inspection and examination until the first day of March thereafter. The commissioner, previous to and during the time such books are open to public inspection, shall advertise such fact in the City Record and in such other newspaper or newspapers published in the several boroughs as may be authorized by the director of the City Record with the approval of the mayor and the comptroller.

HISTORICAL NOTE

Amended by L. L. 1981, No. 82.

Amended at General Election, November 7, 1989.

CASE NOTES

¶ 1. Respondent exceeded his jurisdiction when he increased assessed valuation of property without mailing petitioner the required ten day notice of an increase in assessment.-Matter of Grand Central Building, Inc. (Tishelman), 183(79) N. Y. L. J. (4-23-80) 10, Col. 2 B.

FOOTNOTES

[Footnote 48]: * Chapter 58 added by L. L. 1977, No. 30.



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§ 1511. **Notice of increase in assessed valuation of real property.**

The department or division responsible for the assessment of real property shall, upon an increase in assessed valuation of real property, notify the owner, as recorded in said department or division, of such increase by first-class mail at least thirty days prior to the final date for filing any appeal. The department or division shall notify the commissioner of the mailing of such notices by the filing of an affidavit of such mailing in the main office of the department.

CASE NOTES

¶ 1. This section applies to owners of realty who will be called upon to pay new or additional taxes and to accord them an opportunity to contest such action by the city, particularly as it relates to a revocation of tax exemption.-Religious Educ. v. City of N. Y., 123 Misc. 2d 786 [1983].

FOOTNOTES

48

[Footnote 48]: * Chapter 58 added by L. L. 1977, No. 30.



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§ 1512. **Annual record of assessed valuation, additions and changes.**

During the time the books of the annual record of the assessed valuation of real estate remain open for public inspection and examination, and, in the case of real estate other than residential real estate, during an additional period ending the tenth day of May in each year, the commissioner may place on such books any real estate and also the assessed valuation of any such real estate that may have been omitted from such books on the day of the opening thereof, and may increase or diminish the assessed valuation of any real estate as in the commissioner's judgment may be just or necessary for the equalization of taxation; but no such addition to the books and no such increase in assessed valuation shall be made, except upon mailing ten days' prior written notice addressed to the person whose name appears on the records in the office of the city collector as being the owner or agent of the owner of the real estate affected thereby at the last known address of such owner or agent. Where no name appears on such records such notice shall be sent to the premises addressed to either the owner or agent. An affidavit of such mailing shall be filed in the main office of the department. When such notice is mailed after the first day of February, such owners may apply for a correction of such assessment so added or so increased within twenty days after the mailing of such notice with the same force and effect as if such application were made on or before the first day of March in such year. For purposes of this section the term "residential real estate" shall include but not be limited to one and two-family homes and multiple dwellings (including co-operative and condominium dwelling units), but shall not include hotels, apartment hotels and motels.

HISTORICAL NOTE

Amended by L. L. 1981, No. 18.

Amended by L. L. 1981, No. 82.

Amended by L. L. 1982, No. 21.

Amended by L. L. 1983, No. 7.

Section amended at General Election, November 8, 1988.

Section amended at General Election, November 7, 1989.

CASE NOTES

¶ 1. Where Commissioner of Finance failed to give petitioner for reduced assessment of certain property 10 days prior written notice of the increase in valuation the increase was void.-*Matter of Trump v. Tishelman*, 80 A. D. 2d 858 [1981].

¶ 2. Where property owners were notified within ten day period required by statute that the assessed value of their property would be increased and the changes in assessment were entered into a computer on March 15 between 4:00 P.M. and 9:00 P.M. failure to enter the changes into the "books" of the tentative annual record of the assessed valuation which had been open to the public was not a fatal defect which annulled the purported increases in assessment since this section is primarily a notice section and in this case there was timely and sufficient notice, and the statute does not preclude use of a computer entry.-*Matter of Lincoln Plaza Associates South v. Com'r. of Finance*, 116 Misc. 2d 357 [1982].

¶ 3. This section applies to owners of realty who will be called upon to pay new or additional taxes and to accord them an opportunity to contest such action by the city, particularly as it relates to a revocation of tax exemption.-*Religious Educ. v. City of N. Y.*, 123 Misc. 2d 786 [1983].

¶ 4. Failure of owner to file owner's registration card caused city to fail to notify owner of an increase in assessment. Filing transfer tax return with City Register is not a substitute for filing an owner's registration card. 10-day notice provisions of § 1512 were not violated.-*Gabin v. Grayson*, 143 Misc. 2d 1051 [1989].

FOOTNOTES

48

[Footnote 48]: * Chapter 58 added by L. L. 1977, No. 30.



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§ 1513. **Apportionment of assessments.**

When any separately assessed parcel of real estate shall have been divided prior to the first day of June, the commissioner may apportion the assessment thereof in such manner as may be provided by law.

HISTORICAL NOTE

Section added by L. L. 1977, No. 30.

FOOTNOTES

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[Footnote 48]: * Chapter 58 added by L. L. 1977, No. 30.



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§ 1514. **Assessment rolls; preparation and delivery.**

1. Commencing immediately after the close of the period for public inspection and examination of the books of annual record of the assessed valuation of real estate, the commissioner shall cause to be prepared, from such books, assessment rolls for each borough in such manner as shall be provided by law.

2. As soon as such rolls are completed, the commissioner shall annex to each of such rolls a certificate that the same is correct in accordance with the entries and corrected entries in the several books of annual record. The rolls so certified must, on or before the twentieth day of June in each year, be delivered by the commissioner to the council.

HISTORICAL NOTE

Section added by L. L. 1977, No. 30.

Section amended at General Election, November 7, 1989.

FOOTNOTES

48

[Footnote 48]: * Chapter 58 added by L. L. 1977, No. 30.



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§ 1515. **Statement and estimate by the mayor.**

a. The mayor shall prepare and submit to the council, immediately upon the adoption of a single budget pursuant to section two hundred fifty-four, a statement setting forth the amount of the budget as approved by the council for the ensuing year and the mayor shall prepare and submit to the council not later than the fifth day of June an estimate of the probable amount of (1) receipts into the city treasury during the ensuing fiscal year from all the sources of revenue of the general fund and (2) all receipts other than those of the general fund and taxes on real property. The mayor may include in the statement of the amount of the budget as approved by the council a confirmation of such amount, and thereby waive mayoral veto power pursuant to section two hundred fifty-five.

b. If, as a result of the exercise of the mayor's veto pursuant to section two hundred fifty-five, the amount of the budget for the ensuing fiscal year differs from the amount of the budget approved by the council pursuant to section two hundred fifty-four, not later than two days after the budget is finally adopted the mayor shall prepare and submit to the council a statement setting forth the amount of the budget for the ensuing year, and the council shall, if necessary, fix new annual tax rates pursuant to subdivision c of section one thousand five hundred sixteen.

c. The mayor, prior to establishing the final estimate of revenues for the ensuing fiscal year as required by this section, shall consider any alternative estimate of revenues which is submitted pursuant to subdivision d of this section and which is accompanied by a statement of the methodologies and assumptions upon which such estimate is based in such detail as is necessary to facilitate official and public understanding of such estimates.

d. Any person or organization may, prior to the fifteenth day of May, submit to the mayor an official alternative estimate of revenues for consideration by the mayor in accordance with subdivision c. Such estimate shall be in a form prescribed by the mayor.

HISTORICAL NOTE

Amended by L. L. 1977, No. 102.

Amended by L. L. 1979, No. 6.

Amended at General Election, November 7, 1989.

FOOTNOTES

48

[Footnote 48]: * Chapter 58 added by L. L. 1977, No. 30.



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§ 1516. **Fixing of tax rates.**

a. The council shall fix the annual tax rates immediately upon the approval of the budget pursuant to section two hundred fifty-four. The council shall deduct the total amount of receipts as estimated by the mayor from the amount of the budget, for the ensuing fiscal year, and shall cause to be raised by tax on real property such sum as shall be as nearly as possible but not less than, the balance so arrived at, by fixing tax rates in cents and thousandths of a cent upon each dollar of assessed valuation. The tax rates shall be such to produce a balanced budget within generally accepted accounting principles for municipalities.

b. If a single budget has not been adopted by the fifth day of June pursuant to subdivision b of section two hundred fifty-four, the tax rates adopted for the current fiscal year shall be deemed to have been extended for the new fiscal year until such time as a new budget is adopted.

c. In the event the mayor exercises the veto power pursuant to section two hundred fifty-five, the council shall, if necessary, fix new annual rates not later than the date the budget is finally adopted in accordance with the requirements of subdivision a of this section.

HISTORICAL NOTE

Added by L. L. 1979, No. 6.

Section amended at General Election, November 7, 1989.

FOOTNOTES

48

[Footnote 48]: * Chapter 58 added by L. L. 1977, No. 30.



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NYC Charter 1516-a

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§ 1516-a. **Fixing of tax rates.**

Notwithstanding the provisions of sections fifteen hundred sixteen, fifteen hundred seventeen and fifteen hundred eighteen or any other provisions of law to the contrary:

(a) If the city council has not fixed the tax rates for the ensuing fiscal year pursuant to section fifteen hundred sixteen on or before the fifth day of June, the commissioner of finance shall be authorized to complete the assessment rolls using estimated rates and to collect the sums therein mentioned according to law. The estimated rates shall equal the tax rates for the current fiscal year.

(b) If, subsequent to the fifth day of June, the council shall, pursuant to section fifteen hundred sixteen, fix the tax rates for the ensuing fiscal year at percentages differing from the estimated rates, real estate tax payment shall nevertheless be payable in accordance with subdivision a of this section at the estimated rates. However, in such event, prior to the first day of January in such fiscal year, the commissioner of finance shall cause the completed assessment rolls to be revised to reflect the tax rates fixed by the council pursuant to section fifteen hundred sixteen, and an amended bill for the installment or installments for such fiscal year due and payable on or after the first day of January shall be submitted to each taxpayer in which whatever adjustment may be required as a result of the estimated bill previously submitted to the taxpayer shall be reflected.

HISTORICAL NOTE

Added by L. L. 1978, No. 11.

Amended at General Election, November 7, 1989.

FOOTNOTES

48

[Footnote 48]: * Chapter 58 added by L. L. 1977, No. 30.



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§ 1517. **Completion of assessment rolls.**

At such annual meeting the council shall cause to be set down in the assessment rolls, opposite to the several sums set down in the valuation of real property, the respective sums, in dollars and cents, to be paid as a tax thereon, rejecting the fractions of a cent. It shall also cause to be added and set down the aggregate valuations of the real property in the several boroughs, and shall transmit to the comptroller of the state by mail a certificate of such aggregate valuation in each borough.

FOOTNOTES

48

[Footnote 48]: * Chapter 58 added by L. L. 1977, No. 30.



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§ 1518. **Collection of the real property tax.**

1. Immediately upon the completion of the assessment rolls, the city clerk shall procure the proper warrants authorizing and requiring the commissioner to collect the several sums therein mentioned according to law. Such warrants need be signed only by the public advocate and counter-signed by the city clerk. Immediately thereafter and on or before the thirtieth day of June, the assessment rolls of each borough, as corrected according to law and finally completed, or a fair copy thereof, shall be delivered by the public advocate to the commissioner with the proper warrants, so signed and counter-signed, annexed thereto. At the same time the public advocate shall notify the comptroller of the amount of taxes in each book of the assessment rolls so delivered.

2. The commissioner upon receiving the assessment rolls and warrants shall immediately cause the assessment rolls and warrants to be filed in the respective borough offices.

HISTORICAL NOTE

Subd. 1 amended L.L. 68/1993 § 15, eff. Jan. 1, 1994.

FOOTNOTES

48

[Footnote 48]: * Chapter 58 added by L. L. 1977, No. 30.



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§ 1519. **Real property taxes due and payable.**

The commissioner, immediately after receiving the assessment rolls, shall give notice for at least five days in the City Record that the assessment rolls have been delivered to the commissioner and that all taxes shall be due and payable at the commissioner's offices as follows:

1. a. With respect to all properties which are:

(1) real property with an assessed valuation of forty thousand dollars or less on such assessment roll, except such property held in a cooperative form of ownership;

(2) real property held in a cooperative form of ownership, provided that the assessed valuation on such assessment roll of such property divided by the number of dwelling units contained in such property shall equal forty thousand dollars or less;

(3) for the fiscal year commencing on the first day of July, nineteen hundred ninety-eight, and for each fiscal year thereafter, real property (i) with an assessed valuation of eighty thousand dollars or less on such assessment roll, except such property held in a cooperative form of ownership, and (ii) classified as class one or class two in accordance with subdivision one of section eighteen hundred two of the real property tax law as such subdivision was in effect on January fifth, nineteen hundred ninety-seven; and

(4) for the fiscal year commencing on the first day of July, nineteen hundred ninety-eight, and for each fiscal year thereafter, real property held in a cooperative form of ownership, provided that (i) the assessed valuation on such assessment roll of such property divided by the number of dwelling units contained in such property shall equal eighty thousand dollars or less, and (ii) such property is classified as class one or class two in accordance with subdivision one of section eighteen hundred two of the real property tax law as such subdivision was in effect on January fifth, nineteen

hundred ninety-seven; all taxes upon real estate for each fiscal year shall be due and payable in four equal installments each of which shall be due and payable in such year as follows: the first payment on the first day of July, the second payment on the first day of October, the third payment on the first day of January, the fourth payment on the first day of April. However, if any property is acquired by the city in condemnation proceedings, the proportionate share of the amount of the tax on such property which would be due and payable on the next succeeding installment date, shall be due and payable on the date when the title to such property vests in the city.

b. With respect to real property other than such property listed in paragraph a of this subdivision one, for the fiscal year commencing on the first day of July nineteen hundred eighty-three and for each fiscal year thereafter: all taxes upon real estate for each fiscal year shall be due and payable in two equal installments, the first of which shall be due and payable on the first day of July in such year, and the second of which shall be due and payable on the first day of January in such year. However, if any property is acquired by the city in condemnation proceedings, the proportionate share of the amount of the tax on such property which would be due and payable on the next succeeding installment date, shall be due and payable on the date when the title to such property vests in the city.

2. All taxes shall be and become liens on the real estate affected thereby and shall be construed as and deemed to be charged thereon on the respective days when they become due and payable, and not earlier, and shall remain such liens until paid.

3. Any installment of taxes on real estate for any fiscal year may be paid, in full or in part, twenty-five days prior to the date on which the first installment for such fiscal year would otherwise become due and payable or at any time thereafter and, provided that payment of any installment or part thereof is made not later than fifteen days prior to the date that such installment would otherwise become due and payable and provided that all prior installments shall have been paid or shall be paid at the same time, a discount shall be allowed from the date of payment of such installment or part thereof to and including the fifteenth day of the calendar month on which such installment would otherwise become due and payable at the rate fixed by the council and a receipt shall be furnished to the extent of such payment and the discount thereon. Upon payment of any such installment or part thereof prior to the date such installment would otherwise become due and payable, such installment or part thereof shall be deemed due and payable and shall be satisfied and extinguished to the extent of the amount so paid plus the discount provided for herein. Not later than the fifteenth day of May in each year, the banking commission shall transmit a written recommendation to the council of the proposed discount rate for the ensuing fiscal year. The council may adopt a discount rate for such ensuing fiscal year on the fifth day of June preceding such ensuing fiscal year or at any time thereafter. As used in this subdivision, the words "taxes on real estate," in the case of utility companies, shall also include special franchise taxes.

4. a. (1) Notwithstanding anything in subdivision three to the contrary, the discount allowed pursuant to such subdivision shall not be allowed to and including the fifteenth day of the calendar month in which an installment of taxes on real property would otherwise become due and payable if the real property with respect to which such installment is paid is described in paragraph b of this subdivision. With respect to real property described in paragraph b, the discount shall be allowed only to and including the date on which an installment of taxes becomes due and payable.

(2) Notwithstanding anything in subdivision three to the contrary, no discount shall be allowed with respect to an installment of taxes on real property described in paragraph b of this subdivision unless such installment is paid no later than thirty days prior to the date on which such installment becomes due and payable.

b. Real property is described in this paragraph if:

(1) its assessed valuation is more than forty thousand dollars, provided that, for this purpose, real property held in a cooperative form of ownership shall not be deemed to have an assessed valuation of more than forty thousand dollars if its assessed valuation divided by the number of dwelling units contained therein equals forty thousand dollars or less, except that for the fiscal year commencing on the first day of July, nineteen hundred ninety-eight, and for each

fiscal year thereafter, such property shall not include real property with an assessed valuation of eighty thousand dollars or less, provided that, for this purpose, real property held in a cooperative form of ownership shall not be deemed to have an assessed valuation of more than eighty thousand dollars if its assessed valuation divided by the number of dwelling units contained therein equals eighty thousand dollars or less, and provided, further, that such real property or such real property held in a cooperative form of ownership is classified as class one or class two in accordance with subdivision one of section eighteen hundred two of the real property tax law as such subdivision was in effect on January fifth, nineteen hundred ninety-seven; or

(2) irrespective of its assessed valuation, real property taxes on such property are held in escrow and paid to the commissioner by a mortgage escrow agent.

c. For purposes of this subdivision, the term "mortgage escrow agent" shall include every banking organization, federal savings bank, federal savings and loan association, federal credit union, bank, trust company, licensed mortgage banker, savings bank, savings and loan association, credit union, insurance corporation organized under the laws of any state other than New York, or any other person, entity or organization which, in the regular course of its business, requires, maintains or services escrow accounts in connection with mortgages on real property located in the city.

5. The provisions of this section shall not apply to any installment of tax that becomes due and payable on or after July first, two thousand five.

HISTORICAL NOTE

Amended by L. L. 1978, No. 11.

Amended by L. L. 1978, No. 17.

Amended by L. L. 1982, No. 29.

Subd. 4 added by L. L. 1989, No. 47, § 1.

Open. par., subd. 1 amended at General Election, November 7, 1989.

Subd. 1 par a amended L.L. 72/1997 § 1, eff. Sept. 11, 1997 and applying to installments of taxes due on and after July 1, 1998.

Subd. 4 par b subpar (1) amended L.L. 72/1997 § 2, eff. Sept. 11, 1997 and applying to installments of taxes due on and after July 1, 1998.

Subd. 5 added L.L. 62/2005 § 1, eff. June 6, 2005.

NOTE

Provisions of L.L. 40/2002 eff. Dec. 2, 2002:

To provide for the levy and collection of additional real property taxes

for fiscal year 2003.

Be it enacted by the Council as follows:

Section 1. Where the mayor estimates that the revenue receipts for fiscal year 2003 will fall below the amount set forth in the budget for such year as adopted, and where the mayor requests modifications to the expense budget for such year, the council shall be authorized to raise, by an additional tax on real property in fiscal year 2003, additional

revenues, by fixing additional tax rates in cents and thousandths of a cent upon each dollar of assessed valuation; provided, however, that such additional tax rates shall apply from January 1, 2003 to June 30, 2003, and provided, further, however, that nothing herein shall authorize any subsequent and further increase in real property tax rates for fiscal year 2003.

§2. The council shall, at the same time as it fixes the additional tax rates as provided in section one of this local law, amend the assessment rolls by making the necessary adjustments to the listing of the sums, in dollars and cents, to be paid as a tax upon real property for fiscal year 2003 originally set down pursuant to section 1517 of the charter.

§3. The procedures set forth in sections 1518 and 1519 of the charter, without regard to the dates specified therein, shall apply to the collection of the additional amount of real property taxes provided for in this local law; provided, however, that such additional amount (i) shall be due and payable in one installment, on January 1, 2003, with respect to real property subject to paragraph b of subdivision one of section 1519 of the charter, and (ii) shall be due and payable in two equal installments, the first payment on January 1, 2003 and the second payment on April 1, 2003, with respect to real property subject to paragraph a of subdivision one of section 1519 of the charter. Notwithstanding any other provision of law to the contrary, interest shall be charged, received and collected at the rate established pursuant to section 11-224 of the administrative code if such installment or installments shall remain unpaid in whole or in part on such date or dates. For purposes of section 1516-a of the charter, the tax rates for the current fiscal year shall be the rates, including the additional tax rates, applicable from January 1, 2003 to June 30, 2003.

§4. This local law shall take effect immediately and shall be retroactive to and deemed to have been in full force and effect as of November 25, 2002.

NOTE

Provisions of L.L. 41/1996, eff. May 14, 1996:

A LOCAL LAW

In relation to prepayment of real estate taxes.

Be it enacted by the Council as follows:

Section 1. Notwithstanding any other provision of law, any installment of taxes on real estate for the fiscal year beginning July first, nineteen hundred ninety-six that becomes due and payable prior to January first, nineteen hundred ninety-seven, may be paid twenty-five days prior to the date on which the first installment for such fiscal year would otherwise become due and payable or at any time thereafter and, provided that any installment that becomes due and payable prior to January first, nineteen hundred ninety-seven, is paid in full not later than June thirteenth, nineteen hundred ninety-six, and provided, further, that all prior installments shall have been paid or shall be paid at the same time, a discount shall be allowed from the date of payment of such installment to and including the fifteenth day following the date on which such installment would otherwise become due and payable at the rate of five percent per annum.

§ 2. Notwithstanding anything in section one of this local law to the contrary, the discount allowed pursuant to such section shall not be allowed to and including the fifteenth day following the date on which such installment would otherwise become due and payable if the real property with respect to which such installment is paid is described in paragraph b of subdivision four of section fifteen hundred nineteen of the New York city charter. With respect to real property described in paragraph b of subdivision four of such section, the discount shall be allowed only to and including the date on which such installment of taxes would otherwise become due and payable.

§ 3. The discount provided for in subdivision three of section fifteen hundred nineteen of the New York city charter shall apply to all prepayments made in accordance with the terms of that subdivision after June thirteenth,

nineteen hundred ninety-six.

§ 4. Notwithstanding any inconsistent provisions of a local law for the year 1996, as proposed in Int. No. 765, for the purpose of implementing the provisions of this local law, the commissioner of finance shall be authorized to complete the assessment rolls using estimated rates and to collect the sums therein mentioned according to law in accordance with subdivision a of section 1516-a of the New York city charter and, where the commissioner of finance has exercised the authority granted by subdivision a of section 1516-a of such charter, the provisions of subdivision b of section 1516-a of such charter shall apply.

§ 5. This local law shall take effect immediately.

FOOTNOTES

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[Footnote 48]: * Chapter 58 added by L. L. 1977, No. 30.



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NYC Charter 1519-a

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§ 1519-a. **Real property taxes due and payable.**

The commissioner, immediately after receiving the assessment rolls, shall give notice for at least five days in the City Record that the assessment rolls are final and that all taxes shall be due and payable as follows:

1. The provisions of this section shall apply to any installment of tax that becomes due and payable on or after July first, two thousand five.

2. Real property with an assessed value of two hundred fifty thousand dollars or less.

(a) Quarterly installments. All property taxes shall be due in four equal installments.

(b) Due date of installments. The first installment shall be due on July first, the second installment shall be due on October first, the third installment shall be due on January first and the fourth installment shall be due on April first.

(c) Discount for early payment. A discount, at a percentage provided for in subdivision seven of this section, shall be allowed for early payment of an installment in accordance with this subdivision, as follows:

(i) if all the installments due for a fiscal year are paid in full on or before July fifteenth, a discount shall be allowed for such installments.

(ii) if the installments due on October first, January first and April first are paid in full on or before October fifteenth, a discount shall be allowed for such installments.

(iii) if the installments due on January first and April first are paid in full on or before January fifteenth, a discount shall be allowed for such installments.

3. Real property with an assessed value of over two hundred fifty thousand dollars.

(a) Semi-annual installments. All property taxes shall be due in two equal installments.

(b) Due date of installments. The first installment shall be due on July first and the second installment shall be due on January first.

(c) Discount for early payment. A discount, at a percentage provided for in subdivision seven of this section, shall be allowed for early payment of installments if all the installments due for a fiscal year are paid in full on or before July first.

4. Cooperative property. For purposes of this section, property held in the cooperative form of ownership shall not be deemed to have an assessed value of over two hundred fifty thousand dollars if the property's assessed value divided by the number of residential dwelling units is two hundred fifty thousand dollars or less per unit.

5. For purposes of this section, a property's assessed value shall be based on the assessed value listed on the final assessment roll on or around May twenty-fifth.

6. All taxes shall be and become liens on the property on the date such taxes become due and payable, and shall remain liens until paid.

7. Calculation of discount for early payment.

(a) Calculation of discount. Where a discount is allowed under this section, the discount shall be a percentage of the installments paid.

(b) Determination of discount percentage. Not later than the twenty-fifth day of May in each year, the banking commission shall send a written recommendation to the council of a proposed discount percentage for the ensuing fiscal year.

(c) The council may adopt a discount percentage on the fifth day of June preceding such ensuing fiscal year, or at any time thereafter.

(d) If the council does not adopt a discount percentage prior to the date that the statement of account or other similar bill or statement is prepared, a discount percentage of one and one-half percent shall be used to determine the discount provided where a discount is allowed for payments made on or before the last day that the installment due July first could be paid without interest, and this percentage shall continue to apply until the council adopts a discount percentage pursuant to paragraph (c) of this subdivision.

(e) Application of discount percentages.

(i) For properties the taxes for which are due in quarterly or semi-annual installments, the discount percentage applied for payments made on or before the last day that the installment due July first could be paid without interest, as set forth in subparagraph (i) of paragraph (c) of subdivision two of this section or paragraph (c) of subdivision three of this section, shall be the percentage established pursuant to paragraph (c) of this subdivision or, where applicable, paragraph (d) of this subdivision.

(ii) For properties the taxes for which are due in quarterly installments, the discount percentage applied for payments made on or before October fifteenth, as set forth in subparagraph (ii) of paragraph (c) of subdivision two of this section, shall be two-thirds of the discount percentage described in subparagraph (i) of this paragraph.

(iii) For properties the taxes for which are due in quarterly installments, the discount percentage applied for payments made on or before January fifteenth, as set forth in subparagraph (iii) of paragraph (c) of subdivision two of

this section, shall be one-third of the discount percentage described in subparagraph (i) of this paragraph.

(f) A discount shall be allowed only if all prior installments have been paid or are paid at the same time as the payments for which a discount would apply.

(g) (i) The commissioner may provide a discount, at a percentage not more than two times the discount percentage established pursuant to paragraph (c) or (d) of this subdivision, to taxpayers who pay their real property taxes by electronic funds transfer. This subparagraph shall apply only to taxpayers who are not required by law to pay their real property taxes by electronic funds transfer. The commissioner shall establish such discount percentage by rule and may promulgate such other rules as may be necessary to implement this subparagraph.

(ii) The commissioner may provide a discount, at a percentage not more than two times the discount percentage established pursuant to paragraph (c) or (d) of this subdivision, to taxpayers whose annual real property tax liability exceeds one million dollars and who pay their real property taxes before the date such taxes become due and payable, where the commissioner determines by rule that it would be in the best interests of the city to provide an incentive for such payment by a specified date and at a specified discount percentage. The commissioner may promulgate such other rules as may be necessary to implement this subparagraph.

8. As used in this section, "taxes" shall include special franchise taxes in the case of utility companies.

9. If property is acquired by the city in a condemnation proceeding, on the date that title vests in the city, any tax due prior to the title vesting date, and interest, shall be due and payable, and shall become an equitable lien with first priority against any condemnation award.

HISTORICAL NOTE

Section added L.L. 62/2005 § 2, eff. June 6, 2005.

Subd. 2 heading amended L.L. 66/2008 § 4, eff. Dec. 29, 2008 and retroactive to and deemed to have been in full force and effect as of Dec. 1, 2008. [See Note 1]

Subd. 3 heading amended L.L. 66/2008 § 5, eff. Dec. 29, 2008 and retroactive to and deemed to have been in full force and effect as of Dec. 1, 2008. [See Note 1]

Subd. 4 amended L.L. 66/2008 § 6, eff. Dec. 29, 2008 and retroactive to and deemed to have been in full force and effect as of Dec. 1, 2008. [See Note 1]

NOTE

1. Provisions of L.L. L.L. 66/2008:

Section 1. Where the mayor estimates that the revenue receipts for fiscal year 2009 will fall below the amount set forth in the budget for such year as adopted, and where the mayor requests modifications to the expense budget for such year, the council shall be authorized to raise, by an additional tax on real property in fiscal year 2009, additional revenues, by fixing additional tax rates in cents and thousandths of a cent upon each dollar of assessed valuation; provided, however, that such additional tax rates shall apply from January 1, 2009 to June 30, 2009, and provided, further, however, that nothing herein shall authorize any subsequent and further increase in the real property tax rates for fiscal year 2009.

§ 2. The council shall, at the same time as it fixes the additional tax rates as provided in section one of this local law, amend the assessment rolls by making the necessary adjustments to the listing of the sums, in dollars and cents, to be paid as a tax upon real property for fiscal year 2009 originally set down pursuant to section 1517 of the charter.

§ 3. The procedures set forth in sections 1518 and 1519-a of the charter, without regard to the dates specified therein, shall apply to the collection of the additional amount of real property taxes provided for in this local law; provided, however, that such additional amount (i) shall be due and payable in one installment, on January 1, 2009, with respect to real property subject to subdivision three of section 1519-a of the charter, and (ii) shall be due and payable in two equal installments, the first payment on January 1, 2009 and the second payment on April 1, 2009, with respect to real property subject to subdivision two of section 1519-a of the charter. Notwithstanding any other provision of law to the contrary, interest shall be charged, received and collected at the rate established pursuant to section 11-224.1 of the administrative code if such installment or installments shall remain unpaid in whole or in part on such date or dates, provided, however, that for each real property with an assessed value of two hundred fifty thousand dollars or less, if an installment of tax due and payable is not paid by January thirtieth two thousand nine, interest shall be imposed on such unpaid amounts. For purposes of section 1516-a of the charter, the tax rates for the current fiscal year shall be the rates, including the additional tax rates, applicable from January 1, 2009 to June 30, 2009.

FOOTNOTES

48

[Footnote 48]: * Chapter 58 added by L. L. 1977, No. 30.



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§ 1520. **Interest and penalties on real property taxes.**

The commissioner shall charge, receive and collect the interest and penalties upon taxes on real estate not paid when due and payable in such manner and at such rates as shall be provided by law, provided, however, where such taxes are not escrowed, and where such interest does not exceed five dollars, it shall be forgiven.

HISTORICAL NOTE

Amended by L. L. 1978, No. 11.

CASE NOTES

¶ 1. Petitioner purchased the subject property in 1988. However, due to an error on the part of the City Register of Deeds, the property was carried as tax exempt. In 1997, the City discovered the error and billed petitioner for all the back taxes, plus interest and penalties dating back to the date of petitioner's acquisition of the property. The court held, however, that under City Charter § 1520, the taxes did not become due and payable until the tax bill was presented in 1997, and the interest and penalties, if any, would accrue as of that date. *American Pen Corp. v. Tax Commission of the City of New York*, 722 N.Y.S.2d 27 (1st Dept. 2001).

FOOTNOTES

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[Footnote 48]: * Chapter 58 added by L. L. 1977, No. 30.



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§ 1521. **Right of entry.**

The commissioner or any assessor may, in accordance with law, enter upon real property and into buildings and structures at all reasonable times to ascertain the character of the property. Refusal by the owner or the agent of such owner to permit such entry shall be a misdemeanor triable by a judge of the criminal court of the city of New York and punishable by not more than thirty days' imprisonment or a fine of not more than fifty dollars, or both.

HISTORICAL NOTE

Section amended at General Election, November 7, 1989.

FOOTNOTES

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[Footnote 48]: * Chapter 58 added by L. L. 1977, No. 30.



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§ 1522. **Warrants.**

No money shall be paid out of the treasury except on a warrant authorized by law, signed by the comptroller and countersigned by the commissioner of finance which shall refer to the law under and to the appropriation against which it is drawn. No warrant shall be paid on account of any appropriation after the amount authorized to be raised for the purpose specified in the appropriation shall have been expended. In counter-signing warrants drawn by the comptroller, the commissioner shall be under no duty of inquiring as to the legality or propriety thereof but may rely on the comptroller's signature thereto.

FOOTNOTES

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[Footnote 48]: * Chapter 58 added by L. L. 1977, No. 30.



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§ 1523. **Deposits.**

1. The commissioner shall deposit all moneys which shall come into the commissioner's hands on account of the city on the day of receipt thereof, or on the business day next succeeding, in such banks and trust companies as shall have been designated as deposit banks, but no amount shall be on deposit at any one time in any one bank or trust company exceeding one-half of the amount of the capital and net surplus of such bank or trust company. The moneys so deposited shall be placed to the account of the commissioner who shall keep a record in which shall be entered the commissioner's accounts of deposits in, and moneys drawn from, the banks and trust companies in which the deposits shall be made. Each such bank and trust company shall transmit to the comptroller a weekly statement of the moneys which shall be received and paid by it on account of the commissioner.

2. The commissioner shall draw moneys of the city from said banks or trust companies only by checks subjoined and attached to warrants and subscribed by the commissioner or by payment orders duly authorized by the comptroller and the commissioner, and no moneys shall be paid by any such banks or trust companies on account of the commissioner except upon such checks or orders; but this provision shall not apply to transfers of such funds from one city depository to another.

3. The commissioner of finance, in consultation with agency heads, shall by rule establish criteria by which to evaluate whether banks are using the means at their disposal to comply with the embargo on trade and financial transactions with Burma and any other sanctions imposed by the United States government with regard to Burma, including but not limited to:

- a. withdrawal of operations from Burma;
- b. the denial of loans, letters of credit and other correspondent banking services to Burmese entities;

c. restrictions on the rescheduling of loans owed by Burmese entities, and on conversion of outstanding loans to instruments having longer maturity dates; and

d. divestiture of outstanding debt owed by Burmese entities.

The commissioner shall, after offering banks designated pursuant to section fifteen hundred twenty-four and the public an opportunity to be heard, classify such banks according to such criteria and publish notice of such classification in the City Record. The commissioner may at any time, upon the request of a bank or at his or her own initiative and after offering the public and the bank an opportunity to be heard, change the classification of a bank and publish notice of such change. The failure of a bank to provide information requested by the commissioner for the purposes of this subdivision shall be grounds for the commissioner to lower the classification of the bank. When choosing among banks offering comparable services at a comparable cost, city agencies shall, in a manner consistent with guidelines established by the commissioner of finance, seek to deposit or invest funds at, and obtain services from, the available banks that have received the highest classification.

HISTORICAL NOTE

Subd. 1 amended at General Election, November 8, 1988.

Section amended at General Election, November 7, 1989.

Subd. 3 added L.L. 33/1997 § 2 no longer enforced. [See Administrative Code § 6-115 footnote]

Subd. 3 added L.L. 33/1997 § 2, eff. July 14, 1997.

Subd. 3 repealed L.L. 75/1993 § 2, eff. Sept. 24, 1993.

Subd. 3 added L.L. 49/1990 § 2, eff. Sept. 1, 1990.

FOOTNOTES

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[Footnote 48]: * Chapter 58 added by L. L. 1977, No. 30.



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§ 1524. **Deposit banks.**

1. The banking commission which consists of the mayor, the commissioner and the comptroller shall by majority vote, by written notice to the commissioner, designate the banks or trust companies in which all moneys of the city shall be deposited, and may by like notice in writing from time to time change the banks and trust companies thus designated.

2. a. No bank or trust company shall be designated pursuant to this section unless:

(1) it shall agree to pay into the city treasury interest or to provide the city with equivalent value on the daily balances at a rate which the banking commission shall negotiate according to the current rate of interest upon like balances deposited in banks and trust companies in the city by private persons or corporations; and

(2) it shall file with the banking commission and city clerk a certificate signed by the president or other duly authorized officer of such bank setting forth that its board of directors has established and will adhere to a policy of hiring and promotion of employees and officers without regard to sex, race, color, religion, religious affiliation, national origin, disability, age, marital status, or sexual orientation, which certificate shall further set forth affirmatively the steps taken by the bank or trust company to implement said policy.

(3)* it does⁵⁰ not provide the following services, either directly or through a subsidiary or agent, to the Government of Burma; (a) advertising or otherwise promoting the sale, outside of Burma, coins minted in Burma. (b) underwriting securities of the Government of Burma, or (c) making loans to the Government of Burma.

(4) it has certified that neither it nor any of its affiliates is or will become a predatory lender or an affiliate thereof, as such terms are defined in section 6-128 of the administrative code of the city of New York.

b. If the banking commission by a majority vote shall decide that a requirement or condition contained in

paragraph a of this subdivision has been violated after giving the bank or trust company an opportunity to be heard, then upon thirty days' notice to the bank or trust company such designation may be revoked.

3. The commissioner may, with the approval of the comptroller, make time deposits of city moneys, for a period not to exceed six months, in any bank or trust company designated for deposit of city funds. Each such bank or trust company shall before deposits are made, other than such as are of a temporary character and specifically relate to the current business of the city, execute and file with the commissioner a bond to the city in such form and in such amount as may be prescribed and approved by the commissioner and the comptroller for the safekeeping and prompt payment of city moneys on demand with interest at the rate agreed upon and, as security for such funds, shall deposit with the comptroller outstanding unmatured obligations of the United States of America, or any obligation fully guaranteed or insured as to interest and principal by the United States of America acting through an agency, subdivision, department or division thereof, obligations of the state of New York or obligations of the city of New York, the value of which at the existing prices on the open market shall be equal to the estimated amount of the proposed deposit, for which the comptroller shall deliver a certificate of deposit containing the condition of such bond.

4. On the withdrawal of all or a part of the funds deposited in any depository and a closing or depleting of the account thereof, or in the event of the deposit actually made being less than the estimated amount of such deposit, the commissioner and the comptroller shall certify to such settlement or depletion of difference and direct the surrender of the whole or a proportionate share of the securities so deposited to the owner or owners thereof.

HISTORICAL NOTE

Amended by L. L. 1986, No. 19.

Subd. 2 amended L.L. 75/1993 § 3, eff. Sept. 24, 1993.

Subd. 2 par a open par amended L.L. 36/2002 § 3, eff. Feb. 18, 2003.

Subd. 2 par a subpar (2) amended at General Election, November 8, 1988.

Subd. 2 par a subpar (3) added L.L. 33/1997 § 3 no longer enforced. [See Administrative Code § 6-115 footnote]

Subd. 2 par a subpar (4) added L.L. 36/2002 § 3, eff. Feb. 18, 2003.

Subd. 2 pars. (1), (2); subd. 3 amended at General Election, November 7, 1989.

Subd. 2 par a subpar (3) added L.L. 33/1997 § 3, eff. July 14, 1997.

Subd. 2 par b amended L.L. 36/2002 § 3, eff. Feb. 18, 2003.

Subd. 3 amended at General Election, November 8, 1988.

FOOTNOTES

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[Footnote 48]: * Chapter 58 added by L. L. 1977, No. 30.

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[Footnote 50]: * New York City's "Burma Law" (Local Law No. 33 of 1997) No Longer to be Enforced. In

light of the United States Supreme Court's decision in **Crosby v. National Foreign Trade Council**, 530 U.S. 363 (2000), the City has determined that New York City's Local Law No. 33 of 1997 (codified in Administrative Code § 6-115 and Charter § 1524), which restricts City business with banks and companies doing business in Burma, is unconstitutional. This is to advise, therefore, that the language relating to Burma contained in existing New York City contracts may not be enforced.



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§ 1525. **City register.**

1. There shall be within the department a city register who shall be appointed by the mayor.
2. The functions, powers and duties formerly exercised by the registers or registrars of the several counties shall remain with the city register.

FOOTNOTES

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[Footnote 48]: * Chapter 58 added by L. L. 1977, No. 30.



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§ 1526. **Office of city sheriff.**

1. There shall be within the department an office of the city sheriff which shall be subject to the supervision and control of the commissioner of finance. Notwithstanding any other provision of law, the commissioner of finance may exercise or assign within the department such management functions of the office of the sheriff, including but not limited to those functions related to the appointment and removal of deputy sheriffs and other personnel of such office pursuant to the civil service law, as he or she may deem appropriate to achieve effective and efficient functioning and management of such office.

2. Except as otherwise provided by law, the city sheriff shall exercise the functions, powers and duties formerly exercised by the sheriffs of the several counties.

HISTORICAL NOTE

Section added L.L. 53/1995 § 3, eff. July 27, 1995.

DERIVATION

Formerly Chapter 44, §§ 1031, 1032 repealed L.L. 53/1995, amended by L.L. 74/1969, L.L. 102/1977, L.L. 189/1977, L.L. 34/1990.

CASE NOTES FROM FORMER SECTION 1031

¶ 1. Amendment to the Charter embodied in the proposition to abolish the offices of Sheriff and Register in the counties within the City and to create City-wide appointive offices instead, **held** to have been properly enacted as a Local Law within meaning of Constitution, Art. IX, § 8 through enactment by petition and ratification by popular vote

pursuant to the authorization of City Home Rule Law § 2 and former § 44 of the Charter. The duty of determining how Local Laws may be enacted was placed upon the Legislature, as there was no provision with reference thereto in either §§ 8 or 12 of Article IX of the Constitution.-Burke v. Kern, 287 N. Y. 203, 38 N. E. 2d 500 [1941], rev'g 263 App. Div. 834, 31 N. Y. S. 2d 1015.

¶ 2. Proposition submitting to the electorate the question whether the Charter should be amended to reorganize county government by abolishing the county offices of Sheriff and Register of Deeds and creating City-wide appointive offices of City Sheriff and City Register, **held** not invalid on ground the proposition embraced more than one subject, since the subject matter was merely county reorganization.

¶ 3. Objection to the proposition that no provision was made for the electors who desired to abolish one office and not the other, was over-ruled, since the only plan submitted was to effect economy in the manner indicated, and if the voter did not approve he disapproved of the plan as a whole.-Id.

¶ 4. That the functions, powers and duties of the old officers were being assigned to the new, did not result in the amendment violating Constitution, Art. III, § 16 prohibiting the insertion by reference of an existing law, since the principle is well established that reference to procedure and jurisdiction definitely established is not violative of the constitutional provision.-Id.

¶ 5. The operative date of the amendment was not postponed until the expiration of the terms of the respective officers elected on November 4, 1941, since Constitution, Art. IX, § 8, providing that elective county officers who were in office at time that Article took effect might serve out their terms, merely meant that the county officers who were in office on January 1, 1939, might fill out their then terms, and otherwise the section vested the City with unconditioned power to abolish the county offices, and by the amendment the City chose to make the abolition immediately effective on January 1, 1942.-Id.

CASE NOTES

¶ 1. The Mayor did not violate Charter §11 when he implemented Local Law #53 of 1995 which consolidated the office of the City Sheriff within the Department of Finance. Section 11 empowers the Mayor to reorganize agencies under his jurisdiction and transfer functions between agencies, create or merge agencies. The City Sheriff is an office under the Mayor's jurisdiction, former Charter §§1031, 1032 giving him the power to consolidate. Fucito v. Vallone, 166 Misc.2d 785, 635 N.Y.S.2d 415 [1995].

¶ 2. Although the New York City sheriff is within the supervision and control of the Commissioner of Finance, the statute does not provide for indemnification of the sheriff in the event of lawsuits against the sheriff. Thus, a party commencing an action against the sheriff is not required to serve a notice of claim upon the City. Parciak v. Mason, N.Y.L.J., Sept. 3, 1999, page 31, col. 2 (Civ.Ct. New York Co.).

FOOTNOTES



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NYC Charter 1527

New York City Charter

CHAPTER 58 DEPARTMENT OF FINANCE*48

§ 1527. **Contracts with collection agencies.**

1. Notwithstanding any other provisions of law to the contrary, the commissioner may enter into contracts with collection agencies for the collection of (i) any or all tax warrants and judgments for all city taxes subject to collection by the department, other than real property taxes, or (ii) city water and sewer charges, or both; provided however, that any such contract shall be subject to the provisions of sections three hundred twelve and three hundred thirteen.

2. Any such contract shall apply only to such tax warrants and judgments and to such water and sewer charges as the commissioner may refer to the collection agency, and shall be terminable at the will of the commissioner.

3. The consideration to be paid to such collection agency may be a percentage or percentages of the amount collected by such agency, or as otherwise provided in the contract, but shall be within the amount appropriated and available for such purpose.

4. No legal action to collect tax warrants and judgments or water and sewer charges under any contract entered into pursuant to this section shall be initiated without the express written permission of the corporation counsel, and the selection of any attorney to take such legal action shall be subject to the approval of the corporation counsel.

5. Before beginning performance of a contract authorized by subdivision one of this section, the contracting collection agency shall give security for faithful performance and shall provide such insurance policies, including but not limited to a comprehensive general liability insurance, naming the city as a party in interest, as the commissioner may require. The adequacy and sufficiency of such security and insurance policies, as well as the justification and acknowledgement thereof, shall be subject to the approval of the comptroller. The commissioner, in his or her discretion, may require additional security or insurance in such amounts and running to such city officers and employees as the commissioner may require, to indemnify them for any liability incurred by reason of any act or omission of such collection agency.

6. No contract entered into pursuant to this section may be so worded as to grant to any contracting collection agency the exclusive right to perform any work authorized by this section.

HISTORICAL NOTE

Added by L. 1977, ch. 814.

Subds. 1, 5 amended at General Election, November 7, 1989.

FOOTNOTES

48

[Footnote 48]: * Chapter 58 added by L. L. 1977, No. 30.



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NYC Charter 1800

New York City Charter

CHAPTER 61 DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT*51

§ 1800. **Department; commissioner.**

There shall be a department of housing preservation and development, the head of which shall be the commissioner of housing preservation and development.

HISTORICAL NOTE

Section added by L. L. 1977.

FOOTNOTES

51

[Footnote 51]: * Chapter 61 added by L. L. 1977.



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NYC Charter 1801

New York City Charter

CHAPTER 61 DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT*51

§ 1801. **Officials of the department.**

The commissioner may appoint not more than five deputy commissioners, one of whom may be a first deputy commissioner and one of whom shall be a deputy commissioner charged with the powers and duties that include, but are not limited to, the powers and duties described in paragraphs (j), (k), (l) and (m) of subdivision six of section eighteen hundred two of this chapter.

HISTORICAL NOTE

Section amended at General Election, November 8, 1988.

Section amended at General Election, November 7, 1989.

FOOTNOTES

51

[Footnote 51]: * Chapter 61 added by L. L. 1977.



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NYC Charter 1802

New York City Charter

CHAPTER 61 DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT*51

§ 1802. **Powers and duties of the commissioner.**

Except as otherwise specifically provided by law, the commissioner may exercise or delegate any of the following functions, powers and duties which are vested in the department:

1. all functions of the city relating to the rehabilitation, maintenance, alteration and improvement of residential buildings and privately owned housing including, but not limited to, the making of rehabilitation loans pursuant to article eight ("municipal loans"), article eight-a ("mini-loans") and article fifteen ("participation loans") of the private housing finance law, acting as liaison with the New York city rehabilitation mortgage insurance corporation established pursuant to article fourteen of the private housing finance law ("REMIC") and the New York city housing development corporation established pursuant to article twelve of the private housing finance law ("HDC"), the execution of emergency repairs to and the sealing, removal and demolition of buildings, structures and privately-owned housing in accordance with applicable provisions of law and the enforcement of those provisions of the multiple dwelling law or any other law, rule or regulation which relate to the maintenance, use, occupancy, safety or sanitary condition of any building or portion thereof which is occupied, arranged or intended to be occupied as a home, residence or dwelling place;

2. such functions and duties as may be prescribed by law with respect to the relocation of tenants of real property and the selection of tenants for publicly owned or publicly aided housing in the city; 3. all functions of the city, and all powers, rights and duties as provided by any federal, state or local law or resolution, relating to slum clearance, slum prevention and urban renewal; neighborhood conservation; prevention and rehabilitation of blighted, substandard, deteriorated or unsanitary areas, and publicly-aided and public housing, including the regulation of rents in housing built with state or local financing, except housing under the jurisdiction of the New York city housing authority;

4. the functions, rights, powers and duties and the offices granted to, vested in or delegated to the housing and

redevelopment board, the housing and development administration or the administrator of the housing and development administration;

5. such powers, rights and duties vested in or exercised by the New York city housing authority as may be transferred to or vested in the city;

6. the functions, powers and duties to:

(a) establish and administer programs designed to encourage the rehabilitation and preservation of existing housing;

(b) administer laws authorizing tax exemption or tax abatement, or both, including, but not limited to, section 11-243 of the administrative code of the city of New York and section four hundred twenty-one of the real property tax law, which are in aid of the construction, rehabilitation, alteration or improvement of residential buildings and structures and the elimination of substandard conditions therein, process applications for such exemption or abatement or both, and coordinate the activities of officers and agencies of the city relating thereto; (c) manage and superintend all real property acquired by the city for, or devoted to, housing or urban renewal purposes;

(d) represent the city in carrying out the provisions of the private housing finance law including, but not limited to, article two (relating to limited-profit housing companies), article five (relating to redevelopment companies), article eight, article eight-a, article eleven (relating to housing development fund companies) and article fifteen, and act as and exercise the powers, rights and duties vested in the "supervising agency" pursuant to the private housing finance law;

(e) represent the city in carrying out the provisions of article fifteen of the general municipal law ("urban renewal law") including, but not limited to, acquiring, leasing or disposing of real property pursuant to said law and establishing the disposition price of real property in an urban renewal area;

(f) undertake projects and exercise the rights, powers and privileges authorized by sections fifty-five and fifty-five-a of the public housing law;

(g) impose and collect charges and fees for the financing, regulation, supervision and audit of municipality-aided projects and loan programs administered by the commissioner, which charges and fees shall be set aside in a special account for administrative expenses of the department;

(h) act as the coordinating agency with respect to the activities of officers and agencies of the city concerning areas designated by the planning commission or any analogous officer or body, as districts for development or improvement of neighborhoods;

(i) acquire real property, pursuant to the federal housing and community development act of nineteen hundred seventy-four, on behalf of other city agencies.

(j) sell, lease, exchange or otherwise dispose of residential real property of the city, provided that no such sale, lease, exchange or other disposition shall be authorized without the approval of the mayor and until a public hearing has been held with respect to such action after the publishing of notice in the City Record at least thirty days in advance of such hearing, and provided further that any disposition by public auction shall be conducted by the department of citywide administrative services, except as otherwise provided by law;

(k) manage and superintend all residential real property of the city not used for public purposes, including real property acquired for a public purpose and not being currently utilized for such purpose, but not wharf property or other real property under the jurisdiction of the New York city transit authority, real property under the jurisdiction of the department of small business services, or real property under the jurisdiction of the New York city housing authority by virtue of an authorization granted by the mayor pursuant to the provisions of subdivision three of section one hundred

twenty-five of the public housing law, or real property under the jurisdiction of the triborough bridge and tunnel authority;

(l) exercise such other powers and duties as may be prescribed by law in relation to the management, demolition or sealing or other treatment of residential real property of the city; and

(m) employ professional community and other personnel to manage residential real property of the city.

HISTORICAL NOTE

Subd. 8 amended by L. L. 1978, No. 3.

Subd. 7, par. (b) amended at General Election, November 8, 1988.

Subd. 7, pars. (i)-(m), (o) bracketed out of law at General Election, November 8, 1988.

Subd. 7, par. (i) relettered and amended at General Election, November 8, 1988.

Subd. 1 amended at General Election, November 7, 1989.

Subd. 4 bracketed out of law at General Election, November 7, 1989.

Subds. 4, 5 renumbered at General Election, November 7, 1989 (formerly subds. 5, 6).

Subd. 6 so designated and amended at General Election, November 7, 1989 (formerly subds. 7, 8).

Subd. 6 par (k) amended L.L. 61/1991 § 8, eff. July 1, 1991.

Subd. 6 par (j) amended L.L. 59/1996 § 25, eff. Aug. 8, 1996.

Subd. 6 par (k) amended L.L. 34/2002 § 6, eff. Nov. 7, 2002.

CASE NOTES

¶ 1. Tenants in emergency relocation center in Bronx for whom Dept. of Housing Preservation and Development (HPD) was responsible for relocating, who had benefits terminated by HPD for their refusal of 3 "standard" apts. (as per HPD's reguls.) were entitled to bring class action. Change in HPD's defin. of "standard" apt. from "hazardous" viol. standard to "immediately hazardous" viol. standard was arbitrary and capricious. Permanent injunction granted preventing HPD from using such standard.-Matter of Goodwin v. Gleidman, 119 Misc. 2d 538 [1983].

¶ 2. The authority conferred on the Commissioner of Housing Preservation and Development by Charter § 1802(6)(d) and Private Housing Finance Law § 32 is sufficiently broad to include the limited pre-eviction review proceedings at issue here, the granting of a certificate of eviction and authorizing respondent housing corp. to proceed with eviction proceedings. Moses v. Michetti, 210 AD2d 124, 620 N.Y.S.2d 55 [1994].

FOOTNOTES

[Footnote 51]: * Chapter 61 added by L. L. 1977.



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NYC Charter 1803

New York City Charter

CHAPTER 61 DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT*51

§ 1803. **Inspectors, inspection.**

1. Housing maintenance inspectors shall have such qualifications as shall be prescribed by the department of citywide administrative services after consultation with the commissioner.

2. The commissioner or any inspector or any officer of the department authorized in writing by the commissioner or the commissioner's delegate may, in accordance with law, for the purpose of performing their respective official duties, enter and inspect any building, structure, enclosure, premises or any part thereof, or anything therein or attached thereto, and any refusal to permit such entry or inspection shall be a misdemeanor triable in the criminal court and punishable upon conviction by not more than thirty days imprisonment, or by a fine of not more than one hundred dollars or both.

HISTORICAL NOTE

Subd. 1 amended L.L. 59/1996 § 26, eff. Aug. 8, 1996.

FOOTNOTES

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[Footnote 51]: * Chapter 61 added by L. L. 1977.



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NYC Charter 1804

New York City Charter

CHAPTER 61 DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT*51

§ 1804. **Acquisitions of real property.**

No purchase, lease, condemnation or other acquisition of real property by the department shall be authorized until (1) a public hearing has been held with respect to the acquisition after the publishing of notice in the City Record at least thirty days in advance of such hearing and (2) the department shall have received the approval of the mayor; provided, however, that in the case of an acquisition by purchase or condemnation, no such hearing shall be required if a public hearing is held with respect to such purchase or condemnation pursuant to any other requirement of law. In the case of a lease in which the city is to be the tenant, the notice for the hearing required in this subdivision shall include a statement of the location and proposed use of the premises, and the term and annual rent of the proposed lease.

HISTORICAL NOTE

Section added at General Election, November 7, 1989. Former § 1804 repealed at General Election, November 7, 1989.

FOOTNOTES

51

[Footnote 51]: * Chapter 61 added by L. L. 1977.



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NYC Charter 1805

New York City Charter

CHAPTER 61 DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT*51

§ 1805. **Establishment of affordable housing trust fund.**

1. Notwithstanding any provision of law to the contrary and in addition to the functions, powers and duties that the commissioner may exercise or delegate pursuant to section eighteen hundred two of this chapter, the commissioner shall be authorized to establish or cause to be established an affordable housing trust fund.

2. Such fund may be established through agreement with a public benefit corporation authorized pursuant to the private housing finance law to finance the development and rehabilitation of affordable housing.

3. The sole purpose of the fund established pursuant to subdivision one of this section shall be to fund affordable housing outside of the areas set forth in paragraphs two through four*52 of subdivision (a) of section 11-245 of the administrative code of the city of New York.

4. Payments from such fund shall be subject to the following requirements:

(a) Priority shall be given first to projects in the ten sub-borough areas, as established by the United States census bureau, with the highest percentage of households below the poverty line based on the most recent United States census bureau data, with a target of forty percent of the total amount of the fund as initially funded to be used in such areas; and then to projects in the next five sub-borough areas, as established by the United States census bureau, with the highest percentage of households below the poverty line based on the most recent United States census bureau data, with a target of fifteen percent of the total amount of the fund as initially funded to be used in such areas.

(b) Priority shall be given to projects that will create affordable housing for persons of low income as defined in rules of the department in effect on the date of enactment of the local law that added this paragraph.

(c) Priority shall be given to projects in which the developer agrees to maintain the affordability of the housing

significantly beyond the period of the governmental assistance.

(d) Payments from such fund shall be made in accordance with subsidy guidelines, including, but not limited to, guidelines concerning the maximum amount of subsidy per dwelling unit and per project, established by the commissioner or established in the agreement, if any, with the public benefit corporation pursuant to subdivision two of this section provided however, that no project may receive a subsidy in excess of twenty million dollars.

(e) The aggregate payments from such fund in any calendar year beginning on or after January first, two thousand seven shall not be less than five percent of the total amount of the fund as initially funded, provided, however, that in no calendar year shall a lesser amount be spent other than pursuant to the written approval of the mayor.

5. On or before February first, two thousand eight and each year thereafter, the commissioner shall report to the council on the payments from the fund. Such report shall include a description of each project funded, including location, number of units, affordability requirements, status of the project and amount of funding for each project. Within forty-five days of receipt of such report the council shall conduct a hearing on such report and such fund created pursuant to this section.

HISTORICAL NOTE

Section added L.L. 58/2006 § 9, eff. Dec. 28, 2007. [See Ad. Cd.

§ 11-245 Note 1]

FOOTNOTES

51

[Footnote 51]: * Chapter 61 added by L. L. 1977.

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[Footnote 52]: * Paragraph (2) through (4) expire Dec. 28, 2010 per L.L. 58/2006 § 12.



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NYC Charter 2100

New York City Charter

CHAPTER 63*53 BUSINESS INTEGRITY COMMISSION

§ 2100. **Business integrity commission.**

a. There shall be a business integrity commission, which shall consist of a full-time chairperson appointed by the mayor and of the commissioners of the department of small business services, the department of consumer affairs, the department of investigation, the police department and the department of sanitation, or their designees.

b. The chairperson may appoint a first deputy who shall possess all the powers and perform all the duties of the chairperson during the absence or disability of the chairperson and in case of the death of the chairperson or of a vacancy in that office shall act as chairperson until the appointment of a chairperson by the mayor.

c. The chairperson shall have charge of the organization of the commission and shall have authority to employ, assign and superintend the duties of such officers and employees as may be necessary to carry out the provisions of this chapter. In addition, the commissioner of any agency represented on the commission or the commissioner of any other appropriate city agency may, if requested, provide staff and other assistance with respect to any matter within the jurisdiction of the commission.

HISTORICAL NOTE

Section added at General Election, November 6, 2001 (Question 6 § 5) eff. November 6, 2001 with special provisions in § 1152 subd. h par (5).

Section heading amended L.L. 21/2002 § 2, eff. July 29, 2002.

Subd. a amended L.L. 34/2002 § 7, eff. Nov. 7, 2002.

Subd. a amended L.L. 21/2002 § 2, eff. July 29, 2002.

FOOTNOTES

53

[Footnote 53]: * Chapter heading amended L.L. 21/2002 § 1, eff. July 29, 2002; Chapter added at General Election, November 6, 2001 eff. November 6, 2001; Ballot Question Abstract:

Organized Crime Control Commission. Currently, the Charter does not provide any agency with centralized jurisdiction over regulatory matters relating to the influence of organized crime in specific sectors of the economy. The Administrative Code provides several City agencies with regulatory, licensing, and investigative powers in connection with public wholesale food markets, the private carting industry, and the shipboard gambling industry. This proposal would consolidate the regulatory, licensing and investigative functions of the existing City agencies that combat organized crime activities into a single Organized Crime Control Commission, which would be one Charter agency. It would also clarify executive authority to oversee a centralized integrity assessment system, and to provide for vendor prequalification, to deter corruption in the area of City contracting.



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NYC Charter 2101

New York City Charter

CHAPTER 63*53 BUSINESS INTEGRITY COMMISSION

§ 2101. **Jurisdiction; powers and duties.**

a. The business integrity commission shall be responsible for the regulation of the trade waste industry, the shipboard gambling industry, the fulton fish market distribution area and other seafood distribution areas and the public wholesale markets. In regulating such industries, areas and markets, the commission shall have the powers and duties conferred by this chapter and such other powers and duties as are conferred by law.

b. The powers and duties of the business integrity commission shall be exercised in a manner consistent with all local laws governing the regulation of the trade waste industry, the shipboard gambling industry, the fulton fish market distribution area and other seafood distribution areas and the public wholesale markets and shall include but not be limited to the following:

1. to establish standards for the issuance, denial, suspension and revocation of licenses and other authorizations necessary for the operation of businesses in the industries, areas and markets it regulates; and to issue, deny, suspend and revoke such licenses and other authorizations;

2. to investigate any matter within its jurisdiction and to have full power to compel the attendance, examine and take testimony under oath of such persons as it may deem necessary in relation to such investigation, and to require the production of books, accounts, papers and other evidence relevant to such investigation;

3. to establish standards for service provided by, and for the conduct of, regulated businesses;

4. to conduct studies of, or investigations into, any matter within its jurisdiction in order to assist the city in formulating policies relating to the industries, areas and markets it regulates;

5. to create and disseminate materials on any matter within its jurisdiction in order to advise or educate regulated

businesses and members of the public regarding such matters;

6. to adopt rules necessary or appropriate to carry out the powers and duties conferred on it by law;
7. to establish fees to enable it to effectuate the purposes of this chapter, including fees sufficient to cover the costs of processing applications and conducting investigations; and
8. to enforce compliance with applicable laws and rules through the imposition of fines and penalties.

HISTORICAL NOTE

Section added at General Election, November 6, 2001 (Question 6 § 5) eff. November 6, 2001 with special provisions in § 1152 subd. h par (5).

Subd. a amended L.L. 21/2002 § 3, eff. July 29, 2002.

Subd. b open par amended L.L. 21/2002 § 3, eff. July 29, 2002.

FOOTNOTES

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[Footnote 53]: * Chapter heading amended L.L. 21/2002 § 1, eff. July 29, 2002; Chapter added at General Election, November 6, 2001 eff. November 6, 2001; Ballot Question Abstract:

Organized Crime Control Commission. Currently, the Charter does not provide any agency with centralized jurisdiction over regulatory matters relating to the influence of organized crime in specific sectors of the economy. The Administrative Code provides several City agencies with regulatory, licensing, and investigative powers in connection with public wholesale food markets, the private carting industry, and the shipboard gambling industry. This proposal would consolidate the regulatory, licensing and investigative functions of the existing City agencies that combat organized crime activities into a single Organized Crime Control Commission, which would be one Charter agency. It would also clarify executive authority to oversee a centralized integrity assessment system, and to provide for vendor prequalification, to deter corruption in the area of City contracting.



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NYC Charter 2102

New York City Charter

CHAPTER 63*53 BUSINESS INTEGRITY COMMISSION

§ 2102. **Cooperation with other agencies.**

The business integrity commission shall provide such assistance to the mayor and other agencies as requested and shall establish liaison and information-sharing arrangements with other law enforcement, prosecutorial, investigative and regulatory agencies as it deems appropriate.

HISTORICAL NOTE

Section amended L.L. 21/2002 § 4, eff. July 29, 2002.

Section added at General Election, November 6, 2001 (Question 6 § 5) eff. November 6, 2001 with special provisions in § 1152 subd. h par (5).

FOOTNOTES

53

[Footnote 53]: * Chapter heading amended L.L. 21/2002 § 1, eff. July 29, 2002; Chapter added at General Election, November 6, 2001 eff. November 6, 2001; Ballot Question Abstract:

Organized Crime Control Commission. Currently, the Charter does not provide any agency with centralized jurisdiction over regulatory matters relating to the influence of organized crime in specific sectors of the economy. The Administrative Code provides several City agencies with regulatory, licensing, and investigative powers in connection with public wholesale food markets, the private carting industry, and the

shipboard gambling industry. This proposal would consolidate the regulatory, licensing and investigative functions of the existing City agencies that combat organized crime activities into a single Organized Crime Control Commission, which would be one Charter agency. It would also clarify executive authority to oversee a centralized integrity assessment system, and to provide for vendor prequalification, to deter corruption in the area of City contracting.



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NYC Charter 2201

New York City Charter

CHAPTER 64 DEPARTMENT OF CONSUMER AFFAIRS

§ 2201. **Department; commissioner.**

There shall be a department of consumer affairs, the head of which shall be the commissioner of consumer affairs.



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NYC Charter 2202

New York City Charter

CHAPTER 64 DEPARTMENT OF CONSUMER AFFAIRS

§ 2202. **Deputies.**

The commissioner may appoint two deputies.



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NYC Charter 2203

New York City Charter

CHAPTER 64 DEPARTMENT OF CONSUMER AFFAIRS

§ 2203. **Powers of the commissioner.**

(a) The commissioner shall plan, make recommendations, conduct research and develop programs for consumer education and protection, facilitate the exchange and dissemination of information in consultation with agencies, federal and state officials, commercial interests, private groups and others working in this field and coordinate the consumer protection activities of other city agencies.

(b) The commissioner shall enforce all laws in relation to weights and measures.

(c) The commissioner shall have cognizance and control of the granting, issuing, transferring, renewing, revoking, suspending and cancelling of all licenses and permits, except in the cases with respect to which and to the extent to which any of said powers are conferred on other persons or agency by laws, and shall collect all fees for licenses and permits the collection of which by some other person or agency is not authorized by law.

(d) The commissioner shall enforce all laws relating to the advertising and offering for sale and the sale of all commodities, goods, wares and services; in addition he shall receive and evaluate complaints and initiate his own investigations relating to these matters and take appropriate action, including referral to a federal or state agency.

(e) The commissioner, in the performance of said functions, shall be authorized to hold public and private hearings, administer oaths, take testimony, serve subpoenas, receive evidence, and to receive, administer, pay over and distribute monies collected in and as a result of actions brought for violations of laws relating to deceptive or unconscionable trade practices, or of related laws, and to promulgate, amend and modify rules and regulations necessary to carry out the powers and duties of the department.

(f) The commissioner shall exercise the powers of a commissioner of public markets under the agriculture and markets law with respect to open air markets.

HISTORICAL NOTE

Amended by L. L. 1969, No. 10.

Amended by L. L. 1969, No. 83.

Added by L. L. 1970, No. 16.

Subds. (b), (c) amended at General Election, November 7, 1989.

CASE NOTES

¶ 1. Injunction pendente lite granted to food merchants' association in action for a declaratory judgment and permanent injunction to bar enforcement of a regulation of Department of Consumer Affairs which required consumer commodities sold at retail to indicate price per appropriate unit of measurement as beyond the power of the Commissioner where there were triable issues concerning the validity of the regulations.-N. Y. State Food Merchants' Asso. v. Grant, 62 Misc. 2d 644, 309, N. Y. S. 2d 747 [1970]. Plaintiffs were later granted summary judgment in the injunction action in N. Y. State Food Merchants' Asso. v. Grant, 63 Misc. 2d 550, 312 N. Y. S. 2d 600 (1970), on ground that the Commissioner of the Department of Consumer Affairs lacked authority to adopt a "unit pricing law."

¶ 2. Commissioner has power to issue subpoenas in connection with an investigation of a deceptive trade practice.-Myerson v. Marandola, 166 (37) N. Y. L. J. (8-23-71).

¶ 3. Regulations limiting the access by food vendors are valid since the presence of food vendors may pose health and safety hazards in certain areas due to congested streets.-Huggins v. City of N. Y., 192 (53) N. Y. L. J. (9-14-84) 6, Col. 3 B.

¶ 4. The "thirty foot rule" adopted by regulation which prohibits vending in a specified area of each street crossing certain designated streets is arbitrary and therefore invalid.-Huggins v. City of N. Y., 192 (53) N. Y. L. J. (9-14-84) 6, Col. 3 B.



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NYC Charter 2204

New York City Charter

CHAPTER 64 DEPARTMENT OF CONSUMER AFFAIRS

§ 2204. **Consumers council.**

There shall be in the department a consumers council which shall advise the commissioner on general goals for the development of programs, undertake studies and reports, and foster cooperation among city, state and federal agencies and private groups. The council shall consist of the commissioner, ex officio, and twelve members to be appointed by the mayor to serve for three years except that of the twelve members first appointed, four shall be appointed for a term of three years, four for a term of two years and four for a term of one year. One of these twelve shall be appointed chairman annually by the mayor. The members shall represent a cross section of consumer interests. They shall serve without compensation but shall be reimbursed for expenses necessarily incurred in the performance of their duties.

HISTORICAL NOTE

Added by L. L. 1968, No. 68.

Amended by L. L. 1969, No. 74.



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NYC Charter 2300

New York City Charter

CHAPTER 65 NEW YORK CITY TAXI AND LIMOUSINE COMMISSION*54

§ 2300. **Commission.**

There shall be a New York city taxi and limousine commission, the purposes of which shall be the continuance, further development and improvement of taxi and limousine service in the city of New York. It shall be the further purpose of the commission, consonant with the promotion and protection of the public comfort and convenience to adopt and establish an overall public transportation policy governing taxi, coach, limousine, wheelchair accessible van services and commuter van services as it relates to the overall public transportation network of the city; to establish certain rates, standards of service, standards of insurance and minimum coverage; standards for driver safety, standards for equipment safety and design; standards for noise and air pollution control; and to set standards and criteria for the licensing of vehicles, drivers and chauffeurs, owners and operators engaged in such services; all as more particularly set forth herein.

HISTORICAL NOTE

Section added by L.L. 1971, No. 12.

Section amended L.L. 83/1997 § 2, eff. Oct. 29, 1997.

CASE NOTES

¶ 1. Rule of New York City Taxi and Limousine Commission requiring fleet operators of taxicabs to provide service to the public for a minimum of two shifts of nine hours each per day including holidays and weekends was not unconstitutional, was authorized by this section and was not arbitrary or unreasonable.-*PavleMarty Cab Corp. v. City of N. Y.*, 48 N. Y. 2d 784, 423 N. Y. S. 2d 915 [1979], *aff'd*, 65 A. D. 2d 687.

FOOTNOTES

54

[Footnote 54]: * Chapter 65 added by L. L. 1971, No. 12.



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NYC Charter 2301

New York City Charter

CHAPTER 65 NEW YORK CITY TAXI AND LIMOUSINE COMMISSION*54

§ 2301. **Membership of commission.**

a. The commission shall consist of nine members to be appointed by the mayor with the advice and consent of the city council; five of said members, one resident from each of the five boroughs of New York city, shall be recommended for appointment by a majority vote of the councilmen of the respective borough.

b. Such members shall be appointed for terms of seven years. The members shall first be appointed to serve as follows:

1. Five members recommended by the city council for a term of two years.
2. Two members for a term of four years.
3. Two members for a term of six years.

Each such other member shall serve until the appointment and qualification of a successor. For the purpose of fixing the expiration of terms, they shall be deemed to have commenced on the first day of February in the year of appointment and qualification, irrespective of the actual date of appointment and qualification. Vacancies other than by expiration of a term shall be filled for the unexpired term. The mayor may remove any such member for cause, upon stated charges. Notwithstanding the provisions of this paragraph, any public officer appointed to the commission shall serve only during the period that he holds such public office and shall receive no additional compensation.

c. The mayor shall designate one member of the commission to act as the chairman and chief executive officer. The chairman shall have charge of the organization of its office and have authority to employ, assign and superintend the duties of such officers and employees as may be necessary to carry out the provisions of this chapter. The chairman shall devote his full time to this position and as such he shall receive compensation.

d. The other members of the commission shall not be entitled to compensation.

e. A majority of the whole number of members of the commission then in office shall constitute a quorum for the transaction of any business. The commission shall have power to act by a majority of its members.

HISTORICAL NOTE

Section added by L. L. 1971, No. 12.

FOOTNOTES

54

[Footnote 54]: * Chapter 65 added by L. L. 1971, No. 12.



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NYC Charter 2302

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CHAPTER 65 NEW YORK CITY TAXI AND LIMOUSINE COMMISSION*54

§ 2302. **Reports of commission.**

All proceedings of the commission and all documents and records in its possession shall be public records and the commission shall make an annual report to the city council on or before the second Monday of January in each year. The chairman of the city council committee on consumer affairs may at any time direct the commission or the chairman of the commission to appear before the committee to give testimony pertaining thereto, and to furnish to the members of the council any reports deemed necessary.

HISTORICAL NOTE

Section added by L. L. 1971, No. 12.

FOOTNOTES

54

[Footnote 54]: * Chapter 65 added by L. L. 1971, No. 12.



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NYC Charter 2303

New York City Charter

CHAPTER 65 NEW YORK CITY TAXI AND LIMOUSINE COMMISSION*54

§ 2303. **Jurisdiction, powers and duties of commission.**

a. The jurisdiction, powers and duties of the commission shall include the regulation and supervision of the business and industry of transportation of persons by licensed vehicles for hire in the city, pursuant to provisions of this chapter. Except as otherwise provided herein, charges of violations of the provisions of the administrative code and rules promulgated thereunder shall be adjudicated by the administrative tribunal established by the commission and governed by the citywide administrative procedure act.

b. Such regulation and supervision shall extend to:

1. The regulation and supervision of rates of fare to be charged and collected.
2. The regulation and supervision of standards and conditions of service.
3. The revocation and suspension of licenses for vehicles, other than licenses issued pursuant to state law, provided, however, that taxicab licenses represented by medallions heretofore issued shall in all respects remain valid in accordance with their terms and transferable according to law.
4. Taxicab licenses represented by medallions which have heretofore been surrendered are hereby revoked. Additional taxicab licenses may be issued from time to time only upon the enactment of a local law providing therefor. Any nontransferable licenses shall be deemed revoked upon the surrender by or death of the holder thereof.
5. The issuance, revocation, suspension of licenses for drivers, chauffeurs, owners or operators of vehicles, other than licenses issued pursuant to state law, and for taxicab brokers and the establishment of qualifying standards required for such licensees.

6. Requirements of standards of safety, and design, comfort, convenience, noise and air pollution control and efficiency in the operation of vehicles and auxiliary equipment.

7. Requirements for the maintenance of financial responsibility, insurance and minimum coverage.

8. The establishment of, and the requirement of adherence to, uniform system of accounts, with the right of the commission to inspect books and records and to require the submission of such reports as the commission may determine.

9. The development and effectuation of a broad public policy of transportation affected by this chapter as it relates to forms of public transportation in the city, including innovation and experimentation in relation to type and design of equipment, modes of service and manner of operation, which for limited purposes and limited periods of time may depart from the requirements otherwise established for licensed vehicles pursuant to this chapter.

10. Assistance to the business and industry of public transportation affected by this chapter in aid of the continuation, development and improvement of service and the safety and convenience of the public, including assistance in securing federal and state grants.

11. The formulation, promulgation and effectuation of rules and regulations reasonably designed to carry out the purposes, terms and provisions of this chapter.

c. (1) The commission shall create an administrative tribunal to adjudicate charges of violation of provisions of the administrative code and rules promulgated thereunder. The commission shall have the power to enforce its tribunal's decisions and orders imposing civil penalties, not to exceed ten thousand dollars for each respondent, for violations relating to unlicensed vehicles for hire and unlicensed drivers of vehicles for hire*56 as if they were money judgments, without court proceedings, in the following manner: Any such decision or order of the commission's administrative tribunal imposing a civil penalty, whether the adjudication was had by hearing or upon default or otherwise, shall constitute a judgment rendered by the commission which may be entered in the civil court of New York or any other place provided for the entry of civil judgments within the state. Before a judgment based upon a default may be so entered the commission or administrative tribunal shall have first notified the respondent by first class mail in such form as the commission may direct: (i) of the default and order and the penalty imposed; (ii) that a judgment will be entered in the civil court of the city of New York or any other place provided by law for the entry of civil judgments within the state of New York; and (iii) that entry of such judgment may be avoided by requesting a stay of default for good cause shown and either requesting a hearing or entering a plea pursuant to**57 the mailing of such notice.

(2) The commission or tribunal shall not enter any decision or order pursuant to paragraph one of this subdivision unless the notice of violation shall have been served in the same manner as is prescribed for service of process by article three of the civil practice law and rules or article three of the business corporation law except that: (a) with respect to any notice of violation which alleges the operation of an unlicensed vehicle for hire the operator of such vehicle who is not the owner thereof but who uses or operates such vehicle with the permission of the owner, express or implied, shall be deemed to be the agent of such owner to receive such notice of violation and service made pursuant to this paragraph on such operator shall also be deemed to be lawful service upon such owner; or (b) with respect to any notice of violation which alleges the operation of an unauthorized commuter van service or an unlicensed commuter van, the operator of the vehicle giving rise to such violation who is not the owner of such commuter van service or such commuter van, as applicable, but who uses or operates such vehicle with the permission, express or implied, of the owner of such commuter van service or such commuter van, as the case may be, shall be deemed to be the agent of the owner of such commuter van service or such commuter van, as the case may be, to receive such notice of violation. Service made pursuant to this paragraph on such operator shall be deemed to be lawful service upon the owner of such commuter van service or commuter van, as applicable.

HISTORICAL NOTE

Section added by L. L. 1971, No. 12.

Subd. a amended L.L. 16/2008 § 1, eff. Sept. 3, 2008.

Subd. b par. 5 amended at General Election, November 7, 1989.

Subd. b par 5 amended by L. L. 1984, No. 18, § 1.

Subd. c amended L.L. 115/1993 § 1, eff. Sept. 26, 1994.

Subd. c added by L. 1983, ch. 1021.

Subd. c amended ch. 697/87 § 2.

Subd. c par (1) amended L.L. 16/2008 § 2, eff. Sept. 3, 2008.

NOTE

1. Provisions of chap 63/2003 Part I, eff. May 19, 2003:

PART I

Section 1. The city of New York may, by local law, authorize the New York city taxi and limousine commission or its successor agency to issue additional taxicab licenses, provided, however, that the number of such additional licenses issued shall not exceed nine hundred, and provided further that such additional licenses shall be issued by public sale and shall be fully transferable. Such local law shall also provide that such commission or successor thereto shall prescribe by regulation the procedures for the issuance and public sale of such additional licenses, by public auction, sealed bids or other competitive process.

§ 2. This act shall take effect immediately.

CASE NOTES

¶ 1. This section relates to "hire in the city" of taxis and does not preclude the commission from making rules relating to transportation outside the city of taxis hired in the city.-Bakalar v. Lazar, 71 Misc. 2d 683, 336 N. Y. S. 2d 695 [1972].

¶ 2. It was not clear whether plaintiff's business of private car rental by prearrangement was not the business of "transportation of persons by licensed vehicles for hire" and hence within the jurisdiction of the Taxi and Limousine Commission and thus plaintiff's motion to preliminarily enjoin defendants from issuing summonses could not be granted.-Kelly's Rental, Inc. v. City of N. Y., 48 A. D. 2d 661, 367 N. Y. S. 2d 537 [1975].

¶ 3. The court refused to grant a preliminary injunction enjoining the Taxi and Limousine Commission from issuing licenses to nonmedallion vehicles as part of an experimental program to increase radio-dispatched taxis. The court held that the plaintiff could not show irreparable harm and that the program was valid pursuant to § 2303 City Charter.-Association of Private Limousine Services, Inc. v. New York City Taxi and Limousine Commission, 190 (112) N. Y. L. J. (12-13-83) 6, Col. 1 B.

¶ 4. N. Y. C. Taxi and Limousine Commission had authority to fix service charge (\$2.50) for answering each radio call for radio-dispatched taxis.-Fone-A-Cab Inc. v. N. Y. C., 191 (72) N. Y. L. J. (4-13-84) 12, Col. 3 T.

¶ 5. The statutory provision requiring the Taxi and Limousine Commission (TLC) to serve notices of violations in the same manner as a summons, applies only to violations by unlicensed operators. Where the alleged offender is a

licensed operator which has submitted to the jurisdiction of the TLC, the agency can serve the notices by ordinary mail. *Humming Bird Car Service, Inc. v. New York City Taxi and Limousine Commission*, 184 Misc.2d 146, 706 N.Y.S.2d 850 (Sup.Ct. New York Co. 2000).

¶ 6. Section 2303 enables the TLC to enact financial disclosure requirements for cab owners. *Statharos v. New York City Taxi & Limousine Commission*, 198 F.3d 317 (2d Cir. 1999). See annotations under 35 RCNY Sec. 1-02 for details.

FOOTNOTES

54

[Footnote 54]: * Chapter 65 added by L. L. 1971, No. 12.

56

[Footnote 56]: ** "and for violations relating to the operation of commuter van services without authorization and the operation of unlicensed commuter vans and unlicensed drivers of commuter vans pursuant to chapter five of title nineteen of the administrative code" deleted without bracketing

57

[Footnote 57]: ** "the rules of the commission or administrative tribunal within thirty days of" deleted without bracketing



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NYC Charter 2304

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CHAPTER 65 NEW YORK CITY TAXI AND LIMOUSINE COMMISSION*54

§ 2304. **Rates.**

a. The amount to be charged and collected for the hire of a taxicab for one or more passengers within the city of New York shall be the total of the following items:

1. For the first one-fifth mile or fraction thereof, or the first one minute of waiting time or fraction thereof, or the combination thereof, sixty cents.
2. For each additional one-fifth mile or fraction thereof, or seventy-two seconds of waiting time or fraction thereof, or the combination thereof, ten cents.
3. Fifty cents for each trunk.
4. All bridge and tunnel and ferry tolls.
5. There shall be no charge for personal luggage or for other belongings of the passengers transported in the interior of the taxicab.

b. Hereafter, and notwithstanding the rates set forth in paragraph a of this section, the commission shall prescribe, revise and otherwise regulate reasonable rates of fare which may be charged and collected for each type of service rendered.

c. In determining the rates of fare, the commission may consider all facts which in its judgment have a bearing on a proper determination, with due regard among other things to the time and distance of travel, to the character of the service provided, to the gross revenues derived from operation, to the net return derived from operation, to the expenses of operation including the income of drivers or operators, to the return upon capital actually expended and the necessity

of making reservations out of income for surplus and contingencies, to the number of passengers transported, to the effect of fares upon the public and in relation to the fares for other forms of public transportation, and to the fares and practices with respect to similar services in other cities of the United States.

d. No determination by the commission changing the rates of fare shall be made except after a public hearing before the commission, at which evidence shall be taken.

e. At any public hearing involving a change in the rates of fare, the burden of proof to show that existing rates are not reasonable shall be upon such segment of the business or industry affected by this chapter as is involved in the change in rates.

f. The costs reasonably attributable to a public hearing involving a change in the rates of fare, including the expenses of the commission and the compensation of its officers, agents and employees, shall be charged to and paid by such segment of the business or industry affected by this chapter as is involved in the change in rates.

HISTORICAL NOTE

Section added L. L. 1971, No. 12.

Subd. a par. 2 amended at General Election, November 7, 1989.

CASE NOTES

¶ 1. Provision requiring public hearing before commission changes the rates of fares does not apply to fares for trip beyond the city limits.-Bakalar v. Lazar, 71 Misc. 2d 683, 336 N. Y. S. 2d 695 [1972].

FOOTNOTES

54

[Footnote 54]: * Chapter 65 added by L. L. 1971, No. 12.



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NYC Charter 2400

New York City Charter

CHAPTER 66 DEPARTMENT FOR THE AGING*55

§ 2400. **Department; commissioner.**

There shall be a department for the aging, the head of which shall be the commissioner for the aging.

FOOTNOTES

55

[Footnote 55]: * Chapter 66 added by L. L. 1975, No. 36.



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NYC Charter 2401

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CHAPTER 66 DEPARTMENT FOR THE AGING*55

§ 2401. **Deputies.**

The commissioner may appoint and at pleasure remove a deputy commissioner.

FOOTNOTES

55

[Footnote 55]: * Chapter 66 added by L. L. 1975, No. 36.



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NYC Charter 2402

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CHAPTER 66 DEPARTMENT FOR THE AGING*55

§ 2402. **Powers and duties.**

The department shall have the following powers and duties:

- a. to stimulate community interest in the problems of the aging;
- b. to promote public awareness of resources available for the aging, and to refer the public to appropriate departments and agencies of the city, state and federal governments for advice, assistance and available services in connection with particular problems;
- c. to cooperate with and assist local neighborhoods in the development of programs and the establishment of local offices;
- d. to serve as a clearing house for information relating to the needs of the aging;
- e. to disburse available city, state and federal funds to programs throughout the city and, when practical, coordinate such funds with available funding from the private sector;
- f. to promulgate rules and regulations for the operation of facilities, services and programs under its jurisdiction;
and
- g. to maintain, operate and control such programs and facilities as may be necessary or required for the proper administration of the department.

HISTORICAL NOTE

Section amended at General Election, November 8, 1988.

FOOTNOTES

55

[Footnote 55]: * Chapter 66 added by L. L. 1975, No. 36.



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NYC Charter 2403

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CHAPTER 66 DEPARTMENT FOR THE AGING*55

§ 2403. **Advisory council.**

a. There shall be in the department an advisory council consisting of thirty-one members at least sixteen of whom shall be recipients of services rendered to the elderly.

These members shall include representatives from the areas of social service, health care, the academic community and local neighborhoods.

b. It shall be the duty of the council to advise the commissioner and make recommendations. The council shall submit an annual report of its activities to the mayor.

c. The members of the council shall be appointed by the mayor. Ten of said members, two residents from each of the five boroughs of the city, shall be recommended for appointment by a majority vote of the city council members of the respective boroughs.

d. The terms of office of the thirty-one members of the council first appointed shall be as follows: eleven appointees, five of whom shall be recommended for appointment by the city council members of the respective boroughs, one from each borough, shall serve for a term ending the thirty-first day of March, nineteen hundred eighty-one; ten appointees shall serve for a term ending the thirty-first day of March, nineteen hundred eighty-two; and ten appointees, five of whom shall be recommended for appointment by the city council members of the respective boroughs, one from each borough, shall serve for a term ending the thirty-first day of March, nineteen hundred eighty-three. Upon the expiration of such terms, the terms of office of their successors shall be three years. Vacancies occurring otherwise than by expiration of term shall be filled for the unexpired term in the same manner as regular appointments.

e. The mayor shall designate one of the members of the council to be chairman and one to be vice-chairman.

- f. The members of the council shall serve without compensation.

HISTORICAL NOTE

Amended by L. L. 1980, No. 6.

FOOTNOTES

55

[Footnote 55]: * Chapter 66 added by L. L. 1975, No. 36.



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NYC Charter 2501

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CHAPTER 67 DEPARTMENT OF CULTURAL AFFAIRS*58

§ 2501. **Department; commissioner.**

There shall be a department of cultural affairs, the head of which shall be the commissioner of cultural affairs.

HISTORICAL NOTE

Section added by L. L. 1976, No. 6.

FOOTNOTES

58

[Footnote 58]: * Chapter 67 added by L. L. 1976 No. 6.



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NYC Charter 2502

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CHAPTER 67 DEPARTMENT OF CULTURAL AFFAIRS*58

§ 2502. **Deputies.**

The commissioner may appoint a deputy.

HISTORICAL NOTE

Section added by L. L. 1976, No. 6.

FOOTNOTES

58

[Footnote 58]: * Chapter 67 added by L. L. 1976 No. 6.



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NYC Charter 2503

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CHAPTER 67 DEPARTMENT OF CULTURAL AFFAIRS*58

§ 2503. **Powers and duties of commissioner.**

Except as otherwise provided by law, the commissioner shall have the power and duty:

(a) to plan, acquire, design, construct, improve and manage facilities for the conduct of cultural activities by the city and, to the extent possible, to use the resources of other agencies to perform design and planning functions subject to the approval of such agencies;

(b) to plan, develop, conduct and supervise such cultural activities; and

(c) to foster coordination among city, state and federal agencies, other organizations and institutions with respect to cultural activities in the city.

HISTORICAL NOTE

Section added by L. L. 1976, No. 6.

FOOTNOTES

58

[Footnote 58]: * Chapter 67 added by L. L. 1976 No. 6.



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NYC Charter 2504

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CHAPTER 67 DEPARTMENT OF CULTURAL AFFAIRS*58

§ 2504. **Budget estimates of cultural institutions.**

The capital and expense budget estimates, to the extent involving expenditures to be paid from the city treasury, of all institutions or other organizations engaging in cultural activities in the city, shall be submitted to the commissioner, who shall submit such expense budget estimates to the director of management and budget and such capital budget estimates to the mayor, the borough presidents, the council, and the city planning commission in accordance with law, together with the commissioner's recommendations.

HISTORICAL NOTE

Added by L. L. 1976, No. 6.

Amended by L. L. 1977, No. 102.

Amended at General Election, November 7, 1989.

FOOTNOTES

58

[Footnote 58]: * Chapter 67 added by L. L. 1976 No. 6.



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NYC Charter 2505

New York City Charter

CHAPTER 67 DEPARTMENT OF CULTURAL AFFAIRS*58

§ 2505. **Cultural affairs advisory commission.**

1. There shall be in the department a cultural affairs advisory commission consisting of not fewer than fifteen nor more than twenty-one members, exclusive of a deputy mayor, the commissioner of cultural affairs, and the commissioner of parks and recreation, who shall serve as ex-officio members. The members of the advisory commission shall serve without compensation.

2. a. Members other than ex-officio members shall be appointed by the mayor for a term of three years and provided that of those members first taking office one-third shall serve for one year, one-third shall serve for two years and the remainder shall serve for three years. Notwithstanding the date of appointment, the terms of members first taking office shall be deemed to commence on the effective date of this chapter.

b. The mayor shall designate one of the members of the commission to be chairman and one to be vice-chairman.

3. The commission shall advise the commissioner and the mayor with respect to cultural activities in the city and in furtherance of this function shall:

- a. formulate and recommend goals with regard to cultural activities and policy;
- b. foster coordination among city, state and federal agencies and other organizations and institutions with respect to cultural activities;
- c. compile data and reports and submit its findings to the commissioner and the mayor; and
- d. perform such other related functions and duties which may, from time to time, be deemed appropriate by the mayor.

4. All city agencies are directed to cooperate with the commission, consistent with the law, in order to coordinate and promote cultural activities in this city.

HISTORICAL NOTE

Section added by L. L. 1976, No. 6.

Subd. 1 amended by L. L. 1977, No. 102.

FOOTNOTES

58

[Footnote 58]: * Chapter 67 added by L. L. 1976 No. 6.



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NYC Charter 2600

New York City Charter

CHAPTER 68 CONFLICTS OF INTEREST*59

§ 2600. **Preamble.**

Public service is a public trust. These prohibitions on the conduct of public servants are enacted to preserve the trust placed in the public servants of the city, to promote public confidence in government, to protect the integrity of government decision-making and to enhance government efficiency.

HISTORICAL NOTE

Section added at General Election, November 8, 1988.

FOOTNOTES

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[Footnote 59]: * Added at General Election, November 8, 1988, effective on January 1, 1990.



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NYC Charter 2601

New York City Charter

CHAPTER 68 CONFLICTS OF INTEREST*59

§ 2601. **Definitions.**

As used in this chapter.

1. "Advisory committee" means a committee, council, board or similar entity constituted to provide advice or recommendations to the city and having no authority to take a final action on behalf of the city or take any action which would have the effect of conditioning, limiting or requiring any final action by any other agency, or to take any action which is authorized by law.

2. "Agency" means a city, county, borough or other office, position, administration, department, division, bureau, board, commission, authority, corporation, advisory committee or other agency of government, the expenses of which are paid in whole or in part from the city treasury, and shall include but not be limited to the council, the offices of each elected official, the board of education, community school boards, community boards, the financial services corporation, the health and hospitals corporation, the public development corporation, and the New York city housing authority, but shall not include any court or any corporation or institution maintaining or operating a public library, museum, botanical garden, arboretum, tomb, memorial building, aquarium, zoological garden or similar facility.

3. "Agency served by a public servant" means (a) in the case of a paid public servant, the agency employing such public servant or (b) in the case of an unpaid public servant, the agency employing the official who has appointed such unpaid public servant unless the body to which the unpaid public servant has been appointed does not report to, or is not under the control of, the official or the agency of the official that has appointed the unpaid public servant, in which case the agency served by the unpaid public servant is the body to which the unpaid public servant has been appointed.

4. "Appear" means to make any communication, for compensation, other than those involving ministerial matters.

5. A person or firm "associated" with a public servant includes a spouse, domestic partner, child, parent or sibling; a person with whom the public servant has a business or other financial relationship; and each firm in which the public servant has a present or potential interest.

6. "Blind trust" means a trust in which a public servant, or the public servant's spouse, domestic partner, or unemancipated child, has a beneficial interest, the holdings and sources of income of which the public servant, the public servant's spouse, domestic partner, and unemancipated child have no knowledge, and which meets requirements established by rules of the board, which shall include provisions regarding the independent authority and discretion of the trustee, and the trustee's confidential treatment of information regarding the holdings and sources of income of the trust.

7. "Board" means the conflicts of interest board established by this chapter.

8. "Business dealings with the city" means any transaction with the city involving the sale, purchase, rental, disposition or exchange of any goods, services, or property, any license, permit, grant or benefit, and any performance of or litigation with respect to any of the foregoing, but shall not include any transaction involving a public servant's residence or any ministerial matter.

9. "City" means the city of New York and includes an agency of the city.

10. "Elected official" means a person holding office as mayor, comptroller, public advocate, borough president or member of the council.

11. "Firm" means sole proprietorship, joint venture, partnership, corporation and any other form of enterprise, but shall not include a public benefit corporation, local development corporation or other similar entity as defined by rule of the board.

12. "Interest" means an ownership interest in a firm or a position with a firm.

13. "Law" means state and local law, this charter, and rules issued pursuant thereto.

14. "Member" means a member of the board.

15. "Ministerial matter" means an administrative act, including the issuance of a license, permit or other permission by the city, which is carried out in a prescribed manner and which does not involve substantial personal discretion.

16. "Ownership interest" means an interest in a firm held by a public servant, or the public servant's spouse, domestic partner, or unemancipated child, which exceeds five percent of the firm or an investment of twenty-five thousand dollars in cash or other form of commitment, whichever is less, or five percent or twenty-five thousand dollars of the firm's indebtedness, whichever is less, and any lesser interest in a firm when the public servant, or the public servant's spouse, domestic partner, or unemancipated child exercises managerial control or responsibility regarding any such firm, but shall not include interests held in any pension plan, deferred compensation plan or mutual fund, the investments of which are not controlled by the public servant, the public servant's spouse, domestic partner, or unemancipated child, or in any blind trust which holds or acquires an ownership interest. The amount of twenty-five thousand dollars specified herein shall be modified by the board pursuant to subdivision a of section twenty-six hundred three.

17. "Particular matter" means any case, proceeding, application, request for a ruling or benefit, determination, contract limited to the duration of the contract as specified therein, investigation, charge, accusation, arrest, or other similar action which involves a specific party or parties, including actions leading up to the particular matter; provided that a particular matter shall not be construed to include the proposal, consideration, or enactment of local laws or

resolutions by the council, or any action on the budget or text of the zoning resolution.

18. "Position" means a position in a firm, such as an officer, director, trustee, employee, or any management position, or as an attorney, agent, broker, or consultant to the firm, which does not constitute an ownership interest in the firm.

19. "Public servant" means all officials, officers and employees of the city, including members of community boards and members of advisory committees, except unpaid members of advisory committees shall not be public servants.

20. "Regular employee" means all elected officials and public servants whose primary employment, as defined by rule of the board, is with the city, but shall not include members of advisory committees or community boards.

21. a. "Spouse" means a husband or wife of a public servant who is not legally separated from such public servant.

b. "Domestic partner" means persons who have a registered domestic partnership pursuant to section 3-240 of the administrative code, a domestic partnership registered in accordance with executive order number 123, dated August 7, 1989, or a domestic partnership registered in accordance with executive order number 48, dated January 7, 1993.

22. "Supervisory official" means any person having the authority to control or direct the work of a public servant.

23. "Unemancipated child" means any son, daughter, step-son or step-daughter who is under the age of eighteen, unmarried and living in the household of the public servant.

HISTORICAL NOTE

Section added at General Election, November 8, 1988.

Subds. 5, 6 amended L.L. 27/1998 § 5, eff. Sept. 5, 1998.

Subd. 10 amended L.L. 68/1993 § 16, eff. Jan. 1, 1994.

Subds. 16, 21 amended L.L. 27/1998 § 5, eff. Sept. 5, 1998.

FOOTNOTES

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[Footnote 59]: * Added at General Election, November 8, 1988, effective on January 1, 1990.



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NYC Charter 2602

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CHAPTER 68 CONFLICTS OF INTEREST*59

§ 2602. **Conflicts of interest board.**

a. There shall be a conflicts of interest board consisting of five members, appointed by the mayor with the advice and consent of the council. The mayor shall designate a chair.

b. Members shall be chosen for their independence, integrity, civic commitment and high ethical standards. No person while a member shall hold any public office, seek election to any public office, be a public employee in any jurisdiction, hold any political party office, or appear as a lobbyist before the city.

c. Each member shall serve for a term of six years; provided, however, that of the three members first appointed, one shall be appointed for a term to expire on March thirty-first, nineteen hundred ninety, one shall be appointed for a term to expire on March thirty-first, nineteen hundred ninety-two and one shall be appointed for a term to expire on March thirty-first, nineteen hundred ninety-four, and of the remaining members, one shall be appointed for a term to expire on March thirty first, nineteen hundred ninety two and one shall be appointed for a term to expire on March thirty first, nineteen hundred ninety four. If the mayor has not submitted to the council a nomination for appointment of a successor at least sixty days prior to the expiration of the term of the member whose term is expiring, the term of the member in office shall be extended for an additional year and the term of the successor to such member shall be shortened by an equal amount of time. If the council fails to act within forty-five days of receipt of such nomination from the mayor, the nomination shall be deemed to be confirmed. No member shall serve for more than two consecutive six-year terms. The three initial nominations by the mayor shall be made by the first day of February, nineteen hundred eighty-nine, and both later nominations by the mayor shall be made by the first day of March, nineteen hundred ninety.

d. Members shall receive a per diem compensation, no less than the highest amount paid to an official appointed to a board or commission with the advice and consent of the council and compensated on a per diem basis, for each calendar day when performing the work of the board.

e. Members of the board shall serve until their successors have been confirmed. Any vacancy occurring other than by expiration of a term shall be filled by nomination by the mayor made to the council within sixty days of the creation of the vacancy, for the unexpired portion of the term of the member succeeded. If the council fails to act within forty-five days of receipt of such nomination from the mayor, the nomination shall be deemed to be confirmed.

f. Members may be removed by the mayor for substantial neglect of duty, gross misconduct in office, inability to discharge the powers or duties of office or violation of this section, after written notice and opportunity for a reply.

g. The board shall appoint a counsel to serve at its pleasure and shall employ or retain such other officers, employees and consultants as are necessary to exercise its powers and fulfill its obligations. The authority of the counsel shall be defined in writing, provided that neither the counsel, nor any other officer, employee or consultant of the board shall be authorized to issue advisory opinions, promulgate rules, issue subpoenas, issue final determinations of violations of this chapter, or make final recommendations of or impose penalties. The board may delegate its authority to issue advisory opinions to the chair.

h. The board shall meet at least once a month and at such other times as the chair may deem necessary. Two members of the board shall constitute a quorum and all acts of the board shall be by the affirmative vote of at least two members of the board.

HISTORICAL NOTE

Section added at General Election, November 8, 1988.

Subds. a, c amended at General Election, November 7, 1989.

DERIVATION

Derived from former § 2600 repealed at General Election, November 8, 1988.

FOOTNOTES

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[Footnote 59]: * Added at General Election, November 8, 1988, effective on January 1, 1990.



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NYC Charter 2603

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CHAPTER 68 CONFLICTS OF INTEREST*59

§ 2603. **Powers and obligations.**

a. Rules. The board shall promulgate rules as are necessary to implement and interpret the provisions of this chapter, consistent with the goal of providing clear guidance regarding prohibited conduct. The board, by rule, shall once every four years adjust the dollar amount established in subdivision sixteen of section twenty-six hundred one of this chapter to reflect changes in the consumer price index for the metropolitan New York-New Jersey region published by the United States bureau of labor statistics.

b. Training and education. 1. The board shall have the responsibility of informing public servants and assisting their understanding of the conflicts of interest provisions of this chapter. In fulfilling this responsibility, the board shall develop educational materials regarding the conflicts of interest provisions and related interpretive rules and shall develop and administer an on-going program for the education of public servants regarding the provisions of this chapter.

2. The board shall provide training to all individuals who become public servants to inform them of the provisions of this chapter, shall assist agencies in conducting ongoing training programs, and shall make information concerning this chapter available and known to all public servants. On or before the tenth day after an individual becomes a public servant, such public servant must file a written statement with the board that such public servant has read and shall conform with the provisions of this chapter.

c. Advisory opinions. 1. The board shall render advisory opinions with respect to all matters covered by this chapter. An advisory opinion shall be rendered on the request of a public servant or a supervisory official of a public servant and shall apply only to such public servant. The request shall be in such form as the board may require and shall be signed by the person making the request. The opinion of the board shall be based on such facts as are presented in the request or subsequently submitted in a written, signed document.

2. Advisory opinions shall be issued only with respect to proposed future conduct or action by a public servant. A public servant whose conduct or action is the subject of an advisory opinion shall not be subject to penalties or sanctions by virtue of acting or failing to act due to a reasonable reliance on the opinion, unless material facts were omitted or misstated in the request for an opinion. The board may amend a previously issued advisory opinion after giving reasonable notice to the public servant that it is reconsidering its opinion; provided that such amended advisory opinion shall apply only to future conduct or action of the public servant.

3. The board shall make public its advisory opinions with such deletions as may be necessary to prevent disclosure of the identity of any public servant or other involved party. The advisory opinions of the board shall be indexed by subject matter and cross-indexed by charter section and rule number and such index shall be maintained on an annual and cumulative basis.

4. Not later than the first day of September, nineteen hundred ninety, the board shall initiate a rulemaking to adopt, as interpretive of the provisions of this chapter, any advisory opinions of the board of ethics constituted pursuant to chapter sixty-eight of the charter heretofore in effect, which the board determines to be consistent with and to have interpretive value in construing the provisions of this chapter.

5. For the purposes of this subdivision, public servant includes a prospective and former public servant, and a supervisory official includes a supervisory official who shall supervise a prospective public servant and a supervisory official who supervised a former public servant.

d. Financial disclosure. 1. All financial disclosure statements required to be completed and filed by public servants pursuant to state or local law shall be filed by such public servants with the board.

2. The board shall cause each statement filed with it to be examined to determine if there has been compliance with the applicable law concerning financial disclosure and to determine if there has been compliance with or violations of the provisions of this chapter.

3. The board shall issue rules concerning the filing of financial disclosure statements for the purpose of ensuring compliance by the city and all public servants with the applicable provisions of financial disclosure law.

e. Complaints. 1. The board shall receive complaints alleging violations of this chapter.

2. Whenever a written complaint is received by the board, it shall: (a) dismiss the complaint if it determines that no further action is required by the board; or

(b) refer the complaint to the commissioner of investigation if further investigation is required for the board to determine what action is appropriate; or

(c) make an initial determination that there is probable cause to believe that a public servant has violated a provision of this chapter; or

(d) refer an alleged violation of this chapter to the head of the agency served by the public servant, if the board deems the violation to be minor or if related disciplinary charges are pending against the public servant.

3. For the purposes of this subdivision, a public servant includes a former public servant.

f. Investigations. 1. The board shall have the power to direct the department of investigation to conduct an investigation of any matter related to the board's responsibilities under this chapter. The commissioner of investigation shall, within a reasonable time, investigate any such matter and submit a confidential written report of factual findings to the board.

2. The commissioner of investigation shall make a confidential report to the board concerning the results of all

investigations which involve or may involve violations of the provisions of this chapter, whether or not such investigations were made at the request of the board.

g. Referral of matters within the board's jurisdiction. 1. A public servant or supervisory official of such public servant may request the board to review and make a determination regarding a past or ongoing action of such public servant. Such request shall be reviewed and acted upon by the board in the same manner as a complaint received by the board under subdivision e of this section.

2. Whenever an agency receives a complaint alleging a violation of this chapter or determines that a violation of this chapter may have occurred, it shall refer such matter to the board. Such referral shall be reviewed and acted upon by the board in the same manner as a complaint received by the board under subdivision e of this section.

3. For the purposes of this subdivision, public servant includes a former public servant, and a supervisory official includes a supervisory official who supervised a former public servant.

h. Hearings. 1. If the board makes an initial determination, based on a complaint, investigation or other information available to the board, that there is probable cause to believe that the public servant has violated a provision of this chapter, the board shall notify the public servant of its determination in writing. The notice shall contain a statement of the facts upon which the board relied for its determination of probable cause and a statement of the provisions of law allegedly violated. The board shall also inform the public servant of the board's procedural rules. Such public servant shall have a reasonable time to respond, either orally or in writing, and shall have the right to be represented by counsel or any other person.

2. If, after receipt of the public servant's response, the board determines that there is no probable cause to believe that a violation has occurred, the board shall dismiss the matter and inform the public servant in writing of its decision. If, after the consideration of the response by the public servant, the board determines there remains probable cause to believe that a violation of the provisions of this chapter has occurred, the board shall hold or direct a hearing to be held on the record to determine whether such violation has occurred, or shall refer the matter to the appropriate agency if the public servant is subject to the jurisdiction of any state law or collective bargaining agreement which provides for the conduct of disciplinary proceedings, provided that when such a matter is referred to an agency, the agency shall consult with the board before issuing a final decision.

3. If the board determines, after a hearing or the opportunity for a hearing, that a public servant has violated provisions of this chapter, it shall, after consultation with the head of the agency served or formerly served by the public servant, or in the case of an agency head, with the mayor, issue an order either imposing such penalties provided for by this chapter as it deems appropriate, or recommending such penalties to the head of the agency served or formerly served by the public servant, or in the case of an agency head, to the mayor; provided, however, that the board shall not impose penalties against members of the council, or public servants employed by the council or by members of the council, but may recommend to the council such penalties as it deems appropriate. The order shall include findings of fact and conclusions of law. When a penalty is recommended, the head of the agency or the council shall report to the board what action was taken.

4. Hearings of the board shall not be public unless requested by the public servant. The order and the board's findings and conclusions shall be made public.

5. The board shall maintain an index of all persons found to be in violation of this chapter, by name, office and date of order. The index and the determinations of probable cause and orders in such cases shall be made available for public inspection and copying.

6. Nothing contained in this section shall prohibit the appointing officer of a public servant from terminating or otherwise disciplining such public servant, where such appointing officer is otherwise authorized to do so; provided, however, that such action by the appointing officer shall not preclude the board from exercising its powers and duties

under this chapter with respect to the actions of any such public servant.

7. For the purposes of this subdivision, the term public servant shall include a former public servant.

i. Annual report. The board shall submit an annual report to the mayor and the council in accordance with section eleven hundred and six of this charter. The report shall include a summary of the proceedings and activities of the board, a description of the education and training conducted pursuant to the requirements of this chapter, a statistical summary and evaluation of complaints and referrals received and their disposition, such legislative and administrative recommendations as the board deems appropriate, the rules of the board, and the index of opinions and orders of that year. The report, which shall be made available to the public, shall not contain information, which, if disclosed, would constitute an unwarranted invasion of the privacy of a public servant.

j. Revision. The board shall review the provisions of this chapter and shall recommend to the council from time to time such changes or additions as it may consider appropriate or desirable. Such review and recommendation shall be made at least once every five years.

k. Except as otherwise provided in this chapter, the records, reports, memoranda and files of the board shall be confidential and shall not be subject to public scrutiny.

HISTORICAL NOTE

Section added at General Election, November 8, 1988.

Subd. c par. 4 amended L. L. 95/89 § 2.

DERIVATION

Derived from former §§ 2601 Investigations, 2602 Advisory Opinions and 2603 Revision, repealed at General Election, November 8, 1988, amended by L. L. 102/1977, L. L. 29/1979.

CASE NOTES

¶ 1. Section 2604(b)(15) of NY City Charter prohibits high city officials from holding certain political offices is intended to eliminate conflicts of interest. Section 2600 sets forth the guiding purpose of the Charter's conflict of interest provisions (NY City Charter ch. 68). Section 2603(a) delegates to the Conflicts of Interest Board the general power to make such rules as are necessary under Chapter 68 and provides reasonable standards to govern the Board's action in a limited and specified field for a stated purpose. The authority of the board to promulgate these rules is not an unconstitutional delegation of rule making authority. *Golden v. Clark*, 76 NY2d 618.

¶ 2. Ignorance of the law is not a defense to an enforcement case. The ethics training provision in this section does not act as a condition precedent for bringing an enforcement action. *Conflicts of Interest Bd. v. Capetanakis*, OATH Index No. 604/01 (Feb. 27, 2001), adopted in substantial part, Board Determination (July 16, 2001).

FOOTNOTES



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CHAPTER 68 CONFLICTS OF INTEREST*59

§ 2604. **Prohibited interests and conduct.**

a. Prohibited interests in firms engaged in business dealings with the city.

1. Except as provided in paragraph three below,

(a) no public servant shall have an interest in a firm which such public servant knows is engaged in business dealings with the agency served by such public servant; provided, however, that, subject to paragraph one of subdivision b of this section, an appointed member of a community board shall not be prohibited from having an interest in a firm which may be affected by an action on a matter before the community or borough board, and

(b) no regular employee shall have an interest in a firm which such regular employee knows is engaged in business dealings with the city, except if such interest is in a firm whose shares are publicly traded, as defined by rule of the board.

2. Prior to acquiring or accepting an interest in a firm whose shares are publicly traded, a public servant may submit a written request to the head of the agency served by the public servant for a determination of whether such firm is engaged in business dealings with such agency. Such determination shall be in writing, shall be rendered expeditiously and shall be binding on the city and the public servant with respect to the prohibition of subparagraph a of paragraph one of this subdivision.

3. An individual who, prior to becoming a public servant, has an ownership interest which would be prohibited by paragraph one above; or a public servant who has an ownership interest and did not know of a business dealing which would cause the interest to be one prohibited by paragraph one above, but has subsequently gained knowledge of such business dealing; or a public servant who holds an ownership interest which, subsequent to the public servant's acquisition of the interest, enters into a business dealing which would cause the ownership interest to be one prohibited

by paragraph one above; or a public servant who, by operation of law, obtains an ownership interest which would be prohibited by paragraph one above shall, prior to becoming a public servant or, if already a public servant, within ten days of knowing of the business dealing, either:

- (a) divest the ownership interest; or
- (b) disclose to the board such ownership interest and comply with its order.

4. When an individual or public servant discloses an interest to the board pursuant to paragraph three of this subdivision, the board shall issue an order setting forth its determination as to whether or not such interest, if maintained, would be in conflict with the proper discharge of the public servant's official duties. In making such determination, the board shall take into account the nature of the public servant's official duties, the manner in which the interest may be affected by any action of the city, and the appearance of conflict to the public. If the board determines a conflict exists, the board's order shall require divestiture or such other action as it deems appropriate which may mitigate such a conflict, taking into account the financial burden of any decision on the public servant.

5. For the purposes of this subdivision, the agency served by

- (a) an elected official, other than a member of the council, shall be the executive branch of the city government,
- (b) a public servant who is a deputy mayor, the director of the office of management and budget, commissioner of citywide administrative services, corporation counsel, commissioner of finance, commissioner of investigation or chair of the city planning commission, or who serves in the executive branch of city government and is charged with substantial policy discretion involving city-wide policy as determined by the board, shall be the executive branch of the city government,
- (c) a public servant designated by a member of the board of estimate to act in the place of such member as a member of the board of estimate, shall include the board of estimate, and
- (d) a member of the council shall be the legislative branch of the city government.

6. For the purposes of subdivisions a and b of section twenty-six hundred six, a public servant shall be deemed to know of a business dealing with the city if such public servant should have known of such business dealing with the city.

b. Prohibited conduct. 1. A public servant who has an interest in a firm which is not prohibited by subdivision a of this section, shall not take any action as a public servant particularly affecting that interest, except that

- (a) in the case of an elected official, such action shall not be prohibited, but the elected official shall disclose the interest to the conflicts of interest board, and on the official records of the council or the board of estimate in the case of matters before those bodies,
- (b) in the case of an appointed community board member, such action shall not be prohibited, but no member may vote on any matter before the community or borough board which may result in a personal and direct economic gain to the member or any person with whom the member is associated, and
- (c) in the case of all other public servants, if the interest is less than ten thousand dollars, such action shall not be prohibited, but the public servant shall disclose the interest to the board.

2. No public servant shall engage in any business, transaction or private employment, or have any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties.

3. No public servant shall use or attempt to use his or her position as a public servant to obtain any financial

gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant.

4. No public servant shall disclose any confidential information concerning the property, affairs or government of the city which is obtained as a result of the official duties of such public servant and which is not otherwise available to the public, or use any such information to advance any direct or indirect financial or other private interest of the public servant or of any other person or firm associated with the public servant; provided, however, that this shall not prohibit any public servant from disclosing any information concerning conduct which the public servant knows or reasonably believes to involve waste, inefficiency, corruption, criminal activity or conflict of interest.

5. No public servant shall accept any valuable gift, as defined by rule of the board, from any person or firm which such public servant knows is or intends to become engaged in business dealings with the city, except that nothing contained herein shall prohibit a public servant from accepting a gift which is customary on family and social occasions.

6. No public servant shall, for compensation, request private interests before any city agency or appear directly or indirectly on behalf of private interests in matters involving the city. For a public servant who is not a regular employee, this prohibition shall apply only to the agency served by the public servant.

7. No public servant shall appear as attorney or counsel against the interests of the city in any litigation to which the city is a party, or in any action or proceeding in which the city, or any public servant of the city, acting in the course of official duties, is a complainant, provided that this paragraph shall not apply to a public servant employed by an elected official who appears as attorney or counsel for that elected official in any litigation, action or proceeding in which the elected official has standing and authority to participate by virtue of his or her capacity as an elected official, including any part of a litigation, action or proceeding prior to or at which standing or authority to participate is determined. This paragraph shall not in any way be construed to expand or limit the standing or authority of any elected official to participate in any litigation, action or proceeding, nor shall it in any way affect the powers and duties of the corporation counsel. For a public servant who is not a regular employee, this prohibition shall apply only to the agency served by the public servant.

8. No public servant shall give opinion evidence as a paid expert against the interests of the city in any civil litigation brought by or against the city. For a public servant who is not a regular employee, this prohibition shall apply only to the agency served by the public servant.

9. No public servant shall,

(a) coerce or attempt to coerce, by intimidation, threats or otherwise, any public servant to engage in political activities, or

(b) request any subordinate public servant to participate in a political campaign. For purposes of this subparagraph, participation in a political campaign shall include managing or aiding in the management of a campaign, soliciting votes or canvassing voters for a particular candidate or performing any similar acts which are unrelated to the public servant's duties or responsibilities. Nothing contained herein shall prohibit a public servant from requesting a subordinate public servant to speak on behalf of a candidate, or provide information or perform other similar acts, if such acts are related to matters within the public servant's duties or responsibilities.

10. No public servant shall give or promise to give any portion of the public servant's compensation, or any money, or valuable thing to any person in consideration of having been or being nominated, appointed, elected or employed as a public servant.

11. No public servant shall, directly or indirectly,

(a) compel, induce or request any person to pay any political assessment, subscription or contribution, under

threat of prejudice to or promise of or to secure advantage in rank, compensation or other job-related status or function,

(b) pay or promise to pay any political assessment, subscription or contribution in consideration of having been or being nominated, elected or employed as such public servant or to secure advantage in rank, compensation or other job-related status or function, or

(c) compel, induce or request any subordinate public servant to pay any political assessment, subscription or contribution.

12. No public servant, other than an elected official, who is a deputy mayor, or head of an agency or who is charged with substantial policy discretion as defined by rule of the board, shall directly or indirectly request any person to make or pay any political assessment, subscription or contribution for any candidate for an elective office of the city or for any elected official who is a candidate for any elective office; provided that nothing contained in this paragraph shall be construed to prohibit such public servant from speaking on behalf of any such candidate or elected official at an occasion where a request for a political assessment, subscription or contribution may be made by others.

13. No public servant shall receive compensation except from the city for performing any official duty or accept or receive any gratuity from any person whose interests may be affected by the public servant's official action.

14. No public servant shall enter into any business or financial relationship with another public servant who is a superior or subordinate of such public servant.

15. No elected official, deputy mayor, deputy to a citywide or boroughwide elected official, head of an agency, or other public servant who is charged with substantial policy discretion as defined by rule of the board may be a member of the national or state committee of a political party, serve as an assembly district leader of a political party or serve as the chair or as an officer of the county committee or county executive committee of a political party, except that a member of the council may serve as an assembly district leader or hold any lesser political office as defined by rule of the board.

c. This section shall not prohibit:

1. an elected official from appearing without compensation before any city agency on behalf of constituents or in the performance of public official or civic obligations;

2. a public servant from accepting or receiving any benefit or facility which is provided for or made available to citizens or residents, or classes of citizens or residents, under housing or other general welfare legislation or in the exercise of the police power;

3. a public servant from obtaining a loan from any financial institution upon terms and conditions available to members of the public; 4. any physician, dentist, optometrist, podiatrist, pharmacist, chiropractor or other person who is eligible to provide services or supplies under title eleven of article five of the social services law and is receiving any salary or other compensation from the city treasury, from providing professional services and supplies to persons who are entitled to benefits under such title, provided that, in the case of services or supplies provided by those who perform audit, review or other administrative functions pursuant to the provisions of such title, the New York state department of health reviews and approves payment for such services or supplies and provided further that there is no conflict with their official duties; nothing in this paragraph shall be construed to authorize payment to such persons under such title for services or supplies furnished in the course of their employment by the city;

5. any member of the uniformed force of the police department from being employed in the private security field, provided that such member has received approval from the police commissioner therefor and has complied with all rules and regulations promulgated by the police commissioner relating to such employment;

6. a public servant from acting as attorney, agent, broker, employee, officer, director or consultant for any not-for-profit corporation, or association, or other such entity which operates on a not-for-profit basis, interested in business dealings with the city, provided that: (a) such public servant takes no direct or indirect part in such business dealings;

(b) such not-for-profit entity has no direct or indirect interest in any business dealings with the city agency in which the public servant is employed and is not subject to supervision, control or regulation by such agency, except where it is determined by the head of an agency, or by the mayor where the public servant is an agency head, that such activity is in furtherance of the purposes and interests of the city;

(c) all such activities by such public servant shall be performed at times during which the public servant is not required to perform services for the city; and

(d) such public servant receives no salary or other compensation in connection with such activities;

7. a public servant, other than elected officials, employees in the office of property management of the department of housing preservation and development, employees in the department of citywide administrative services who are designated by the commissioner of such department pursuant to this paragraph, and the commissioners, deputy commissioners, assistant commissioners and others of equivalent ranks in such departments, or the successors to such departments, from bidding on and purchasing any city-owned real property at public auction or sealed bid sale, or from purchasing any city-owned residential building containing six or less dwelling units through negotiated sale, provided that such public servant, in the course of city employment, did not participate in decisions or matters affecting the disposition of the city property to be purchased and has no such matters under active consideration; The commissioner of citywide administrative services shall designate all employees of the department of citywide administrative services whose functions relate to citywide real property matters to be subject to this paragraph; or

8. a public servant from participating in collective bargaining or from paying union or shop fees or dues or, if such public servant is a union member, from requesting a subordinate public servant who is a member of such union to contribute to union political action committees or other similar entities.

d. Post-employment restrictions. 1. No public servant shall solicit, negotiate for or accept any position (i) from which, after leaving city service, the public servant would be disqualified under this subdivision, or (ii) with any person or firm who or which is involved in a particular matter with the city, while such public servant is actively considering, or is directly concerned or personally participating in such particular matter on behalf of the city.

2. No former public servant shall, within a period of one year after termination of such person's service with the city, appear before the city agency served by such public servant; provided, however, that nothing contained herein shall be deemed to prohibit a former public servant from making communications with the agency served by the public servant which are incidental to an otherwise permitted appearance in an adjudicative proceeding before another agency or body, or a court, unless the proceeding was pending in the agency served during the period of the public servant's service with that agency. For the purposes of this paragraph, the agency served by a public servant designated by a member of the board of estimate to act in the place of such member as a member of the board of estimate, shall include the board of estimate.

3. No elected official, nor the holder of the position of deputy mayor, director of the office of management and budget, commissioner of citywide administrative services, corporation counsel, commissioner of finance, commissioner of investigation or chair of the city planning commission shall, within a period of one year after termination of such person's employment with the city, appear before any agency in the branch of city government served by such person. For the purposes of this paragraph, the legislative branch of the city consists of the council and the offices of the council, and the executive branch of the city consists of all other agencies of the city, including the office of the public advocate.

4. No person who has served as a public servant shall appear, whether paid or unpaid, before the city, or receive compensation for any services rendered, in relation to any particular matter involving the same party or parties with respect to which particular matter such person had participated personally and substantially as a public servant through decision, approval, recommendation, investigation or other similar activities.

5. No public servant shall, after leaving city service, disclose or use for private advantage any confidential information gained from public service which is not otherwise made available to the public; provided, however, that this shall not prohibit any public servant from disclosing any information concerning conduct which the public servant knows or reasonably believes to involve waste, inefficiency, corruption, criminal activity or conflict of interest.

6. The prohibitions on negotiating for and having certain positions after leaving city service, shall not apply to positions with or representation on behalf of any local, state or federal agency.

7. Nothing contained in this subdivision shall prohibit a former public servant from being associated with or having a position in a firm which appears before a city agency or from acting in a ministerial matter regarding business dealings with the city.

e. Allowed positions. A public servant or former public servant may hold or negotiate for a position otherwise prohibited by this section, where the holding of the position would not be in conflict with the purposes and interests of the city, if, after written approval by the head of the agency or agencies involved, the board determines that the position involves no such conflict. Such findings shall be in writing and made public by the board.

HISTORICAL NOTE

Section added at General Election, November 8, 1988.

Subd. b par. 15 added at General Election, November 7, 1989.

Subd. a par 5 subpar (b) amended L.L. 59/1996 § 27, eff. Aug. 8, 1996.

Subd. c par 7 amended L.L. 59/1996 § 28, eff. Aug. 8, 1996.

Subd. d par 3 amended L.L. 59/1996 § 29, eff. Aug. 8, 1996.

DERIVATION

Derived from former §§ 2604 Conflicts of Interest, 2605 Corrupt practices, 2606 Political Contributions and 2607 False reports; compensation; gratuities, repealed at General Election, November 8, 1988, all amended by chap. 763/1978, § 2604 further amended by L. L. 41/1980, L. L. 33/1979, L. L. 41/1979, chap. 687/1986.

CASE NOTES FROM FORMER SECTION 2604

¶ 1. Request of petitioners who were police officers and shareholders of a corporation, for approval of the commissioner to participate in the affairs of the corporation by keeping records and exercising inventory and purchasing control should not have been denied on ground that they would thereby have an indirect interest in "business dealings with the city" because of a contract that the corporation had with another corporation to sell certain items in the area adjacent to the Yankee Stadium which the New York Yankees leased from the city.-Matter of Smith (McGuire), 182 (8) N. Y. L. J. (7-12-79) 15, Col. 1 M.

¶ 2. This statute is not pre-empted by Public Authorities Law § 1211 and is applicable to Transit Authority employees and to such of their acts as occur after January 1, 1977, and thus a senior executive officer of the Transit Authority could be prosecuted for alleged improper receipt of meals occurring after that date.-People v. DeRoos, 118 Misc. 2d 445 [1983].

¶ 3. This section was designed to prohibit gifts to public officials, and clearly was not directed at political contributions which are the subject of § 2606 of the Charter. Thus the plaintiff cannot use this section to challenge campaign contributions to his opponent. *DiLucia v. Mandelker*, 68 N. Y. 2d 844 [1986].

CASE NOTES

¶ 1. Revised advisory opinion of board of ethics that Ralph Lamberti, now Borough President of Staten Island, should not have made an investment in Copperflag Corp, a developer, because of unrevealed extensive lobbying for the corporate project. The new opinion of conflict of interest was used by the Public Development Corporation to cancel the contract for sale of site. Petitioner maintains that § 2602 allows for deletion of names of involved parties so they will not suffer adverse consequences. A new revised opinion should be issued.-*Matter of N v. NYC Bd of Ethics*, 139 Misc. 2d 634 [1988].

¶ 2. The consolidation of the New York City sheriff's office with the New York City Finance Department is not a prohibited conflict of interest, even though on occasion the sheriff is called upon to enforce judgments against the City. *Fucito v. Vallone*, 166 Misc.2d 785, 635 N.Y.S.2d 415 (Sup.Ct. New York Co. 1995).

¶ 3. An architect for the City Department of Housing Preservation and Development who offers, for a fee, to assist a private community organization in obtaining government grant money, can be dismissed from his position. *Sullivan v. City of New York Housing Preservation and Development*, 162 A.D.2d 147, 556 N.Y.S.2d 568 (1st Dept. 1990).

¶ 4. That portion of the statute which required high City officers to forego certain political offices as a qualification for holding public office, was held to have a rational basis; thus, the constitutionality of the provision was upheld. The court found that there was a legitimate legislative purpose, i.e. to eliminate the conflicts of interest that exist when the officials are simultaneously subject to the demands of both their constituencies and their political parties. The law did not violate the equal protection or free speech provisions of the state constitution. *Golden v. Clark*, 76 N.Y.2d 618, 563 N.Y.S.2d 1 (1990).

¶ 5. In one case, a former acting commissioner of the Department of Buildings (DOB) had overseen the City's investigation of a scaffolding collapse that was now the subject of insurance litigation. The court held that under the City's conflict of interest rules, he could not testify as an expert witness for one of the litigants. However, the court held that an engineer, who was employed by an engineering firm retained by the City to participate in the investigation, was not precluded from testifying as an expert witness. The engineer was neither employed or paid by the City, and was not considered a public servant. *St. Paul Fire & Marine Ins. Co. v. Universal Builders Supply*, 279 F.Supp.2d 169 (S.D.N.Y. 2003).

¶ 6. A contract under which an architect, who had recently been employed by the New York City Board of Education, was to act as project manager for a conversion of a building into school facilities, was held to be unenforceable. Although the statute did not specifically provide that the contract was unenforceable, the court considered the particular circumstances of the case. The architect had resigned from his position at the Board of Education, and only two months later obtained a lucrative contract to provide project management services for the same leased-facility program which he had monitored as a Board of Education employee. The court said that the architect had unclean hands. *RAC Group Inc. v. Bd. of Education*, 21 A.D.3d 243, 799 N.Y.S.2d 559 (2nd Dept. 2005), leave to appeal denied, 6 N.Y.2d 702, 810 N.Y.S.2d 416 (2005).

¶ 7. The Board imposed fine of \$7,500.00 for respondent's violation of Charter section 2604(b)(3). *Conflicts of Interest Bd v. Holtzman*, OATH Index No. 581/94 (Nov. 23, 1994), *aff'd in part, rev'd in part*, COIB Case No. 93-121 (Apr. 3, 1996), *aff'd*, *Holtzman v. Oliensis*, 91 N.Y.2d 488, 673 N.Y.S.2d 23 (1998).

¶ 8. Community board members are not prohibited from having an interest in firms which may be affected by an action on a matter before the community board. However, subsection (b)(1)(b) of this section prohibits community board members from voting on any matter which "may result" in a personal and direct financial gain to the member or

person associated with the member. The Board interprets "may result" language to include even a mere possibility greater than zero. Held, community board member violated this section when he voted on whether it supported the development of vacant lots that the member had an ownership interest in. The community board member's votes also constituted an attempt to use his position for "financial gain" in violation of subsection (b)(3) of this section. Fine of \$4,000 imposed. *Conflicts of Interest Bd. v. Capetanakis*, OATH Index No. 604/01 (Feb. 27, 2001), adopted in substantial part, Board Determination (July 16, 2001).

¶ 9. Community Board member with an ownership interest in vacant lots did not violate subsection (b)(2) of this section when he voted on whether the Board supported the development of those lots, as member did not have a "business," "transaction," "private employment," or "other private interest" in the property. *Conflicts of Interest Bd. v. Capetanakis*, OATH Index No. 604/01 (Feb. 27, 2001), adopted in substantial part, Board Determination (July 16, 2001).

¶ 10. An attorney employed by the Department of Finance (DOF) violates the statute if he engages in private law practice by submitting documents, on behalf of clients, to the DOF. The Department of Investigation (DOI) received an anonymous tip that this employee was engaging in improper private practice, and the DOI issued a subpoena which demanded, among other things, his client list. The court held that to the extent that the subpoena related to the client list, it would put him in jeopardy of criminal prosecution for representing clients on tax matters while employed by DOF, it violated the attorney's privilege against self-incrimination. The court explained that if DOI's main concern is prosecuting people for conflicts of interest, it cannot compel a person to inculcate himself via the subpoena. On the other hand, if the DOI's concern is to learn whether any decisions regarding taxpayers were tainted by conflict of interest and to obtain a reversal of those decisions, it should grant immunity to the employee and then demand the relevant information. *Brasky v. New York City Dept. of Investigation*, 40 A.D.3d 531, 840 N.Y.S.2d 315 (1st Dept. 2007).

¶ 11. City employee violated subsection (d)(1)(ii) when, pursuant to his official duties, he approved invoices for a firm while he was negotiating for employment with the firm's parent company. Fine of \$1500 imposed. *Conflicts of Interest Bd. v. Pentangelo*, OATH Index No. 422/07 (Mar. 8, 2007), adopted, *Conflicts of Interest Bd. Case No. 99-026* (July 13, 2007).

¶ 12. To establish a violation of subsection (d)(1)(ii), the Board must prove that the employee negotiated for and/or accepted a position with a firm which the employee was then involved, on behalf of the City, in a particular matter pending before the City. The Board does not have to prove that respondent's new position relates to the "particular matter" involving the vendor respondent worked on while in City service. *Conflicts of Interest Bd. v. Pentangelo*, *Conflicts of Interest Bd. Case No. 99-026* (July 13, 2007), adopting, OATH Index No. 422/07 (Mar. 8, 2007).

¶ 13. City employee's use of City van for personal purposes violated section 2604(b)(2) and 2604(b)(3) of the City Charter. \$5000 fine imposed as the penalty where the employee had already resigned from his City position in face of prior disciplinary charges. *Conflicts of Interest Bd. v. Allen*, OATH Index No. 1791/07 (June 12, 2007), adopted, *Conflicts of Interest Bd. Case No. 06-411* (Sept. 11, 2007).

¶ 14. Fine of \$4000 imposed upon former director of information technology at Department of Correction who received \$4100 in personal loans from a subcontractor who was hired to provide technology services to the department. *Conflicts of Interest Bd. v. Norwood*, *Conflicts of Interest Bd. Case No. 05-365* (Oct. 10, 2007), adopting, OATH Index No. 1974/07 (Jul. 11, 2007).

¶ 15. A construction laborer accepted money as a gratuity from an undercover officer posing as a plumbing contractor, in violation of section 2604(b)(13) of the City Charter. In a default proceeding, the laborer's employment was terminated. *Dep't of Environmental Protection v. DePalma*, OATH Index No. 533/08 (Dec. 12, 2007).

¶ 16. Pursuant to subsection (b)(13) of this section, a public servant is prohibited from receiving a gratuity of any value from any person or entity whose interest may be affected by the public servant's action. There is no requirement that the gratuity be worth \$50 or more or that it come from an entity doing business with the City. Therefore, the ALJ erred when she referred to the Board's valuable gift rule (1-01) when analyzing whether the respondent violated this Charter subsection. **Conflicts of Interest Bd. v. Okanome**, OATH Index No. 110/08 (Nov. 9, 2007), **adopted**, Bd. Dec. (Mar. 10, 2008).

¶ 17. Child protective specialist violated subsections (b)(2), (b)(3), and (b)(13) when he solicited home repair work from a client in exchange for a promise to help the client's family. Fine of \$7,000 was imposed. **Conflicts of Interest Bd. v. Okanome**, OATH Index No. 110/08 (Nov. 9, 2007), **adopted**, Bd. Dec. (Mar. 10, 2008).

¶ 18. An assistant principal of a New York City public school violated subsections (b)(2) and (b)(3) when she failed to deposit \$8,500 into a school account and instead used the funds from the account for her personal benefit and other non-city purposes, including purchasing intimate apparel and a handbag, and to pay a teacher's parking ticket. The ALJ rejected the assistant principal's unverified defense that she was only reimbursing herself for school related purchases as implausible. Further, even if she had been reimbursing herself, she failed to follow agency procedures and gave priority to her claims over those of vendors or other teachers, thereby using her position as custodian of the student fund for personal advantage. \$7,500 fine imposed. **Conflicts of Interest Bd. v. Bryan**, OATH Index No. 1366/08 (Aug. 14, 2008), **adopted**, Chair's Dec. (Nov. 18, 2008).

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FOOTNOTES

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[Footnote 59]: * Added at General Election, November 8, 1988, effective on January 1, 1990.



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NYC Charter 2605

New York City Charter

CHAPTER 68 CONFLICTS OF INTEREST*59

§ 2605. **Reporting.**

No public servant shall attempt to influence the course of any proposed legislation in the legislative body of the city without publicly disclosing on the official records of the legislative body the nature and extent of any direct or indirect financial or other private interest the public servant may have in such legislation.

HISTORICAL NOTE

Section added at General Election, November 8, 1988.

FOOTNOTES

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[Footnote 59]: * Added at General Election, November 8, 1988, effective on January 1, 1990.



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NYC Charter 2606

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CHAPTER 68 CONFLICTS OF INTEREST*59

§ 2606. **Penalties.**

a. Upon a determination by the board that a violation of section twenty-six hundred four or twenty-six hundred five of this chapter, involving a contract work, business, sale or transaction, has occurred, the board shall have the power, after consultation with the head of the agency involved, or in the case of an agency head, with the mayor, to render forfeit and void the transaction in question.

b. Upon a determination by the board that a violation of section twenty-six hundred four or twenty-six hundred five of this chapter has occurred, the board, after consultation with the head of the agency involved, or in the case of an agency head, with the mayor, to impose fines of up to ten thousand dollars, and to recommend to the appointing authority, or person or body charged by law with responsibility for imposing such penalties, suspension or removal from office or employment.

c. Any person who violates section twenty-six hundred four or twenty-six hundred five of this chapter shall be guilty of a misdemeanor and, on conviction thereof, shall forfeit his or her public office or employment. Any person who violates paragraph ten of subdivision b of section twenty-six hundred four, on conviction thereof, shall additionally be forever disqualified from being elected, appointed or employed in the service of the city. A public servant must be found to have had actual knowledge of a business dealing with the city in order to be found guilty under this subdivision, of a violation of subdivision a of section twenty-six hundred four of this chapter.

d. Notwithstanding the provisions of subdivisions a, b and c of this section, no penalties shall be imposed for a violation of paragraph two of subdivision b of section twenty-six hundred four unless such violation involved conduct identified by rule of the board as prohibited by such paragraph.

HISTORICAL NOTE

Section added at General Election, November 8, 1988.

CASE NOTES

¶ 1. Board imposed penalty of \$84,000.00 fine upon former City Sheriff for fifteen violations of § 2604(b)(3). Conflicts of Interest Bd. v. Katsorhis, OATH Index No. 1531/97 (Feb. 12, 1998), adopted in part, modified in part, COIB Case No. 94-351 (Sept. 17, 1998).

¶ 2. The Board imposed fine of \$7,500.00 for respondent's violation of Charter section 2604(b)(3). Conflicts of Interest Bd v. Holtzman, OATH Index No. 581/94 (Nov. 23, 1994), aff'd in part, rev'd in part, COIB Case No. 93-121 (Apr. 3, 1996), aff'd sub. nom., Holtzman v. Oliensis, 91 N.Y.2d 488, 673 N.Y.S.2d 23 (1998).

FOOTNOTES

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[Footnote 59]: * Added at General Election, November 8, 1988, effective on January 1, 1990.



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NYC Charter 2607

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CHAPTER 68 CONFLICTS OF INTEREST*59

§ 2607. **Gifts by lobbyists.**

Complaints made pursuant to subchapter three of chapter two of title three of the administrative code shall be made, received, investigated and adjudicated in a manner consistent with investigations and adjudications of conflicts of interest pursuant to this chapter and chapter thirty-four.

HISTORICAL NOTE

Section added L.L. 16/2006 § 2, eff. Dec. 10, 2006. [See Ad Cd T3 Chapter 2 Subchapter 3 footnote]

FOOTNOTES

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[Footnote 59]: * Added at General Election, November 8, 1988, effective on January 1, 1990.



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NYC Charter 2700

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CHAPTER 69 COMMUNITY DISTRICTS AND COTERMINALITY OF SERVICES*60

§ 2700. **Declaration of intent.**

It is the intent of this chapter to encourage and facilitate coterminous community districts and service districts to be used for the planning of community life within the city, the participation of citizens in city government within their communities, and the efficient and effective organization of agencies that deliver municipal services in local communities and boroughs.

HISTORICAL NOTE

Section added at General Election, November 4, 1975.

Amended by L. L. 1977, No. 102.

Section amended at General Election, November 7, 1989.

FOOTNOTES

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[Footnote 60]: * Chapter 69 added at General Election of November 4, 1975.



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NYC Charter 2701

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CHAPTER 69 COMMUNITY DISTRICTS AND COTERMINALITY OF SERVICES*60

§ 2701. **Community districts.**

a. Each community district shall:

(1) Lie within the boundaries of a single borough, except as provided in subdivisions d and e of this section, and coincide with historic, geographic and identifiable communities from which the city has developed;

(2) Be suitable for the efficient and effective delivery of those services of municipal agencies required to be made coterminous with the community districts, pursuant to section two thousand seven hundred four, including particularly the service and districting requirements of the police and sanitation departments; and,

(3) Be compact and contiguous and have a population of not more than two hundred fifty thousand persons.

b. Community districts shall be as nearly equal in population with each other as is possible under the criteria in paragraphs one, two and three of subdivision a of this section.

c. With respect to the city's central business district in the borough of Manhattan from fifty-ninth street south, the council may adopt as part of the community district map, districts which shall reflect its unique character as the city's financial, business and entertainment center. In so doing, the council shall take into consideration the residential, working and other daytime population as well as the hotel and transient or other nighttime populations and adhere as nearly as possible to the provisions of paragraph (3) of subdivision a of this section.

d. The community district map for the borough of Manhattan shall include Roosevelt Island, located in the east river, as part of a community district in the borough of Manhattan, immediately opposite and to the west of Roosevelt Island. However, for the purposes of meeting the requirements of section twenty-seven hundred four relating to coterminality of local services, section twenty-seven hundred five relating to district service cabinets and section

twenty-seven hundred seven relating to agency budget and service statements, Roosevelt Island shall be deemed included within a community district of the borough of Queens immediately opposite and to the east of Roosevelt Island. The chairperson of the community board of the Manhattan community district which includes Roosevelt Island, or his or her designee, shall be a member of the district service cabinet of each of the community districts in which Roosevelt Island is included in the respective boroughs.

e. The community district map for the borough of the Bronx shall include that portion of the borough of Manhattan which lies north of the Harlem River.

HISTORICAL NOTE

Section added at General Election, November 4, 1975.

Subd. e added by L. L. 1977, No. 22.

Subd. f added by L. L. 1977, No. 22.

Section amended at General Election, November 7, 1989.

FOOTNOTES

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[Footnote 60]: * Chapter 69 added at General Election of November 4, 1975.



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NYC Charter 2702

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CHAPTER 69 COMMUNITY DISTRICTS AND COTERMINALITY OF SERVICES*60

§ 2702. **Preparation and adoption of map.**

a. The map of community districts in effect as of the seventh day of November, nineteen hundred eighty-nine shall be continued until modified pursuant to this section. Not later than the first day of May nineteen hundred ninety-four and every tenth year thereafter, the mayor shall, and at such other times as the mayor deems appropriate, the mayor may, prepare and present to the council a report reviewing the community district map then in force and presenting such recommendations for changes in the map as the mayor deems appropriate. Such review shall consider shifts in population shown in the most recent decennial census that may require adjustments in the community district map to conform to the criteria in section twenty-seven hundred one. Such review shall also consider whether reducing the size of any community district would provide more efficient and effective service delivery within the district or districts involved. If the mayor's recommendations for changes in the map would produce a community district with a population below seventy-five thousand persons, the mayor may consider whether partial suspension of coterminality within the district is likely to provide more efficient or effective service delivery of one or more of the services for which coterminality is required, and may recommend that coterminality for one or more designated services within the community district and any adjacent district be suspended. The mayor's recommendations for changes shall be referred to as the preliminary revision of the community district map.

b. The borough presidents, city planning commission, community boards and other civic, community and neighborhood groups and associations shall be consulted and their recommendations considered in the preparation of the preliminary revision of the community district map.

c. The mayor shall publish the preliminary revision of the community district map in the City Record and in each borough of the city and shall, jointly with the borough president, conduct one or more public hearings on it in each borough of the city. Within sixty days after the last such hearing, the mayor shall submit to the council such preliminary revisions of the community district map as he or she deems appropriate.

d. The council shall conduct public hearings on the preliminary revision of the community district map submitted by the mayor and it shall, by resolution, within one hundred twenty days of such submission, adopt, adopt with modifications, or disapprove the map as submitted. If the council adopts the proposed map without modifications, or if the mayor concurs in any modifications adopted by the council, the new map shall be effective as of the date specified in the mayor's proposal or in the modifications adopted by the council and concurred in by the mayor. If the council disapproves the map as submitted by the mayor, or if the council fails to act within the one hundred twenty day period, or if the mayor does not concur in any modifications adopted by the council, the community district map then in force shall remain in effect.

HISTORICAL NOTE

Section added at General Election, November 4, 1975.

Section amended at General Election, November 7, 1989.

Subd. a amended L.L. 71/1993 § 1, eff. Sept. 30, 1993.

NOTE

Provisions of L.L. 71/1993 § 2

§ 2. Notwithstanding the provisions of paragraph d of section 2702 of the New York City Charter, the city council shall conduct public hearings on the preliminary revision of the community district map submitted by the mayor and shall, by resolution, by December 1, 1994, adopt, adopt with modifications, or disapprove the map submitted. If the council adopts the proposed without modifications, or if the mayor concurs in any modifications adopted by the council, the new map shall be effective as of the date specified in the mayor's proposal or in the modification adopted by the council and concurred in by the mayor. If the council disapproves the map as submitted by the mayor, or if the council fails to act by December 1, 1994, or if the mayor does not concur in any modifications adopted by the council, the community district map then in force shall remain in effect.

Provisions of L.L. 51/1994 approved Dec. 23, 1994

A LOCAL LAW

To amend Local Law 71 of 1993 in relation to the community district map.

Be it enacted by the Council as follows:

Section 1. Notwithstanding the provisions of section 2 of local law 71 of 1993 and paragraph d of section 2702 of the New York City Charter, the city council shall conduct public hearings on the preliminary revision of the community district map submitted by the mayor and shall, by resolution, by June 1, 1995, adopt, adopt with modifications, or disapprove the map submitted. If the council adopts the proposed map without modifications, or if the mayor concurs in any modifications adopted by the council, the new map shall be effective as of the date specified in the mayor's proposal or in the modification adopted by the council and concurred in by the mayor. If the council disapproves the map as submitted by the mayor, or if the council fails to act by June 1, 1995, or if the mayor does not concur in any modifications adopted by the council, the community district map then in force shall remain in effect.

§ 2. This local law shall take effect immediately and shall be deemed to have been in full force and effect as of November 30, 1994.

FOOTNOTES

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[Footnote 60]: * Chapter 69 added at General Election of November 4, 1975.



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CHAPTER 69 COMMUNITY DISTRICTS AND COTERMINALITY OF SERVICES*60

§ 2703. **Modification and review.**

(Bracketed out of law at General Election, November 7, 1989.)

FOOTNOTES

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[Footnote 60]: * Chapter 69 added at General Election of November 4, 1975.



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CHAPTER 69 COMMUNITY DISTRICTS AND COTERMINALITY OF SERVICES*60

§ 2704. **Coterminality of local services.**

a. The head of each agency responsible for one or more of the services listed below shall organize the local service delivery districts of such agency as follows: (1) To be coterminous with each of the community districts: local parks services; local recreation services; street cleaning and refuse collection services; the patrol services of the police department; and social services, including community services, community development, youth services, child development, and special services for children; and,

(2) To be coterminous with one or more community districts or aggregates of them: housing code enforcement, highway and street maintenance and repair, sewer maintenance and repair, and health services, other than municipal hospitals.

b. Notwithstanding the provisions of subdivision a, the requirement that patrol services of the police department be coterminous with each of the community districts in any borough shall not apply to any community district where the mayor, after consultation with the police commissioner, shall determine that establishment of such coterminality would be inconsistent with the most effective delivery of such services. The mayor shall promptly notify the council of any such determination, and the council may, by majority vote, disapprove such determination with respect to any community district within sixty days after the first stated meeting of the council following the receipt of such notice. If the council shall disapprove such determination with respect to any community district, the police commissioner shall organize patrol services to be coterminous with such district within ninety days of such disapproval.

c. The council, by resolution subject to the approval of the mayor, or the mayor by executive order, may direct that city services in addition to those specified in subdivision a of this section be made coterminous with one or more community districts or aggregates of them.

d. The head of each agency whose local service delivery districts are not required to be coterminous with

community districts pursuant to subdivision a or c of this section shall organize the local service delivery districts of the agency to coincide as closely as possible to the boundaries of the community districts.

e. For purposes of this section, coterminality of services shall mean that the boundaries of the local service districts of each agency service listed in subdivision a or required to be made coterminous pursuant to subdivision c shall coincide with the boundaries of community districts.

f. The head of each agency responsible for one or more of the services listed in subdivision a or required to be made coterminous pursuant to subdivision c shall: (1) assign to each such local service district at least one official with managerial responsibilities involving the exercise of independent judgment in the scheduling, allocation and assignment of personnel and equipment and the evaluation of performance or the management and planning of programs; each such official shall have operating or line authority over agency programs, personnel and facilities within the local service district; (2) assign to each borough at least one borough commissioner, or official with an equivalent title, who shall have line authority over agency programs, personnel and facilities within the borough related to such services; such official shall consult regularly with the borough president and shall be a member of the borough service cabinet established pursuant to section twenty-seven hundred six of the charter; and (3) publish semi-annually in the City Record and make available to interested parties a list, by community district and borough, of the name, title, office mailing address, and office telephone number of the officials appointed pursuant to paragraphs one and two of this subdivision and to subdivision a of section twenty-seven hundred six.

g. The head of any agency may assign or reallocate personnel, equipment or other resources outside a community district to meet emergency needs, special situations, or temporary conditions.

h. Nothing in this chapter shall prohibit any agency from maintaining sub-districts within a community district for purposes of efficient and effective service delivery so long as the combined sub-districts shall coincide with the boundaries of the community district. Nothing contained in this section shall prevent the establishment of any special district authorized pursuant to federal, state or local law, the boundaries of which do not coincide with the boundaries of a community district.

i. Each borough president may publish an annual report evaluating the delivery, within the borough, of the services which are listed in subdivision a, or are required to be made coterminous pursuant to subdivision c, of this section.

j. On or before the first day of December, nineteen hundred ninety, the mayor shall appoint a task force on service delivery, consisting of no more than ten members, to review the requirements of subdivision a, c, and f of this section. Such task force shall include members appointed upon the recommendations of the council, comptroller, public advocate, and borough presidents. The membership of the task force shall include, but not be limited to community board members, district managers, and representatives of the agencies subject to the requirements of this section. On or before the first day of December, nineteen hundred ninety-two, the task force shall submit a report to the mayor and council summarizing its conclusions and presenting such recommendations for changes in the list of services made coterminous pursuant to subdivisions a or c, and in the requirements for such services contained in subdivision f, as the task force deems appropriate.

k. The mayor shall report biennially to the council on the implementation of the requirements of this section. Such report shall include: (1) an evaluation of the quality of the services delivered to community districts pursuant to subdivisions a and c of this section during the preceding two fiscal years, (2) a review of the agencies' implementation of subdivisions d and f of this section, and of subdivision a of section twenty-seven hundred six, and (3) any recommendations for changes in the services listed or in the requirements for those services which the mayor deems appropriate.

HISTORICAL NOTE

Subd. a amended by L. L. 1979, No. 91.

Subd. b added by L. L. 1979, No. 91.

Subd. b amended by L. L. 1983, No. 3.

Subd. c added by L. L. 1983, No. 3.

Subd. d-h relettered by L. L. 1983.

Section amended at General Election, November 7, 1989.

Subd. j amended L.L. 68/1993 § 17, eff. Jan. 1, 1994.

FOOTNOTES

60

[Footnote 60]: * Chapter 69 added at General Election of November 4, 1975.



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NYC Charter 2705

New York City Charter

CHAPTER 69 COMMUNITY DISTRICTS AND COTERMINALITY OF SERVICES*60

§ 2705. **District service cabinet.**

a. There shall be a district service cabinet within each community district established pursuant to this chapter. The members of the district service cabinet shall include: (1) The agency officials designated pursuant to paragraph one of subdivision f of section twenty-seven hundred four;

(2) Representatives of other agencies that provide local services on a regular basis in the community district, who shall be the ranking line official assigned to the district;

(3) Each council member whose district comprises all or part of the community district;

(4) A representative of the department of city planning designated by director of city planning;

(5) The district manager appointed pursuant to subdivision f of section twenty-eight hundred; and,

(6) The chairperson of the community board for the community district or his or her representative.

b. Each district service cabinet shall:

(1) Coordinate service functions and programs of the agencies that deliver services in the community district;

(2) consider interagency problems and impediments to the effective and economic delivery of services in the district;

(3) Plan and recommend joint programs to meet the needs and priorities of community districts and their residents;

(4) Consult with residents of the community district and their representatives about local service problems and activities; and

(5) Keep a public record of its activities and transactions, including minutes of its meetings.

HISTORICAL NOTE

Section added at General Election, November 4, 1975.

Section amended at General Election, November 7, 1989.

FOOTNOTES

60

[Footnote 60]: * Chapter 69 added at General Election of November 4, 1975.



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NYC Charter 2706

New York City Charter

CHAPTER 69 COMMUNITY DISTRICTS AND COTERMINALITY OF SERVICES*60

§ 2706. **Borough agency managers and borough service cabinets.**

a. The head of each agency delivering services in the boroughs shall designate one or more senior officials of the agency with line authority as borough representatives of the agency with such coordinative or other duties and responsibilities as the head of the agency may specify in a written statement filed in the agency and with the director of operations and the appropriate borough president.

b. There shall be a borough service cabinet within each borough whose members shall include the borough representatives designated pursuant to subdivision a of this section, and the borough president, who shall be the chairperson. Each borough service cabinet shall:

(1) Coordinate at the borough level service delivery functions and programs of agencies that provide services in the borough;

(2) Consider interagency problems and impediments to the effective and economic delivery of services in the borough;

(3) Plan and develop programs addressed to the needs and priorities of the borough and its residents; and

(4) Consult with residents of the borough and representatives of the community boards about service problems and activities.

(5) Keep a public record of its activities and transactions, including minutes of its meetings.

HISTORICAL NOTE

Section added at General Election, November 4, 1975.

Section amended at General Election, November 7, 1989.

FOOTNOTES

60

[Footnote 60]: * Chapter 69 added at General Election of November 4, 1975.



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NYC Charter 2707

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CHAPTER 69 COMMUNITY DISTRICTS AND COTERMINALITY OF SERVICES*60

§ 2707. **Agency budgets and service statements.**

a. Each agency with service districts within the community districts and boroughs shall prepare annually a statement of its service objectives, priorities, programs and projected activities within each community district and each borough for the new fiscal year, if requested by the respective community board or borough board.

b. In preparing such statements for community districts the agencies shall consult with the respective district service cabinets and community boards. In preparing such statements for the borough, the agencies shall consult with the borough service cabinet and borough board. The statements shall be filed no later than the fifteenth day of August with the mayor, council, borough president, community board and borough board.

c. By no later than four months after the end of the fiscal year, each agency with service districts within the community districts and boroughs shall report to the respective community and borough boards the amount of expenditures within each service district for each unit of appropriation for the preceding year.

HISTORICAL NOTE

Section added at General Election, November 4, 1975.

Subd. b amended by L. L. 1977, No. 102.

Subd. c amended by L. L. 1977, No. 102.

Subds. b, c amended at General Election, November 7, 1989.

FOOTNOTES

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[Footnote 60]: * Chapter 69 added at General Election of November 4, 1975.



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NYC Charter 2708

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CHAPTER 69 COMMUNITY DISTRICTS AND COTERMINALITY OF SERVICES*60

§ 2708. **Agency information.**

Each agency with service districts within the community districts and boroughs shall make available to each community board and borough board and to the respective borough presidents current information on its operations and programs within each community district and borough.

HISTORICAL NOTE

Section added at General Election, November 4, 1975.

Amended by L. L. 1977, No. 102.

Section amended at General Election, November 7, 1989.

FOOTNOTES

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[Footnote 60]: * Chapter 69 added at General Election of November 4, 1975.



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NYC Charter 2800

New York City Charter

CHAPTER 70 CITY GOVERNMENT IN THE COMMUNITY*61

§ 2800. **Community boards.**

a. For each community district created pursuant to chapter sixty-nine there shall be a community board which shall consist of (1) not more than fifty persons appointed by the borough president for staggered terms of two years, at least one-half of whom shall be appointed from nominees of the council members elected from council districts which include any part of the community district, and (2) all such council members as non-voting members. The number of members appointed on the nomination of each such council member shall be proportional to the share of the district population represented by such council member. The city planning commission, after each council redistricting pursuant to chapter two-A, and after each community redistricting pursuant to section twenty-seven hundred two, shall determine the proportion of the community district's population represented by each council member. Copies of such determinations shall be filed with the appropriate borough president, community board, and council member. One-half of the members appointed to any community board shall serve for a term of two years beginning on the first day of April in each odd-numbered year in which they take office and one half of the members appointed to any community board shall serve for a term of two years beginning on the first day of April in each even-numbered year in which they take office. Members shall serve until their successors are appointed but no member may serve for more than sixty days after the expiration of his or her original term unless reappointed by the borough president. Not more than twenty-five percent of the appointed members shall be city employees. No person shall be appointed to or remain as a member of the board who does not have a residence, business, professional or other significant interest in the district. The borough president shall assure adequate representation from the different geographic sections and neighborhoods within the community district. In making such appointments, the borough president shall consider whether the aggregate of appointments fairly represents all segments of the community. Community boards, civic groups and other community groups and neighborhood associations may submit nominations to the borough president and to council members.

b. An appointed member may be removed from a community board for cause, which shall include substantial nonattendance at board or committee meetings over a period of six months, by the borough president or by a majority

vote of the community board. Vacancies among the appointed members shall be filled promptly upon the occurrence of the vacancy by the borough president for the remainder of the unexpired term in the same manner as regular appointments.

c. Members of community boards shall serve as such without compensation but shall be reimbursed for actual and necessary out-of-pocket expenses in connection with attendance at regularly scheduled meetings of the community board.

d. Each community board shall:

- (1) Consider the needs of the district which it serves;
- (2) Cooperate with, consult, assist and advise any public officer, agency, local administrators of agencies, legislative body, or the borough president with respect to any matter relating to the welfare of the district and its residents;
- (3) At its discretion hold public or private hearings or investigations with respect to any matter relating to the welfare of the district and its residents, but the board shall take action only at a meeting open to the public;
- (4) Assist city departments and agencies in communicating with and transmitting information to the people of the district;
- (5) Cooperate with the boards of other districts with respect to matters of common concern;
- (6) Render an annual report to the mayor, the council and the borough board within three months of the end of each year and such other reports to the mayor or the borough board as they shall require (such reports or summaries thereof to be published in the City Record);
- (7) Elect its own officers; adopt, and make available for reasonable public inspection, by-laws and statements of the duties assigned by the board to its district manager and other professional staff appointed pursuant to subdivision f of this section; and keep a public record of its activities and transactions, including minutes of its meetings, majority and minority reports, and all documents the board is required by law to review, which shall be made available, in accordance with law, to elected officials upon request and for reasonable public inspection;
- (8) Request the attendance of agency representatives at meetings of the community board;
- (9) Prepare comprehensive and special purpose plans for the growth, improvement and development of the community district;
- (10) Prepare and submit to the mayor, on or before a date established by the mayor, an annual statement of community district needs, including a brief description of the district, the board's assessment of its current and probable future needs, and its recommendations for programs, projects, or activities to meet those needs;
- (11) Consult with agencies on the capital needs of the district, review departmental estimates, hold public hearings on such needs and estimates and prepare and submit to the mayor capital budget priorities for the next fiscal year and the three succeeding fiscal years;
- (12) Conduct public hearings and submit recommendations and priorities to the mayor, the council and the city planning commission on the allocation and use within the district of funds earmarked for community development activities under city, state or federal programs;
- (13) Consult with agencies on the program needs of the community district to be funded from the expense budget, review departmental estimates, hold public hearings on such needs and estimates, and prepare and submit to the

mayor expense budget priorities for the next fiscal year;

(14) Assist in the planning of individual capital projects funded in the capital budget to be located in the community district and review scopes of projects and designs for each capital project provided, however, that such review shall be completed within thirty days after receipt of such scopes or designs;

(15) Evaluate the progress of capital projects within the community district based on status reports to be furnished to the board;

(16) Be authorized to assign a representative to attend any meeting held by a city agency to determine, in advance of drafting, the form and content of any environmental impact statement required by law for a proposal or application for a project in such board's district;

(17) Exercise the initial review of applications and proposals of public agencies and private entities for the use, development or improvement of land located in the community district, including the conduct of a public hearing and the preparation and submission to the city planning commission of a written recommendation;

(18) Assist agencies in the preparation of service statements of agency objectives, priorities, programs and projected activities within the community district and review such statements;

(19) Evaluate the quality and quantity of services provided by agencies within the community district;

(20) Within budgetary appropriations for such purposes, disseminate information about city services and programs, process complaints, requests, and inquiries of residents of the community district; and

(21) Conduct substantial public outreach, including identifying the organizations active in the community district, maintaining a list of the names and mailing addresses of such community organizations, and making such names and, with the consent of the organization, mailing addresses available to the public upon request.

e. Each agency shall furnish promptly to each community board on request any information or assistance necessary for the board's work. Each agency shall also report periodically to each board on its service activities programs and operations within the community district.

f. Each community board, within the budgetary appropriations therefor, shall appoint a district manager and shall be authorized to utilize the services of such other professional staff and consultants, including planners and other experts, as it may deem appropriate, all of whom shall serve at the pleasure of the community board and shall provide the board with the staff support and technical assistance it requires to fulfill the duties assigned to it by this charter or other law. The district manager shall (1) have responsibility for processing service complaints, (2) preside at meetings of the district service cabinet and (3) perform such other duties as are assigned by the community board in accordance with the statement of duties required by paragraph seven of subdivision d of this section. One of the board members shall be elected by the other members to serve as chairperson. The chairperson shall use no title other than chair or chairperson of the community board and the other members shall use no title other than member of the community board or community board member, except that any member who is elected or appointed to an official position on the board, including but not limited to, vice-chairperson, secretary, treasurer, or chair of a committee or subcommittee of the board shall be allowed to use such title when acting in such capacity. The department of investigation shall investigate any allegations concerning the misuse of a community board title and shall report its findings to the mayor, the council and the borough president in whose borough the community board is located. The knowing and intentional use of an improper title by any member of a community board shall be punishable by a civil penalty of not less than one hundred dollars nor more than two hundred and fifty dollars for every infraction thereof. The chairperson of the community board or his or her representative shall be a member of the district service cabinet. A member of a community board shall be eligible for appointment to the position of district manager provided that such member does not participate in any manner in the selection of the district manager by the board and resigns as a member of any board

prior to or upon assuming the duties of district manager.

g. Each community board may employ such other assistants as it may require within budgeted appropriations for such purposes or funds contributed for such purpose. Any funds appropriated by the city to enable the community boards to conduct their duties and responsibilities pursuant to this chapter shall be allocated directly to each board subject to the terms and conditions of such appropriations. The basic budget appropriation for the personal service and other than personal service needs of each community board shall not include rent. Within reasonable limits appropriate to each board's location, rent shall be separately appropriated for the board.

h. Except during the months of July and August, each community board shall meet at least once each month within the community district and conduct at least one public hearing each month. Notwithstanding the foregoing, a community board shall be required to meet for purposes of reviewing the scope or design of a capital project located within such community board's district when such scope or design is presented to the community board. Such review shall be completed within thirty days after receipt of such scope or design. Each board shall give adequate public notice of its meetings and hearings and shall make such meetings and hearings available for broadcasting and cablecasting. At each public meeting, the board shall set aside time to hear from the public. The borough president shall provide each board with a meeting place if requested by the board.

i. Each community board may create committees on matters relating to its duties and responsibilities. It may include on such committees persons with a residence or significant interest in the community who are not members of the board, but each such committee shall have a member of the board as its chairperson. Except as otherwise provided by law, meetings of such committees shall be open to the public.

HISTORICAL NOTE

Section added at General Election, November 4, 1975.

Subd. a amended by L. L. 1977, No. 102.

Subd. b amended by L. L. 1977, No. 102.

Subd. c amended by L. L. 1977, No. 102.

Subd. d amended by L. L. 1977, No. 102.

Subd. e amended by L. L. 1977, No. 102.

Subd. f amended by L. L. 1977, No. 102.

Subd. h amended by L. L. 1977, No. 102.

Subd. f amended L. L. 57/87 § 1.

Subds. a, b, d, f, g, h, i amended at General Election, November 7, 1989.

Subd. d par (14) amended L.L. 77/1995 § 10, eff. Nov. 23, 1995 and does not apply to matters submitted to community board prior to that date.

Subd. h amended L.L. 77/1995 § 11, eff. Nov. 23, 1995.

Subd. d par (14) amended L.L. 63/1996 § 1, eff. July 12, 1996.

Subd. h amended L.L. 63/1996 § 2, eff. July 12, 1996.

CASE NOTES

¶ 1. This section, under which community boards are created, does not give a community board legal capacity to bring a Freedom of Information Article 78 proceeding against the Department of City Planning, even though a land use question may be involved. *Community Board 7 of the Borough of Manhattan v. Schaffer*, 84 N.Y.2d 148, 615 N.Y.S.2d 644 (1994).

¶ 2. In one case, petitioners sought an order enjoining the City from implementing plans to renovate and redesign a City park. Under City Charter § 2800(d)(17), each Community Board is required to exercise the initial review of applications and proposals of public agencies and private entities for the use, development or improvement of land located in the community district, including the conduct of a public hearing and the preparation and submission to the City Planning Commission of a written recommendation. The court found that several aspects of the proposed renovation project, including the construction of a perimeter fence, new fountain and children's playground, fit within the statutory definition of "use" or "improvement" of land, so that § 2800(d)(17) was applicable, even though the City Planning Commission had no role in reviewing the project. However, the court also held that the Community Board's role in the review process was merely advisory. No provision of the City Charter or Administrative Code vests a community board with approval power over park development *Greenberg v. City of NY*, 38 A.D.2d 245, 832 N.Y.S.2d 16 (1st Dept. 2007). However, the court later concluded that the City's interpretation of this Charter provision is not tenable, since several aspects of the renovation project, including construction of a perimeter fence, new fountain and children's playground easily fit within the statutory definition of "use" or "improvement" of land and § 2800(d)(17) is applicable. Nevertheless, the City is correct in arguing that the Comm. Bd.'s role in the review process is merely advisory. Thus, the alleged failure of the City to disclose to the community board the precise measurements of plaza or fountain strength did not render approval of the community board ultra vires.

FOOTNOTES

61

[Footnote 61]: * Chapter 70 adopted at General Election, November 4, 1975.



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NYC Charter 2801

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CHAPTER 70 CITY GOVERNMENT IN THE COMMUNITY*61

§ 2801. **Actions of community boards.**

- a. A majority of the appointed members of any community board shall constitute a quorum of such board.
- b. Whenever any act is authorized to be done or any determination or decision made by any community board, the act, determination or decision of the majority of the members present entitled to vote during the presence of a quorum, shall be held to be the act, determination or decision of such board.

HISTORICAL NOTE

Added by L. L. 1979, No. 11.

CASE NOTES

¶ 1. A by-law requirement that the removal of a district manager be by a majority of the entire community board was inconsistent with the general provision in the City Charter permitting the board to act by a majority of the members present. Thus, the manager could be removed by a majority of the Board members present at the meeting. *Alabi v. Community Board No. 2 of Brooklyn*, 17 A.D.3d 459, 793 N.Y.S.2d 137 (2d Dept. 2005).

FOOTNOTES

61

[Footnote 61]: * Chapter 70 adopted at General Election, November 4, 1975.



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NYC Charter 2901

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CHAPTER 71 DEPARTMENT OF TRANSPORTATION*62

§ 2901. **Department; commissioner.**

There shall be a department of transportation, the head of which shall be the commissioner of transportation.

HISTORICAL NOTE

Added by L. L. 1977, No. 27.

Formerly § 2601 renumbered by L. L. 1977, No. 102.

FOOTNOTES

62

[Footnote 62]: * Chapter 71 added by L. L. 1977, No. 27.



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NYC Charter 2902

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CHAPTER 71 DEPARTMENT OF TRANSPORTATION*62

§ 2902. **Deputies.**

The commissioner may appoint three deputies, one of whom shall be in charge of highway operations and be a licensed professional engineer in good standing under the education law.

HISTORICAL NOTE

Added by L. L. 1977, No. 27.

Formerly § 2602 renumbered and amended by L. L. 1977, No. 102.

Section amended at General Election, November 8, 1988.

Section amended L.L. 25/1994 § 3, eff. July 1, 1994.

FOOTNOTES

62

[Footnote 62]: * Chapter 71 added by L. L. 1977, No. 27.



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NYC Charter 2903

New York City Charter

CHAPTER 71 DEPARTMENT OF TRANSPORTATION*62

§ 2903. **Powers and duties of the commissioner.**

Except as otherwise provided by law, the commissioner shall have control over and be responsible for all those functions and operations of the city relating to transportation including, without limitation, the following:

a. Parking and traffic operations. The commissioner shall:

(1) make such rules and regulations for the conduct of vehicular and pedestrian traffic in the streets, squares, avenues, highways and parkways of the city as may be necessary. The violation of such rules and regulations shall be a traffic infraction triable by a judge of the criminal court of the city of New York and, except as otherwise provided by law, punishable by not more than fifteen days' imprisonment, or by a fine of not more than fifty dollars, or both, and may also be adjudicated pursuant to title nineteen of the administrative code or pursuant to articles 2-A and 2-B of the vehicle and traffic law. The police commissioner may, in an emergency, suspend for a period of forty-eight hours the provisions of any such rule or regulation and shall immediately notify the commissioner of such suspension. In order to expedite the movement of traffic or to safeguard pedestrians or property, a police officer or authorized employee of the transportation department may order a person to disregard any traffic signal or any such rule or regulation;

(2) establish, determine, control, install and maintain the design, type, size and location of any and all signs, signals, marking, and similar devices indicating the names of the streets and other public places and for guiding, directing or otherwise regulating and controlling vehicular and pedestrian traffic in the streets, squares, parks, parkways, highways, roads, alleys, marginal streets, bridges and other public ways of the city;

(3) make recommendations to the mayor as to the design and location of highway lighting devices, poles and fixtures, and the type of intensity of illumination of streets and highways;

(4) prepare and submit to the mayor a proposed comprehensive city traffic plan;

(5) collect and compile traffic data and prepare engineering studies and surveys in regard to vehicular and pedestrian traffic;

(6) prepare and submit to the mayor detailed reports in regard to traffic conditions in the city;

(7) make recommendations to the mayor in regard to methods of ameliorating traffic conditions which adversely affect the welfare of the city and which cannot be remedied by traffic rules and regulations; (8) submit to the mayor from time to time for consideration and forwarding to appropriate city agencies, specific proposals for amendment of any resolutions, rules, or regulations of any city agency which affect traffic conditions in the city, and proposed legislation which may be necessary to implement and effectuate such proposals;

(9) prepare and submit to the mayor, for consideration and forwarding to the council, the city planning commission and to other agencies of the city, recommendations and proposals for the improvement of existing streets, street widening and location of new streets, avenues, highways and parkways; the location and design of parking garages and parking areas; the establishment of public parking garages and parking areas; the location, type and design of off-street loading and unloading and parking facilities; and other matters relating to traffic control;

(10) coordinate the efforts of and consider the reports, recommendations and suggestions of public and private agencies and civic groups in regard to traffic conditions and traffic control in the city;

(11) prepare analyses of traffic accidents with a view to determining their causes and means for their prevention;

(12) carry on educational activities for the purpose of promoting traffic safety and free movement of vehicular and pedestrian traffic in the city;

(13) establish parking meter zones, determine the design, type, size, location and use of parking meters and fix the fees for parking in parking areas and public parking garages except that regulations pertaining to the use of parking meter zones shall not apply to vehicles operated by disabled persons duly displaying special vehicle identification cards issued by the commissioner other than at those periods of time when "no standing" restrictions are in effect in the metered zones. The parking fees and fines and penalties for violation of parking rules so collected shall be paid into a special fund to be known as the "traffic improvement fund." The revenues of such fund, upon authorization by the council, shall be used for the payment of all costs of purchase, rental, engineering, installation, operation, maintenance and repair of parking meters, for the collection of coins, for the enforcement of rules and regulations pertaining to vehicular parking, the collections of fines and penalties for violation of such rules and regulations, and for the payment of interest on, amortization of, or payment of any indebtedness contracted by the city in connection with the installation, operation and maintenance of parking meters. Any revenues remaining after such payments are made shall be used for capital and other expenditures to ameliorate traffic conditions which adversely affect the welfare of the city;

(13-a) in conjunction with the commissioner of finance and with any other city agency, enter into at least one agreement with a financing agency or card issuer to provide for the acceptance by the city of credit cards as an alternate means of payment of fines, civil penalties, charges and fees incurred due to a violation of any law, rule, or regulation providing for or regulating parking, stopping, standing or trespassing of a motor vehicle. Such agreement(s) shall be in accordance with the provisions of the administrative code governing the acceptance by the city of credit cards as an alternate means of payment of fines, civil penalties, taxes, fees, rent, rates, charges or other amounts owed by a person to the city.

(13-b) notwithstanding the provisions of any other law, consult with the commissioner of finance or the police commissioner, or any other appropriate agency head, one or more of whom shall enter into at least one agreement with a financing agency or card issuer to provide for the acceptance by the city of at least two major credit cards as an alternate means of payment of fees or charges required to be paid in order to retrieve a motor vehicle which has been towed due to a violation of any law, rule, or regulation providing for or regulating parking, stopping, standing or trespassing of a motor vehicle. Such agreement(s) shall be in accordance with the provisions of the administrative code governing the

acceptance by the city of credit cards as an alternate means of payment of fines, civil penalties, taxes, fees, rent, rates, charges or other amounts owed by a person to the city. For purposes of this provision, the term "major credit card" shall mean MasterCard, Visa, American Express or Discover. This provision shall not be construed to apply to the towing of a vehicle in satisfaction of a judgment for an outstanding debt owed to the city.

(14) enforce laws, rules and regulations concerning the parking of vehicles and the movement and conduct of vehicular and pedestrian traffic;

(a) Notwithstanding the provisions of any other law the commissioner shall have the power, concurrently with the police department, to enforce all laws, rules and regulations prohibiting, regulating, directing, controlling or restricting both the parking of vehicles and the movement and conduct of vehicular and pedestrian traffic in and on all streets, squares, avenues, highways, parkways and public off-street parking facilities in the city. As used in this section the term "parking" shall mean and include the parking, standing and stopping of vehicles at meters and off-street parking metered areas and on any highway in the city as such terms are defined in the traffic regulations of the city promulgated pursuant to law; and the term "highway" shall mean and include any highway or public highway as defined in sections one hundred thirty-four and sixteen hundred forty-two of the vehicle and traffic law.

(b) The commissioner may employ, hire and retain officers, agents and employees for the purpose of enforcing laws, rules and regulations prohibiting, regulating, directing, controlling or restricting the parking of vehicles and the movement and conduct of vehicular and pedestrian traffic, which officers, agents and employees are hereby authorized, empowered and designated to issue, make and serve tickets, summonses and complaints for traffic infractions pursuant to article two-A of the vehicle and traffic law and such rules and regulations as may be promulgated thereunder, to issue, make and serve simplified traffic informations and to issue, make and serve appearance tickets for traffic infractions, misdemeanors and violations related to the movement and conduct of vehicular traffic, pursuant to article two-B of the vehicle and traffic law and title nineteen of the administrative code of the city of New York and such rules and regulations as may be promulgated thereunder.

(15) issue special vehicle identification parking permits;

(a) The commissioner shall issue a special vehicle identification parking permit to a New York city resident who requires the use of a private automobile for transportation and to a non-resident who requires the use of a private automobile for transportation to a school in which such applicant is enrolled or to a place of employment, when such person has been certified by the department of health and mental hygiene or a provider designated by the department or the department of health and mental hygiene, who shall make such certification in accordance with standards and guidelines prescribed by the department or the department of health and mental hygiene, as having a permanent disability seriously impairing mobility. A permit shall be issued to such person upon his or her application. A permit shall also be issued to such person upon application made on such person's behalf by a parent, spouse, domestic partner,*63 guardian or other individual having legal responsibility for the administration of such person's day to day affairs. Any vehicle displaying such permit shall be used exclusively in connection with parking a vehicle in which the person to whom it has been issued is being transported or will be transported within a reasonable period of time. Such permit shall not be transferable and shall be revoked if used on behalf of any other person. Any abuse by any person to whom such permit has been issued of any privilege, benefit or consideration granted pursuant to such permit, shall be sufficient cause for revocation of said permit.

(b) A vehicle bearing such special vehicle identification permit when parked shall not be deemed in violation of any of the provisions of the rules and regulations governing parking in the city except where such a vehicle shall be parked in a bus stop, a taxi-stand, within fifteen feet of a fire hydrant, a fire zone, a driveway, a crosswalk, a no stopping zone, a no standing zone, or where such vehicle is double parked.

(c) The name, address and telephone number where the permittee can be reached shall be written on the reverse side of the permit, not to be displayed to the public, but to be available for emergency purposes. Such permit shall also

include on the front side thereof, the license plate number(s) of the vehicle(s) which will be used to transport the permittee. The commissioner shall allow the permittee to add or delete license plate number(s) as may be necessary; however, at no time shall the number of license plate numbers on any given permit exceed ten.

(d) Any person to whom a permit has not been issued, and who shall use a permit issued pursuant to this section for any purpose other than parking a motor vehicle while transporting a physically handicapped person, shall be guilty of a misdemeanor.

(e) Certifications by the department of health and mental hygiene of applications for special vehicle identification permits shall be made at those district health offices designated for such purpose by the commissioner of health and mental hygiene. At least one such district health office shall be designated in each borough for special vehicle identification permit certifications. Such certifications shall be available by appointment at each of said borough health offices, or an alternative location within the borough as designated by the commissioner by regulation, on a regular basis.

(16) Repealed.

(17) Establish and publicize a telephone number for citizen reporting of violations of section 1203-c of the vehicle and traffic law;

(a) The department shall affix a sign indicating the aforementioned telephone number to all above grade signs, located on city property which display the international symbol of access;

(b) Any person, firm or corporation that is required by law to install such above grade signs, which display the international symbol of access, shall affix a sign indicating the aforementioned telephone number to these signs.

(c) Whenever the department shall determine that such a sign should be installed or affixed, it may order the owner of the property to perform such work. Such order shall specify the work to be performed and shall fix a reasonable time for compliance. The department shall, by appropriate regulations, provide for a reinspection by a departmental inspector, if the owner of the property requests such reinspection.

(d) Upon the owner's failure to comply with such order or notice within thirty days of service thereof, the department may perform the work or cause same to be performed, the cost of which, together with administrative expenses, as determined by the commissioner, but not to exceed twenty percent of the cost of performance, shall constitute a debt recoverable from the owner by lien on the property affected or otherwise. Upon entry by the city collector, in the book in which such charges are to be entered, of the amount definitely computed as a statement of account by the department, such debt shall become a lien prior to all liens or encumbrances on such property, other than taxes. An owner shall be deemed to have complied with this subdivision if he or she performs such work as specified in the order within the time set forth therein.

(e) Service of a notice or order upon an owner pursuant to the provisions of this section shall be made upon such owner or upon his or her designated managing agent personally or by certified or registered mail, return receipt requested, addressed to the person whose name appears on the records of the city collector as being the owner of the premises. If the records of the city collector show that a party other than the owner, has been designated to receive tax bills for such property, the notice shall be mailed to such party as well as to the owner of record, at his or her last known address. If the postal service returns the order with a notation that the owner refused to accept delivery of such notice, it may be served by ordinary mail and posted in a conspicuous place on the premises.

(f) A copy of such notice or order shall also be filed in the office of the clerk of the county where the property is situated, together with proof of service thereof.

(g) A notice of such account, stating the amount due and the nature of the charge, shall be mailed by the city

collector, within five days after such entry, to the last known address of the person whose name appears on the records of the city collector as being the owner or the agent or as the person designated by the owner to receive tax bills or where no name appears, to the premises, addressed to either the owner or the agent.

(h) If such charge is not paid within ninety days from the date of entry, it shall be the duty of the city collector to charge and receive interest thereon, to be calculated to the date of payment from the date of entry.

(i) Such charge and interest shall be collected and the lien thereof may be foreclosed in the manner provided by law for the collection and foreclosure of the lien of taxes, sewer rents, sewer surcharges and water charges due and payable to the city, and the provisions of chapter four of title eleven of the code shall apply to such charge and the interest thereon and the lien thereof.

(j) In addition to collecting the charge for the cost of installation or affixing of such a sign, the city may maintain a civil action for recovery of such charge against a property owner who is responsible under this section for such work in the first instance, provided however, that in the event that the department performs the work without duly notifying such person in the manner prescribed in subdivision e, the cost to the city of performing such work shall be prima facie evidence of the reasonable cost thereof.

(18) upon receipt of a complaint in the appropriate borough office of the department concerning a measurement error, incorrect property assessment, or that the property qualifies for local law sixty-seven, the borough office shall notify the property owner, within ten business days, in writing, where appropriate, that all records will be reviewed and the results will be sent, if applicable, to the sidewalk assessment review board within the department for review within thirty days of receipt of the complaint. The property owner may schedule an appointment in the appropriate borough office of the department to review that property owner's records. The appropriate borough office shall notify the property owner of the determination of the sidewalk assessment review board in writing within fifteen business days of receiving the determination from the sidewalk assessment review board. The borough office shall also notify the property owner in writing that if the property owner is not satisfied with the determination, of the right to file a notice of claim with the office of the comptroller as provided by section 19-152.2 of the administrative code of the city of New York and of the right to file a petition for appeal and commence a proceeding to review and/or correct the notice of account and/or the quality of work performed under the direction of the department in the manner provided by section 19-152.3 of the administrative code of the city of New York. Such notice shall also include the appropriate claim form to be filed with the office of the comptroller.

Upon receipt of complaint in the appropriate borough office of the department regarding the quality of work, the department shall send an inspector to investigate the complaint within thirty days. Where appropriate the department shall notify the property owner in writing of the inspection date at least five days prior to the inspection date. If the quality of the work is determined to be poor, the work shall be corrected by the appropriate contractor within eighteen months of substantial completion. If the property owner alleges that the subsequent or the corrective work was of poor quality, or if the inspector determines that no correction is required, the property owner shall be informed in writing, where appropriate, within ten business days, by the appropriate borough office of the department of the right to file a notice of claim with the office of the comptroller as provided in section 19-152.2 of the administrative code of the city of New York and of the right to file a petition for appeal and commence a proceeding to review and/or correct the notice of account and/or the quality of work performed under the direction of or by the department in the manner provided by section 19-152.3 of the administrative code of the city of New York. Such notice shall also include the appropriate claim form to be filed with the office of the comptroller. Upon receipt of a complaint other than a measurement error, incorrect property assessment, that the property qualifies for local law sixty-seven or concerning quality of work performed under the direction of or by the department in the appropriate borough office of the department, the appropriate borough office shall notify, in writing, where appropriate, within ten business days, of the right to file a notice of claim with the office of the comptroller as provided by section 19-152.2 of the administrative code of the city of New York and of the right to file a petition for appeal and commence a proceeding to review and/or correct the notice of account in the manner provided by section 19-152.3 of the administrative code of the city of New

York. Upon request of the owner of property, the department through the appropriate borough office shall within fifteen business days provide for the reinspection as provided in section 19-152 of the administrative code of the city of New York. Upon request of the owner of property, the appropriate borough office shall within fifteen business days provide for the reinspection as provided in section 19-152 of the administrative code of the city of New York. The department shall also post signs in conspicuous places in the borough offices advising the public of such rights;

b. Highway operations. The commissioner shall have charge and control of the following functions relating to the construction, maintenance and repair of public roads, streets, highways, parkways, bridges and tunnels:

(1) regulating, grading, curbing, flagging and guttering of streets, including marginal streets and places, and the laying of crosswalks;

(2) designing, constructing and repairing of public roads, streets, highways and parkways;

(3) paving, repaving, resurfacing and repairing of all public roads, streets, including marginal streets and places, highways and parkways and the relaying of all pavement removed for any cause including cleaning, sweeping, landscaping and maintenance functions for arterial highways as defined by regulation;

(4) filling of sunken lots, fencing of vacant lots, digging down of lots and licensing of vaults under sidewalks;

(5) regulation of the use and transmission of gas, electricity, pneumatic power and steam for all purposes in, upon, across, over and under all streets, roads, avenues, parks, public places and public buildings; regulation of the construction of electric mains, conduits, conductors and subways in any streets, roads, avenues, parks and public places and the issuance of permits to builders and others to use or open a street; and to open the same for the purpose of carrying on the business of transmitting, conducting, using and selling gas, electricity or steam or for the service of pneumatic tubes, provided, however, that this subdivision shall not be construed to grant permission to open or use the streets except by persons or corporations otherwise duly authorized to carry on business of the character above specified;

(6) construction, alteration and maintenance of all bridges and tunnels. The commissioner shall issue a report to the mayor, city council and the people of the city about the condition of all bridges and tunnels operated and maintained by the department on March first, as of December thirty-first of the preceding calendar year. The report shall include a description of all capital and revenue budget funds appropriated for rehabilitation and maintenance of bridges and tunnels as well as the program developed by the commission for the maintenance of all bridges and tunnels in the city of New York;

(7) removal of encroachments on public roads, streets, highways and parkways, with the exception of seasonal horticultural operations, as defined by regulations to be adopted by the commissioner, to be executed by the department of parks and recreation, and snow removal and de-icing operations to be carried out by the department of sanitation;

(8) clearing, grubbing, grading, filling or excavating of vacant lots and other land areas, as provided by law;

(9) installation of metal chain link fences or barriers on overpasses, footbridges, bridges or walkways extending over highways, roadways, parkways and streets. Every fence or barrier so installed shall extend a suitable height above the surface level of such overpass, footbridge, bridge or railing, abutment or curbing thereon or adjacent thereto;

(10) designing, constructing and maintaining a lighting system for streets, highways, parks and public places in the city.

c. Ferries and related facilities. The commissioner shall:

(1) maintain and operate the ferries of the city;

(2) be responsible for constructing, acquiring, operating, maintaining or controlling all ferry boats, ferry houses, ferry terminals and equipment thereof and all wharf property and marginal roads adjacent to such wharves, ferry houses and terminals necessary for the operation of the ferries and related facilities, including parking sites; any ferry and any other such property, including but not limited to, all or part of such wharf property, may be leased in the same manner as other wharf property, provided, however, that from and after the sixtieth day next succeeding the date on which the provisions of this paragraph as hereby amended take effect, no substantial or general change in the level of services furnished upon any such ferry facility under the jurisdiction of the commissioner shall be instituted, allowed or continued except upon not less than thirty days notice to the city planning commission and the council. Provided, further that notice of such change shall be conspicuously posted in a public place at each ferry house and terminal for a continuous period of at least thirty days in advance of any such change taking effect and in addition, such notice shall further be published at least once during such thirty day period in a daily newspaper of general circulation in the city;

(3) have charge and control of all marine operations within the city and the power to regulate public and private ferry operations originating or terminating within the city;

(4) establish tours of ferry facilities and their related operations as well as tours of the New York harbor at fees to be established by the commissioner, together with the authority to publicize and advertise the same;

(5) issue permits for the control of television and photography activities within or upon ferries and related facilities; and

(6) construct, operate and maintain marinas and public boat launching ramps and related facilities of ferry property and collect fees for the use thereof; such fees to be deposited in a special fund for the continued maintenance, operation or reconstruction of public marine facilities.

d. Mass transportation facilities. The commissioner shall:

(1) prepare or review plans and recommendations with respect to the nature, location, construction, operation and financing of roads, highways, bridges, tunnels, subways or other facilities for mass transportation other than aviation facilities for use in whole or in part within the city whether or not the funds provided for such facilities are derived from the city treasury;

(2) develop and coordinate planning and programming for all forms of mass transportation within the city of New York whether or not said transportation is within the sole operating jurisdiction of the city of New York; and

(3) make recommendations to the mayor, the metropolitan transportation authority, the New York city transit authority, the port authority of New York and New Jersey and other city, state and federal authorities and agencies concerning the mass transit needs of the city of New York.

HISTORICAL NOTE

Section added by L. L. 1977, No. 27.

Subd. a par (15) subpars (a), (e) amended at General Election, November 6, 2001 (Question 5 § 24) eff. November 6, 2001 with special provisions in § 1152 subd. h par (4).

Subd. a par (15) subpars (a), (e) amended L.L. 22/2002 § 9, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

Subd. b par. 1 amended by L. L. 1981, No. 5.

Subd. b par. 1 amended by L. L. 1983, No. 20.

Subpar. e of par. 15 of subd. b added by L. L. 1981, No. 88.

Par. 9 of subd. c added by L. L. 1980, No. 1.

Section renumbered and amended by L. L. 1977, No. 102.

Section renumbered and amended by L. L. 1978, No. 2.

Section amended by L. L. 1979, No. 29.

Section amended by L. 1983, ch. 289.

Subd. a bracketed out of law at General Election, November 8, 1988.

Subds. a-d relettered at General Election, November 8, 1988.

Subd. a, pars. 1, 2 amended at General Election, November 8, 1988.

Subd. a, par. 17 added L. L. 1988, No. 76 § 1.

Subd. c, par. 7 amended L. L. 1986, No. 5 § 9 (pick up of renumbering).

Subd. c heading, pars. 5, 6 amended, pars. 7, 8 repealed by L. L. 1989, No. 14. §§ 1-3.

Subd. d par. 1 amended by L. L. 1989, No. 14 § 4.

Subd. a pars. (9), (13) amended at General Election, November 7, 1989.

Subd. b par. (6) amended at General Election, November 7, 1989.

Subd. c par. (2) amended at General Election, November 7, 1989.

Subd. a par (13-a) added ch. 78/1993 § 3 eff. Nov. 28, 1993.

Subd. a par (15) open. par amended L.L. 43/1995 § 1, eff. Sept. 9, 1995.

Subd. a par (15) subpar (a) amended L.L. 27/1998 § 6, eff. Sept. 5, 1998.

Subd. a par (15) subpar (a) amended L.L. 43/1995 § 1, eff. Sept. 9, 1995.

Subd. a par (15) subpar (c) amended L.L. 43/1995 § 1, eff. Sept. 9, 1995.

Subd. a par (16) repealed L.L. 25/1994 § 4, eff. July 1, 1994.

Subd. a par (18) added ch. 813/1992 § 1, eff. Nov. 5, 1992.

Subd. a par (13-a) amended L.L. 30/1997 § 1, eff. Nov. 24, 1997.

Subd. a par (13-b) added L.L. 30/1997 § 2, eff. Nov. 24, 1997.

CASE NOTES

¶ 1. Ban on bicycles in midtown Manhattan is unenforceable. While the Transportation commissioner may regulate traffic pursuant to formal rules and regulations (NYC Charter § 2903) he may not bar bicycles from certain streets at certain times by the mere posting of signs. Ban must take form of regulation with mandated publication and

notice (NYC Charter § 1105).-*Messenger Services, Inc. v. City of NY*, 136 Misc. 2d 869 [1987].

¶ 2. Plaintiff allegedly injured her leg on a stump of a pole that was protruding from the sidewalk. The court held that even if the stump was the remnant of a bus stop sign, the responsibility to maintain bus stops, including the attendant sidewalks, rests either with the City of New York or the owner or lessee of the abutting property. The New York City Transit Authority was not liable under a "special use" theory; the NYCTA was not the owner of the abutting property, nor did it derive a special benefit from the alleged bus stop sign. *Gall v. City of New York*, 636 N.Y.S.2d 837 (App.Div. 2d Dept. 1996).

¶ 3. Police officers must assume certain risks inherent in police work and, in the absence of statutory violations which increase the risks inherent in police work, cannot recover against the City or private property owners for injuries arising out of such work. A police officer, who tripped on the sidewalk while chasing a suspect, sought to establish liability against the City pursuant to City Charter § 2903(b), which gives the Commissioner of Transportation authority to repair sidewalks and streets. The court, however, held that the City's alleged failure to repair the sidewalk did not increase the inherent risks undertaken by police officers in pursuing suspects, so that the officer could not recover against the City. *St. Jacques v. City of New York*, 633 N.Y.S.2d 97 (App.Div. 1st Dept. 1995), *aff'd* 1996 Westlaw 303060 (New York Court of Appeals).

¶ 4. The Department of Transportation has the power to determine the holidays on which alternate side of the street parking regulations are to be suspended. Where the Department declined to suspend the regulations for St. Patrick's Day, the court refused to interfere with that decision. *Santiago v. Riccio*, 170 A.D.2d 340, 566 N.Y.S.2d 44 (1st Dept. 1991).

¶ 5. An agent of the Department of Transportation has the authority to issue a summons for a moving violation (illegal turn). *Reape v. Adduci*, 159 A.D.2d 406, 552 N.Y.S.2d 952 (1st Dept. 1990).

¶ 6. City Charter Section 2903, and Administrative Code §19-152, can form a predicate for a claim under General Municipal Law 205-e, which provides for recovery by injured police officers against the municipality. These provisions are part of a well-developed body of law and imposes a clear legal duty on the city to take appropriate steps to keep the sidewalks in safe repair. *Gonzalez v. Iacovello*, 93 N.Y.2d 539, 693 N.Y.S.2d 486 (1999).

¶ 7. Both City Charter Section 2903 and Multiple Dwelling Law Section 78 can be used by an injured firefighter asserting a claim under General Municipal Law Sec. 205-a against a property owner arising out of a statutory violation. *Hayes v. City of New York*, 264 A.D.2d 810, 695 N.Y.S.2d 328 (1st Dept. 1999).

¶ 8. See *King v. Alltom*, discussed in Note 3 to Admin. Code. § 7-210.

¶ 9. Section 2903 vests the Department of Transportation with jurisdiction over the use and transmission of gas, electricity, power and steam for all purposes, over and across all thoroughfares and public places. Thus, the New York State Public Service Commission properly dismissed, for lack of jurisdiction, an action by petitioner seeking to prohibit City Cinemas Corp. from installing electrical equipment on petitioner's side of the street beneath a sidewalk abutting petitioners' building. 212 E. 85th St. LLC v. Dept. of Public Service of the State of NY, 60 A.D.3d 1239, 874 N.Y.S.2d 827 (App. Div. 3d Dept.).

FOOTNOTES

62

[Footnote 62]: * Chapter 71 added by L. L. 1977, No. 27.

63

[Footnote 63]: * "domestic partner," was inadvertently omitted from the amendment at General Election, November 6, 2001 because of an incorrect bill section which overlooked the amendment made by L.L. 27/1998 § 6.



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NYC Charter 2904

New York City Charter

CHAPTER 71 DEPARTMENT OF TRANSPORTATION*62

§ 2904. Duties and obligations of property owner with respect to sidewalk flags, fencing of vacant lots and filling of sunken lots or cutting down of raised lots.

The owner of any property at his own cost, shall

(1) install, reconstruct, repave and repair the sidewalk flags in front of or abutting such property, including but not limited to the intersection quadrant for corner property, and

(2) fence any vacant lot or lots comprising part or all of such property and fill any sunken lot or lots comprising part or all of such property or cut down any raised lot or lots comprising part or all of such property whenever the transportation department shall so order pursuant to standards and policies of the transportation department and section 19-152 of the administrative code of the city of New York. In the event that the owner fails to comply with the provisions of this section, the transportation department may provide for the doing of same at the expense of the owner in the manner to be provided by local law and section 19-152 of the administrative code of the city of New York.

HISTORICAL NOTE

Section added by L. L. 1977, No. 27.

Renumbered by L. L. 1977, No. 102.

Section amended ch. 813/1992 § 2, eff. Nov. 5, 1992.

CASE NOTES

¶ 1. Notice of defect in sidewalk abutting premises needed repair was given by city pursuant to NYC Charter § 230 [§ 2904]. Defendant responded by letter assuming duty to maintain sidewalk during a planned construction. City

found liable as its duty to maintain sidewalks in safe condition is nondelegable. *City of NY v. Kalikow Realty Co.*, 132 A. D. 2d 481 [1987].

FOOTNOTES

62

[Footnote 62]: * Chapter 71 added by L. L. 1977, No. 27.



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NYC Charter 2905

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CHAPTER 71 DEPARTMENT OF TRANSPORTATION*62

§ 2905. **Right of entry.**

The commissioner or his agent when authorized by him may in accordance with law enter upon public or private property the purpose of making surveys, borings or other investigations necessary for the exercise of the powers or the performance of the duties of the department. Refusal to permit such entry shall be triable by the judge of the criminal court of the city of New York and punishable by not more than thirty days' imprisonment or by a fine of not more than fifty dollars or both.

HISTORICAL NOTE

Section added by L. L. 1977, No. 27.

Renumbered by L. L. 1977, No. 102.

FOOTNOTES

62

[Footnote 62]: * Chapter 71 added by L. L. 1977, No. 27.



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NYC Charter 2906

New York City Charter

CHAPTER 71 DEPARTMENT OF TRANSPORTATION*62

§ 2906. **Improved traffic flow at highway construction sites.**

The commissioner may provide that on any city-sponsored, authorized or assisted arterial highway construction site, or major repair site that in the discretion of the commissioner is likely to substantially disrupt traffic, signs be posted at least one half mile or more prior to the area under construction or repair warning motorists of the fact that such work is in progress and, wherever possible, advising of an available alternate route.

HISTORICAL NOTE

Added by L. L. 1983, No. 21.

FOOTNOTES

62

[Footnote 62]: * Chapter 71 added by L. L. 1977, No. 27.



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NYC Charter 3000

New York City Charter

CHAPTER 72 DEPARTMENT OF RECORDS AND INFORMATION SERVICES*64

§ 3000. **Department; commissioner.**

There shall be a department of records and information services which shall include, but not be limited to, municipal archives, a municipal reference and research center and municipal records management division. The head of the department shall be the commissioner, who shall be appointed by the mayor.

HISTORICAL NOTE

Added by L. L. 1977, No. 49.

Amended at General Election, November 8, 1988.

FOOTNOTES

64

[Footnote 64]: * Chapter 72 added by L. L. 1977, No. 49.



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NYC Charter 3001

New York City Charter

CHAPTER 72 DEPARTMENT OF RECORDS AND INFORMATION SERVICES*64

§ 3001. **Deputy.**

The commissioner may appoint one deputy.

FOOTNOTES

64

[Footnote 64]: * Chapter 72 added by L. L. 1977, No. 49.



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NYC Charter 3002

New York City Charter

CHAPTER 72 DEPARTMENT OF RECORDS AND INFORMATION SERVICES*64

§ 3002. **Technical assistants.**

[Bracketed out of law at General Election, November 8, 1988.]

FOOTNOTES

64

[Footnote 64]: * Chapter 72 added by L. L. 1977, No. 49.



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NYC Charter 3003

New York City Charter

CHAPTER 72 DEPARTMENT OF RECORDS AND INFORMATION SERVICES*64

§ 3003. **Powers and duties.**

The commissioner: 1. shall be the chief archivist of the city and shall advise the mayor, borough presidents and council on those matters concerning the preservation of the city's historical documentation;

2. shall act as the chief reference and research librarian for the mayor, borough presidents and council and shall ensure that all significant research material pertaining to the operations of the city as well as other municipalities shall be preserved and readily available for use;

3. shall act as the chief public records officer for the mayor, borough presidents and council and shall, except as otherwise provided by law, establish standards for the proper records management in any agency or government instrumentality funded in whole or in part from local tax levy monies, and

4. shall have the power to exercise or delegate any of the functions and duties vested in such commissioner by law, subject to the provisions of subdivision five of this section.

5. In addition to the above duties, the commissioner shall ensure the city's custody and control of city records as follows:

a. Pursuant to an approved records disposition schedule as set forth in section eleven hundred thirty-three of this charter, the commissioner shall ensure that the records of any city officer or agency that are of historical, research, cultural or other important value shall be delivered directly to the department's municipal archives. Upon delivery, the department shall begin to review such records and publish a survey of such records with appropriate specificity, and, to the extent practicable, the contents of such records. Where the commissioner has certified in writing as to its necessity, under extraordinary circumstances, such records may be transferred to an archival establishment to be organized and prepared for archival preservation, provided that such establishment meets the specific requirements specified in

paragraph b of this subdivision.

b. If the commissioner decides that it is necessary to enter into an agreement or contract with another archival establishment outside the department, to organize and prepare records for archival preservation, it may not be with a private entity as defined by this chapter, and may not be with any entity outside the city. The commissioner shall include with the agreement or contract a plan for strictly monitoring the status and progress of the archiving operations. The commissioner shall devise and publish such plan, which shall include at least the following: (i) a list of the tasks to be conducted and a timetable for the completion of each such task; (ii) a description of the resources, staffing and training dedicated by the archival establishment to carrying out such tasks; (iii) allowances for direct supervision by department archivists; and (iv) an agreement by the archival establishment to issue, at a minimum, quarterly reports of its activities to the commissioner. The commissioner shall also include with such agreement and publish a schedule, where applicable, for the municipal archives to send original records to such archival establishment and to receive such records when processing is completed. To the extent practicable, such schedule shall take into account that original records should be sent in a limited and controlled manner and that no new such original records should be sent until receipt of any previously sent under such schedule. Any such agreement, contract, plan and schedule must be approved by the law department for compliance with this subdivision. The commissioner will at all times remain responsible for the proper handling and archiving of records, notwithstanding any agreement with an archival establishment outside the department.

c. No agreement provided for in subdivision five of this section shall be entered into during the term of office of any elected official of the city with regard to whose records such agreement applies.

d. Nothing in this subdivision shall prevent officers or members of such officer's administration from donating money to the department's municipal archives or other archival establishment so long as such officers or members are not involved in the supervision, control or management of the archival processing pertaining to their respective administrations.

e. Nothing in this subdivision should be construed to limit access by the public to city records. The department shall be responsible for granting access to records in accordance with applicable provisions of law. Additionally, agencies of the city shall have free access to such records as needed.

HISTORICAL NOTE

Section added by L. L. 1977, No. 49.

Section amended at General Election, November 7, 1989.

Subd. 3 amended at General Election, November 8, 1988.

Subd. 4 amended L.L. 22/2003 § 3, eff. Mar. 26, 2003. [See § 1133 Note 2]

Subd. 5 added L.L. 22/2003 § 3, eff. Mar. 26, 2003. [See § 1133 Note 2]

FOOTNOTES



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NYC Charter 3004

New York City Charter

CHAPTER 72 DEPARTMENT OF RECORDS AND INFORMATION SERVICES*64

§ 3004. **Department; duties.**

1. The department shall operate a municipal archives, the head of which shall be a professional archivist. The archives shall perform the following functions:

- a. develop and promulgate standards, procedures and techniques with regard to archives management;
- b. make continuing surveys of existing records to determine the most suitable methods to be used for the creating, maintaining, storing and servicing of archival material;
- c. preserve and receive all city records of historical, research, cultural or other important value;
- d. appraise, accession, classify, arrange and make available for reference all records which come into the possession of the archives and
- e. establish and maintain an archives depository for the storage, conservation, processing and servicing of records.

2. The department shall operate a municipal reference and research center, the head of which shall be a professional librarian. The center shall perform the following functions:

- a. provide information and assistance to the mayor, the board of estimate, members of committees thereof and administrative officers of the city in connection with problems of municipal administration and proposed legislation;
- b. provide legislative reference assistance to the council, its members and committees and maintain, in a legislative reference section, such records and papers as the council and city clerk may remand to its custody;

c. maintain facilities which shall be open to the public wherein, subject to such reasonable regulation as may be prescribed, all books, reports, documents and other materials shall be available for public inspection;

d. ensure that at least one copy of each report, document, study or publication of the city or any of its administrations, departments, boards or other agencies shall be available at the center at all times;

e. collect, compile and maintain data and information pertaining to the operation of the city as well as other municipalities, governmental bodies and public authorities and arrange for the exchange, sale, purchase and loan of information materials from and with legislative and research services, libraries and institutions in other municipalities, governmental bodies and public authorities; and

f. ensure that each report, document, study or publication that is electronically transmitted to the department of records and information services pursuant to section 1133 of the charter is made available to the public on or through the website of the department, or its successor's website, within ten business days of publication, issuance, release or transmittal to the council or mayor.

3. The department shall:

a. provide for the distribution of publications of the city, where such authority is not vested in another city agency, and issue at regular intervals, no less than quarterly, a bulletin describing its facilities and resources;

b. institute actions in replevin to recover any historical and/or other documents properly owned by, or originating from, the city of New York;

c. report annually by the thirtieth day of September to the mayor and city council on the powers and duties herein mentioned including, but not limited to, the cost of savings effectuated by the department during the preceding fiscal year. This report shall further include an evaluation of compliance with the requirements of subdivision a of section 1133 of the charter.

4. The department shall operate a municipal records management division, the head of which shall be a professional records manager. The center*65 shall perform the following functions:

a. develop and promulgate standards, procedures and techniques in relation to records management;

b. make continuing surveys of operations relating to records and recommend improvements in current records management practices, including the use of space, equipment and materials employed in the creation, maintenance, storage and servicing of records;

c. establish standards for the preparation of schedules for the disposition of records, providing for the retention of records and archives of continuing value, and for the prompt and orderly disposal of records no longer possessing sufficient administrative, legal or fiscal value to warrant their further retention; and

d. establish, maintain and operate facilities for the storage, processing and servicing of records for all city agencies pending their deposit in the municipal archives or their disposition in any manner as may be authorized by law.

HISTORICAL NOTE

Section added by L. L. 1977, No. 49.

Amended at General Election, November 8, 1988.

Subd. 2 par e amended L.L. 11/2003 § 3, eff. June 18, 2003 except that community boards are subject to this amendment on June 18, 2004. [See § 1133 Note 1]

Subd. 2 par f added L.L. 11/2003 § 3, eff. June 18, 2003 except that community boards are subject to this amendment on June 18, 2004. [See § 1133 Note 1]

Subd. 3 par c amended at General Election, November 7, 1989.

Subd. 3 par c amended L.L. 11/2003 § 4, eff. June 18, 2003 except that community boards are subject to this amendment on June 18, 2004. [See § 1133 Note 1]

FOOTNOTES

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[Footnote 64]: * Chapter 72 added by L. L. 1977, No. 49.

65

[Footnote 65]: * Should be "division."



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NYC Charter 3005

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CHAPTER 72 DEPARTMENT OF RECORDS AND INFORMATION SERVICES*64

§ 3005. **Archival review board.**

There shall be in the department an archival review board which shall consist of five members; two of whom shall be appointed by the speaker, two of whom shall be appointed by the mayor, and one of whom shall be the commissioner, who shall serve ex officio as chairperson of the board. At least one such appointment shall be a professional archivist and at least one other such appointment shall be a professional historian. The members of the commission, other than the chair, shall be appointed within 30 days of the effective date of this section and shall be entitled to reasonable expenses. All appointed members of the commission shall be residents of the city. Members shall serve for terms of four years from such date of appointment. Vacancies in appointed membership of the board shall be filled by appointment by whosoever was responsible for such original appointment. The board shall meet once every 90 days or upon the request of any of its members. Any member of such board shall have complete access, during work hours, to inspect and review any appraisal, organization, processing or archiving of city records in the custody of an entity with which an agreement has been entered into for the purposes specified in subdivision five of section 3003. Such board may request and receive, from the department, assistance and data as may be necessary for the proper execution of its powers and duties. Such board shall render annually to the mayor a report reviewing the archival processing of any city papers during the year for which the report has been written.

HISTORICAL NOTE

Section added L.L. 22/2003 § 4, eff. Mar. 26, 2003. [See § 1133 Note 2]

FOOTNOTES

[Footnote 64]: * Chapter 72 added by L. L. 1977, No. 49.



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§ 3006. **Destruction of other materials.**

[Became § 1133(c).]

FOOTNOTES

64

[Footnote 64]: * Chapter 72 added by L. L. 1977, No. 49.



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§ 3007. **Departmental libraries.**

The commissioner shall analyze the needs of each city agency, except the law department, with respect to the establishment and maintenance of any library or research facility therein, and make such recommendations as may be appropriate in the circumstances.

HISTORICAL NOTE

Section added by L. L. 1977, No. 49.

Section amended at General Election, November 8, 1988.

FOOTNOTES

64

[Footnote 64]: * Chapter 72 added by L. L. 1977, No. 49.



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§ 3008. **Rules and regulations.**

The commissioner shall promulgate rules and regulations to effectuate the purposes of this chapter, except that rules and regulations relating to the disposal of records pursuant to section eleven hundred thirty-three shall be issued by the commissioner after consultation with the corporation counsel and the comptroller.

HISTORICAL NOTE

Added by L. L. 1977, No. 49.

Amended at General Election, November 7, 1989.

FOOTNOTES

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[Footnote 64]: * Chapter 72 added by L. L. 1977, No. 49.



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CHAPTER 72 DEPARTMENT OF RECORDS AND INFORMATION SERVICES*64

§ 3009. **Archives, reference and research advisory board.**

There shall be in the department an archives, reference and research advisory board which shall consist of fifteen members who shall be appointed by the mayor and which shall consult with the commissioner with respect to the functions referred to in subdivisions one and two*66 of section three thousand four of this chapter to advise such commissioner in matters at his or her request and render annually to the mayor a report regarding the development of municipal archives, reference and research services in the government and administration of the city.

HISTORICAL NOTE

Added by L. L. 1977, No. 49.

Amended at General Election, November 7, 1989.

FOOTNOTES

64

[Footnote 64]: * Chapter 72 added by L. L. 1977, No. 49.

66

[Footnote 66]: * Became subds. 1, 2, 3 with changes at General Election, November 8, 1988.



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CHAPTER 72 DEPARTMENT OF RECORDS AND INFORMATION SERVICES*64

§ 3010. **Municipal archives reference and research fund.**

1. There is hereby established a municipal archives reference and research fund, which shall be credited with all sums appropriated therefor, donations made thereto, and proceeds from the disposition of personal property which is in the custody of the department and which the commissioner has determined is not a record which must be retained pursuant to law and is not necessary for archival, reference, or research purposes. Interest accruing on principal from all aforementioned sources also shall be credited to the fund.

2. The municipal archives reference and research fund established by this section shall be used, subject to the approval of the director of management and budget, by the department for purposes related to its library and archival research programs including, but not limited to, purchasing and conserving books and other records, financing lecture series and commissioning studies and articles.

HISTORICAL NOTE

Added by L. L. 1985, No. 18, March 14.

FOOTNOTES

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[Footnote 64]: * Chapter 72 added by L. L. 1977, No. 49.



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CHAPTER 72 DEPARTMENT OF RECORDS AND INFORMATION SERVICES*64

§ 3011. **Definitions.**

As used in this chapter: 1. "Archives" means those official records which have been determined by the department to have sufficient historical or other value to warrant their continued preservation by the city;

2. "Records" means any documents, books, papers, photographs, sound recordings, machine readable materials or any other materials, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official city business. Library and museum materials made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference and stocks of publications are not included within the definition of records as used in this chapter;

3. "Records management" means the planning, controlling, directing, organizing, training, promoting and other managerial activities involved in records creation, records maintenance and use and records disposition, including but not limited to, the management of correspondence, forms, directives, reports, machine readable records, microfilms information retrieval, files, mail, vital records, equipment and supplies, office copiers, word processing and source data automation techniques, records preservation, records disposal and records centers or other storage facilities;

4. "Records management practices" means any system, procedure or technique followed with respect to effective records creation, records maintenance and use and records disposition;

5. "Records disposition" means: a. The removal by a city agency, in accordance with approved records retention schedules, of records no longer necessary for the conduct of business by such agency through removal methods which may include:

(1) the disposal of temporary records by destruction or donation;

(2) the transfer of records to the department, and

(3) the transfer to the department of records determined to have historical or other sufficient value to warrant continued preservation and

b. the transfer of records from one city agency to any other city agency;

6. "Records creation" means any process involved in producing any recorded information necessary to conduct the business of a city agency;

7. "Records management division" means an establishment maintained by the department primarily for the storage, servicing, security and processing of records which must be preserved for varying periods of time and need not be retained in office equipment or space and

8. "Servicing" means making information in records available to any city agency for official use or to the public.

9. "Private entity" means a for-profit or not-for-profit corporation, or non-governmental organization, but shall not include the City and State Universities of New York, public libraries, including the New York Public Library, and any college or university in the city.

HISTORICAL NOTE

Section added by L. L. 1977, No. 49.

Formerly § 3010, renumbered by L. L. 1985, No. 18, March 14.

Subds. 5, 7 amended at General Election, November 8, 1988.

Subd. 9 added L.L. 22/2003 § 5, eff. Mar. 26, 2003. [See § 1133 Note 2]

FOOTNOTES

64

[Footnote 64]: * Chapter 72 added by L. L. 1977, No. 49.



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NYC Charter 3020

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CHAPTER 74 LANDMARKS PRESERVATION COMMISSION

§ 3020. **Landmarks preservation commission.**

1. There shall be a landmarks preservation commission consisting of eleven members. The membership of such commission shall include at least three architects, one historian qualified in the field, one city planner or landscape architect, and one realtor. The membership shall include at least one resident of each of the five boroughs.

2. (a) The members of the commission shall be appointed by the mayor for terms of three years, provided that of those members first taking office, three shall be appointed for one year, four for two years, and four for three years. Each member shall serve until the appointment and qualification of his or her successor. The terms of members first taking office shall commence on the date of their appointment.

(b) Before making any appointment of a member who is required to be an architect, historian or city planner or landscape architect, the mayor may consult with the fine arts federation of New York and any other similar organization. In the event of a vacancy occurring during the term of a member of the commission, the mayor shall make an interim appointment to fill out the unexpired term of such member, and where such member is herein required to have specified qualifications, such vacancy shall be filled by interim appointment of a person having such qualifications, in the manner herein prescribed.

3. The members of the commission other than the chair, shall serve without compensation, but shall be reimbursed for expenses necessarily incurred in the performance of their duties.

4. The mayor shall designate one of the members of the commission to be chair and one to be a vice-chair. The chair and vice-chair shall serve as such, until a successor or successors are designated. The commission shall appoint an executive director who shall devote full time to his or her duties. The commission shall submit an annual report on its activities to the mayor.

5. The commission may employ technical experts and such other employees as may be required to perform its duties, within the appropriations therefor.

6. The commission shall have such powers and duties as shall be prescribed by law with respect to the establishment and regulation of landmarks, portions of landmarks, landmark sites, interior landmarks, scenic landmarks and historic districts.

7. In order to provide an opportunity for comment, in advance of any hearing on a proposed designation of a landmark, landmark site, interior landmark, scenic landmark or historic district, the commission shall send a notice of the proposed designation and the hearing to the city planning commission, all affected community boards and the office of the borough president in whose borough the property or district is located.

8. All landmarks, landmark sites, interior landmarks, scenic landmarks and historic districts designated by the commission pursuant to any applicable law shall be in full force and effect from and after the date of the action of the commission. Within ten days after making a designation, the commission shall file a copy of such designation with the city planning commission and the council. Within sixty days after such filing, the city planning commission shall (a) hold a public hearing on any such designation of a historic district and (b) shall submit to the council a report with respect to the relation of any such designation, whether of a historic district or a landmark, to the zoning resolution, projected public improvements, and any plans for the development, growth, improvement or renewal of the area involved. The city planning commission shall include with any such report its recommendation, if any, for council action with respect to any such designation of a historic district.

9. The council may modify or disapprove by majority vote any designation of the landmarks preservation commission within one hundred twenty days after a copy of such designation is filed with the city council provided that the city planning commission has submitted the report required above or that sixty days have elapsed since the filing of the designation with the council. All votes of the council pursuant to this section shall be filed by the council with the mayor and shall be final unless disapproved by the mayor within five days of such filing. Any such mayoral disapproval shall be filed by the mayor with the council and shall be subject to override by a two-thirds vote of the council within ten days of such filing.

10. (a) There shall be a panel, independent of the commission, consisting of five members appointed by the mayor with the advice and consent of the council in accordance with the procedures in section thirty-one. Such panel shall review appeals from determinations of the commission denying applications for certificates of appropriateness, based on the grounds of hardship, to demolish, alter or reconstruct improvements that are exempt from real property taxes, provided that such appeals may be brought only with respect to applications made under applicable law on the grounds of hardship applicable only to tax-exempt properties.

(b) Within a reasonable time period, the mayor shall submit to the council a proposed local law establishing the procedure, including the standard of review, for reviews by such panel. If such a local law is not enacted within one year of the effective date of this subdivision, the mayor shall promptly establish by executive order the procedures for reviews by such panel. Such panel shall not review appeals from determinations of the commission until the effective date of such a local law or executive order; provided, however, that any of the applications described in paragraph a of this subdivision that are denied by the commission after the first day of January, nineteen hundred ninety and prior to the effective date of such local law or executive order may be appealed to such panel during a sixty-day period commencing on the effective date of such local law or executive order.

(c) The provisions of this subdivision shall not be construed to alter or amend the provisions of chapter three of title twenty-five of the administrative code and the judicial interpretations thereof.

(d) The failure to appeal to the panel for review of a determination of the commission described in paragraph a of this subdivision shall not preclude the commencement of a judicial action or proceeding for review of such a

determination; provided, however, that no such action or proceeding may be brought during the pendency of an appeal before the panel. Notwithstanding anything to the contrary in this subdivision, the commencement of a judicial action or proceeding for review of a determination of the commission shall preclude the appeal of such a determination to the panel. Any party, including the commission, aggrieved by a final determination of the panel may commence a judicial action or proceeding for review of such determination of the panel.

11. In addition to the powers conferred by this chapter, the commission shall have the powers specifically conferred upon it by chapter thirty-seven of the charter.

HISTORICAL NOTE

Section added at General Election, November 7, 1989.

Derived from former § 534.

Subd. 11 added L.L. 77/1995 § 12, eff. Nov. 23, 1995 and shall not apply to matters submitted to the art commission prior to that date.

CASE NOTES

¶ 1. Landmarks Preservation Commission ordered restoration of windows in apartment building to their original condition since building was in an historic district and work was done prior to obtaining a certificate from the commission. Commission's contention of lack of capacity to maintain a proceeding by cooperative shareholders is meritless. The 4-month statute of limitations period was not violated because administrative decision affecting petitioner's rights was within such period. Further an escrow agreement to help settle the dispute is not a waiver of right to litigate.-Rudey v. Landmarks Commn, 137 AD2d 238 [1988].



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NYC Charter 3021

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CHAPTER 74 LANDMARKS PRESERVATION COMMISSION

§ 3021. **Hardship appeals panel.**

1. Definitions. For the purposes of this section,

- (a) "Panel" means the hardship appeals panel established pursuant to subdivision two of this section.
- (b) "Commission" means the landmarks preservation commission.

2. (a) There is hereby established the hardship appeals panel, independent of the commission, to consist of five members appointed by the mayor with the advice and consent of the council in the manner specified in section thirty-one of the charter. No more than two members of the panel shall be residents of the same borough.

(b) The term of each member shall be three years, provided, however, that of the members first appointed on or after the effective date of this section, two shall be appointed for a term of two years and one shall be appointed for a term of one year.

(c) The mayor shall designate one member to be chair.

(d) The members shall serve without compensation but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties.

3. The panel shall review appeals from determinations of the commission denying applications for certificates of appropriateness, based on the grounds of hardship, to demolish, alter or reconstruct improvements that are exempt from real property taxes, provided that such appeals may be brought only with respect to applications made under applicable law on the grounds of hardship applicable only to tax-exempt properties. Notwithstanding the foregoing provision, the panel shall not have jurisdiction to review such appeals if a judicial proceeding for review of such determination of the

commission has been commenced.

4. A proceeding for review pursuant to this section shall be commenced by filing a notice of appeal and petition. A notice of appeal shall be filed with the panel and the commission no more than forty-five days after the date that notice of the determination of the commission is served upon the appellant. A petition and any supporting memoranda of law shall be filed with the panel and the commission no later than sixty days after the date on which the notice of appeal was filed with the panel and the commission. Upon the filing of a petition, the panel shall obtain from the commission the record of the proceedings before the commission relating to the matter to be reviewed. The commission shall have the opportunity to file with the panel responsive memoranda of law within thirty days after receipt of the petition and supporting memoranda. Any other submissions to the panel, including reply memoranda, shall be filed in accordance with a schedule established by the panel. Notwithstanding the foregoing provisions, with respect to applications described in subdivision three of this section that are denied by the commission after the first day of January, nineteen hundred ninety and prior the the effective date of this section the notice of appeal and petition shall be filed with the panel and the commission no more than sixty days after the effective date of this section.

5. The panel shall review the petition, consider the arguments made in the memoranda submitted to it, afford the parties the opportunity to present oral argument, and review the record of the commission including the statements of those who appeared before the commission, the documents in the record, including materials prepared by members of the commission, staff and their consultants, the statements of members of the commission and staff in the record and findings of, and the reasons given by, the commission for its determination. The panel shall not substitute its own judgment for that of the commission. It shall not take testimony or consider any evidence that was not in the record below. If the panel finds that the determination of the commission has a rational basis supported by substantial evidence in the record, it shall affirm the determination of the commission; otherwise it shall reverse the commission's determination and remand the matter to the commission, which shall then issue a preliminary determination of insufficient return and take such steps as are provided by law following such preliminary determination.

6. The appellant or the commission may commence a judicial proceeding for review of a determination of the panel.

7. The panel shall render a determination expeditiously. If the panel does not render a determination within ninety days after the date of the filing of the petition, the petitioner at his or her option may agree to an extension of time for such determination or may withdraw his or her petition. If the petitioner chooses to withdraw the petition, the panel shall no longer have jurisdiction to hear the appeal and the determination of the commission described in subdivision three of this section shall be considered final and shall be subject to judicial review as provided by law.

8. Any determination of the panel reversing the commission's determination and remanding the matter shall be stayed pending the final resolution of any judicial proceeding for review of the determination of the panel.

9. Nothing in this section shall be construed to affect the provisions of law and procedures governing determinations of the commission, including, but not limited to, the nature and conduct of hearings and the burdens of proof, that are otherwise provided for under chapter three of title twenty-five of the administrative code and any rules promulgated thereunder and any judicial interpretations thereof, or to affect the standards provided in law for judicial review of any determination of the commission or panel.

10. Nothing in this section shall be construed to require a person aggrieved by a determination of the commission to appeal to the panel prior to commencing a judicial proceeding for review of such determination.

11. The panel may adopt such rules of procedure consistent with this section as are necessary to carry out the provisions of this section.

HISTORICAL NOTE

Section added L.L. 70/1991 § 2, eff. Oct. 17, 1991. [See Note.]

NOTE

Provision of L.L. 70/1991 § 1

Section 1. Purpose. In November, 1989 the voters of the city adopted changes to the New York city charter which included the provision for a panel to review appeals from certain determinations of the landmarks preservation commission. The purpose of this local law is to carry out the mandate of subdivision 10 of section 3020 of the charter to establish such panel and the procedure for review of appeals by such panel.