

NEW YORK
CHAMBERS
&
ADAMS
CO.

NEW YORK CITY CHARTER AND ADMINISTRATIVE CODE

ANNOTATED

A complete text of the New York City Charter and the New York City
Administrative Code with court decisions from the time of the
enactment of the Code and Charter

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NEW YORK CITY
CHARTER
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ANNOTATED

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NEW YORK CITY CHARTER

CHAPTER 1

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EXPLANATION

CASE NOTES—The case notes contain a summary of the facts of the case, the questions asked, the answers given, and the conclusions reached. The notes are written in a concise and clear manner, and are intended to provide a quick and accurate reference to the facts of the case.

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NEW YORK CITY
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CHAPTER I

MAYOR

§ 1. Office powers. The mayor shall be the chief executive officer of the city. Except as otherwise provided in another chapter, he may, by executive order, do any thing which is necessary to carry out his official duties, subject to the approval of the Board of Estimate and Finance. He may, from time to time, by executive order, delegate to or withdraw from any member of his staff, any official, appointed commission, board, and various boards, committees, and advisory boards, any or all of the powers and duties which are vested in him by this chapter.

NEW YORK CITY CHARTER

CHAPTERS 1-72

NEW YORK CITY
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NEW YORK CITY CHARTER

CHAPTER 1-1

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 The inclusion in the table of repealed laws annexed to the Administrative Code (Laws of 1935, Ch. 246) which authorized the city to operate a Foreign Trade Zone was inadvertent where this section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].

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

CHAPTER 1

MAYOR

§ 3. **Office powers.** The mayor shall be the chief executive officer of the city. Except as otherwise provided in section eleven, he may, by executive order, at any time, create or abolish bureaus, divisions or positions within his executive office as he may deem necessary to fulfill his duties. He may from time to time by executive order, delegate to or withdraw from any member of said office, specified functions, powers and duties, except his 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.

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'g 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].

HISTORICAL NOTE

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

Amended at General Election, November 4, 1975.

Amended by L. L. 1984, No. 19, § 1.

§ 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. The salary of the mayor shall be one hundred ten 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. 1977, No. 102.

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

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

§ 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.

§ 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.

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 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].

HISTORICAL NOTE

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

§ 7. **Deputy mayors.** The mayor shall appoint one or more deputy mayors with such duties and responsibilities as the mayor determines, including a deputy mayor to carry out, supervise and coordinate on behalf of the mayor and under his direction the fiscal and management reforms provided for in this charter or other law in the areas of budget, accounting, personnel and management practices.

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].

HISTORICAL NOTE

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

Amended at General Election, November 4, 1975.

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

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.

e. The minimum per diem rate for compensation for election inspectors attending classes of instruction shall be five dollars.

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.

HISTORICAL NOTE

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.

§ 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.

§ 10. **Succession.** a. In case of the suspension of the mayor from office, his temporary inability to discharge the powers and duties of his office by reason of sickness or otherwise, or his absence from the city, the powers and duties of the office of mayor shall devolve upon the president of the council or the comptroller in that order of succession until the suspension, inability or absence shall cease. While so acting temporarily as mayor neither the president of the council 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 whether before or after the commencement of such suspension, inability or 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 president of the council 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 his powers and duties, such powers and duties shall devolve upon the president of the council, the comptroller or a person selected pursuant to subdivision b of section twenty-seven, in that order of succession, until a new mayor shall be elected as provided herein. If the vacancy shall occur before the twentieth day of September in any year, such vacancy shall be filled in the general election held in that year, otherwise it shall be filled in the general election held in the following year. The term of the person then elected mayor shall begin on January first after such election and shall expire on the date when the term of the mayor originally elected would have expired. Upon the commencement of the term of the thus elected mayor, the president of the council or the comptroller then acting as mayor shall complete the term of the office to which he was elected if any remains.

HISTORICAL NOTE

Amended at General Election, November 4, 1975.

§ 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. 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 subsection 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 subsection 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-nine, 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.

§ 12. **Mayor's management report.** a. Not later than January thirtieth in each year the mayor shall make public and submit to the council and to the board of estimate 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 and to the board of estimate a management report. 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 goals and measures; (2) proposed program and performance goals and measures for the next fiscal year reflecting budgetary decisions made as of the date of submission of the plan; and (3) an explanation in narrative and/or tabular form of significant changes in performance goals and indicators from the adopted budget condition to the current budget as modified and from said modified budget to the preliminary budget statements. The management report shall contain for each agency (1) program and performance goals for the current fiscal year and a statement and explanation of performance measures; and (2) a statement of actual performance for the entire previous fiscal year relative to goals. 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. Prior to April eighth in each year the council shall conduct public hearings jointly with the board of estimate on the preliminary management report and on the proposed program and performance goals and measures of city agencies contained in such report. The council and the board of estimate 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.

§ 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.

CHAPTER 2

COUNCIL

§ 21. **Legislative power.** In addition to the other powers vested in it by this charter, the council shall be vested with the legislative power of the city, and shall be the local legislative body of the city.

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 in-

dependent 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'g, 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].

§ 22. **Composition of council.** a. The council shall consist of the president of the council and of other members termed council members.

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

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].

§ 23. **President of the council.** a. The president of the council 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.

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

c. The president of the council may, by written authority filed with the board of estimate and with the city clerk, designate any

two officers or employees appointed by him to exercise the powers specified in this subdivision. Either such officer or employee, so designated, may act in the place of the president of the council as a member of the board of estimate whenever the president of the council, although present in the city, shall be absent from a meeting of said board for any reason whatever.

d. The president of the council shall preside over the meetings of the council and shall have the right to participate in the discussion of the council but shall not have a vote except in case of a tie.

e. In addition to his other duties and responsibilities, the president of the council shall (1) oversee the coordination of city-wide citizen information and service complaint programs, and (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 and processing of such complaints.

HISTORICAL NOTE

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.

§ 24. **Election; term; vacancies.** The council members shall be elected at the general election in the year nineteen hundred seventy-seven and every fourth year thereafter. The term of office of each council member shall commence on the first day of January after the election and shall continue for four years thereafter. Any vacancy which may occur among the council members shall be filled by election by a majority of all the council members remaining in office, of a person who must be of the same political party of which the council member whose place has become vacant was the candidate on the ballot if such council member was elected as a candidate of any political party and who must be a resident of the district from which such council member was elected. In the case of a candidate who was listed on the ballot as the candidate for two or more political parties, such candidate shall, for the purposes of this section, be deemed to be the candidate of the party for which he received the highest number of votes.

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].

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.

§ 25. **Salaries.** a. The salary of the president of the council shall be ninety thousand dollars a year.

b. The salary of each council member shall be forty-seven thousand five hundred dollars a year.

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.

§ 26. **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."

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 998, aff'd 280 N. Y. 629, 20 N. E. 2d 1008 [1939].

§ 27. **Powers of council.** a. Any enumeration of powers in this charter shall not be held to limit the legislative power of the council except as in this charter specifically provided. The council in addition to all enumerated powers shall have power to adopt local law as to it may seem meet, 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 effec-

uate the purposes and provisions of this charter or of the other law relating to the city. 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.

b. 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.

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

d. 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.

e. 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.

f. 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.

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 thereof 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].

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.

§ 28. **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. The stated and occasional 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.

HISTORICAL NOTE

Amended by L. L. 1940, No. 147.

Amended at General Election, November 4, 1975.

§ 29. **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.

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].

HISTORICAL NOTE

Amended by L. 1950, ch. 434.

Amended at General Election, November 4, 1975.

§ 30. **Vice-Chairman.** The council shall elect from among the council members a vice-chairman, who shall possess the powers and perform the duties of the president of the council when the president is absent or while the president is acting as mayor, or when a vacancy occurs in the office of the president, and the vice-chairman shall, during such times, retain his right to vote in the council, except that during the time when filling a vacancy in the office of the president the vice-chairman shall have the right to vote only in case of a tie, and shall be a member of every board

of which the president of the council is a member by virtue of his office, except that such vice-chairman shall not be a member of the board of estimate unless the president of the council is acting as mayor under subdivision b of section ten or in case of the failure of a person elected as president of the council to qualify or a vacancy in the office caused by the president's resignation, removal, death or permanent inability to discharge powers and duties. In any such event, the vice-chairman shall act as president of the council with all powers and duties of said office.

CASE NOTES

¶ 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.*

HISTORICAL NOTE

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.

§ 31. **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. The council shall determine the rules of its own proceedings at the first organizational meeting of the council in each year and shall file a copy with the city clerk; it may appoint committees and shall appoint a finance committee properly staffed to consider budgetary and related matters; 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 journal of its proceedings; 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.

CASE NOTES

¶ 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].

HISTORICAL NOTE

Amended by L. 1962, ch. 998, § 4.
Amended at General Election, November 4, 1975.

§ 32. **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 his office for six years and until his 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. He shall keep the record of the proceedings of the council. He 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. He shall also keep a separate and public record which shall be known as the "street franchise book." In such record he shall forthwith file a copy duly certified by or under the authority of the board of estimate granting, making or adopting the same, of every grant, franchise, contract or resolution in the nature of a franchise which shall hereafter be granted, made or adopted by

said board, together with copies of all formalities of the execution or verification thereof, and shall forthwith, after so filing the same, transmit to the board a copy of such record, with a minute of the date and volume thereof, duly certified by him. Copies of all papers duly filed in his office, 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 him 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. He 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. He shall keep the seal of the city, and his 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, his first deputy 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 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

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.

§ 33. **Council members not to be employees of agencies.** No council member shall be an employee of any agency in any capacity whatever.

HISTORICAL NOTE

Amended at General Election, November 4, 1975.

§ 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.

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 con-

struable 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.*

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.

§ 35. **Ayes and noes.** 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.

§ 36. **Local laws; subject and title.** Every local law shall embrace only one subject. The title shall briefly refer to the subject-matter.

CASE NOTES

¶ 1. 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.

§ 37. **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.

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].

HISTORICAL NOTE

Amended at General Election, November 4, 1975.

§ 38. **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, he shall sign it and return it to the clerk; it shall then be deemed to have been

adopted. If he disapproves it, he shall return it to the clerk with his 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, the mayor shall neither approve nor return the local law to the clerk with his objections, it shall be deemed to have been adopted in like manner as if he 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.

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].

HISTORICAL NOTE

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

Amended at General Election, November 4, 1975.

§ 39. **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 the board of estimate or increases or decreases the number of votes any member is entitled to cast.
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 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 his hours of employment or changes his working conditions 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 or the board of estimate 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-two, one hundred ninety-one, one hundred ninety-two, one hundred ninety-three, one hundred ninety-nine, two hundred, two hundred twenty-five, 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 four, twenty-six hundred five, twenty-six hundred six and twenty-six hundred seven insofar as they relate to elected officials.

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. Contentions 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].

HISTORICAL NOTE

Amended at General Election, November 4, 1975.

§ 40. **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.

§ 41. **Power of investigation.** Each standing committee of the council may investigate any matters within its jurisdiction relating to the property, affairs, or government of the city or of any county within the city. The council may from time to time appoint a special committee to investigate any matters relating to the property, affairs or government of the city or of any county within the city. Any such 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.

CASE NOTES

¶ 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. Surpless*, 258 App. Div. 275, 16 N. Y. S. 2d 454 [1939], aff'g, 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 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'g* 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 Commission 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].

HISTORICAL NOTE

Amended at General Election, November 4, 1975.

§ 42. **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.

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 intendment. 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].

HISTORICAL NOTE

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

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

§ 43. **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.

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 and that they were called upon to vote on 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].

§ 44. **Council review of city agencies.** The council, through its standing committees and as an exercise of its legislative authority, shall review on a regular and continuous basis the service goals

and performance and management efficiency of the agencies of the city.

HISTORICAL NOTE

Added at General Election, November 4, 1975.

§ 45. **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.

§ 46. **Advice and consent.** Appointment by the mayor of the members of the art commission, board of health (other than the chairman), board of standards and appeals, city planning commission (other than the chairman), civil service commission, landmarks preservation commission, tax commission, taxi and limousine commission and the public members of the environmental control 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

Added at General Election, November 4, 1975.

Amended by L. L. 1977, No. 75.

CHAPTER 2-A

DISTRICTING COMMISSION

§ 50. **Districting Commission; composition; appointment; terms; vacancies; compensation.** a. There shall be a districting commission consisting of nine members appointed by the mayor as provided in this section. The two political parties receiving the largest number of votes in the most recent mayoral election shall each have its city council delegation submit a list of ten nominations to the mayor. If such a party does not have any members sitting on the city council, the chairpersons of its county committees shall each submit two nominations to the mayor, in order to provide a list of ten nominations from that party. The mayor shall appoint two members from each of the two lists. The mayor shall appoint five additional members, but of these additional members no more than two may be enrolled in the same political party. The mayor shall designate one of the nine members to chair the commission.

b. The commission shall have among its members at least one resident of each borough.

c. The mayor shall appoint the commission no later than one year and five months before the first general election of the city council after each federal decennial census. The commission's term shall end upon adoption of a districting plan, as set forth in section fifty-one.

d. In the event of a vacancy by death, resignation or otherwise, the mayor shall appoint a new member enrolled in the same political party from which his or her predecessor was selected, to serve the balance of the term remaining.

e. No member of the districting commission shall be removed from office by the mayor except 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.

§ 51. **Powers and duties of the Commission; hearings; submissions and approval of plan.** a. Following each decennial census, the commission shall consult the city council and 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 the plan to the city council.

The commission shall make its plan available to the public for inspection and comment not less than one month before its first public hearing.

c. The commission shall submit its plan to the city council not less than one year before the first general election of the city council after each decennial census.

d. The plan shall be deemed adopted by the city council unless disapproved within three weeks by the vote of the majority of all the members of the city council. If the city council fails to adopt the plan, it shall return the plan to the commission with its objections, and with the objections of the individual members of the council.

e. Upon the rejection of its plan, the commission shall prepare a revised plan and shall submit such revised plan to the city council no later than nine months before the first general election of the city council after each decennial census. Such revised plan shall be deemed adopted by the city council unless disapproved within two weeks by the vote of two thirds of all the members of the city council and unless, by a vote of two thirds of all of its members, the city council votes to file a petition in the Supreme Court, New York County, for a determination that the plan fails to meet the requirements of the Charter. The city council shall file its petition no later than ten days after its disapproval of the plan. Upon a final determination, including a final determination upon appeal, if any, that the plan meets the requirements of the Charter, the plan shall be deemed adopted by the city council and the commission shall deliver the plan to the city clerk.

f. The mayor shall not approve or veto the districting plan.

g. If in any year population figures are not available at least one year and five months before the first general election following the decennial census, the city council may by local law shorten the time periods providing for districting commission action in subsections (b), (c), (d), and (e) of this section.

§ 52. **District plan; criteria.** In the preparation of its plan for dividing the city into districts for the election of council members the commission shall apply the following criteria. To the extent practicable, the criteria 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.

b. 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.

c. Each district shall be compact. To the extent practicable, each district shall be no more than twice as long as it is wide.

d. To the extent practicable, a district shall not cross borough or county boundaries.

e. To the extent practicable, district lines shall keep intact neighborhoods and communities with established ties of common interest and association, whether historical, racial, economic, ethnic, or religious.

CHAPTER 3

BOARD OF ESTIMATE

§ 61. **Membership.** The mayor, the comptroller, the president of the council, and the presidents of the boroughs shall constitute the board of estimate.

HISTORICAL NOTE

Amended at General Election, November 4, 1975.

§ 62. **Voting in the board.** a. As members of the board of estimate, the mayor, the comptroller and the president of the council shall each be entitled to cast two votes, and the president of each borough shall be entitled to cast one vote.

b. Except as otherwise provided in this charter or by law, the board shall act by resolution adopted by a majority of the whole number of votes authorized to be cast by all the members of the board.

c. No resolution or amendment of any resolution shall be passed at the same meeting of the board at which it is originally presented unless by a three-fourths vote or shall be finally passed except at a meeting open to the public. Prior to a final vote by the board on any resolution or amendment of any resolution members of the general public shall be afforded the opportunity to be heard on such resolution or amendment.

d. A quorum of the board shall consist of a sufficient number of members thereof to cast six votes, including at least two of the members authorized to cast two votes each.

CASE NOTES

¶ 1. The one-man one-vote principle does not apply to voting by the board of estimate on city budget matters as the board is not a legislative nor "general governing body" of the city nor a political unit vested with general governmental powers. *Bergerman v. Lindsay*, 58 Misc. 2d 1013, 297 N. Y. S. 2d 421 [1969].

¶ 2. Where the Board of Estimate made minor modifications in an urban renewal plan by designating 100 out of 1800 dwelling units exclusively for low-income housing for the elderly instead of for low and middle income families, procedure of the board in effecting the modification was not improper when the modification was approved by a simple majority but the entire plan as amended was approved by a vote of 9-2 since the policy of the section, which is to protect against hasty action, is not violated by permitting a majority to approve an amendment, but requiring a three-fourths vote if the amended resolution is to be passed at the same meeting.—*Lower East Side Joint Planning Council v. N. Y. C. Board of Estimate*, 56 N. Y. 2d 717 [1982].

HISTORICAL NOTE

Amended by L. 1958, ch. 719.

Amended at General Election, November 4, 1975.

Amended by L. 1978, ch. 761.

§ 63. **Meetings.** The first meeting of the board in every year shall be called by the mayor upon due notice. The board shall meet at least once every other week except that it shall meet at least once a month during the months of July and August. Additional meetings shall be called as the board shall direct. The mayor, or in his absence the president of the council, shall preside at all meetings.

CASE NOTES

¶ 1. The provisions of this section must be read in conjunction with § 3 of the Charter which empowers the Mayor by executive order to delegate specified functions, powers and duties and hence the Mayor can validly delegate the power to preside at Board of Estimate hearings to a member of his executive office. *Battista v. Bd. of Estimate of City of N. Y.*, 51 Misc. 2d 962, 274 N. Y. S. 2d 729 [1966], *aff'd*, 25 N. Y. 2d 405, 255 N. E. 2d 142, 306 N. Y. S. 2d 898 [1969], *cert. den.*, 398 U. S. 955 [1969].

HISTORICAL NOTE

Amended at General Election, November 4, 1975.

§ 64. **Journal; record.** a. The secretary of the board shall keep a journal of the meetings of the board, which shall be a public record and which shall contain a record of ayes and noes on all votes taken on any resolution or other action of the board, the text of any resolution as passed by the board, a record of any other action taken by the board in such form as may be required by the board and such other matters as may be required by the board.

b. A full stenographic record of all public meetings of the board shall be filed in the office of the secretary and shall be a public record, and a transcript thereof or of any part thereof shall be promptly furnished to any citizen or taxpayer of the city on his demand made within ninety days of the meeting on payment of reasonable fees fixed by law or by resolution of the board.

CASE NOTES

¶ 1. In taxpayer's action seeking to invalidate grant by Board of Estimate of a franchise to operate buses, plaintiff could not establish, in face of recitals to the contrary in the official journal of the Board of Estimate, that the Board had not made inquiry into the money value of the franchise and the adequacy of the compensation therefor, since in awarding franchises the Board acts in a legislative capacity, and the acts of a legislative body, as recorded in its journal, may not be collaterally attacked.—*Loos v. City of N. Y.*, 257 App. Div. 219, 13 N. Y. S. 2d 119 [1939].

¶ 2. Plaintiff could not dispute the action of the Board of Estimate in legislating a zoning amendment by claiming that only defendant's project was then considered, when the contrary was shown by the minutes of the hearing before the Board of Estimate. Nor might the court inquire into the motive of the Board, nor go behind the duly enacted legislation of the Board in an attempt to seek a wrongful motive.—*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].

§ 65. **Rules.** The board may adopt rules for the conduct of its proceedings not inconsistent with the provisions of law, and such

rules shall not be suspended at any meeting except by affirmative vote of two-thirds of the votes which all members present are entitled to cast. By unanimous vote, it may delegate to any member of committee the power to act or hold hearings on any matter within its jurisdiction other than matters included in chapters six, eight, nine and fourteen; but such delegation shall not apply to any particular matter specified by any member in a notice filed with the secretary.

CASE NOTES

¶ 1. A petitioner cannot insist that the Board hear his petition on a specified date, since it is discretionary with the Board when it will hear and determine petitions.—*Matter of Ungar (Wagner)*, 20 Misc. 2d 403, 195 N. Y. S. 2d 2 [1961].

§ 66. **Secretary.** The secretary of the board shall be appointed and may be removed at pleasure by the board.

§ 67. **Responsibilities of the board.** The board shall exercise the powers and perform the duties imposed upon it by this charter, and shall:

1. Grant leases of city property and concessions for the use of city property and enter into leases of property to the city for city use.

2. Make recommendations to the mayor or the council in regard to matters of city policy whenever requested or on its own initiative.

3. Hold public hearings on any such matter of city policy or other matters within the scope of its responsibilities whenever requested by the mayor or required to do so by this charter or other provision of law or whenever in its judgment the public interest will be benefited thereby.

4. Have final authority respecting the use, development and improvement of city land.

5. Have authority to approve standards, scopes and final designs of capital projects.

6. Have power to supersede a community board or withdraw from a community board delegated powers of such community board for violation of law, malfeasance or misfeasance by three-quarters vote after notice to members of the community board and a public hearing.

7. Hold a hearing on tax abatement applications relating to the development of city land where the granting of such applications involves the exercise of administrative discretion by any city agency.

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. A taxpayer's action to restrain the sale of Neponsit Beach Hospital land to private purchasers was not premature where the land had been surrendered to the City and although the Board of Estimate had not made a final decision on the disposition of the land, it had defeated a resolution to assign the land to the De-

partment of Parks.—*Aldrich v. City of New York*, 208 Misc. 930, 145 N. Y. S. 2d 732 [1955].

¶ 3. A resolution of the board of estimate providing that no city funds should be used for the payment of wages to any employees in the Department of Welfare or other department who did not give his whole time to his duties or who engaged in any other business or employment was invalid as being legislative in nature. Neither former § 70 nor § 39 gives legislative power to the board of estimates. Furthermore, the charter does not grant power to the mayor or board of estimate who make Civil Service Rules.—*Natilson v. Hodgeson*, 264 App. Div. 384, 35 N. Y. S. 2d 537, aff'd without opinion 289 N. Y. 842, 47 N. E. 2d 442 [1943].

¶ 4. 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 Construct. Corp. v. Morris*, 15 App. Div. 2d 373, 225 N. Y. S. 2d 507 [1962].

¶ 5. Where no statutory or other right to a hearing existed on the question of whether the Board of Estimate should approve proposed amendments of regulations adopted by the Department of Water Supply, Gas and Electricity but the Board permitted a discretionary hearing a complaint as to the adequacy of notice of the hearing could not be validly made. *Battista v. Bd. of Estimate of City of N. Y.*, 51 Misc. 2d 962, 274 N. Y. S. 2d 729 [1966].

¶ 6. When New York City Cultural Resources Act, enacted by the legislature, involved more than the "use, development and improvement of city land" it required a home rule message and was unconstitutional without it despite legislative provision for Board of Estimate ratification of act.—*Hotel Dorset v. Trust for Cultural Resources*, 63 A.D. 2d 157, 407 N. Y. S. 2d 480 [1978].

¶ 7. The Board of Estimate had authority to make minor modification in an urban renewal plan by designating 100 out of 1800 dwelling units exclusively for low-income housing for the elderly instead of for low and middle-income families without need for prior submission to city planning commission.—*Lower East Side Joint Planning Council v. N. Y. C. Board of Estimate*, 83 App. Div. 2d 526, 441 N. Y. S. 2d 453 [1981], affirmed, 56 N. Y. 2d 717 [1982].

HISTORICAL NOTE

Section amended at General Election, November 4, 1975.
Subd. 6 amended by L. L. 1977, No. 102

§ 68. **Bureaus under the board.** a. There shall be the following bureaus under the board:

1. The bureau of the secretary, the head of which shall be the secretary of the board of estimate.

2. The bureau of franchises, the head of which shall be the director of franchises.

b. The head of each bureau shall be appointed by and shall be removable at the pleasure of the board. The head of each bureau and the secretary shall perform such duties as may be conferred upon him by the board or by law and shall have the powers of the head of a department in respect to the organization of his bureau and the officers and employees thereof.

HISTORICAL NOTE

Amended by L. 1969, ch. 866.

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 his election and remain a resident thereof throughout his term of office.

b. He 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.

c. The salary of the borough president shall be eighty 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 caused by removal from the borough or otherwise, shall be filled by an election to such vacancy by majority vote of all the council members then in office representing such borough, and in case of any such vacancy it shall be the duty of the mayor forthwith to call such council members into session for such an election and to preside thereat, but he shall not vote in such election except in the case of a tie vote.

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].

HISTORICAL NOTE

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.

§ 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 his office and with the board of estimate may delegate to either of them, and either, in the order of priority specified by the president in such instrument, shall, when such president is prevented from attending to the duties of his office, by reason of sickness, absence from the city or suspension from office, act as such president.

2. Have power to appoint a secretary and such assistants, clerks and subordinates as he 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.

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 his borough.

7. Appoint such professional staff within appropriations therefor to assist in the review and analysis of proposed budgets, departmental estimates, budget modifications and other fiscal matters under the jurisdiction of the president of the borough.

8. Perform such other functions and duties and exercise such other powers as may be assigned to him by law.

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].

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.

§ 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 board of estimate, the council, the mayor and the city planning commission on borough programs and proposed borough capital projects. 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) 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; and

(10) 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.

§ 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.

CHAPTER 5

COMPTROLLER

§ 91. **Election; terms; salary.** The comptroller 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. The salary of the comptroller shall be ninety 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.

§ 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.

§ 93. **Powers and duties.** a. The comptroller from time to time in his discretion may, and whenever required by law or requested by the mayor, the board of estimate or the council, shall advise the mayor, the board of estimate 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 may deem advisable in the public interest.

b. He shall have power to 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 for such purpose he shall have power to require the attendance and examine and take the testimony under oath of such persons as he may deem necessary.

c. 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.

d. 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. He shall investigate the processing of vouchers by city agencies and undertake studies, including cost benefit analyses, of purchases of equipment, goods and services by agencies of government that use city funds for such purposes and report his findings and recommendations to the mayor, the board of estimate, the council and the public.

e. The comptroller shall have power and it shall be his 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.

f. Except as provided in subsection e, not later than July first, nineteen hundred seventy-seven the agencies shall prepare and audit vouchers before payment, prepare and audit payrolls, receive and inspect goods and forward bills to the comptroller for payment. The comptroller shall prescribe methods 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 board of estimate after the agency has had an opportunity to be heard on this matter.

g. 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.

h. He 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 he shall be deemed to be acting in a fiduciary capacity.

i. He 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.

j. 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 receipts and expenditures of the city and the cash balance or 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, the street and park openings fund and the street improvement fund, so long as such funds shall be continued, 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 moneys expended 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.

k. On January first, nineteen hundred seventy-six, the comptroller shall begin to establish for his office and in city agencies a system of uniform accounting and reporting based on the principles set forth in the state comptroller's uniform system of accounts for municipalities as modified by the state comptroller in consultation with the city comptroller, for application to the city. Such system of uniform accounting and reporting shall be fully implemented not later than January first, nineteen hundred eighty-one.

(1) Notwithstanding any provision to the contrary, such accounting principles shall require that:

a. all expenses, excluding debt service and pension fund contributions, be accounted for on an accrual basis; and

b. revenues be accounted for on an accrual basis only if the liability of the payor of such revenue can be measured precisely and can be shown to have been created during a specific fiscal year and that a cash basis of accounting is to be used for those revenues for which an accrual basis is not feasible.

(2) Such system of uniform 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.

(3) The comptroller shall review agency accounts and systems to assure compliance with this chapter and with the methods, standards and procedures prescribed by him for the agencies.

1. He 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 statistical data in regard to the financial operations of such city agencies.

m. 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 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 him 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 his or its proportionate share of the cost of such custodial safekeeping which shall be paid to the city of New York.

n. 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.

o. The comptroller, upon request, shall assist the board of estimate or the council in the conduct of any investigations or studies by either body of the fiscal or economic affairs of the city or of any agency. He shall provide reports to the board of estimate or the council upon request of either body and shall testify before either body or a committee of either body.

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].

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.

§ 94. **Deputy comptrollers and other appointees.** a. The comptroller shall appoint and at pleasure remove a first, and second deputy comptroller. He may appoint and at pleasure remove a third deputy 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 to him by the comptroller by instrument in writing filed with the city clerk. Provided however that no more than five (5) such additionally appointed officers or employees shall serve simultaneously. The city clerk shall notify the city council of the filing or revocation of each such appointment.

b. Any deputy comptroller or any one of three officers or employees appointed by the comptroller may, by written authority filed with the board of estimate and with the city clerk, act in the place of the comptroller as a member of the board of estimate. Any deputy comptroller or any officer or employee appointed by the comptroller may act in place of the comptroller on any other 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. In the event of a vacancy in the office of comptroller, 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 his 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 illness or absence the third deputy comptroller shall act as comptroller.

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.

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.

§ 95. **Annual audit.** An annual audit shall be made of the consolidated operating accounts of the city and year-end receivables accounts of the city by a firm or firms of certified public accountants selected by the board of estimate, after submission of more than one proposal to perform the audit, unless such audit is performed or shall be performed by the state comptroller. Copies of the annual audit shall be submitted to the mayor, the comptroller, the board of estimate, the council and the state comptroller and shall be published in the City Record. No firm of certified public accountants shall perform any such audit or a part of such audit for more than four consecutive years.

§ 95.* **Third 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 related to borrowings and the investment of funds.

HISTORICAL NOTE

Added at General Election, November 4, 1975.

§ 96. **Actuarial audit.** The board of estimate 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.

* So in original.

CHAPTER 6

EXPENSE BUDGET*

§ 110. **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.

* L. L. 1981, No. 35, Apr. 23 and L. L. 1981, No. 37, June 18 provide as follows:

Section 1. Notwithstanding any provision of law to the contrary, the preparation of the following documents relating to the budgetary process for fiscal year nineteen hundred eighty-two shall be in accordance with the following schedule:

a. The proposed expense budget and budget message required to be submitted pursuant to section one hundred sixteen of the New York city charter shall be submitted to the board of estimate and the council not later than the twelfth day of May;

b. The certificate of the mayor required to be issued and published pursuant to section two hundred thirteen of such charter shall be issued and published not later than the twelfth day of May;

c. The proposed executive capital budget and proposed executive capital program prepared in accordance with section two hundred nineteen of such charter shall be submitted to the board of estimate and the council not later than the twelfth day of May; and

d. The recommendations of the comptroller and the city planning commission prepared in accordance with section two hundred twenty of such charter shall be submitted to the board of estimate and the council not later than the twentieth day of May.

§ 2. Notwithstanding any provision of law to the contrary, the steps required for the consideration and adoption of the expense and capital budgets and capital program for fiscal year nineteen hundred eighty-two shall be in accordance with the following schedule:

a. The board of estimate and the council shall hold public hearings in accordance with section one hundred nineteen of such charter between the twelfth day of May and the twenty-eighth day of May;

b. The board of estimate and the council shall adopt and return to the mayor a single expense budget in accordance with section one hundred twenty of such charter not later than the eighteenth day of June;

c. The mayor, not later than one day following the date on which the board of estimate and the council adopt a single expense budget, may exercise his veto power in accordance with subdivision a of section one hundred twenty-one of such charter.

d. The board of estimate and the council, not later than four days following the date on which the mayor may have exercised his veto power, may exercise their power to override a mayoral veto in accordance with subdivision b of section one hundred twenty-one of such charter;

e. The budget shall be certified not later than the twenty-fourth day of June or one day following the date on which the board of estimate and the council may have exercised their power to override a mayoral veto, whichever is later, by the mayor, comptroller and the city clerk in accordance with section one hundred twenty-two of such charter;

f. The board of estimate and the council shall hold public hearings in accordance with section two hundred twenty-one of such charter between the twelfth day of May and the twenty-eighth day of May;

g. The board of estimate and the council shall adopt and return to the mayor a single capital budget and a single capital program in accordance with section two hundred twenty-two of such charter not later than the eighteenth

§ 111. **Office of management and budget.** a. There shall be an office of management and budget in the executive office of the

day of June;

h. The mayor, not later than one day following the date on which the board of estimate and the council adopt a single capital budget and capital program, may exercise his veto power in accordance with subdivision b of section two hundred twenty-three;

i. The board of estimate and the council, not later than four days following the date on which the mayor may have exercised his veto power, may exercise their power to override a mayoral veto in accordance with subdivision c of section two hundred twenty-three of such charter; and

j. The capital budget and capital program shall be certified not later than the twenty-fourth day of June or one day following the date on which the board of estimate and the council may have exercised their power to override a mayoral veto, whichever is later, by the mayor and the city clerk in accordance with subdivision d of section two hundred twenty-three of such charter.

L. L. 1982, No. 22, Apr. 26 provides as follows:

Section 1. Notwithstanding any provision of law to the contrary, the preparation of the following documents relating to the budgetary process for fiscal year nineteen hundred eighty-three shall be in accordance with the following schedule:

a. The proposed expense budget and budget message required to be submitted pursuant to section one hundred sixteen of the New York city charter shall be submitted to the board of estimate and the council not later than the tenth day of May;

b. The certificate of the mayor required to be issued and published pursuant to section two hundred thirteen of such charter shall be issued and published not later than the tenth day of May;

c. The proposed executive capital budget and proposed executive capital program prepared in accordance with section two hundred nineteen of such charter shall be submitted to the board of estimate and the council not later than the tenth day of May; and

d. The recommendation of the comptroller and the city planning commission prepared in accordance with section two hundred twenty of such charter shall be submitted to the board of estimate and the council not later than the twentieth day of May.

Section 2. Notwithstanding any provision of law to the contrary, the steps required for the consideration and adoption of the expense and capital budgets and capital program for fiscal year nineteen hundred eighty-three shall be in accordance with the following schedule:

a. The board of estimate and the council shall hold public hearings in accordance with section one hundred nineteen of such charter between the twelfth day of May and the twenty-eighth day of May;

b. The board of estimate and the council shall adopt and return to the mayor a single expense budget in accordance with section one hundred twenty of such charter not later than the seventeenth day of June;

c. The mayor, not later than the eighteenth day of June or one day following the date on which the board of estimate and the council adopt a single expense budget, whichever is later, may exercise his veto power in accordance with subdivision a of section one hundred twenty-one of such charter.

d. The board of estimate and the council, not later than the twenty-second day of June or two days following the date on which the mayor may have exercised his veto power, whichever is later, may exercise their power to override a mayoral veto in accordance with subdivision b of section one hundred twenty-one of such charter and on that date the expense budget shall be adopted. In the event the board of estimate and the council fail to act by that date, the expense budget as modified by the disapprovals by the mayor is adopted;

e. The budget shall be certified not later than the twenty-third day of June or one day following the date on which the board of estimate and the council may have exercised their power to override a mayoral veto, whichever is

mayor, the head of which shall be director of management and budget who shall be appointed by the mayor.

b. It shall be the duty of the director to prepare each year an executive budget for the ensuing fiscal year and to perform all such duties in regard thereto as the mayor may direct. He shall have the power, personally or by his representatives, to survey each agency for the purpose of ascertaining its budgetary requirements. He may require any agency, or any officer or employee, to furnish data and information and to answer inquiries pertinent to such survey.

CASE NOTES

¶ 1. In Civil Service promotion examination for promotion from Clerk, Grade 3, to Grade 4 in the Finance Department, question requiring candidate to explain fully the procedure in carrying out an assignment to prepare job descriptions for all of the positions in the Department, was relevant to the duties of the position for which the examination was held, as under Charter former § 113 (now § 111) and Administrative Code § 113-1.0 et seq., Grade 4 clerks would reasonably be assigned to prepare descriptions of the work being done or which reasonably could be assigned to be done.—*Furman v. Marsh*, 185 Misc. 209, 56 N. Y. S. 2d 690 [1945].

¶ 2. Director of the Budget was not authorized to issue a certificate permitting the billing of a certain vacancy but at a lower salary. Provision of budget stating that no vacancy should be filled except upon a certificate issued by the director upon such terms and conditions as might be proper, referred, by "terms and conditions", to the administration of payment and was hardly intended to delegate to the Director the power to fix salaries. Furthermore, such power to fix salaries would seem not delegable, as the Director

later, by the mayor, comptroller and the city clerk in accordance with section one hundred twenty-two of such charter;

f. The board of estimate and the council shall hold public hearings in accordance with section two hundred twenty-one of such charter between the twelfth day of May and the twenty-eighth day of May;

g. The board of estimate and the council shall adopt and return to the mayor a single capital budget and a single capital program in accordance with section two hundred twenty-two of such charter not later than the seventeenth day of June;

h. The mayor, not later than the eighteenth day of June or one day following the date on which the board of estimate and the council adopt single capital budget and capital program, whichever is later, may exercise his veto power in accordance with subdivision b of section two hundred twenty-three of such charter;

i. The board of estimate and the council, not later than the twenty-second day of June or two days following the date on which the mayor may have exercised his veto power, whichever is later, may exercise their power to override a mayoral veto in accordance with subdivision c of section two hundred twenty-three of such charter and on that date the capital budget and capital program shall be adopted. In the event the board of estimate and the council fail to act by that date, the capital budget and capital program as modified by the mayor are adopted; and

j. The capital budget and capital program shall be certified not later than the twenty-third day of June or one day following the date on which the board of estimate and the council may have exercised their power to override a mayoral veto, whichever is later, by the mayor and the city clerk in accordance with subdivision d of section two hundred twenty-three of such charter.

is given nothing but administrative duties in respect to the preparation of the budget.—*McGovern v. Patterson*, 117 (131) N. Y. L. J. (6-6-47) 2234, Col. 6 F.

† 3. Petitioner who had passed a promotion examination for senior stenographer in the Department of Public Works and was actually performing the duties of senior stenographer in the Department of Public Works, Division of Operation and Maintenance in New York City, would be entitled to an order directing the Civil Service Commission and Superintendent of Public Works to certify her as senior stenographer and appoint her to such position, which existed at least de facto in the New York City office. However, the granting of such relief was barred by fact that the Director of the Budget had not approved such classification for petitioner or the position held by her, nor approved any budgetary appropriation for such position, and he was not made a party to the proceeding.—*Leitner v. Conway*, 195 Misc. 621, 90 N. Y. S. 2d 441 [1949].

HISTORICAL NOTE

Amended by L. L. 1975, No. 5.

§ 112. **Departmental estimates.** a. On such date as the mayor may direct, the head of each agency shall submit to the director of management and budget an estimate of the requirements for expense of such agency for the ensuing fiscal year. Such estimates shall be known as departmental estimates and shall consist of proposed units of appropriation for personal services and proposed units of appropriation for other than personal services. Each agency head shall submit a statement of the impact on the level of services provided. Each agency that delivers local services within community district shall consult with the respective community boards in the preparation of its estimates.

b. Each proposed unit of appropriation for personal service shall represent the amount requested for personal service for a particular program, purpose, activity or institution.

c. Each proposed unit of appropriation for other than personal service shall represent the total amount requested for other than personal service for a particular agency; provided, however, that the amount thereof allocable to each unit of appropriation for personal service in such agency shall be set forth for informational purposes at the end of each unit of appropriation for personal service.

d. Each requested unit of appropriation shall be supported by line items showing how the total amount of such unit is determined. Such departmental estimates shall be in such form and contain such further information as may be required by the mayor or by law. Such departmental estimates shall be public records and shall at all reasonable times be open to public inspection. For each city agency that has local service districts within community districts and boroughs, the departmental estimates where practicable shall contain a statement of proposed direct expenses in each such service district for each requested unit of appropriation, pursuant to the requirements and time periods specified in subdivision k of section ninety-three.

HISTORICAL NOTE

Section amended by L. L. 1964, No. 24.
 Section amended by L. L. 1975, No. 5.
 Section amended at General Election, November 4, 1975.
 Subd. a amended by L. L. 1977, No. 102.
 Subd. a amended by L. L. 1979, No. 6.
 Subd. c amended by L. L. 1977, No. 102.
 Subd. d amended by L. L. 1977, No. 102.
 Subd. e repealed by L. L. 1976, No. 6.
 Subd. f repealed by L. L. 1976, No. 6.
 Subd. g repealed by L. L. 1976, No. 6.

§ 112-a. **Preliminary budget statements.** a. Not later than the sixteenth day of January, the mayor shall submit the preliminary budget statements for the ensuing fiscal year to the board of estimate, council and each community board and borough board. Such preliminary budget statements shall contain proposed expenditures and forecast revenues for the ensuing fiscal year, and shall indicate proposed units of appropriations for personal services and for other than personal services. Such preliminary budget statements shall consist of: (1) a financial plan covering estimates of expenditures and revenues for the four ensuing fiscal years, (2) departmental estimates of agency expenditures for the ensuing fiscal year pursuant to section one hundred twelve together with proposed sources of revenue for each unit of appropriation specified therein and (3) a plan to balance the expense and revenue budgets, by unit of appropriation where actions are allocated to specific agencies, showing the number of full-time personnel affected in each agency, the estimate impact on services that would result from such plan and the funding consequences of such plan.

b. Not later than the fifteenth day of February, each community board shall (1) hold a public hearing on the preliminary budget statements with respect to the service needs and priorities of the community district and (2) submit a statement of its budget priorities and recommendations to the mayor, board of estimate, council, director of management and budget, and the respective borough board.

c. 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, board of estimate, council, and director of management and budget.

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].

HISTORICAL NOTE

Added by L. L. 1979, No. 6.
 Amended by L. L. 1981, No. 29.

§ 113. **Statement by comptroller.** a. Not later than the fifteenth day of February in each year, the comptroller shall submit to the mayor, to the board of estimate and to the council a certified

statement which shall be published forthwith in the City Record and which shall contain:

1. A schedule of appropriations required for debt service, including appropriations to the several sinking funds required by law.

2. An itemized statement of the condition of the street and park openings fund and of the street improvement fund, and any appropriation therefor required by law.

3. Such other information as may be required by law.

b. At such times as the mayor, the board of estimate or the council shall request, the comptroller shall submit to them a certified statement showing as of a specified date:

1. An itemized statement of all taxes due and uncollected.

2. Such other information as may be requested by the mayor, the board of estimate or the council.

HISTORICAL NOTE

Amended by L. L. 1955, No. 21.
Amended by L. L. 1961, No. 93.
Amended by L. 1962, ch. 998, § 9.
Added by L. L. 1977, No. 102.

§ 114. **Statement of commissioner of finance.** Not later than the fifteenth day of February in each year, the commissioner of finance shall submit to the mayor, to the board of estimate and to the council 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.

HISTORICAL NOTE

Amended by L. L. 1968, No. 98.
Amended by L. L. 1976, No. 28.
Amended by L. L. 1977, No. 30.
Amended by L. L. 1981, No. 82.

§ 115. **Preliminary hearings.** Not later than the twenty-fifth day of March, the board of estimate and the council through its committees shall hold joint hearings on the preliminary budget statements, recommendations of community boards, recommendations of borough boards, and such other information as may be available to them, and submit any findings and recommendations to the mayor. The public and representatives of the director of management and budget may participate in the hearings. Officers of agencies, when requested by the board of estimate or the council, shall appear and be heard. Representatives of community boards and borough boards may appear and be heard.

HISTORICAL NOTE

Added at General Election, November 4, 1975.
Amended by L. L. 1977, No. 12.
Amended by L. L. 1979, No. 6.

§ 116. **Submission of the budget.** Not later than the twenty-sixth day of April the mayor simultaneously shall submit to the board of estimate and the council (1) a proposed budget for the

ensuing fiscal year, and (2) a budget message, both of which shall be public records and shall be printed forthwith.

HISTORICAL NOTE

Amended at General Election, November 4, 1975.

Amended by L. L. 1977, No. 12.

Amended by L. L. 1979, No. 6.

§ 117. **Contents of the budget and budget message.** a. There shall be included in the budget:

1. Units of appropriation, prepared according to section one hundred twelve, in such amounts and upon such terms and conditions as may be determined by the mayor.
2. The amounts required by law to be appropriated to the several sinking funds as certified by the comptroller.
3. The amount required to pay the interest and principal of city obligations as certified by the comptroller.
4. The amounts required by law to be appropriated to the street and park openings fund and the street improvement fund as certified by the comptroller.
5. The 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.
6. 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 charter which are allocable to a particular program, purpose, activity or institution shall be included for informational purposes only.
7. Such other amounts as may be required by law.
8. The terms and conditions under which appropriations shall be administered.
9. 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.
10. There shall be appropriated in the expense budget a reserve for unanticipated contingencies.

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

b. 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, 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, accompanied by comparison with the amounts appropriated in the current expense budget as originally adopted and as modified through the first nine months of the

fiscal year, and with the amounts actually expended in the previous year and through the first nine months of the current fiscal year.

3. Estimates of all revenue receipts and recommendations for any changes in the revenue and fiscal sources and operations of the city, including intergovernmental revenue and fiscal arrangements.

4. An itemized statement of the revenue 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 nine months of the current fiscal year, and the estimated receipts 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 all revenues of a nonrecurring nature that are not expected to be available or used in subsequent fiscal years.

6. For each existing program, forecasts of expenses for the succeeding three fiscal years at existing levels of service; forecasts of revenue by source from existing sources of revenue for the succeeding three years; and for each new or expanded program, a three year forecast of annual recurring costs after such program is fully implemented.

7. For each existing program, a comparison of the expenses for the current year with the prior year's forecast for the current year.

8. For each agency that has local service districts within community districts and boroughs, a statement of proposed direct expenses in each service district for each unit of appropriation and a statement of the basis for the allocation of direct expenses 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 budgets.

CASE NOTES

¶ 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.*

HISTORICAL NOTE

Section amended by L. L. 1961, No. 93.
 Section amended by L. 1962, ch. 998, § 10, 11 and 12.
 Section amended at General Election, November 4, 1975.
 Subd. a, subpar. 5 amended by L. L. 1977, No. 102.
 Subd. a, subpar. 9 amended by L. L. 1977, No. 102.
 Subd. b, subpar. 1 amended by L. L. 1977, No. 102.

§ 118. **Appropriations for supplies, materials and equipment.** Appropriations for the purchase of supplies, materials and equipment or the provision of services, utilities, or facilities required by and to be purchased or provided for the account of the various agencies and institutions for which the department of general services is authorized by the provisions of this charter to make purchases or provide services, utilities, or facilities shall be made to the department of general 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 service department of general 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.

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].

HISTORICAL NOTE

Amended by L. 1962, ch. 998, § 13.
Amended by L. L. 1968, No. 69.
Amended by L. L. 1977, No. 102.

§ 119. **Budget hearings.** Between the sixth day of May and the twenty-fifth day of May in each year, the board of estimate and the council shall hold public hearings on the budget as presented by the mayor. The council may hold such hearing either as a body or by its finance committee or other committees. The hearings may be held jointly by consent of both bodies. 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 board of estimate or the council, to appear and be heard.

HISTORICAL NOTE

Amended by L. 1962, ch. 998, § 14.
Amended by L. L. 1963, No. 30.
Amended by L. L. 1969, No. 74.
Amended at General Election, November 4, 1975.
Amended by L. L. 1977, No. 12.
Amended by L. L. 1979, No. 6.

§ 120. **The budget; approval.** a. The board of estimate and the council may increase, decrease, add or omit any unit of appropriation in the budget as submitted by the mayor, or add, omit or change any terms or conditions of it.

b. Except as otherwise provided by law, and subject to the veto of the mayor pursuant to section one hundred twenty-one, the board of estimate and the council, by separate concurrent vote of each body, shall adopt a single budget, and it shall be returned to the mayor not later than the fifth day of June. In the event of a disagreement between the two bodies, each shall appoint members to a conference committee to reconcile differences and to make recommendations to the respective bodies for concurrent vote of each body.

c. If a single budget has not been adopted by the fifth day of June pursuant to subdivision b of this section, the 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 budget is adopted.

d. The mayor shall not participate in any action or vote of the board of estimate on the budget.

e. The actions and votes of the board of estimate and the council shall be certified to the mayor by the secretary of the board of estimate and the president of the council, respectively.

CASE NOTES

¶ 1. Resolution of Board of Estimate providing that no City funds should be used for payment of wages of any employee in the Department of Welfare or other department who did not give his whole time to his duties or who was engaged in any other business or employment, *held* invalid as being clearly legislative in nature, purporting to attach conditions to the holding of civil service positions in City departments, whereas the legislative power of the City is vested in the Council by § 21 of the Charter. Neither former § 70 nor former § 39 gives legislative power to the Board of Estimate. Former § 123 (now § 120) of the Charter, referring to powers of the Board of Estimate to increase, decrease or omit items from the budget, merely refers to accounting problems and kindred subjects, and does not grant legislative power to such Board under the guise of passing the budget. Furthermore, the Charter does not grant power to the Mayor or Board of Estimate to make civil service rules.—*Natilson v. Hodson*, 264 App. Div. 384, 35 N. Y. S. 2d 537, *aff'd* without opinion 289 N. Y. 842, 47 N. E. 2d 442 [1943].

¶ 2. A Code item in the budget reading "unallocated appropriations—motor vehicle equipment, repair parts, special machinery, unforeseen expenditures and sundry expenses . . . \$3,500,000" was not in compliance with the Charter which sets out a comprehensive scheme of budgetary Code items through supporting schedules.—*Wilmerding v. La Guardia*, 268 App. Div. 496, 52 N. Y. S. 2d 169 [1944].

¶ 3. The action of the budget director in modifying the expense budget by eliminating ten positions of battalion chief and creating ten additional positions was not authorized by the Charter. The terms and conditions permitted modification of the appropriation by adding new positions but such terms and conditions could not be used to permit the summary realignment of an unlimited number of incumbents without a clear warrant of law. Charter § 128 does not furnish such warrant to the budget director.—*Matter of Broderick*, 295 N. Y. 363, 67 N. E. 2d 737 [1946].

¶ 4. A provision in a budget that vacancies should be filled only upon a certificate of the director of the budget who could impose such terms and conditions as he found proper was valid and the budget director was within his power when he authorized the filling of a vacancy which had a line schedule rate of \$4,450.00 at \$3,850.00 per annum. The appointee was not entitled to payment of salary in excess of the rate so fixed by the budget director.—*McGovern v. Patterson*, 273 App. Div. 35, 75 N. Y. S. 2d 492 [1947], *aff'd*, 298 N. Y. 530, 80 N. E. 2d 667 [1948].

¶ 5. A resolution passed in 1920 by the Board of Estimate which recommended to the Board of Aldermen a rate of pay for "foremen" of \$300 per annum in excess of the pay of mechanics was not effective where it was not implemented in the budget and the plaintiffs as "foremen" could not recover any wages in excess of those established in the yearly budgets.—*Anderson v. City of New York*, 281 App. Div. 539, 120 N. Y. S. 2d 860 [1953], *aff'd*, 306 N. Y. 803, 118 N. E. 2d 819 [1954].

¶ 6. This section is not unconstitutional as a violation of the one-man one-vote principle as this rule does not apply to the board of estimate which is not a legislative nor general governing body

of the city nor a political unit vested with general governmental powers.—*Bergerman v. Lindsay*, 58 Misc. 2d 1013, 297 N. Y. S. 2d 421 [1969], *aff'd*, 25 N. Y. 2d 405, 255 N. E. 2d 42, 306 N. Y. S. 2d 898 [1969], *cert. den.*, 398 U.S. 955 [1970].

¶ 7. Mayor as a member of the board of estimate may vote on proposals to override budget modifications under § 124(b) of Charter.—*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].

HISTORICAL NOTE

Added at General Election, November 4, 1975.

Amended by L. L. 1977, No. 12.

Amended by L. L. 1979, No. 6.

§ 121. **Veto of the mayor.** a. The mayor, not later than the tenth day of June, 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 shall return the budget by that date to the board of estimate and council, setting forth his objections in writing.

b. Either the board of estimate by a two-thirds vote of all the members of the board other than the mayor, or 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, with the concurrence of the other body by a majority vote of all members other than the mayor in the case of the board of estimate. The board of estimate and the council shall act and the expense budget shall be adopted not later than the twentieth day of June. In the event the board of estimate and the council fail to act by that date, the expense budget as modified by the disapprovals by the mayor is adopted.

HISTORICAL NOTE

Added at General Election, November 4, 1975.

Amended by L. L. 1977, No. 12.

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

§ 122. **Appropriation, certification and publication.** Not later than the twenty-first day of June in each year, 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 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, shall be a public record and be published forthwith.

HISTORICAL NOTE

Amended by L. 1962, ch. 998, § 16.

Amended by L. L. 1963, No. 30.

Amended at General Election, November 4, 1975.

Amended by L. L. 1977, No. 12.

Amended by L. L. 1979, No. 6.

§ 123. **Budget administration.** a. Except as otherwise provided by law, no unit of appropriation shall be available for expenditure by any city agency until the head of the agency has filed with the mayor, the director of management and budget, the comptroller, and the personnel director a schedule fixing positions and salaries and setting forth other expenses within the units of appropriation established pursuant to the budget and 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 published in the City Record. 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 personnel by job categories; 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 his 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.

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].

HISTORICAL NOTE

Amended by L. 1962, ch. 998, § 17.

Amended by L. L. 1975, No. 5.

Amended at General Election, November 4, 1975.

§ 124. **Budget modification.** a. Subject to the quarterly spending allotments and aggregate position and salary limits established pursuant to section one hundred twenty-three, 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 published in the City Record and copies shall be forwarded to the mayor and the comptroller not less than ten days before the effective date thereof.

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 per cent from the budget as adopted for such unit of appropriation, the mayor shall notify the board of estimate and the council of the proposed action. Within thirty days after the first stated meeting of each body following the receipt of such notice, either the board of estimate or the council may disapprove the proposed action. 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. As used in this section, the term "unit of appropriation" shall mean and include (1) a unit of appropriation for personal service as defined in subdivision b of section one hundred twelve of the charter together with that portion of a unit of appropriation for other than personal service, as defined in subdivision c of such section one hundred twelve, which is allocated to such unit of appropriation for personal service; or (2) a unit of appropriation for other than personal service as defined in subdivision c of such section one hundred twelve.

e. 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.

f. The procedures and required approvals pursuant to sections one hundred twenty, one hundred twenty-one and one hundred twenty-two, 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, 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.

CASE NOTES

¶ 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'g 268 App. Div. 856, 50 N. Y. S. 2d 844 [1944], aff'g, 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].

HISTORICAL NOTE

Amended by L. 1962, ch. 998, § 18.

Amended at General Election, November 4, 1975.

§ 126 All revenues of the city, of every administration, department, board, office and commission thereof, and of every 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."

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].

HISTORICAL NOTE

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

§ 129. **Revenue estimation report.** Not later than the thirtieth day of September, the comptroller shall certify to the mayor the actual revenues for the previous fiscal year. Not later than the fifteenth day of October, the mayor shall issue a report comparing actual revenues to estimated revenues in the budget as adopted for such 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

Added at General Election, November 4, 1975.

§ 130. **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 twenty-three 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.

CHAPTER 7

TAX COMMISSION

§ 153. **Tax commission.** a. There shall be 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.

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].

HISTORICAL NOTE

Amended by L. L. 1973, No. 26.
Amended by L. L. 1984, No. 76.

§ 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.

§ 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.

§ 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 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 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.

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 (Karlop 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 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 pe-

itioner'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 annul 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].

HISTORICAL NOTE

Amended by L. 1964, ch. 714.
Amended by L. L. 1968, No. 10.
Amended by L. L. 1984, No. 77.

§ 164. **Procedure on application.** 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, 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.

§ 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. The power of the tax commission to remit or reduce taxes pursuant to section 153b-2.0 of the administrative code is extended for a period of three months but in no event later than September first.

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.

§ 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 role 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.

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, 360 N. Y. S. 2d 575 [1974].

HISTORICAL NOTE

Added by L. L. 1984, No. 11, § 4.

§ 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.

§ 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 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 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.

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.

§ 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.

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 2½ 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].

HISTORICAL NOTE

Amended by L. 1949, ch. 550.

Amended by L. L. 1984, No. 14, § 1.

Amended by L. L. 1984, No. 14.

§ 167. 1. Real property owned by one or more persons each of whom is sixty-five years of age or over or real property owned by husband and wife one of whom is sixty-five years of age or over shall be exempt from taxes on real estate to the extent of fifty per centum of the assessed valuation thereof.

2. Exemption from taxation for school purposes shall not be granted in the case of real property where a child resides if such child attends a public school of elementary or secondary education.

3. No exemption shall be granted:

(a) If the income of the owner or the combined income of the owners of the property exceeds the sum of ten thousand five hundred dollars for the income tax years immediately preceding the date of making application for exemption. Income tax year shall mean the twelve month period for which the owner or owners filed a federal personal income tax return, or if no such return is filed, the calendar year. Where title is vested in either the husband or the wife, their combined income may not exceed such sum. Such income shall include social security and retirement benefits, interest, dividends, total gain from the sale or exchange of a capital asset which may be offset by a loss from the sale or exchange of a capital asset in the same income tax year, net rental income, salary or earnings, and net income from self-employment, but shall not include gifts, inheritance, or a return of capital. In computing net rental income and net income from self-employment no depreciation deduction shall be allowed for the exhaustion, wear and tear of real or personal property held for the production of income.

(b) Unless the title of the property shall have been vested in the owner or one of the owners of the property for at least twenty-four consecutive months prior to the date of making application for exemption, provided, however, that in the event of the death of either husband or wife in whose name title of the property shall have been vested at the time of death and then becomes vested solely in the survivor by virtue of devise by or descent from the deceased husband or wife, the time of ownership of the property by the deceased husband or wife shall be deemed also

a time of ownership by the survivor and such ownership shall be deemed continuous for the purposes of computing such period of twenty-four consecutive months, and provided further, that in the event of a transfer by either husband or wife to the other spouse of all or part of the title to the property the time of ownership of the property by the transferer spouse shall be deemed also a time of ownership by the transferee spouse and such ownership shall be deemed continuous for the purposes of computing such period of twenty-four consecutive months, and provided further, that where property of the owner or owners has been acquired to replace property formerly owned by such owner or owners and taken by eminent domain or other involuntary proceeding, except a tax sale, and where a residence is sold and replaced with another within one year and is in the same assessment unit, the period of ownership of the former property shall be combined with the period of ownership of the property for which application is made for exemption and such periods of ownership shall be deemed to be consecutive for purposes of this section.

(c) Unless the property is used exclusively for residential purposes.

(d) Unless the property is the legal residence of and is occupied in whole or in part by the owner or by all of the owners of the property.

4. Application for such exemption must be made by the owner, or all of the owners of the property, on forms prescribed by the state board to be furnished by the tax commission and shall furnish the information and must be executed in the manner required or prescribed in such form and shall be filed in the office of the tax commission in the borough in which the real property is located between the fifteenth day of January and the first day of March.

5. At least sixty days prior to the fifteenth day of January the tax commission shall mail to each person who was granted exemption pursuant to this section on the latest completed assessment roll an application form and a notice that such application must be filed between the fifteenth day of January and the fifteenth day of March and be approved in order for the exemption to be granted. The tax commission shall, within three days of the completion and filing of the tentative assessment roll, notify by mail any applicant who has included with his application at least one self-addressed, prepaid envelope, of the approval or denial of the application, however, where an applicant has included two such envelopes, the tax commission shall, upon the filing of the application, send by mail, notice of receipt of that application. Where an applicant is entitled to the notice of denial provided herein, such notice shall state the reasons for such denial and shall further state that such determination is reviewable in a manner provided by law. Failure to mail any such application form or notices or the failure of such person to receive any or all of the same shall not prevent the levy, collection and enforcement of the payment of the taxes on property owned by such person.

6. Any conviction of having made any wilful false statement in the application for such exemption shall be punishable by a fine of not more than one hundred dollars and shall disqualify the applicant or applicants from further exemption for a period of five years.

7. Notwithstanding the maximum income exemption eligibility level provided in subdivision three of this section, an exemption, subject to all other provisions of this section, shall be granted as indicated in the following schedule:

Annual Income	Percentage Assessed Valuation Exempt From Taxation
More than \$10,500 but less than \$11,000.00	45 per centum
\$11,000.00 or more but less than \$11,500.00	40 per centum
\$11,500.00 or more but less than \$12,000.00	35 per centum
\$12,000.00 or more but less than \$12,500.00	30 per centum
\$12,500.00 or more but less than \$13,000.00	25 per centum
\$13,000.00 or more but less than \$13,500.00	20 per centum

8. Exemption from taxation as provided in this section on real property owned by husband and wife, one of whom is sixty-five years of age or older, once granted, shall not be rescinded solely because of the death of the older spouse so long as the surviving spouse is at least sixty-two years of age.

CASE NOTES

¶ 1. Real property was not entitled to 50% real estate tax exemption provided to property owned by senior citizens where owner's son who was under 65 had a one-third interest but it was alleged that the continued recordation of his interest after 1963 was the result of an oversight.—*Hassberg v. Tax Comm. of City of N. Y.*, 81 Misc. 2d 252 [1974], affirmed, 44 A. D. 2d 909, 355 N. Y. S. 2d 1014 affirmed, 36 N. Y. 2d 817, 338 N. E. 2d 680, 370 N. Y. S. 2d 899 [1975].

HISTORICAL NOTE

Section amended by L. L. 1973, No. 91.
 Section amended by L. L. 1977, No. 102.
 Section amended by L. L. 1977, No. 39.
 Section amended by L. L. 1980, No. 57.
 Section amended by L. L. 1981, No. 82.
 Section amended by L. L. 1984, No. 14.
 Section amended by L. L. 1984, No. 14, § 1.
 Subd. 7 added by L. L. 1984, No. 14, § 3.

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. He shall be chairman and a member of the city planning commission.

b. The director of city planning shall:

1. Advise and assist the mayor, the board of estimate 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. Perform such other functions as are assigned to him 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.

§ 192. **City planning commission.** a. There shall be a city planning commission to consist of the chairman and six members to be appointed by the mayor. The appointments shall be made so that there is at least one resident of each borough on the commission. Except as otherwise provided in section one hundred ninety-one, no member shall hold any other city office. Members other than the chairman shall be appointed for a term of eight years. In case of a vacancy in the office of a member other than that of the chairman, the mayor shall appoint a member to serve for the remainder of the unexpired term.

b. One of the members other than the chairman shall be designated by the mayor as vice-chairman and shall serve as such at the pleasure of the mayor. The vice-chairman shall possess the powers and perform the duties of the chairman when the chairman is absent or while a vacancy exists in the office of chairman, and shall at such times serve as director of city planning.

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].

HISTORICAL NOTE

Amended at General Election, May 4, 1975.

§ 193. **Removal by mayor after hearing.** A member of the commission other than the chairman may be removed by the mayor only upon 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; and before 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.

§ 197-a. **Plans.** a. The city planning commission shall be responsible for the conduct of planning relating to the orderly growth and improvement and future development of the city, including adequate and appropriate resources for the housing, business, industry, transportation, distribution, recreation, comfort, convenience, health and welfare of its population. Plans for the development, growth, and improvement of the city and of its boroughs and community districts may be initiated by (1) the mayor, (2) the city planning commission, (3) a borough board with respect to land located within two or more community districts, or (4) a community board with respect to land located within its community district. A community board or borough board that initiates any such plan shall conduct a public hearing on it and submit a written recommendation to the city planning commission. Plans initiated by the mayor or the city planning commission shall be referred to the affected community board or boards and, if land located within two or more community districts is included, to the affected borough board or boards for review and recommendation after public hearing. 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 a case the plan and any advice relative thereto submitted by any officer or agency 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 recommendations in regard thereto to the city planning commission. The city planning commission shall prepare and, with the approval of the mayor, establish the procedures and schedule for review

and public hearings by community boards and borough boards on any plans initiated by the mayor or the city planning commission which involve matters of city-wide concern.

b. The city planning commission shall review any plan initiated pursuant to subdivision a of this section, hold a public hearing on it and recommend to the board of estimate approval, modification or disapproval of the plan. The board of estimate shall hold a public hearing on the plan and the recommendation of the city planning commission, and thereafter take final action of approval, modification or disapproval. The board may by a three-fourths vote override any action of the city planning commission which disapproved a plan. If the city planning commission has approved a plan with or without modification, the board of estimate may take final action on it by majority vote. Copies of approved plans shall be filed with the city clerk, the department of city planning and every borough president and the borough boards and community boards affected.

HISTORICAL NOTE

Added at General Election, May 4, 1975.
Amended by L. L. 1977, No. 102.
Amended by L. L. 1979, No. 29.

§ 197-b. **Notification to community boards.** Advance notification 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 borough president, provided that exceptions may be made in matters of no appreciable public concern by agency regulation pursuant to the provisions of section eleven hundred five.

HISTORICAL NOTE

Added at General Election, May 4, 1975.
Amended by L. L. 1977, No. 102.

§ 197-c. **Uniform land use review procedure.** a. Except as otherwise provided in this charter, proposals and 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) The city map pursuant to section one hundred ninety-eight and section one hundred ninety-nine;
- (2) Map of a subdivision 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 section two hundred;
- (4) Special permits within the jurisdiction of the city planning commission under the zoning resolution, pursuant to section two hundred;

(5) Site selection for capital projects pursuant to section two hundred twenty-seven;

(6) Franchises and revocable consents involving residential, industrial, commercial, transportation or community facility projects pursuant to chapter fourteen;

(7) Improvements in real property the costs of which are payable other than by the city pursuant to section two hundred twenty-nine;

(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 real property to the city and of the real property of the city, and the proposed acquisition, sale or lease of land under water pursuant to section sixty-seven, section sixteen hundred three, chapter fifteen, and other applicable provisions of law; and

(11) Such other matters involving the use, development or improvement of property as are specified by the board of estimate upon recommendation of the city planning commission.

b. Each proposal or application shall be filed with the department of city planning, 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.

c. Each such community board shall, not later than sixty days after receipt of the proposal or application, either (1) notify the public of the proposal or application in a manner specified by the city planning commission pursuant to subdivision g of this section, (2) conduct a public hearing thereon and (3) prepare and submit a written recommendation directly to the city planning commission or waive the conduct of a public hearing and the preparation of such written recommendations where authorized by this charter.

d. A copy of a recommendation by a community board pursuant to subdivision c of this section 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 as specified in subdivision c. Not later than thirty days after the filing of a recommendation or waiver with the borough board by every community board in which 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 recommendations and submit a written recommendation or waiver thereof to the city planning commission.

e. Not later than sixty days after the filing of a recommendation with it by a community board or borough board or the latest filing if there is more than one within the time allowed, the city planning commission shall approve, modify, or disapprove, the

proposal or application and shall file its decision with the board of estimate. The city planning commission shall conduct a public hearing on any proposal or application on which a hearing was not held by a community board or borough board and on any other proposal or application on which a hearing is required by law. The commission may waive a public hearing if a community board or borough board held a public hearing after adequate notice. 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 of real property, a franchise or a revocable consent, the city planning commission shall obtain a report from the office of management and budget, the department of general services or the bureau of franchises, as appropriate. Any action of the city planning commission which modifies or disapproves a recommendation of a community board or borough board shall be accompanied by a written explanation of its reason for such action.

f. The city planning commission shall file copies of its decision or recommendation with the board of estimate, together with copies of any recommendation of a community board or borough board. Within sixty days of such filing, the board of estimate shall hold a public hearing on the matter and take final action by a majority vote unless otherwise specified in this charter.

g. The city planning commission, after notice and a public hearing, shall establish and publish not later than June first, nineteen hundred seventy-six, guidelines, minimum standards, and procedural requirements for community boards, borough boards and the commission in the exercise of their duties and responsibilities pursuant to this section.

h. If a community board, borough board, or the city planning commission fails or waives its right to act within the time limits for review pursuant to subdivisions c, d and e of this section, the proposal or application is referred to the next level of review. If the board of estimate fails to act within the time limit specified in subdivision f of this section, any prior decision of the city planning commission with respect to the land use impact and implications is final.

i. Notice of any hearing on a proposal or application by the city planning commission or board of estimate 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 proposal or application.

j. A community or borough board may review a proposal or application which is subject to 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 proposal or application might significantly affect the welfare of the community district or borough served by such board. In such a case the proposal or application and the related materials submitted to the affected board or boards by the city planning department shall be submitted also to such board on

request, and such board may hold its own public hearing thereon if it so desires and may submit its own 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 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. h amended by L. L. 1977, No. 102.

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

§ 197-d. **Temporary exemption for certain city properties.** a. Notwithstanding the provisions of section eleven hundred fifty-two or any other section to the contrary, chapter eight of this charter shall not apply to the sale, lease, exchange or other disposition of real property of the city of New York under the jurisdiction of the municipal service administration.

b. The provisions of this section shall remain in full force and effect only until the thirty-first day of December, nineteen hundred seventy-six.

CASE NOTES

¶ 1. Motion for summary judgment dismissing complaint which sought declaratory and injunctive relief regarding the recommencing of the dumping of refuse by the City on a particular site was denied where it was not clear, as contended by the City, that this section was inapplicable since the City had stopped using the site just before the enactment of this section.—*Calandra v. City of N. Y.*, 179(8) N. Y. L. J. (5-18-78) 14, Col. 5 B.

¶ 2. The provisions of subdivision a, par. 6, on the record provided, were inapplicable where the New York City 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.—*Mauldin v. N. Y. C. Transit Auth.*, 64 A. D. 2d 114, 408 N. Y. S. 2d 538 [1978].

¶ 3. Land use review procedures apply to cable television franchises even though they involve relatively little land use impact.—*Orth-O-Vision v. City of N. Y.*, 101 Misc. 2d 987, 422 N. Y. S. 2d 781 [1979].

¶ 4. Where community affected was Chinatown, publication in the City Record and in the Comprehensive City Planning Calendar of the N. Y. C. Planning Commission's notice of hearing regulations violated due process which requires that the notice be given in both an English and Chinese language newspaper of general circulation in the community.—*Lai Chun Chan Jen v. Board of Estimate*, 115 Misc. 2d 774 [1982].

¶ 5. Where private developer owned entire site and intended to construct large residential and commercial project thereon it was error to grant petition by a coalition of Upper West Side groups, community leaders and locally elected legislators to annul determinations of City Planning Commission and Board of Estimate approving resolutions permitting the construction to the extent of vacating the environmental impact statement on the ground that the development of only one-half of the site should have been considered as an alternative where the court incorrectly assumed that the developer owned only one-half rather than the whole

site.—*Lincoln West v. City of N. Y.*, 94 A. D. 2d 483 [1983]; affirmed 60 N. Y. 2d 805 [1983].

¶ 6. City is obligated to comply with the mandates of provisions hereof (uniform land use review procedure) when U. S. Govt. issued revocable license permitting City to temporarily occupy the Brig at Brooklyn Navy Yard for renovation as a medium security prison pending anticipated negotiated sale of prop. to City. Such license did not constitute a "lease" or such a "disposition of real property to the city" as to fall within subd. a, par. [10], but did constitute a "[s]ite selection for capital projects" under subd. a, par. [5]. Injunctive relief denied due to compelling need for such additional detention facils.—*Matter of Gerges v. Koch*, 101 A. D. 2d 201 [1984]; affirmed 62 N. Y. 2d 84 [1984].

¶ 7. The publication provided for by the supplementing provisions of this section meet the standard of reasonableness and thus the statute is constitutional.—*Lai Chun Chan Jin v. Bd. of Estimate of the City of N. Y.*, 62 N. Y. 2d 900 [1984].

HISTORICAL NOTE

Added by L. 1976, ch. 826.

§ 198. **City map.** a. The city map, as the same shall exist at the time when this charter goes into effect, is hereby continued.

b. The director of city planning shall be the custodian of the city map, and it shall be his 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, 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.

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].

HISTORICAL NOTE

Amended by L. 1962, ch. 998, § 21.

§ 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 except that if the city planning commission (1) does not recommend approval or recommends a modification of the proposed addition to or change in the city map which is not acceptable to the board of estimate or (2) fails to act within the time limit specified in subdivision e of section one hundred ninety-seven-c,

the board of estimate nevertheless may approve or modify the proposed addition to or change in the city map by a three-fourths vote.

CASE NOTES

¶ 1. Section 199 b of the Charter, 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 ¾'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].

HISTORICAL NOTE

Amended by L. 1963, ch. 928.

Amended at General Election, November 4, 1975.

Amended by L. 1978, ch. 763.

§ 200. **Zoning regulations.** a. Except as provided in subdivision b, any existing resolution or regulation of 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 for any such purpose 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. Any such resolution shall be filed with the secretary of the board of estimate within five days from the day of its adoption.

2. Approval, disapproval or modification by the board of estimate of such a resolution by the commission recommending a change in the zoning resolution must occur within sixty days from the date of filing of the resolution with the board. In case the board shall fail to act on such affirmative resolution within such period of sixty days, such change shall be deemed approved and effective on the sixty-first day after the date of filing unless a protest of owners of affected property shall have been filed in accordance with the provisions of paragraph three. Any resolution for a zoning change which the mayor shall have certified to the planning commission as necessary, and which has been disapproved by the commission, may be adopted by the board of estimate by a three-fourths vote and, after notice to the parties affected, a public hearing. The foregoing limitation of sixty days shall be inapplicable to such an adoption and the change shall become effective at a time fixed by the board of estimate.

3. In case a protest against such a proposed resolution approved by the city planning commission shall have been presented to the secretary of the board of estimate within thirty days from the date of the filing of such resolution with the board, 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 board of estimate, either in the form in which it was filed or as modified by the board, by a three-fourths vote of the board within one hundred eighty days after the filing of said resolution with the secretary of the board of estimate. 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 conform to the procedures provided in section one hundred ninety-seven-c, 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 board of estimate by a three-fourths vote may approve such change or the issuance of such permit only if the mayor shall have certified to the city planning commission that such change or issuance is necessary.

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 per cent 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 Busi-

ness, Manufacturing and Unrestricted Use Districts within "B" Area Districts, protests by owners of 20 per cent 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 may Area and Height Districts did not require protests from 20 per cent 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 per cent 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 per cent or more of the area of the land immediately adjacent to the 28½ 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 per cent of the tracts of 10 acres or more in residential districts in the city, or the owners of at least 20 per cent of the land immediately adjacent thereto for a distance of 100 feet, or the owners of at least 20 per cent 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. Contentions 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. Contentions 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].

HISTORICAL NOTE

Amended by L. 1959, ch. 652.

Amended at General Election, November 4, 1975.

Amended by L. 1978, ch. 763.

§ 201. **Applications for zoning changes.** Applications for changes in zoning resolutions or regulations or for the issuance of special permits within the jurisdiction of the city planning commission under the zoning resolution may be filed by any taxpayer, com-

munity board, or borough board with the city planning commission. For applications involving changes in the designation of zoning districts or the issuance of special permits under the zoning resolution, the review and hearing procedure in section one hundred ninety-seven-c, as modified by subdivision b of section two hundred, shall be applicable. 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.

HISTORICAL NOTE

Amended by L. 1957, ch. 127.

Amended at General Election, November 4, 1975.

Amended by L. L. 1977, No. 10.

§ 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 submitted to the board of estimate and approved by such board, after transmittal to the city planning commission for report, by the same procedure as provided in subdivision b of section one hundred ninety-nine for changes in the city map. If such map is disapproved by the board of estimate, the secretary of the board 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.

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.*

CHAPTER 9

CAPITAL PROJECTS AND BUDGET

§ 211. **Definitions.** a. As used in this charter:

1. The term "capital project" shall mean:

(a) Any physical public betterment or improvement or any preliminary studies and surveys relative thereto or any underwriting or other costs incurred in connection with the financing thereof, which would be classified as capital expenditures under generally accepted accounting principals for municipalities.

(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 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 board of estimate.

4. The term "scope of project" or "proposed scope of project" shall mean a detailed plan prepared for a capital project included in the capital budget that contains specific guidelines within general standards for the design and implementation of such project and includes:

(a) Purposes and public to be served;

(b) Programs to be conducted in the facility;

(c) Social, economic, and environmental impact statements;

(d) Gross amounts of space and bulk for any building or structure;

(e) Identification of required architectural, engineering or other consultants and estimated fees for such consultants;

(f) Schedule of design and construction;

(g) Total estimated project costs, including costs for site acquisition, preparation and tenant relocation, design, construction and equipment;

(h) Estimated expenditures for the project for each fiscal year until its completion;

(i) Estimated annual costs to operate programs within the facility when fully staffed and to maintain the facility; and,

(j) Such other information as shall be required by the mayor or by resolution of the board of estimate.

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.

9. The term "assessable improvement fund" shall mean the fund established pursuant to section three hundred.

b. Unless otherwise provided in the capital budget, the cost and expense of the physical improvements or the acquisition of the real property for physical improvements contained in item (d) of subdivision one of paragraph a of this section shall be paid directly or indirectly in the first instance out of the assessable improvement fund and shall be recouped by the city with the taxes of so many fiscal years, not exceeding five, next succeeding the completion of the work or the acquisition of the property as shall be certified by the head of the department at whose request such real property was acquired or the improvement made.

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.

§ 212. **Report of comptroller.** Not later than the first day of December in each year, the comptroller shall submit to the mayor, the board of estimate, 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 project and the liabilities incurred for each 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 of nature of debt and reserves which in his opinion the city may soundly incur for capital projects during each of the four succeeding fiscal years, and containing such other information as may be required by the mayor.

HISTORICAL NOTE

Amended by L. L. 1963, No. 30.
Amended by L. L. 1969, No. 74.
Amended at General Election, November 4, 1975.
Amended by L. L. 1977, No. 5.
Amended by L. L. 1977, No. 12.

§ 213. **Certificate of the mayor.** No later than the fifteenth day of January the mayor shall issue and publish his preliminary statement and no later than the twenty-sixth day of April the mayor shall issue and publish his certificate as to the maximum amount of debt and reserves which, in his opinion, the city may soundly incur for capital projects and all projects to be financed by capital debt during the ensuing fiscal year and the following three fiscal years, with any recommendations he may wish to make as to capital projects to be included in the capital budget. At any time up to the submission of his executive capital budget to the board of estimate and to the council, the mayor may amend such preliminary statement.

HISTORICAL NOTE

Added at General Election, November 4, 1975.
Amended by L. L. 1977, No. 12.
Amended by L. L. 1979, No. 6.

§ 214. **Departmental estimates for capital projects.** On such date as the mayor may direct the head of each agency shall submit to the director of management and budget, a detailed estimate of all capital projects pending or which he believes should be undertaken within the ensuing fiscal year and the three succeeding fiscal years. Such estimates shall be known as departmental estimates for capital projects and shall be in such form and contain such information as may be required by the mayor. Agencies shall consult with the community boards in the preparation of the estimates.

HISTORICAL NOTE

Section added at General Election, November 4, 1975.
Subd. a amended by L. L. 1979, No. 6.

§ 214-a. **Preliminary budget statements for capital projects.** a. Not later than the fifteenth day of January, the mayor shall submit the preliminary budget statements for capital projects to the board of estimate, council and each community board and borough board, the city planning commission and the department of city planning. Such preliminary budget statements shall consist of: (1) a financial plan covering estimates of capital expenditures for the

four ensuing fiscal years, (2) departmental estimates for capital projects as provided in section 214 together with the cash flow requirements and proposed sources of funding for each project included in such estimates for the ensuing fiscal year and capital programs for the three succeeding years, and (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.

b. Not later than the fifteenth day of February each community board shall (1) hold a public hearing on the preliminary budget statements with respect to the capital needs and priorities of the community district, and (2) submit a statement of its budget priorities and capital improvement needs for the ensuing fiscal year and the three succeeding fiscal years to the mayor, board of estimate, council, city planning commission, department of city planning, and the respective borough board.

c. Not later than the twenty-fifth day of February, each borough board shall submit a comprehensive statement of the budget priorities and needs of the borough for the fiscal year and three succeeding years to the mayor, board of estimate, council, city planning commission, and department of city planning.

d. Not later than the fifteenth day of March, the city planning commission shall submit to the mayor, board of estimate, and council a report containing a statement of the city's capital needs and priorities, including recommended dollar allocations for general categories of programs and an explanation of recommended priorities among such categories of programs and their likely impact on the orderly growth and development of the city.

HISTORICAL NOTE

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

§ 215. **Preliminary budget statements public records.** Such preliminary budget statements shall be public records and shall at all reasonable times be open to public inspection.

HISTORICAL NOTE

Amended by L. L. 1977, No. 5.
Amended by L. L. 1979, No. 6.

§ 216. **Preliminary capital hearings.** a. Not later than the twenty-fifth day of March, the board of estimate and the council through its committees, shall hold joint hearings on the program objectives and fiscal implications of preliminary budget statements, the priorities of community boards and borough boards, the report of the city planning commission on the long range capital needs of the city, and the status of capital projects previously authorized. 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 board of estimate or committees of the council, shall appear and be heard. The public and representatives of community boards and borough boards may attend and be heard.

b. Findings and recommendations of the board of estimate and the council, or its committees, as to capital projects proposed to be included in the budget shall be submitted to the mayor not later than the twenty-fifth day of March. The total dollar amount of such recommendations shall not exceed the maximum amount of debt set forth in the mayor's preliminary statement pursuant to section two hundred thirteen.

HISTORICAL NOTE

Added at General Election, November 4, 1975.
Amended by L. L. 1977, No. 12.

§ 219. **Executive capital budget.** a. Not later than the twenty-sixth day of April in each year, the mayor shall submit to the board of estimate and to the council with an explanatory message, a proposed executive capital budget for the ensuing fiscal year, the aggregate amount of which shall not exceed the amount in the mayor's certificate, and a proposed executive capital program for the three succeeding fiscal years.

b. The executive capital budget shall set forth separately each capital project and shall state:

1. A brief description and the location of each project; the total estimated cost of the project; the amount of obligations which have been authorized; the amount of obligations which are required to be authorized during the balance of the current fiscal year; the amount of obligations recommended to be issued in the ensuing fiscal year; the amount of obligations required thereafter to complete the project; the sources of funds for the project; the period of probable usefulness; the estimated additional annual debt service; the estimated additional annual maintenance and operation costs; and any terms and conditions of the project;

2. A listing of all pending projects; any recommendations that any pending projects be modified, rescinded or postponed accompanied by a statement of the budgetary impact of any such action; and the estimated completion date for each project;

3. Information respecting capital projects which do not involve the appropriation of city funds or the issuance of city obligations;

4. A listing of noncapital projects and expense items and amounts proposed to be appropriated in the capital budget for each such project and item; and

5. A listing of proposed capital projects by community district and by borough and identification of those projects included in the statement of capital priorities submitted by each community board and borough board.

c. The executive capital program shall set forth:

1. A statement for each of the three succeeding fiscal years of total dollar authorizations and supporting schedules indicating the amount of funds obligated for each project, amounts necessary to complete projects initiated in prior years as proposed in the executive budget for both program categories and individual projects and amounts reserved for projects proposed to be initiated in future budgets and for amendments and contingencies;

2. Forecasts for the succeeding three fiscal years, consistent with the capital budget, including assessed and full valuation of taxable real property, the constitutional debt limit, new capital debt to be issued, the tax rate on real property outside the constitutional limitation for operating purposes necessary to service existing debt and debt to be issued pursuant to the capital program.

3. 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; and

4. A statement of the implications of the capital projects included in or contemplated by the capital program for the orderly development of the city, its community districts and boroughs.

d. The proposed executive capital budget, executive capital program, and message from the mayor and any accompanying reports and schedules shall be public records and shall be published forthwith.

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.

§ 220. **Recommendations of comptroller and city planning commission.** Not later than the sixth day of May, the comptroller and the city planning commission shall submit to the board of estimate and to the council reports, which shall be published forthwith in the City Record, containing such comments and recommendations with respect to the proposed executive capital budget and capital program as they may deem advisable.

HISTORICAL NOTE

Amended by L. L. 1962, No. 30.
Amended by L. L. 1977, No. 12.
Amended by L. L. 1977, No. 102.
Amended by L. L. 1979, No. 6.

§ 221. **Executive capital budget; hearings.** Between the sixth day of May and the twenty-fifth day of May in each year, the board of estimate and the council shall hold public hearings on the proposed executive capital budget and executive capital program. The council may hold hearings as a body or by its finance committee or other committees. Such hearings may be held jointly by consent of both bodies. 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 board of estimate or the council, to appear and be heard.

HISTORICAL NOTE

Amended by L. 1962, ch. 998, § 22.
Amended by L. L. 1963, No. 30.
Amended by L. L. 1977, No. 12.
Amended by L. L. 1979, No. 6.

§ 222. **Capital budget; adoption.** a. The board of estimate and the council, by separate concurrent vote of each body, may increase, decrease or omit the amount of the appropriation for any capital project in the proposed executive capital budget or executive capital program, or add any new capital project to such proposed budget or program or add, omit, or change any term or condition of such proposed budget or program. Except as otherwise provided by law, and subject to the veto of the mayor pursuant to section two hundred twenty-three, the board of estimate and the council, by separate concurrent vote of each body, shall adopt a single capital budget and a single capital program, and they shall be returned to the mayor not later than the fifth day of June. In the event of a disagreement between the two bodies, each shall appoint members to a conference committee to reconcile differences and make recommendations to the respective bodies.

b. If a single capital budget and a single capital program have not been adopted by the fifth day of June pursuant to subdivision a of this section, they shall be deemed adopted so far as acted on by both bodies with the lower amount of any item in dispute between the two bodies in effect.

c. The mayor shall not participate in any action or vote of the board of estimate on the executive capital budget or in any action or vote on the executive capital program.

HISTORICAL NOTE

Section amended by L. L. 1963, No. 30.

Section 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 amended by L. L. 1977, No. 12.

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

Subd. b amended by L. L. 1979, No. 6.

§ 223. **Veto of the mayor.** a. Any action by the council on a capital project or on the terms and conditions of the capital budget shall be certified to the mayor by the president of the council. Any action by the board of estimate on a capital project or on the terms and conditions of the capital budget shall be certified to the mayor by the secretary of the board of estimate.

b. The mayor, not later than the tenth day of June, may disapprove any increase or addition to the executive capital budget or executive capital program or any increase or addition to any capital project in the executive capital budget or executive capital program, or any change in term or condition of the executive capital budget or executive capital program. The mayor shall return the capital budget and capital program by that date to the board of estimate and council, setting forth his objections in writing.

c. Either the board of estimate by a two-thirds vote of all the members of the board other than the mayor, or the council by a two-thirds vote of all the council members, may override any disapproval by the mayor pursuant to subdivision b of this section with the concurrence of the other body by a majority vote of all members other than the mayor in the case of the board of estimate.

The board of estimate and the council shall act and the capital budget and capital program shall be adopted not later than the twentieth day of June. In the event the board of estimate and the council fail to act by that date, the capital budget and capital program as modified by the mayor are adopted.

d. Not later than the twenty-first day of June, the capital budget as finally adopted shall be certified by the mayor and the city clerk as the capital budget for the ensuing fiscal year. The capital budget shall, not later than five days after such certification be filed in the office of the comptroller and shall be published forthwith.

HISTORICAL NOTE

Section amended by L. 1962, ch. 998, § 23.
Section amended by L. L. 1963, No. 30.
Section amended at General Election, November 4, 1975.
Subd. b amended by L. L. 1977, No. 12.
Subd. b amended by L. L. 1977, No. 102.
Subd. c amended by L. L. 1977, No. 12.
Subd. c amended by L. L. 1977, No. 102.
Subd. d amended by L. L. 1977, No. 12.
Subd. d amended by L. L. 1977, No. 102.
Subd. d amended by L. L. 1979, No. 29.

§ 224. **Amendment.** a. Upon receipt of a recommendation in writing from the mayor, the board of estimate and 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.

b. Upon the adoption of any such amendment by the board of estimate and by the council, it shall be certified by the mayor, the secretary of the board of estimate, the president of the council 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.

§ 225. **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 board of estimate and 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. Not later than the fiscal year commencing July first, nineteen hundred eighty-seven, the city may issue capital debt only to finance capital projects as defined in section two hundred eleven. The mayor, during a period of ten successive fiscal years, beginning with the fiscal year ending June thirtieth, nineteen hundred seventy-seven, shall progressively eliminate from the capital budget 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. Such reduction shall be at the cumulative rate of at least ten percent per year from the total of the amount of expense items included in the capital budget for the fiscal year ending June thirtieth, nineteen hundred seventy-five, and no new or additional expense item or noncapital item shall be included in the capital budget during such period.

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 funds will be expended for the completion of the project.

e. No part of any consultant contract that is properly included only in the expense budget under generally accepted accounting principles for municipalities shall be paid for from obligations of the city which would add to or increase the capital debt of the city.

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].

HISTORICAL NOTE

Section amended at General Election, November 4, 1975.
Subd. a, c, d, e amended by L. L. 1978, ch. 763.

§ 227. **Site selection.** a. The selection of sites for capital projects shall conform to the uniform procedures provided pursuant to section one hundred ninety-seven-c.

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.

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].

HISTORICAL NOTE

Adopted at General Election, November 4, 1975.

§ 228. **Project initiation.** 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 his 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 his authorization to expend appropriated construction funds.

d. The mayor shall require each agency to prepare and submit to him periodic reports in regard to the progress of its capital projects, including schedules and explanations of any delays. Such reports shall be published on a quarterly basis and copies shall be transmitted by the mayor or his representative to the board of estimate, the council, the city planning commission, and the respective community boards, borough boards and borough presidents.

e. 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.

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. C. Housing & Development Administration*, 79 Misc. 2d 769, 361 N. Y. S. 2d 263 [1974].

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.

§ 229. **Improvements payable other than by city.** Any owner of real property or any other person interested may apply to the board of estimate to authorize an improvement referred to in paragraph (d) of subdivision one of section two hundred eleven hereof, not included in the capital budget. The board of estimate may authorize such improvement to be made by the city or by such owner or other person interested upon compliance with the following condition:

1. Such owner or group or other persons interested shall enter into an agreement with the city, whereby he or they will either authorize the city, or himself 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 section one hundred ninety-seven-c.

4. Any agreement providing for the performance of such work and the furnishing of such security, shall be first approved by the board of estimate before the same shall become effective.

HISTORICAL NOTE

Amended at General Election, November 4, 1975.
Intro. par. amended by L. L. 1979, No. 29.

§ 231. **Standards for capital projects.** The mayor shall prepare general standards and cost limits for categories of capital projects which shall be submitted by him to the board of estimate for review. The proposed standards shall become effective thirty days after they have been filed with the board of estimate unless within that time the board modifies or disapproves them or part of them, after conducting a public hearing.

HISTORICAL NOTE

Added at General Election, November 4, 1975.

§ 232. **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 shall be submitted to the mayor and to the respective borough president and community board within nine months from the effective date of the budget in which the capital project is included. If the proposed scope of project is not submitted by such date, the board of estimate shall conduct a public hearing to determine the reasons for the delay.

b. Not later than sixty days after receipt of the proposed scope of project from an agency pursuant to subsection a of this section, the mayor shall approve, modify, or disapprove the proposed scope of project and notify the agency, borough president and community board. If a borough president or a community board petitions the board of estimate to review such action of the mayor within thirty days thereof, or if the mayor fails to act, the board of estimate after a public hearing may approve, modify, or disapprove the scope of project within sixty days. A scope of project approved by the mayor shall be effective thirty days after it has been acted upon by the mayor if no petition for review is made to the board of estimate within the specified time period.

c. No scope of project shall be approved unless (1) 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.

§ 233. **Design of capital project.** The proposed design and final design for a capital project shall be made available for review to the respective 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. Within thirty days after receipt of the final design, the borough president or community board may petition to have it reviewed by the board of estimate to determine only if the final design violates the scope of project or creates excessive costs. The board of estimate shall have thirty days within which to approve or disapprove the final design. If no petition for review is made to the board of estimate, and no objections are received by the mayor within the thirty day period, the final design shall be effective.

HISTORICAL NOTE

Added at General Election, November 4, 1975.

§ 234. **Works of art.** a. As used in this section the term "works of art" includes all forms of the visual 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

district council member, council-members-at-large, borough president and chairperson of the community board of the 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 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.

CHAPTER 10

OBLIGATIONS OF THE CITY

§ 250. **Assessment bonds.** a. Serial bonds to meet the expenditures payable from the street and park openings fund or the street improvement fund for the payment of which the moneys available in either such fund are insufficient shall not be issued in an amount in excess of the amount of assessments remaining uncollected and a lien upon lands assessed, of awards confirmed and of advance payments to be made for or upon awards in proceedings upon which assessments remain to be imposed, and of contract liability and of payments on account of work in progress and work completed for which assessments remain to be imposed. The proceeds of the sale of all such bonds shall be paid into the fund on account of which the bonds were issued, and all such bonds shall be redeemed from such fund.

b. Serial bonds to meet the expenditures payable from an assessable improvement fund for the payment of which moneys available are insufficient shall not be issued in an amount in excess of the amount of assessments remaining uncollected, of awards confirmed and of advance payments to be made for or upon awards in proceedings upon which assessments remain to be imposed and of contract liability and of payments on account of work in progress and for work completed for which assessments remain to be imposed. The proceeds of the sale of all such bonds shall be paid into the fund on account of which the bonds were issued and all such bonds shall be redeemed from such fund.

HISTORICAL NOTE

Amended by L. 1943, ch. 710.

Amended by L. 1944, ch. 606.

Amended by L. 1945, ch. 338.

§ 251. **Real property fund.** There shall be a fund to be known as the "real property fund." There shall be paid into such fund the proceeds of all sales of real property of the city, except as otherwise provided by law.

HISTORICAL NOTE

Amended by L. L. 1960, No. 80.

§ 252. **Payments from real property fund.** The comptroller may, in his discretion, authorize the expenditure of any money in the real property fund for the purchase of real property for which he has been authorized to issue obligations and within the amount authorized. Upon authorization of the board of estimate, the comptroller may, in his discretion, authorize the expenditure of any money in such fund for payment of any charges or expenses which the city is required to pay under the terms of any lease of real property owned by the city and leased to others and for

payment of any costs or charges incurred by the city in connection with the maintenance, construction, improvement, repair, demolition, sale, rental or other disposition of real property owned by the city.

HISTORICAL NOTE

Amended by L. 1940, No. 120.

Amended by L. 1962, ch. 998, § 26.

§ 253. **Allocation of authorization to department of general 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 general services is authorized to purchase or provide shall be allotted to the department of general 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.

§ 254. **Short term debt.** a. Subject to the provisions of subsections b, c and d of this section, the city may issue temporary debt obligations in anticipation of taxes and revenues as authorized by state law.

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.

HISTORICAL NOTE

Added at General Election, November 4, 1975.

CHAPTER 11

**SINKING FUNDS ESTABLISHED
PRIOR TO JULY FIRST,
NINETEEN HUNDRED EIGHTY-ONE**

§ 270. **Application.** The provisions of this chapter shall apply to the several sinking funds of the city established prior to July first, nineteen hundred eighty-one.

HISTORICAL NOTE

Added by L. L. 1981, No. 81.

§ 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 chapter eleven-A of this charter.

HISTORICAL NOTE

Amended by L. L. 1981, No. 81.

§ 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 chapter eleven-A of this charter.

HISTORICAL NOTE

Amended by L. L. 1981, No. 81.

§ 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 re-

deemable from the general sinking fund or any other sinking fund established pursuant to chapter eleven-A of this charter.

HISTORICAL NOTE

Added by L. L. 1939, ch. 474.

Amended by L. L. 1981, No. 81.

§ 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.

§ 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 of this charter, 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 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, 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

Amended by L. 1972, ch. 983.
Amended by L. L. 1981, No. 81.

§ 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

Added by L. 1970, ch. 845.
Amended by L. 1975, ch. 6.
Amended by L. 1975, ch. 868.
Amended by L. L. 1981, No. 81.

§ 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

Amended by L. 1975, ch. 868.
Amended by L. 1981, No. 81.

§ 277. **Monthly report.** Not later than the tenth day in each month, the comptroller shall submit to the board of estimate 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 preceding 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

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

§ 278. **Annual report.** Not later than the first day of September in each year, the comptroller shall submit to the board of estimate 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.

CHAPTER 11-A*

SINKING FUNDS ESTABLISHED
ON OR AFTER JULY FIRST
NINETEEN HUNDRED EIGHTY-ONE

§ 290. **Application.** The provisions of this chapter shall apply to the establishment, operation and administration of sinking funds established on or after July first, nineteen hundred eighty-one.

§ 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 funds 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 sinking fund of the city of New York, or any additional sinking fund established pursuant to section two hundred ninety-eight of this chapter.

§ 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.

§ 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 for 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

* Added by L. L. 1981, No. 81.

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.

§ 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 of this chapter 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.

§ 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 of this chapter, 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.

§ 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 of this chapter 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.

§ 297. 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 of this chapter.

§ 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 of this chapter, such additional sinking funds shall be established with such terms and conditions as the comptroller shall prescribe.

§ 299. 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 of this chapter.

CHAPTER 12

ASSESSABLE IMPROVEMENT FUNDS

§ 300. Existing assessable improvement funds. The fund for street and park openings and the street improvement fund shall be continued for the purpose of paying from them the sums lawfully authorized to be paid or which may be authorized to be paid on account of assessable improvements lawfully authorized prior to the first day of January, nineteen hundred sixty-two. No other payments shall be made from such funds, and any cash remaining in either of them in excess of the liabilities chargeable thereto shall be paid into the assessable improvement fund.

CASE NOTES UNDER FORMER CHAPTER 12

¶ 1. Limited housing corporation, which was entitled to exemptions on its buildings and improvements from taxation for local purposes, but not from assessments for local improvements, *held* entitled to exemption from that portion of the charges annually levied against New York City real property which, on the tax books and bills, was segregated under the classification of Assessment for Special Improvements, since under previous decisions it had been held that such assessment was a tax and not one for a local improvement.—*Hillside Housing Corp. v. Reid*, 104 (144) N. Y. L. J. (12-21-40) 2157, Col. 3 F.

¶ 2. Levies which were apportioned by the Board of Estimate on a city-wide or a borough-wide basis, did not fall within the category of local assessments levied for special benefit, and constituted a tax and not an assessment for benefit. Accordingly, plaintiff, which was a non-profit, educational corporation, was entitled to cancellation of items of purported assessment for special improvements, as plaintiff's property was favored by a general exemption from direct property taxation.—*Cooper Union v. City of N. Y.*, 272 App. Div. 438, 71 N. Y. S. 2d 204 [1947], *aff'd* 298 N. Y. 578, 81 N. E. 2d 108 [1948].

¶ 3. That the published notice stated that the petition for the construction of the Brookhaven sewer would be submitted to the Newtown Local Board in Long Island City, which had no jurisdiction, did not result in the proceedings being initiated without the required public notice so as to render the whole proceeding and the assessments void, where the Board of Estimate had granted preliminary authorization in conformance with amended resolutions adopted by the Jamaica Local Board, passed a further resolution requiring notice of a public hearing for final authorization to be published for ten days in the City Record, and such public notice was duly given and the public hearing was held and duly adjourned from time to time until final adoption of the resolution granting final authorization. Furthermore, the Greater New York Charter, in effect when the sewer proceeding was begun, only required the notice when the petition had been "received" by the president of the Borough, but had no provision as to notice when the petition had originated with the Borough President, as in the instant case.—*Emmigrant Industrial Sav. Bank v. City of New York*, 271 App. Div. 330, 65 N. Y. S. 2d 507 [1946], *aff'd* without opinion, 297 N. Y. 795, 77 N. E. 2d 800 [1948].

¶ 4. In view of the language of Charter § 295(a) and Administrative Code § 293-1.0, hearings as to petitions for assessable improvements which have been received by the Borough President

or which originate with him should be held by the Local Improvement Board in the first instance. The Borough President may not initiate a proceeding for assessment of improvements before the Board of Estimate without first submitting the matter to the Local Board.—*Maickel v. Lundy*, 4 Misc. 2d 98, 155 N. Y. S. 2d 581 [1953].

¶ 5. Contention that a subsidy-guarantee contract for a housing project was illegal because it had not received the approval of the City Council but only of the Board of Estimate was rejected, as the Charter provides for permanent improvements, known as "assessable improvements", upon authorization of the Board of Estimate without any concurring action by the Council. The intention of the Legislature discussed in various sections of the Public Housing Law was to place all authority in housing matters in the Board of Estimate and City Planning Commission.—*Neufeld v. O'Dwyer*, 192 Misc. 538, 79 N. Y. S. 2d 53 [1948].

¶ 6. Objections to condemnation of certain parcels for use as a public park were overruled on ground that action of the body vested with the power to determine necessity or expediency in acquisition of private property for public use was governmental and not judicial, and was not subject to review by the court (217 N. Y. 45; &c.).—*In re Public Park (Lawrence, Main and 133d Sts., &c.)*, 104 (145) N. Y. L. J. (12-23-40) 2175, Col. 7 M.

¶ 7. Where a short, dead-end private street was subject to unrestricted parking of trucks and the City proposed to take it over as a public street, condemnation of a small area at the end of the street to provide a turning space was proper. The fact that a company proposing to build a warehouse at the end of the street would derive some special benefit did not affect the public nature of the appropriation.—*In re City of New York (Walnut Avenue)*, 137 (17) N. Y. L. J. (1-24-57) 8, Col. 2 F.

¶ 8. In a condemnation proceeding by the City to demolish an elevated railroad structure with one-third of the cost to be borne by abutting property owners, the abutting owners were entitled to intervene. Although property owners are not generally parties in a condemnation proceeding until there has been a tentative assessment affecting their property, the rule is not applicable where the city is the owner of the property being condemned.—*In re City of New York (James Street)* 135 (12) N. Y. L. J. (1-18-56) 8, Col. 6 F.

¶ 9. Where, as result of opening of a new street, the benefit parcels on the westerly side thereof received a benefit considerably in excess of that received by owners of the parcels on the east as those on the westerly side now had access and egress over a 60-foot street when they legally had no such access before, whereas those on the easterly side benefited merely by now having access and egress over a 60-foot street rather than over 30 feet in accordance with easements which they theretofore possessed, the assessment was apportioned 60 per cent to those on the westerly side and 40 per cent to those on the easterly side.—*In re City of N. Y. (Bronx River Ave.)*, 123 (66) N. Y. L. J. (4-6-50) 1214, Col. 3 M.

¶ 10. The statutory provision that an improvement assessment be made within one year "if practicable" is directory and not mandatory. Therefore, a sewer assessment levied more than six years after completion of the project is not barred by any statute of limitations.—*Ploss v. Board of Assessors*, 17 Misc. 2d 283, 186 N. Y. S. 2d 301 [1959].

¶ 11. For assessment purposes there was properly added to the value of the remaining parcels the sum by which the lands were enhanced in value by reason of the present improvements.—*In*

re Avenues V and X, E. 18th St., &c., B'klyn, 102 (134) N. Y. L. J. (12-11-39) 2085, Col. 4 M.

HISTORICAL NOTE

Amended by L. L. 1961, No. 93.

CHAPTER 13

CONTRACTS AND PURCHASES

§ 341. **Scope.** Except as otherwise provided in this charter or by statute, all supplies, materials and equipment to be furnished and work or labor to be done, 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 furnished or provided as prescribed in this chapter.

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].

§ 342. **Purchases not requiring public letting.** a. If the several parts of the work, labor or the supplies, materials and equipment to be done or furnished shall together involve an expenditure of not more than five hundred dollars, such purchase may be made without competition; provided, however, that the aggregate total

of such purchase by any agency shall not exceed twenty thousand dollars in any one month without the prior approval of the board of estimate.

b. In the event of an emergency requiring an immediate purchase involving an expenditure of not more than one thousand dollars, such purchase may be made without competition. An "emergency", for this purpose, is an instance or situation in which: (1) a threat to health or safety exists, (2) a necessary service is threatened with material damage or suspension, or (3) buildings or property are threatened. Such emergency purchase shall require the prior approval of the commissioner of general services unless it is outside normal working hours.

c. If the several parts of the work, labor or the supplies, materials and equipment to be done or furnished shall together involve an expenditure of not more than ten thousand dollars, the items may be procured on order awarded to the lowest responsible bidder upon bids submitted without public advertisement. An order for construction, repair, rehabilitation or alteration may be awarded to the lowest responsible bidder without public advertisement if it involves an expenditure of not more than fifteen thousand dollars and is awarded pursuant to regulations and conditions prescribed by the board of estimate.

d. In the event of an emergency requiring an immediate purchase, a purchase order for equipment, supplies or materials involving an expenditure of more than five thousand dollars may be awarded to the lowest responsible bidder upon bids submitted without public advertisement on written approval of the comptroller and the corporation counsel accompanied by a statement of the reasons for such action.

e. Notwithstanding any other provision of this charter, the dollar limits pursuant to this section for purchases without public letting may be raised as to any or all agencies by the concurrent action of the board of estimate and council by a two-thirds vote of each body.

CASE NOTES

¶ 1. A budget item for "unallocated appropriations" of \$3,500,000.00 for "motor vehicles, unforeseen expenditures and sundry expenses" did not violate the provisions of this section requiring that appropriations for equipment and materials be made through the Department of Purchase and segregated to a particular use since segregation is impossible so long as the nature and kind of equipment that may become available is unknown.—*Wilmerding v. LaGuardia*, 183 Misc. 142, 50 N. Y. S. 2d 292 [1944], reversed on ground that itemization was required under former §§ 111-132 (now §§ 110-128) of the Charter, 268 App. Div. 496, 52 N. Y. S. 2d 169 [1944].

¶ 2. The Commissioners of Election of New York City 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 Election without reference to the Department of Purchase.—*Forbes v. Cohen*, 254 App. Div. 548, 5 N. Y. S. 2d 316 [1938].

HISTORICAL NOTE

Section amended by L. L. 1964, No. 101.
Section amended by L. L. 1968, No. 10.
Section amended by L. L. 1968, No. 69.
Section amended by L. L. 1969, No. 74.
Section amended by L. L. 1971, No. 3.
Subd. a amended by L. L. 1977, No. 102.
Subd. b amended by L. L. 1977, No. 102.
Subd. c amended by L. L. 1976, No. 28.
Subd. c amended by L. L. 1981, No. 12.

§ 343. **Public letting.** a. If the several parts of the work, labor or the supplies, materials and equipment to be done or furnished shall together involve the expenditure of more than five thousand dollars, or in the case of construction, repair, rehabilitation or alteration, the expenditure of more than fifteen thousand dollars, such work or labor or supplies, materials, and equipment or construction, repair, rehabilitation or alteration shall be obtained only by contract on public letting founded on sealed bids under such regulations as shall be made by the board of estimate, except that in a special case the board of estimate by a two-thirds vote may order otherwise. The terms of such contracts shall be settled by the corporation counsel as an act of preliminary specification to a proposal for bids.

b. The agency letting the contract may reject all bids if it shall deem it for the dinterest 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 board of estimate by a two-thirds vote shall determine that it is for the public interest that a bid other than that of the lowest responsible bidder shall be accepted. Tie bids are to be decided by the agency letting the contract and the award made. Whenever a contract is awarded to another than the lowest bidder, except by action of the board of estimate, the agency awarding the same shall file in its office and in the offices of the comptroller, the commissioner of general services and the city clerk a statment in detail of the reasons therefor. Notwithstanding any other provision of this subdivision, the agency letting the contract may award the contract to other than the lowest bidder upon prior approval of the corporation counsel and the comptroller.

c. Notwithstanding any other requirement of this section, any work or labor to be contracted or supplies, materials and equipment to be purchased, involving the use of funds received wholly or partially from or through the federal government, may be procured, ordered or awarded through the United States General Services Administration, if the price is lower than the prevailing market price.

d. 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 commissioner of general services shall establish such requirements for bid deposits as are necessary and practicable, and, pursuant to rules and standards published in the City Record, may waive the bid deposit requirement for specific classes of purchase and, in his discretion, for individual trans-

actions. 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 to him upon his executing the contract and furnishing the required security.

e. Every proposal 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 to him, his deposit or so much thereof as shall be applicable to the amount of the award made to him shall be retained by the city, and he 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 his deposit or as a defense to any action based upon such accepted bid.

CASE NOTES

¶ 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. La Guardia*, 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).—*Neproch 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 man-

damus 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, 187 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 Elec-

tric, 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.

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

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

§ 344. **By whom procured.** a. All work or labor to be performed by contract, including the furnishing of materials or supplies incident thereto, shall be obtained by the agency for whose use the appropriation therefor shall have been made, except as otherwise provided by law.

b. All other supplies, materials and equipment shall be purchased or procured by the department of general services, except as otherwise provided pursuant to this chapter or other law.

c. Pursuant to standards and guidelines of the commissioner of general services filed in the offices of the comptroller, the commissioner of finance, and the city clerk and published in the City Record, and subject to other sections of this chapter, each agency may purchase directly supplies, materials and equipment in an amount not to exceed one thousand dollars for each transaction or, with the prior approval of the commissioner of general 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 general 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 com-

missioner of general 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 board of estimate. Any increase in dollar limits pursuant to this subdivision shall be published in the City Record and may be rescinded by the commissioner of general services, the mayor, or the board of estimate.

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].

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.

§ 345. **Defaulter to city.** Any person who is in arrears to the city or any agency upon debt or contract, or who is a defaulter as surety or otherwise upon any obligation to the city or any agency, may be declared by the commissioner of general services or the head of any agency in the case of any purchase made by him, and in the case of any other contract by the comptroller at any time prior to the registration of the contract by him, not to be a responsible bidder, by filing in the offices of the comptroller, the commissioner of finance and the city clerk a statement in detail of the reasons therefor. Any person in arrears or who is a defaulter in the sum of five thousand dollars or more shall be declared not to be a responsible bidder for a period of three years unless some lesser period is prescribed by resolution of the board of estimate.

CASE NOTES

¶ 1. Under N. Y. C. Charter § 345, it would seem to be discretionary in the Comptroller as to whether contractors who had theretofore defaulted upon a contract with the City should be permitted to bid again.—*Martin v. Nichol*, 119 (60) N. Y. L. J. (3-29-48) 1143, Col. 1 M.

¶ 2. This section is not retroactive.—*Expert Electric, Inc. v. City of N. Y.*, 177 (57) N. Y. L. J. (3-24-77) 6, Col. 2 B.

HISTORICAL NOTE

Amended by L. L. 1968, No. 10.
Amended by L. L. 1968, No. 69.
Amended by L. L. 1969, No. 74.
Amended at General Election, November 4, 1975.
Amended by L. L. 1976, No. 28.
Amended by L. L. 1977, No. 30.
Amended by L. L. 1977, No. 102.

§ 346. **Inspection.** Inspection and acceptance or rejection of all deliveries of supplies, materials and equipment shall be made by the agency that makes the direct purchase other than under a

vendor contract. The commissioner of general services may authorize an agency to which delivery is made to perform such functions on purchases made by the department of general 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 general 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.

§ 347. **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 supplies, materials and equipment approved by the commissioner of general services. Before adopting standard specifications the commissioner shall obtain and consider the recommendations of agencies using the items to be standardized.

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].

HISTORICAL NOTE

Amended by L. L. 1969, No. 74.
Amended at General Election, November 4, 1975.
Amended by L. L. 1977, No. 102.

§ 348. **Patented, brand name, sole source articles; how supplied.** Except for repairs no patented pavement shall be laid and

no patented or brand name or sole source article shall be advertised for, contracted for or purchased, except under such circumstances that there can be a fair and reasonable opportunity for competition, pursuant to standards and policies of the commissioner of general services. In the event that an item involves a purchase price of more than twenty-five hundred dollars, the determination of the commissioner shall be made after (1) the commissioner has conducted or authorized to be conducted a public hearing and (2) the approval in writing of the comptroller has been obtained.

CASE NOTES UNDER FORMER § 349

¶ 1. Action by contractor against Board of Education of New York City to recover sum allegedly due for alleged delays and extra work in connection with project, *held* barred by the one-year period of limitations fixed by the contract, which provided that any action should be commenced within one year after filing of certificate of completion of the work. Plaintiff knew or should have known of the filing of the certificate by fact that the warrant for final payment, based upon filing of such certificate, was issued to plaintiff and receipt thereof acknowledged by it, and moreover it was informed by letter as to the date of filing at a time over six months prior to expiration of the one-year period. Since the contract was let by the Board of Education pursuant to the Education Law, Administrative Code §§ 343-5.0, 5.6 were inapplicable.—*Driscoll v. Bd. of Education*, 98 N. Y. S. 2d 610 [1950].

¶ 2. The Board of Estimate is without the power to make the Comptroller's audit a condition of payment in regard to a voucher of the Board of Education for additional compensation to a contractor.—*Matter of C. K. Rehner Inc.*, 17 Misc. 2d 226, 184 N. Y. S. 2d 998 [1959].

HISTORICAL NOTE

Amended at General Election, November 4, 1975.
Amended by L. L. 1977, No. 102.

§ 349. **Consultant contracts.** a. Except as otherwise provided by resolution of the board of estimate, no contract for the performance of technical, consultant or personal services for which competitive bidding is inappropriate, involving the expenditure of more than ten thousand dollars shall be awarded except after public hearing before and approval by a majority of the board of estimate.

b. Within ten days after the award of any contract for technical, consultant or personal services, notice thereof shall be published in the City Record.

c. This section shall not be applicable to contracts with planners, architects, engineers, or any other person or firm, if such person or firm and their estimated fees have been identified in a scope of project approved by the board of estimate pursuant to chapter nine.

d. All mayoral and non-mayoral agencies required to submit contracts to the board of estimate for approval pursuant to this section shall have guidelines setting forth their procedures regarding the use, oversight and reporting of contracts and selection of contractors for consultant, technical and personal services which require approval pursuant to this section. Such guidelines shall include the following matters:

1. the circumstances under which such contracts may be used, which shall include but not be limited to, circumstances where the use of such contracts is (a) cost-effective, (b) to obtain special expertise, (c) to obtain personnel or expertise not available in the agency, (d) to perform a service not needed on a long-term basis, (e) to accomplish work within a limited amount of time, or (f) to avoid a conflict of interest;

2. the methods for selecting contractors, which may include but shall not be limited to recruiting methods, and contractor evaluation criteria such as expertise, resources, prior experience, familiarity with agency operations, cost, and financial capability;

3. the manner in which the agency shall oversee the performance of such contracts; and

4. agency record keeping procedures for such contracts.

The guidelines established pursuant to this subdivision shall be filed with the council and the board of estimate and shall be published in the City Record within 60 days of the effective date of this bill and any subsequent revisions thereof shall be so filed and published within 30 days of their promulgation.

e. When contracts are referred to the board of estimate for approval pursuant to this section, the agency head or the agency head's designee shall submit to such board a statement of the reasons why the award of the contract is appropriate under the agency's guidelines.

f. Each entity subject to subdivisions d and e shall have published in the City Record an announcement of proposed contracts over fifty thousand dollars, 10 days prior to their submission to the board of estimate, or at a time shorter than 10 days when reasonable circumstances exist precluding compliance within the 10 day period. The reason for such delay or nonpublication shall be set forth in the board of estimate calendar.

HISTORICAL NOTE

Added by L. 1971, ch. 1133.

Amended at General Election, November 4, 1975.

§ 350. **Payments procedure.** The commissioner of general services shall prepare and promulgate procedures, standards and guidelines for the expeditious processing of payment vouchers by city agencies and departments; and shall oversee, monitor, and report to the mayor, the board of estimate and the public on agency performance of such function.

HISTORICAL NOTE

Amended at General Election, November 4, 1975.

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

CHAPTER 14

FRANCHISES

§ 361. **Definition.** The term "streets of the city" as used in this chapter shall include streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, docks, bulkheads, wharves, piers and public grounds or waters within or belonging to the city.

§ 362. **Powers of board of estimate.** The board of estimate shall have the control of the streets of the city, except as in this charter otherwise provided, and shall have the exclusive power in behalf of the city to grant franchises or rights or make contracts providing for or involving the occupation or use of any of the streets of the city, whether on, under or over the surface thereof, for railroads, pipe or other conduits or ways or otherwise for the transportation of persons or property or the transmission of gas, electricity, steam, light, heat or power, or the installation of transformer vaults, and to give the consent of the city to any franchise or right of any kind or nature whatsoever for or relating to the occupation or use of the streets of the city under the provisions of the constitution or of any statute.

CASE NOTES

† 1. A franchise to lay gas conductors in the streets entitles the guarantee to install gas pressure regulators in vaults in the streets, equipped with suitable vents. Order granted directing issuance of permit.—*In re Brooklyn Union Gas Co.* (Cashmore), 140 (43) N. Y. L. J. (8-29-58) 6, Col. 2 F.

† 2. Agreements in 1933 and 1936 wherein the defendant bus lines agreed to pay stipulated compensation to transit line acquired by Transit Authority from City in 1953, were null and void, since City had modified the franchise agreement with defendant bus line including the routes covered by the specified contracts on various occasions prior to 1953.—*New York City Transit Authority v. The Jamaica Bus Line*, 20 Misc. 2d 659, 192 N. Y. S. 2d 72 [1959].

† 3. City was not entitled to injunction restraining company from using city streets to operate CATV systems without a franchise or consent for use of streets as the power given by the city charter to franchise is not for the use of streets for the transmission of electricity but for the use of streets for pipes through which electricity is transmitted.—*City of N. Y. v. Comtel, Inc.*, 57 Misc. 2d 585, 293 N. Y. S. 2d 599 [1968], *aff'd*, 30 A. D. 2d 1049, 294 N. Y. S. 2d 981 [1968], *aff'd* 25 N. Y. 2d 922, 252 N. E. 2d 285, 304 N. Y. S. 2d 853 [1969].

† 4. Petitioner, a cable television company was not entitled to injunction relief against the Board of Estimate's issuance of franchises to two other cable television companies using their own cables under the streets since the City is not regulating the industry under its police power but granting franchises to certain companies to use the streets for the purpose of laying cables and franchise holders did not have to be chosen by competitive bidding.—*In re Comtel, Inc.* (Lindsay), 164 (53) N. Y. L. J. (9-15-70) 18, Col. 3 F.

¶ 5. The power to convert Madison Avenue from 44th Street to 57th Street into a mall resides in the Board of Estimate and not the Mayor.—Fifth Avenue Association, Inc. v. Lindsay, 73 Misc. 2d 111, 341 N. Y. S. 2d 473 [1973], *aff'd*, 344 N. Y. S. 2d 633 [1974].

¶ 6. City had right to impose special franchise tax assessments where oil pipeline company accepted consent of city to construct underwater portion of pipeline in Arthur Kill and was not relieved from the terms of its acceptance by subsequent grant of easement rights in bed of Arthur Kill from state.—Colonial Pipeline Co. v. State Bd. of Equalization & Assessment, 81 Misc. 2d 696, 366 N. Y. S. 2d 949 [1975].

¶ 7. Article 78 proceeding was appropriate remedy to seek review of a resolution of the board of estimate concerning construction, operation and maintenance of bus stop shelters, claimed to be arbitrary and capricious.—Bustop Shelters Inc. v. City of N. Y., 99 Misc 2d 198, 415 N. Y. S. 2d 726 [1978].

§ 363. Franchise to be granted by contract. Every grant of or consent to a franchise of any character or modification thereof must be by contract executed by or under the authority of the board of estimate.

CASE NOTES

¶ 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 492 [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.

§ 364. **Limitation on period of grant.** a. No such contract 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.

b. The contract 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.

CASE NOTES

¶ 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].

§ 365. **Rights to cease without compensation upon termination.** At termination of such contract all the rights or property of the grantee in the streets of the city shall cease without compensation.

§ 366. **Plant and appurtenances may inure to city upon termination.** a. Any such contract 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.

b. 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.

§ 366-a. **Review of proposals.** a. A petition for a franchise or revocable consent shall be filed with the board of estimate, department of city planning and the bureau of franchises.

b. Review by a community board or borough board of such petition shall be in the manner specified pursuant to section one hundred ninety-seven-c. Such review shall be limited to the land use impact and implications of the subject matter of the petition and shall not extend to any fees or compensation to be paid in connection therewith. A community board may waive a public hearing and the preparation of a written recommendation with respect to any such petition which in its judgment does not involve a substantial land use interest.

c. Notwithstanding any provision of this charter or the administrative code, revocable consents to construct and operate sidewalk cafes shall be reviewed pursuant to article ten of title B of chapter thirty-two of the administrative code.

CASE NOTES

† 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.*

HISTORICAL NOTE

Section added at General Election, November 4, 1975.
Subd. c added by L. L. 1982, No. 50.

§ 367. **General provisions of contracts.** a. Every such contract shall contain adequate provisions by way of forfeiture or otherwise to secure efficiency of public service at reasonable rates and for the maintenance of the property in good condition throughout the full term of the grant.

b. Every contract 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.

CASE NOTES

¶ 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 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.*

§ 368. **Public hearing on the petition.** a. Before any such contract shall be made, a public hearing shall be held by the board of estimate upon the petition therefor at which citizens, including representatives of community or borough boards, shall be entitled to appear and be heard. Such hearing shall be held on at least ten days' notice, which notice, together with the petition in full, shall be published in the City Record, and, at the expense of the petitioner, at least twice in two daily newspapers to be designated

by the mayor and which are published in the borough affected. Where only one daily newspaper is published in the borough affected, the mayor shall designate that newspaper together with a daily newspaper published in the city of New York and having a circulation in the borough affected. Where more than one borough is affected or where no daily newspaper is published in the borough affected, the mayor shall designate two daily newspapers published in the city and having a circulation in the borough or boroughs affected.

b. Copies of such notice, together with the petition in full, shall be forwarded to the community board or boards in the community district or districts affected, and to the borough board or boards for review pursuant to section one hundred ninety-seven-c.

CASE NOTES

¶ 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. 2d 781 [1979].

HISTORICAL NOTE

Amended by L. 1949, ch. 495.

Amended at General Election, November 4, 1975.

§ 369. **Inquiry by board of estimate.** The board of estimate shall make inquiry as to the money value of the proposed franchise or right and the adequacy of the compensation proposed to be paid therefor, and shall embody the result of such inquiry in a form of contract, with all the terms and conditions, including the provisions as to rates, fares and charges.

CASE NOTES

¶ 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].

§ 370. **Proposed contract and resolution to be entered on minutes.** Such proposed contract together with the form of resolution authorizing the same shall, but not until after the hearing upon the petition, be entered on the minutes of the board of estimate.

§ 371. **Public hearing on proposed contract and resolution; publication of notice.** The board of estimate shall, not less than twenty-seven days after such entry and before adopting any such resolution, hold a public hearing thereon at which citizens shall be entitled to appear and be heard. No such hearing shall be held until after notice thereof and the proposed contract and proposed resolution authorizing the same shall have been published in full for at least fifteen days, except Sundays and legal holidays, immediately prior thereto in the City Record, nor until a notice of such hearing, together with the place where copies of the proposed contract and resolution may be obtained by all those interested therein, shall have been published at least twice at the expense of the proposed grantee in the two newspapers in which the petition and notice of hearing thereon shall have been published pursuant to section three hundred sixty-eight.

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].

HISTORICAL NOTE

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

§ 372. **Requisite vote of board of estimate for approval of resolution.** No such resolution shall take effect unless carried by a three-fourths vote, and the vote shall be shown by ayes and noes as recorded in the minutes of the board.

CASE NOTES

¶ 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 a 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. LaGuardia*, 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 state-wide application.—*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].

§ 373. **Powers of the mayor.** a. The separate and additional approval of the mayor shall be necessary to the validity of every such resolution.

b. Every such resolution shall before it takes effect be presented, duly certified, to the mayor for his approval. Such contract or resolution shall not be effective unless such resolution shall be approved by the mayor within sixty days after it is presented to him, or within such further time not exceeding sixty days additional as may be authorized by the board of estimate.

§ 374. **Revocable consents.** Consent to construct and use for private use pipes, conduits and tunnels under, railroad tracks upon, and connecting bridges over, any of the streets of the city shall be by resolution of the board of estimate, subject to the

uniform land use review procedure provided for in section one hundred ninety-seven-c, for such term and upon such conditions as may be provided in the resolution, but shall be revocable at any time by resolution of the board of estimate. Such consents shall provide for adequate compensation to be paid annually to the city during the continuance of the consent, and the separate and additional approval of the mayor shall be necessary to their validity.

CASE NOTES

¶ 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].

HISTORICAL NOTE

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

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].

§ 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 direction contained in this section shall not invalidate or affect the proceeding.

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].

HISTORICAL NOTE

Amended by L. L. 1968, No. 10.

Amended by L. L. 1970, No. 30.

Amended by L. L. 1976, No. 28.

§ 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 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.

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].

§ 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 board of estimate 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 board of estimate 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, and 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 to purposes determined by the board of estimate.

2. Real property of the city may be leased only after appraisal made within sixty days prior to the authorization of the lease by the board of estimate, provided, however, that advertisement 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 general 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 board of estimate 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 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 as may be determined by the board of estimate to be in the public interest, and no such lease shall run for a term longer than ninety-nine years.

5. Review by a community board or borough board of any proposal or application for the sale, lease (other than lease of office space), exchange or other disposition of city property or of property for the use of the city shall be in the manner specified pursuant to section one hundred ninety-seven-c. 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 proposal or application involving a lease of property.

6. The city planning commission shall act on any proposed lease of property of or for the city within sixty days of filing with it of the recommendation of a community board or borough board, or the latest filing if there is more than one filing within the time allowed under section one hundred ninety-seven-c. The commission may waive a public hearing on any proposal or application involving a lease of property.

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 auctioneer's 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 De-

tention 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].

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.

CHAPTER 16

LAW DEPARTMENT

§ 391. **Department; corporation counsel.** There shall be a law department the head of which shall be the corporation counsel.

§ 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, possess such of the powers and perform such of the duties of the corporation counsel as he shall empower such assistant to exercise by written authority filed and remaining on record in the department.

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.

§ 393. **Offices.** The corporation counsel may maintain an office in each of the boroughs or any of them.

§ 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; but the board of estimate may direct such changes to be made in the form of contracts and specifications as the interests of the city may in its judgment require.

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. He 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 he 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 this 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.

d. The corporation counsel shall annually compile and publish departmental rules and regulations as provided in section eleven hundred five.

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*, 50 Misc. 2d 428, 270 N. Y. S. 2d 773 [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].

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.

§ 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 him or them individually or may be followed by a motion to commit for contempt of court, in which case he or they may employ and be represented by attorney or counsel at his own or their own expense.

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].

HISTORICAL NOTE

Amended at General Election, November 4, 1975.

§ 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.

§ 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 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.

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].

§ 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.

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].

HISTORICAL NOTE

Amended by L. L. 1946, No. 6.
Amended by L. L. 1954, No. 43.
Amended by L. L. 1962, No. 8.

§ 433. **Member of 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 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 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 commission and to have vacated his office, and all votes cast at any election for any person holding the office of police commissioner, or within thirty days after he 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.

§ 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].

§ 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, 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. 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.

c. 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.

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.—*Anguieira 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, 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'g* 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 ½ 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 curbside 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.

HISTORICAL NOTE

Amended by L. L. 1949, No. 2.
Amended by L. L. 1950, No. 27.

§ 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 boatmen, 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.

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].

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.

§ 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.

§ 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].

§ 440. **Civilian complaints against members of the police department.** (a) Policy. It is hereby declared to be the public policy of the city of New York in order to preserve the independence and integrity of police service, that civilian complaints against members of the police department of the city of New York shall be investigated and dealt with fully and fairly by the appropriate officials regularly charged with the governance and discipline of the police department without interference by any person or group of persons not regularly in police service.

(b) Definitions. As used in this section:

1. The term "mayor" means the mayor of the city of New York or any official acting on his behalf or in his place and stead.

2. The term "commissioner" means the police commissioner of the city of New York or any official acting on his behalf or in his place and stead.

e. The term "police department" means the police department of the city of New York.

4. The term "civilian" means any person who is not a member or full-time employee of the police department.

(c) Review of civilian complaints. The commissioner shall have the power to and may establish within the police department a review board, to consist of one or more persons, who shall serve at his pleasure, which board may have the power to receive, to investigate, to hear and to recommend action upon civilian complaints against members of the police department, or any one or

more of such powers, provided that each member of such board is, and for a period of at least one year prior to his appointment to such board has been, a regularly appointed, full-time member or full-time administrative employee of the police department and shall continue to be a full-time member or full-time administrative employee of the police department during his period of service on such board. Neither the mayor, the commissioner, nor any other administrator or officer of the city of New York shall have power to authorize any person, agency, board or group to receive, to investigate, to hear, or to require or recommend action upon, civilian complaints against members of the police department except as provided in this section.

(d) Attendance by police officers. No member of the police department or other person shall be disciplined or otherwise penalized for his failure to appear before or respond to the inquiries of any person, agency, board or group appointed by the mayor, the commissioner, or any other administrator or officer of the city of New York to receive, to investigate, to hear or to require or recommend action upon civilian complaints against members of the police department, unless such person, agency, board or group shall be duly appointed in accordance with the provisions of this section.

(e) Prosecution; right to hearing. Notwithstanding anything herein contained to the contrary, this section shall not be construed to prevent investigation or prosecution of members of the police department for violations of law by a duly constituted court having jurisdiction, a grand jury, district attorney or other law enforcement agency; nor shall this section be construed to permit a member of the police department to be fined, reprimanded, removed, suspended or dismissed, except upon written charges, after such charges have been examined, heard and investigated by the commissioner, one of his deputies or the assistant to the commissioner.

(f) Separability. The invalidity of any provision or provisions of this section shall not affect the validity of the remaining provisions thereof, but such remaining provisions shall continue in full force and effect.

CASE NOTES

† 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].

HISTORICAL NOTE

Added by L. L. 1966, No. 40.

CHAPTER 19

FIRE DEPARTMENT

§ 481. **Department; commissioner.** There shall be a fire department the head of which shall be the commissioner.

§ 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.

§ 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

Amended by L. L. 1947, No. 8.

§ 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.

§ 485. **Seal.** The commissioner may adopt a seal for the department and direct its use.

§ 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.

§ 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.

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.

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 Assn. Local 94*, 58 N. Y. 2d 957 [1983].

HISTORICAL NOTE

Amended by L. L. 1959, No. 24.

§ 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

Amended by L. L. 1959, No. 24.

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

Amended by L. L. 1967, No. 127.

Amended by L. L. 1968, No. 76.

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

§ 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.

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].

§ 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.

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 oc-

cupancy 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.

§ 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.

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].

§ 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 un-

derground 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

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

§ 493. **Member of department; no other office.** Any commissioner or any member of the uniformed force of the department 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 term of office be nominated for any office elective by the people, except a member of the force appointed, nominated or elected to a board of education outside of the city of New York, or a member of the fire department appointed, nominated or elected to a party position as defined within the New York state election law, and shall not, within ten days succeeding the same, decline the said nomination, shall be deemed thereby to have resigned his commission and to have vacated his office. The provisions of this section shall apply as long as it does not interfere with his/her performance as a member of the department.

The foregoing provisions shall not apply to any member of the uniformed force of the department who, with the written authorization of the mayor, shall accept any additional place of public trust or civil emolument while such member shall be on leave of absence without pay from the department.

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].

HISTORICAL NOTE

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.

§ 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

Added by L. 1978, ch. 652.

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.

§ 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.

CASE NOTES

¶ 1. City of New York was not a proper party defendant to action to recover for injuries sustained by infant in the public school yard, as all property acquired by the City for school purposes is under control of the Board of Education, a separate entity.—In re Rubenstein (Bd. of Education), 127 (92) N. Y. L. J. (5-12-52) 1900, Col. 1 F.

¶ 1.1 To same effect, Winkler v. City of New York, 136 (66) N. Y. L. J. (10-3-56) 11, Col. 8 F.

§ 522. **Reports of board.** The board 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 board 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 board 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.

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].

§ 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 his official duties, or otherwise, which tends to discredit his office or the school system, or for mental or physical inability to perform his duties; but before removal he 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.

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].

§ 524. **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 his 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.

§ 525. **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 department 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.

§ 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.

§ 527. **Changes in state law.** This chapter shall not prevent the city from exercising any power now or hereafter conferred by law.

CHAPTER 21

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.

§ 532. **Deputies.** The commissioner may appoint three deputies.

§ 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 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 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 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

* Added by L. L. 1976, No. 7.

under his 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 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;

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. Any violation of such rules or regulations 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;

10. to plan, conduct, supervise, coordinate and promote conservation 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, 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.

§ 534. **Landmarks preservation commission.** 1. There shall be in the department 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 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 chairman, 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 chairman and one to be vice-chairman. The chairman and vice-chairman 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 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.

CHAPTER 22*

DEPARTMENT OF HEALTH

§ 551. **Department; commissioner.** a. There shall be a department of health, the head of which shall be the commissioner of health who shall be appointed by the mayor.

b. The commissioner shall: (1) be a doctor of medicine and a holder of 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

(2) have had at least eight years' experience either in public health administration or in college or university public health teaching or in both.

§ 552. **Deputy commissioners.** The commissioner may appoint four deputy commissioners, one of whom shall have the same qualifications as the commissioner and one of whom shall be designated as the deputy commissioner for addiction programs and who shall be responsible for the drug treatment and drug prevention programs authorized by law.

§ 553. **Board of health.** a. There shall be in the department a board of health, the chairman of which shall be the commissioner. In addition to the chairman, the board shall consist of four members, two 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, public health administration or college or university public health teaching. The other two members need not be physicians.

b. The four members other than the chairman shall serve without compensation and shall be appointed by the mayor, each for a term of eight 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.

§ 554. **Removal of board members.** A member of the board of health other than the chairman may be removed by the mayor

* Added by L. L. 1977, No. 25.

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.

§ 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) Review, analyze and evaluate the needs of the city with respect to the matters subject to the jurisdiction of the department.

(2) 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.

(3) Prepare and transmit budget estimates of the department as prescribed by law.

(4) Supervise the management of all programs, activities and expenditures of the department.

(5) To the extent to which the organization of the department is not prescribed by law and in accordance with such standards and policies as may be established by the mayor, to organize the department into bureaus, divisions, boards or offices and make assignments of powers and duties among them and from time to time change such organization and assignments.

b. In the exercise of the commissioner's functions, powers and duties the commissioner may:

(1) With approval of the board of estimate, enter into contracts from time to time with any university, medical school, public or voluntary hospital or not-for-profit corporation, agency or association established to provide health services, organized pursuant to the laws of the state of New York, whereby such university, medical school, public or voluntary hospital or not-for-profit corporation, agency or association established to provide health services, shall agree to provide and supervise, under the general supervision of the commissioner, all or part of the professional and related staff used in the operation of any institutional or other health services under the jurisdiction of the department. The personnel so provided by such university, medical school, public or voluntary hospital or not-for-profit corporation, agency or association shall not be deemed to be employees of the city of New York.

(2) Compel the attendance of witnesses in any matter or proceeding before the commissioner.

(3) 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; and

(4) Except as otherwise provided by law, delegate the functions, powers or duties vested in him by this chapter to officers and employees of the department.

HISTORICAL NOTE

Amended by L. L. 1979, No. 29.

§ 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 following:

(a) 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; and shall maintain an office in each borough and shall 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;

(b) 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;

(c) receive and expend funds made available for public health purposes pursuant to law;

(d) supervise and control the registration of births, fetal deaths and deaths;

(e) 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;

(f) 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;

(g) produce, standardize and distribute certain diagnostic, preventive and therapeutic products and conduct laboratory examinations for the diagnosis, prevention and control of disease;

(h) promote or provide education in the prevention and control of disease;

(i) promote or provide diagnostic and therapeutic services for maternity and child health, family planning, communicable disease, medical rehabilitation, narcotics addiction and other diseases and conditions affecting public health;

(j) promote or provide medical and health services for school children and the ambulant sick and needy persons of the city;

(k) promote or provide medical and health services for the inmates of prisons maintained and operated by the city;

(l) maintain and operate hospitals, institutions, public health centers and clinics as shall be established in the department;

(m) 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 may adjourn such hearing from time to time, if necessary, in order to allow persons interested to attend or express their views;

(n) except as otherwise provided by law, analyze, evaluate, supervise and regulate hospitals, clinics, nursing homes, homes for the aged, clinical laboratories, blood banks, institutions and

other facilities providing medical and health services and services ancillary thereto;

(o) supervise and regulate the public health aspects of water supply and sewage disposal and water pollution;

(p) supervise and regulate the public health aspects of the production, processing and distribution of milk, cream and milk products;

(q) except as otherwise provided by law, supervise and regulate the public health aspects of the food and drug supply of the city and other businesses and activities affecting public health in the city;

(r) supervise and regulate the removal, transportation and disposal of human remains;

(s) 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

(t) develop, promote, provide, coordinate and evaluate addiction programs for the prevention of addiction and the treatment and rehabilitation of persons addicted to narcotics and other dangerous drugs, including but not limited to the following functions and operations:

1. participate in cooperative efforts of federal, state, regional and city agencies and programs dealing with the problems of addiction to narcotics and other dangerous drugs;

2. evaluate present and proposed research designs, demonstration projects, treatment and service programs, and other requests related to the prevention of addiction and the care, treatment and rehabilitation of drug addicts in the city, before public funds are made available therefor;

3. promote or provide research and demonstration projects designed to obtain information relating to the prevention of addiction and the care, treatment and rehabilitation of drug addicts by public or voluntary private agencies supported in whole or in part by city funds;

4. promote or provide an educational and prevention program to acquaint the public with the problems of addiction resulting from narcotics and other dangerous drugs;

5. promote or provide treatment modalities for persons addicted to narcotics and other dangerous drugs including but not limited to drug free programs and chemotherapeutic programs, a school based drug prevention program and drug prevention programs and facilities with maintenance of a balance;

6. annually report to the city council by March first, as of December thirty-first of the preceding year, on all modalities promoted or provided during the preceding year and proposed to be promoted or provided during the ensuing year with particular reference to the balance between all modalities and the relative effectiveness thereof; and

7. promote or provide training programs for persons in public or voluntary private agencies and institutions or other facilities

engaged in the prevention, treatment and rehabilitation of persons addicted to narcotics and other dangerous drugs.

§ 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 personnel director and serving upon the chief medical examiner his 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 paragraphs one, two, three, and four of subdivision a of section five hundred fifty-five of this chapter, but he shall not interfere with the performance by the chief medical examiner or his 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, associate medical examiners, assistant medical examiners, junior 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, associate medical examiners, assistant medical examiners and junior 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 personnel.

(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 and all deputy chief medical examiners, associate medical examiners, assistant medical examiners, junior medical examiners and medical investigators may administer oaths and take affidavits, proofs and examinations as to any matter within the jurisdiction of the office.

(f) The chief medical examiner shall have such powers and duties as may be provided by law in respect to bodies of persons dying from criminal violence, by casualty, 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 the body of a person.

(g) The chief medical examiner shall keep full and complete records in such form as may be provided by law. He 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.
Subd. f amended by L. L. 1983, No. 55.

§ 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. Such board 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 board 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 duly certified by the person serving as secretary of the board is filed with the city clerk. Upon such filing the amendment or addition shall be part of the health code and shall be published forthwith in the City Record by the city clerk.

(g) The board of health may add, amend and repeal regulations in regard to any matter contained in the health code, and such regulations when filed with the city clerk shall have the same force and effect as a provision of the health code and shall be published forthwith in the City Record.

(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.

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, Col. 1 T.

HISTORICAL NOTE

Subd. c amended by L. L. 1979, No. 5.
Subd. d amended by L. 1980, ch. 221.

§ 559. **Seal.** The commissioner, with the concurrence of the board of health, may adopt a seal which shall 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.

§ 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.

§ 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.

§ 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.

§ 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 twenty-four of this charter 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.

§ 564. **Suits and service of papers.** The department may sue and be sued in and by the proper name of "Department of Health 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.

§ 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.

§ 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.

§ 568. **Creation of addiction programs advisory council.** There shall be in the department an addiction programs advisory council to inform and advise the mayor, city council and commissioner on all matters relating to drug addiction problems and the management, development and evaluation of addiction programs, subject to the following:

(a) such council shall consist of eighteen members, nine of whom shall be appointed by the mayor and nine of whom shall be appointed by the city council; in making their appointments each shall appoint, respectively, at least one member with expertise in the treatment modalities of chemotherapy, drug-free therapy, and prevention, and three persons or consumers knowledgeable in addiction services, who are non-providers in the field;

(b) the advisory council shall select one of its members to be designated as chairperson and each member shall serve without compensation for a term of two years; the advisory council shall meet at least six times annually;

(c) no person shall be ineligible for council membership by virtue of his holding any other public office, employment or trust, nor shall any person be made ineligible to, or forfeit his right to

any public office, employment or trust by reason of such appointment; and

(d) contracts for services and facilities under this chapter may be made with any university, medical school, public or voluntary hospital or not-for-profit corporation, agency or association, notwithstanding that any officer or employee or member of the medical or consultant staff thereof is a member of such advisory council provided that if any matter arises before the advisory council directly involving a university, medical school, public or voluntary hospital or not-for-profit corporation, agency or association or other institution of which any member of the council is an officer, employee or serving as a consultant, that member shall participate in the advisory council's deliberations on the matter only insofar as to provide any information requested of this member by other members of the advisory council and that member shall not participate further in the advisory council's deliberations on the matter after having provided the requested information.

CHAPTER 23*

DEPARTMENT OF MENTAL HEALTH,
MENTAL RETARDATION
AND ALCOHOLISM SERVICES

§ 590. **Definitions.** When used in this chapter:

"mentally disabled" means those afflicted with mental illness, mental retardation or alcoholism as these terms are defined in section 1.05 of the mental hygiene law; or any other mental illness or mental condition placed under the jurisdiction of the department of mental health, mental retardation and alcoholism services by the mayor.

"provider of services" means an individual, association, corporation or public or private agency which provides for the mentally disabled;

"services for the mentally disabled" means 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.

§ 591. **Department; commissioner.** There shall be a department of mental health, mental retardation and alcoholism services, the head of which shall be the commissioner of mental health, mental retardation and alcoholism services, who shall be a psychiatrist, appointed by the mayor, and whose qualifications shall meet the standards fixed by the mental hygiene law.

§ 592. **Officials of the department.** The commissioner shall have the powers and duties of the department of mental health, mental retardation and alcoholism services and those conferred or imposed upon a community mental health, mental retardation and alcoholism services board and a director of a community mental health, mental retardation and alcoholism services board by the mental hygiene law or any other applicable law. Except as otherwise provided by law, such powers and duties shall include but shall not be limited to:

(a) determining 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 commissioner's jurisdiction;

(b) engaging in short-range, intermediate-range and long-range mental hygiene planning which reflects the entire array of city mental hygiene needs and mental hygiene resources; to effect such

* Chapter 23 added by L. L. 1977, No. 25.

planning, the commissioner shall have assembled and analyzed all proper and relevant data from all providers of services;

(c) developing and submitting to the mayor and council a program for the delivery of services for the mentally disabled, including construction and operation of facilities;

(d) arranging, with the approval of the mayor, for the rendition of services and operation of facilities by other agencies of the city;

(e) within the amounts appropriated therefor, entering into contracts for the rendition or operation of services and facilities on a per capita basis or otherwise, including contracts executed pursuant to subdivision e of section 11.19 of the mental hygiene law;

(f) within the amounts appropriated therefor, executing such programs and maintaining such facilities as may be authorized under such appropriations;

(g) using the services and facilities of public or private voluntary institutions whenever practical, and encouraging all providers of services to cooperate with or participate in the program, whether by contract or otherwise;

(h) implementing and administering an inclusive citywide planning process for the delivery of services for the mentally disabled; and designing and incorporating within that planning process, consistent with applicable law, standards and procedures for community participation at the borough and local community level;

(i) encouraging the development and expansion of programs for the prevention, diagnosis, care, treatment, social and vocational rehabilitation, special education and training of the mentally disabled and for public education on mental disability;

(j) establishing coordination and cooperation among all providers of services, coordinating 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 seeking 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;

(k) making policy and planning for, monitoring, evaluating and exercising general supervision over all services and facilities for the mentally disabled within the commissioner's jurisdiction; and exercising general supervisory authority, through the promulgation of appropriate standards consistent with accepted professional practices, over the care and treatment of patients within such services and facilities;

(l) 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, arranging for the visitation, inspection and investigation of all providers of services, by the department or otherwise;

(m) conducting or contracting for such research and studies as may be useful for the discharge of the commissioner's duties and for the promotion of mental hygiene and prevention of mental disability;

(n) conducting such inquiries as may be useful in performing the functions of the department and for such purpose the commissioner shall have subpoena power to compel the attendance of witnesses, to administer oaths and to compel the production of books, papers and documents;

(o) in furtherance of the purposes of this chapter and the mental hygiene law, making rules and regulations covering the provision of services by providers of services;

(p) submitting all materials required by the mental hygiene law for purposes of state reimbursement;

(q) serving as a member of such state or federally authorized committees as may be appropriate to the discharge of the commissioner's functions;

(r) performing 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.

§ 594. **Functions of the department.** Except as otherwise provided by law, the department shall perform all those functions and operations performed by the city of New York that relate to the mental health, mental retardation and alcoholism-related needs of the people of the city, including, where necessary and proper, performance of the functions and operations empowered in the commissioner by section five hundred ninety-three of this chapter.

§ 595. **Mental hygiene advisory board.** (a) 1. There shall be a mental hygiene advisory board which shall be advisory to the commissioner in the development of community mental health, mental retardation and alcoholism facilities and services and programs related thereto. The board shall be constituted and its appointive members appointed and removed in the manner prescribed for a community mental health, mental retardation and alcoholism 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 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 board membership because he holds any other public office, employment or trust, nor shall any person be made ineligible to or forfeit his 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 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 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 is an officer, employee or on the medical or consultant staff thereof, that member shall participate in the board's deliberations on the matter only in so far as to provide any information requested of him by the other members of the board and that member shall not participate further in the board's deliberations on the matter after having provided the required information.

HISTORICAL NOTE

Amended by L. L. 1982, No. 9.

§ 596. **Advisory committees.** The mayor may appoint such advisory committee or committees as he may deem necessary or desirable to advise the commissioner and the advisory board provided for in section five hundred ninety-five of this chapter.

§ 597. **Construction clause.** The provisions of this chapter shall be carried out subject to and in conjunction with the provisions of the mental hygiene law.

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.

§ 602. **Deputies.** The commissioner may appoint three deputies.

§ 603. **Powers and duties.** 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.

§ 604. **Public institutions under the commissioner.** The commissioner shall control, maintain and operate such institutions as are now or may be put under his control.

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.

§ 622. **Deputies.** The commissioner may appoint two deputies.

§ 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.

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], affg 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].

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.

§ 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.

§ 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.

§ 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.

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].

HISTORICAL NOTE

Amended at General Election, November 4, 1975.
Amended by L. L. 1977, No. 102.

§ 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.

CHAPTER 26*

DEPARTMENT OF BUILDINGS

§ 641. **Department; commissioner.** There shall be a department of buildings, the head of which shall be the commissioner of buildings. The commissioner shall be a registered architect or a licensed professional engineer in good standing under the education law.

§ 642. **Deputies.** The commissioner may appoint two deputies.

§ 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) 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; (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 wiring and appliances for electric light, heat and power 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

* Chapter 26 added by L. L. 1977, No. 29.

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 and terminals, 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.

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].

HISTORICAL NOTE

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

§ 644. **Department; powers.** The commissioner shall have the power and duty:

- (a) to prepare and transmit the budget estimates of the department as required by law;
- (b) to supervise the execution and management of all programs, activities and expenditures of the department; and
- (c) to the extent to which the organization of the department is not prescribed by law, and in accordance with such standards and policies as may be established by the mayor, to organize the department into divisions, bureaus, boards or offices and make assignments of powers and duties among them and from time to time change such organization or assignments.

§ 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 personnel director 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 personnel director.

(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.

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 mortgagees 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].

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.

§ 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.

§ 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.

§ 648. **Appeals.** Appeals may be taken from decisions of the commissioner and of the borough superintendent acting under a written delegation of power filed in accordance with the provisions of subdivision (c) of section six hundred forty-five of this chapter, to the board of standards and appeals as provided by law.

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].

§ 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.

CHAPTER 27

BOARD OF STANDARDS AND APPEALS

§ 659. **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. He shall devote his entire time to the performance of his duties and shall not engage in any other occupation, profession or employment.

HISTORICAL NOTE

Amended by L. L. 1972, No. 31.

§ 660. **Staff, powers and duties.** a. The executive director may appoint such engineers, architects, experts and other officers and employees as may be required to perform the duties of his office, with the approval of the board and within the appropriation provided therefor.

b. The executive director shall assign and supervise all members of his staff. He shall provide for the testing of materials and appliances and 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.

§ 661. **Constitution and appointment.** a. The board of standards and appeals shall consist of six members to be termed commissioners to be appointed by the mayor each for a term of six years, commencing at the expiration of the terms of the present incumbents.

b. One of the members shall be a planner with professional qualifications and at least ten years' experience as a planner. Two of the members shall be registered architects and shall have had at least ten years' experience as architects. One shall be a licensed professional engineer and shall have had at least ten years' experience as an engineer engaged in structural work. One shall be a licensed professional engineer and shall have had at least ten years' experience as an engineer engaged in mechanical work. The mayor shall designate one of the members, who shall have had the required experience as an architect, planner, or as an engineer, to serve as chairman and shall designate one of the members to serve as vice-chairman who shall act as chairman in the absence of the chairman or in the event that a vacancy exists in the office of chairman.

c. Every member of the board shall receive a salary, which shall not be reduced during his term of office except in case of a 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 chairman.

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 qualifications.

HISTORICAL NOTE

Amended by L. L. 1957, No. 94.
Amended at General Election, November 4, 1975.

§ 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 official duties which tends to discredit his office, or of mental or physical inability to perform his duties; but before 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.

HISTORICAL NOTE

Amended by L. L. 1957, No. 94.

§ 663. **Meetings.** Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. The chairman, or in his absence the acting chairman, 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 four members of the board, and a concurring vote of at least four members shall be necessary to a decision. 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.

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.

HISTORICAL NOTE

Amended at General Election, November 4, 1975.

§ 664. **Member interested in question.** No member of the board shall pass upon any question in which he or any corporation in which he is a stockholder or security holder is interested.

§ 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. The director shall print and publish weekly a bulletin in which he shall publish every rule, regulation, amendment or repeal thereof made by the board, and every order, requirement, decision and determination of the board, and the reasons therefor whenever it shall deem it practical to do so, and such other matters, including indices and digests, as the director may deem it advisable to publish.

c. At least ten days' notice of intention to adopt, amend or repeal any rule or regulation shall be given by publication in the bulletin of the board, and a public hearing shall be given before any action is taken thereon. The adopted rules and regulations and amendments and changes thereof shall take effect not less than twenty days after the publication thereof in the bulletin of the board.

d. Every amendment or repealer to the reference standards of the building code of the city of New York shall be published forthwith in the City Record.

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.

HISTORICAL NOTE

Section amended by L. L. 1957, No. 94.
Subd. d added by L. L. 1984, No. 19, § 2, May 15.

§ 666. **Jurisdiction.** The board shall have power:

1. To require the testing of and to approve, materials and appliances to be used pursuant to law.

2. 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.

3. 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.

4. To make, amend and repeal rules, regulations and directives governing the preparation and presentation by the director of matters before the board.

5. 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.

6. 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.

7. 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 any borough superintendent of buildings acting under a written delegation of power from the commissioner of buildings filed in accordance with the provisions of subdivision (b) of section six hundred forty-five, 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 terminals made in relation to the structures or uses on water front property under his 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.

8. 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 title D of chapter twenty-six of the administrative code and of any regulation or order issued under such title may be varied or modified only to the extent permitted by such title and only in the manner and subject to the conditions therein specified.

9. 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.

10. 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.

11. To issue such special permits under the zoning resolution as are authorized by the city planning commission and the board of estimate.

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. Plaintiff, contesting order of City to vacate the premises as an unlawful building, was required first to appeal from the order to the Board of Standards and Appeals.—*Glazer v. City of N. Y.*, 129 (8) N. Y. L. J. (1-13-53) 122, Col. 1 M.

¶ 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.

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

Subd. 11 amended by L. L. 1977, No. 102.

§ 667. **Inspections.** Any member of the board or any subordinate thereof shall, when authorized in writing by the chairman, and the director or any officer or employee designated by him 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 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 or not more than fifty dollars, or both.

HISTORICAL NOTE

Amended by L. L. 1957, No. 94.

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

§ 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 g 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.

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 and the board of estimate. Copies of the decision shall also be filed with the affected community or borough boards. Within thirty days of such decision, an appeal may be taken to the board of estimate by an applicant or other interested party, community board or borough board. In the event of an appeal, the board of estimate, in its discretion, may accept jurisdiction in such matter within thirty days after the filing of the appeal and shall render a decision within thirty days after accepting jurisdiction. In the case of an application to determine and vary the zoning resolution, review by the board of estimate shall be limited to an administrative determination as to whether the decision of the board of standards and appeals under each of the specific requirements of the zoning resolution was supported by substantial evidence before the board of standards and appeals. The board of estimate may approve or disapprove such decision and shall provide written findings and an explanation of the basis for its decision under the zoning resolution.

d. Any decision of the board of standards and appeals or of the board of estimate 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 or the board of estimate if, in the judgment of the 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 may appeal to the board of estimate the granting or denial of any such variance by the board of standards and appeals and 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.

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.

HISTORICAL NOTE

Added at General Election, November 4, 1975.
Amended by L. L. 1977, No. 102.

§ 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. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken shall file with the board, after the notice of appeal shall have been filed with him a certificate, a copy of which shall

forthwith be mailed to the appellant at the address stated in the notice of appeal, that, by reason of fact stated in the certificate, a stay would in his opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board or by the supreme court, on application of notice to the officer from whom the appeal is taken and on good cause shown. For proceedings involving power-operated cranes and derricks, the board of standards and appeals shall act within seventy-two hours after receipt of the certificate, either to grant or deny the continuation of the stay.

d. 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. Upon the hearing any party may appear in person or by agent or attorney.

e. Any decision of the board under this section may be reviewed as provided by law.

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].

HISTORICAL NOTE

Section amended by L. L. 1969, No. 73.
Subd. c amended by L. L. 1977, No. 102.

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.

§ 676. **Deputies.** The commissioner may appoint two deputies.

§ 677. **Powers and duties of the commissioner.** The commissioner shall:

a. establish, initiate, control, maintain and operate secure and non-secure facilities for the temporary care and maintenance away from their own homes of children held for or at the direction of the family court pending adjudication of alleged juvenile delinquency by such court, or pending transfer to institutions or facilities to which placed by such court, or while awaiting disposition by such court after adjudication, or held pending return to a jurisdiction other than the one in which the child is held, or for alleged juvenile offenders held pursuant to a securing order of a criminal court or pending transfer pursuant to sentence,

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 or local law or with applicable rules and regulations of any state or city agency having jurisdiction,

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 7 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 to which the child is 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 com-

mitted delinquent or criminal acts, and to conduct research and demonstration projects related thereto,

g. report annually by September 30th of each year to the Deputy Mayor for Operations and the City Council on the performance of the agency and on recommendation for the improvement of the juvenile justice system, and

h. perform such other functions as may lawfully be delegated to him.

HISTORICAL NOTE

Subd. g amended by L. L. 1983, No. 53.

§ 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.

CHAPTER 29*

DEPARTMENT OF PORTS AND TERMINALS

§ 701. **Department; commissioner; seal.** There shall be a department of ports and terminals, the head of which shall be the commissioner of ports and terminals. The commissioner may adopt a seal for the department and direct its use.

§ 702. **Deputies.** The commissioner may appoint two deputy commissioners, one to be the first deputy commissioner.

§ 703. **Secretary.** The commissioner may appoint a secretary to the department, who shall keep and attest to the seal of the department and shall perform such other duties as may be assigned by the commissioner, consistent with law.

§ 704. **Powers and duties of the commissioner.** The commissioner shall have the power, and it shall be his duty, to exercise the functions, operations, powers and duties relating to the development, construction, reconstruction, operation, maintenance, management, administration and regulation of public markets, wharf property and water front property within the city of New York, including, without limitation, the following:

(a) to exercise the powers of a commissioner of public markets of a city and a city department of public markets under the agriculture and markets law;

(b) to have exclusive charge and control of the wharf property and water front property owned or possessed 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 board of estimate, on the recommendation of the city planning commission and after a public hearing, notice of which shall be given by publication in the City Record not less than seven or more than thirty days prior thereto, may withdraw from the jurisdiction of the department and assign for use for any public purpose or assign to the jurisdiction of any other agency any wharf property or water front property owned by the city and not under lease;

(c) 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 thereon, and such other structures used in conjunction with and in furtherance of water front commerce and/or navigation;

(d) 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,

* Chapter 29 added by L. L. 1977, No. 28.

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 or amend fees to be charged for the issuance of such permits or certificates of completion, which fees shall be fixed by the board of estimate on recommendation of the commissioner after a public hearing, notice of which shall be given by publication in the City Record for the five days of publication of the City Record immediately prior thereto;

(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 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;

(g) to lease, subject to the approval of the board of estimate, any wharf property belonging to the city for such terms and in such manner as may be provided by law. 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 board of estimate 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. If the department fails to agree upon terms of a lease with any person desiring to lease any wharf property, it shall, if the offer be made in writing, decline it in writing and such person may submit his proposed lease to the board of estimate at its next regular meeting, and if the board accepts the same by a three-fourths vote at such meeting or any one of its three regular meetings next succeeding thereto, the department shall promptly execute such lease;

(h) to grant temporary permits terminable at will for a period not exceeding one year 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, subject to the approval of the board of estimate, the charges for wharfage, crantage and dockage of all vessels or floating structures using any wharf property set aside under subdivision (i) of this section, 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 the board of estimate after public hearing on recommendation of the department; and

(k) to establish, amend and enforce all needful rules and regulations for the proper care of all public markets, wharf property and waterfront property placed in his charge or over which he shall have power of regulation and to issue such orders as may be necessary for such enforcement. No such rule, regulation or amendment thereof shall become valid and effective until a copy thereof, duly certified by an officer of the department to be a correct copy, shall have been filed with the city clerk and such rule, regulation or amendment, published once a week for two successive weeks in the City Record. The violation of or the failure to comply with any such order, rule or regulation 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 hundred dollars, or both.

(l) to sell, subject to the approval of the board of estimate, buildings, structures and other improvements on market property and wharf property to a person leasing such property pursuant to subdivisions (a) and (g) of this section.

CASE NOTES

¶ 1. Complaint of plaintiff which alleged that defendant city represented to plaintiff that it intended to develop a model food processing distribution center in Hunts Point in the Bronx, and that in reliance upon this representation plaintiff entered into a long term lease with the city to relocate its business of selling fresh fruit and that plaintiff has been required to pay rents far in excess of the fair market value of the leased premises and that the city never intended to develop the area as planned was dismissed where none of the alleged representations were included in the lease as required by this section.—New York Fruit Auction Corp. v. City of N. Y., 56 N. Y. 2d 1015 [1982].

HISTORICAL NOTE

Subd. k amended by L. L. 1979, No. 54.
Added by L. 1985, ch. 374.

§ 705. **Waterfront plans.** (a) The plans for the water front of the city are continued in effect and may be changed by the commissioner with the approval of the board of estimate after a public hearing before the board. Notice of such hearing shall be published in the City Record for the seven days of publication of the City Record immediately prior thereto. Such change shall take effect notwithstanding that any plan may have been wholly or partially physically perfected and improvements made in conformity therewith. The board of estimate, before approving any change, shall refer it to the city planning commission, and the procedure thereafter shall be the same as in case of a change in the city map not initiated by the city planning commission.

(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 included in such plans except in accordance with such plans as changed from time to time, provided,

that the commissioner, with the approval of the board of estimate, 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 city planning commissioner shall require. If the city planning commission makes a finding that the proposed change is in accordance with the waterfront 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 board of estimate by a three-fourths 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 commissioner and if it does not act within such weeks the commissioner may proceed with the change.

HISTORICAL NOTE

Subd. c amended by L. L. 1979, No. 29.

CHAPTER 31*

DEPARTMENT OF SANITATION

§ 751. **Department; commissioner.** There shall be a department of sanitation the head of which shall be the commissioner of sanitation.

§ 752. **Deputies.** The commissioner may appoint three deputies.

§ 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 in accordance with regulations adopted by the board of estimate, except that such board may provide by regulation that the removal and storage of household effects or other chattels shall be a responsibility of the department of general services or its successor agency;
- (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

* Chapter 31 added by L. L. 1977, No. 24.

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.

§ 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 his 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.

§ 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.

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. He 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.

HISTORICAL NOTE

Amended at General Election, November 4, 1975.

§ 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.

§ 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.

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, ad 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 (Surpress)*, 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 [1984].

HISTORICAL NOTE

Amended at General Election, November 4, 1975.

§ 804. **Complaint bureau.** There shall be a complaint bureau in the department which shall receive complaints from the public.

§ 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.—*Blaikie 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.

§ 806. **Interference with investigation.** a. No person shall prevent, seek to prevent, interfere with, obstruct, or otherwise hinder any study or investigation being conducted pursuant to this chapter. Any violation of this section shall constitute cause for suspension or removal from office or employment.

b. Full cooperation with the commissioner shall be afforded by every officer or employee of the city or other persons.

HISTORICAL NOTE

Adopted at General Election, November 4, 1975.

§ 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.

CHAPTER 35

DEPARTMENT OF PERSONNEL

§ 810. **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 preserve and promote merit and fitness in city employment; ensure that appointments and promotions in city service are made without regard to sex, race, religion or political affiliation; and promote and support the efficient and effective delivery of services to the public.

(b) Consistent with subsection 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

Added at General Election, November 4, 1975.

§ 811. **Department; personnel director.** There shall be a department of personnel, the head of which shall be the personnel director. The personnel director 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 city agencies.

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 Broad 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].

HISTORICAL NOTE

Amended at General Election, November 4, 1975.

§ 812. **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 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 chairman and vice chairman, 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) The commission may appoint a secretary and such other subordinates as may be necessary within the appropriation therefor.

(c) The civil service commission shall have the power to hear and determine appeals by any person aggrieved by any action or determination of the personnel director made pursuant to paragraphs three, four, five, six, seven and eight of subsection a or paragraph five of subsection b of section eight hundred thirteen 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.

(d) The commission, on its own initiative, or upon request of the mayor, council or personnel director, shall have the power and duty to conduct reviews, studies, or analyses of the administration of personnel in the city.

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. 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].

HISTORICAL NOTE

Amended by L. L. 1963, No. 8.

Amended at General Election, November 4, 1975.

§ 813. **Personnel director; powers and duties.** a. The personnel director 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 him as the 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 personnel director;
 - (5) To determine the appropriateness of eligible lists for the filling of vacancies in the manner provided in the civil service law and the rules of the personnel director;
 - (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 personnel director or any other law;
 - (7) To review any appointment of persons as provisional employees within sixty days after appointment to assure compliance with this charter, 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 personnel director;
 - (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 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.
- b. The personnel director shall have the following powers and duties with respect to the personnel management functions assigned to city agencies pursuant to section eight hundred fourteen:

(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 subsection a of section eight hundred fourteen;

(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 fourteen, subject to review by the civil service commission as provided in subdivision c of section eight hundred twelve;

(6) To delegate to the head of an agency personnel management functions assigned to the personnel director where such delegation is not otherwise prohibited by the civil service law, and pursuant to terms and conditions prescribed by the director;

(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.

c. The personnel director 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.

CASE NOTES

¶ 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.

HISTORICAL NOTE

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. b par. 5 amended by L. L. 1977, No. 102.

§ 814. **Agency heads; powers and duties.** 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 personnel department 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 personnel department 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 personnel director 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 personnel director 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 twenty-three;
- (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, development and advancement;
- (16) To administer employee safety programs;
- (17) To maintain personnel records, and

(18) To perform such other personnel management functions as are delegated by the personnel director pursuant to this chapter or that are not otherwise assigned by this chapter.

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 personnel director 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 subsection 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 personnel director. 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 personnel director and other applicable law.

HISTORICAL NOTE

Section adopted at the General Election, November 4, 1975.
Subd. b amended by L. L. 1977, No. 102.

§ 815. **Management service.** a. The personnel director, 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 personnel director 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

Adopted at General Election, November 4, 1975.

§ 816. **Appointments and promotions.** 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.

HISTORICAL NOTE

Amended by L. 1954, ch. 354.

Amended by L. L. 1974, No. 14.

Amended at General Election, November 4, 1975.

Amended by L. L. 1976, No. 28.

§ 817. **Power of investigation.** The personnel director 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 personnel director shall have the power to administer oaths, to compel the attendance of witnesses, and to examine such persons as deemed necessary.

CASE NOTES

† 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'r.*, 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.

HISTORICAL NOTE

Amended by L. 1954, ch. 354.
Amended at General Election, November 4, 1975.
Amended by L. L. 1977, No. 102.

§ 818. **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

Amended by L. L. 1968, No. 10.
Amended by L. L. 1977, No. 30.

§ 819. **Examination for licenses.** The personnel director 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 personnel director, examinations and tests to determine the qualifications of persons applying for such licenses or permits. The personnel director shall certify to the person having power to issue the license or permit the result of any such examination or test.

HISTORICAL NOTE

Amended by L. 1954, ch. 354.
Amended by L. L. 1977, No. 102.

§ 820. **Certifications for new positions.** 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 personnel director and the personnel director 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 personnel director.

HISTORICAL NOTE

Amended by L. L. 1975, No. 5.
Amended at General Election, November 4, 1975.
Amended by L. L. 1977, No. 30.

§ 821. **Political activities forbidden.** No member or officer or employee of the department or commission shall hold office or

serve as a member of any committee in any political organization or association, nor shall he serve as a delegate to any political convention. Any member, officer or employee violating this provision shall forfeit his office or employment.

§ 822. **Condition precedent to employment.** a. Notwithstanding 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 he is or becomes a nonresident individual as that term is defined in section T46-6.0 of the administrative code of the city of New York or any similar provision of such code, during his employment by the city, he will pay to the city an amount by which a city personal income tax on residents computed and determined as if he 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 him 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 term 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.

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 of 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 [1982].

HISTORICAL NOTE

Added by L. L. 1973, No. 2.

CHAPTER 37

ART COMMISSION

§ 851. **Constitution and appointment.** a. There shall be an art commission the members of which shall be the mayor, 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 Institute of Arts and Sciences, 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 seven last mentioned shall serve without compensation and 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 any appointment is to be made, 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.

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 secretary, appoint a trustee of the institution or corporation 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.

§ 852. **Members; how chosen; vacancies.** All appointments 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 and shall be made as provided in section eight hundred fifty-one.

§ 853. **Officers.** 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 have power to adopt its own rules of procedure. Five commissioners shall constitute a quorum.

b. Suitable offices 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.

§ 854. All works of art, etc., to be submitted to and approved by the commission. a. The term "work 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, fountains, archs, walls, curbing, steps, gates, fences, benches, lamps or traffic signals, erected or to be erected upon or over land belonging to the city whether the works of art by the property of the city itself or of an institution, corporation or private individual, and whether intended for ornament, commemoration or actual use.

b. 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 street, avenue, 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, together with a plan showing its proposed location, and, if the commission deems it necessary or desirable, also a model, shall first have been submitted to the commission by the head of the agency having jurisdiction, and such work of art or the design thereof and its location shall have been approved in writing by the commission. No final payment shall be made for the purchase or erection of any such work of art except upon certificate signed by the president or vice-president and the secretary or executive secretary of the commission that the work has been completed substantially in accordance with the approval of the commission.

c. No building, bridge or viaduct or approach thereto, dock, pier, gate, fence, lamp or other structure shall be erected 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. No final payment shall be made for the purchase or erection of any such building or structure except upon certificate signed by the president or vice-president and the secretary or executive secretary of the commission that the work has been completed substantially in accordance with the approval of the commission.

d. The approval of the commission shall be required as hereinabove provided for every such work of art or structure hereafter purchased, commissioned, contracted for, accepted or erected, except that in the case of any building or other structure the total

estimated cost of which shall not exceed two hundred fifty thousand dollars, the approval of the commission shall not be required if the mayor or the council shall in writing request the commission not to act; but nothing in this section shall be construed as intended to impair the concurrent power of the commissioner of parks and recreation to refuse his 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.

e. Designs for all buildings or other 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 buildings; but the approval of such designs shall be for a period of three years only, after which the commission shall either extend the period or order the removal of the building or other structure.

f. The commission shall periodically examine all monuments, sculpture and paintings belonging to the city, shall make or approve detailed recommendations for their cleaning, maintenance and repair, and shall have general supervision over such monuments, sculpture and paintings and their cleaning, maintenance and repair. 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. No final payment shall be made for such work except upon certificate signed by the president or vice-president and the secretary or executive secretary of the commission that the work has been completed substantially in accordance with its approval.

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.

HISTORICAL NOTE

Subd. d amended by L. L. 1968, No. 22.

§ 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.

§ 856. **Removal or relocation of works of art.** a. In case the immediate removal or relocation of any existing work of art shall be deemed necessary by the mayor, the commission shall, within

forty-eight hours after the receipt of written notice from him, approve or disapprove of such removal or relocation, and in case of its failure to act within forty-eight hours after receipt of such notice it shall be deemed to have approved the same.

b. Before any work of art is altered, demolished, removed, or relocated, the art commission shall be notified and given an opportunity, not to exceed thirty 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.

HISTORICAL NOTE

Amended at General Election, November 4, 1975.

§ 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 works of art which have been preserved.

HISTORICAL NOTE

Added at General Election, November 4, 1975.

CHAPTER 44

CITY SHERIFF

§ 1031. **City sheriff.** There shall be a city sheriff who shall be appointed by the mayor after competitive examination conducted by the personnel director in accordance with the civil service law.

CASE NOTES

¶ 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.*

HISTORICAL NOTE

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

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

§ 1032. **Functions, powers and duties.** Except as otherwise provided by law, the functions, powers and duties formerly exercised

by the sheriffs of the several counties shall remain with the city sheriff.

HISTORICAL NOTE

Amended by L. 1977, ch. 189.

CHAPTER 46

PERMANENT PERSONAL REGISTRATION

§ 1061. Permanent personal registration. The system of permanent personal registration set forth in article fifteen of the election law is hereby continued.

CHAPTER 49

OFFICERS AND EMPLOYEES

§ 1100. **Head of department; whole time.** a. 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 his duties and shall not engage in any other occupation, profession or employment.

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.

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.—*Ratray 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].

HISTORICAL NOTE

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

Amended at General Election, November 4, 1975.

§ 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 his powers and exercise such of his duties and for such times and under such conditions as he 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 he shall be prevented from attending to the duties of his 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.

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].

HISTORICAL NOTE

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

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

Amended at General Election, November 4, 1975.

§ 1102. **Organization of department.** a. Any head of an administration of a department established by this charter or a borough president to the extent to which the organization of his administration, department or office is not prescribed by law, may organize his administration, department or 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 he 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 his jurisdiction 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.

§ 1103. **Powers of heads of agencies over subordinates.** 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 1173-8.0 of the administrative code of the city of New York, for employees of agencies the heads of which are appointed by the mayor.

CASE NOTES

¶ 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'g 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].

HISTORICAL NOTE

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

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

§ 1104. **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. The officer or employee so designated shall retain all the rights, privileges and status of his 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 personnel director 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 his 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 his position in the competitive class with the status, rights, privileges and salary enjoyed by him immediately prior to his designation to the position in the exempt class.

HISTORICAL NOTE

Amended by L. L. 1939.

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

Amended at General Election, November 4, 1975.

§ 1105. **Rules and regulations; adoption; publication; effective date.** a. Each head of an agency may, except as otherwise provided by law, make rules and regulations for the conduct of his office or agency and to carry out its powers and duties.

b. No rule or regulation of an officer of the city or of a city agency, included but not limited to those with respect to the fixing of charges or penalties, nor an amendment or addition thereto, shall be adopted or repealed pursuant to any provision of this charter, unless, prior thereto, there shall be afforded by such officer

or agency an opportunity for interested persons to comment in writing thereon by a date certain to be specified in a notice published at least twice in the City Record, the first publication being not less than twenty days and the second publication being not more than ten nor less than five days preceding the date so specified. The notice shall set forth the text and an explanation of the rule, regulation, amendment or addition and the authority pursuant to which it is proposed to be adopted or repealed. Such publication in the City Record shall constitute complete legal notice.

c. In addition thereto, and on the occasion of the first publication in the City Record, for the purpose of broadly disseminating such information, a separate copy of such notice shall be transmitted to the council and mailed to each council member, to the chairpersons of all community boards and to civic organizations and the news media.

d. News media, for the purpose of this section, shall include 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, the newspaper of any labor union or trade association representing an industry affected by such rule or regulation and any community newspaper or other publication that requests such notification on an annual basis. Civic organizations, for the purposes of this section, shall include any city-wide or borough-wide organization that requests such notification on an annual basis.

e. If an officer or agency authorized to adopt rules and regulations finds that imminent peril to the public health or safety requires adoption of a rule or regulation or an amendment or addition thereto and that observance of the requirement of notice and opportunity for comment in writing would be contrary to the public interest, the officer or agency may dispense with all or part of such requirements and adopt or repeal the rule, regulation, amendment or addition as an emergency measure. The officer's or agency's finding and a brief statement of the reasons for that finding shall be incorporated in the emergency measure which shall be published promptly in the City Record, and which shall be forwarded promptly to such news media and civic organizations and to each community board chairperson and council member. No such emergency measure shall remain in effect for more than sixty days unless during that time the officer or agency gives notice and affords interested persons an opportunity to comment thereon as required in this subdivision.

f. No rule or regulation made by any officer of the city or by an agency nor any amendment, addition, or repeal of it shall be effective until (1) it is filed in the office of the city clerk, (2) a copy is transmitted to the council for its review, and (3) after such filing and transmittal, it is published in the City Record and thirty days have elapsed after such publication. The requirement that thirty days shall first elapse after the publication shall not apply in those instances where a finding of imminent peril has been made and the rule, regulation, or amendment or addition

thereto published pursuant to subdivision b of this section, or where the officer or agency shall certify that good cause exists for waiving same, and a statement of such certification is published with the rule, regulation, amendment or addition. It shall be the duty of the corporation counsel to compile all rules and regulations filed in the office of the city clerk and publish them in the City Record each month and annually to revise and print them in a volume or volumes.

g. The provisions of subdivisions b, c, d, e, and f of this section shall not apply to rules, regulations or amendments or additions thereto (1) which are promulgated by the board of estimate; or (2) which relate to the organization or internal management of any agency and do not affect materially the rights of or procedures available to the public; or (3) where and to the extent that there is other specific provision of law as to notice, opportunity for comment, or effective date of the adoption or repeal of such rules or regulations, or amendments or additions thereto.

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 boards 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 a 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 [1985].

HISTORICAL NOTE

Section amended by L. L. 1966, No. 51.
 Section amended by L. L. 1969, No. 74.
 Section amended by L. L. 1973, No. 25.
 Section amended at General Election, November 4, 1975.
 Subd. b amended by L. L. 1977, No. 102.
 Subd. c amended by L. L. 1977, No. 102.
 Subd. e amended by L. L. 1977, No. 102.

§ 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 president of the council, 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 answer given by a witness in such inquiry shall not be used against him in any criminal proceeding, except that for all false answers or material points he 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.

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.

HISTORICAL NOTE

Amended at General Election, November 4, 1975.
Amended by L. L. 1977, No. 102.

§ 1110. **Council and officers trustees 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.

§ 1111. **Expenses not to exceed appropriation.** No 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.

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].

§ 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 him, in such form and under such rules as he may prescribe, reports of their operations and action. Each of such annual reports shall be published in the City Record. The heads of all agencies shall, when required by the mayor, furnish to him such information as he may demand, within such reasonable time as he may direct.

HISTORICAL NOTE

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

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

§ 1113. **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.

CASE NOTES

¶ 1. This section does not apply to cases pending in court.—*Moses v. Bentley*, 143 (22) N. Y. L. J. (1-2-60) 12, Col. 3 F.

¶ 2. On examination before trial, police records could be used solely for the purpose of refreshing the recollection of witnesses.—*Frank v. City of New York*, 146 (88) N. Y. L. J. (11-6-61) 16, Col. 2 F.

¶ 3. Respondents, chairman of the New York City Planning Commission and the Mayor were ordered to deliver a copy of the proposed Master Plan to the president of the city council as this was a public record which had been completed and finalized.—*Smith v. Elliott*, 162 (88) N. Y. L. J. (11-5-69) 2, Col. 3 F.

¶ 4. Petition to inspect files of majority leader and vice chairman of city council as they pertain to two bills introduced by another councilman was dismissed on the ground that this section is inapplicable to the personal files of the members of the council and that petitioner can obtain the information he is seeking from the city clerk.—*Hanft v. Cuite*, 167 (8) N. Y. L. J. (4-26-72) 18, Col. 4 F.

¶ 5. This section which relates to a taxpayer's action does not preclude discovery in a direct proceeding against the Police Department by the estate of a former member to establish personal or property rights incidental to his police service. Discovery and inspection of clothing worn by police officer at time of his death was therefore permitted as well as the bullet and firearms where petitioner claimed that her husband's death was not suicide but homicide in the line of duty.—*Nunziata v. Police Dept. of City of N. Y.*, 73 Misc. 2d 29, 341 N. Y. S. 2d 22 [1973].

¶ 6. This section limits discovery of police department records in applications made by taxpayers or citizens and does not apply to production of such records in pending litigation or relevant disciplinary records when sought by a litigant whose rights are at issue and hence subpoena seeking such records would not be quashed but records should be examined by trial judge so that he can determine if any of the information contained therein should be made available to counsel for impeachment or other valid purpose.—*People v. Sumpter*, 75 Misc. 2d 55, 347 N. Y. S. 2d 670 [1973].

¶ 7. Requiring city employees whose base pay is \$25,000 a year and their spouses to file personal financial information is not unconstitutional and classification of employees earning more than \$25,000 a year as managerial or policy making in nature is not an arbitrary one. However, provision that statements be made available to public as a matter of course was unconstitutional.—*Hunter v. City of N.Y.*, 58 A. D. 2d 136, 396 N. Y. S. 2d 186 [1977], *aff'd*, 44 N. Y. 2d 708 [1975].

¶ 8. This section does not prohibit the subpoena of confidential records by a person with a valid interest in them other than a taxpayer and hence petitioner, a construction inspector of the Department of Buildings charged with taking bribes could subpoena a tape recording made secretly by representatives of the Department of Investigation at the time of petitioner's arrest.—*Gaglia v. Starr*, 59 A. D. 2d 840, 398 N. Y. S. 2d 898 [1977].

HISTORICAL NOTE

Amended by L. L. 1949, No. 20.

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

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

§ 1114. **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.

CASE NOTES

¶ 1. Application to examine certain records of the Department of Sanitation relative to an accident in which petitioner's sister allegedly suffered injuries and for which the sister had brought an action against the City, was denied, where no showing of interest in the records sought to be examined was made other than that petitioner was a taxpayer and that her sister had brought an action against the City (167 N. Y. 398; 131 Misc. 75; 141 App. Div. 450; distinguishing 205 N. Y. 147).—*Matter of Lena Costello*, 100 (106) N. Y. L. J. (11-4-38) 1486, Col. 4 F.

¶ 2. Where the petition was in fact the petition of one who swore that he was a taxpayer, the application for inspection of the records of Lincoln Hospital should be granted notwithstanding the title was misleading in that it described the matter as the application of another.—*In re Suslow (Lincoln Hospital)*, 107 (25) N. Y. L. J. (1-30-42) 458, Col. 3 M, *aff'd*, 273 App. Div. 852, 77 N. Y. S. 2d 138 [1948].

¶ 3. Application by alleged taxpayer for order directing Queens Borough President to permit petitioner to examine certain books and papers relative to construction of certain sewers, was denied on grounds the proceeding was instituted by an individual who himself had never made a demand or request for inspection, that the petition did not comply with basic requirement of showing factually that petitioner was a taxpayer or owned real estate in Queens, and moreover the committee, of which petitioner was a member, which was sponsoring the candidacy of a person for Borough President, had been permitted to inspect records in the Borough Hall for four days. The demand of the committee for inspection could not form the basis of the instant proceeding.—*In re Zoeller (Pres., Bor. of Queens)*, 122 (87) N. Y. L. J. (11-3-49) 1118, Col. 6 M.

¶ 4. Taxpayer, who was also a member of the Citizens Budget Commission, *held* entitled to an order requiring the Municipal Civil Service Commission to afford him an opportunity to inspect its books and records in its office which set forth the names, positions and qualifications of occupants of exempt positions in the City government, for the purpose of giving publicity to the qualifications of those appointed.—*In re Walker (Watson)*, 201

Misc. 556, 115 N. Y. S. 2d 93 [1952] modified in 280 App. Div. 760, 113 N. Y. S. 2d 676 [1952], by granting the application only to the extent of directing the Civil Service Commission to permit the petitioner to examine Form P23 filed by the appointing officer of an exempt employee pursuant to Rule IV of the Commission only for specified persons whose names would be set forth in the order.

¶ 5. Even if respondent was not a City department and the papers sought were not public records, if what petitioner sought was deemed reasonable and in the public interest and not prohibited by law, the Court had the power and duty to grant the relief requested even if petitioner did not have specific and absolute statutory right thereto.—*Id.*

¶ 6. The Board of Education *held* neither a City department, nor a division or bureau of a City department for the purpose of inspection by taxpayer of books and records.—*Kelly v. Board of Education of the City of N. Y.*, 141 N. Y. S. 2d 34 [1955].

¶ 7. Plaintiff *held* not entitled to an order directing Commissioners of the Board of Transportation of the City of New York to submit for inspection the report of a special officer employed by the Board with respect to personal injuries sustained by person for whose death the present action was instituted, since the report was one made to a City department by one of its employed agents, and was in the nature of a confidential report.—*Bragman v. Delaney*, 107 (10) N. Y. L. J. (1-13-42) 174, Col. 3 F.

¶ 8. There is no mandatory publicity of all of the records of departments of police or of law, nor of papers prepared for the City Comptroller for use in adjusting or contesting claims, nor in the case of welfare records, nor of papers prepared for use in any investigations authorized by the City Charter. Thus, a report to the Mayor by the Commissioner of Investigation dealing with charges reflecting upon the Commissioner of Correction was exempted from inspection.—*Cherkis v. Impelliteri*, 307 N. Y. 132, 120 N. E. 2d 530 [1954].

¶ 9. Order denying plaintiff's application for a subpoena duces tecum directing the Police Department of the City of New York to produce at the trial of the action the records of the alleged accident which was the subject matter of the action, was affirmed without opinion.—*Yude v. Cruise*, 287 N. Y. 59, 38 N. E. 2d 126 [1941].

¶ 10. This section does not apply to the production of records in court in pending proceedings.—*Cain v. City of New York*, 134 (85) N. Y. L. J. (11-1-55) 11, Col. 3 M.

¶ 11. There is nothing in the provisions of this section which prevents the use of police records solely for the purpose of refreshing the recollection of witnesses upon an examination before trial. The sections, however, do operate to prevent discovery and inspection of police records.—*Ojeda v. City of New York*, 134 (46) N. Y. L. J. (9-6-55) 8, Col. 3 F.

¶ 12. In action against City for damages growing out of race riots, records of the Police Department would be produced on an examination of the City before trial only for purpose of refreshing the recollection of § 32.1. Section 1114 does not apply to the witness.—*Blumkin v. City of New York*, 183 Misc. 31, 47 N. Y. S. 2d 492 [1944].

¶ 13. Under the federal Rules of Civil Procedure, the City of New York, when sued in the federal district court to recover damages for wrongful death, *held* subject to examination before trial through its Commissioner of Docks or other employee having knowledge of the facts.—*Conneway v. City of N. Y.*, 32 F. Supp. 54 [1940].

¶ 14. Although the marriage record index of the City Clerk of the City of New York is a public record and open to public inspection, the right to inspect it is not an unqualified or unlimited one, but is subject to the restriction that the examination must be shown to be necessary or required for judicial or other proper

purposes, and on the payment of the prescribed fee. An examination would not be permitted where petitioner's real motive for his request was to obtain information to enable him to institute an action at law.—*Goldsmith v. Hubbard*, 183 Misc. 889, 52 N. Y. S. 2d 871 [1945].

¶ 15. Petitioner who claimed certain premises owned by him had been damaged as result of a cave-in of a sewer maintained by the City, would be permitted to examine records of Borough President for information concerning that occurrence, as well as other cave-ins in the immediate vicinity during 1949 and 1950, in order to establish notice.—*Laezza v. Office of President of Borough of Brooklyn*, 127 (66) N. Y. L. J. (4-4-52) 1359, Col. 3 T.

¶ 16. Plaintiff's request that persons in the office of the Comptroller of the defendant City of New York be submitted to examination, was rejected, since the investigation made by the Comptroller's Office was manifestly to enable defendant to contest plaintiff's claim and to prepare for trial, and constituted "work product," concerning which examination is not permissible.—*Kolb v. City of N. Y.*, 129 (7) N. Y. L. J. (1-12-53) 106, Col. 1 M.

¶ 17. That the information sought was intended to be used in action instituted by petitioner against the City, was no valid ground for denial of the inspection.—*Taezza v. President of Borough of Brooklyn*, 127 (66) N. Y. L. J. (4-4-52) 1359, Col. 3 T.

¶ 18. Petitioner would not be required to execute an assignment of the proceeds of his claim against the party causing his injuries as a condition for the granting of his motion for inspection of hospital records of his treatment, since a remedy to secure payment of its bill was provided the hospital by Lien Law § 189.—*Schulweis v. Bellevue Hospital*, 101 (133) N. Y. L. J. (6-9-39) 2666, Col. 3 M.

¶ 19. Petitioner, being a taxpayer, was entitled to an order directing Bellevue Hospital to exhibit to her certain hospital records and to permit her to make copies thereof. That a suit had been instituted against the City and the information sought was intended to be used against it, was not a valid ground for a denial of the inspection.—*In re Fernandez*, 105 (37) N. Y. L. J. (2-14-41) 695, Col. 4 F.

¶ 20. Motion for an order directing the Police Commissioner to permit plaintiff to make transcript of minutes taken at a departmental trial of defendant, was denied.—*Turetsky v. Greenwood*, 105 (144) N. Y. L. J. (6-21-41) 2800, Col. 4 F.

¶ 21. In prosecution for murder, County Court properly denied defendant's motion for a copy of the report of the Ballistics Bureau of the New York City Police Department with respect to bullet found in deceased's body.—*In re Hughes*, 109 (120) N. Y. L. J. (5-24-43) 2031, Col. 7 M, at 2023, Col. 1 M.

¶ 22. Plaintiff, continuing as executrix her husband's action to recover the names and addresses of any witnesses appearing on the police blotter, although the City would not be required to produce the blotter for her inspection.—*Greenspan v. City of N. Y.*, 103 (136) N. Y. L. J. (6-11-40) 2645, Col. 5 M. Reversed to extent appealed from by App. Term, N. Y. L. J. (11-8-40) 1465, Col. 5 F.

¶ 23. Motion for an order of mandamus directed to the chief engineer of the Bureau of Highways and Sewers permitting petitioner or her attorney, with a stenographer, to inspect and examine and make a copy of the records and reports of the chief engineer relating to an accident, was denied.—*In re Santora*, 105 (130) N. Y. L. J. (6-5-41) 2535, Col. 7 M.

¶ 24. Order permitting corporate taxpayer to inspect "all drawings, diagrams, plans, surveys, searches, blueprints, field notes, reports, engineers' notes and reports, inspectors' notes and reports, petitions, resolutions, agreements, correspondence, communications, memoranda of conferences and conversations, and all other papers" in the office of the Director of Franchises of the Board of

Estimate, with respect to a bridge, catwalk, pipes, wires, tunnels and other structures in, under, along and across a certain avenue, was affirmed by the Court of Appeals without opinion.—Application of Rubel Corp., 295 N. Y. 638, 64 N. E. 2d 710 [1945].

¶ 25. A discovery and inspection of the records of the New York City Housing Authority could not be obtained by proceeding under General Municipal Law § 51. A mandamus proceeding by a taxpayer who had been refused his right to inspect, would seem to be the proper remedy.—*Helfer v. N. Y. C. Housing Authority*, 104 (25) N. Y. L. J. (7-30-40) 237, Col. 1 M.

¶ 26. The remedies provided for by the New York City Charter for inspection of records by taxpayers should first be exhausted before other applications would be considered (129 Misc. 177).—*Cooks Hotel & Restaurant Supply Co. v. City of N. Y.*, 105 (23) N. Y. L. J. (1-28-41) 430, Col. 3 M.

¶ 27. Applicant *held* entitled to inspect, examine and copy all records of the Tax Commission and the Tax Department relating to the determination and fixing of assessed valuation of certain premises for years for which certiorari proceedings had been instituted and for years in which no proceedings were pending where the information sought was within reason and the applicant showed a reasonable necessity therefor.—*Petition of Martin Holding Corp.*, 137 N. Y. S. 2d 507 [1954].

¶ 28. Investigators' reports upon their search into the impact of crimes upon mental health involved an investigation authorized by the Charter and consequently were not open to inspection by a taxpayer.—*In re McGhan (Wagner)*, 8 Misc. 2d 337, 170 N. Y. S. 2d 251 [1957].

¶ 29. In a negligence action, plaintiff was not entitled to move by notice of motion to compel the medical examiner to furnish a copy of the autopsy report respecting the deceased driver of the other motor vehicle since such application was not equivalent to a petition. Also, the application failed to allege that the moving party was a taxpayer.—*Walsh v. Beckman*, 29 Misc. 2d 591, 215 N. Y. S. 2d 398 [1961].

¶ 30. On examination before trial, police records could be used solely for the purpose of refreshing the recollection of witnesses.—*Frank v. City of New York*, 146 (88) N. Y. L. J. (11-6-61) 16, Col. 2 F.

¶ 31. In an assault action against a policeman, plaintiff's demand for the production of police records was denied.—*Meyers v. City of N. Y.*, 147 (27) N. Y. L. J. (2-7-62) 14, Col. 7 T.

¶ 32. This section does not apply to cases pending in court.—*Moses v. Bentley*, 143 (22) N. Y. L. J. (2-2-60) 12, Col. 3 F.

¶ 33. Claimants were entitled to discovery and inspection of hospital records of prenatal care and delivery where they were the parents of the deceased fetus. Claimants were not entitled to discovery and inspection of the police report or work records.—*Torres v. City of New York*, 146 (56) N. Y. L. J. (9-20-61) 11, Col. 2 M.

¶ 34. In an action against the City for injuries sustained by reason of an assault upon plaintiff by a police officer, the plaintiff was not entitled to inspect the minutes of a hearing conducted by the Police Department into the complaints made to the Department by the plaintiff as such transcript was for use in an investigation only.—*Olenick v. City of New York*, 144 (58) N. Y. L. J. (9-22-60) 10, Col. 5 M.

¶ 35. A person sentenced upon plea or guilty to a charge of carrying a dangerous weapon was not entitled to an order to inspect the ballistic report of the Police Department where such report was not before the Court at the time of his plea.—*Brown v. Adams*, 137 (54) N. Y. L. J. (3-20-57) 5, Col. 7 F.

¶ 36. In a negligence action against the City, plaintiff was entitled to an order requiring the City to permit him to copy police blotters, detective reports and notices of claim in the City's possession for

purpose of supporting claim that the City had actual as well as constructive notice of the existence of a certain condition which caused the accident. Evidence of prior similar accidents is admissible to prove existence of a defective or dangerous condition, to prove notice, and to prove proximate cause or actionable negligence. The information sought was not the work product of an attorney.—*Morgan v. City of N. Y.*, 150 (93) N. Y. L. J. (11-12-63) 15, Col. 2 F.

¶ 37. A member of the Board of Estimate submitted a report, dealing with condemnation, which made derogatory statements about plaintiff, an appraiser. Under § 384 (as in effect in 1958) the Board of Estimate had broad powers with regard to condemnation and defendant was acting within the scope of his official duties. The subsequent release of the report to the press was within the scope of absolute privilege. The report was a matter of public concern and defendant was obligated by § 893 (as in effect in 1958) to make it available on demand. Libel action dismissed.—*Sheridan v. Crisona*, 14 N. Y. 2d 108, 198 N. E. 2d 359, 249 N. Y. S. 2d 161 [1964].

¶ 38. 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.—*Blaikie v. Borden Co.*, 47 Misc. 2d 180, 262 N. Y. S. 2d 8 (1965).

¶ 39. U. F. 18 report of accident filed by patrolman was not a privileged communication within meaning of section 1113 and such reports being internal reports serving other purposes besides litigation are discoverable under the provisions of the CPLR.—*Walsh v. City of N. Y.*, 157 (53) N. Y. L. J. (3-20-67) 16, Col. 3 M.

¶ 40. Transcript of minutes of Police Department hearings are confidential and are not subject to a discovery proceeding.—*Gotsch v. City of N. Y.*, 157 (99) N. Y. L. J. (5-23-67) 18, Col. 2 F.

¶ 41. Protection against discovery afforded by this section is inapplicable where discovery is not sought by a taxpayer or citizen but by a litigant whose rights are at issue in a suit against the City.—*Wood v. City of N. Y.*, 116 (26) N. Y. L. J. (8-6-71) 2, Col. 4 T.

¶ 42. A statement of income and expenses appended by owners of property to application for correction of tentative assessed valuations by New York City Tax Commission was open to inspection by any taxpayer including a newspaper reporter.—*Kaufman Associates v. Levy*, 74 Misc. 2d 209, 345 N. Y. S. 2d 836 [1973].

¶ 43. Action of plaintiff against City of New York was stricken from trial calendar without prejudice and notice of issue and statement of readiness was vacated when subsequent to the filing of the statement of readiness plaintiff used the Freedom of Information Law and this section to obtain information normally discoverable by authorized discovery devices in the course of litigation.—*Brady Co. v. City of N. Y.*, (84 App. Div. 2d 113 [1982]).

HISTORICAL NOTE

Amended by L. L. 1949, No. 20.
Amended by L. L. 1967, No. 58.
Amended by L. L. 1969, No. 74.
Amended by L. L. 1977, No. 102.

§ 1115. **Officer not to hold any other civil office.** Any person holding office, whether by election or appointment, who shall, during his 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 him 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 he 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.

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.

HISTORICAL NOTE

Amended by L. 1973, ch. 1040.

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

§ 1116. **Fraud of officer.** Any council member or other officer or employee of the city who shall wilfully violate or evade any

provision of law relating to his office or employment, or commit any fraud upon the city, or convert any of the public property to his 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 his office or employment, and be excluded forever after from receiving or holding any office or employment under the city government.

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].

HISTORICAL NOTE

Amended at General Election, November 4, 1975.

§ 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 his 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 he 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 dollars annually.

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].

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.

§ 1118. **Officers and employees not 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 his public office, work or employment; and any violation of this section shall constitute a misdemeanor.

HISTORICAL NOTE

Amended by L. 1978, ch. 763.

§ 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 § 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 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].

§ 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 him or by this charter, perform any duties and exercise any powers vested in him 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 him or it.

§ 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 his duties 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.

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.*

§ 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 his answer would tend to incriminate him, or shall refuse to waive immunity from prosecution on account of any such matter in relation to which he may be asked to testify upon any such hearing or inquiry, his term or tenure of office or employment shall terminate and such office or employment shall be vacant, and he shall not be eligible to election or appointment to any office or employment under the city or any agency.

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 Un-American 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'd* 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], *rev'd* 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, *Slochower 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, *Slochower 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 educa-

tional 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 *Garrity 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.

§ 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.

§ 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 he has been elected and is serving, or eighty-two thousand dollars a year, whichever is greater.

HISTORICAL NOTE

Added by L. L. 1983, No. 32.

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.

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].

HISTORICAL NOTE

Amended at General Election, November 4, 1975.

§ 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].

§ 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.

§ 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.

§ 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.

§ 1145. **Continuity of agencies.** 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.

§ 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.

§ 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.

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 board of estimate 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 board of estimate shall mean respectively three-fourths and two-thirds of the total number of votes which all the members of the board 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.

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].

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.

§ 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.—*Acce 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].

§ 1152. **Time of taking effect.** 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. 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.

HISTORICAL NOTE

Amended at General Election, November 4, 1975.
Amended by L. L. 1977, No. 102.

§ 1153. **Separability clause.** If any provisions 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.

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].

§ 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.

§ 1155. **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, board of estimate and its committees, 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 its members, but shall not take final action at any such meeting.

HISTORICAL NOTE

Adopted at General Election, November 4, 1975.
Amended by L. L. 1977, No. 102.

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.

§ 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.

§ 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.

§ 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.

§ 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 services as director, chairman of the board of collective bargaining, and chairman of the board of certification. On and after the first day of July, nineteen hundred eighty, the per diem fee to be paid to impartial members, other than the director, when actually rendering services as a member of either such board shall be two hundred dollars. The amount of such per diem fee shall be increased to two hundred fifty dollars on and after the first day of January, nineteen hundred eighty-one. 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 the members of the municipal labor 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 by L. L. 1972, No. 1.
Subd. a amended by L. L. 1980, No. 51.

§ 1175. **Publication of collective bargaining agreements.** Not later than sixty 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.

§ 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.

§ 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.

CHAPTER 56-A*

OFFICE FOR ECONOMIC DEVELOPMENT

§ 1300. **Office; executive director.** There shall be an office for economic development, the head of which shall be the executive director for economic development, who shall report directly and be responsible to the deputy mayor for economic development.

§ 1311. **Officials of the office.** The deputy mayor for economic development may appoint ten directors and he may also appoint deputy directors, assistant directors, and managers within the appropriations available for the office.

§ 1312. **Powers and duties of the executive director.** The executive director shall have the power to exercise or delegate any of the functions, powers and duties vested in him or in the office by this chapter or otherwise. In the performance of his functions the executive director shall have, in addition to such others as may be conferred upon him from time to time by law, the power and duty:

1. To analyze the needs of the city with respect to matters within the jurisdiction of the office, prepare intermediate and long range programs designed to meet such needs, and establish priorities among them;
2. To prepare and transmit the budget estimates of the office as prescribed by law;
3. To supervise the execution and management of all programs, activities and expenditures of the office;
4. To the extent to which the organization of the office is not prescribed by law, and in accordance with such standards and policies as may be established by the mayor, to organize the office into sections, divisions, bureaus, boards and make assignments of powers and duties among them and from time to time change such organization or assignments.
5. To be responsible for coordinating the activities of public or quasi-public bodies to ensure effective economic development policies and programs in city agencies.

§ 1313. **Functions of the office.** Except as otherwise provided by law, the office shall perform all those functions and operations performed by the city of New York relating to the economic development of the city, including, without limitation, the following:

1. With respect to economic development the office shall have the power and duty:
 - a. To establish business, industrial and commercial policies, programs and projects which affect the business, industry, indus-

* Chapter 56-A added by L. L. 1977, No. 28.

trial, commercial or economic well-being, development, growth and expansion of the economic life of the city, except for those functions which have been delegated to another agency of city government by statute, local law or executive order, in which instance the office of economic development shall review and coordinate those functions, together with the other agency of city government to which those functions have been delegated;

The heads of all city agencies are hereby directed to forward to the office for economic development all economic development proposals following intake of said proposals. Upon receipt of a proposal, the office for economic development shall assume responsibility for said proposal but the forwarding agency shall furnish the office for economic development such assistance as may be required to carry out the proposal;

b. To serve as liaison for the city with the New York city industrial development agency, the public development corporation and all other public or quasi-public bodies involved in economic development within the city or any other such body as the mayor shall direct;

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 of the public or quasi-public bodies 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.

2. To serve as a clearing house in connection with efforts to devise solutions for problems affecting business, industry and commerce in the city;

3. To promote and encourage the expansion and development of markets for city products;

4. 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 the purpose to cooperate with public and private agencies, organizations and individuals;

5. 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 education activities as may be necessary or useful in the effective execution of the powers of

the office in relation to the promotion and development of business, industry and commerce in the city;

6. 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;

7. To make to the mayor, from time to time, recommendations 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;

8. To publicize the economic advantages and other factors which make the city a desirable location for business and industry;

9. 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;

10. 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;

11. 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;

12. 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 encouragement and 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 by the office 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

13. 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.

HISTORICAL NOTE

Formerly § 1303 renumbered by L. L. 1978, No. 37.

Subd. d added by L. L. 1984, No. 67.

Subd. 13 amended by L. L. 1969, No. 74.

§ 1314.* **Waterfront management advisory board.** There shall be in the office a waterfront management advisory board which shall consist of twenty-one members and which shall consult with the deputy mayor for economic development and the commissioner of ports and terminals to advise them on matters relating to the industrial, commercial, residential, recreational and any other development of the city's wharves and waterfront property and on other matters and their request and to render annually by March first as of December thirty-first of the preceding year to the mayor, the board of estimate, the city council and people of the city a report regarding the development of wharves and waterfront property in the city.

The board shall include the deputy mayor for economic development, to be designated as the chairperson of the board, the commissioner of ports and terminals, to be designated as the vice chairperson, the director of the office of management and budget, the chairperson of the city planning commission, the commissioner of parks and recreation, the commissioner of housing preservation and development, the commissioner of environmental protection, two city council members to be designated by the city council; in addition, there shall be two labor representatives, two industry representatives, and eight representatives of community interests, one from each borough and three at large, to be selected by the mayor with the advice and consent of the city council. The labor, industry and community representatives shall each serve for a three-year term without compensation.

HISTORICAL NOTE

Formerly § 1304 renumbered by L. L. 1978, No. 37.
Amended at General Election, November 4, 1975.
Amended by L. L. 1979, No. 74.

* See LL 37/78—renumber supplied by BD

CHAPTER 57*

DEPARTMENT OF ENVIRONMENTAL
PROTECTION§ 1401. **Department; commissioner.**

There shall be a department of environmental protection, the head of which shall be the commissioner of environmental protection.

§ 1402. **Deputies.** The commissioner may appoint three deputies.

§ 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 including, 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;

(c) Making and enforcing rules and regulations governing and restricting the use and supply of water; and

(d) Making rules and regulations, subject to the approval of the board of estimate, fixing uniform annual charges and extra and miscellaneous charges for the supply of water, meter rates and minimum charges for the supply of water by meter, annual service charges and charges for meters and their connections and for their setting, repair and maintenance and charges for water where a meter shall fail to register correctly or shall cease to record the flow of water or where a meter shall have been removed, and in cases in which no fines are fixed by provision of law, or fixing and collecting fines for violations of rules and regulations; but no fines shall be imposed against any property unless notice thereof by mail is addressed to the owner of the property, or if his name is unknown, then to the "owner or occupant" thereof and a hearing is held;

(2) The commissioner shall examine into the sources of water supply of any private companies supplying the city or any portion

* Chapter 57 added by L. L. 1977, No. 24.

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.

(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.

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. He shall enforce all laws, rules and regulations with respect to such emissions. He 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 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. He shall make investigations and studies to develop permissible sound levels and to correct problems related to noise control, and, for such purposes, he 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. The commissioner shall have the power and duty of formulating an energy policy for the city. In formulating such policy, the commissioner shall analyze the energy and fuel needs of the city with respect to all kinds of energy, prepare intermediate and long range plans, goals and programs designed to meet such needs, establish priorities, among them, to study, organize, promote, coordinate and carry out activities, projects and programs designed to encourage fuel and energy conservation, alternate sources of fuel and energy and encourage, stimulate and foster others in these programs and goals.

§ 1404. **Environmental control board.** a. There shall be in the department an environmental control board consisting of the commissioner, who shall be chairman, the commissioner of sanitation, the commissioner of buildings, the commissioner of health, the police commissioner, the fire commissioner and the commissioner of consumer affairs, 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 non-salaried 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.

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; and

(g) the construction, alteration, maintenance, use, occupancy, safety, sanitary condition, mechanical equipment and inspection of buildings or structures in the city which are within the jurisdiction of the department of buildings and which the commissioner of buildings shall designate by rule or regulation.

(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 him. 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) 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 ten thousand dollars for each respondent.

(f) 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.

(g) A judgment entered pursuant to this paragraph shall remain in full force and effect for eight years.

(h) 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 thirty-one of the administrative code of the city of New York shall be directed only to the sheriff.

(2) The environmental control board shall not enter any final decision or order pursuant to the provisions of paragraph 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 or the commissioner of environmental protection and over which the environmental control board has jurisdiction, may be made by delivering such notice to a person employed by the respondent on the premises the occupancy of which caused such violation; 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 and over which the environmental control board has jurisdiction, may be made by affixing such notice in a conspicuous place to the premises, the occupancy of which caused such violation.

Such notice may only be affixed or delivered pursuant to items (i) and (ii) above 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) above, a copy shall be mailed to the person at the address of such premises 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 subparagraphs (a), (b) and (c) of this paragraph, a copy of the notice shall also be mailed:

(a) 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 forty-one of title D of chapter twenty-six of the administrative code; or

(b) 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

(c) 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. Proof of such service shall be filed with the Envi-

ronmental Control Board within twenty days; service shall be completed within 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 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.

CHAPTER 58*

DEPARTMENT OF FINANCE

§ 1501. **Department; commissioner.** There shall be a department of finance, the head of which shall be the commissioner of finance.

§ 1502. **Deputies.** The mayor may appoint three deputy commissioners. The commissioner and deputy commissioners shall provide a bond.

§ 1503. **Powers and duties of the commissioner.** The commissioner shall have the power to exercise any of the functions, powers and duties vested in him or in the department by this chapter or otherwise. 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 by law, the power and duty:

1. to analyze the needs of the city with respect to the matters within the jurisdiction of the department, prepare intermediate and long range programs designed to meet such needs, and establish priorities among them;

2. to prepare and transmit the budget estimates of the department as prescribed by law;

3. to supervise the execution and management of all programs, activities and expenditures of the department; and

4. to prepare and disperse payroll checks upon a master warrant prepared by the comptroller as prescribed in the administrative code.

§ 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.

* Chapter 58 added by L. L. 1977, No. 30.

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 to make determinations in contested cases. For such purposes, the commissioner or his delegate may 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.

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, section eighty-seven 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, section two hundred twenty-five of the family court act 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 fully 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 he 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.

HISTORICAL NOTE

Subd. c added by L. 1980, ch. 408.

§ 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.

§ 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

Amended by L. L. 1984, No. 76, November 21.

§ 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.

§ 1508. **Assessment of real property.** The assessors shall commence to assess real estate on the first day of July in each year, not a Sunday or holiday.

HISTORICAL NOTE

Amended by L. L. 1981, No. 82.

§ 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.

§ 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 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.

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.

HISTORICAL NOTE

Amended by L. L. 1981, No. 82.

§ 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].

§ 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 he may increase or diminish the assessed valuation of any real estate as in his judgment may be just or necessary for the equalization of taxation; excepting that in nineteen hundred eighty-three, the commissioner may diminish the assessed valuation of improved real estate with taxes under

\$2,500 annually until the 25th day of May; 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 least 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.

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].

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.

§ 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.

§ 1514. **Assessment rolls; preparation and delivery.** 1. Commencing immediately after the closing of 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 his 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.

§ 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 one hundred twenty, a statement setting forth the amount of the budget as approved by the council and board of estimate 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 his statement of the amount of the budget as approved by the council and board of estimate his confirmation of such amount, and thereby waive his veto power pursuant to section one hundred twenty-one of the charter.

b. If, as a result of the exercise of the mayor's veto pursuant to section one hundred twenty-one, the amount of the budget for the ensuing fiscal year differs from the amount of the budget approved by the board of estimate and the council pursuant to section one hundred twenty, not later than the twenty-second day of June 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 a new annual tax rate pursuant to subdivision c of section one thousand five hundred sixteen.

HISTORICAL NOTE

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

Amended by L. L. 1979, No. 6.

§ 1516. **Fixing of tax rate.** a. The council shall fix the annual tax rate immediately upon the approval of the budget pursuant to section one hundred twenty. 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 a tax rate in cents and thousandths of a cent upon each dollar of assessed valuation. The tax rate 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 one hundred twenty, the tax rate 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 one hundred twenty-one, the council shall, if necessary, fix a new annual rate not later than the twenty-third day of June, in accordance with the requirements of subdivision a of this section.

HISTORICAL NOTE

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

§ 1516-a. Notwithstanding provisions of sections fifteen hundred sixteen, fifteen hundred seventeen and fifteen hundred eighteen of the charter or any other provisions of law to the contrary:

(a) If the city council has not fixed the tax rate for the ensuing fiscal year pursuant to section fifteen hundred sixteen of the charter on or before the fifth day of June, the commissioner of finance shall be authorized to complete the assessment rolls using an estimated rate and to collect the sums therein mentioned according to law. The estimated rate shall equal the tax rate for the current fiscal year.

(b) If, subsequent to the fifth day of June, the council shall, pursuant to section fifteen hundred sixteen of the charter, fix the tax rate for the ensuing fiscal year at a percentage differing from the estimated rate, real estate tax payment shall nevertheless be payable in accordance with subdivision (a) of this section at the estimated rate. 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 rate fixed by the council pursuant to section fifteen hundred sixteen of the charter, 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.

§ 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 as 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.

§ 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 president of the council 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 president of the council to the commissioner with the proper warrants, so signed and counter-signed, annexed thereto. At the same time the president of the council 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.

§ 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 him and that all taxes shall be due and payable at his 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; and

(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; 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:

(1) For the fiscal year commencing on the first day of July nineteen hundred eighty-two: all taxes upon real estate shall be due and payable in three installments as follows: the first payment, consisting of one-fourth of the total amount payable for the year, shall be due and payable on the first day of July, the second payment, consisting of one-fourth of the total amount payable for the year, shall be due and payable on the first day of September, and the third payment, consisting of one-half of the total amount payable for the year, shall be due and payable on the first day of January. 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) 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.

HISTORICAL NOTE

Amended by L. L. 1978, No. 11.

Amended by L. L. 1978, No. 17.

Amended by L. L. 1982, No. 29.

§ 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.

§ 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 his agent 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.

§ 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.

§ 1523. **Deposits.** 1. The commissioner shall deposit all moneys which shall come into his 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 and he shall keep a bank-book in which shall be entered his accounts of deposit 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 him, and no moneys shall be paid by any such banks or trust companies on account of the commissioner except upon such checks; but this provision shall not apply to transfer checks transferring such funds from one city depository to another.

§ 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. Except as provided in paragraph b of this subdivision, no bank or trust company shall be designated pursuant to this section unless:

(1) it shall agree to pay into the city treasury interest on the daily balances at a rate which the banking commission shall, by a majority vote, fix quarterly on the first day of February, May, August, and November in each year, according to the current rate of interest upon like balances deposited in banks and trust companies in the city by private persons or corporations;

(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 race, color, creed, religious affiliation, sex or national origin which certificate shall further set forth affirmatively the steps taken by the bank or trust company to implement said policy; and

(3) it does not provide the following services, either directly or through a subsidiary or agent, to the government of the Republic of South Africa: (a) advertising or otherwise promoting the sale, outside of the Republic of South Africa or Namibia, of krugerrands or other coins minted in the Republic of South Africa or Namibia, (b) underwriting securities of the government of the Republic of South Africa, or (c) making loans to such government, other than loans for educational, housing or health facilities available to all persons on a totally nondiscriminatory basis and located in geographic areas accessible to all population groups without any legal or administrative restrictions.

b. The commission may designate a bank or trust company which does not meet the criteria set forth in clause three of paragraph a of this subdivision upon a determination, made in writing and forwarded to the council, that deposit of city moneys in such bank or trust company is necessary to obtain essential services which are not reasonably obtainable from another bank or trust company.

If the banking commission by majority vote shall decide that such policy not to discriminate or provide services to the government of the Republic of South Africa has been violated after giving the bank or trust company an opportunity to be heard, then upon giving 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 issued by the city, 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. 1985, No. 19, March 18, eff. 120 days after it becomes a law.

§ 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.

§ 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 section three hundred forty-three of this charter.

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 board of estimate 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 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.

CHAPTER 59*

DEPARTMENT OF GENERAL SERVICES

§ 1600. **Department; commissioner.** There shall be a department of general services, the head of which shall be the commissioner of general services.

§ 1601. **Deputies.** The commissioner may appoint four deputies, one of whom shall be first deputy commissioner.

§ 1602. **Powers and duties of the commissioner.** Except as otherwise provided by law, the commissioner shall have the power and it shall be the commissioner's duty to perform all the functions and operations of the city of New York relating to the construction, maintenance and care of public buildings and structures, the acquisition and disposal of personal property, the provision to city agencies of other than personal services, the acquisition, management, sale or lease by the city of real property other than housing, the provision of automotive, communication and data processing services, the custody and maintenance of public records of the city, the provision, regulation and control of electrical activities and similar services, including without limitation, the following:

1. Public buildings and structures. With respect to public buildings and structures the commissioner shall have the following powers and duties:

(a) to have charge and control over the plans and specifications for and the construction of all buildings and structures paid for in whole or in part from the city treasury;

(b) to manage, alter, repair, operate, maintain and clean buildings, structures 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;

(c) except for the provisions of chapter nine of this charter, to employ when in the commissioner's opinion such services are necessary or desirable, subject to the approval of the mayor and in accordance with the provisions of section three hundred forty-nine of this charter, qualified consultants in private practice to aid the commissioner in carrying out his duties and responsibilities with respect to public building or structures; such consulting or advisory services shall be performed under the supervision of the commissioner;

(d) to consult with the agencies for whose use the buildings or structures are intended in preparing and considering plans and

* Chapter 59 added by L. L. 1977, No. 29.

specifications and in carrying out such plans and specifications, and to consider any recommendations made by such agency.

Notwithstanding the provisions of this subdivision one, 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;

(e) to exercise and perform such other powers and duties as may be prescribed by law or delegated to him in relation to laboratory testing of commodities and construction materials.

2. Supply services. With respect to the procurement and disposal of personal property and the procurement of other than personal services, the commissioner shall have the following powers and duties:

(a) the power to purchase, inspect, store and distribute all supplies, materials or equipment 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, to operate therein a uniform, modern system of stores control based upon perpetual inventory and maintain a sufficient stock of staple commodities on hand 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 old or waste material and other personal property discarded, replaced or not required in storehouses or 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 and regulations promulgated by him 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 and codify rules and regulations governing the purchase, payment, storage, delivery of supplies and equipment by agencies of the city and the disposal of unusable and obsolete materials, and to supervise their enforcement;

(f) to classify all 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.

3. Real property. With respect to real property, the commissioner shall have the following powers and duties:

(a) to exercise and perform the powers and duties imposed by law upon the board of estimate relating to the acquisition, selling, leasing, exchanging or otherwise disposing of real property of the city and the assignment to city agencies of space owned or leased by the city. The commissioner shall also undertake comprehensive and continuing programs to manage utilization of space owned or leased by the city and to establish standards, conduct surveys of space utilization and assign space to all city agencies except as otherwise provided by law;

(b) to manage and superintend 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, but the commissioner shall not manage and superintend wharf property, real property under the jurisdiction of the department of housing preservation and development, real property under the jurisdiction of the New York city transit authority, 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 except as otherwise provided by law, real property under the jurisdiction of the triborough bridge and tunnel authority;

(c) to exercise and perform such other powers and duties as may be prescribed by law or delegated to him in relation to the acquisition, disposition, demolition or other treatment of real property of the city;

(d) to employ, where desirable, managing agents to manage city properties and collect rents therefrom and pay bills, pursuant to rules and regulations promulgated by him and approved by the board of estimate.

4. Communications. With respect to communications facilities, the commissioner shall have the following powers and duties:

(a) Municipal broadcasting system: to maintain, operate and administer in conformance with all federal, state and local laws and to use the facilities of such system as an adjunct to 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) Communication facilities: except for emergency or other special communication facilities, to provide to city agencies such telephone, radio, television or other communications facilities as they may require for the effective discharge of their responsibilities;

(c) City Record: (i) There shall be published daily, except Saturdays, Sundays and legal holidays, under contract or by the department, a paper to be known as the City Record;

(ii) there shall be inserted in the City Record nothing aside from such official matters as are expressly authorized;

(iii) 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;

(iv) nothing herein contained shall prevent the publication elsewhere of any advertisement required by law to be so published; provided, however, that no such publication shall be made unless the same is authorized by the commissioner with the approval of the mayor and the comptroller and in a newspaper, magazine, journal or periodical designated by the commissioner with the approval of the mayor and the comptroller;

(v) the comptroller shall cause a continuous series of the City Record to be bound as completed quarterly and to be deposited with his 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;

5. Data processing services. The commissioner shall operate one or more data processing service centers providing data processing equipment, programming services, and computer systems analysis services for city agencies when necessary or desirable, in accordance with executive orders promulgated by the mayor.

6. Gas and electricity. With respect to gas and electricity, the commissioner shall have charge and control of furnishing the city or any part thereof, by contract or otherwise, with gas, electricity or any other illuminant or steam, except such functions as are exercised by the public utility service of the city.

7. Automotive services. To acquire by purchase, lease or otherwise, vehicles and other automotive equipment for the use of city agencies; to manage, maintain, store and operate a fleet of motor vehicles; to assign such fleet in accordance with the direction of the mayor and to operate shops, yards, garages, fuel depots and other facilities required for the effective and economical use and maintenance of such fleet.

HISTORICAL NOTE

Amended by L. L. 1977, No. 49.
Amended by L. L. 1977, No. 102.

§ 1603. **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.

§ 1604. **Maintenance of master list of leases.** The department shall 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

Added by L. L. 1981, No. 89.

CHAPTER 61*

DEPARTMENT OF HOUSING PRESERVATION
AND DEVELOPMENT

§ 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.

§ 1801. **Officials of the department.** The commissioner may appoint not more than five deputy commissioners, one of whom may be a first deputy commissioner, one of whom shall be a deputy commissioner charged with powers and duties that include, but are not limited to, the control or regulation of rentals pursuant to state or local rent control laws, rules or regulations, 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 subdivision eight of section eighteen hundred two of this chapter. The commissioner may also appoint such number of other officers of the department and employ such staff as are within the appropriation of the department.

§ 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;

* Chapter 61 added by L. L. 1977.

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. all functions of the city relating to the control or regulation of rentals pursuant to state or local rent control laws, rules or regulations, including liaison with any body, such as, but not limited to the conciliation and appeals board, the real estate industry stabilization association and the rent guidelines board, in which any rent regulation functions or powers are vested;

5. 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;

6. 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;

7. the functions, powers and duties to:

(a) establish and administer programs including, but not limited to, the municipal loan program, "mini" loan program and participation loan program, 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 J51-2.5 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 (relating to municipal loans), article eight-a (relating to "mini" loans), article eleven (relating to housing development fund companies) and article fifteen (relating to participation loans), 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") in-

cluding, 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) promulgate and enforce rules and regulations to carry out the functions, powers and duties of the commissioner and the department;

(j) analyze the needs of the city with respect to the matters subject to the jurisdiction of the department, prepare intermediate and long range programs designed to meet such needs, and establish priorities among them;

(k) prepare and transmit the budget estimates of the department as prescribed by law;

(l) supervise the execution and management of all programs, activities and expenditures of the department;

(m) to the extent to which the organization of the department is not prescribed by law, and in accordance with such standards and policies as may be established by the mayor, organize the department into divisions, bureaus, boards or offices and make assignments of powers and duties among them and from time to time change such organization or assignments;

(n) acquire real property, pursuant to the federal housing and community development act of nineteen hundred seventy-four, on behalf of other city agencies; and

(o) perform such other functions, powers and duties as are vested in or assigned to the commissioner or the department by law or by the mayor.

8. On and after September first, nineteen hundred seventy-eight.

(a) the powers and duties imposed by law upon the board of estimate relating to the sale, lease, exchange or other disposition of residential real property of the city, provided that any disposition by public auction shall be conducted by the department of general services;

(b) management and superintendence of 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 management and superintendence of wharf property, real property under the jurisdiction of the New York city transit authority, 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;

(c) 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

(d) employment of professional community and other personnel to manage residential real property of the city.

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 regulns.) 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].

HISTORICAL NOTE

Subd. 8 amended by L. L. 1978, No. 3.

§ 1803. **Inspectors, inspection.** 1. Housing maintenance inspectors shall have such qualifications as shall be prescribed by the department of personnel 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.

§ 1804. **Organization of the department; notice.** In January, nineteen hundred seventy-eight and every six months thereafter, in accordance with the procedures of section eleven hundred five, subdivisions (b) and (c) of this charter, the commissioner shall cause to be published in the City Record and shall give notice of a written plan or chart describing the organization of the department.

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.

§ 2202. **Deputies.** The commissioner may appoint two deputies.

§ 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.

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.

HISTORICAL NOTE

Amended by L. L. 1969, No. 10.

Amended by L. L. 1969, No. 83.

Added by L. L. 1970, No. 16.

§ 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.

CHAPTER 65*

NEW YORK CITY TAXI AND LIMOUSINE
COMMISSION

§ 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 and wheelchair accessible 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.

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.—*Pavle-Marty 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.

§ 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

* Chapter 65 added by L. L. 1971, No. 12.

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.

§ 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.

§ 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 the provisions of this chapter.

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 licenses.

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. The commission or an administrative tribunal which may be established by the commission to adjudicate charges of violation of provisions of the administrative code and rules and regulations promulgated thereunder shall have the power to enforce its 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 as if they were money judgments, without court proceedings, in the following manner: After four months from the issuance of a decision or order imposing such a civil penalty a copy of such decision or order shall be filed in the office of the clerk of any county within the city. In the event that the decision or order was made after a hearing at which the respondent failed to appear, a notice of default shall be mailed to said respondent at least seven days before such filing and a copy of such notice and an affidavit of the mailing thereof shall be filed with a copy of the decision or order. Upon such filing such county clerk shall enter and docket such decision or order in the same manner and with the same effect as a money judgment. Upon such entry and docketing such decision or order may be enforced as provided in article fifty-two of the civil practice law and rules. The commission or tribunal shall not enter any decision or order pursuant to 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 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 subdivision on such operator shall also be deemed to be lawful service upon such owner.

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.

HISTORICAL NOTE

Subd. b5 amended by L. L. 1984, No. 18, § 1.
Subd. c added by L. 1983, ch. 1021.

§ 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 de-

termination, 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.

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].

CHAPTER 66*

DEPARTMENT FOR THE AGING

§ 2400. **Department; commissioner.** There shall be a department for the aging, the head of which shall be the commissioner for the aging.

§ 2401. **Deputies.** The commissioner may appoint and at pleasure remove a deputy commissioner.

§ 2402. **Powers and duties.** The department shall have the following powers and duties:

- a. to advise and assist the mayor in developing policies designed to meet the needs of the aging;
- b. to coordinate city programs and activities relating to the aging with each other and with those sponsored by responsible organizations in the private sector;
- c. to stimulate community interest in the problems of the aging;
- d. 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;
- e. to cooperate with and assist local neighborhoods in the development of programs and the establishment of local offices;
- f. to make such studies and reports regarding needs of the aging as the commissioner may deem appropriate or as may be requested by the mayor;
- g. to serve as a clearing house for information relating to the needs of the aging;
- h. to enter into contracts with individuals, organizations and institutions;
- i. 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;
- j. to promulgate rules and regulations for the operation of facilities, services and programs under its jurisdiction; and
- k. to maintain, operate and control such programs and facilities as may be necessary or required for the proper administration of the department.

§ 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.

* Chapter 66 added by L. L. 1975, No. 36.

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.

CHAPTER 67*

DEPARTMENT OF CULTURAL AFFAIRS

§ 2501. **Department; commissioner.** There shall be a department of cultural affairs, the head of which shall be the commissioner of cultural affairs.

§ 2502. **Deputies.** The commissioner may appoint a deputy.

§ 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.

§ 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 board of estimate, the council, and the city planning commission in accordance with law, together with the commissioner's recommendations.

HISTORICAL NOTE

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

§ 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

* Chapter 67 added by L. L. 1976 No. 6.

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

Subd. 1 amended by L. L. 1977, No. 102.

CHAPTER 68

ETHICS

§ 2600. **Board of ethics.** a. There shall be a board of ethics consisting of the corporation counsel, the director of personnel, and three public members appointed by the mayor, each for a term of four years, who shall serve without compensation. The mayor shall designate a chairman from among the public members.

b. The board of ethics may appoint a counsel to serve at its pleasure and may employ or retain other officers, employees and consultants within appropriations for such purpose.

§ 2601. **Investigations.** Upon request from the board of ethics, the commissioner of investigation shall investigate any matter within the jurisdiction of the board and report to it the result of such investigation.

HISTORICAL NOTE

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

§ 2602. **Advisory opinions.** a. The board of ethics shall render advisory opinions with respect to questions of ethical conduct, conflicts of interest and other matters arising under sections twenty-six hundred four, twenty-six hundred five, twenty-six hundred six and twenty-six hundred seven. Such advisory opinions shall be rendered on the written request of the officer or employee, former officer or employee concerned or any supervisory official of such officer or employee and in the board's discretion may be rendered on its own initiative or on the basis of an investigation.

b. The board of ethics shall make public its advisory opinions with such deletions as may be necessary to prevent disclosure of the identity of any officer or employee or other involved party. The records, reports, memoranda and files of the board shall be confidential and shall not be subject to public scrutiny.

HISTORICAL NOTE

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

Subd. a amended by L. L. 1979, No. 29.

§ 2603. **Revision.** The board of ethics shall review the provisions of this chapter and shall recommend to the council from time to time changes or additions that may be appropriate or desirable. Such review and recommendation shall be made at least once every five years.

HISTORICAL NOTE

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

§ 2604. **Conflicts of interest.** a. A council member who has a direct or indirect financial or other private interest in any proposed

legislation shall publicly disclose, on the official records of the council, the nature and extent of such interest.

b. No member of the board of estimate or the council or other salaried officer or employee of the city or any city agency:

(1) shall be or become interested directly or indirectly in any manner whatsoever except by operation of law in any business dealings with the city or any city agency;

(2) shall act as attorney, agent, broker, director, officer, employee or consultant for any person, firm, corporation or other entity interested directly or indirectly in any manner whatsoever in any such business dealings;

(3) shall accept any valuable gift, whether in the form of service, loan, thing or promise, or in any other form from any person, firm, corporation or other entity which to his knowledge is interested directly or indirectly in any manner whatsoever in any such business dealings;

(4) shall represent private interests before any city agency;

(5) shall appear as attorney or counsel against the interests of the city or any city agency in any litigation to which the city or any city agency is a party, or in any action or proceeding in which the city or any city agency, or any officer or employee of the city or any city agency, acting in the course of his official duties, is a complainant; or

(6) shall give opinion evidence as a paid expert against the interests of the city or any city agency in any civil litigation brought for private pecuniary gain against the city or any city agency.

(7) This subdivision shall not be construed to prohibit an officer or employee of the city or of any city agency, other than elected officials, employees in the office of property management of the department of housing preservation and development, employees in the division of real property of the department of general services 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 officer or employee, 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.

c. No member of the board of estimate or the council or other officer or employee of the city or any city agency, whether paid or unpaid:

(1) shall engage in any business or transaction or private employment, or shall have any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his official duties;

(2) shall use or attempt to use his position to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for himself or any person, firm, cor-

poration or other entity with which he is associated; he shall be deemed 'associated' with each person who is a close relative by blood or marriage, with each person with whom he has a business or other financial relationship and with each firm, corporation or other entity in which he has a present or potential substantial interest, direct or indirect;

(3) shall attempt to influence the course of any proposed legislation in the board of estimate or the council without publicly disclosing on the official records of the board of estimate or the council, as the case may be, the nature and extent of any direct or indirect financial or other private interest he may have in such legislation;

(4) shall coerce or attempt to coerce, by intimidation, threats or otherwise, any officer or employee of the city or of any city agency to engage in political activities;

(5) shall appear, directly or indirectly, on behalf of private interests in matters involving the city agency in which he serves or before any city agency affecting matters involving the city agency in which he serves;

(6) shall disclose any confidential information concerning any of the property, affairs or government of the city or any city agency, or use any such information to advance any direct or indirect financial or other private interest of himself or any other person, firm, corporation or other entity.

d. As used in this chapter, the words "business dealings with the city" shall include any contract, service, work or business with, any sale, renting or other disposition to, any purchase, leasing or other acquisition from, and any grant, license, permit or other privilege from, the city or any city agency, and any performance of or litigation with respect to any of the foregoing.

e. As used in this chapter, the term "agency" shall mean a city, county, borough or other office, position, administration, department, division, bureau, board, commission, authority, corporation or other agency of government, the expenses of which are paid in whole or in part from the city treasury, and shall include the board of education, the board of higher education, school boards, city and community colleges, community boards, the New York city transit authority, the New York city housing authority, and the triborough bridge and tunnel 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.

f. This section shall not be construed:

(1) to prohibit a council member from appearing without compensation before any city agency on behalf of constituents or in the performance of public official or civic obligations;

(2) to prohibit a member of the board of estimate or the council or other officer or employee from:

(a) 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;

(b) acquiring or holding an insubstantial investment or other insubstantial interest in any firm, corporation or other entity or business or private transaction, provided such investment or interest does not create a conflict with his official duties;

(c) being affiliated with, by investment or otherwise, employed by or representing a person, firm, corporation or other entity whose business dealings with the city or any city agency form an insubstantial and unimportant part of its total business, provided that he has no direct or indirect interest in such business dealings and takes no direct or indirect part in such business dealings and receives no direct or indirect compensation or other benefit in connection therewith;

(3) to prohibit 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.

(4) to prohibit 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.

(5) to prohibit an officer or employee, other than an elected official, 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 or a city agency, provided that:

(a) such officer or employee 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 dealing with the city agency in which the officer or employee is employed and is not subject to supervision, control or regulation by such agency;

(c) all such activities by such officer or employee shall be performed at times during which the officer or employee is not required to perform services for the city;

(d) such officer or employee receives no salary or other compensation in connection with such activities, and

(e) the head of the city agency which employs the officer or employee, the commissioner of investigation, and the board of ethics have determined that the proposed activity is in furtherance of the purposes and interests of the city and would not constitute a conflict of interest.

g. No member of the board of estimate or the council or other officer or employee of the city or any city agency, whether paid or unpaid, shall solicit, negotiate for or accept any employment from which, after leaving city service, he would be disqualified under subdivision h of this section.

h. No person who has served as a member of the board of estimate or the council or other officer or employee of the city or any city agency, whether paid or unpaid, shall, within a period of three years after termination of his employment, appear before any city agency, or receive compensation for any services rendered on behalf of any person, firm, corporation or other private entity, in relation to any case, proceeding, application or other matter with respect to which during his employment he was directly concerned, or in which he personally participated, or which was under his active consideration, or with respect to which knowledge or information was made available to him as a result of his city employment, provided, however, that:

(1) such a person shall be barred for eight years from any action in relation to any such case, proceeding, application or other matter on behalf of a private person, firm, corporation or other private entity which would be adverse to or against the interests of the city or any city agency;

(2) such a person may engage in private employment or action from which he would otherwise be prohibited by the aforesaid provisions of this subdivision where the employment or action would be in furtherance of the purposes and interests of the city and the city agency in question and not in conflict therewith, if, after written approval as satisfying this requirement by the head of such city agency, the corporation counsel and the commissioner of investigation, the board of ethics shall find that the employment or action involves no such conflict.

i. Any violation of any of the provisions of this section shall, at the option of the comptroller, render forfeit and void the contract, work, business, sale or transaction in question.

j. Any violation of any of the provisions of this section shall constitute cause for fine, suspension or removal from office or employment.

k. Any person who shall knowingly and intentionally violate any of the provisions of this section, shall be guilty of a misdemeanor and shall, on conviction thereof, forfeit his office and be punished for a misdemeanor.

CASE NOTES

¶ 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].

HISTORICAL NOTE

Section amended by L. 1978, ch. 763.

Par. 7 of subd. b added by L. L. 1980, No. 41.

Subd. 4 of subpar. f added by L. L. 1979, No. 33.

Subd. 5 of subpar. f added by L. L. 1979, No. 41.

§ 2605. **Corrupt practices.** No member of the board of estimate or the council or other officer or employee of the city or of any city agency shall give or promise to give any portion of his compensation or any money or valuable thing to any person in consideration of his having been or being nominated, appointed, elected or employed as such officer or employee, under the penalty of forfeiting his office or employment and being forever disqualified from being elected, appointed or employed in the service of the city or of any city agency, and shall on conviction be punished for a misdemeanor.

HISTORICAL NOTE

Amended by L. 1978, ch. 763.

§ 2606. **Political contributions.** No council member or other officer or employee of the city shall, directly or indirectly, pay or promise to or compel, request or induce 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 or in consideration of his having been or being nominated, elected, appointed or employed as such officer or employee, under the penalty of forfeiting his office or employment. Any violation of this section shall be a misdemeanor.

HISTORICAL NOTE

Amended by L. 1978, ch. 763.

§ 2607. **False reports; compensation; gratuities.** 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 his duty or shall, except as in this charter otherwise provided receive compensation except from the city or a city agency for performing any official duty or shall accept or receive any gratuity from any person whose interests may be affected by his official action, shall be guilty of a misdemeanor and upon conviction, forfeit his office or employment.

HISTORICAL NOTE

Amended by L. 1978, ch. 763.

§ 2608. **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 his approval 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 is a member or any corporation in which he holds ten percentum (10%) 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 the member to be benefited.

3. Require each member of its governing board to submit to the agency each year a disclosure statement including his name, home address, principal occupation and business interests from which he or his spouse received income equal to or greater than 10 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.

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.

HISTORICAL NOTE

Added by L. L. 1978, No. 1.

CHAPTER 69*

COMMUNITY DISTRICTS AND
COTERMINALITY OF SERVICES

§ 2700. **Declaration of intent.** The capacity of the city to provide services to residents and businesses, the welfare and orderly development of communities in the five boroughs, and the active participation of city residents in civic activities has been impeded by (1) the dissimilarity of local service delivery districts of municipal agencies and (2) the disparity among such service districts and the community districts and city council districts. 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

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

§ 2701. **Community districts.** a. Not later than January first, nineteen hundred seventy-seven, the board of estimate, pursuant to this chapter, shall adopt a map of community districts.

b. Each community district shall:

(1) So far as feasible, lie within the boundaries of a single borough and coincide with historic, geographic and identifiable communities from which the city has developed;

(2) Be suitable for the efficient and effective delivery of services by municipal agencies 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.

c. 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 subsection b.

d. The community districts may serve as the basis for city council districts for the election of council members pursuant to section twenty-two and other applicable law.

e. With respect to the city's central business district in the borough of Manhattan from fifty-ninth street south, the board of estimate 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 board of

* Chapter 69 added at General Election of November 4, 1975.

estimate 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 b of this section.

f. 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 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.

HISTORICAL NOTE

Subd. e added by L. L. 1977, No. 22.

Subd. f added by L. L. 1977, No. 22.

§ 2702. **Preparation and adoption of map.** a. Not later than the first day of October, nineteen hundred seventy-six, the mayor shall prepare and present to the board of estimate a preliminary community district map pursuant to this chapter.

b. The 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 community district map.

c. The mayor shall publish the preliminary community district map in the City Record and in each county of the city and shall conduct public hearings on it.

d. The board of estimate shall conduct public hearings on the preliminary community district map submitted by the mayor and it shall adopt the map as submitted or as modified by it not later than the date specified in subsection a of section twenty-seven hundred one.

§ 2703. **Modification and review.** a. The community district map shall be reviewed within one year following the publication of each decennial census, and a new or revised community district map may be adopted pursuant to the criteria and procedures applicable to the creation of community districts pursuant to sections twenty-seven hundred one and twenty-seven hundred two. Such review shall consider shifts in population shown in the new census that may require adjustments in the community district map to conform to the criteria in section twenty-seven hundred one.

b. The board of estimate, after public hearing on notice and consideration of any recommendation from the mayor, at any

time may modify the community district map to assure conformance to the criteria in section twenty-seven hundred one.

§ 2704. **Coterminality of local services.** a. Within three years after the effective date of the community district map adopted pursuant to this chapter, the head of each agency shall organize the local service delivery districts of such agency as follows:

(1) To be coterminous with each of the community districts for local parks services; street cleaning and refuse collection services; 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 for housing code enforcement, highway and street maintenance and repair; sewer maintenance and repair, and health services, other than municipal hospitals.

b. Not later than the first day of January, nineteen hundred eighty-three the commissioner of the department of parks and recreation shall organize the department's service districts for local recreation services to be coterminous with each of the community districts.

c. No later than the first day of January, nineteen hundred eighty-three, the police commissioner shall organize the patrol services of the police department in the boroughs of the Bronx, Manhattan, Queens and Staten Island to be coterminous with each of the community districts in such boroughs. Not later than the first day of April, nineteen hundred eighty-four, the police commissioner shall organize the patrol services of the police department in the borough of Brooklyn to be coterminous with each of the community districts in that borough. Notwithstanding the provisions of this subdivision, 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.

d. The board of estimate, upon the recommendation of the mayor, may direct that city services in addition to those specified pursuant to subsection a of this section be made coterminous with one or more community districts or aggregates of them.

e. The head of each agency whose local service delivery districts are not required to be coterminous with community districts pursuant to subsection a or b 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.

f. For purposes of this section, coterminality of services shall mean that (1) the boundaries of the local service districts of each designated agency service shall coincide with the boundaries of community districts, and (2) the head of each designated agency shall 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.

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. Whenever the population of a community district falls below seventy-five thousand persons, the city planning commission 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. The city planning commission shall give notice to all the affected community districts and shall hold a public hearing. Following the hearing, the commission may recommend to the board of estimate that coterminality for one or more designated services within the community district and any adjacent district be suspended. If the board of estimate votes to approve the recommendation, coterminality shall be suspended for the designated services. The city planning commission may at any time recommend to the board of estimate that the suspension be terminated and that coterminality be restored for one or more of the services.

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 relettered by L. L. 1983.

Subd. e relettered by L. L. 1983.

Subd. f relettered by L. L. 1983.

Subd. g relettered by L. L. 1983.

Subd. h relettered by L. L. 1983.

§ 2705. **District service cabinet.** a. There shall be a district service cabinet within each community district established pur-

suant to this chapter. The members of the district service cabinet shall include:

- (1) The agency officials designated pursuant to subsection d of section twenty-seven hundred four;
- (2) Representatives of other agencies that provide local service 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 subsection f of section twenty-eight hundred; and,
- (6) The chairperson of the community board for the community district or his 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; and
- (4) Consult with residents of the community district and their representatives about local service problems and activities.

§ 2706. **Borough agency managers and borough service cabinets.** a. The head of each agency delivering services in the boroughs so far as is practicable shall designate a senior official of the agency with line authority as borough representative of the agency with such coordinative or other duties and responsibilities as the head of the agency may specify.

b. There shall be a borough service cabinet within each borough whose members shall include the borough representatives designated pursuant to subsection 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.

§ 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 August fifteenth with the mayor, board of estimate, council, community board or borough board.

c. By no later than three months after the end of the fiscal year, each agency with service districts within community districts or 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

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

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

§ 2708. **Agency information.** Each agency with service districts within 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

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

CHAPTER 70*

CITY GOVERNMENT IN THE COMMUNITY

§ 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, 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. One-half of the members first appointed to any new community board shall serve for a term of one year. The terms of all appointed members shall be calculated from the first day of January in the year in which they take office. 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. 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 by the borough president or by a majority vote of the community board. Vacancies among the appointed members shall be filled 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;

* Chapter 70 adopted at General Election, November 4, 1975.

(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 and keep a public record of its activities and transactions, including minutes of its meetings and majority and minority reports, which shall be made available to elected officials upon request;

(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) Consult with agencies on the capital needs of the district, review departmental estimates, hold public hearings on such needs and estimates and prepare capital budget priorities for the next fiscal year and the three succeeding fiscal years;

(11) conduct public hearings and submit recommendations and priorities to the mayor, the board of estimate, 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;

(12) 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 expense budget priorities for the next fiscal year;

(13) 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;

(14) Evaluate the progress of capital projects within the community district based on status reports to be furnished to the board;

(15) 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;

(16) Assist agencies in the preparation of service statements of agency objectives, priorities, programs and projected activities within the community district and review such statements;

(17) Evaluate the quality and quantity of services provided by agencies within the community district; and

(18) Within budgetary appropriations for such purposes, disseminate information about city services and programs, process complaints, requests, and inquiries of residents of the community district.

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, who shall serve at the pleasure of the community board. 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. The chairperson of the community board or representative shall be a member of the district service cabinet.

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.

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. 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.

HISTORICAL NOTE

- 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.

§ 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.

CHAPTER 71*

DEPARTMENT OF TRANSPORTATION

§ 2901. **Department; commissioner.** There shall be a department of transportation, the head of which shall be the commissioner of transportation.

HISTORICAL NOTE

Formerly § 2601 renumbered by L. L. 1977, No. 102.

§ 2902. **Deputies.** The commissioner may appoint four 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

Formerly § 2602 renumbered and amended by L. L. 1977, No. 102.

§ 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. General.

(1) to prepare and transmit the budget estimates of the department as prescribed by law;

(2) to the extent to which the organization is not prescribed by law and in accordance with such standards and policies as may be established by the mayor, to organize the department into divisions, bureaus, boards or offices and make assignments of powers and duties among them and from time to time change such organization or assignments, provided, however, that the first deputy commissioner shall supervise and be responsible for the operations of the parking violations bureau.

b. 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 chapter seventy-one 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

* Chapter 71 added by L. L. 1977, No. 27.

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, without the necessity of filing and publication, 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 by him to the board of estimate, 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 board of estimate, 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;

(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 chapter seventy-one 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 permits;

(a) Upon application, the commissioner shall issue a special vehicle identification permit to a New York city resident certified by the department of health as suffering from a permanent disability seriously impairing mobility, who requires the use of private automobile for transportation and to a non-resident similarly certified 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, provided, however, that an applicant for such permit must possess an operator's or chauffeur's license with any restrictions indicating special devices or equipment required for the operation of a motor vehicle noted thereon by the department of motor vehicles.

(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.

(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 of applications for special vehicle identification permits shall be made at those district health offices designated for such purpose by the commissioner of health. 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) operate and control the parking violations bureau:

c. 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, board of estimate, 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.

d. Ferries and general aviation. 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 takes 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 board of estimate and the city 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;

(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;

(7) have charge and control of all airports, airplane landing sites, seaplane bases, heliports, marginal streets and parking facilities appurtenant thereto owned or possessed by the city and of the building, rebuilding, repairing, altering, maintaining, strengthening, protection and operation thereof; any part of such property may be leased in the same manner as wharf property under-the control of the department; and

(8) 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.

e. 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, aviation facilities, subways or other facilities for mass transportation 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

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.

§ 2904. **Duties and obligations of property owner with respect to sidewalks, 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 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. 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.

HISTORICAL NOTE

Renumbered by L. L. 1977, No. 102.

§ 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

Renumbered by L. L. 1977, No. 102.

§ 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.

CHAPTER 72*

DEPARTMENT OF RECORDS AND
INFORMATION SERVICES

§ 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 center. The head of the department shall be the commissioner, who shall be appointed by the mayor.

§ 3001. **Deputy.** The commissioner may appoint one deputy.

§ 3002. **Technical Assistants.** The commissioner may employ technical experts and such other employees as may be required to perform the duties of the department within the appropriations made available therefor.

§ 3003. **Powers and duties.** The commissioner: 1. shall be the chief archivist of the city and shall advise the mayor, board of estimate 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, board of estimate 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 records manager for the mayor, board of estimate 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 him by law.

§ 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. collect, classify and make available for reference all records which come into the possession of the archives and

* Chapter 72 added by L. L. 1977, No. 49.

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 library, 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. 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

e. 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;

f. institute actions in replevin to recover any historical and/or other documents properly owned by, or originating from, the city of New York;

g. report annually to the mayor, board of estimate and city council on the powers and duties hereinmentioned including but not limited to the cost of savings effectuated by the department on the first of March as of December thirty-first of the preceding calendar year.

The head of each agency shall transmit to the center at least four copies of each report, document, study or publication of such agency, immediately after the same shall have been issued. He shall transmit to the 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. 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.

3. The department shall operate a municipal records center, the head of which shall be a professional records manager. The center 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.

§ 3005. **Disposal of records.** No records shall be destroyed or otherwise disposed of by an agency of the city unless approval has been obtained from the commissioner, the corporation counsel and the agency which created or has jurisdiction over the records who shall base their determinations on the potential administrative, fiscal, legal, research or historical values of the record. Approval for records disposal schedule and remain in force until the status of the records changes. The commissioner or the agency which created or has jurisdiction over the records may initiate action to eliminate records eligible for disposal. The commissioner shall insure the destruction of disposable records within six months of the date of eligibility. Records retained for historical or research purposes shall be transferred, upon request of the commissioner, to the municipal archives for permanent custody.

§ 3006. **Destruction of other materials.** Other materials not included within the definition of records in this chapter 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. The commissioner, may, however, formulate procedures and interpretations to guide in the disposition of such materials.

§ 3007. **Departmental libraries.** 1. 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.

2. No agency, except the law department, shall establish, fund or operate any departmental library or employ any departmental librarian without the express approval and consent of the commissioner.

3. Departmental libraries in every city agency, except the law department, shall be funded and operated by the department of records and information services.

4. Purchases of books, documents, informational materials, subscriptions and library equipment for all city agencies, except the law department, shall be made from funds of the department by the commissioner. Each agency shall request such materials in a

budgetary procedure established by the department and the office of Budget and Management.

§ 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 three thousand five of this chapter shall be issued by the commissioner after consultation with the corporation counsel and the comptroller.

§ 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 of section three thousand four of this chapter to advise him in matters at his 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.

§ 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.

§ 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 control 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 center" 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.

HISTORICAL NOTE

Formerly § 3010, renumbered by L. L. 1985, No. 18, March 14.

**NEW YORK CITY
CHARTER
AND
ADMINISTRATIVE
CODE**

**CITY CHARTER
CHAPTERS
1-72**

CUMULATIVE SUPPLEMENT

NOVEMBER 1987

ANNOTATED

**Including amendments made by the Laws of 1986
and all the New York City Local Laws of 1986**

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1987**



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CHAPTER 1

MAYOR

§ 8. General powers.

CASE NOTES

¶ 4. Subsection [a] of 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].

CHAPTER 3

BOARD OF ESTIMATE

§ 67. Responsibilities of the board.

CASE NOTES

¶ 8. The board of estimate's scope of review of an application to operate an enclosed sidewalk cafe is much broader than that of a community board as enunciated in § 366-a[b] of the Charter. The board of estimate may, pursuant to subsection [4], review the character and fitness of the applicants seeking such a revocable consent franchise. *Matter of Midan Rest. v. Tarshis*, 68 N. Y. 2d 800 [1986].

¶ 9. Pursuant to this section, a resolution of approval from the board of estimate is a necessary prerequisite to the exercise of consecutive options to renew a lease for real property for city purposes. Each option must be the subject of a new resolution, and thus the second option was not validly exercised and the petitioner is entitled to possession of the premises from the City. *Bermont v. City of NY*, 128 Misc. 2d 653 [1985].

CHAPTER 4

BOROUGH PRESIDENTS

§ 82. Powers and duties.

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 en-

gineer. In addition to his other duties, he shall monitor capital projects in the borough and shall be available to serve as an expediter on construction projects in the borough and provide technical assistance with respect to construction projects.

NOTE

Subd. 3 amended by General Election, November 4, 1975. [Main volume is incorrect, should read as above.]

CHAPTER 6

EXPENSE BUDGET

NOTE

Provisions of L.L. 6/86

A LOCAL LAW

In relation to dates for submission of the expense budget, expense budget hearings, approval of the expense budget by the board of estimate and council, disapproval by the mayor of certain portions of the expense budget and override thereof, certification of the expense budget, certification of debt and reserves for capital projects, submission of the capital budget and program, recommendations by the comptroller and city planning commission on the capital budget and program, capital budget and program hearings, adoption of the capital budget and program by the board of estimate and council, disapproval by the mayor of certain portions of the capital budget and program and override thereof, certification of the assessment roll, the estimate by the mayor of receipts and submission of a statement setting forth the amount of the capital budget, and fixing of the tax rate, relating to the fiscal year nineteen hundred eighty-seven.

Be it enacted by the Council as follows:

Section 1. During the calendar year nineteen hundred eighty-six and in relation to the nineteen hundred eighty-seven fiscal year:

1. Notwithstanding any inconsistent provisions of section one hundred sixteen of the New York city charter, the mayor shall pursuant to such section submit a proposed expense budget and budget message as therein described not later than the sixth day of May, nineteen hundred eighty-six.

2. Notwithstanding any inconsistent provisions of section one hundred nineteen of such charter, the board of estimate and the council shall pursuant to such section hold public hearings on the expense budget as therein described between the fourteenth day of May and the thirtieth day of May, nineteen hundred eighty-six.

3. Notwithstanding any inconsistent provisions of subdivision b of section one hundred twenty of such charter, the single expense budget adopted pursuant to such subdivision shall be returned to the mayor not later than the eleventh day of June, nineteen hundred eighty-six.

4. Notwithstanding any inconsistent provisions of subdivision c of section one hundred twenty of such charter, if a single expense budget has not been adopted as therein described by the eleventh day of June, nineteen hundred eighty-six, the expense budget and tax rate adopted as modified for the nineteen hundred eighty-six fiscal year shall be deemed to have been extended for the nineteen

hundred eighty-seven fiscal year until such time as a new budget is adopted.

5. Notwithstanding any inconsistent provisions of subdivision a of section one hundred twenty-one of such charter, the mayor may pursuant to such subdivision disapprove certain parts of the expense budget as therein described not later than the sixteenth day of June, nineteen hundred eighty-six, and shall return the expense budget to the board of estimate and the council setting forth his objections in writing by that date.

6. Notwithstanding any inconsistent provisions of subdivision b of section one hundred twenty-one of such charter, the board of estimate and the council shall pursuant to such subdivision act and the expense budget shall be adopted not later than the twenty-sixth day of June, nineteen hundred eighty-six.

7. Notwithstanding any inconsistent provisions of section one hundred twenty-two of such charter, the mayor, the comptroller and the city clerk shall pursuant to such section certify the expense budget as therein described not later than the twenty-seventh day of June, nineteen hundred eighty-six.

8. Notwithstanding any inconsistent provisions of section two hundred thirteen of such charter, the mayor shall pursuant to such section issue and publish a certificate as to the maximum amount of debt and reserves which may be incurred for capital projects and projects financed by capital debt as therein described not later than the sixth day of May, nineteen hundred eighty-six.

9. Notwithstanding any inconsistent provisions of subdivision a of section two hundred nineteen of such charter, the mayor shall pursuant to such subdivision submit a proposed capital budget, capital program and explanatory message, as therein described, not later than the sixth day of May, nineteen hundred eighty-six.

10. Notwithstanding any inconsistent provisions of section two hundred twenty of such charter, the comptroller and city planning commission shall pursuant to such section submit reports containing comments and recommendations as therein described not later than the fourteenth day of May, nineteen hundred eighty-six.

11. Notwithstanding any inconsistent provisions of section two hundred twenty-one of such charter, the board of estimate and council shall hold public hearings as therein described between the fourteenth day of May and the thirtieth day of May, nineteen hundred eighty-six.

12. Notwithstanding any inconsistent provisions of subdivision a of section two hundred twenty-two of such charter, the single capital budget and single capital program adopted pursuant to such subdivision shall be returned to the mayor not later than the eleventh day of June, nineteen hundred eighty-six.

13. Notwithstanding any inconsistent provisions of subdivision b of section two hundred twenty-two of such charter, if a single capital budget and single capital program have not been adopted as therein described by the eleventh day of June, nineteen hundred eighty-six, they shall be deemed adopted so far as acted on by both bodies with the lower amount of any item in dispute between the two bodies in effect.

14. Notwithstanding any inconsistent provisions of subdivision b of section two hundred twenty-three of such charter, the mayor may pursuant to such subdivision disapprove certain parts of the capital budget or capital program as therein described not later than the sixteenth day of June, nineteen hundred eighty-six, and shall return the capital budget and capital program to the board of estimate and the council setting forth his objections in writing by that date.

15. Notwithstanding any inconsistent provisions of subdivision c of section two hundred twenty-three of such charter, the board of estimate and the council shall pursuant to such subdivision act

and the capital budget and capital program shall be adopted not later than the twenty-sixth day of June, nineteen hundred eighty-six, and in the event the board of estimate and the council fail to act by that date, the capital budget and capital program as modified by the mayor are adopted.

16. Notwithstanding any inconsistent provisions of subdivision d of section two hundred twenty-three of such charter, the capital budget as finally adopted shall pursuant to such subdivision be certified by the mayor and the city clerk as therein described not later than the twenty-seventh day of June, nineteen hundred eighty-six.

17. Notwithstanding any inconsistent provisions of subdivision two of section fifteen hundred fourteen of such charter, the commissioner of finance shall pursuant to such subdivision deliver to the council certified assessment rolls as therein described on or before the twenty-sixth day of June, nineteen hundred eighty-six.

18. Notwithstanding any inconsistent provisions of subdivision a of section fifteen hundred fifteen of such charter, the mayor shall pursuant to such subdivision prepare and submit to the council an estimate of the probable amount of receipts as therein described not later than the eleventh day of June, nineteen hundred eighty-six.

19. Notwithstanding any inconsistent provisions of subdivision b of section fifteen hundred fifteen of such charter, if necessary, the mayor shall pursuant to such subdivision submit to the council a statement setting forth the amount of the budget as therein described not later than the twenty-eighth day of June, nineteen hundred eighty-six.

20. Notwithstanding any inconsistent provisions of subdivision c of section fifteen hundred sixteen of such charter, if necessary, the council shall pursuant to such subdivision fix a new annual tax rate as therein described not later than the thirtieth day of June, nineteen hundred eighty-six.

§ 2. This local law shall take effect immediately.

ALSO NOTE

Provisions of L.L. 21/86

A LOCAL LAW

In relation to dates for approval of the expense budget by the board of estimate and council, disapproval by the mayor of certain portions of the expense budget and override thereof, certification of the expense budget, adoption of the capital budget and program by the board of estimate and council, disapproval by the mayor of certain portions of the capital budget and program and override thereof, certification of the capital budget, certification of the assessment roll, the estimate by the mayor of receipts and submission of a statement setting forth the amount of the capital budget, and fixing of the tax rate, relating to the fiscal year nineteen hundred eighty-seven.

Be it enacted by the Council as follows:

Section 1. During the calendar year nineteen hundred eighty-six and in relation to the nineteen hundred eighty-seven fiscal year:

1. Notwithstanding any inconsistent provisions of subdivision b of section one hundred twenty of the New York city charter or local law number six for the year nineteen hundred eighty-six, the single expense budget adopted pursuant to such subdivision shall be returned to the mayor not later than the earlier of:

a. four days after certification by the mayor that the New York state senate and assembly have adopted identical legislation authorizing the city of New York to impose a tax on the transfer of shares of stock in a cooperative housing corporation where the owner held such shares in connection with residential use, identical

legislation authorizing the city of New York to impose a tax on gains derived from certain real property transfers, and identical legislation authorizing the city of New York to impose a tax pursuant to the authorization contained in section two hundred fifty-three-a of the tax law in connection with the filing of a financing statement under article nine of the uniform commercial code where the collateral described in such statement is shares of stock in a cooperative housing corporation, or

b. the twenty-sixth day of June, nineteen hundred eighty-six.

2. Notwithstanding any inconsistent provisions of subdivision c of section one hundred twenty of such charter or such local law number six, if a single expense budget has not been adopted as described in such subdivision by the date by which such budget shall be returned to the mayor in accordance with subdivision one of this section, the expense budget and tax rate adopted as modified for the nineteen hundred eighty-six fiscal year shall be deemed to have been extended for the nineteen hundred eighty-seven fiscal year until such time as a new budget is adopted.

3. Notwithstanding any inconsistent provisions of subdivision a of section one hundred twenty-one of such charter or such local law number six, the mayor may pursuant to such subdivision disapprove certain parts of the expense budget as therein described not later than one day after the date by which the single expense budget shall be returned to the mayor in accordance with subdivision one of this section and shall return the expense budget to the board of estimate and the council setting forth his objections in writing by that day.

4. Notwithstanding any inconsistent provisions of subdivision b of section one hundred twenty-one of such charter or such local law number six, the board of estimate and the council shall pursuant to such subdivision act and the expense budget shall be adopted no later than four days after the date by which the single expense budget shall be returned to the mayor in accordance with subdivision one of this section.

5. Notwithstanding any inconsistent provisions of section one hundred twenty-two of such charter or such local law number six, the mayor, comptroller and city clerk shall pursuant to such section certify the expense budget as described in such section one hundred twenty-two not later than four days after the date by which the expense budget shall be returned to the mayor in accordance with subdivision one of this section.

6. Notwithstanding any inconsistent provisions of subdivision a of section two hundred twenty-two of such charter or such local law number six, the single budget and single capital program shall be returned to the mayor not later than the earlier of:

a. four days after certification by the mayor that the New York state senate and assembly have adopted identical legislation authorizing the city of New York to impose a tax on the transfer of shares of stock in a cooperative housing corporation where the owner held such shares in connection with residential use, identical legislation authorizing the city of New York to impose a tax on gains derived from certain real property transfers, and identical legislation authorizing the city of New York to impose a tax pursuant to the authorization contained in section two hundred fifty-three-a of the tax law in connection with the filing of a financing statement under article nine of the uniform commercial code where the collateral described in such statement is shares of stock in a cooperative housing corporation, or

b. the twenty-sixth day of June, nineteen hundred eighty-six.

7. Notwithstanding any inconsistent provisions of subdivision b of section two hundred twenty-two of such charter or such local law number six, if a single capital budget and single capital program have not been adopted as described in such subdivision by the date by which the single capital budget and single capital program shall be returned to the mayor in accordance with subdivision

five of this section, they shall be deemed adopted so far as acted on by both bodies with the lower amount of any item in dispute between the two bodies in effect.

8. Notwithstanding any inconsistent provisions of subdivision b of section two hundred twenty-three of such charter or such local law number six, the mayor may pursuant to such subdivision disapprove certain parts of the capital budget or capital program as therein described not later than one day after the date by which the single capital budget and single capital program shall be returned to him in accordance with subdivision six of this section and shall return the capital budget and capital program to the board of estimate and the council setting forth his objections in writing by that day.

9. Notwithstanding any inconsistent provisions of subdivision c of section two hundred twenty-three of such charter or such local law number six, the board of estimate and the council shall pursuant to such subdivision act and the capital budget and capital program shall be adopted not later than four days after the date the single capital budget and single capital program shall be returned to the mayor in accordance with subdivision six of this section.

10. Notwithstanding any inconsistent provisions of subdivision d of section two hundred twenty-three of such charter or such local law number six, the capital budget as finally adopted shall pursuant to such subdivision be certified by the mayor and the city clerk as described in such subdivision not later than four days after the date the single capital budget and single capital program shall be returned to the mayor in accordance with subdivision six of this section.

11. Notwithstanding any inconsistent provisions of subdivision two of section fifteen hundred fourteen of such charter or such local law number six, the commissioner of finance shall pursuant to such subdivision deliver to the council certified assessment rolls as therein described not later than four days after the date the single capital budget and single capital program shall be returned to the mayor in accordance with subdivision six of this section.

12. Notwithstanding any inconsistent provisions of subdivision a of section fifteen hundred fifteen of such charter or such local law number six, the mayor shall pursuant to such subdivision prepare and submit to the council an estimate of the probable amount of receipts as therein described not later than the date by which the single expense budget shall be returned to the mayor in accordance with subdivision one of this section.

13. Notwithstanding any inconsistent provisions of subdivision b of section fifteen hundred fifteen of such charter or such local law number six, if necessary, the mayor shall pursuant to such subdivision submit to the council a statement setting forth the amount of the budget as therein described not later than four days after the date the single capital budget and single capital program shall be returned to the mayor in accordance with subdivision six of this section.

14. Notwithstanding any inconsistent provisions of subdivision c of section fifteen hundred sixteen of such charter or such local law number six, if necessary, the council shall pursuant to such subdivision fix a new annual tax rate as therein described not later than four days after the date the single capital budget and single capital program shall be returned to the mayor in accordance with subdivision six of this section.

§ 2. This local law shall take effect immediately and shall be retroactive to and shall be deemed to have been in full force and effect as of the eleventh day of June, nineteen hundred eighty-six.

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

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on June 11, 1986 and approved by the Mayor on June 25, 1986.

CARLOS CUEVAS, City Clerk, Clerk of the Council.

§ 126. All revenues of the city, of every administration, department, board, office and commission thereof, and of every 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."

NOTE

Bold face type in Section 126 is a typographical error in main volume. It should appear as printed above.

CHAPTER 7

TAX COMMISSION

§ 167.

3. No exemption shall be granted:

(a) If the income of the owner or the combined income of the owners of the property exceeds the sum of twelve thousand twenty-five dollars for the income tax years immediately preceding the date of making application for exemption. Income tax year shall mean the twelve month period for which the owner or owners filed a federal personal income tax return, or if no such return is filed, the calendar year. Where title is vested in either the husband or the wife, their combined income may not exceed such sum. Such income shall include social security and retirement benefits, interest, dividends, total gain from the sale or exchange of a capital asset which may be offset by a loss from the sale or exchange of a capital asset in the same income tax year, net rental income, salary or earnings, and net income from self-employment, but shall not include gifts, inheritance, or a return of capital. In computing net rental income and net income from self-employment no depreciation deduction shall be allowed for the exhaustion, wear and tear of real or personal property held for the production of income.

(Subd. 3 par a amended L.L. 75/86 § 1.)

7. Notwithstanding the maximum income exemption eligibility level provided in subdivision three of this section, an exemption, subject to all other provisions of this section, shall be granted as indicated in the following schedule:

Annual Income	Percentage Assessed Valuation Exempt From Taxation
More than \$12,025.00 but less than \$12,525.00	45 per centum
\$12,525.00 or more but less than \$13,025.00	40 per centum

\$13,025.00 or more but less than	
\$13,525.00	35 per centum
\$13,525.00 or more but less than	
\$14,025.00	30 per centum
\$14,025.00 or more but less than	
\$14,525.00	25 per centum
\$14,525.00 or more but less than	
\$15,025.00	20 per centum

(Subd. 7 amended L.L. 75/86 § 2.)

NOTE

Effective date of L.L. 75/86

§ 3. This local law shall take effect immediately and shall apply to assessments appearing on the assessment roll filed for the fiscal year commencing on the first day of July, nineteen hundred eighty-seven.

CHAPTER 8

CITY PLANNING

§ 197-C. Uniform land use review procedures.

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. *Starbusrt 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 (1 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].

CHAPTER 9

CAPITAL PROJECTS AND BUDGET

NOTE

See Notes after Chapter 6

§ 211. **Definitions.** a. 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. (Subd. 1 par a amended L.L. 12/86 § 1.)

CHAPTER 18

POLICE DEPARTMENT

§ 436. **Powers over certain trades.**

CASE NOTES

¶ 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].

§ 440. **Civilian complaints against members of the police department.** (a) Policy. It is hereby declared to be the public policy of the city of New York in order to preserve the independence and integrity of police service, that civilian complaints against members of the police department of the city of New York shall be reviewed fairly and impartially by the review board established in this section and shall be investigated and dealt with fully and fairly by the appropriate officials regularly charged with the governance and discipline of the police department without interference by any person or group of persons not regularly in police service. (Subd. (a) amended L.L. 55/86 § 1.)

(c) Review of civilian complaints. There shall continue to be within the police department a review board, with the power to receive, to investigate, to hear and to recommend action upon civilian complaints against members of the police department. The board shall consist of twelve members, of whom six shall be members of the public selected so that one resident from each of

the five boroughs of the city and one citywide representative are members. The public representatives shall be appointed by the mayor for terms of two years with advice and consent of the council in the same manner as is provided in section forty-six of this charter. Six members shall be appointed by the commissioner for terms of two years. Each member appointed by the commissioner must have been, for a period of at least one year prior to his appointment to such board, a regularly appointed, full-time member or full-time administrative employee of the police department. Any such member shall be a member of the board only for such time as he or she is so employed. 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 was the member whose position became vacant. A member appointed to fill a vacancy shall serve for the balance of the unexpired term. Neither the mayor, the commissioner, nor any other administrator or officer of the city of New York shall have power to authorize any person, agency, board or group to receive, to investigate, to hear, or to require or recommend action upon civilian complaints against members of the police department except as provided in this section, provided that nothing herein shall limit or impair the authority of the commissioner to discipline members of the force pursuant to law. (Subd. (c) amended L.L. 55/86 § 1.)

d. Rules of procedure; staffing. 1. The board shall establish rules of procedure, which may provide for the establishment of panels of the board of not less than three members each, which shall consist of at least one public representative to act on behalf of the board. No panel shall consist entirely of public representatives. Such panels may recommend action on civilian complaints against members of the police department.

2. The commissioner shall assign personnel of the police department to assist the board and conduct investigations on its behalf.

(Subd. d added L.L. 55/86 § 2.)

(e) Attendance by police officers. No member of the police department or other person shall be disciplined or otherwise penalized for his failure to appear before or respond to the inquiries of any person, agency, board or group appointed by the mayor, the commissioner, or any other administrator or officer of the city of New York to receive, to investigate, to hear or to require or recommend action upon civilian complaints against members of the police department, unless such person, agency, board or group shall be duly appointed in accordance with the provisions of this section.

(f) Prosecution; right to hearing. Notwithstanding anything herein contained to the contrary, this section shall not be construed to prevent investigation or prosecution of members of the police department for violations of law by a duly constituted court having jurisdiction, a grand jury, district attorney or other law enforcement agency; nor shall this section be construed to permit a member of the police department to be fined, reprimanded, re-

moved, suspended or dismissed, except upon written charges, after such charges have been examined, heard and investigated by the commissioner, one of his deputies or the assistant to the commissioner.

(g) Separability. The invalidity of any provision or provisions of this section shall not affect the validity of the remaining provisions thereof, but such remaining provisions shall continue in full force and effect.

(Subds. e-g relettered L.L. 55/86 § 2 [formerly Subds. d-f].)

NOTE

Special provision of L.L. 55/86 § 3

§ 3. Notwithstanding any provision of this local law to the contrary, any ongoing review of a civilian complaint received prior to the effective date of this local law may continue to be considered by the board as constituted prior to such effective date.

CHAPTER 19

FIRE DEPARTMENT

§ 493. **Member of department; no other office.** Any commissioner or any member of the uniformed force of the department 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 term of office be nominated for any office elective by the people, except a member of the force appointed, nominated or elected to a board of education outside of the city of New York, to a party position as defined within the New York state election law or to a board of fire commissioners established in accordance with section 3-308 of the village law or section one hundred seventy-four of the town law, and shall not, within ten days succeeding the same, decline the said nomination, shall be deemed thereby to have resigned his commission and to have vacated his office. The provisions of this section shall apply as long as it does not interfere with his/her performance as a member of the department.

The foregoing provisions shall not apply to any member of the uniformed force of the department who, with the written authorization of the mayor, shall accept any additional place of public trust or civil emolument while such member shall be on leave of absence without pay from the department.

(Section amended L.L. 72/86 § 1.)

CHAPTER 22

DEPARTMENT OF HEALTH

§ 558. Health code.

CASE NOTES

¶ 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].

CHAPTER 23

**DEPARTMENT OF MENTAL HEALTH,
MENTAL RETARDATION
AND ALCOHOLISM SERVICES**

§ 592. **Officials of the department.** The commissioner may appoint two deputy commissioners.

NOTE

Section added L.L. 25/77. [Main volume is incorrect, should read as above.]

§ 593. **Powers and duties of the commissioner.**

NOTE

Text for this section erroneously laid out in main volume as § 592.

CHAPTER 27

BOARD OF STANDARDS AND APPEALS

§ 668. **Variances and special permits.**

CASE NOTES

¶ 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].

CHAPTER 29

DEPARTMENT OF PORTS, INTERNATIONAL TRADE AND COMMERCE

NOTE

Title amended L.L. 5/86 § 2 [erroneously referred to as Chapter 79 in bill section].

ALSO NOTE

Provisions made by L.L. 5/86 §§ 1 and 24.

Section 1. Legislative intent. It is the intent of the council to establish the department of ports, international trade and commerce which will foster expansion of the international business community of the city of New York and promote high quality and cost-competitive air, marine, rail and truck freight services for the city. It is the expectation of the council that the department will enable the city to attract more effectively foreign investment and trade, to assist firms in the city to win and fulfill foreign contracts, and to allow businesses in the city to transport goods more efficiently. In this manner, the department will promote economic development and employment in the city.

In addition, it is the intent of the council that the department continue to perform the responsibilities formerly delegated by the charter to the department of ports and terminals.

§ 24. Any reference to the department of ports and terminals in law or contract shall be deemed to refer to the department of ports, international trade and commerce.

§ 701. **Department; commissioner; seal.** There shall be a department of ports, international trade and commerce, the head of which shall be the commissioner of ports, international trade and commerce. The commissioner may adopt a seal for the department and direct its use. (Section amended L.L. 5/86 § 3 [amendment omitted section heading which was supplied by editor].)

§ 704. **Powers and duties of the commissioner.** The commissioner shall have the power, and it shall be his duty, to promote and foster development of intrastate, interstate, and international commerce and trade in the city of New York and to exercise the functions, operations, powers and duties of the city relating to

the development, 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:
(Open par amended L.L. 5/86 § 4.)

(j) to regulate, subject to the approval of the board of estimate, the charges for wharfage, crantage and dockage of all vessels or floating structures using any wharf property set aside under subdivision (i) of this section, 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 the board of estimate after public hearing on recommendation of the department;

(Subd. j amended L.L. 5/86 § 5.)

(k) to establish, amend and enforce all needful rules and regulations for the proper care of all public markets, wharf property and waterfront property placed in his charge or over which he shall have power of regulation and to issue such orders as may be necessary for such enforcement. No such rule, regulation or amendment thereof shall become valid and effective until a copy thereof, duly certified by an officer of the department to be a correct copy, shall have been filed with the city clerk and such rule, regulation or amendment, published once a week for two successive weeks in the City Record. The violation of or the failure to comply with any such order, rule or regulation 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 hundred dollars, or both;

(Subd. k amended L.L. 5/86 § 6.)

(l) to sell, subject to the approval of the board of estimate, buildings, structures and other improvements on market property and wharf property to a person leasing such property pursuant to subdivisions (a) and (g) of this section;

(Subd. l amended L.L. 5/86 § 7.)

(m) to manage and promote the economic development of all airports, airplane landing sites, seaplane bases and heliports owned or possessed by the city; and to lease any part of such property in the same manner as wharf property;

(n) to promote and encourage the expansion and development of the city as a center for intrastate, interstate and international overland freight transportation;

(o) 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; and

(p) to administer and promote the development of foreign trade zones within the city.

(Subds. m-p added L.L. 5/86 § 8.)

§ 704. Powers and duties of the commissioner.

CASE NOTES

¶ 2. Subsection (k) of this section grants to the Commissioner of Ports and Terminals the authority to enforce criminal penalties for the violation of any order, rule or regulation promulgated pursuant thereto. This power is not precluded by the civil penalties provided by the Agricultural and Markets Law § 270. *People v. Arol Dev. Corp.*, 132 Misc. 2d 200 [1986].

CHAPTER 35

DEPARTMENT OF PERSONNEL

§ 819. Examination for licenses.

CASE NOTES

¶ 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].

CHAPTER 49

OFFICERS AND EMPLOYEES

§ 1117. Pensioner not to hold office.

CASE NOTES

¶ 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].

CHAPTER 56-A

OFFICE FOR ECONOMIC DEVELOPMENT

§ 1315. **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 vice-chairman of the council, and one member shall be designated as chairperson by the mayor after consultation with the vice-chairman.

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 a prior written notice served upon the chairperson of the commission.

c. The commission shall:

(1) make recommendation to insure the continuation and growth of a healthy environment for professional, amateur and scholastic sports activities in the city; and

(2) seek to promote the city as a positive and profitable base for professional sports teams wishing to relocate their organizations; and

(3) perform such other duties as may be necessary as determined by the commission.

NOTE

Section added L.L. 74/86 § 1 (effective 60 days after enactment, signed by mayor 12/22/86).

CHAPTER 57

DEPARTMENT OF ENVIRONMENTAL
PROTECTION

§ 1404. **Environmental control board.**

CASE NOTES

¶ 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].

CHAPTER 58

DEPARTMENT OF FINANCE

SPECIAL NOTE

See Notes after Chapter 6

CHAPTER 68

ETHICS

§ 2604. Conflicts of interest.

i. No member of the board of estimate, member of the city council, officer or employee of the city or one of its departments or agencies employed on a full-time basis by virtue of appointment of the mayor, and no officer or employee of the city or one of its departments or agencies employed in a policy-making position as determined by the appointing authority, shall solicit, negotiate for or accept any employment or agree to contract to render services, without regard to when such employment or contract shall commence, with or to any private person, firm, corporation or other entity who or which is involved in a matter with the city, while such member, officer or employee is actively considering, or is directly concerned or personally participating in such matter on behalf of the city.

j. Any violation of any of the provisions of this section shall, at the option of the comptroller, render forfeit and void the contract, work, business, sale or transaction in question.

k. Any violation of any of the provisions of this section shall constitute cause for fine, suspension or removal from office or employment.

l. Any person who shall knowingly and intentionally violate any of the provisions of this section, shall be guilty of a misdemeanor and shall, on conviction thereof, forfeit his office and be punished for a misdemeanor.

(Subd. i added ch 687/86 § 1; Subds. j-l relettered ch 687/86 § 1 [formerly subds. i-k].)

CASE NOTES

§ 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].

CHAPTER 71

DEPARTMENT OF TRANSPORTATION

§ 2903. Powers and duties of the commissioner.

d. Ferries and general aviation. The commissioner shall:

(7) 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 or possessed by the city; and

NOTE

Subd. d par 7 amended L.L. 5/86 § 9.