GENERAL CITY LAW

LAWS 1909, CHAP. 26.

AN ACT in relation to cities, constituting chapter twenty-one of the consolidated laws.

Became a law February 17, 1909, with the approval of the Governor. Passed,three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

CHAPTER 21 OF THE CONSOLIDATED LAWS

GENERAL CITY LAW

ARTICLE 1
SHORT TITLE

§ 1. Short title. This chapter shall be known as the "General City Law."

ARTICLE 2
GENERAL PROVISIONS

§ 2. Term of office of city supervisors. 1. The term of office of each supervisor hereafter elected in a city shall, notwithstanding the provisions of such city charter, be two years, and a supervisor shall only be elected in such city each second year thereafter, except to fill vacancies.

2. Notwithstanding any provision of subdivision one of this section, but subject to the mandatory referendum provisions of section twenty-three of the municipal home rule law, the term of office of each supervisor hereafter elected in the city of Geneva shall, notwithstanding the provisions of such city charter, be four years, and a supervisor shall only be elected in such city each fourth year thereafter, except to fill vacancies.

§ 2-a. Succession to certain city offices. 1. In every city in which the mayor and president or presiding officer of the local legislative body are elected at the same time and for the same term by the electors of the entire city, in case of the removal from office of the mayor, his death, inability to discharge the powers and duties of the office, resignation or absence from the city, the powers and duties of the office shall devolve upon such president or presiding officer for the residue of the term or until the disability shall cease. When the powers and duties of the office of mayor shall devolve upon such president or presiding officer for the residue of the term, he shall serve as and be the mayor.

In case the person elected mayor shall die, or become unable to discharge the powers and duties of the office, after his election but before he shall have qualified as and assumed the office of mayor, the powers and duties of the office of mayor shall devolve upon the person elected as such president or presiding officer at the same election and he shall serve as and be the mayor for the term for which the mayor was elected.

This subdivision shall not affect the operation of any provision of law which limits or restricts the exercise by the president or presiding officer of the powers and duties of the mayor during a limited period of either absence of the mayor from the city or inability of the mayor to perform his powers and duties.

2. In every such city, in case of the removal from office of the

president or presiding officer, his death, inability to discharge the powers and duties of the office, resignation, absence from the city or when he shall serve as and be the mayor as provided in subdivision one, the powers and duties of the office shall devolve upon the president pro tempore or vice-chairman for the residue of the term or until the disability shall cease. When the powers and duties of the office of president or presiding officer shall devolve upon such president pro tempore or vice-chairman for the residue of the term, he shall serve as and be the president or presiding officer. The provisions of this subdivision shall apply to cities in which the president or presiding officer of the local legislative body is elected at the same time and for the same term as the member selected by such body to be its president pro tempore or vice-chairman.

This subdivision shall not affect the operation of any provision of law which limits or restricts the exercise by the president pro tempore or vice-chairman of the powers and duties of the president or presiding officer during a limited period of either absence of the president or presiding officer from the city or inability of the president or presiding officer to perform his powers and duties.

3. The provisions of this section shall apply notwithstanding section thirty of the public officers law or any inconsistent provisions of,

a. any general or special law, or

b. any local law, ordinance, or city charter, heretofore or hereafter adopted, except that a city charter provision in effect before November fifth, nineteen hundred seventy-five which provides for a vacancy in the office of mayor to be filled in at the next general election if the vacancy occurs before the twentieth day of September and otherwise in the general election held in the following year shall prevail over this section and a vacancy in the office of mayor shall be filled as provided in such a charter provision.

§ 2-b. Definition. The term "infant" or "minor", as used in this chapter, shall mean a person who has not attained the age of eighteen years.

§ 3. Members of common council; appointments to other city offices. No member of the common council of any city shall, during the period for which they were elected, be capable of holding under the appointment or election of the common council any office the emoluments of which are paid from the city treasury, or paid by fees or compensation directed to be paid by any act or ordinance of the common council, but this section shall not affect the right to any fees or emoluments belonging to any office, provided, however, that in any city having a city manager or council-manager form of government in which a mayor and vice-mayor may be elected or appointed from the membership of its council, such mayor and vice-mayor may, in addition to the emoluments received as council member, receive compensation for their services from the city treasury as mayor and vice-mayor. An officer of any city who violates any provision of this section shall be guilty of a misdemeanor and on conviction thereof their office shall be vacant.

§ 3-a. Liability of city officials. No official of any city of this state who shall deposit any moneys coming into his hands by virtue of his office in any bank, savings bank, national banking association, trust company, or with any private banker, in accordance with the provisions of any general or local law or charter, or in accordance with the official action taken by the governing body or board of any such city, shall be liable for the loss of any such moneys resulting from the default or insolvency of any such depositary.

§ 3-b. Deposit of city funds. Funds of a city shall be deposited and secured in the manner provided by section ten of the general municipal law.

§ 3-c. Unlawful offers or agreements by municipal officials or omnibus

lines with respect to omnibus line operations. 1. No officer, employee or agent of any city or any person acting on his behalf shall, directly or indirectly, make an offer to or agree with any private owner or operator of an omnibus line within such city or any person acting on behalf of such owner or operator, to approve or recommend the approval of an increase in fare or any other benefit for such owner or operator at some future time, in consideration of the promise or agreement of such owner or operator to delay making any application for a fare increase until some future time, or to enter into a contract with a labor organization.

2. No private owner or operator of an omnibus line within any city or any person acting on behalf of such owner or operator shall, directly or indirectly, make an offer to or agree with any officer, employee or agent of such city, or any person acting on his behalf, to delay making an application for a fare increase until some future time, or to enter into a contract with a labor organization, in consideration of the promise or agreement of such officer, employee or agent of such city to approve or recommend the approval of an increase in fares or any other benefit for such owner or operator at some future time.

3. The violation of any provision of this section shall constitute a misdemeanor. Any public officer or employee who is convicted of a violation of this section shall forfeit his office or employment and shall forever be disqualified from holding any public office or employment under the state or any political subdivision thereof.

§ 3-d. Receipts and disbursements of payrolls. By resolution duly adopted, the common council or other legislative body of the city, may determine to enter into a contract to provide for the deposit of the periodic payroll of the city in a bank or trust company for disbursal by it in accordance with provisions of section ninety-six-b of the banking law.

§ 4. Removal of appointive officers in cities of the third class. No officer heretofore or hereafter appointed by the mayor of a city of the third class, or nominated and appointed by such mayor by or with the consent of the common council of such city, shall be removed or suspended from office without the approval of such mayor, such approval to be in writing and filed with the city clerk.

§ 5. Certain parades and processions forbidden; penalty. All processions or parades occupying or marching on any street of any city to the exclusion or interruption of other citizens in their individual right and use thereof, excepting the National Guard and the police and fire departments, and the associations of veteran soldiers, are forbidden, unless written notice of the object, time and route of such procession or parade be given by the chief officer thereof, not less than six hours previous to its forming or marching, to the police authorities of such city; and such police authorities may designate to such procession or parade how much of the street in width it can occupy with especial reference to crowded thoroughfares through which such procession may move; and, when so designated, the chief officer of such procession or parade shall be responsible that the designation is obeyed; and it shall be the duty of the police authorities to furnish such escort as may be necessary to protect persons and property and maintain the public peace and order. A person wilfully violating any provision of this section shall be guilty of a misdemeanor, punishable by a fine not exceeding twenty dollars or imprisonment not exceeding ten days, or both.

§ 6. Swearing witnesses. Whenever the common council of a city shall have appointed a committee of members of their body upon any subject or matter within the jurisdiction of such common council, or to examine any officer of the city, in relation to the discharge of his official duties, or to the receipt or disbursement by him of any moneys in the discharge of such duties, or concerning the possession or disposition by him, in his official capacity, of any property belonging to the city; or to use, inspect or examine any book, account, voucher or document, in his possession or under his control as such officer, relating to the affairs or interests of such city, the chairman of such committee is authorized to administer oaths to all such witnesses as may appear or be brought before such committee.

§ 7. Summoning witnesses. The chairman or any other member of any such committee in his name shall have power to subpoena witnesses.

§ 8. Law applicable to conduct of elections at which ballot questions are submitted to all the voters of a city. The provisions of the election law or any other law relating to the submission of questions at general elections, so far as the same are applicable and not inconsistent with this chapter, shall apply to the conduct of all elections at which questions are submitted to all the voters of a city. Where a specific provision of law exists in any other law which is inconsistent with the provisions of the election law, such provision shall apply unless a provision of the election law specifies that such provision of the election law shall apply notwithstanding any other provision of law.

§ 10. Licenses to adult blind persons. The mayor of any city shall have the power to issue a license to any adult blind person for the vending of goods, or newspapers in such places as he or she may set aside for this purpose. The license shall be issued for a term of one year and no charge shall be made for the license. A license shall not be issued to a blind person unless he or she is a resident for three years in the city in which application for such license is made and is a citizen of the United States or a noncitizen lawfully admitted for permanent residence in the United States.

This license shall be revocable only for cause.

§ 11. Use of soft coal in public institutions. No public institution maintained by the state within the corporate limits of any city of the second class, shall use or burn bituminous coal in the operation of any of its departments, provided that the local ordinances of any such city forbid the use thereof.

§ 12. Money for celebration of legal holidays in cities. The common council of any city is hereby authorized to appropriate and set aside each year such sums it may deem proper for the purpose of providing for the due and proper observance of any legal holiday in such city.

§ 12-a. Money for tercentennial celebrations. The common council of any city is hereby authorized to appropriate and set aside such sums as it may deem proper in order to celebrate the due and proper observance of tercentennial celebrations commemorating the founding of the community.

§ 13. Moneys for Memorial and Veterans days; how expended. The moneys appropriated by a city for observance of Memorial and Veterans days therein pursuant to section twelve of this chapter shall be expended under the direction of a board composed of the mayor and the commanders and quartermasters of the Grand Army posts, the American Legion, the United Spanish War Veterans camps, the Veterans of Foreign Wars of the United States, the Army and Navy Union of the United States, the Marine Corps League, Inc., the Catholic War Veterans, Inc., the Italian American War Veterans of the United States, Incorporated, the Jewish War Veterans of the United States and commanders and treasurers of Sons of Veterans, Military Order of the Purple Heart, Inc., Disabled American Veterans camps, AMVETS, American Veterans of World War II, Masonic War Veterans of the State of New York, Inc., Veterans of World War I of the United States of America Department of New York, Inc., Polish-American Veterans of World War II, Amsterdam, N. Y., Inc., Polish-American Veterans of World War II, Schenectady, N. Y., Inc., Polish Legion of American Veterans, Inc., United Veteran's Association of America, Incorporated, Vietnam Veterans of America and the United Veterans Memorial and Executive Committee of such city. The whole amount of such money appropriated or any part thereof may be spent by such board in observance of Memorial and Veterans days. Bills properly verified for all claims and expenditures arising under section twelve of this chapter or under this section, shall be presented to and audited by such board and shall be paid by the common council of any such city. The moneys appropriated shall be raised by tax on the real and personal property liable to taxation in any such city in the same manner as the ordinary expenses of maintaining the city government.

§ 13-a. Moneys for maintaining the conference of mayors and other city officials of the state of New York and any of its activities. The common council of any city is hereby authorized to appropriate and expend annually, from moneys raised by taxation in such city, a sum to meet the actual and necessary expenses of maintaining and continuing the conference of mayors and other city officials of the state of New York and any of its activities, in this state, for the purpose of devising practicable ways and means for obtaining greater economy and efficiency in the government thereof. The moneys thus appropriated shall be raised by tax on the real and personal property liable to taxation in any such city in the same manner as other city expenses.

§ 13-b. Publicity fund. Any city may establish a publicity fund of such amount as the city council or other governing body may by resolution direct, to be expended for the purpose of advertising the advantages of such city as a winter and summer resort, or for the commemoration programs of historical events, or otherwise, including the necessary and legitimate expense of securing the designation of such city as the place for holding the convention or meeting of any organization or society, and for such other and additional purposes as may tend to promote the general commercial and industrial welfare of the city, and for that purpose may raise by taxation a sum not exceeding twenty-five thousand dollars per annum to be assessed, levied and collected in the same manner that other city taxes are assessed, levied and collected. Notwithstanding the provisions of this section, the city council of any city may by local law establish a publicity fund in excess of twenty-five thousand dollars per annum, as such local law shall direct. Such local law shall be subject to a referendum on petition. Such sum shall be raised by taxation and shall be assessed, levied and collected in the same manner that other city taxes are assessed, levied and collected. Provided, however, that if the city council of any city with a population of fifty thousand or less establishes, by local law, a publicity fund in excess of fifty thousand dollars, such local law shall become operative only after it shall be adopted after submission to the qualified voters of the city, and due adoption thereof by a majority of the qualified voters of the city voting thereon at a general election.

§ 13-c. Power of cities to provide moneys to replace revenues from excise taxes. The common council or other governing body of any city, in which the trafficking in liquor is prohibited wholly or partly may raise, as long as the trafficking in liquor is prohibited, an amount not exceeding the revenue derived from excise taxes on alcoholic beverages in the last year in which the excise taxes were received. Such amount to be raised shall be included in the tax levy in addition to all other sums which the common council or other governing body is authorized to raise, any provision of the city charter to the contrary notwithstanding.

In a city having a board of estimate and apportionment, action by the common council or other governing body under this section shall not be taken except with the consent of such board.

§ 13-e. Expenses of meeting rooms for veterans' and other organizations. Any city may appropriate and make available a sum of money not exceeding five hundred dollars in any one year for each chapter, post, camp or garrison, as the case may be, of the Grand Army of the Republic, the United Spanish War Veterans, the Veterans of Foreign Wars, the American Legion, the Disabled American Veterans, the Military Order of the Purple Heart, Inc., the Army and Navy Union of the United States, the Marine Corps League, AMVETS, American Veterans of

World War II, the Italian American War Veterans of the United States, Incorporated, Veterans of World War I of the United States of America Department of New York, Inc., Polish-American Veterans of World War II, Amsterdam, N. Y., Inc., Polish-American Veterans of World War II, Schenectady, N. Y., Inc., Polish Legion of American Veterans, Inc., the Jewish War Veterans of the United States, Inc., the Catholic War Veterans, Inc., Masonic War Veterans of the State of New York, Inc., the American Gold Star Mothers, Inc., Regular Veterans Association, Inc., the Viet Nam Veterans of America, the Eastern Paralyzed Veterans Association, the 369th Veterans Association, Inc., the Tri-County Council of Vietnam Veterans, the National Congress of Puerto Rican Veterans, the Navy Seabee Veterans of America, the Korean War Veterans Association, the Women's Army Corps Veterans Association, or the Navy Club of the U.S.A., located within its boundaries, for the purpose of assisting in defraying the rental or maintenance expenses, or both, of rooms for the holding of meetings of any such post, camp, garrison or chapter. All sums hereby authorized to be expended shall be appropriated, raised and expended, in the same manner as moneys for other municipal expenses in the city are appropriated, raised and expended.

§ 13-f. Moneys for maintaining the municipal electric utilities association of the state of New York and any of its activities. The common council of any city or the board in control of any electric utility owned and operated by the city is hereby authorized to appropriate and expend annually from moneys derived from the operation of the said utility a sum to meet its proportionate share of the actual and necessary expenses of maintaining and continuing the municipal electric utilities association of the state of New York and any of its activities, in this state, for the purpose of devising practical ways and means for obtaining greater economy and efficiency in the operation of the utility.

§ 13-g. Moneys for maintaining the New York State Assessors Association and any of its activities. The common council of any city is hereby authorized to appropriate and expend annually a sum to meet its proportionate share of the actual and necessary expenses of maintaining and continuing the New York State Assessors Association and any of its activities, in this state, for the purpose of the improvement of assessment administration.

§ 13-h. Moneys for maintaining statewide associations of local officials and any of their activities. The common council of any city is hereby authorized to appropriate and expend annually a sum to meet its proportionate share of the actual and necessary expenses of maintaining and continuing any state-wide, non-profit association of local officials whose activities are designed to improve local administration in this state.

§ 14. Permits for erection of booths and arches. The mayor of any city of the first class or the commissioner of transportation in the city of New York, may, in his discretion, grant temporary permits for the erection of booths, stands, arches, overhead passageways, or flagstaffs for the stringing of flags or banners, upon or over the sidewalks or streets of such city for the purpose of a public celebration, exposition, fair, political demonstration or any charitable or patriotic drive, function or celebration; provided, however, that no such permit shall be granted for the erection of any such structure or device which is to be used in whole or in part for business or commercial advertising purposes. No such permit shall be granted by virtue of this section without the consent of the owners of the abutting property constituting more than one-half of the foot frontage upon both sides of such street in the block formed by the nearest cross-streets on each side of such structure or erection.

§ 15. Firefighters moving from one city to another. The firefighters of the different cities of this state, in case of removal from one city to another, shall be allowed the time which they have served as such firefighters in the city they left, in the city to which they have removed, upon producing a certificate of such service, signed by the chief of the city so left, and being appointed firefighters in the city to which they have removed.

§ 16. Term of service; how reckoned. When any such firefighter shall have served as such for so long a time thereafter as shall make the whole term of service the same as required by law of firefighters residing in the city removed to, he shall be entitled to all the privileges and exemptions secured by law to the firefighters of the cities of Albany and New York.

§ 16-a. Volunteer members of fire companies. 1. Except as otherwise provided in a city charter or other special or local law, volunteer members of a fire company shall be elected and appointed as provided in this section.

2. The board of fire commissioners or other body or officer having control of the fire department shall appoint residents of the city as the volunteer members of any newly organized fire company. Thereafter, the fire company may elect other eligible persons, including city officers, as volunteer members. The election shall be pursuant to the by-laws, if any, of the fire company; otherwise, by a three-fourths vote of the members of the fire company present and voting at a regular or special meeting thereof. The membership of any person so elected shall become effective when approved by resolution of the board of fire commissioners or such other body or officer. Membership shall be deemed to have been approved pursuant to this subdivision in the event that no action is taken by such board, body or officer, either approving or disapproving, within thirty days after service of written notice of election to membership shall have been made by the secretary of the fire company upon the chairman of such board or body, or upon such officer, either personally or by mail.

3. Any person elected to membership as a volunteer member of a fire company shall be a resident of the city or of territory outside the city

which is afforded fire protection by the fire department of the city, or any fire company thereof, pursuant to a contract for fire protection, except as otherwise provided in subdivision six.

4. The membership of a volunteer member of a fire company shall terminate when he ceases to be a resident of the city or of any territory outside the city which is afforded fire protection by the fire department of the city, or any fire company thereof, pursuant to a contract for fire protection, except as otherwise provided in subdivision five.

5. Any fire company may authorize the continued membership of any volunteer member where such member notifies the secretary of his or her fire company (a) that he or she plans to change his or her residence to territory which is not in the city and is not protected by the fire department of the city, or any fire company thereof, pursuant to a contract for fire protection, and (b) that by reason of his or her residence in the vicinity and his or her usual occupation he or she will be available to render active service as a volunteer firefighter in the city or in territory outside the city which is afforded fire protection pursuant to a contract for fire protection by the fire department of the city, or a fire company thereof. Such authorization shall be pursuant to the by-laws, if any, of the fire company of which he or she is a member, otherwise by a three-fourths vote of the members of such fire company present and voting at a regular or special meeting thereof. Such authorization shall not become effective unless approved by resolution of the board of fire commissioners or other body or officer hereinabove mentioned. Any membership continued pursuant to the provisions of this subdivision shall terminate when the member cannot meet either the requirements of this subdivision or the residence requirements of subdivision three. In the case of a city which adjoins another state, the term "vicinity", as used in this subdivision, includes territory in this state and territory in the adjoining state.

6. A person who cannot meet the residence requirements of subdivision three of this section may be elected to membership as a volunteer member of any fire company of the fire department if by reason of his or her

residence in the vicinity and his or her usual occupation he or she will be available to render active service as a volunteer firefighter in the city or in territory which is afforded fire protection pursuant to a contract for fire protection by the fire department of the city or a fire company thereof. Such authorization shall be pursuant to the by-laws, if any, of the fire company; otherwise by a three-fourths vote of the members of the fire company present and voting at a regular or special meeting thereof. Such authorization shall not become effective unless approved by resolution of the board of fire commissioners or other body or officer hereinabove mentioned. The membership of any volunteer member elected pursuant to the provisions of this subdivision shall terminate when the member cannot meet either the requirements of this subdivision or the residence requirements of subdivision three. In the case of a city which adjoins another state, the term "vicinity", as used in this subdivision, includes territory in this state and territory in the adjoining state.

7. The membership of any volunteer firefighter shall not be continued pursuant to subdivision five of this section, and persons shall not be elected to membership pursuant to subdivision six of this section, if, by so doing, the percentage of such non-resident members in the fire company would exceed forty-five per centum of the actual membership of the fire company.

8. The legislative body of the city, or the board of fire commissioners or other body or officer hereinabove mentioned subject to approval of such legislative body, by resolution may restrict the membership of volunteer members in any or all of the fire companies of the fire department to residents of the city. Any volunteer member who then resides in territory outside the city shall cease to be a member of any fire company to which the restriction is applicable unless the resolution provides that his membership shall continue during the existence of any lawful contract for fire protection to such territory by his company or the fire department or during the period in which he may continue to meet the requirements of subdivision three, five or six.

9. Residents of outside territory protected pursuant to a contract for

fire protection who have been elected to volunteer membership, and non-residents whose volunteer memberships have been authorized or continued pursuant to subdivision five or six, shall have all the powers, duties, immunities, and privileges of resident volunteer members, except (1) they may not be elected or appointed to any office of the fire department which is required by law to be held by an elector of the city, (2) non-residents of the state may not be appointed or elected to any office in the fire company or fire department, and (3) a non-resident of this state whose membership has been continued pursuant to subdivision five of this section, or a non-resident of this state who was elected to membership pursuant to subdivision six of this section, shall not be considered to be performing any firemanic duty, or to be engaged in any firemanic activity, as a member of the fire company while he or she is outside of this state unless and until he or she has first reported to the officer or firefighter in command of his or her fire department, or any company, squad or other unit thereof, engaged or to be engaged in rendering service outside this state, or has received orders or authorization from an officer of the fire department or fire company to participate in or attend authorized activities outside of this state in the same manner as resident members of the fire company.

10. A person shall not be eligible to volunteer membership in more than one fire company at one time.

11. The term "contract for fire protection" as used in this section means one under which a cash consideration is received by the city or by the fire department or a fire company thereof for the furnishing of fire protection to an area outside the city. Any such contract shall be deemed in full force and effect for the purposes of this section if negotiations are pending for the renewal thereof.

12. The provisions of this section shall not be deemed to authorize the election of any person as a member of a fire company or the continuance of membership in a fire company as herein provided if such election or continuance of membership shall be contrary to the by-laws, rules or regulations of the fire company or of the fire department of the city

13. Any person:

(1) who was recognized prior to the first day of January, two thousand eleven, as a volunteer member of any fire company of a city subject to the provisions of this section by the governing board or board of fire commissioners of the city or by the officers and members of his fire company, and

(2) who rendered active service with such fire company between such dates, and

(3) who was, at the time of his or her election to membership, a resident of the city or of territory outside the city which was afforded fire protection by the fire department of the city, or any fire company thereof, pursuant to a contract for fire protection, or who was a non-resident who was elected to membership or who was continued as a member, pursuant to the provisions of subdivision five or six of this section, shall for all purposes in law be considered to have been duly elected and approved, or continued, as a member in such fire company as of the date of such approval, if any, and, if none, then as of the date of such election or, in the case of a continuance, as of the date of the approval, if any, by the board of fire commissioners or the governing board, and, if none, as of the date of authorization of continuance by the fire company; notwithstanding that there may have been some legal defect in such election, or the proceedings precedent thereto, or a failure of the board of fire commissioners or governing board to approve such member, or approve the continuance of membership of such member, as provided by the law in force at the time of such election, or continuance, and the status of such person as a volunteer firefighter as of such date is hereby legalized, validated and confirmed. This subdivision shall not apply to a person, if any, whose volunteer membership in a fire company was disapproved by the board of fire commissioners or declared invalid by a court of competent jurisdiction prior to the first day of January, two thousand eleven.

14. (a) It shall be an unlawful discriminatory practice for any volunteer fire department or fire company, through any member or members thereof, officers, board of fire commissioners or other body or office having power of appointment of volunteer firefighters in any fire

department or fire company pursuant to this section, because of the race, creed, color, national origin, sex or marital status of any individual, to exclude or to expel from its volunteer membership such individual, or to discriminate against any of its members because of the race, creed, color, national origin, sex or marital status of such volunteer members.

(b) Any person claiming to be aggrieved by an unlawful discriminatory practice pursuant to this section may by himself or his attorney at law make, sign and file with the state division of human rights, a verified complaint which shall set forth the particulars of the alleged unlawful discriminatory practice and contain such other information as the division of human rights may require. The division shall thereupon cause to be made an investigation and disposition of the charges pursuant to the provisions of article fifteen of the executive law.

§ 16-b. Computation of pensions in certain retirement funds. Notwithstanding the provisions of any other law, general or special, the members of every teachers' retirement system in all cities of the state shall, when retired pursuant to the law governing such system, receive a pension, if lawfully entitled thereto, based on the average annual compensation earnable as a teacher during the five years immediately preceding the date of his retirement, or the average annual compensation earnable as a teacher during any ten consecutive years of state service, said ten years to be selected by the member prior to date of retirement.

§ 16-c. Minimum service retirement benefits for certain sanitation department employees in cities and who are members of pension or retirement systems maintained by such cities. 1. For the purposes of this section the uniformed force of a city department of sanitation or similar department or agency shall be deemed to consist of sanitationman, assistant foreman, foreman, district superintendent, senior superintendent, supervising superintendent, principal superintendent, city superintendent, director of operations and general superintendent.

2. Notwithstanding the provisions of any general, special or local law, charter or administrative code to the contrary, and in lieu of any lesser amount otherwise prescribed, any person:

(a) who is a member of the uniformed force of the department of sanitation or similar department or agency of a city, and is a member of a pension or retirement system maintained by such city; and

(b) who, by reason of a plan or option selected by him or otherwise made applicable to him pursuant to or by the administrative code or charter or other local provisions of law governing the rate of contribution and eligibility for service retirement of members of such uniformed force who are members of such city-maintained pension or retirement system:

(1) is required to make contributions to such system at a rate calculated on the basis of a service-fraction of not less than one one-hundredth of his final compensation under such system; and

(2) is eligible for retirement for service upon completion of a minimum of twenty-five years of service in such uniformed force as a member of such system; and

(c) who has completed at least twenty-five years of service in such uniformed force as a member of such system;

shall, upon retirement for service, receive, on account of the first twenty-five years of service in such uniformed force, a pension or retirement allowance which shall, subject to the provisions of this section, be equal to one-half of his annual salary or compensation when so retired.

3. Where a city-maintained pension or retirement system for such members of such uniformed force of such city provides, upon retirement for service, for a retirement allowance consisting of a pension (with or without a pension for-increased-take-home-pay) plus an annuity which is the actuarial equivalent of the member's accumulated contributions or accumulated deductions at the time of his retirement, then in that event there shall be added by the city, whenever required, a further pension of such amount which, together with the member's annuity, shall be sufficient to provide him with a retirement allowance equal to one-half of his annual salary or compensation when so retired. For the purpose only of determining the amount of the additional pension contributions

by the city that may be required, the member's annuity, if any, shall be computed, as it would be, (a) if it were not reduced by the actuarial equivalent of any outstanding loan, (b) if it were not increased by the actuarial equivalent of any additional contributions, (c) if it were not reduced by reason of the member's election to decrease his annuity contributions in order to apply the amount of such reduction in payment of his contributions for old-age and survivors insurance coverage, (d) as it would be without any optional modification.

4. Where additional retirement benefits are payable under the city-maintained pension or retirement system, such additional benefits shall be paid, for service in addition to and in excess of twenty-five years of service, in addition to the minimum retirement benefits required to be paid by this section.

5. The provisions of this section shall not apply to members of the New York state employees' retirement system.

§ 17. Operation of crematories for disposal of garbage. A crematory in any city or within ten miles of the corporate limits of any city, owned or controlled by any person or corporation or by a city, for the treatment or consuming of garbage or other refuse matter or offal, dead animals or fish, shall be so operated by the use of coke, charcoal, or other fuel device and by such appliances and methods that the offensive and noxious gases and fumes arising from the consumption or treatment of such garbage or other refuse matter or offal, dead animals or fish shall be burned or disposed of without offense or danger to the persons residing in the neighborhood of such crematory. The city authorities or the person or corporation owning or controlling such crematory shall cause the necessary devices, and fuel or other supplies to be furnished for the consumption or proper disposal of such gases and fumes. Any city authority or other person or corporation owning or controlling such crematory and any city employee or other person operating such a crematory who shall allow or permit such gases or fumes arising from the consumption of such garbage or other matter to escape and become offensive or dangerous to the persons residing in the neighborhood of such crematory, shall be guilty of a misdemeanor and shall upon conviction be punished by a fine of not less than one hundred dollars nor more than two hundred and fifty dollars for each day that such offensive or noxious gases or fumes are permitted or allowed to escape, or by imprisonment for not more than one year, or both.

§ 18. License to operate moving picture apparatus. It shall not be lawful for any person or persons, save as excepted in section eighteen-a of this article, to operate any moving picture apparatus and its connections in a city of the first class unless such person or persons so operating such apparatus is duly licensed as hereinafter provided. Any person desiring to act as such operator shall make application for a license to so act to the mayor or licensing authority designated by the mayor, unless the charter of said city so designates, which officer shall furnish to each applicant blank forms of application which the applicant shall fill out. Such officer shall make rules and regulations governing the examination of applicants and the issuance of licenses and certificates. A license shall not be granted to an applicant unless he shall have served as an apprentice under a licensed operator, for a period of not less than six months prior to the date of the application; the application must be made in writing, and contain a verified statement to that effect; it must be accompanied by the affidavit of the licensed operator to the same effect; before entering upon the period of apprenticeship the applicant must register his name and address with the officer issuing such license. The applicant shall be given a practical examination under the direction of the officer required to issue such license and if found competent as to his ability to operate moving picture apparatus and its connections shall receive within six days after such examination a license as herein provided. Such license may be revoked or suspended at any time by the officer issuing the same. Every license shall continue in force for one year from the date of issue unless sooner revoked or suspended. Every license, unless revoked or suspended, as herein provided, may at the end of one year from the date of issue thereof be renewed by the officer issuing it in his discretion upon application and with or without further examination as he may direct. Every application for renewal of license must be made within the thirty days previous to the expiration of such license. With every license granted there shall be issued to every person obtaining such license a certificate, certifying that the person named therein is duly authorized to operate moving picture apparatus and its connections. Such certificate shall be displayed in a conspicuous place in the room where the person to whom it is issued operates moving picture apparatus and its connections. No person shall be eligible to procure a license unless he shall be of full age. Any person offending against the provisions of this section, as well as any person who employs or permits a person not licensed as herein provided to operate moving picture apparatus and its connections, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding the sum of one hundred dollars, or imprisonment for a period not exceeding three months, or both.

§ 18-a. Nothing contained in section eighteen shall be considered to apply to any so-called miniature motion picture apparatus which uses only an enclosed incandescent electric lamp and approved acetate of cellulose or slow-burning films, and is of such construction that films ordinarily used on full-sized commercial picture apparatus cannot be used therewith.

§ 18-b. Admission of children to theatres. The local legislative body of any city by a majority vote may provide by local law, subject to the provisions of this section, for the licensing of theatres in such city wherein there shall be exhibited those films which have been licensed by the education department of the state of New York to admit children over the age of eight years and under the age of sixteen years, unaccompanied by a parent or guardian or other adult person.

No child under the age of sixteen years shall be admitted to any theatre unaccompanied by a parent, guardian or other adult person, unless such theatre is licensed pursuant to and complies with the terms of a local law adopted pursuant to this section. Any such local law, and every license issued thereunder, shall require:

1. That a separate section of seats shall be set aside on the main or orchestra floor by the owner, operator, or management of such theatre and used exclusively for children, to which adults shall not be admitted. Such section of seats shall be specified in the license, but provision may be made therein for varying the size of such section at different periods of time.

2. A seat in such section shall be provided for every such child admitted to the theatre.

3. Such children shall not be admitted to such a theatre during the time when their school classes within the city are in session.

4. One matron and such other assistants as may be specified in such local law, shall be provided by such owner, operator, or management of such theatre for the supervision of such children. Such matron shall be licensed by such a city and the license fee, not exceeding two dollars, shall be paid by such owner, operator, or management of such theatre.

Such local law may provide other and additional conditions or limitations but such conditions or limitations shall not require any additional approval of and shall not prohibit the exhibition of any motion picture film duly licensed by the education department of the state of New York.

Such a local law may provide for the enforcement thereof, and may prescribe penalties for violations thereof or of licenses issued thereunder.

The admission of a child between eight and sixteen years of age to a theatre licensed under authority of a local law adopted pursuant to the provisions of this section, where such theatre complies with the terms of this section and of the license, shall not be deemed a violation of the provisions of section 260.20 of the penal law.

§ 18-c. The common council in all cities of the third class shall have the power, upon application, in writing, of the property owners, owning at least two-thirds of the number of feet fronting or abutting upon the street and along the line of any proposed improvement for the construction of an improved system of street lighting, to establish such special lighting district or districts for the proposed system of street lighting, and from time to time may alter or extend the same, with full power to order such construction and installation and to enter into a contract for lighting in such district or districts so established or extended as they may deem proper or expedient.

The amount of any such contract that may be entered into for such special lighting, pursuant to the provisions of this act, shall be assessed, levied and collected upon and between the taxable property in said city and the district or districts respectively, in the same manner and by the same officers as city taxes, charges or expenses for said city are now assessed, levied and collected.

The common council shall, by ordinance, apportion the expenses that shall be borne by the property fronting or abutting upon the street and along the line of the proposed system or systems, and the city at large; but in no event shall the property fronting or abutting upon the street or streets along the line of the proposed system or systems be charged less than fifty per centum for such charges or expenses, nor more than the per centum specified in the application and agreed to by the property owners.

§ 18-d. Duty of street vendors to keep the sidewalk and street clean. Notwithstanding any other provision of law, any city which has a local law or ordinance in relation to responsibility for maintenance of sidewalk and street cleanliness shall apply such law or ordinance or provisions similar thereto to any licensed or unlicensed street vendor using areas of sidewalks and streets subject to such law or ordinance.

ARTICLE 2-A.

POWERS OF CITIES

§ 19. General grant of powers. 1. Every city is granted power to regulate, manage and control its property and local affairs and is granted all the rights, privileges and jurisdiction necessary and proper for carrying such power into execution. No enumeration of powers in this or any other law shall operate to restrict the meaning of this general grant of power, or to exclude other powers comprehended within this general grant.

2. Whenever the constitutionality of any local law, ordinance, rule or regulation of a city is brought into issue upon a trial or hearing of any civil cause of action or proceeding in any court, and the city is not a party to such action or proceeding, notice shall be served upon the city in accordance with section one thousand twelve of the civil practice law and rules.

§ 20. Grant of specific powers. Subject to the constitution and general laws of this state, every city is empowered:

1. To contract and be contracted with and to institute, maintain and defend any action or proceeding in any court.

2. To take, purchase, hold and lease real and personal property within and without the limits of the city; to acquire pursuant to the provisions of the eminent domain procedure law, real property within or without the limits of the city for the construction, maintenance and operation of a sewage disposal plant, together with necessary rights of way for extending its sewage system to, and connecting the same with such disposal plant, to acquire or purchase real property and/or personal property within or without the limits of the city necessary for the construction, maintenance and operation of a water supply system for such city together with necessary rights of way for extending its water supply system to and connecting the same with a source or sources of water supply; to acquire by purchase, if the city is able to agree with the owners on the terms thereof, and otherwise in the manner provided by the eminent domain procedure law, real property within or without the limits of the city for the construction, maintenance and operation of drainage channels and structures for the purpose of flood control, when plans for such purpose have been approved by the state department of environmental conservation, together with necessary rights of way for extending such channels and structures; and also to acquire real and personal property within the limits of the city, for any public or municipal purpose, and to sell and convey the same, but the rights of a

city in and to its water front, ferries, bridges, wharf property, land under water, public landings, wharves, docks, streets, avenues, parks, and all other public places, are hereby declared to be inalienable, except in the cases provided for by subdivision seven of this section.

Notwithstanding any other provision of law, general, special or local, cities with a population of one million or more inhabitants shall have the additional power to acquire any property and the franchises of any person, firm or corporation situated within such city, used and usable in the operation of omnibus lines which are entirely within and do not extend beyond the boundaries of such city, the immediate acquisition of which property and franchises is determined by the board of estimate or other appropriate governing body of such city to be necessary to serve the public convenience through the provision of adequate omnibus transportation, notwithstanding the fact that such property and franchises were or are devoted to a public use. The term "property" as used in this subdivision is defined to include lands, waters, rights in lands or waters, structures, franchises and interests in land, including lands under water and riparian rights, and any and all other things and rights usually included within the said term and includes also any and all interests in such property less than full title, such as easements permanent or temporary, right-of-way, uses, leases, licenses and all other incorporeal hereditaments and every estate, interest or right legal or equitable, and omnibuses, rolling stock and any other form of real or personal property. Acquisition of such property shall be in accordance with the provisions of the eminent domain procedure law.

Notwithstanding the provisions of any general, special or local law to the contrary, such city may authorize, issue and sell obligations, pursuant to the local finance law, to pay for the cost of any acquisition or acquisitions of such property used and usable in the operation of omnibus lines provided, however, that no such obligations shall be authorized, issued, sold or refunded after September thirtieth, nineteen hundred sixty-three, except, however, that such obligations may be authorized, issued, sold or refunded by such city pursuant to such law after such date, to pay for the cost of any acquisition or acquisitions of such property, title to which vested in such city prior to July first, nineteen hundred sixty-two. The maximum period of probable usefulness for each such object or purpose for which obligations may be issued hereunder is hereby determined to be as follows:

a. The acquisition of real property, thirty years.

b. The acquisition of omnibuses and other necessary personal property, five years.

c. The acquisition of franchises, five years.

Notwithstanding any general, special or local law to the contrary, the city of New York is hereby required to acquire by condemnation, and to maintain and operate, all or part of the plants, properties, mains, pipes, facilities, easements, franchises and other real or personal property of the Jamaica Water Supply Company constituting or related to the water distribution system located in the city of New York, notwithstanding the fact that such property or part thereof was or is devoted to a public use. Notwithstanding any general, special or local law to the contrary, title to the property condemned under the preceding sentence shall vest in the city of New York and compensation shall be paid only (a) upon a decision by the supreme court that compensation for the property so condemned shall be determined solely by the income capitalization method of valuation, based on the actual net income as allowed by the public service commission, and (b) upon such court's determination of the amount of such compensation, based upon the income capitalization method, entry of the final judgment, the filing of the final decree, and the conclusion of any appeal or expiration of the time to file an appeal related to the condemnation proceeding. Should any court determine that a method of compensation other than the income capitalization method be utilized, or if the proposed award is more than the rate base of the assets taken in condemnation as utilized by the public service commission in setting rates and as certified by the public service commission, the city of New York may withdraw the condemnation proceeding without prejudice or costs to any party.

2-a. To make and execute by its local governing body, a lease or leases of space in any building owned by the city for a term or terms of not to exceed three years, provided that not more than one-half of the space in any such building may be so leased to any one person and provided that the annual rent does not exceed the sum of five thousand dollars. Any such lease may be made without holding a public auction or requiring the submission of sealed bids therefor, but no such lease shall be made and executed unless notice of the proposed leasing is published as required by law for three days in any seven day period. Such notice shall contain a summary of the terms and conditions of the proposed lease which shall include a statement of the area of space proposed to be leased, the location of the building in which such space is contained and the rent to be paid therefor.

3. To take by gift, grant, bequest or devise and to hold and administer real and personal property within and without the limits of the city, absolutely or in trust for any public or municipal purpose, upon such terms and conditions as may be prescribed by the grantor or donor and accepted by the city.

4. To levy and collect taxes on real and personal property for any public or municipal purpose.

5. To spend money for any public or municipal purpose; to pay or compromise claims equitably payable by the city, though not constituting obligations legally binding on it, but it shall have no power to waive the defense of the statute of limitations or to grant extra compensation to any public officer, servant or contractor.

6. To establish and maintain sinking funds for the liquidation of principal and interest of any indebtedness.

7. To lay out, establish, construct, maintain, operate, alter and discontinue streets, sewers and drainage systems, water supply systems, and lighting systems, for lighting streets, public buildings and public places, and to lay out, establish, construct, maintain and operate markets, parks, playgrounds and public places, and upon the

discontinuance thereof to sell and convey the same, and the city council or other body constituting the local authorities of any city having a population of less than one million, notwithstanding the provisions of any special or local act, may acquire on its behalf by purchase or by condemnation any water supply system owned and operated by a waterworks corporation within the limits of such city, and where such water supply system extends beyond the limits of such city, any such city may acquire on its behalf by purchase or by condemnation the portion of the water supply system within the limits of such city, and may pay the purchase price or award therefor wholly or partly by the assumption of outstanding bonds of such waterworks corporation, and to cause the necessary explorations, investigations, examinations, surveys, maps, plans, specifications and reports for its proposed water supply systems or extensions thereof to be made and for such purposes by its officers, agents, servants or employees may enter at all times upon any lands or waters, subject to liability for all damages done.

7-a. To sell and convey the water supply and distribution system of the city, or any part thereof, to a water authority, a county water district or a joint water works system established pursuant to article five-B of the general municipal law. The proceeds of such sale shall be deposited in a reserve fund established for the purpose of retiring outstanding obligations issued by the city to finance the cost of the facilities sold and shall be expended only for such purpose, except as provided below. If the proceeds exceed the sum of all installments of principal of and interest on such indebtedness due or to become due, or if, when all such outstanding obligations shall have been retired, any moneys remain unexpended in the reserve fund, such excess moneys may be used for any city purpose.

8. To control and administer for any business, commercial, maritime or public purpose the waterfront and waterways of the city and to establish, maintain, operate and regulate for any such purpose or purposes docks, piers, wharves, warehouses and all adjuncts and facilities for the utilization of the waterfront and waterways and adjacent property.

8-a. To provide by ordinance of its local governing body for control over the filling or diversion of streams and watercourses, except when authorized by a state or federal agency, by requiring that any person, firm or corporation shall secure a permit before filling or diverting any stream or watercourse from its natural course. The local governing body may in its discretion deny a permit if it determines that the proposed filling or diversion is detrimental to the drainage or welfare of the city.

9. To establish, construct and maintain, operate, alter and discontinue bridges, tunnels and ferries, and approaches thereto, including but not limited to bridges over and across and tunnels under navigable streams, waters, bays or arms of the sea, whether or not the title to the bed thereof is in the state.

10. To grant franchises or rights to use the streets, waters, water front, public ways and public places of the city.

11. To construct and maintain public buildings, public works and public improvements, including local improvements, and assess and levy upon the property benefited thereby the cost thereof, in whole or in part.

12. To prevent and extinguish fires and to protect the inhabitants of the city and property within the city from loss or damage by fire or other casualty.

12-a. May appropriate moneys to a fire department to fund an annual firefighter's inspection dinner for volunteer firefighters and the city of Glen Cove may appropriate moneys to a fire department to fund an annual dinner for installation of fire district officers.

13. To maintain order, enforce the laws, protect property and preserve and care for the safety, health, comfort and general welfare of the inhabitants of the city and visitors thereto; and for any of said purposes to regulate and license occupations and businesses.

14. To create, maintain and administer a system or systems for the enumeration, identification and registration, or either, of the inhabitants of the city and visitors thereto, or such classes thereof as may be deemed advisable.

15. To establish, maintain, manage and administer hospitals, sanitaria, dispensaries, public baths, almshouses, workhouses, reformatories, jails and other charitable and correctional institutions; to relieve, instruct and care for children and poor, sick, infirm, defective, mentally ill or inebriate persons; to provide for the burial of indigent persons; to contribute to and supervise charitable, eleemosynary, correctional or reformatory institutions wholly or partly under private control.

16. To establish and maintain such institutions and instrumentalities for the instruction, enlightenment, improvement, entertainment, recreation and welfare of its inhabitants as it may deem appropriate or necessary for the public interest or advantage.

17. To determine and regulate the number, mode of selection, terms of employment, qualifications, powers and duties and compensation of all employees of the city and the relations of all officers and employees of the city to each other, to the city and to the inhabitants.

18. To create a municipal civil service; to make rules for the classification of the offices and employments in the city's service, for appointments, promotions and examinations, and for the registration and selection of laborers.

19. To regulate the manner of transacting the city's business and affairs and the reporting of and accounting for all transactions of or concerning the city.

20. Subject to the provisions in article four and section one hundred thirteen of the retirement and social security law, to provide methods and provide, manage and administer funds for pensions and annuities for and retirement of city officers and employees, their widows and

dependents.

21. To investigate and inquire into all matters of concern to the city or its inhabitants, and to require and enforce by subpoena the attendance of witnesses at such investigations.

22. To regulate by ordinance or local law any matter within the powers of the city, and to provide penalties, forfeitures and imprisonment to punish violations thereof, and to maintain an action or special proceeding in a court of competent jurisdiction to compel compliance with or restrain by injunction the violation of any such ordinance or local law, notwithstanding that a penalty, forfeiture and/or imprisonment may have been provided to punish violations thereof.

23. To exercise all powers necessary and proper for carrying into execution the powers granted to the city.

24. To regulate and limit the height, bulk and location of buildings hereafter erected, to regulate and determine the area of yards, courts and other open spaces, and to regulate the density of population in any given area, and for said purposes to divide the city into districts. Such regulations shall be uniform for each class of buildings throughout any district, but the regulations in one or more districts may differ from those in other districts. Such regulations shall be designed to secure safety from fire, flood and other dangers and to promote the public health and welfare, including, so far as conditions may permit, provision for adequate light, air, convenience of access, and the accommodation of solar energy systems and equipment and access to sunlight necessary therefor, and shall be made with reasonable regard to the character of buildings erected in each district, the value of land and the use to which it may be put, to the end that such regulations may promote public health, safety and welfare and the most desirable use for which the land of each district may be adapted and may tend to conserve the value of buildings and enhance the value of land throughout the city.

25. To regulate and restrict the location of trades and industries and

the location of buildings, designed for specified uses, and for said purposes to divide the city into districts and to prescribe for each such district the trades and industries that shall be excluded or subjected to special regulation and the uses for which buildings may not be erected or altered. Such regulations shall be designed to promote the public health, safety and general welfare and shall be made with reasonable consideration, among other things, to the character of the district, its peculiar suitability for particular uses, the conservation of property values and the direction of building development, in accord with a well considered plan.

25-b. To acquire by purchase, gift, devise, lease or otherwise, in accordance with the provisions of any appropriate general, special or local law, real and personal property within the limits of the city owned by any stock corporation organized to promote musical art and used as an auditorium and facility for musical concerts, symphonies, recitals and instruction, cultural displays, lectures and exhibits, public assembly and educational, recreational and incidental residential purposes and to maintain and lease or sell such property under such terms and conditions as may be necessary or desirable to effectuate and promote the above described cultural and educational purposes in the interests of the people of the city, and, at the discretion of the local legislative body, and upon such conditions as it may deem appropriate, to provide for the limitation or remission of taxes on such property. The power to remit or limit taxes pursuant to this subdivision shall include the power to remit or limit taxes on property acquired by the city from such stock corporation and used for commercial or residential purposes or both, including any building at any time constructed thereon, provided that a portion of space in any building constructed thereon for such commercial or residential purposes or both is dedicated for the exclusive purposes of a corporation formed other than for profit to support the above described cultural and educational purposes. Such local legislative body may also require the making of tax equivalency payments in such amounts as it may determine in its discretion with respect to such property, and provide that a portion of such payments shall be made to and retained by such corporation, to be used exclusively for such cultural and educational purposes. The exercise of the power granted to the city by this subdivision to require the making of tax equivalency payments and the expenditure of any portion of such tax equivalency payments by such corporation for the above described cultural and educational purposes is in all respects for the general welfare and benefit of the people of the state, and in making such expenditures such corporation shall be regarded as performing a public purpose. The exercise of the powers granted to the city by this subdivision shall, with respect to the owners of the building used for commercial or residential purposes or both, have the same effect as though such payments were taxes as defined in the real property tax law which had been duly levied and imposed upon such owners by the city. The local legislative body shall be authorized to provide that the taxes or tax equivalency payments with respect to the property occupied by such building shall be deemed attributable only to the building. If any person obligated to make tax equivalency payments with respect to such property shall fail to make such payments when due, the city shall have a lien on such property in the same manner and at the same time as if such payments were ordinary real property taxes. Such lien shall have all the priorities of a lien for taxes on such property in favor of the city and shall be enforceable by the city in the manner provided for the collection of tax liens in such city.

26. To establish by ordinance a scale of rents to be called "sewer rents" and to prescribe the manner in which and the time at which such rents are to be paid and to change such scale from time to time as may be deemed advisable. Such rents may be based upon either the metered consumption of water on premises connected with the sewer system making due allowances for commercial use of water, the number and kind of plumbing fixtures connected with the sewer system or the number of persons served by said sewer system or may be determined by the common council, or other local legislative body of the city upon any other equitable basis. Such rents shall constitute a lien upon the real property served by sewers, and such a lien is prior and superior to every other lien or claim, except the lien of an existing tax, water rent or local assessment, and the common council or such local legislative body may bring and maintain an action in the name of the city for the foreclosure of such liens for such sewer rents. The

provisions of this subdivision shall apply only to those cities in which sewer rents have been established and are being imposed on May first, nineteen hundred fifty-one, pursuant to the provisions of this subdivision. The provisions of this subdivision shall not prevent a city from acting pursuant to the provisions of subdivision twenty-six-a of this section.

26-a. To establish and impose sewer rents through the action of its local legislative body pursuant to the provisions of article fourteen-f of the general municipal law.

27. (a) To enact ordinances: (1) To examine, license and regulate master and special electricians; (2) to establish a board for the examination, licensing, and regulation of master and special electricians; (3) to regulate the modification, suspension or revocation of any such licenses for cause after a hearing.

(b) The term "master electrician" as used in this subdivision shall mean and include any person, firm, co-partnership, association or corporation having a regular place of business, who or which performs the work of or who is engaged in the business of electrical contracting and/or of installing, altering and repairing or contracting to install, alter or repair any electric wires or wiring apparatus, fixtures and other appliances used or to be used for the transmission of electricity for light, heat or power, or signaling system where more than fifty volts is required for its operation.

(c) The term "special electrician" as used in this subdivision shall mean and include any person who is in the exclusive employ of the owner, lessee or manager of a building to install, alter or repair electric wiring or appliances for light, heat or power, or to install, alter or repair signalling systems where more than fifty volts is required for operation. Such license may be limited in its scope to any particular premises to be specified in such license, but if so limited the holder thereof shall be entitled to have such location changed from time to time upon application to the board.

(d) Such ordinances shall not apply to a plant operated by a municipality authorized to generate or sell electricity nor to electric corporations as defined in the transportation corporations law, nor to any person or corporation engaged in their behalf, nor to the employees of any of them in performing such work in the conduct of the business of such corporations in installing, maintaining or repairing wires, apparatus or fixtures, or other appliances used by such companies and necessary for or to their business, whether or not such wires, conduits, apparatus, fixtures or other appliances are on its own premises, unless the work in connection therewith is done within a building not owned by such corporation. Such ordinances shall not apply to the installation, maintenance or repair of elevators, dumb-waiters and escalators, nor to the electrical work of a telephone, telegraph, central station, of a protective, railroad or radio broadcasting company, nor to persons performing electrical work for such a company where said electrical work is an integral part of the plant or service used by such company in rendering its duly authorized service to the public. Such ordinances shall not apply to the maintenance, repairing or operation of electrical equipment within a theatre, or other place of public assemblage where entertainment or exhibition is provided, motion picture studio, theatrical studio, or motion picture film laboratory, nor to the installation of temporary electrical cables, assembling or erecting of such theatrical, sound recording, sound reproducing or motion picture equipment where such equipment is an integral part of the theatre, traveling production, motion picture studio or laboratory used in the production or exhibition of stage or motion picture attractions. An ordinance adopted hereunder shall provide that either of said licenses shall be issued upon proof that the applicant has been continuously engaged in work of the character herein defined for a period of five years prior to the enactment of such ordinance, without further examination, provided that such application be made to such board within one year after the enactment of such ordinance.

(e) Any existing board for the examination and licensing of master and/or special electricians in any city to which this subdivision applies, which has been created by the legislative body of said city, is hereby validated and continued until otherwise provided by ordinance. No such board shall possess powers other than those which might be granted to a board created pursuant to an ordinance authorized by this subdivision.

(f) The provisions of this subdivision shall not apply to any city having a population of less than four hundred thousand or more than one million inhabitants.

28. (a) To contract by its local governing body, on recommendation of the board of health or other local health officer or agency, with any non-profit institution organized to conduct research and investigation into the control of diseases of importance to the public health for research and investigation by such institution into the prevention and treatment of communicable diseases and other matters relating to public health. Such contract shall run for a term of not less than ten years and may contain provisions and conditions for renewals thereof, from time to time, for terms of not less than ten years each, provided, however, that during such term or any renewal thereof the mayor or other chief executive officer, the comptroller or other chief fiscal officer and the commissioner of health or other local health officer of such city shall be ex officio members of the board of directors of such institution.

(b) The local governing body is further authorized and empowered to appropriate the sum required to be paid to the institution under the terms of such contract and shall include the sum so appropriated in its budget for the next ensuing fiscal year. The expenditure of all moneys appropriated to the institution shall be subject to the audit of the comptroller or other chief fiscal officer.

29. To contract, by its board of estimate or other local governing body, and in the case of any city with a population of one million or more inhabitants, by its board of estimate, with a non-profit membership corporation, organized under article forty-three of the insurance law and approved by the superintendent of financial services and the state board of social welfare, for the purpose of furnishing medical and surgical services and hospital service as defined in such article forty-three, to persons who contract with such corporation. Any city with a population of one million or more inhabitants, acting by its board of estimate, may make such a contract or contracts with one or more insurance companies authorized to do business in this state or with one or more of such corporations organized under article forty-three of the insurance law, and any such contract or contracts or any health

insurance plan or plans of such city effectuated by such contract or contracts shall be administered by the department of personnel of such city or, if there be no such department therein, by a department, agency or officer thereof designated by the board of estimate or other governing board or body of such city. Any such contract entered into by a city shall permit any officer or employee or group of officers or employees of an agency or department who is paid out of the city treasury voluntarily to subscribe to a plan or plans providing for medical and surgical services and hospital service to such officers or employees and their families. The comptroller or other disbursing officer of the city shall be authorized to deduct from the wages or salary paid by the city to such officer or employee, with the prior consent of such contracting or subscribing officer or employee, the sums required to be paid by such officer or employee to such corporation or company. Such board of estimate or other local governing body, and in the case of any city with a population of one million or more inhabitants, the authorities authorized by law to make expense budget appropriations, if such contract or plan provides that the employer shall contribute a share of the cost of such medical and surgical services and hospital service, shall have power to appropriate a sum required to be paid under such contract by the city as employer. The sum to be paid under such contract, in the discretion of such board or body, may be a payment equal to the sum of the contributions of individual officers or employees who have subscribed to the plan or plans of such corporation or company, and in the case of any city with a population of one million or more inhabitants, may be a payment equal to all or any part of the sum to be paid under such contract. The sum so appropriated shall be included in the city's budget for the next ensuing fiscal year. The city shall be authorized to pay directly to such corporation or company the total of such appropriation and of such officer or employee deductions.

29-a. To contract, by its board of estimate or other local governing body, and in the case of any city having a population of one million or more, by its board of estimate, with such non-profit membership corporation organized under article forty-three of the insurance law, and in the case of any city with a population of one million or more inhabitants, with one or more insurance companies authorized to do business in this state or with one or more of such corporations organized under article forty-three of the insurance law, for the purpose of providing and administering, as in subdivision twenty-nine of section twenty of the general city law, health insurance for retired officers and employees of an agency or department and their spouses and their dependent children and for the widowed spouses and dependent children of employees of an agency or department of such city whose death was the natural and proximate result of an accident sustained while an employee of such city and while in the performance of duty. During any period in which a retired employee voluntarily subscribes to such plan or plans after the date of his retirement, the comptroller shall be authorized to deduct from his retirement allowance the contribution required to be paid by such officer or employee to such corporation or company. During any period in which the widowed spouse or dependent children of an employee of any agency or department of such city voluntarily subscribes to such plan or plans after the death of such employee, the comptroller shall be authorized to deduct from the pension or other allowance payable to such widowed spouse or dependent children the contribution required to be paid by such spouse or children to such corporation or company. Where an authority, created under the public authorities law or defined in section three of the public housing law, which performs its functions wholly within a city having a population of one million or more inhabitants, is providing for its former officers and employees, who are retirees of a retirement system maintained by such city, a health insurance plan or plans with any such carrier or carriers similar to a health insurance plan or plans provided by such city for its retirees, the comptroller or other disbursing officer of such city shall be authorized to deduct from the retirement allowance of any such retiree of an authority the contribution or share, if any, required to be paid by such retiree who voluntarily elects coverage under any of such plans.

29-b. To reimburse any retired officer or employee who:

(1) at the time of retirement was an employee of an agency or department and was paid out of the city treasury;

(2) is receiving a retirement allowance, pension or other retirement

benefit from a retirement or other pension system maintained by the city; and

(3) is enrolled in a choice of health plans program offered by the city;

for premium charges for supplementary medical insurance benefits under the federal old-age, survivors and disability insurance benefit program for such officer or employee, if he is enrolled under such federal program, and for his spouse, if he or she is so enrolled. Such reimbursement may be made monthly or at other intervals, and shall not exceed the amount of premium charges paid for such supplementary medical insurance benefits.

30. To enact ordinances creating a lien for towing, storage and incidental expenses upon vehicles found standing or parked in violation of ordinances and removed and stored as an abatement of a nuisance, and imposing a charge against the owner or persons entitled to possession of such vehicles and providing the procedure for the determination of ownership or right to possession and the collection of such lien or charge, including public sale of the said vehicle.

31. May permit the use of any city-owned street or highway machinery, tools or equipment by a county in which such city is wholly or partly located or by a municipal subdivision, district, district corporation or school district, wholly or partly within such a county, upon such terms as may be agreed upon but with the payment to the city of not less than the hourly rate as fixed by the state commissioner of transportation for the rental or hiring of such machinery, tools or equipment by the city. Moneys received by a city pursuant to the provisions of this subdivision may be applied to the payment of any existing obligations of the city or transferred to the general fund.

32. To create by resolution of the local governing body a board, commission or department of traffic control in order to more effectively regulate and control vehicular and pedestrian traffic and better to serve the public convenience, promote public safety and to protect human life, health and property. Such a traffic agency shall consist of not less than five nor more than nine members who shall be appointed by the

mayor. The chairman or head of such agency shall be a licensed professional engineer who shall have at least ten years' experience in traffic engineering. He shall also be the city traffic engineer and shall receive an annual salary. Such agency members shall include the commissioners of police and public works and the chairman of the city planning commission or the officials occupying analogous offices and one other qualified person and the mayor may designate other qualified city officers or employees to serve as members ex officio and without additional compensation. Such traffic agency may contain within its departmental structure a bureau of traffic engineering which bureau shall be under the immediate supervision of the city traffic engineer.

Whenever such a traffic agency shall be created as in this subdivision provided it shall, notwithstanding any other provision of law, possess exclusive power and authority within such city to (a) regulate, direct, restrict and otherwise to control the movement of vehicular and pedestrian traffic, but not inconsistent with the provisions of the vehicle and traffic law in relation thereto, (b) limit the carrying capacity of vehicles used in the business of carrying passengers for hire, except omnibuses operated pursuant to certificates of public convenience and necessity issued by commissioner of transportation, (c) determine the location of garages, parking lots and parking meters, (d) determine the design, type, size, method of erection, installation, removal, maintenance, operation and location of any and all signs, signals, markings, and similar devices for guiding, directing or otherwise regulating and controlling such traffic and, with the approval of the local governing board, may relinquish for transfer and assignment to any other agency of the city government part or all of one or more such powers and duties, and (e) make rules and regulations for the conduct of vehicular and pedestrian traffic in the use of the public streets, squares and avenues as such board, commission or department may deem necessary. Such rules and regulations shall be filed with the city clerk and shall become effective when published in a paper published by the city or, if no paper be published by such city, in not less than three newspapers having a general daily circulation in such city, except that in a city having a population of not more than thirty thousand, such rules and regulations shall be published in one newspaper published or having a general circulation in such city. The violation of any provision of any such rule or regulation shall be triable by a city magistrate and punishable by imprisonment of not more than thirty days or by a fine of not more than fifty dollars or both.

Nothing in this subdivision contained shall affect or impair the powers or duties of the city planning commission or of any analogous agency of city government to determine the location of garages and parking lots or affect the power or duty imposed on the police department or other analogous agency to regulate hacks, taxicabs and taxi drivers pursuant to the provisions of any city charter, local law or ordinance and any such power and duty shall continue to be exercised and performed under the jurisdiction and control of such department or agency.

Upon the adoption of a resolution creating such a traffic agency, and except as in this subdivision otherwise provided, all of the functions, powers and duties vested in such traffic agency which theretofore were exercised and performed by any other agency of the city government of such city, together with all records, property and equipment used in the exercise and performance of such functions, powers or duties shall, on the date fixed in such resolution, pass to and be in addition to the functions, powers and duties vested in such traffic agency by this subdivision.

33. By resolution of its legislative body to authorize the payment of a reasonable mileage allowance for the miles actually and necessarily traveled on official business by any city officer or employee by the use of his own automobile.

34. To adopt a local law providing that every deed given by such city pursuant to any general or special law providing for the foreclosure of a tax lien by action in rem, shall be presumptive evidence that the action and all proceedings therein and all proceedings prior thereto from and including the assessment of the lands affected and all notices required by law were regular and in accordance with all provisions of law relating thereto.

After two years from the date of the record of such deed, the presumption shall be conclusive, unless at the time that such local law takes effect the two year period since the record of the deed has expired or less than six months of such period of two years remains unexpired, in which case the presumption shall become conclusive six months after such local law takes effect. No action to set aside such deed may be maintained unless the action is commenced and a note of pendency of the action is filed in the office of the proper county clerk prior to the time that the presumption becomes conclusive as aforesaid.

35. To adopt a local law or ordinance compelling the repair or removal of any building or structure that, from any cause, endangers the health, safety or welfare of the public, providing as follows:

a. For an inspection and report by the director of buildings of the city.

b. For the service of a notice upon the owner, and all other persons having an interest in such property or structure, either personally or by registered mail, addressed to his last known address as shown by the records of the officer or agency of the city charged with the assessment of real property therein or collection of real property taxes thereon and/or in the office of the county clerk or county register, containing a description of the premises, a statement of the particulars in which the building or structure is unsafe or dangerous and an order of the director of buildings requiring same to be repaired or removed; and if such service be made by registered mail, for the posting of a copy of such notice on the premises.

c. For the time within which the owner so served shall commence the repair or removal of such building or structure.

d. For the filing of a copy of such notice in the office of the county clerk of the county within which such building or structure is located, which notice shall be filed by such clerk in the same manner as a notice of pendency pursuant to article sixty-five of the civil practice law and rules, and shall have the same effect as a notice of pendency as therein provided, except as otherwise hereinafter provided in this paragraph. A notice so filed shall be effective for a period of one year from the date of filing, provided, however, that it may be vacated upon the order of a judge or justice of a court of record or upon the consent of the corporation counsel. The clerk of the county where such notice is filed shall mark such notice and any record or docket thereof as cancelled of record upon the presentation and filing of such consent or of a certified copy of such order.

e. For a hearing before the director of buildings, notice of which and the time and place thereof to be specified in the notice to repair or demolish, served upon the owner and such persons having an interest in the property or structure as is herein prescribed.

f. For the removal of such building or structure by the city in the event such owner fails or refuses to repair or remove the same within the time provided.

g. For the assessment of all costs and expenses incurred by the city in connection with the proceedings to repair or remove such building or structure, including the cost of actually removing the same, against the land on which such building or structure is located.

h. The powers conferred by this subdivision thirty-five shall be in addition to all other powers conferred upon cities in relation to the same subject matter. Nothing contained in this subdivision shall be construed to amend, repeal, modify or affect any existing local law or ordinance or provision of any charter or administrative code pertaining to the subject matter to which this subdivision relates, or to limit or restrict the power of any city to amend or modify any such existing local law, ordinance or provision of any charter or administrative code, or to restrict or limit any power otherwise conferred on any city by law with respect to the subject matter to which this subdivision relates.

36. In cities having a population of fewer than one million inhabitants, to lease to any person, firm or corporation, for commercial

or private use, the air rights over or the subsurface area under any property of the city acquired or to be acquired for street or highway puposes, together with easements or other rights of user necessary for the use and development of such air rights or subsurface areas, as are not needed for public purposes, subject to such reservations, restrictions and conditions as the city deems necessary to assure adequate protection to the safety and the adequacy of street or highway facilities and to abutting or adjacent land users and as the city deems necessary to minimize or avoid public utility facility relocation costs which would otherwise ensue if such facilities were removed without regard to their compatability with the intended use of such air rights or subsurface areas. Any such lease may be for a term not exceeding ninety-nine years and may be renewed for such additional term or terms as the city council may provide. Any buildings, structures, substructures or superstructures, the title to which remains in the lessee, shall be deemed to be real property for purposes of taxation as defined in subdivision twelve of section one hundred two of the real property tax law. Nothing in this subdivision shall be deemed to create any liability arising from the cost of public utility facility relocation not recognized at common law or otherwise created by statute.

37. To adopt ordinances or local laws prohibiting and punishing loitering; provided however, that such ordinance or law shall only prohibit loitering for a specific illegal purpose or loitering in a specific place of restricted public access and shall therein set forth guidelines for application of such prohibitions by law enforcement officers so as to prevent arbitrary or discriminatory enforcement of such prohibitions.

38. a. A city having a population of more than one hundred twenty-five thousand and less than one million, is authorized and empowered to enter into a lease, sublease or other agreement with the dormitory authority providing for the financing or refinancing of all or a portion of school district capital facilities or school district capital equipment in accordance with section sixteen hundred eighty of the public authorities law and with the approval of the commissioner of education. Such lease, sublease, or other agreement may provide for the payment of annual

rentals and other payments to the dormitory authority, and contain such other terms and conditions as may be agreed upon by the parties thereto, including the establishment of reserve funds and indemnities. For purposes of this subdivision, school district capital equipment shall have the meaning ascribed thereto in section sixteen hundred seventy-six of the public authorities law.

b. Notwithstanding any provisions of law to the contrary, the dormitory authority and the board of education are hereby authorized and empowered to perform any and all acts and to enter into any and all agreements necessary or desirable to effectuate the purposes of this subdivision.

§ 20-a. Purchasing department or agency. Each city, except a city of the first class having a population of one million or more inhabitants, is hereby authorized and empowered to create and establish by ordinance of the common council or similar legislative body and to maintain a purchasing department or agency. Such department or agency shall consist of a purchasing agent, who shall be its head, and such assistants and with such salaries as the body which is by charter authorized to designate the number of employees and fix salaries, may from time to time authorize. The purchasing agent shall be appointed and removable at pleasure by the same official or body who or which by charter is now authorized to appoint the heads of city departments. The purchasing agent shall appoint and remove at pleasure such assistants and employees as may be authorized.

The purchasing department or agency shall purchase and be responsible for the proper receipt of all materials and supplies, including those on which bids are obtained after publication of notice pursuant to law unless the legislative body shall by ordinance otherwise provide, as well as those purchased without the requirement of competitive bidding, for such departments, boards, bureaus and offices of the city as shall be designated in the ordinance creating the department. Boards of contract and supply in second class cities and boards with similar powers in other cities and the common council or similar legislative body in cities which have no boards of contract and supply or bodies with similar powers, shall make rules and regulations not inconsistent with general laws or their charter, which shall prescribe the procedure, conditions, methods and practices that shall prevail in regard to all purchases of materials and supplies by the purchasing department or agency, and all departments, boards, bureaus and offices of the city for which supplies are purchased shall obey and comply with such rules and regulations. The purchasing department or agency may sell, under the direction of the board of contract and supply or any body having similar powers or the common council or similar legislative body in those cities which have no boards of contract and supply or body with similar powers, all property, real and personal, of the city not needed for public use and authorized to be sold. The purchasing department or agency shall have charge of such storerooms and warehouses of the city as the legislative body by ordinance may prescribe.

The purchasing agent and such other subordinates of the department as the common council or other legislative body may designate, shall within ten days after appointment execute bonds to be approved by the mayor, payable to such city in amounts to be prescribed by ordinance of the common council or similar legislative body contingent on the faithful performance of the duties of their offices and for a due accounting of all property that may come under their care, custody and control.

§ 20-b. Cities authorized to impose taxes on utilities. Notwithstanding any other provisions of law to the contrary, any city of this state, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in any such city a tax such as was imposed by section one hundred eighty-six-a of the tax law, in effect on January first, nineteen hundred fifty-nine, except that the rate thereof shall not exceed one per centum of gross income or of gross operating income, as the case may be, and may make provision for the collection thereof by the chief fiscal officer of such city; provided, however, that the rate of such tax imposed by the cities of Rochester, Buffalo and Yonkers shall not exceed three per centum of gross income or gross operating income, as the case may be; and provided further that nothing herein contained shall be construed so as to prevent any city from adopting local laws exempting from such tax omnibus corporations subject to the supervision of the state department of public service under article three-a of the public service law. A tax imposed pursuant to this section shall have application only within the territorial limits of any such city, and shall be in addition to any and all other taxes. This section shall not authorize the imposition of a tax on any transaction originating or consummated outside of the territorial limits of any such city, notwithstanding that some act be necessarily performed with respect to such transaction within such limits.

Revenues resulting from the imposition of taxes authorized by this section heretofore or hereafter imposed shall be paid into the treasury of the city imposing the same, and shall be credited to and deposited in the general fund of such city.

All of the provisions of section one hundred eighty-six-a of the tax law, so far as the same are or can be made applicable, with such limitations as are set forth in this section, and such modifications as may be necessary in order to adapt such taxes to local conditions shall apply to the taxes authorized by this section.

Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation, shall be first deposited and an undertaking filed, in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

§ 20-c. Temporary investment of certain city funds in obligations of the United States. Notwithstanding any other provision of law, each city of the state, acting through its board of estimate or other analogous governing body, may authorize its comptroller or other chief fiscal officer, to set aside in a special fund, all or part of the proceeds of the sale of serial or other city bonds sold prior to February first, nineteen hundred forty-five, which such comptroller or other chief fiscal officer may determine, in his discretion, not to be needed immediately for making payments for the purposes for which such bonds were issued, and may authorize such comptroller or other chief fiscal officer to invest such fund in direct obligations of the United States which may be issued in registered or inscribed form until such time as funds are needed or should be available for the purposes for which such bonds were issued. Such comptroller or other chief fiscal officer may thereupon invest such fund in such obligations and may thereafter sell all or any of such obligations whenever he deems such sale advisable. Nothing in this section contained shall be deemed to refer to refunding bonds.

§ 20-d. Alternative procedure for acquisition of certain real property, personal property and franchises of omnibus lines within cities having a population of one million or more inhabitants. Notwithstanding any other provision of law, general, special or local, cities with a population of one million or more inhabitants shall have the additional power to acquire by acquisition any property and the franchises of any person, firm or corporation situated within such city, used and usable in the operation of omnibus lines which are entirely within and do not extend beyond the boundaries of such city, the immediate acquisition of which property and franchises is determined by the board of estimate or other appropriate governing body of such city to be necessary to serve the public convenience through the provision of adequate omnibus transportation, notwithstanding the fact that such property and franchises were or are devoted to a public use. The term "property" as used in this subdivision is defined to include lands, waters, rights in lands or waters, structures, franchises and interests in land, including lands under water and riparian rights, and any and all other things and rights usually included within the said term and includes also any and all interests in such property less than full title, such as easements permanent or temporary, rights-of-way, uses, leases, licenses and all other incorporeal hereditaments and every estate, interest or right legal or equitable, and omnibuses, rolling stock and any other form of real or personal property. Acquisition of such property shall be in accordance with the provisions of the eminent domain procedure law.

Notwithstanding the provisions of any general, special or local law to the contrary, such city may authorize, issue and sell obligations, pursuant to the local finance law, to pay for the cost of any acquisition or acquisitions of such property used and usable in the operation of omnibus lines provided, however, that no such obligations shall be authorized, issued, sold or refunded after September thirtieth, nineteen hundred sixty-three. The maximum period of probable usefulness for each such object or purpose for which obligations may be issued hereunder is hereby determined to be as follows:

a. The acquisition of real property, thirty years.

b. The acquisition of omnibuses and other necessary personal property, five years.

c. The acquisition of franchises, five years.

The provisions of this section constitute an alternative procedure to the procedure set forth in subdivision two of section twenty of this chapter and any city having a population of one million or more inhabitants may proceed under the authority of this section or of such subdivision two of section twenty.

§ 20-e. State office buildings and other public improvements in certain cities. 1. Notwithstanding any other provision of law, general, special or local, every city is hereby authorized and empowered:

(a) To acquire by purchase, gift or dedication, or by acquisition in the manner provided by the eminent domain procedure law, property within such city as a site for an office building or buildings and appurtenances, suitable for the primary use of state departments, agencies and employees, and other public improvements and appurtenances, which site may be located within a larger area previously acquired and cleared under an urban renewal program.

(b) To acquire property from the state as such a site, by lease for a term not exceeding forty years, or by a quitclaim deed conveying all the right, title and interest of the people of the state in and to such property, and to agree that if the city shall fail, within five years from the date of such conveyance, to construct an office building or to construct, reconstruct or otherwise provide a public improvement on such property as may be required by the terms of a contract entered into with the state commissioner of general services in accordance with the provisions of this section, or if any office building so constructed on such property ceases to be used primarily for state purposes, then and in either event, such property shall revert to the people of the state with right of re-entry thereupon; provided, however, that as a condition precedent to the exercise of such right of re-entry the state shall pay to the city such amount as may be specified in a contract or lease entered into between the state commissioner of general services and the city in accordance with the provisions of this act, which amount may equal (i) the purchase price of the city for such property, (ii) the depreciated costs of the city for all buildings, public improvements and appurtenances constructed thereon pursuant to any such contract or lease, and (iii) all other costs of the city incurred pursuant to such contract or lease incident to such property and the construction of such office buildings and the construction, reconstruction or provision of public improvements and appurtenances, including the cost of original fixtures, furnishings, equipment, machinery and apparatus, if any, included in such work or purchased by the city. Upon the exercise by the state of such right of re-entry, the city shall establish a sinking fund pursuant to subdivision six of section twenty of the general city law and any payment made by the state upon exercise of such right of re-entry, to the extent necessary, shall be paid into such fund which shall be maintained solely for the liquidation of the principal of and interest on any indebtedness contracted or incurred by the city in relation to the property which so reverts to the people of the state of New York.

(c) To enter into a contract or contracts with the state commissioner of general services on behalf of the state providing for the construction on such property of one or more office buildings, suitable for the primary use of state departments, agencies and employees, and for the construction, reconstruction or other provision of other public improvements and appurtenances.

(d) To clear such property, close and open streets and public ways, and demolish existing structures as may be required by any such contract with the state commissioner of general services and to construct one or more such office buildings and to construct, reconstruct or otherwise provide for other public improvements and appurtenances in accordance with plans and specifications approved by the state commissioner of general services and incorporated in any such contract.

(e) To designate the state commissioner of general services as its agent in connection with the construction of one or more such office buildings and the construction, reconstruction or provision of other public improvements and appurtenances by the city pursuant to any such contract with the state commissioner of general services, provided that in such case, construction, reconstruction or other contracts in connection therewith shall be let by the state commissioner of general services to the lowest responsible bidder, after public advertisement, in the manner provided in section eight of the public buildings law.

(f) To purchase through the state office of general services, in accordance with section one hundred four of the general municipal law, such furnishings, equipment, machinery and apparatus, not included in the construction plans and specifications, as may be specified by contract with the state commissioner of general services for installation in an office building, public improvement or appurtenances, and to install, alter or improve the same in accordance with such contract.

(g) To lease to the state, for possession upon the completion of work, all office buildings and public improvements and appurtenances constructed, reconstructed or provided pursuant to any such contract with the state commissioner of general services, together with the original furnishings, equipment, machinery and apparatus installed therein pursuant to paragraph (f) of this subdivision, and to lease the property upon which such office buildings, public improvements and appurtenances are constructed, reconstructed or provided if such property is owned by the city or to sublease such property to the state if leased to the city, for a term not exceeding forty years and upon such terms and conditions including a fair and reasonable annual rental as may be agreed upon between the city and the state commissioner of general services. The limitations set forth in subdivision two of section twenty-three of this article shall not apply to any such lease.

(h) To sublease from the state an office building or public improvement, or space therein, for the use of city departments, agencies, or employees.

(i) To convey to the state title to all such office buildings and public improvements and appurtenances, and to the property upon which the same are constructed, reconstructed or provided if such property is owned by the city, in fee simple at the expiration of the term of any such lease or upon the earlier payment in full of the total amount specified in any such contract or lease with the state commissioner of general services, without additional charge therefor.

(j) To make appropriate provision in any contract or lease with the state as to liability on account of loss or damage caused by fire, explosion or other catastrophe and as to whether any property, office building, public improvement and appurtenance shall be insured against loss or damage from such causes, for the payment of the cost of such insurance and for the application of (i) any payments made by the state in respect of such liability, or (ii) the proceeds of any such insurance received by the city. If, under the terms of such contract or lease, any payments so made by the state or the proceeds of any such insurance so received by the city are not used to rebuild or repair the property, office building, public improvement or appurtenance destroyed or damaged, the city shall establish a sinking fund pursuant to subdivision six of section twenty of this chapter and, to the extent necessary, shall pay any such payments so made by the state or the proceeds of any such insurance so received into such fund which shall be maintained solely for the liquidation of the principal of and interest on any indebtedness contracted or incurred by the city in relation to the property, office building, public improvement or appurtenance so destroyed or damaged.

(k) From time to time, to authorize, issue and sell obligations, pursuant to the local finance law, to pay the costs of acquiring property, of constructing office buildings, of constructing, reconstructing or otherwise providing other public improvements and appurtenances, including in each case architectural and engineering fees, and of purchasing original furnishings, equipment, machinery and apparatus therefore pursuant to this section. The acquisition of such property, the construction of such office buildings, the construction, reconstruction or other provision of other public improvements and appurtenances and the purchase of such original furnishings, equipment, machinery and apparatus are hereby declared city purposes.

(l) To enter into a contract or contracts in accordance with the provisions of this section, with the state commissioner of general services and with any county containing such city which contract or contracts may provide for:

(i) The acquisition by such city of land suitable for the establishment thereon of a portion of a complex, the remainder of which complex is to be established upon the contiguous site of an office building or buildings suitable for the primary use of state departments, agencies and employees.

(ii) The construction by the city on its land of a building or buildings and public improvements and appurtenances for the uses and purposes of the city and such county.

(iii) The designation by the city of the state commissioner of general services to act as its agent for the joint design, development, construction, reconstruction and provision of the portions of the complex containing common facilities, in accordance with plans and specifications approved by the state commissioner of general services and the city.

(iv) The payment by the state in the first instance, whenever state funds therefor are made available, of any and all costs and expenses of the design, development, construction, reconstruction and development of the portions of the complex containing the common facilities, subject to payment to and reimbursement of the state by the city of its proportionate share of the said costs and expenses, at the time and in the amounts specified in the contract.

(v) The granting, acceptance and exchange of easements, licenses and rights-of-way in, on, over and under any land, building or public improvement in connection with the construction or use of the complex.

(vi) The operation, maintenance and repair by the state and city and such county of the common facilities of the complex and for the payment and reimbursement by the state and city and such county of all costs of such operation, maintenance and repair.

(vii) The defense against claims by third parties arising out of the ownership, operation and control of the common facilities, by insurance or otherwise.

(viii) The repair and reconstruction of any building, common facility, public improvement and appurtenance within the complex damaged or destroyed by fire, explosion or other catastrophe.

(ix) The lease by such city and the state of stores and restaurants within the common facilities for the convenience of state and municipal employees and the public at large upon such terms and conditions, including consideration and length of term as such city and the commissioner of general services deem proper.

2. For purposes of this section:

(a) The term "property" is defined to include lands, waters, rights in lands or waters, structures, franchises and interests in land, including lands under water and riparian rights, and any and all other things and rights usually included within the definition of real property and includes also any and all interests in such property less than full title, such as easements permanent or temporary, rights-of-way, uses, leases, licenses and all other incorporeal hereditaments and every estate, interest or right, legal or equitable.

(b) The term "public improvement" or "public improvements" is defined to include but not limited to a courthouse, an archives and records center, a museum, a laboratory, a park, a garden, a recreation area, restaurants, shops, the installation of trees, shrubs and other landscaping, a monument, fountain, sculpture, a plaza, a substructure and parts thereof, mechanical, pedestrian or vehicular accessways, a parking garage, a parking lot, a pedestrian walkway or overpass or underpass, an arterial highway or connection, a crossroad or access road, a transportation terminal or shelter, a meeting hall, a civil defense shelter against radioactive fallout or blast, and other public structures and facilities intended for the use of state or municipal employees and the public at large.

(c) The term "appurtenances" is defined to include but is not limited to fixtures, equipment, machinery and apparatus which are an integral part of an office building or public improvement and service units and other connections and installations for power, water, sewer, gas, electrical, telephone, heating, air conditioning, ventilating, snow melting, and other utility services.

(d) The term "governmental building complex" or "complex" is defined to mean any building or group of buildings together with their common facilities, related public improvements and appurtenances, constructed by the state and any city and such county as an integrated unit for the primary use of state and municipal offices, departments, agencies, employees and the public at large.

(e) "Common facility" or "common facilities" is defined to mean public improvements or appurtenances for the joint use and benefit of occupants of a governmental building complex.

3. Except as otherwise provided in relation to any amount paid by the

state upon the exercise of a right of re-entry upon property which reverts to the people of the state of New York, or in relation to any payment made by the state on account of loss or damage caused by fire, explosion or other catastrophe, or in relation to any proceeds of insurance, any moneys received by a city from the state in accordance with the provisions of any contract or lease entered into between the city and the state commissioner of general services pursuant to this section shall be applied to and actually used for payment of all costs of operation, maintenance and repair, if required by such contract or lease to be performed by the city, and for payment of any interest on and amortization of or redemption of any city obligations issued pursuant to paragraph (k) of subdivision one of this section, or such moneys shall be deposited in a special fund to be used solely for such payments. The application and use of such payments, or the deposits required therefor, shall not prohibit the city from using any such moneys, in excess of such payments or deposits in any one year, for any lawful city purpose.

§ 20-f. Transfer of development rights; definitions; conditions; procedures. 1. As used in this section:

a. "Development rights" shall mean the rights permitted to a lot, parcel, or area of land under a zoning ordinance or local law respecting permissible use, area, density, bulk or height of improvements executed thereon. Development rights may be calculated and allocated in accordance with such factors as area, floor area, floor area ratios, density, height limitations, or any other criteria that will effectively quantify a value for the development right in a reasonable and uniform manner that will carry out the objectives of this section.

b. "Receiving district" shall mean one or more designated districts or areas of land to which development rights generated from one or more sending districts may be transferred and in which increased development is permitted to occur by reason of such transfer.

c. "Sending district" shall mean one or more designated districts or areas of land in which development rights may be designated for use in one or more receiving districts.

d. "Transfer of development rights" shall mean the process by which development rights are transferred from one lot, parcel, or area of land in any sending district to another lot, parcel or area of land in one or more receiving districts.

2. In addition to existing powers and authorities to regulate by planning or zoning including authorization to provide for transfer of development rights pursuant to other enabling law, the legislative body of any city is hereby empowered to provide for transfer of development rights subject to the conditions hereinafter set forth and such other conditions as the city legislative body deems necessary and appropriate that are consistent with the purposes of this section, except that in cities of over one million any transfer of development rights shall be provided in the zoning ordinance after adoption by the city planning commission and board of estimate. The purpose of providing for transfer of development rights shall be to protect the natural, scenic or agricultural qualities of open lands, to enhance sites and areas of special character or special historical, cultural, aesthetic or economic interest or value, to protect lands at risk from sea level rise, storm surge or flooding, and to enable and encourage flexibility of design and careful management of land in recognition of land as a basic and valuable natural resource. The conditions hereinabove referred to are as follows:

a. That transfer of development rights, and the sending and receiving districts, shall be established in accordance with a well-considered plan within the meaning of subdivision twenty-five of section twenty of this article. The sending district from which transfer of development rights may be authorized shall consist of natural, scenic, recreational, agricultural or open land or sites of special historical, cultural, aesthetic or economic values sought to be protected or lands at risk from sea level rise, storm surge or flooding. Every receiving district, to which transfer of development rights may be authorized, shall have been found by the legislative body of the city, after evaluating the effects of potential increased development which is possible under the transfer of development rights provisions, to contain adequate resources, environmental quality and public facilities including adequate transportation, water supply, waste disposal and fire protection, and that there will be no significant environmentally damaging consequences and such increased development is compatible with the development otherwise permitted by the city and by the federal, state, and county agencies having jurisdiction to approve permissible development within the district. A generic environmental impact statement pursuant to the provisions of article eight of the environmental conservation law shall be prepared by the city for the receiving district before any such district, or any sending district, is designated, and such statement shall be amended from time to time by the city if there are material changes in circumstances. Where a transfer of development rights affects districts in two or more school, special assessment or tax districts, it may not unreasonably transfer the tax burden between the taxpayers of such districts. The receiving and sending districts need not be coterminous with zoning districts.

b. That sending and receiving districts be designated and mapped with specificity and the procedure for transfer of development rights be specified. Notwithstanding any other provision of law to the contrary, environmental quality review pursuant to article eight of the environmental conservation law for any action in a receiving district that utilizes development rights shall only require information specific to the project and site where the action will occur and shall be limited to review of the environmental impacts of the action, if any, not adequately reviewed in the generic environmental impact statement.

c. That the burden upon land within a sending district from which development rights have been transferred shall be documented by an instrument duly executed by the grantor in the form of a conservation easement, as defined in title three of article forty-nine of the environmental conservation law, which burden upon such land shall be enforceable by the appropriate city in addition to any other person or entity granted enforcement rights by the terms of the instrument. All provisions of law applicable to such conservation easements pursuant to such title shall apply with respect to conservation easements hereunder, except that the city may adopt standards pertaining to the duration of such easements that are more stringent than such standards promulgated by the department of environmental conservation pursuant to such title. Upon the designation of any sending district, the city shall adopt regulations establishing uniform minimum standards for instruments creating such easements within the district. No such modification or extinguishment of an easement shall diminish or impair development rights within any receiving district. Any development right which has been transferred by a conservation easement shall be evidenced by a certificate of development right which shall be issued by the city to the transferee in a form suitable for recording in the registry of deeds for the county where the receiving district is situated in the manner of other conveyances of interests in land affecting its title.

d. That within one year after a development right is transferred, the assessed valuation placed on the affected properties for real property tax purposes shall be adjusted to reflect the transfer. A development right which is transferred shall be deemed to be an interest in real property and the rights evidenced thereby shall inure to the benefit of the transferee, and his heirs, successors and assigns.

e. That development rights shall be transferred reflecting the normal market in land, including sales between owners of property in sending and receiving districts, a city may establish a development rights bank or such other account in which development rights may be retained and sold in the best interest of the city. Cities shall be authorized to accept for deposit within the bank gifts, donations, bequests or other development rights. All receipts and proceeds from sales of development rights sold by the city shall be deposited in a special municipal account to be applied against expenditures necessitated by the municipal development rights program.

f. That prior to designation of sending or receiving districts, the legislative body of the city shall evaluate the impact of transfer of development rights upon the potential development of low or moderate income housing lost in sending districts and gained in receiving districts and shall find either there is approximate equivalence between potential low and moderate housing units lost in the sending district and gained in the receiving districts or that the city has or will take reasonable action to compensate for any negative impact upon the availability or potential development of low or moderate income housing caused by the transfer of development rights.

3. A legislative body of a city modifying its zoning ordinance or enacting a local law pursuant to this section shall follow the procedure for adopting and amending its zoning ordinance or local laws, as the case may be, including all provisions for notice applicable for changes or amendments to a zoning ordinance, local law or regulation.

4. Nothing in this section shall be construed to invalidate any provision for transfer of development rights heretofore or hereafter adopted by any local legislative body, or, in the case of cities over one million, by the board of estimate.

§ 20-g. Intermunicipal cooperation in comprehensive planning and land use regulation. 1. Legislative intent. This section is intended to illustrate the statutory authority that any municipal corporation has under article five-G of the general municipal law and place within land use law express statutory authority for cities, towns and villages to enter into agreements to undertake comprehensive planning and land use regulation with each other or one for the other, and to provide that any city, town or village may contract with a county to carry out all or a portion of the ministerial functions related to the land use of such city, town or village as may be agreed upon. By the enactment of this section the legislature seeks to promote intergovernmental cooperation that could result in increased coordination and effectiveness of comprehensive planning and land use regulation, more efficient use of infrastructure and municipal revenues, as well as the enhanced protection of community resources, especially where such resources span municipal boundaries.

2. Authorization and effects. (a) In addition to any other general or

special powers vested in a city to prepare a comprehensive plan and enact and administer land use regulations, by local law or ordinance, rule or regulation, each city is hereby authorized to enter into, amend, cancel and terminate agreements with any other municipality or municipalities to undertake all or a portion of such powers, functions and duties.

(b) Any one or more municipalities located in a county which has established a county planning board, commission or other agency, hereinafter referred to as a county planning agency, are hereby authorized to enter into, amend, cancel and terminate agreements with such county in order to authorize the county planning agency to perform and carry out certain ministerial functions on behalf of such municipality or municipalities related to land use planning and zoning. Such functions may include, but are not limited to, acting in an advisory capacity, assisting in the preparation of comprehensive plans and land use regulations to be adopted and enforced by such municipality or municipalities and participating in the formation and functions of individual or joint administrative boards and bodies formed by one or more municipalities.

(c) Such agreements shall apply only to the performance or exercise of any function or power which each of the municipal corporations has the authority by any general or special law to prescribe, perform, or exercise separately.

3. Definitions. As used herein:

(a) "Municipality", means a city, town or village.

(b) "Community resource", means a specific public facility, infrastructure system, or geographic area of special economic development, environmental, scenic, cultural, historic, recreational, parkland, open space, natural resource, or other unique significance, located wholly or partially within the boundaries of one or more given municipalities.

(c) "Intermunicipal overlay district", means a special land use district which encompasses all or a portion of one or more municipalities for the purpose of protecting, enhancing or developing one or more community resources as provided herein.

4. Intermunicipal agreements. In addition to any other powers granted to municipalities to contract with each other to undertake joint, cooperative agreements any municipality may:

(a) create a consolidated planning board which may replace individual planning boards, if any, which consolidated planning board shall have the powers and duties as shall be determined by such agreement;

(b) create a consolidated zoning board of appeals which may replace individual zoning boards of appeals, if any, which consolidated zoning board of appeals shall have the powers and duties as shall be determined by such agreement;

(c) create a comprehensive plan and/or land use regulations which may be adopted independently by each participating municipality;

(d) provide for a land use administration and enforcement program which may replace individual land use administration and enforcement programs, if any, the terms and conditions of which shall be set forth in such agreement; and

(e) create an intermunicipal overlay district for the purpose of protecting, enhancing or developing community resources that encompass two or more municipalities.

5. Special considerations. (a) Making joint agreements. Any agreement made pursuant to the provisions of this section may contain provisions as the parties deem to be appropriate, and including provisions relative to the items designated in paragraphs a through m inclusive as set forth in subdivision two of section one hundred nineteen-o of the general municipal law.

(b) Establishing the duration of agreement. Any agreement developed pursuant to the provisions of this section may contain procedures for periodic review of the terms and conditions of the agreement, including those relating to the duration, extension or termination.

(c) Amending local laws or ordinances. Local laws or ordinances shall be amended, as appropriate, to reflect the provisions contained in intermunicipal agreements established pursuant to the provisions of this section.

6. Appeal of action by aggrieved party or parties. Any officer, department, board or bureau of any municipality with the approval of the

legislative body, or any person or persons jointly or severally aggrieved by any act or decision of a planning board, zoning board of appeals or agency created pursuant to the provisions of this section may bring a proceeding by article seventy-eight of the civil practice law and rules in a court of record on the ground that such decision is illegal, in whole or in part. Such proceeding must be commenced within thirty days after the filing of the decision in the office of the city clerk. Commencement of the proceeding shall stay proceedings upon the decision from which the appeal is taken. All issues in any proceeding under this section shall have a preference over all other civil actions and proceedings.

7. Any agreements made between two or more municipalities pursuant to article five-G of the general municipal law or any other law which provides for the undertaking of any land use regulation or activity on a joint, cooperative or contract basis, if valid when so made, shall not be invalidated by the provisions of this section.

8. The provisions of this section shall be in addition to existing authority and shall not be deemed or construed as a limitation, diminution or derogation of any statutory authority authorizing municipal cooperation.

§ 21. Public or municipal purpose and general welfare defined. Notwithstanding any other provision of law, the terms "public or municipal purpose," and "general welfare," as used in this article, shall each include the promotion of education, art, beauty, charity, amusement, recreation, health, safety, comfort and convenience, and the promotion, creation, development or expansion of business, commerce, industry or job opportunities, and all of the purposes enumerated in sections twenty, twenty-a, twenty-b, and twenty-e.

§ 21-b. Debt service in relation to certain municipal cooperative activities. If any joint indebtedness described in title one-A of article two of the local finance law is allocated and apportioned, or is excluded, under or pursuant to such title or any other provision of law for the purpose of determining the debt-contracting power of a county, city, town, village or school district, such allocation and apportionment, or exclusion, shall not limit the amount to be raised in any city outside the limitations applicable to cities set forth in section ten of article eight of the constitution to provide for the interest on and the principal of any greater proportionate share of such debt service which the city has agreed or is required to provide. The total of the amounts which may be so raised by all participating public corporations outside any limitation imposed by or pursuant to section ten of article eight of the constitution to provide for their respective portions of any payment of principal or of interest on joint indebtedness shall not exceed the full amount required to be provided by all of such participants to make any such payment.

§ 21-c. Passenger stations of railroad redevelopment corporations in certain cities. 1. Each city having a population of more than one million may from time to time contract with a railroad redevelopment corporation providing passenger service by rail to or from any passenger station within such city and currently certified by the state commissioner of transportation as eligible to receive the exemptions provided by title two-b of the real property tax law to reimburse such corporation for all or part of the costs incurred by it in the operation and maintenance of one or more such stations, owned or used by it, including the buildings, appurtenances, platforms, land and approaches incidental or adjacent thereto, provided, however, that such contract shall contain provisions pursuant to which:

a. The corporation agrees for the term of such contract not to discontinue all passenger or all freight service, or petition any regulatory agency having jurisdiction in respect thereof for permission to discontinue all passenger or all freight service, to or from such stations without the consent of such city;

b. The corporation agrees for the term of such contract to continue the operation and maintenance of such existing facilities or portions thereof as may be required in the public interest for the sale of passenger tickets and the handling of baggage mail and freight at such stations;

c. The corporation shall use the portions of any such station which are not required for the sale of passenger tickets, the handling of baggage, mail and freight or its railroad operations for public purposes or for uses generally available to or serving the general public, including but not limited to access to the railroad and related services, facilities for the convenience and comfort of the general public, the parking of vehicles, public assembly, recreation, cultural activities, shelter, and terminal facilities for other modes of transportation; and

d. Such contract shall expire not later than the first day of July next succeeding its effective date.

Any contract made pursuant to this section may contain such other terms and conditions, not inconsistent with the foregoing, as the city and the corporation may agree.

2. Reimbursement of the costs of maintenance and operation of such stations, and reimbursement of any part thereof, are hereby declared city purposes and the cost thereof shall be a city charge to be paid from city funds annually appropriated, raised and expended for city purposes in the manner provided by law.

3. Any contract made pursuant to this section shall be authorized by the board of estimate of such city by resolution and shall require the separate approval of the mayor of such city. Such resolution may be amended from time to time.

4. Each city entering into a contract pursuant to this section shall file a copy thereof within ten days of its execution with the director of the state office of transportation.

§ 21-d. Establishment of blood credit systems by cities. 1. Every city shall have the power to establish by executive order of the mayor or by resolution of the local governing body, a blood credit system for the purpose of providing blood and related benefits for employees of such city or of any corporation, agency or institution receiving financial support from such city, and the families or dependents of such employees, as defined in such executive order or resolution. Such executive order or resolution may:

(a) Establish the eligibility requirements for and the terms and conditions of membership in such system;

(b) Prescribe the method of organization of the system;

(c) Fix the cost of membership, to be paid either in money or blood donation;

(d) Prescribe the blood bank arrangements to be made with blood bank organizations;

(e) Prescribe the methods of administration and financial management, including provision for payroll deductions of membership fees;

(f) Prescribe the benefits to be provided by the system;

(g) Establish a central blood credit administration unit in the department of personnel or other appropriate department of the city for the purpose of administering the operational activities of the system, and appoint or authorize the appointment of such officers or employees of the city as may be necessary to carry out the functions of such unit;

(h) Provide for the payment by the city of such sum as may be necessary to pay the initial administrative cost of setting up the system and the program, within the amounts appropriated therefor;

(i) Provide that employees who are members of the blood credit system and who retire shall be permitted to retain membership voluntarily at such terms as may be prescribed by such order or resolution;

(j) Contain such other terms, conditions and provisions as may be necessary to enable the system to provide blood and related benefits to the members of such system and their families or dependents which shall bear a reasonable relationship to the cost of membership and will enable the system to be self-supporting.

2. Any such executive order or resolution may be amended from time to time.

§ 21-e. Operating assistance for water-works corporations in certain cities. Each city having a population of more than one million may provide operating assistance to a water-works corporation subject to the provisions of the public service law which provides water service in such city for the purpose of reducing or eliminating disparity between rates charged for such service by the municipal water supply system of such city and rates charged by such water-works corporation, and in furtherance of such purpose the chief executive officer of such city may enter into an agreement with such water-works corporation and expend such sums as may be appropriated therefor so as to effect a reduction of rates of such water-works corporation.

§ 21-f. Operating assistance for certain public utility services. Each city having a population of one million or more shall be authorized to make an appropriation, notwithstanding any provision of general, special or local law to the contrary, to a public utility service operated by such city in accordance with a local law adopted pursuant to article fourteen-A of the general municipal law for the purpose of reducing the rates charged for the electricity sold and billed by such public utility service to non-residential energy users, without the billing services of a utility, so as to enable such public utility service to reduce its rates and charges in a proportion substantially equivalent to reductions effected by rebates made to non-residential energy users in accordance with a local law adopted pursuant to authorization contained in article two-G of this chapter. Any funds so appropriated shall be used by such public utility service to effect a reduction of rates and charges of such public utility service in the manner hereinabove described. For purposes of this section the terms "non-residential energy user", "rebate" and "utility" shall have the meanings ascribed by article two-G of this chapter.

§ 22. This grant in addition to existing powers. The powers granted by this article shall be in addition to and not in substitution for, all the powers, rights, privileges and functions existing in any city pursuant to any other provision of law.

§ 23. Powers hereby granted, how to be exercised. 1. The powers granted by this act are to be exercised by the officer, officers or official body vested with such powers by any other provision of law or ordinance (subject to amendment or repeal of any such ordinance) and in the manner and subject to the conditions prescribed by law or ordinance (subject to amendment or repeal of any such ordinance), but no provision of any special or local law shall operate to defeat or limit in extent the grant of powers contained in this act; and any provision of any special or local law which in any city operates, in terms or in effect, to prevent the exercise or limit the extent of any power granted by this article, shall be superseded. Where any such provision of special or local law is superseded under the provisions of this subdivision, such power, freed from the limitations imposed by such provision, shall be exercised by the same officer, officers or official body that would be vested with the same under the provisions of this subdivision, if such provision had not been superseded, but the exercise thereof shall be subject to the limitations provided for in subdivision two of this section.

2. In the absence of any provision of law or ordinance determining by whom or in what manner or subject to what conditions any power granted by this act shall be exercised, the common council or board of aldermen or corresponding legislative body of the city shall, subject to the provisions of this section, have power by ordinance to determine by whom and in what manner and subject to what conditions said power shall be exercised. The exercise by any city of any power granted by this article not now vested in such city or now vested in such city subject to provisions which are superseded by the provisions of subdivision one of this section, shall be subject to the following limitations:

b. No sale or lease of city real estate or of any franchise belonging to or under the control of the city shall be made or authorized except by vote of three-fourths of all the members of the common council or corresponding legislative body of the city. In case of a proposed sale or lease of real estate or of a franchise, the ordinance must provide for a disposition of the same at public auction to the highest bidder, under proper regulations as to the giving of security and after public notice to be published at least once each week for three weeks in the official paper or papers. A sale or lease of real estate or a franchise shall not be valid or take effect unless made as aforesaid and subsequently approved by a resolution of the board of estimate and apportionment in any city having such a board, and also approved by the mayor. No franchise shall be granted or be operated for a period longer than fifty years. The common council or corresponding legislative body of the city may, however, grant to the owner or lessees of an existing franchise, under which operations are being actually carried on, such additional rights or extensions in the street or streets in which the said franchise exists, upon such terms as the interests of the city may require, with or without any advertisement, as the common council may determine, provided, however, that no such grant shall be operative unless approved by the board of estimate and apportionment in any city having such a board, and also by the mayor.

In any city the question whether any proposed sale or lease of city real estate or of any franchise belonging to or under the control of the city shall be approved shall, upon a demand being filed, as hereinafter provided, be submitted to the voters of such city at a general or special election, after public notice to be published at least once each week for three weeks in the official paper or papers. Such demand shall be subscribed and acknowledged by voters of the city equal in number to at least ten per centum of the total number of votes cast in such city at the last preceding general election and shall be filed in the office of the clerk of such city before the adoption of an ordinance or resolution making or authorizing such sale or lease. If such demand is filed, as aforesaid, such sale or lease of real estate or such franchise shall not take effect unless in addition to the foregoing requirements a majority of the electors voting thereon at such election shall vote in the affirmative.

The foregoing limitations shall not apply to the exercise by any city of any power now vested in it, where the existing provisions of law determining by whom or in what manner or subject to what conditions such power shall be exercised are not superseded by the provisions of subdivision one of this section; but in such case the exercise of such power shall be subject only to such existing provisions of law, and shall not be limited or restricted by any provision of this section.

§ 24. Construction of this act. This article shall be construed, not as an act in derogation of the powers of the state, but as one intended to aid the state in the execution of its duties, by providing adequate power of local government for the cities of the state.

ARTICLE 2-C

PROHIBITION OF CERTAIN EXPENDITURES OF CITIES

§ 25. Increasing compensation during fiscal year prohibited. The board of estimate and apportionment of any city or the body exercising similar functions in any city, excepting a city of the first class having a population of more than five hundred thousand and less than one million, is hereby prohibited from increasing the compensation of any office or position, except compensation on per diem basis, paid out of the treasury of such city, during any fiscal year, after the same shall have been fixed and provided for in the budget of such city for such fiscal year.

ARTICLE 2-D

CITY PERSONAL INCOME TAX ON RESIDENTS

§ 25-a. Authorization to impose tax.-- In addition to any other taxes, now authorized by law, any city having a population of one million or more is hereby authorized and empowered to adopt and amend local laws imposing a tax on the personal income of residents of such city to be administered in the manner provided for in this article by the administrator as defined in section one of the model local law hereinafter set forth.

The tax authorized by this article may be imposed only if the general city law authorizes the adoption of a city tax on the earnings of nonresidents and the city imposing the tax herein authorized also imposes such tax on the earnings of nonresidents. The rates of such tax shall be the rates contained in either section three or three-A of the model local law and such rates may be reduced and increased, provided that the rates shall not be fixed higher than those contained in section three-A of such model local law.

The terms of such local law shall be substantially the same as the following model local law except that:

(a) Any such local law may include a provision for the specific credit for individuals described in section twenty-five-b of this chapter effective for any taxable year commencing on or after July first, nineteen hundred sixty-seven;

(b) Any such local law may be amended to conform it with similar provisions of article twenty-two of the tax law except insofar as it relates to nonresidents as presently in effect or as it may be amended; and

(c) The appendix in such local law may be amended for the purpose of conforming it with the United States internal revenue code or other federal laws relating to taxation as presently in effect or as they may be amended.

CITY PERSONAL INCOME TAX ON RESIDENTS

PART I

GENERAL

PART II

RESIDENTS

PART III

RETURNS, DECLARATIONS AND PAYMENT OF TAX

PART IV

WITHHOLDING OF TAX

PART V

PROCEDURE AND ADMINISTRATION

PART VI

MISCELLANEOUS

CITY PERSONAL INCOME TAX ON RESIDENTS

PART I

GENERAL

Section 1. Meaning of terms.--As used in this local law, the following terms shall mean and include:

(a) "Administrator" means the finance administrator or other fiscal officer of the city charged with administration beginning in nineteen hundred seventy, of excise taxes, except with respect to any taxable year until and including the thirty-first day of December, nineteen hundred seventy-one, such term shall mean state tax commission other than with respect to declarations of estimated tax and payments of such tax and the withholding tax requirements provided for in part iv of this local law. With respect to such declarations and payments and withholding tax requirements, until and including the thirty-first day of December, nineteen hundred seventy-one, the term "administrator" shall mean state tax commission for any taxable year or other period beginning in nineteen hundred seventy-one.

(b) "City" means the city imposing the tax.

(c) Unless a different meaning is clearly required, any term used in this local law shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, and any reference in this local law to the internal revenue code, the internal revenue code of nineteen hundred fifty-four or to the laws of the United States shall mean the provisions of the internal revenue code of nineteen hundred fifty-four, and amendments thereto, and other provisions of the laws of the United States relating to federal income taxes, as the same are included in this local law as an appendix or as included by reference to an appendix of a title enacted by the same local law as enacts this local law. (The quotation of the aforesaid laws of the United States is intended to make them a part of this local law and to avoid constitutional uncertainties which might result if such laws were merely incorporated by reference. The quotation of a provision of the federal internal revenue code or of any other law of the United States shall not necessarily mean that it is applicable to or has relevance to this local law.)

(d) With respect to any taxable year beginning in nineteen hundred seventy, until and including the thirty-first day of December, nineteen hundred seventy-one, "administrative agencies of the city" shall read as "administrative agencies of the state"; "depositories or financial agents of the city" shall be read as "depositories or financial agents of the state"; "officers or employees of the department of finance of the city" shall be read as "officers or employees of the state department of taxation and finance"; in sections seventy-two, seventy-three, seventy-six and seventy-eight (except for the last sentence thereof) "city" shall be read as "state"; "corporation counsel or appropriate officer of the city" or "corporation counsel of the city" shall be read as "state attorney general"; and the words "it" or "its" shall apply instead of the pronouns used where the reference is to state tax commission. Provided, however, with respect to declaration of estimated tax and payments of such tax and the withholding tax requirements, until and including the thirty-first day of December, nineteen hundred seventy-one, any such terms shall be so read with respect to any taxable year or other period beginning in nineteen hundred seventy-one.

§ 2. Persons subject to tax.--(a) Imposition of tax.--A tax determined in accordance with the rates set forth in this local law is hereby imposed for each taxable year, ending on or after July first, nineteen hundred sixty-six, but commencing prior to January first, nineteen hundred seventy-six, on the city taxable income of every resident individual, resident estate and trust.

(b) Partners and partnerships.-- A partnership as such shall not be subject to tax under this local law. Persons carrying on business as partners shall be liable for tax under this local law only in their separate or individual capacities.

(c) Associations taxable as corporations.-- An association, trust or other unincorporated organization which is taxable as a corporation for federal income tax purposes shall not be subject to tax under this local law.

(d) Exempt trusts and organizations.-- A trust or other unincorporated organization which by reason of its purposes or activities is exempt from federal income tax shall be exempt from tax under this local law (regardless of whether subject to federal income tax on unrelated business taxable income).

(e) Cross references.-- For definitions of city taxable income of:

(1) Resident individual, see section eleven.

(2) Resident estate or trust, see section eighteen.

§ 3. Rate of tax. -- The tax imposed by section two shall be determined in accordance with the following table:

If the city taxable income is:	The tax is:
Not over $1,000	0.4 % of the city taxable income
Over $ 1,000 but not over $ 3,000	$ 4 plus 0.6 % of excess over $1,000
Over $ 3,000 but not over $ 6,000	$ 16 plus 0.8 % of excess over $3,000
Over $ 6,000 but not over $10,000	$ 40 plus 1.0 % of excess over $6,000
Over $10,000 but not over $15,000	$ 80 plus 1.2 % of excess over $10,000
Over $15,000 but not over $20,000	$140 plus 1.4 % of excess over $15,000
Over $20,000 but not over $25,000	$210 plus 1.6 % of excess over $20,000
Over $25,000 but not over $30,000	$290 plus 1.8 % of excess over $25,000
Over $30,000	$380 plus $2.0 % of excess over $30,000

§ 3-A. Rate of tax. -- (a) For taxable years ending on or before December thirty-first, nineteen hundred seventy, the tax imposed by section two shall be determined in accordance with the following table:

If the city taxable income is:	The tax is:
Not over $1,000	0.4% of the city taxable income

Over $1,000 but not over $3,000	$4 plus 0.6% of excess over $1,000
Over $3,000 but not over $6,000	$16 plus 0.8% of excess over $3,000
Over $6,000 but not over $10,000	$40 plus 1.0% of excess over $6,000
Over $10,000 but not over $15,000	$80 plus 1.2% of excess over $10,000
Over $15,000 but not over $20,000	$140 plus 1.4% of excess over $15,000
Over $20,000 but not over $25,000	$210 plus 1.6% of excess over $20,000
Over $25,000 but not over $30,000	$290 plus 1.8% of excess over $25,000
Over $30,000	$380 plus 2.0% of excess over $30,000

(b) For taxable years beginning on or after January first, nineteen hundred seventy-one and ending on or before December thirty-first, nineteen hundred seventy-five, and taxable years beginning in nineteen hundred seventy-five and ending in nineteen hundred seventy-six, the tax imposed by section two shall be determined in accordance with the following table:

If the city taxable income is:	The tax is:
Not over $1,000	0.7% of the city taxable income
Over $1,000 but not over $3,000	$7 plus 1.1% of excess over $1,000
Over $3,000 but not over $6,000	$29 plus 1.4% of excess over $3,000

Over $6,000 but not over $10,000	$71 plus 1.8% of excess over $6,000
Over $10,000 but not over $15,000	$143 plus 2.1% of excess over $10,000
Over $15,000 but not over $20,000	$248 plus 2.5% of excess over $15,000
Over $20,000 but not over $25,000	$373 plus 2.8% of excess over $20,000
Over $25,000 but not over $30,000	$513 plus 3.2% of excess over $25,000
Over $30,000	$673 plus 3.5% of excess over $30,000

(c) For each taxable year beginning in nineteen hundred seventy and ending in nineteen hundred seventy-one, two tentative taxes shall be computed, the first as provided in subdivision (a) and the second as provided in subdivision (b), and the tax for each such year shall be the sum of that proportion of each tentative tax which the number of days in nineteen hundred seventy and the number of days in nineteen hundred seventy-one, respectively, bears to the number of days in the entire taxable year.

§ 4. Taxable years to which tax applies; tax for taxable years beginning prior to and ending after July first, nineteen hundred sixty-six.-- (a) General.--The tax imposed by section two, with any modification permitted by subdivision (b) of this section, is imposed for each taxable year beginning with taxable years ending after July first, nineteen hundred sixty-six and prior to January first, nineteen hundred seventy-six and each taxable year beginning in nineteen hundred seventy-five and ending in nineteen hundred seventy-six.

(b) Alternate methods for determining tax for taxable years ending on or after July first, nineteen hundred sixty-six and on or before June thirtieth, nineteen hundred sixty-seven. -- (1) The tax for any taxable year ending on or after July first, nineteen hundred sixty-six and on or before June thirtieth, nineteen hundred sixty-seven shall be the same part of the tax which would have been imposed had section two been in effect for the entire taxable year as the number of months (or major portions thereof) of the taxable year occurring after July first, nineteen hundred sixty-six is of the number of months (or major portions thereof) in the taxable year. The credit allowed against such tax as provided by section twenty shall be reduced by a fraction the numerator of which is equal to the number of months (or major portions thereof) in such taxable year which occurred before July first, nineteen hundred sixty-six and the denominator of which is equal to the number of months (or major portions thereof) in such taxable year.

(2) In lieu of the method of computation of tax prescribed in paragraph (1), if the taxpayer maintains adequate records for any taxable year ending on or after July first, nineteen hundred sixty-six and on or before June thirtieth, nineteen hundred sixty-seven, the tax for such taxable year, at the election of the taxpayer, may be computed on the basis of the city taxable income which the taxpayer would have reported had he filed a return under this local law for the period (referred to in this paragraph as "short period") beginning July first, nineteen hundred sixty-six and ending with the last day of the taxpayer's taxable year. If a return for a period of less than twelve months is made under this paragraph (2), the city taxable income for such short period shall be placed on an annual basis by multiplying such income by twelve and dividing the result by the number of months in the short period. In determining city taxable income under this paragraph (2), the city personal exemptions provided by section sixteen, shall be reduced to amounts that bear the same ratio to the full exemptions, as the number of months in the short period bears to twelve. The credit allowed against such tax as provided by section twenty shall be reduced by a fraction the numerator of which is equal to the number of months (or major portions thereof) in such taxable year which occurred before July first, nineteen hundred sixty-six and the denominator of which is equal to the number of months (or major portions thereof) in such taxable year. The tax shall be the same part of the tax computed on the annual basis as the number of months in the short period is of twelve months. Except as provided in this paragraph (2), the tax for such

period ending on or before June thirtieth, nineteen hundred sixty-seven, shall be computed in accordance with the other provisions of this local law.

§ 5. Accounting periods and methods.--(a) Accounting periods.--A taxpayer's taxable year under this local law shall be the same as his taxable year for federal income tax purposes.

(b) Change of accounting periods.--If a taxpayer's taxable year is changed for federal income tax purposes, his taxable year for purposes of this local law shall be similarly changed. If a taxable year of less than twelve months results from a change of taxable year, the city standard deduction, and the city personal exemptions shall be prorated under regulations of the administrator.

(c) Accounting methods.--A taxpayer's method of accounting under this local law shall be the same as his method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, city taxable income shall be computed under such method as in the opinion of the administrator clearly reflects income.

(d) Change of accounting methods.--(1) If a taxpayer's method of accounting is changed for federal income tax purposes, his method of accounting for purposes of this local law shall be similarly changed.

(2) If a taxpayer's method of accounting is changed, other than from an accrual to an installment method, any additional tax which results from adjustments determined to be necessary solely by reason of the change shall not be greater than if such adjustments were ratably allocated and included for the taxable year of the change and the preceding taxable years, beginning after July first, nineteen hundred sixty-six, not in excess of two, during which the taxpayer used the method of accounting from which the change is made.

(3) If a taxpayer's method of accounting is changed from an accrual to an installment method, any additional tax for the year of such change of method and for any subsequent year which is attributable to the receipt of installment payments properly accrued in a prior year, shall be reduced by the portion of tax for any prior taxable year attributable to the accrual of such installment payments, in accordance with regulations

of the administrator.

§ 6. Resident and nonresident defined.--(a) Resident individual.--A resident individual means an individual:

(1) who is domiciled in the city, unless he maintains no permanent place of abode in the city, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in the city, or

(2) who is not domiciled in the city but maintains a permanent place of abode in the city and spends in the aggregate more than one hundred eighty-three days of the taxable year in the city, unless such individual is in the armed forces of the United States during an induction period.

(b) Nonresident individual.--A nonresident individual means an individual who is not a resident.

(c) Resident estate or trust.--A resident estate or trust means:

(1) the estate of a decedent who at his death was domiciled in the city,

(2) a trust, or a portion of a trust, consisting of property transferred by will of a decedent who at his death was domiciled in the city, or

(3) a trust, or a portion of a trust, consisting of property of:

(A) a person domiciled in the city at the time such property was transferred to the trust, if such trust or portion of a trust was then irrevocable, or if it was then revocable and has not subsequently become irrevocable; or

(B) a person domiciled in the city at the time such trust, or portion of a trust, became irrevocable, if it was revocable when such property was transferred to the trust but has subsequently become irrevocable.

For the purposes of the foregoing, a trust or portion of a trust is revocable if it is subject to a power, exercisable immediately or at any future time, to revest title in the person whose property constitutes such trust or portion of a trust, and a trust or portion of a trust becomes irrevocable when the possibility that such power may be exercised has been terminated.

(d) Nonresident estate or trust.--A nonresident estate or trust means an estate or trust which is not a resident.

(e) Cross reference.--For effect of change of an individual's resident status, see section thirty-four.

PART II
RESIDENTS

§ 11. City taxable income of a resident individual.--(a) General.--The city taxable income of a resident individual shall be his city adjusted gross income less his city deduction and city personal exemptions, as determined under this local law.

(b) Husband and wife.--(1) If the federal taxable income of husband or wife is determined on a separate federal return, their city taxable incomes shall be separately determined.

(2) If the federal taxable income of husband and wife is determined on a joint federal return, or if neither files a federal return:

(A) their tax shall be determined on their joint city taxable income, or

(B) separate taxes may be determined on their separate city taxable incomes if they so elect and if they comply with the requirements of the administrator in setting forth information on a single form.

(3) If either husband or wife is a resident and the other is a nonresident, the tax of the resident shall be determined on his separate city taxable income, unless both elect to determine their joint city taxable income as if both were residents.

§ 12. City adjusted gross income of a resident individual.--(a) General.--The city adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year, with the modifications specified in this section.

(b) Modifications increasing federal adjusted gross income.--There shall be added to federal adjusted gross income:

(1) Interest income on obligations of any state other than this state or of a political subdivision of any such other state unless created by compact or agreement to which this state is a party;

(2) Interest or dividend income on obligations or securities of any authority, commission, or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state or local income taxes;

(3) Income taxes imposed by the city, this state or any other taxing jurisdiction, to the extent deductible in determining federal adjusted gross income and not credited against federal income tax;

(4) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is exempt from tax under this local law, to the extent deductible in determining federal adjusted gross income;

(5) Expenses paid or incurred during the taxable year for (A) the production or collection of income which is exempt from tax under this local law, or (B) the management, conservation or maintenance of property held for the production of such income, and the amortizable bond premium for the taxable year on any bond the interest on which is exempt from tax under this local law, to the extent that such expenses and premiums are deductible in determining federal adjusted gross income; and

(6) In the case of a taxpayer who has exercised the election permitted by subdivisions (g) or (h) of this section, the amount or amounts required by said subdivisions to be added to federal adjusted gross income.

(c) Modifications reducing federal adjusted gross income.--There shall be subtracted from federal adjusted gross income:

(1) Interest income on obligations of the United States and its possessions to the extent includible in gross income for federal income tax purposes;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States to the extent includible in gross income for federal income tax purposes but exempt from state or local income taxes under the laws of the United States;

(3) Pensions to officers and employees of this state, its subdivisions

and agencies, to the extent includible in gross income for federal income tax purposes;

(4) Interest or dividend income on obligations or securities to the extent exempt from income tax under the laws of this state authorizing the issuance of such obligations or securities but includible in gross income for federal income tax purposes;

(5) The amount of any refund or credit for overpayment of income taxes imposed by the city, the state, or any other taxing jurisdiction, to the extent properly included in gross income for federal income tax purposes;

(6) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is subject to tax under this local law but exempt from federal income tax, to the extent that such interest is not deductible in determining federal adjusted gross income and is attributable to a trade or business carried on by the taxpayer;

(7) Ordinary and necessary expenses paid or incurred during the taxable year for (A) the production or collection of income which is subject to tax under this local law but exempt from federal income tax, or (B) the management, conservation or maintenance of property held for the production of such income, and the amortizable bond premium for the taxable year on any bond the interest on which is subject to tax under this local law but exempt from federal income tax, to the extent that such expenses and premiums are not deductible in determining federal adjusted gross income and are attributable to a trade or business carried on by the taxpayer;

(8) In the case of a taxpayer who has exercised the election permitted by subdivisions (g) or (h) of this section, the amount or amounts required by said subdivisions to be subtracted from federal adjusted gross income;

(9) With respect to gain derived from the sale or other disposition of any property acquired prior to July first, nineteen hundred sixty-six, except property described in subsections one and four of section twelve hundred twenty-one of the internal revenue code, the difference between--

(a) the amount of the taxpayer's federal adjusted gross income or, in the case of an estate or trust, the taxpayer's taxable income, and

(b) the amount of the taxpayer's federal adjusted gross income or, in the case of an estate or trust, the taxpayer's taxable income (if smaller than the amount described in (a)) computed as if the federal adjusted basis of such property (on the sale or other disposition of which gain was derived) on the date of the sale or other disposition had been equal to either (i) its fair market value on July first, nineteen hundred sixty-six or the date of its sale or other disposition prior to July first, nineteen hundred sixty-six, plus or minus all adjustments to basis made with respect to such property for federal income tax purposes for periods on and after July first, nineteen hundred sixty-six or (ii) the amount realized from its sale or disposition, whichever is lower; provided, however, that the total modification provided by this subparagraph shall not exceed the amount described in (i), (ii) or (iii)--

(i) if the taxpayer's federal adjusted gross income reflects a net gain from the sale or other disposition of property, except property described in subsections one and four of section twelve hundred twenty-one of the internal revenue code, the amount of such gain plus one thousand dollars,

(ii) if the taxpayer's federal adjusted gross income reflects a net loss from the sale or other disposition of property, except property described in subsections one and four of section twelve hundred twenty-one of the internal revenue code, the amount by which one thousand dollars exceeds such loss,

(iii) if the taxpayer's federal adjusted gross income reflects neither a net gain nor a net loss from the sale or other disposition of property, other than property described in subsections one and four of section twelve hundred twenty-one of the internal revenue code, one thousand dollars.

(d) Modification for city fiduciary adjustment.--There shall be added to or subtracted from federal adjusted gross income (as the case may be) the taxpayer's share, as beneficiary of an estate or trust, of the city fiduciary adjustment determined under section nineteen.

(e) Partners.--The amounts of modifications required to be made under this section by a partner, which relate to items of income, gain, loss or deduction of a partnership, shall be determined under section seventeen.

(f) Husband and wife.--If husband and wife determine their federal income tax on a joint return but determine their city income taxes separately, they shall determine their city adjusted gross incomes separately as if their federal adjusted gross incomes had been determined separately.

(g) Optional modifications.--At the election of the taxpayer there shall also be subtracted from federal adjusted gross income either or both of the items set forth in paragraphs one and two of this subdivision, except that only one of such items shall be subtracted with respect to any one item of property.

(1) Depreciation with respect to any property such as described in paragraph three of this subdivision, not exceeding twice the depreciation allowed with respect to the same property for federal income tax purposes. Such modification shall be allowed only upon condition that any depreciation allowed with respect to the same property in determining federal adjusted gross income shall be added to federal adjusted gross income pursuant to paragraph six of subdivision (b) of this section. The total of all deductions allowed pursuant to this paragraph in any taxable year or years with respect to any property shall not exceed its cost or other basis.

(2) Expenditures paid or incurred during the taxable year for the construction, reconstruction, erection or acquisition of any property such as described in paragraph three of this subdivision which is used or to be used for purposes of research and development in the experimental or laboratory sense. Such purposes shall not be deemed to include the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions or research in connection with literary, historical or similar projects. Such modification shall be allowed only on condition that, for the taxable years, and all succeeding years, any deductions allowed for federal income tax purposes on account of such expenditures or on account of depreciation of the same property, except to the extent that its basis may be attributable to factors other than such expenditures, shall be added to federal adjusted gross income pursuant to paragraph six of subdivision (b) of this section, or in case a modification is allowable pursuant to this paragraph for only a part of such expenditures, on condition that a

proportionate part of any such deductions allowed for federal income tax purposes be added to federal adjusted gross income. With respect to property which is used or to be used for research and development only in part, or during only part of its useful life, the modification allowable pursuant to this paragraph shall be limited to a proportionate part of the expenditures relating thereto. If a modification shall have been allowed pursuant to this paragraph for all or part of such expenditures with respect to any property, and such property is used for purposes other than research and development to a greater extent than originally reported, the taxpayer shall report such use in his return for the first taxable year during which it occurs, and the administrator may recompute the tax for the year or years for which such deduction was allowed, and may assess any additional tax resulting from such recomputation within the time fixed by subdivision (c) of section sixty-three of this local law.

(3) Such modifications shall be allowed only with respect to tangible property which is depreciable pursuant to section one hundred sixty-seven of the internal revenue code, having a situs in the city and used in the taxpayer's trade or business, (A) the construction, reconstruction or erection of which is completed after June thirtieth, nineteen hundred sixty-six, and then only with respect to that portion of the basis thereof or the expenditures relating thereto which is properly attributable to such construction, reconstruction or erection after June thirtieth, nineteen hundred sixty-six, or (B) acquired after June thirtieth, nineteen hundred sixty-six by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, if the original use of such property commenced with the taxpayer, commenced in the city and commenced after such date.

(4) If the modifications allowable for any taxable year pursuant to this subdivision exceed the taxpayer's city adjusted gross income, determined without the allowance of such modifications, the excess may be carried over to the following taxable year or years and may be subtracted from federal adjusted gross income for such year or years.

(5) In any taxable year when property is sold or otherwise disposed of, with respect to which a modification has been allowed pursuant to paragraph one or two of this subdivision, the basis of such property shall be adjusted to reflect the modifications so allowed, and if the

basis as so adjusted is lower than the adjusted basis of the same property for federal income tax purposes, there shall be added to federal adjusted gross income the amount of the difference between such adjusted bases; but if such gain or loss is considered a long-term capital gain or loss for federal income tax purposes, the amount to be added shall be limited to fifty percent of the difference between such adjusted bases.

(h) Optional modification for waste treatment facility expenditures.--At the election of the taxpayer, there shall also be subtracted from federal adjusted gross income expenditures paid or incurred during the taxable year for the construction, reconstruction, erection or improvement of industrial waste treatment facilities and air pollution control facilities.

(1) (A) The term "industrial waste treatment facilities" shall mean facilities for the treatment, neutralization, or stabilization of industrial waste (as the term "industrial waste" is defined in section twelve hundred two of the State public health law) from a point immediately preceding the point of such treatment, neutralization or stabilization to the point of disposal, including the necessary pumping and transmitting facilities, but excluding such facilities installed for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable.

(B) The term "air pollution control facilities" shall mean facilities which remove, reduce, or render less noxious air contaminants emitted from an air contamination source (as the terms "air contaminant" and "air contamination source" are defined in section twelve hundred sixty-seven of the state public health law) from a point immediately preceding the point of such removal, reduction or rendering the point of discharge of air, meeting emission standards as established by the air pollution control board, but excluding such facilities installed for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable and excluding those facilities which rely for their efficacy on dilution, dispersion or assimilation of air contaminants in the ambient air after emmission.

(2) Such modifications shall be allowed only

(A) with respect to tangible property which is depreciable, pursuant to section one hundred sixty-seven of the internal revenue code, having a situs in the city and used in the taxpayer's trade or business, the construction, reconstruction, erection or improvement of which, in the case of industrial waste treatment facilities, is initiated on or after July first, nineteen hundred sixty-six, and only for expenditures paid or incurred prior to January first, nineteen hundred seventy-two, or which, in the case of air pollution control facilities, is initiated on or after July first, nineteen hundred sixty-six, and

(B) on condition that such facilities have been certified by the state commissioner of health or his designated representative, pursuant to the state public health law, as complying with the provisions of the state public health law, the state sanitary code and regulations, permits or orders promulgated pursuant thereto, and

(C) on condition that for the taxable year and all succeeding taxable years, any deductions allowed for federal income tax purposes for such expenditures or for depreciation of the same property, except to the extent that its basis may be attributable to factors other than such expenditures, be added to federal adjusted gross income pursuant to paragraph six of subdivision (b) of this section, or in case a modification is allowable pursuant to this paragraph for only a part of such expenditures, on condition that a proportionate amount of any such deductions allowed for federal income tax purposes be added to federal adjusted gross income, and

(D) where the election provided for in subdivision (g) of section twelve has not been exercised in respect to the same property.

(3) (A) If expenditures in respect to an industrial waste treatment facility or an air pollution control facility have been allowed as a modification as provided herein and if within ten years from the end of the taxable year in which such modification was allowed such property or any part thereof is used for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable, the taxpayer shall report such change of use in its return for the first taxable year during which it occurs, and the administrator may recompute the tax for the year or years for which such modification was allowed, and may assess any additional tax resulting from such recomputation within the time fixed by paragraph eight of subdivision (c) of section sixty-three.

(B) If a modification is allowed as herein provided for expenditures paid or incurred during any taxable year on the basis of a temporary certificate of compliance issued pursuant to the state public health law, and if the taxpayer fails to obtain a permanent certificate of compliance upon completion of the facilities with respect to which such temporary certificate was issued, the taxpayer shall report such failure in its report for the taxable year during which such facilities are completed, and the administrator may recompute the tax for the year or years for which such modification was allowed, and may assess any additional tax resulting from such recomputation within the time fixed by paragraph eight of subdivision (c) of section sixty-three.

(4) In any taxable year when property is sold or otherwise disposed of, with respect to which a modification has been allowed pursuant to this paragraph, such modification shall be disregarded in computing gain or loss, and the gain or loss on the sale or other disposition of such property shall be the gain or loss entering into the computation of federal adjusted gross income for such taxable year.

§ 13. City deduction of a resident individual.-- The city deduction of a resident individual shall be his city standard deduction unless he elects to deduct his city itemized deduction under the conditions set forth in section fifteen.

§ 14. City standard deduction of a resident individual.--(a) General.-- The city standard deduction of a resident individual, or of husband and wife whose city taxable income is determined jointly as if husband and wife were one taxpayer, shall be ten per centum of city adjusted gross income or one thousand dollars, whichever is less.

(b) Husband and wife determining income separately.-- The city standard deductions of husband and wife whose city taxable incomes are determined separately (whether or not on a single form) shall not exceed ten per centum of the aggregate of their separate city adjusted gross incomes or one thousand dollars, whichever is less, but may be taken by either or divided between them as they may elect.

§ 15. City itemized deduction of a resident individual.-- (a) General.--If federal taxable income of a resident individual is determined by itemizing deductions from his federal adjusted gross income, he may elect to deduct his city itemized deduction in lieu of his city standard deduction. The city itemized deduction of a resident individual means the total amount of his deductions from federal adjusted gross income, other than federal deductions for personal exemptions, as provided in the laws of the United States for the taxable year, with the modifications specified in this section.

(b) Husband and wife.--(1) A husband and wife, both of whom are required to file returns under this local law, shall be allowed city itemized deductions only if both elect to take city itemized deductions.

(2) The total of the city itemized deductions of a husband and wife whose federal taxable income is determined on a joint return, but whose city taxable incomes are determined separately, may be taken by either or divided between them as they may elect.

(c) Modifications reducing federal itemized deductions.-- The total amount of deductions from federal adjusted gross income shall be reduced by the amount of such federal deductions for:

(1) income taxes imposed by the city, this state or any other taxing jurisdiction;

(2) interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is exempt from tax under this local law; and

(3) ordinary and necessary expenses paid or incurred during the taxable year for (A) the production or collection of income which is exempt from tax under this local law, or (B) the management, conservation or maintenance of property held for the production of such income, and the amortizable bond premium for the taxable year on any bond the interest on which is exempt from tax under this local law.

(d) Modifications increasing federal itemized deductions.--The total amount of deduction from federal adjusted gross income shall be increased by:

(1) an amount, not exceeding one hundred fifty dollars in the aggregate, for net premiums paid or incurred by a taxpayer during the taxable year with respect to any life insurance or endowment policy upon his life;

(2) interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is subject to tax under this local law but exempt from federal income tax, to the extent that such interest is not deductible for federal income tax purposes and is not subtracted from federal adjusted gross income pursuant to paragraph six of subdivision (c) of section twelve; and

(3) ordinary and necessary expenses paid or incurred during the taxable year for (A) the production or collection of income which is subject to tax under this local law but exempt from federal income tax, or (B) the management, conservation or maintenance of property held for the production of such income, and the amortizable bond premium for the taxable year on any bond the interest on which is subject to tax under this local law but exempt from federal income tax, to the extent that such expenses and premiums are not deductible in determining federal adjusted gross income and are not subtracted from federal adjusted gross income pursuant to paragraph seven of subdivision (c) of section twelve.

(e) Partners.-- The amounts of modifications under subdivision (c) or under paragraphs two or three of subdivision (d) required to be made by a partner with respect to items of deduction of a partnership shall be determined under section seventeen.

§ 16. City personal exemptions of a resident individual.--(a) General.--A resident individual shall be allowed a city exemption of six hundred dollars for each exemption for which he is entitled to a deduction for the taxable year for federal income tax purposes.

(b) Husband and wife.--If the city income taxes of a husband and wife are separately determined but their federal income tax is determined on a joint return, each of them shall be separately entitled to a city exemption of six hundred dollars for each federal exemption to which he would be separately entitled for the taxable year if their federal income taxes had been determined on separate returns.

§ 17. Resident partners.--(a) Partner's modifications.--In determining city adjusted gross income and city taxable income of a resident partner, any modification described in subdivisions (b), (c) or (d) of section twelve, subdivision (c) of section fifteen or paragraphs two or three of subdivision (d) of such section, which relates to an item of partnership income, gain, loss or deduction shall be made in accordance with the partner's distributive share, for federal income tax purposes, of the item to which the modification relates. Where a partner's distributive share of any such item is not required to be taken into account separately for federal income tax purposes, the partner's distributive share of such item shall be determined in accordance with his distributive share, for federal income tax purposes, of partnership taxable income or loss generally.

(b) Character of items.--Each item of partnership income, gain, loss, or deduction shall have the same character for a partner under this local law as for federal income tax purposes. Where an item is not characterized for federal income tax purposes, it shall have the same character for a partner as if realized directly from the source from which realized by the partnership or incurred in the same manner as incurred by the partnership.

(c) City tax avoidance or evasion.--Where a partner's distributive share of an item of partnership income, gain, loss or deduction is determined for federal income tax purposes by special provision in the partnership agreement with respect to such item, and where the principal purpose of such provision is the avoidance or evasion of tax under this local law, the partner's distributive share of such item, and any modification required with respect thereto, shall be determined as if the partnership agreement made no special provision with respect to such item.

§ 18. City taxable income of a resident estate or trust.--The city taxable income of a resident estate or trust means its federal taxable income as defined in the laws of the United States for the taxable year, with the following modifications:

(a) There shall be subtracted six hundred dollars as the city exemption of the estate or trust, and there shall be added the amount of its federal deduction for a personal exemption.

(b) There shall be subtracted the modification described in paragraph nine of subsection (c) of section twelve with respect to gains from the sale or other disposition of property, to the extent such gains are excluded from federal distributable net income of the estate or trust.

(c) There shall be added or subtracted (as the case may be) the share of the estate or trust in the city fiduciary adjustment determined under section nineteen.

(d) There shall be added or subtracted (as the case may be) the modifications described in paragraph six of subsection (b) and in paragraph eight of subsection (c) of section twelve.

§ 19. Share of a resident estate, trust or beneficiary in city fiduciary adjustment.--(a) General.--An adjustment shall be made in determining city taxable income of a resident estate or trust under section eighteen, or city adjusted gross income of a resident beneficiary of any estate or trust under subdivision (d) of section twelve, in the amount of the share of each in the city fiduciary adjustment as determined in this section.

(b) Definition.--The city fiduciary adjustment shall be the net amount of the modifications described in section twelve (including subdivision (d) if the estate or trust is a beneficiary of another estate or trust), and in subdivision (c) and paragraphs two and three of subdivision (d) of section fifteen, which relate to items of income, gain, loss or deduction of an estate or trust. The net amount of such modifications shall not include any modification described in paragraph nine of subsection (c) of section twelve with respect to gains from the sale or other disposition of property, to the extent such gains are excluded from federal distributable net income of the estate or trust.

(c) Shares of city fiduciary adjustments.--(1) The respective shares of an estate or trust and its beneficiaries (including, solely for the purpose of this allocation, nonresident beneficiaries) in the city fiduciary adjustment shall be in proportion to their respective shares of federal distributable net income of the estate or trust.

(2) If the estate or trust has no federal distributable net income for the taxable years, the share of each beneficiary in the city fiduciary adjustment shall be in proportion to his share of the estate or trust income for such year, under local law or the governing instrument, which is required to be distributed currently and any other amounts of such

income distributed in such year. Any balance of the city fiduciary adjustment shall be allocated to the estate or trust.

(d) Alternate attribution of modifications.-- The administrator may by regulation establish such other method or methods of determining to whom the items comprising the fiduciary adjustment shall be attributed, as may be appropriate and equitable. Such method may be used by the fiduciary in his discretion whenever the allocation of the fiduciary adjustment pursuant to subdivision (c) would result in an inequity which is substantial both in amount and in relation to the amount of the fiduciary adjustment.

§ 20. Credit to trust beneficiary receiving accumulation distribution.--(a) General.--A resident beneficiary of a trust whose city adjusted gross income includes all or part of an accumulation distribution by such trust, as defined in section six hundred sixty-five of the internal revenue code, shall be allowed a credit against the tax otherwise due under this local law for all or a proportionate part of any tax paid by the trust under this local law for any preceding taxable year which would not have been payable if the trust had in fact made distributions to its beneficiaries at the times and in the amounts specified in section six hundred sixty-six of the internal revenue code.

(b) Limitation.--The credit under this section shall not reduce the tax otherwise due from the beneficiary under this local law to an amount less than would have been due if the accumulation distribution or his part thereof were excluded from his city adjusted gross income.

PART III
RETURNS, DECLARATIONS AND PAYMENT OF TAX

§ 31. Returns and liabilities.--(a) General.--On or before the fifteenth day of the fourth month following the close of a taxable year, an income tax return under this local law shall be made and filed by or for:

(1) every resident individual required to file a federal income tax

return for the taxable year, or having city adjusted gross income for the taxable year, determined under section twelve, in excess of the sum of his city personal exemptions;

(2) every resident estate or trust required to file a federal income tax return for the taxable year, or having any city taxable income for the taxable year, determined under section eighteen.

(b) Husband and wife.-- (1) If the federal income tax liability of husband or wife is determined on a separate federal return, their city income tax liabilities and returns shall be separate.

(2) If the federal income tax liabilities of husband and wife (other than a husband and wife described in paragraph three) are determined on a joint federal return, or if neither files a federal return:

(A) they shall file a joint city income tax return, and their tax liabilities shall be joint and several, or

(B) they may elect to file separate city income tax returns on a single form if they comply with the requirements of the administrator in setting forth information, in which event their tax liabilities shall be separate except as provided in paragraph four of this subdivision (b).

(3) If either husband or wife is a resident and the other is a nonresident and both elect to determine their joint city taxable income as if both were residents, their tax liabilities shall be joint and several.

(4) If husband and wife file separate city income tax returns on a single form pursuant to paragraph two of this subdivision (b), and:

(A) if the sum of the payments by either spouse, including withheld and estimated taxes, exceeds the amount of the tax for which such spouse is separately liable, the excess may be applied by the administrator to the credit of the other spouse if the sum of the payments by such other spouse, including withheld and estimated taxes, is less than the amount of the tax for which such other spouse is separately liable;

(B) if the sum of the payments made by both spouses with respect to the taxes for which they are separately liable, including withheld and estimated taxes, exceeds the total of the taxes due, refund of the excess may be made payable to both spouses;

Provided, however, that the provisions of this paragraph four shall not apply if the return of either spouse includes a demand that any overpayment made by him or her shall be applied only on account of his or her separate liability.

(c) Decedents.--The return for any deceased individual shall be made and filed by his executor, administrator, or other person charged with his property. If a final return of a decedent is for a fractional part of a year, the due date of such return shall be the fifteenth day of the fourth month following the close of the twelve-month period which began the first day of such fractional part of the year.

(d) Individuals under a disability.--The return for an individual who is unable to make a return by reason of minority or other disability shall be made and filed by his guardian, committee, conservator, fiduciary or other person charged with the care of his person or property (other than a receiver in possession of only a part of his property), or by his duly authorized agent.

(e) Estates and trust.--The return for an estate or trust shall be made and filed by the fiduciary.

(f) Joint fiduciaries.--If two or more fiduciaries are acting jointly, the return may be made by any one of them.

(g) Waiver of returns. The administrator may provide by regulation that any return otherwise required or permitted to be made under this local law need not be made and filed by any resident individual who had, during the taxable year to which the return would relate, total federal adjusted gross income of no more than eight thousand dollars, or such lesser amount as the administrator shall specify, and the amount of whose federal gross income other than wages from which tax has been withheld pursuant to this local law, plus the net of the modifications specified in section twelve, for such taxable year, does not exceed three hundred dollars or such lesser amount as the administrator shall specify. Any such regulation may provide for additional conditions and prerequisites to the privilege of not filing a return.

(h) Cross reference.-- For provisions as to information returns by partnerships, employers and other persons, see section thirty-eight.

§ 32. Time and place for filing returns and paying tax.--A person required to make and file a return under this local law shall, without assessment, notice or demand, pay any tax due thereon to the administrator on or before the date fixed for filing such return (determined without regard to any extension of time for filing the return). The administrator shall prescribe by regulation the place for filing any return, declaration, statement, or other document required pursuant to this local law and for payment of any tax.

§ 33. Signing of returns and other documents.--(a) General.--Any return, declaration, statement or other document required to be made pursuant to this local law shall be signed in accordance with regulations or instructions prescribed by the administrator. The fact that an individual's name is signed to a return, declaration, statement, or other document, shall be prima facie evidence for all purposes that the return, declaration, statement or other document was actually signed by him.

(b) Partnerships.--Any return, statement or other document required of a partnership shall be signed by one or more partners. The fact that a partner's name is signed to a return, statement, or other document, shall be prima facie evidence for all purposes that such partner is authorized to sign on behalf of the partnership.

(c) Certifications.--The making or filing of any return, declaration, statement or other document or copy thereof required to be made or filed pursuant to this local law, including a copy of a federal return, shall constitute a certification by the person making or filing such return, declaration, statement or other document or copy thereof that the statements contained therein are true and that any copy filed is a true copy.

§ 34. Change of residence status during the year.-- (a) General.-- If an individual changes his status during his taxable year from resident to nonresident, or from nonresident to resident, he shall file one return as a resident for the portion of the year during which he is a resident, and an information return for the portion of the year during which he is a nonresident, subject to such exceptions as the administrator may prescribe by regulation. Such information return shall be due at the same time as the return for the portion of the year during which such individual is a resident.

(b) City taxable income for portion of year individual is a resident.--The city taxable income for the portion of the year during which he is a resident shall be determined, except as provided in subdivision (c), under part II of this local law as if his taxable year for federal income tax purposes were limited to the period of his resident status.

(c) Special accruals.--(1) If an individual changes his status from resident to nonresident, he shall, regardless of his method of accounting, accrue for the portion of the taxable year prior to such change of status any items of income, gain, loss or deduction accruing prior to the change of status, if not otherwise properly includible (whether or not because of an election to report on an installment basis) or allowable for city income tax purposes for such portion of the taxable year or for a prior taxable year. The amounts of such accrued items shall be determined with the applicable modifications described in sections twelve and fifteen as if such accrued items were includible or allowable for federal income tax purposes.

(2) If an individual changes his status from nonresident to resident, he shall, regardless of his method of accounting, accrue for the portion of the taxable year prior to such change of status any items of income, gain, loss or deduction accruing prior to the change of status, if not otherwise properly includible (whether or not because of an election to report on an installment basis) or allowable for federal income tax purposes for such portion of the taxable year or for a prior taxable year. The amounts of such accrued items shall be determined with the applicable modifications described in sections twelve and fifteen as if such accrued items were includible or allowable for federal income tax purposes.

(3) No item of income, gain, loss or deduction which is accrued under this subdivision shall be taken into account in determining city adjusted gross income or the city itemized deduction for any subsequent taxable period.

(4) Where an individual changes his status from resident to nonresident, the accruals under this subdivision shall not be required if the individual files with the administrator a bond or other security acceptable to the administrator, conditioned upon the inclusion of

amounts accruable under this subdivision in city adjusted gross income for one or more subsequent taxable years as if the individual had not changed his resident status.

(d) Prorations.--Where an individual changes his status during his taxable year from resident to nonresident or from nonresident to resident, the city personal exemptions allowable under section sixteen shall be prorated, under regulations of the administrator, to reflect the portions of the entire taxable year during which the individual was a resident and a nonresident

(e) Standard deduction.--Where an individual changes his status during his taxable year from resident to nonresident or from nonresident to resident, the city standard deduction allowable shall be either ten per centum of city adjusted gross income reported for the period during which he is a resident, or one thousand dollars prorated according to the period covered by the return, whichever is less.

§ 35. Declarations of estimated tax.-- (a) Requirement of declaration.-- Every resident individual shall make a declaration of his estimated tax for the taxable year, containing such information as the administrator may prescribe by regulations or instructions, if his city adjusted gross income, other than from wages on which tax is withheld under this local law, can reasonably be expected to exceed four hundred dollars plus the sum of the city personal exemptions to which he is entitled.

(b) Definition of estimated tax.--The term "estimated tax" means the amount which an individual estimates to be his income tax under this local law for the taxable year, less the amount which he estimates to be the sum of any credits allowable against the tax.

(c) Joint declaration of husband and wife.--A husband and wife may make a joint declaration of estimated tax as if they were one taxpayer, in which case the liability with respect to the estimated tax shall be joint and several. No joint declaration may be made if husband and wife are separated under a decree of divorce or of separate maintenance, or if they have different taxable years. If a joint declaration is made but husband and wife elect to determine their taxes under this local law separately, the estimated tax for such year may be treated as the estimated tax of either husband or wife, or may be divided between them, as they may elect.

(d) Time for filing declaration.--A declaration of estimated tax of an individual other than a farmer shall be filed on or before April fifteenth of the taxable year, except that if the requirements of subdivision (a) are first met:

(1) after April first and before June second of the taxable year, the declaration shall be filed on or before June fifteenth, or

(2) after June first and before September second of the taxable year, the declaration shall be filed on or before September fifteenth, or

(3) after September first of the taxable year, the declaration shall be filed on or before January fifteenth of the succeeding year.

(e) Declaration of estimated tax by a farmer.--A declaration of estimated tax of an individual having an estimated city adjusted gross income from farming (including oyster farming) for the taxable year which is at least two-thirds of his total estimated city adjusted gross income for the taxable year may be filed at any time on or before January fifteenth of the succeeding year, in lieu of the time otherwise prescribed.

(f) Declaration of estimated tax of forty dollars or less.--A declaration of estimated tax of an individual having a total estimated tax for the taxable year of forty dollars or less may be filed at any time on or before January fifteenth of the succeeding year under regulations of the administrator.

(g) Amendments of declaration.--An individual may amend a declaration under regulations of the administrator.

(h) Return as declaration or amendment.--If on or before February fifteenth of the succeeding taxable year an individual files his return for the taxable year for which the declaration is required, and pays therewith the full amount of the tax shown to be due on the return:

(1) such return shall be considered as his declaration if no declaration was required to be filed during the taxable year, but is otherwise required to be filed on or before January fifteenth, or

(2) such return shall be considered as the amendment permitted by subdivision (g) to be filed on or before January fifteenth if the tax shown on the return is greater than the estimated tax shown in a declaration previously made.

(i) Fiscal year.--This section shall apply to a taxable year other than a calendar year by the substitution of the months of such fiscal year for the corresponding months specified in this section.

(j) Short taxable year.--An individual having a taxable year of less than twelve months shall make a declaration in accordance with regulations of the administrator.

(k) Declaration for individual under a disability.--The declaration of estimated tax for an individual who is unable to make a declaration by reason of minority or other disability shall be made and filed by his guardian, committee, conservator, fiduciary or other person charged with the care of his person or property (other than a receiver in possession of only a part of his property), or by his duly authorized agent.

§ 36. Payments of estimated tax.-- (a) General.-- The estimated tax with respect to which a declaration is required shall be paid as follows:

(1) If the declaration is filed on or before April fifteenth of the taxable year, the estimated tax shall be paid in four equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second, third and fourth installments shall be paid on the following June fifteenth, September fifteenth, and January fifteenth, respectively.

(2) If the declaration is filed after April fifteenth and not after June fifteenth of the taxable year, and is not required to be filed on or before April fifteenth of the taxable year, the estimated tax shall be paid in three equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second and third installments shall be paid on the following September fifteenth and January fifteenth, respectively.

(3) If the declaration is filed after June fifteenth and not after September fifteenth of the taxable year, and is not required to be filed on or before June fifteenth of the taxable year, the estimated tax shall be paid in two equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second shall be paid on the following January fifteenth.

(4) If the declaration is filed after September fifteenth of the

taxable year, and is not required to be filed on or before September fifteenth of the taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

(5) If the declaration is filed after the time prescribed therefor, or after the expiration of any extension of time therefor, paragraphs two, three and four of this subdivision shall not apply, and there shall be paid at the time of such filing all installments of estimated tax payable at or before such time, and the remaining installments shall be paid at the times at which, and in the amounts in which, they would have been payable if the declaration had been filed when due.

(b) Farmers.--If an individual referred to in subdivision (e) of section thirty-five (relating to income from farming) makes a declaration of estimated tax after September fifteenth of the taxable year and on or before the following January fifteenth, the estimated tax shall be paid in full at the time of the filing of the declaration.

(c) Amendments of declaration.--If any amendment of a declaration is filed, the remaining installments, if any, shall be ratably increased or decreased (as the case may be) to reflect any increase or decrease in the estimated tax by reason of such amendment, and if any amendment is made after September fifteenth of the taxable year, any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

(d) Application to short taxable year.--This section shall apply to a taxable year of less than twelve months in accordance with regulations of the administrator.

(e) Fiscal year.--This section shall apply to a taxable year other than a calendar year by the substitution of the months of such fiscal year for the corresponding months specified in this section.

(f) Installments paid in advance.--An individual may elect to pay any installment of his estimated tax prior to the date prescribed for its payment.

(g) Cross reference.--For taxpayers with taxable years beginning prior to the date this local law becomes operative, see section forty-one.

§ 37. Extensions of time.--(a) General.--The administrator may grant a reasonable extension of time for payment of tax or estimated tax (or any installment), or for filing any return, declaration, statement, or other document required pursuant to this local law, on such terms and conditions as he may require. Except for a taxpayer who is outside the United States, no such extension for filing any return, declaration, statement or other document, shall exceed six months.

(b) Furnishing of security.--If any extension of time is granted for payment of any amount of tax, the administrator may require the taxpayer to furnish a bond or other security in an amount not exceeding twice the amount for which the extension of time for payment is granted, on such terms and conditions as the administrator may require.

§ 38. Requirements concerning returns, notices, records and statements.--(a) General.--The administrator may prescribe regulations as to the keeping of records, the content and form of returns and statements, and the filing of copies of federal income tax returns and determinations. The administrator may require any person, by regulation or notice served upon such person, to make such returns, render such statements, or keep such records, as the administrator may deem sufficient to show whether or not such person is liable under this local law for tax or for collection of tax.

(b) Partnerships.--Every partnership having a resident partner shall make a return for the taxable year setting forth all items of income, gain, loss and deduction and such other pertinent information as the administrator may by regulations and instructions prescribe. Such return shall be filed on or before the fifteenth day of the fourth month following the close of each taxable year. For purposes of this subdivision, "taxable year" means year or period which would be a taxable year of the partnership if it were subject to tax under this local law.

(c) Information at source.--The administrator may prescribe regulations and instructions requiring returns of information to be made and filed on or before February twenty-eighth of each year as to the payment or crediting in any calendar year of amounts of six hundred dollars or more to any taxpayer under this local law. Such returns may be required of any person, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of this state, or of any municipal corporation or political subdivision of this state, having the control, receipt, custody, disposal or payment of interest, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable gains, profits or income, except interest coupons payable to bearer. A duplicate of the statement as to tax withheld on wages, required to be furnished by an employer to an employee, shall constitute the return of information required to be made under this section with respect to such wages.

(d) Notice of qualification as receiver, etc.--Every receiver, trustee in bankruptcy, assignee for benefit of creditors, or other like fiduciary shall give notice of his qualification as such to the administrator, as may be required by regulation.

§ 39. Report of change in federal taxable income.--If the amount of a taxpayer's federal taxable income reported on his federal income tax return for any taxable year is changed or corrected by the United States internal revenue service or other competent authority, or as the result of a renegotiation of a contract or subcontract with the United States or if a taxpayer, pursuant to subsection (d) of section six thousand two hundred thirteen of the internal revenue code, executes a notice of waiver of the restrictions provided in subsection (a) of said section, the taxpayer shall report such change or correction in federal taxable income or such execution of such notice of waiver and the changes or corrections of his federal taxable income on which it is based, within ninety days after the final determination of such change, correction, or renegotiation, or such execution of such notice of waiver or as otherwise required by the administrator, and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended federal income tax return shall also file within ninety days thereafter an amended return under this local law, and shall give such information as the administrator may require. The administrator may by regulation prescribe such exceptions to the requirements of this section as he deems appropriate.

§ 40. Change of election.-- Any election expressly authorized by this local law, other than the election authorized by subdivision (g) of section twelve, may be changed on such terms and conditions as the administrator may prescribe by regulation.

§ 41. Declaration of estimated tax for taxable years beginning prior to the date this local law becomes effective.-- Notwithstanding subdivision (d) of section thirty-five, no declaration of estimated tax required by subdivision (a) of such section need be filed until sixty days after the date this local law becomes effective.

PART IV
WITHHOLDING OF TAX

§ 51. Requirement of withholding tax from wages.--(a) General.--On or after the first payroll period beginning forty-five days after the date this local law becomes effective, every employer maintaining an office or transacting business within this state and making payment of any wages taxable under this local law shall deduct and withhold from such wages for each payroll period a tax computed in such manner as to result, so far as practicable, in withholding from the employee's wages during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due under this local law resulting from the inclusion in the employee's city adjusted gross income of his wages received during such calendar year. The method of determining the amount to be withheld shall be prescribed by regulations of the administrator with due regard to the city withholding exemptions of the employee and the sum of any credits allowable against his tax. This section shall not apply to payments by the United States for service in the armed forces of the United States.

(b) Withholding exemptions.--For purposes of this section:

(1) An employee shall be entitled to the same number of city withholding exemptions as the number of withholding exemptions to which he is entitled for federal income tax withholding purposes. An employer

may rely upon the number of federal withholding exemptions claimed by the employee, except where the employee claims a different number of city withholding exemptions.

(2) The amount of each city exemption shall be six hundred dollars.

§ 52. Information statement for employee.-- Every employer required to deduct and withhold tax under this local law from the wages of an employee, or who would have been required so to deduct and withhold tax if the employee had claimed no more than one withholding exemption, shall furnish to each such employee in respect of the wages paid by such employer to such employee during the calendar year on or before February fifteenth of the succeeding year, or, if his employment is terminated before the close of such calendar year, within thirty days from the date on which the last payment of the wages is made, a written statement as prescribed by the administrator showing the amount of wages paid by the employer to the employee, the amount deducted and withheld as tax, and such other information as the administrator shall prescribe.

§ 53. Credit for tax withheld.-- Wages upon which tax is required to be withheld shall be taxable under this local law as if no withholding were required, but any amount of tax actually deducted and withheld under this local law in any calendar year shall be deemed to have been paid to the administrator on behalf of the person from whom withheld, and such person shall be credited with having paid that amount of tax for the taxable year beginning in such calendar year. For a taxable year of less than twelve months, the credit shall be made under regulations of the administrator.

§ 54. Employer's return and payment of withheld taxes.--(a) General.-- Every employer required to deduct and withhold tax under this local law shall, for each calendar month, on or before the fifteenth day of the month following the close of such calendar month, file a withholding return as prescribed by the administrator and pay over to the administrator or to a depositary designated by the administrator, the taxes so required to be deducted and withheld, except that for the month of December in any year, the return shall be filed and the taxes paid on or before January thirty-first of the succeeding year. Where the aggregate amount required to be deducted and withheld by any employer under this local law and under any local law imposing a tax on earnings of nonresidents of the city adopted by the city pursuant to authority granted by the general city law is less than twenty-five dollars in a calendar month and the aggregate of such taxes for the semi-annual period ending on June thirtieth and December thirty-first can reasonably be expected to be less than one hundred fifty dollars, the administrator may, by regulation, permit an employer to file a return on or before July thirty-first for the semi-annual period ending on June thirtieth and on or before January thirty-first for the semi-annual period ending on December thirty-first. The administrator may, if he believes such action necessary for the protection of the revenues, require any employer to make a return and pay to him the tax deducted and withheld at any time, or from time to time. Where the amount of wages paid by an employer is not sufficient under this local law and under any local law imposing a tax on earnings of nonresidents of the city adopted by the city pursuant to authority granted by the general city law to require the withholding of tax from the wages of any of his employees, the administrator may, by regulation, permit such employer to file an annual return on or before February twenty-eighth of the following calendar year.

(b) Combined returns. The administrator may by regulation provide for the filing of one return which shall include the return required to be filed under this section, together with the employer's return required to be filed under any local law imposing a tax on earnings of nonresidents of the city adopted by the city pursuant to authority granted by the general city law.

(c) Deposit in trust for city. Whenever any employer fails to collect, truthfully account for, pay over the tax, or make returns of the tax as required in this section, the administrator may serve a notice requiring such employer to collect the taxes which become collectible after service of such notice, to deposit such taxes in a bank approved by the administrator, in a separate account, in trust for the city and payable to the administrator, and to keep the amount of such tax in such account until payment over to the administrator. Such notice shall remain in effect until a notice of cancellation is served by the administrator.

§ 55. Employer's liability for withheld taxes.-- Every employer required to deduct and withhold tax under this local law is hereby made liable for such tax. For purposes of assessment and collection, any amount required to be withheld and paid over to the administrator, and any additions to tax, penalties and interest with respect thereto, shall be considered the tax of the employer. Any amount of tax actually deducted and withheld under this local law shall be held to be a special fund in trust for the city. No employee shall have any right of action against his employer in respect to any moneys deducted and withheld from his wages and paid over to the administrator in compliance or in intended compliance with this local law.

§ 56. Employer's failure to withhold.--If an employer fails to deduct and withhold tax as required, and thereafter the tax against which such tax may be credited is paid, the tax so required to be deducted and withheld shall not be collected from the employer, but the employer shall not be relieved from liability for any penalties, interest, or additions to the tax otherwise applicable in respect of such failure to deduct and withhold.

PART V
PROCEDURE AND ADMINISTRATION

§ 61. Notice of deficiency.--(a) General.--If upon examination of a taxpayer's return under this local law the administrator determines that there is a deficiency of income tax, he may mail a notice of deficiency to the taxpayer. If a taxpayer fails to file an income tax return required under this local law, the administrator is authorized to estimate the taxpayer's city taxable income and tax thereon, from any information in its possession, and to mail a notice of deficiency to the taxpayer. A notice of deficiency shall be mailed by certified or registered mail to the taxpayer at his last known address in or out of the city. If a husband and wife are jointly liable for tax, a notice of deficiency may be a single joint notice, except that if the administrator has been notified by either spouse that separate residences have been established, then, in lieu of the single joint notice, a duplicate original of the joint notice shall be mailed to each spouse at his or her last known address in or out of the city. If the taxpayer is deceased or under a legal disability, a notice of deficiency may be mailed to his last known address in or out of the city, unless the administrator has received notice of the existence of a fiduciary relationship with respect to the taxpayer.

(b) Notice of deficiency as assessment.--After ninety days from the mailing of a notice of deficiency, such notice shall be an assessment of the amount of tax specified in such notice, together with the interest, additions to tax and penalties stated in such notice, except only for any such tax or other amounts as to which the taxpayer has within such ninety day period filed with the administrator a petition under section sixty-nine. If the notice of deficiency is addressed to a person outside of the United States, such period shall be one hundred fifty days instead of ninety days.

(c) Restrictions on assessment and levy.--No assessment of a deficiency in tax and no levy or proceeding in court for its collection shall be made, begun or prosecuted, except as otherwise provided in section seventy-four, until a notice of deficiency has been mailed to the taxpayer, nor until the expiration of the time for filing a petition contesting such notice, nor, if a petition with respect to the taxable year has been filed with the administrator, until the decision of the tax commission has become final. For exception in the case of judicial review of the decision of the administrator, see subdivision (c) of section seventy.

(d) Exceptions for mathematical errors.--If a mathematical error appears on a return (including an overstatement of the credit for income tax withheld at the source or of the amount paid as estimated income tax), the administrator shall notify the taxpayer that an amount of tax in excess of that shown upon the return is due, and that such excess has been assessed. Such notice shall not be considered as a notice of deficiency for the purposes of this section, subdivision (f) of section sixty-seven (limiting credits or refunds after petition to the administrator), or subdivision (b) of section sixty-nine (authorizing the filing of a petition with the administrator based on a notice of deficiency) nor shall such assessment or collection be prohibited by the provisions of subdivision (c).

(e) Exception where change in federal taxable income is not reported.--(1) If the taxpayer fails to comply with section thirty-nine in not reporting a change or correction increasing his federal taxable income as reported on his federal income tax return or in not reporting a change or correction which is treated in the same manner as if it were a deficiency for federal income tax purposes or in not filing an amended return or in not reporting the execution of a notice of waiver described in such section, instead of the mode and time of assessment provided for in subdivision (b) of this section, the administrator may assess a deficiency based upon such changed or corrected federal taxable income by mailing to the taxpayer a notice of additional tax due specifying the amount of the deficiency, and such deficiency, together with the interest, additions to tax and penalties stated in such notice, shall be deemed assessed on the date such notice is mailed unless within thirty days after the mailing of such notice a report of the federal change or correction or an amended return, where such return was required by section thirty-nine, is filed accompanied by a statement showing wherein such federal determination and such notice of additional tax due are erroneous.

(2) Such notice shall not be considered as a notice of deficiency for the purposes of this section, subdivision (f) of section sixty-seven (limiting credits or refunds after petition to the administrator), or subdivision (b) of section sixty-nine (authorizing the filing of a petition with the administrator based on a notice of deficiency), nor shall such assessment or the collection thereof be prohibited by the provisions of subdivision (c).

(3) If a husband and wife are jointly liable for tax, a notice of additional tax due may be a single joint notice, except that if the administrator has been notified by either spouse that separate residences have been established, then, in lieu of the joint notice, a duplicate original of the joint notice shall be mailed to each spouse at

his or her last known address in or out of the city. If the taxpayer is deceased or under a legal disability, a notice of additional tax due may be mailed to his last known address in or out of the city, unless the administrator has received notice of the existence of a fiduciary relationship with respect to the taxpayer.

(f) Waiver of restrictions.--The taxpayer shall at any time (whether or not a notice of deficiency has been issued) have the right to waive the restriction on assessment and collection of the whole or any part of the deficiency by a signed notice in writing filed with the administrator.

(g) Deficiency defined.--For purposes of this local law, a deficiency means the amount of the tax imposed by this local law, less (1) the amount shown as the tax upon the taxpayer's return (whether the return was made or the tax computed by him or by the administrator), and less, (2) the amounts previously assessed (or collected without assessment) as a deficiency and plus (3) the amount of any rebates. For the purpose of this definition, the tax imposed by this local law and the tax shown on the return shall both be determined without regard to payments on account of estimated tax or the credit for withholding tax; and a rebate means so much of an abatement, credit, refund or other repayment (whether or not erroneous) made on the ground that the amounts entering into the definition of a deficiency showed a balance in favor of the taxpayer.

§ 62. Assessment.--(a) Assessment date.--The amount of tax which a return shows to be due, or the amount of tax which a return would have shown to be due but for a mathematical error, shall be deemed to be assessed on the date of filing of the return (including any amended return showing an increase of tax). In the case of a return properly filed without computation of tax, the tax computed by the administrator shall be deemed to be assessed on the date on which payment is due. If a notice of deficiency has been mailed, the amount of the deficiency shall be deemed to be assessed on the date specified in subdivision (b) of section sixty-one if no petition to the administrator is filed, or if a petition is filed, then upon the date when a decision of the administrator establishing the amount of the deficiency becomes final.

If an amended return or report filed pursuant to section thirty-nine concedes the accuracy of a federal adjustment, change or correction, any deficiency in tax under this local law resulting therefrom shall be deemed to be assessed on the date of filing such report or amended return, and such assessment shall be timely notwithstanding section sixty-three. If a notice of additional tax due, as prescribed in subdivision (e) of section sixty-one, has been mailed, the amount of the deficiency shall be deemed to be assessed on the date specified in such subdivision unless within thirty days after the mailing of such notice a report of the federal change or correction or an amended return, where such return was required by section thirty-nine, is filed accompanied by a statement showing wherein such federal determination and such notice of additional tax due are erroneous. Any amount paid as a tax or in respect of a tax, other than amounts withheld at the source or paid as estimated income tax, shall be deemed to be assessed upon the date of receipt of payment, notwithstanding any other provisions.

(b) Other assessment powers.--If the mode or time for the assessment of any tax under this local law (including interest, additions to tax and assessable penalties) is not otherwise provided for, the administrator may establish the same by regulations.

(c) Estimated income tax.--No unpaid amount of estimated tax under section thirty-six shall be assessed.

(d) Supplemental assessment.--The administrator may, at any time within the period prescribed for assessment, make a supplemental assessment, subject to the provisions of section sixty-one where applicable, whenever it is ascertained that any assessment is imperfect or incomplete in any material respect.

(e) Cross reference.--For assessment in case of jeopardy, see section seventy-four.

§ 63. Limitations on assessment.--(a) General.--Except as otherwise provided in this section, any tax under this local law shall be assessed within three years after the return was filed (whether or not such return was filed on or after the date prescribed).

(b) Time return deemed filed.--(1) Early return.--For purposes of this section a return of income tax, except withholding tax, filed before the last day prescribed by law or by regulations promulgated pursuant to law for the filing thereof, shall be deemed to be filed on such last day.

(2) Return of withholding tax.--For purposes of this section, if a return of withholding tax for any period ending with or within a calendar year is filed before April fifteenth of the succeeding calendar year, such return shall be deemed to be filed on April fifteenth of such succeeding calendar year.

(c) Exceptions.--(1) Assessment at any time.--The tax may be assessed at any time if--

(A) no return is filed,

(B) a false or fraudulent return is filed with intent to evade tax, or

(C) the taxpayer fails to comply with section thirty-nine in not reporting a change or correction increasing his federal taxable income as reported on his federal income tax return, or the execution of a notice of waiver and the changes or corrections on which it is based or in not reporting a change or correction which is treated in the same manner as if it were a deficiency for federal income tax purposes, or in not filing an amended return.

(2) Extension by agreement.--Where, before the expiration of the time prescribed in this section for the assessment of tax, both the administrator and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(3) Report of changed or corrected federal income.--If the taxpayer shall, pursuant to section thirty-nine, report a change or correction or file an amended return increasing his federal taxable income or report a change or correction which is treated in the same manner as if it were a deficiency for federal income tax purposes, the assessment (if not deemed to have been made upon the filing of the report or amended return) may be made at any time within two years after such report or amended return was filed. The amount of such assessment of tax shall not exceed the amount of the increase in city tax attributable to such federal change or correction. The provisions of this paragraph shall not affect the time within which or the amount for which an assessment may otherwise be made.

(4) Deficiency attributable to net operating loss carryback.--If a deficiency is attributable to the application to the taxpayer of a net operating loss carryback, it may be assessed at any time that a deficiency for the taxable year of the loss may be assessed.

(5) Recovery of erroneous refund.--An erroneous refund shall be considered an underpayment of tax on the date made, and an assessment of a deficiency arising out of an erroneous refund may be made at any time within two years from the making of the refund, except that the assessment may be made within five years from the making of the refund if it appears that any part of the refund was induced by fraud or misrepresentation of a material fact.

(6) Request for prompt assessment.--If a return is required for a decedent or for his estate during the period of administration, the tax shall be assessed within eighteen months after written request therefor (made after the return is filed) by the executor, administrator or other person representing the estate of such decedent, but not more than three years after the return was filed, except as otherwise provided in this subdivision and subdivision (d).

(7) Report on use of certain property.--Under the circumstances described in paragraph two of subdivision (g) of section twelve, the tax may be assessed within three years after the filing of a return reporting that property has been used for purposes other than research and development to a greater extent than originally reported.

(8) Report concerning waste treatment facility.--Under the circumstances described in paragraph (3) of subdivision (h) of section twelve, the tax may be assessed within three years after the filing of the return containing the information required by such paragraph.

(d) Omission of income on return.--The tax may be assessed at any time within six years after the return was filed if--

(1) an individual omits from his city adjusted gross income an amount properly includible therein which is in excess of twenty-five percentum of the amount of city adjusted gross income stated in the return, or

(2) an estate or trust omits income from its return in an amount in excess of twenty-five percentum of its income determined as if it were an individual computing his city adjusted gross income under section twelve.

For purposes of this subdivision there shall not be taken into account any amount which is omitted in the return if such amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the administrator of the nature and amount of such item.

(e) Suspension of running of period of limitation.--The running of the period of limitations on assessment or collection of tax or other amount (or of a transferee's liability) shall, after the mailing of a notice of deficiency, be suspended for the period during which the administrator is prohibited under subdivision (c) of section sixty-one from making the assessment or from collecting by levy.

§ 64. Interest on underpayment.--(a) General.--If any amount of income tax is not paid on or before the last date prescribed in this local law for payment, interest on such amount at the rate of six percentum per annum shall be paid for the period from such last date to the date paid, whether or not any extension of time for payment was granted. Interest under this subdivision shall not be paid if the amount thereof is less than one dollar. If the time for filing a return of tax withheld by an employer is extended, the employer shall pay interest for the period for which the extension is granted and may not charge such interest to the employee.

(b) Exception as to estimated tax.--This section shall not apply to any failure to pay estimated tax under section thirty-six.

(c) Exception for mathematical error.--No interest shall be imposed on any underpayment of tax due solely to mathematical error if the taxpayer files a return within the time prescribed in this local law (including any extension of time) and pays the amount of underpayment within three months after the due date of such return, as it may be extended.

(d) No interest on interest.--No interest under this local law shall be imposed on any interest provided by this title.

(e) Suspension of interest on deficiencies.--If a waiver of restrictions on assessment of a deficiency has been filed by the taxpayer, and if notice and demand by the administrator for payment of such deficiency is not made within thirty days after the filing of such waiver, interest shall not be imposed on such deficiency for the period beginning immediately after such thirtieth day and ending with the date of notice and demand.

(f) Tax reduced by carryback.--If the amount of tax for any taxable year is reduced by reason of a carryback of a net operating loss, such reduction in tax shall not affect the computation of interest under this section for the period ending with the last day of the taxable year in which the net operating loss arises.

(g) Interest treated as tax.--Interest under this section shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as income tax. Any reference in this title to the tax imposed by this local law shall be deemed also to refer to interest imposed by this section on such tax.

(h) Interest on penalties or additions to tax.--Interest shall be imposed under subdivision (a) in respect of any assessable penalty or addition to tax only if such assessable penalty or addition to tax is not paid within ten days from the date of the notice and demand therefor under subdivision (b) of section seventy-two, and in such case interest shall be imposed only for the period from such date of the notice and demand to the date of payment.

(i) Payment prior to notice of deficiency.--If, prior to the mailing to the taxpayer of a notice of deficiency under subdivision (b) of section sixty-one, the administrator mails to the taxpayer a notice of proposed increase of tax and within thirty days after the date of the notice of proposed increase the taxpayer pays all amounts shown on the notice to be due to the administrator, no interest under this section on the amount so paid shall be imposed for the period after the date of such notice of proposed increase.

(j) Payment within ninety days after notice of deficiency.--If a notice of deficiency under section sixty-one is mailed to the taxpayer, and the total amount specified in such notice is paid on or before the ninetieth day after the date of mailing, interest under this section shall not be imposed for the period after the date of the notice.

(k) Payment within ten days after notice and demand.--If notice and demand is made for payment of any amount under subdivision (b) of section seventy-two, and if such amount is paid within ten days after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand.

(l) Limitation on assessment and collection.--Interest prescribed under this section may be assessed and collected at any time during the period within which the tax or other amount to which such interest relates may be assessed and collected, respectively.

(m) Interest on erroneous refund.--Any portion of tax or other amount which has been erroneously refunded, and which is recoverable by the administrator, shall bear interest at the rate of six per centum per annum from the date of the payment of the refund, but only if it appears that any part of the refund was induced by fraud or a misrepresentation of a material fact.

(n) Satisfaction by credits.--If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowable with respect to such overpayment.

§ 65. Additions to tax and civil penalties.--(a) Failure to file tax return.--In case of failure to file a tax return under this local law on or before the prescribed date (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five per cent of the amount of such tax if the failure is for not more than one month, with an additional five per cent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five per cent in the aggregate. For this purpose, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(b) Deficiency due to negligence.--If any part of a deficiency is due to negligence or intentional disregard of this local law or rules or regulations hereunder (but without intent to defraud), there shall be added to the tax an amount equal to five per cent of the deficiency.

(c) Failure to file declaration or underpayment of estimated tax.--If any taxpayer fails to file a declaration of estimated tax or fails to pay all or any part of an installment of estimated tax, he shall be deemed to have made an underpayment of estimated tax. There shall be added to the tax for the taxable year an amount at the rate of six per centum per annum upon the amount of the underpayment for the period of the underpayment but not beyond the fifteenth day of the fourth month following the close of the taxable year. The amount of underpayment shall be the excess of the amount of the installment which would be required to be paid if the estimated tax were equal to seventy per cent of the tax (two-thirds of the tax for farmers referred to in subdivision (e) of section thirty-five) shown on the return for the taxable year (or if no return was filed, of the tax for such year) over the amount, if any, of the installment paid on or before the last day prescribed for such payment. No underpayment shall be deemed to exist with respect to a declaration or installment otherwise due on or after the taxpayer's death.

(d) Exception to addition for underpayment of estimated tax.--The addition to tax under subdivision (c) with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds whichever of the following is the lesser--

(1) The amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the least--

(A) The tax shown on the return of the individual for the preceding taxable year, if a return showing a liability for tax was filed by the individual for the preceding taxable year and such preceding year was a taxable year of twelve months, or

(B) An amount equal to the tax computed, at the rates applicable to the taxable year, on the basis of the taxpayer's status with respect to personal exemptions for the taxable year, but otherwise on the basis of the facts shown on his return for, and the law applicable to, the preceding taxable year, or

(C) An amount equal to seventy per cent of the tax for the taxable year (two-thirds of the tax for farmers referred to in subdivision (e) of section thirty-five) computed by placing on an annualized basis the taxable income for the months in the taxable year ending before the month in which the installment is required to be paid. For purposes of this subparagraph, the taxable income shall be placed on an annualized basis by--

(i) multiplying by twelve (or, in the case of a taxable year of less than twelve months, the number of months in the taxable year) the taxable income (computed without deduction for personal exemptions) for the months in the taxable year ending before the month in which the installment is required to be paid,

(ii) dividing the resulting amount by the number of months in the taxable year ending before the month in which such installment date falls, and

(iii) deducting from such amount the deductions for personal exemptions allowable for the taxable year (such personal exemptions being determined as of the last date prescribed for payment of the installment); or

(2) An amount equal to ninety per cent of the tax computed, at the rates applicable to the taxable year, on the basis of the actual taxable income for the months in the taxable year ending before the month in which the installment is required to be paid.

For the purposes of this subdivision the amounts specified in subparagraphs (B) and (C) of paragraph (1) and in paragraph (2) shall be computed without regard to any increase in the rates applicable to the taxable year unless such increase was enacted at least thirty days prior to the time a declaration or amended declaration of estimated tax is required to be filed for such taxable year.

(e) Deficiency due to fraud.--If any part of a deficiency is due to fraud, there shall be added to the tax an amount equal to fifty per cent of the deficiency. This amount shall be in lieu of any other addition to tax imposed by subdivision (a) or (b).

(f) Non-willful failure to pay withholding tax.--If any employer, without intent to evade or defeat any tax imposed by this local law or the payment thereof, shall fail to make a return and pay a tax withheld by him at the time required by or under the provisions of section fifty-four, such employer shall be liable for such tax and shall pay the same together with interest thereon and the addition to tax provided in subdivision (a), and such interest and addition to tax shall not be charged to or collected from the employee by the employer. The administrator shall have the same rights and powers for the collection of such tax, interest and addition to tax against such employer as are now prescribed by this title for the collection of tax against an individual taxpayer.

(g) Willful failure to collect and pay over tax.--Any person required to collect, truthfully account for, and pay over the tax imposed by this local law who willfully fails to collect such tax or truthfully account for and pay over such tax or willfully attempts in any manner to evade or defeat the tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. No addition to tax under subdivisions (b) or (e) shall be imposed for any offense to which this subdivision applies.

(h) Failure to file certain information returns.--In case of each failure to file a statement of a payment to another person, required under authority of subdivision (c) of section thirty-eight (relating to information at source, including the duplicate statement of tax withheld on wages) on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall, upon notice and demand by the administrator and in the same manner as tax, be paid by the person so failing to file the statement, a penalty of one dollar for each statement not so filed, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed one thousand dollars.

(i) Additional penalty.--Any person who with fraudulent intent shall fail to pay, or to deduct or withhold and pay, any tax, or to make, render, sign or certify any return or declaration of estimated tax, or to supply any information within the time required by or under this local law, shall be liable to a penalty of not more than one thousand dollars, in addition to any other amounts required under this local law, to be imposed, assessed and collected by the administrator. The administrator shall have the power, in his discretion, to waive, reduce or compromise any penalty under this subdivision.

(j) Additions treated as tax.--The additions to tax and penalties provided by this section shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as taxes, and any reference in this local law to income tax or tax imposed by this local law, shall be deemed also to refer to the additions to tax and penalties provided by this section. For purposes of section sixty-one, this subdivision shall not apply to--

(1) any addition to tax under subdivision (a) except as to that portion attributable to a deficiency;

(2) any addition to tax under subdivision (c); and

(3) any additional penalty under subdivision (i).

(k) Determination of deficiency.--For purposes of subdivisions (b) and (e), the amount shown as the tax by the taxpayer upon his return shall be taken into account in determining the amount of the deficiency only if such return was filed on or before the last day prescribed for the filing of such return, determined with regard to any extension of time for such filing.

(l) Person defined.--For purposes of subdivisions (g) and (i), the term "person" includes an individual, corporation or partnership or an officer or employee of any corporation (including a dissolved corporation), or a member or employee of any partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

§ 66. Overpayment.--(a) General.--The administrator, within the applicable period of limitations, may credit an overpayment of income tax and interest on such overpayment against any liability in respect of any tax imposed by this local law or by any local law of the city which imposes an unincorporated business income tax on the person who made the overpayment, and the balance shall be refunded. Any refund under this section shall be made only upon the filing of a return.

(b) Excessive withholding.--If the amount allowable as a credit for tax withheld from the taxpayer exceeds his tax to which the credit relates, the excess shall be considered an overpayment.

(c) Overpayment by employer.-- If there has been an overpayment of tax required to be deducted and withheld under section fifty-one, refund shall be made to the employer only to the extent that the amount of the overpayment was not deducted and withheld by the employer.

(d) Credits against estimated tax.--The administrator may prescribe regulations providing for the crediting against the estimated income tax for any taxable year of the amount determined to be an overpayment of the income tax for a preceding taxable year. If any overpayment of income tax is so claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the income tax for the succeeding taxable year (whether or not claimed as a credit in the declaration of estimated tax for such succeeding taxable year), and no claim for credit or refund of such overpayment shall be allowed for the taxable year for which the overpayment arises.

(e) Rule where no tax liability.--If there is no tax liability for a period in respect of which an amount is paid as income tax, such amount shall be considered an overpayment.

(f) Assessment and collection after limitation period.--If any amount of income tax is assessed or collected after the expiration of the period of limitations properly applicable thereto, such amount shall be considered an overpayment.

§ 67. Limitations on credit or refund.--(a) General.--Claim for credit or refund of an overpayment of income tax shall be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expire the later, or if no return was filed, within two years from the time the tax was paid. If the claim is filed within the three year period, the amount of the credit or refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the claim plus the period of any extension of time for filing the return. If the claim is not filed within the three year period, but is filed within the two year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim. Except as otherwise provided in this section, if no claim is filed, the amount of a credit or refund shall not exceed the amount which would be allowable if a claim had been filed on the date the credit or refund is allowed.

(b) Extension of time by agreement.--If an agreement under the provisions of paragraph two of subdivision (c) of section sixty-three (extending the period for assessment of income tax)is made within the period prescribed in subdivision (a) for the filing of a claim for credit or refund, the period for filing a claim for credit or refund, or for making credit or refund if no claim is filed, shall not expire prior to six months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof. The amount of such credit or refund shall not exceed the portion of the tax paid after the execution of the agreement and before the filing of the claim or the making of the credit or refund, as the case may be, plus the portion of the tax paid within the period which would be applicable under subdivision (a) if a claim had been filed on the date the agreement was executed.

(c) Notice of change or correction of federal income.--If a taxpayer is required by section thirty-nine to report a change or correction in federal taxable income reported on his federal income tax return, or to report a change or correction which is treated in the same manner as if it were an overpayment for federal income tax purposes, or to file an amended return with the administrator, claim for credit or refund of any resulting overpayment of tax shall be filed by the taxpayer within two years from the time the notice of such change or correction or such amended return was required to be filed with the administrator. If the report or amended return required by section thirty-nine is not filed within the ninety day period therein specified, interest on any resulting refund or credit shall cease to accrue after such ninetieth day. The amount of such credit or refund shall not exceed the amount of the reduction in tax attributable to such federal change, correction or items amended on the taxpayer's amended federal income tax return. This subdivision shall not affect the time within which or the amount for which a claim for credit or refund may be filed apart from this subdivision.

(d) Overpayment attributable to net operating loss carryback.--A claim for credit or refund of so much of an overpayment as is attributable to the application to the taxpayer of a net operating loss carryback shall be filed within three years from the time the return was due for the taxable year of the loss, or within the period prescribed in subdivision (b) in respect of such taxable year, or within the period prescribed in subdivision (c), where applicable, in respect of the taxable year to which the net operating loss is carried back, whichever expires the latest.

(e) Failure to file claim within prescribed period.--No credit or refund shall be allowed or made, except as provided in subdivision (f) of this section or subdivision (d) of section seventy after the expiration of the applicable period of limitation specified in this local law unless a claim for credit or refund is filed by the taxpayer within such period. Any later credit shall be void and any later refund erroneous. No period of limitations specified in any other law shall apply to the recovery by a taxpayer of moneys paid in respect of taxes under this local law.

(f) Effect of petition to administrator.--If a notice of deficiency for a taxable year has been mailed to the taxpayer under section sixty-one and if the taxpayer files a timely petition with the administrator under section sixty-nine, he may determine that the taxpayer has made an overpayment for such year (whether or not it also determines a deficiency for such year). No separate claim for credit or refund for such year shall be filed, and no credit or refund for such year shall be allowed or made, except--

(1) as to overpayments determined by a decision of the administrator which has become final;

(2) as to any amount collected in excess of an amount computed in accordance with the decision of the administrator which has become final;

(3) as to any amount collected after the period of limitation upon the making of levy for collection has expired; and

(4) as to any amount claimed as a result of a change or correction described in subdivision (c).

(g) Limit on amount of credit or refund.--The amount of overpayment determined under subdivision (f) shall, when the decision of the administrator has become final, be credited or refunded in accordance with subdivision (a) of section sixty-six and shall not exceed the amount of tax which the administrator determines as part of his decision was paid--

(1) after the mailing of the notice of deficiency, or

(2) within the period which would be applicable under subdivisions

(a), (b) or (c), if on the date of the mailing of the notice of deficiency a claim had been filed (whether or not filed) stating the grounds upon which the administrator finds that there is an overpayment.

(h) Early return.--For purposes of this section, any return filed before the last day prescribed for the filing thereof shall be considered as filed on such last day, determined without regard to any extension of time granted the taxpayer.

(i) Prepaid income tax.--For purposes of this section, any tax paid by the taxpayer before the last day prescribed for its payment, any income tax withheld from the taxpayer during any calendar year, and any amount paid by the taxpayer as estimated income tax for a taxable year shall be deemed to have been paid by him on the fifteenth day of the fourth month following the close of his taxable year with respect to which such amount constitutes a credit or payment.

(j) Return and payment of withholding tax.--Notwithstanding subdivision (h), for purposes of this section with respect to any withholding tax--

(1) if a return for any period ending with or within a calendar year is filed before April fifteenth of the succeeding calendar year, such return shall be considered filed on April fifteenth of such succeeding calendar year; and

(2) if a tax with respect to remuneration paid during any period ending with or within a calendar year is paid before April fifteenth of the succeeding calendar year, such tax shall be considered paid on April fifteenth of such succeeding calendar year.

(k) Cross reference.--For provision barring refund of overpayment credited against tax of a succeeding year, see subdivision (d) of section sixty-six.

§ 68. Interest on overpayment.--(a) General.--Notwithstanding the provisions of section three-a of the state general municipal law, interest shall be allowed and paid as follows at the rate of six per cent per annum upon any overpayment in respect of the tax imposed by this title:

(1) from the date of the overpayment to the due date of an amount against which a credit is taken; or

(2) from the date of the overpayment to a date (to be determined by the administrator) preceding the date of a refund check by not more than thirty days, whether or not such refund check is accepted by the taxpayer after tender of such check to the taxpayer. The acceptance of such check shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon.

No interest shall be allowed or paid if the amount thereof is less than one dollar.

(b) Advance payment of tax, payment of estimated tax, and credit for income tax withholding.--The provisions of subdivisions (h), (i) and (j) of section sixty-seven applicable in determining the date of payment of tax for purposes of determining the period of limitations on credit or refund, shall be applicable in determining the date of payment for purposes of this section.

(c) Income tax refund within three months of due date of tax.--If any overpayment of tax imposed by this local law is refunded within three months after the last date prescribed (or permitted by extension of time) for filing the return of such tax or within three months after the return was filed, whichever is later, no interest shall be allowed under this section on such overpayment.

(d) Refund of income tax caused by carryback.--For purposes of this section, if any overpayment of tax imposed by this local law results from a carryback of a net operating loss, such overpayment shall be deemed not to have been made prior to the close of the taxable year in which such net operating loss arises.

(e) Cross-reference.--For provision terminating interest after failure to file notice of federal change under section thirty-nine, see subdivision (c) of section sixty-seven.

§ 69. Petition to administrator.--(a) General.--The form of a petition to the administrator, and further proceedings before the administrator in any case initiated by the filing of a petition, shall be governed by such rules as the administrator shall prescribe. No petition shall be denied in whole or in part without opportunity for a hearing on reasonable prior notice. Such hearing shall be conducted by the administrator, or by a hearing officer designated by the administrator to take evidence and report to the administrator. The administrator shall decide the case as quickly as practicable. Notice of the decision shall be mailed promptly to the taxpayer by certified or registered mail at his last known address, and such notice shall set forth the administrator's findings of fact and a brief statement of the grounds of decision in each case decided in whole or in part adversely to the taxpayer.

(b) Petition for redetermination of a deficiency.--Within ninety days, or one hundred fifty days if the notice is addressed to a person outside of the United States, after the mailing of the notice of deficiency authorized by section sixty-one, the taxpayer may file a petition with the administrator for a redetermination of the deficiency. Such petition may also assert a claim for refund for the same taxable year or years, subject to the limitations of subdivision (g) of section sixty-seven.

(c) Petition for refund.--A taxpayer may file a petition with the administrator for the amounts asserted in a claim for refund if--

(1) the taxpayer has filed a timely claim for refund with the administrator,

(2) the taxpayer has not previously filed with the administrator a timely petition under subdivision (b) for the same taxable year unless the petition under this subdivision relates to a separate claim for credit or refund properly filed under subdivision (f) of section sixty-seven, and

(3) either (A) six months have expired since the claim was filed, or (B) the administrator has mailed to the taxpayer, by registered or certified mail, a notice of disallowance of such claim in whole or in part. No petition under this subdivision shall be filed more than two years after the date of mailing of a notice of disallowance, unless prior to the expiration of such two-year period it has been extended by written agreement between the taxpayer and the administrator. If a taxpayer files a written waiver of the requirement that he be mailed a notice of disallowance, the two year period prescribed by this subdivision for filing a petition for refund shall begin on the date such waiver is filed.

(d) Assertion of deficiency after filing petition.--(1) Petition for redetermination of deficiency.--If a taxpayer files with the administrator a petition for redetermination of a deficiency, the administrator shall have power to determine a greater deficiency then asserted in the notice of deficiency and to determine if there should be assessed any addition to tax or penalty provided in section sixty-five, if claim therefor is asserted at or before the hearing under the rules of the administrator.

(2) Petition for refund.--If the taxpayer files with the administrator a petition for credit or refund for a taxable year, the administrator may

(A) determine a deficiency for such year as to any amount of deficiency asserted at or before the hearing under rules of the administrator, and within the period in which an assessment would be timely under section sixty-three, or

(B) deny so much of the amount for which credit or refund is sought in the petition, as is offset by other issues pertaining to the same taxable year which are asserted at or before the hearing under rules of the administrator.

(3) Opportunity to respond.--A taxpayer shall be given a reasonable opportunity to respond to any matters asserted by the administrator under this subdivision.

(4) Restriction on further notices of deficiency.--If the taxpayer files a petition with the administrator under this section, no notice of deficiency under section sixty-one may thereafter be issued by the administrator for the same taxable year, except in case of fraud or with respect to a change or correction in federal taxable income required to be reported under section thirty-nine.

(e) Burden of proof.--In any case before the administrator under this local law, the burden of proof shall be upon the petitioner except for the following issues, as to which the burden of proof shall be upon the administrator:

(1) whether the petitioner has been guilty of fraud with intent to evade tax;

(2) whether the petitioner is liable as the transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax; and

(3) whether the petitioner is liable for any increase in a deficiency where such increase is asserted initially after a notice of deficiency

was mailed and a petition under this section filed, unless such increase in deficiency is the result of a change or correction of federal taxable income required to be reported under section thirty-nine, and of which change or correction the administrator had no notice at the time it mailed the notice of deficiency.

(f) Evidence of related federal determination.--Evidence of a federal determination relating to issues raised in a case before the administrator under this section shall be admissible, under rules established by the administrator.

(g) Jurisdiction over other years.--The administrator shall consider such facts with relation to the taxes for other years as may be necessary correctly to determine the tax for the taxable year, but in so doing shall have no jurisdiction to determine whether or not the tax for any other year has been overpaid or underpaid.

§ 70. Review of administrator's decision.--(a) General.--A decision of the administrator shall be subject to judicial review at the instance of any taxpayer affected thereby in the manner provided by law for the review of a final decision or action of administrative agencies of the city. An application by a taxpayer for such review must be made within four months after notice of the decision is sent by certified or registered mail to the taxpayer.

(b) Judicial review exclusive remedy of taxpayer.--The review of a decision of the administrator provided by this section shall be the exclusive remedy available to any taxpayer for the judicial determination of the liability of the taxpayer for the taxes imposed by this local law.

(c) Assessment pending review; review bond.--Irrespective of any restrictions on the assessment and collection of deficiencies, the administration may assess a deficiency after the expiration of the period specified in subdivision (a), notwithstanding that an application for judicial review in respect of such deficiency has been duly made by the taxpayer, unless the taxpayer, at or before the time his application for review is made, has paid the deficiency, has deposited with the administrator the amount of the deficiency, or has filed with the administrator a bond (which may be a jeopardy bond under subdivision (h) of section seventy-four) in the amount of the portion of the deficiency (including interest and other amounts) in respect of which the application for review is made and all costs and charges which may accrue against him in the prosecution of the proceeding, including costs of all appeals, and with surety approved by a justice of the supreme court of the state of New York, conditioned upon the payment of the deficiency (including interest and other amounts) as finally determined and such costs and charges. If as a result of a waiver of the restrictions on the assessment and collection of a deficiency any part of the amount determined by the administrator is paid after the filing of the review bond, such bond shall, at the request of the taxpayer, be proportionately reduced.

(d) Credit, refund or abatement after review.--If the amount of a deficiency determined by the administrator is disallowed in whole or in part by the court of review, the amount so disallowed shall be credited or refunded to the taxpayer, without the making of claim therefor, or, if payment has not been made, shall be abated.

(e) Date of finality of administrator's decision.-- A decision of the administrator shall become final upon the expiration of the period specified in subdivision (a) for making an application for review, if no such application has been duly made within such time, or if such application has been duly made, upon expiration of the time for all further judicial review, or upon the rendering by the administrator of a decision in accordance with the mandate of the court on review. Notwithstanding the foregoing, for the purpose of making an application for review, the decision of the administrator shall be deemed final on the date the notice of decision is sent by certified or registered mail to the taxpayer.

§ 71. Mailing rules; holidays.--(a) Timely mailing.--If any claim, statement, notice, petition, or other document (including to the extent authorized by the administrator, a return or a declaration of estimated tax) required to be filed within a prescribed period or on or before a prescribed date under authority of any provision of this local law is, after such period or such date, delivered by the United States mail to the administrator, bureau, office, officer or person with which or with whom such document is required to be filed, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, determined with regard to any extension granted for such filing, and only if such document was deposited in the mail, postage prepaid, properly addressed to the administrator, bureau, office, officer or person with which or with whom the document is required to be filed. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the administrator, bureau, office, officer or person to which or to whom addressed. To the extent that the administrator shall prescribe by regulation, certified mail may be used in lieu of registered mail under this section. This subdivision shall apply in the case of postmarks not made by the United States Post Office only if and to the extent provided by regulations of the administrator.

(b) Last known address.--For purposes of this local law, a taxpayer's last known address shall be the address given in the last return filed by him, unless subsequently to the filing of such return the taxpayer shall have notified the administrator of a change of address.

(c) Last day a Saturday, Sunday or legal holiday.--When the last day prescribed under authority of this local law (including any extension of time) for performing any act falls on Saturday, Sunday, or a legal holiday in the state of New York, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or a legal holiday.

§ 72. Collection, levy and liens.--(a) Collection procedures.--The taxes imposed by this local law shall be collected by the administrator, and he may establish the mode or time for the collection of any amount due him under this local law if not otherwise specified. The administrator shall, upon request, give a receipt for any sum collected under this local law. The administrator may authorize banks or trust companies which are depositories or financial agents of the city to receive and give a receipt for any tax imposed under this local law in such manner, at such times, and under such conditions as the administrator may prescribe; and the administrator shall prescribe the manner, times and conditions under which the receipt of such tax by such banks and trust companies is to be treated as payment of such tax to the administrator.

(b) Notice and demand for tax.--The administrator shall as soon as practicable give notice to each person liable for any amount of tax, addition to tax, penalty or interest, which has been assessed but remains unpaid, stating the amount and demanding payment thereof. Such notice shall be left at the dwelling or usual place of business of such person or shall be sent by mail to such person's last known address. Except where the administrator determines that collection would be jeopardized by delay, if any tax is assessed prior to the last date (including any date fixed by extension) prescribed for payment of such tax, payment of such tax shall not be demanded until after such date.

(c) Issuance of warrant after notice and demand.--If any person liable under this local law for the payment of any tax, addition to tax, penalty or interest neglects or refuses to pay the same within ten days after notice and demand therefor is given to such person under subdivision (b), the administrator may within six years after the date of such assessment issue a warrant directed to the sheriff of any county of the state, or to any officer or employee of the department, bureau or other agency of the city administering the tax imposed under this local law under the direction and supervision of the administrator, commanding him to levy upon and sell such person's real and personal property for the payment of the amount assessed, with the cost of executing the warrant, and to return such warrant to the administrator and pay to him the money collected by virtue thereof within sixty days after the receipt of the warrant. If the administrator finds that the collection of tax or other amount is in jeopardy, notice and demand for immediate payment of such tax may be made by the administrator and upon failure or refusal to pay such tax or other amount the administrator may issue a warrant without regard to the ten-day period provided in this subdivision.

(d) Copy of warrant to be filed and lien to be created.--Any sheriff or officer or employee who receives a warrant under subdivision (c) shall within five days thereafter file a copy with the clerk of the appropriate county. The clerk shall thereupon enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns the tax or other amounts for which the warrant is issued and the date when such copy is filed; and such amount shall thereupon be a binding lien upon the real, personal and other property of the taxpayer.

(e) Judgment.--When a warrant has been filed with the county clerk the administrator shall, on behalf of the city, be deemed to have obtained judgment against the taxpayer for the tax or other amounts.

(f) Execution.--The sheriff or officer or employee shall thereupon proceed upon the judgment in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and a sheriff shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner. An officer or employee of the department, bureau or other agency of the city administering the tax imposed under this local law under the direction and supervision of the administrator may proceed in any county or counties of this state and shall have all the powers of execution conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of actual expenses paid in connection with the execution of the warrant.

(g) Taxpayer not then a resident.--Where a notice and demand under subdivision (b) shall have been given to a taxpayer who is not then a resident of this state, and it appears to the administrator that it is not practicable to find in this state property of the taxpayer sufficient to pay the entire balance of tax or other amount owing by such taxpayer who is not then a resident of this state, the administrator may, in accordance with subdivision (c), issue a warrant directed to an officer or employee of the department, bureau or other agency of the city administering the tax imposed under this local law, a copy of which warrant shall be mailed by certified or registered mail to the taxpayer at his last known address, subject to the rules for mailing provided in subdivision (a) of section seventy-one. Such warrant shall command the officer or employee to proceed in the city, and he shall, within five days after receipt of the warrant, file the warrant and obtain a judgment in accordance with this section. Thereupon the administrator may authorize the institution of any action or proceeding to collect or enforce the judgment in any place and by any procedure where and by which a civil judgment of the supreme court of the state of New York could be collected or enforced. The administrator may also, in his discretion, designate agents or retain counsel for the purpose of collecting, outside the state of New York, any unpaid taxes, additions to tax, penalties or interest which have been assessed under this local law against taxpayers who are not then residents of this state, may fix the compensation of such agents and counsel to be paid out of money appropriated or otherwise lawfully available for payment thereof, and may require of them bonds or other security for the faithful performance of their duties, in such form and in such amount as the administrator shall deem proper and sufficient.

(h) Action by the city for recovery of taxes.--Action may be brought by the corporation counsel or other appropriate officer of the city at the insistence of the administrator to recover the amount of any unpaid taxes, additions to tax, penalties or interest which have been assessed under this local law within six years prior to the date the action is commenced.

(i) Release of lien.--The administrator, if he finds that the interests of the city will not thereby be jeopardized, and upon such conditions as he may require, may release any property from the lien of any warrant for unpaid taxes, additions to tax, penalties and interest filed pursuant to this section, and such release may be recorded in the office of any recording officer in which such warrant has been filed.

§ 73. Transferees.--(a) General.--The liability, at law or in equity, of a transferee of property of a taxpayer for any tax, additions to tax, penalty or interest due to the city under this local law, shall be assessed, paid, and collected in the same manner and subject to the same provisions and limitations as in the case of the tax to which the liability relates, except that the period of limitations for assessment against the transferee shall be extended by one year for each successive transfer, in order, from the original taxpayer to the transferee involved, but not by more than three years in the aggregate. The term "transferee" includes donee, heir, legatee, devisee and distributee.

(b) Exceptions.--(1) If before the expiration of the period of limitations for assessment of liability of the transferee, a claim has been filed by the administrator in any court against the original taxpayer or the last preceding transferee based upon the liability of the original taxpayer, then the period of limitation for assessment of liability of the transferee shall in no event expire prior to one year after such claim has been finally allowed, disallowed or otherwise disposed of.

(2) If, before the expiration of the time prescribed in subdivision (a) or the immediately preceding paragraph of this subdivision for the assessment of the liability, the administrator and the transferee have both consented in writing to its assessment after such time, the liability may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. For the purpose of determining the period of limitation on credit or refund to the transferee of overpayments of tax made by such transferee or overpayments of tax made by the transferor as to which transferee is legally entitled to credit or refund, such agreement and any extension thereof shall be deemed an agreement and extension thereof referred to in subdivision (b) of section sixty-seven. If the agreement is executed after the expiration of the period of limitation for assessment against the original taxpayer, then in applying the limitations under subdivision (b) of section sixty-seven on the amount of the credit or refund, the periods specified in subdivision (a) of section sixty-seven shall be increased by the period from the date of such expiration to the date of the agreement.

(c) Deceased transferor.-- If any person is deceased, the period of limitation for assessment against him shall be the period that would be in effect if he had lived.

(d) Evidence.--Notwithstanding the provisions of section seventy-eight, the administrator shall use his powers to make available to the transferee evidence necessary to enable the transferee to determine the liability of the original taxpayer and of any preceding transferees, but without undue hardship to the original taxpayer or preceding transferee. See subdivision (e) of section sixty-nine for rule as to burden of proof.

§ 74. Jeopardy assessment.--(a) Authority for making.--If the administrator believes that the assessment or collection of a deficiency will be jeopardized by delay, he shall, notwithstanding the provisions of sections sixty-one and seventy-six, immediately assess such deficiency (together with all interest, penalties and additions to tax provided for by law), and notice and demand shall be made by the administrator for the payment thereof.

(b) Notice of deficiency.--If the jeopardy assessment is made before any notice in respect of the tax to which the jeopardy assessment relates has been mailed under section sixty-one, then the administrator shall mail a notice under such section within sixty days after the making of the assessment.

(c) Amount assessable before decision of administrator.--The jeopardy assessment may be made in respect of a deficiency greater or less than that of which notice is mailed to the taxpayer and whether or not the taxpayer has theretofore filed a petition with the administrator. The administrator may, at any time before rendering his decision, abate such assessment, or any unpaid portion thereof, to the extent that he believes the assessment to be excessive in amount. The administrator may in his decision redetermine the entire amount of the deficiency and of all amounts assessed at the same time in connection therewith.

(d) Amount assessable after decision of administrator.--If the jeopardy assessment is made after the decision of the administrator is rendered, such assessment may be made only in respect of the deficiency determined by the administrator in his decision.

(e) Expiration of right to assess.--A jeopardy assessment may not be made after the decision of the administrator has become final or after the taxpayer has made an an application for review of the decision of the administrator.

(f) Collection of unpaid amounts.--When a petition has been filed with the administrator and when the amount which should have been assessed has been determined by a decision of the administrator which has become final, then any unpaid portion, the collection of which has been stayed by bond, shall be collected as part of the tax upon notice and demand from the administrator, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be credited or refunded to the taxpayer as provided in section sixty-six without the filing of claim therefor. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the administrator.

(g) Abatement if jeopardy does not exist.--The administrator may abate the jeopardy assessment if he finds that jeopardy does not exist. Such abatement may not be made after a decision of the administrator in respect of the deficiency has been rendered or, if no petition is filed with the administrator, after the expiration of the period for filing such petition. The period of limitation on the making of assessments and levy or a proceeding for collection, in respect of any deficiency, shall be determined as if the jeopardy assessment so abated had not been made, except that the running of such period shall in any event be suspended for the period from the date of such jeopardy assessment until the expiration of the tenth day after the day on which such jeopardy assessment is abated.

(h) Bond to stay collection.--The collection of the whole or any amount of any jeopardy assessment may be stayed by filing with the administrator, within such time as may be fixed by regulation, a bond in an amount equal to the amount as to which the stay is desired, conditioned upon the payment of the amount (together with interest thereon) the collection of which is stayed at the time at which, but for the making of the jeopardy assessment, such amount would be due. Upon the filing of the bond the collection of so much of the amount assessed as is covered by the bond shall be stayed. The taxpayer shall have the right to waive such stay at any time in respect of the whole or any part of the amount covered by the bond, and if as a result of such waiver any part of the amount covered by the bond is paid, then the bond shall at the request of the taxpayer, be proportionately reduced. If any portion of the jeopardy assessment is abated, or if a notice of deficiency under section sixty-one is mailed to the taxpayer in a lesser amount, the bond shall, at the request of the taxpayer, be proportionately reduced.

(i) Petition to administrator.--If the bond is given before the taxpayer has filed his petition under section sixty-nine, the bond shall contain a further condition that if a petition is not filed within the period provided in such section, then the amount, the collection of which is stayed by the bond, will be paid on notice and demand at any time after the expiration of such period, together with interest thereon from the date of the jeopardy notice and demand to the date of notice and demand under this subdivision. The bond shall be conditioned upon the payment of so much of such assessment (collection of which is stayed by the bond) as is not abated by a decision of the administrator which has become final. If the administrator determines that the amount assessed is greater than the amount which should have been assessed, then the bond shall, at the request of the taxpayer, be proportionately reduced when the decision of the administrator is rendered.

(j) Stay of sale of seized property pending administrators decision.--Where a jeopardy assessment is made, the property seized for the collection of the tax shall not be sold--

(1) if subdivision (b) is applicable, prior to the issuance of the notice of deficiency and the expiration of the time provided in section sixty-nine for filing a petition with the administrator, and

(2) if a petition is filed with the administrator (whether before or after the making of such jeopardy assessment), prior to the expiration of the period during which the assessment of the deficiency would be prohibited if subdivision (a) were not applicable.

Such property may be sold if the taxpayer consents to the sale, or if the administrator determines that the expenses of conservation and maintenance will greatly reduce the net proceeds, or if the property is perishable.

(k) Interest.--For the purpose of subdivision (a) of section sixty-four, the last date prescribed for payment shall be determined without regard to any notice and demand for payment issued under this section prior to the last date otherwise prescribed for such payment.

(l) Early termination of taxable year.--If the administrator finds that a taxpayer designs quickly to depart from this state or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the income tax for the current or the preceding taxable year unless such proceedings be brought without delay, the administrator shall declare the taxable period for such taxpayer immediately terminated, and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of such tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable. In any proceeding brought to enforce payment of taxes made due and payable by virtue of the provisions of this subdivision, the finding of the administrator made as herein provided, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of jeopardy.

(m) Reopening of taxable period.--Notwithstanding the termination of the taxable period of the taxpayer by the administrator as provided in subdivision (l), the administrator may reopen such taxable period each time the taxpayer is found by the administrator to have received income, within the current taxable year, since the termination of such period. A taxable period so terminated by the administrator may be reopened by the taxpayer if he files with the administrator a true and accurate return of taxable income and credits allowed under this local law for such taxable period, together with such other information as the administrator may by regulations prescribe.

(n) Furnishing of bond where taxable year is closed by the administrator.--Payment of taxes shall not be enforced by any proceedings under the provisions of subdivision (l) prior to the expiration of the time otherwise allowed for paying such taxes if the taxpayer furnishes, under regulations prescribed by the administrator, a bond to insure the timely making of returns with respect to, and payment of, such taxes or any income taxes for prior years.

§ 75. Criminal penalties.--(a) Attempt to evade tax.--Any individual, corporation or partnership or any officer or employee of any corporation, or member or employee of any partnership, who, with intent to evade any tax or any requirement of this local law or any lawful requirement of the administrator thereunder, shall fail to pay the tax, or to make, render, sign or certify any return or declaration of estimated income, or to supply any information within the time required by or under the provisions of this local law, or who, with like intent, shall make, render, sign or certify any false or fraudulent return, declaration or statement, or shall supply any false or fraudulent information, or who shall fail to comply with the provisions of subdivision (b) of section fifty-four after the service of a notice by the administrator thereunder, shall be guilty of a misdemeanor and shall, upon conviction, be fined not to exceed five thousand dollars or be imprisoned not to exceed one year, or both, at the discretion of the court.

(b) Limitations.-- Notwithstanding the provisions of section one hundred forty-two of the state code of criminal procedure or of any other law of this state, a prosecution for any offense under this section may be commenced at any time not later than three years after the commission of such offense provided that, if such offense is the failure to do an act required by or under any provision of this local law to be done before a certain date, a prosecution for such offense may be commenced not later than three years after such date.

(c) Willful failure to withhold.-- Any individual, corporation or partnership or any officer or employee of any corporation (including a dissolved corporation), or member or employee of any partnership, who willfully fails to collect or pay over any withholding tax as required, shall, in addition to other penalties provided by law, be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not to exceed five thousand dollars or imprisoned not to exceed one year, or both.

(d) Two or more charges.-- In the prosecution of offenses under this section, if there are two or more charges against any person or corporation, involving a violation or violations of any provision or provisions of this local law, whether for the same or different taxable years, instead of returning several indictments or filing several informations, all of such charges may be joined in one indictment or information, in separate counts, and if two or more indictments are found, or two or more informations are filed, the court may order them to be consolidated. If a person or corporation shall be convicted of two or more offenses constituting different crimes set forth in different counts of one indictment or information, or in separate indictments or informations consolidated as hereinbefore provided, the court may impose a separate sentence for each offense, and if imprisonment is imposed, the court may order any of such sentences to be served concurrently or consecutively.

(e) Miscellaneous rules.-- Any prosecution under this section may be conducted in any county where the person or corporation to whose tax liability the proceeding relates resides, or has a place of business, or from which such person or corporation received any income, or in any county in which any such crime is committed. The corporation counsel of the city shall have concurrent jurisdiction with any district attorney in the prosecution of any offense under this section. If the provisions of this section conflict with those contained in any other law, this section shall control. The certificate of the administrator to the effect that a tax has not been paid, that a return or declaration of estimated tax has not been filed, or that information has not been supplied, as required by or under the provisions of this local law, shall be prima facie evidence that such tax has not been paid, that such return or declaration has not been filed, or that such information has not been supplied. All fines levied under this section shall be paid to the administrator and deposited in the same manner as revenues collected or received under this local law.

§ 76. Armed forces relief provisions.--(a) Time to be disregarded.-- In the case of an individual serving in the armed forces of the United States or serving in support of such armed forces, in an area designated by the president of the United States by executive order as a "combat zone" at any time during the period designated by the president by executive order as the period of combatant activities in such zone, or hospitalized outside the state as a result of injury received while serving in such an area during such time, the period of service in such area, plus the period of continuous hospitalization outside the state attributable to such injury, and the next one hundred eighty days thereafter, shall be disregarded in determining, under this local law in respect of the income tax liability (including any interest, penalty, or addition to the tax) of such individual---

(1) Whether any of the following acts was performed within the time prescribed therefor:

(A) filing any return of income tax (except withholding tax);

(B) payment of any income tax (except withholding tax) or any installment thereof or of any other liability to the administrator, in respect thereof;

(C) filing a petition with the administrator for credit or refund or for redetermination of a deficiency, or application for review of a decision rendered by the administrator;

(D) allowance of a credit or refund of income tax;

(E) filing a claim for credit or refund of income tax;

(F) assessment of income tax;

(G) giving or making any notice or demand for the payment of any income tax, or with respect to any liability to the administrator in respect of income tax;

(H) collection, by the administrator, by levy or otherwise of the amount of any liability in respect of income tax;

(I) bringing suit by the city, or any officer, on its behalf, in respect of any liability in respect of income tax; and

(J) any other act required or permitted under this local law or specified in regulations prescribed under this section by the administrator.

(2) The amount of any credit or refund (including interest).

(b) Action taken before ascertainment of right to benefits.--The assessment or collection of the tax imposed by this local law or of any liability to the administrator in respect of such tax, or any action or proceeding by or on behalf of the administrator in connection therewith, may be made, taken, begun, or prosecuted in accordance with law, without regard to the provisions of subdivision (a), unless prior to such assessment, collection, action, or proceeding it is ascertained that the person concerned is entitled to the benefit of subdivision (a).

(c) Members of armed forces dying in action.--In the case of any person who dies during an induction period while in active service as a member of the armed forces of the United States, if such death occurred while serving in a combat zone during a period of combatant activities in such zone, as described in subdivision (a), or as a result of wounds, disease or injury incurred while so serving, the tax imposed by this local law shall not apply with respect to the taxable year in which falls the date of his or her death, or with respect to any prior taxable year ending on or after the first day so served in a combat zone, and no returns shall be required in behalf of such person or his or her estate for such year; and the tax for any such taxable year which is unpaid at the date of death, including interest, additions to tax and penalties, if any, shall not be assessed and, if assessed, the assessment shall be abated and, if collected, shall be refunded to the legal representative of such estate if one has been appointed and has qualified, or, if no legal representative has been appointed or has qualified, to the surviving spouse.

§ 77. General powers of administrator.-- (a) General.--The administrator shall administer and enforce the tax imposed by this local law and he is authorized to make such rules and regulations, and to require such facts and information to be reported, as he may deem necessary to enforce the provisions of this local law and he may delegate his powers and functions under all parts of this local law to one of his deputies or to any employee or employees of his department.

(b) Examination of books and witnesses.-- The administrator for the purpose of ascertaining the correctness of any return, or for the purpose of making an estimate of taxable income of any person, shall have power to examine or to cause to have examined, by any agent or representative designated by him for that purpose, any books, papers, records or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take testimony and require proof material for his information, with power to administer oaths to such person or persons.

(c) Abatement authority.-- The administrator, of his own motion, may abate any small unpaid balance of an assessment of income tax, or any liability in respect thereof, if the administrator determines under uniform rules prescribed by him that the administration and collection costs involved would not warrant collection of the amount due. He may also abate, of his own motion, the unpaid portion of the assessment of any tax or any liability in respect thereof, which is excessive in amount, or is assessed after the expiration of the period of limitation properly applicable thereto, or is erroneously or illegally assessed. No claim for abatement under this subdivision shall be filed by a taxpayer.

(d) Special refund authority.-- Where no questions of fact or law are involved and it appears from the records of the administrator that any moneys have been erroneously or illegally collected from any taxpayer or other person, or paid by such taxpayer or other person under a mistake of facts, pursuant to the provisions of this local law, the administrator at any time, without regard to any period of limitations, shall have the power, upon making a record of his reasons therefor in writing, to cause such moneys so paid and being erroneously and illegally held to be refunded.

(e) Cooperation with the United States, other states and the state of New York. Notwithstanding the provisions of section seventy-eight, the administrator may permit the secretary of the treasury of the United States or his delegates, or the proper tax officer of this state or of any other state imposing an income tax upon the incomes of individuals, or the authorized representative of either such officer, to inspect any return filed under this local law, or may furnish to such officer or his authorized representative an abstract of any such return or supply him with information concerning an item contained in any such return, or disclosed by any investigation of tax liability under this local law, but such permission shall be granted or such information furnished to such officer or his representative only if the laws of the United States or of such state, as the case may be, grant substantially similar privileges to the administrator and such information is to be used for tax purposes only; and provided further the administrator may furnish to the commissioner of internal revenue or his authorized representative or to the tax commission of the state of New York or its authorized representative such returns filed under this local law and other tax information as he may consider proper for use in court actions or proceedings under the internal revenue code or the tax law, whether civil or criminal, where a written request therefor has been made to the administrator by the secretary of the treasury of the United States or by such tax commission or by their delegates provided the laws of the United States or the laws of the state of New York grant substantially similar powers to the secretary of the treasury of the United States or his delegates or to such tax commission or its delegates. Where the administrator has so authorized use of returns and other information in such actions or proceedings, officers and employees of the department of finance of the city may testify in such actions or proceedings in respect to such returns or other information.

§ 78. Secrecy requirement and penalties for violation.-- Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the administrator or any other officer or employee of the department, bureau or other agency of the city administering the tax imposed by this local law, any person engaged or retained by such administrator, department, bureau or other agency or an independent contract basis, or any person who, pursuant to this section, is permitted to inspect any report or return or to whom a copy, an abstract or a portion of any report or return is furnished, or to whom any information contained in any report or return is furnished, to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this local law. The administrator or any other officer and employee charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the city in an action or proceeding under the provisions of this local law or in any other action or proceeding involving the collection of a tax due under this local law to which the city is a party or a claimant, or on behalf of any party to any action or proceeding under the provisions of this local law when the reports, returns or facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of, and may admit in evidence, so much of said reports, returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more; except as provided in subdivision (e) of section seventy-seven. The administrator may, nevertheless, publish a copy or a summary of any determination or decision rendered after the hearing required under section sixty-nine of this local law. Nothing herein shall be construed to prohibit the delivery to a taxpayer or his duly authorized representative of a certified copy of any return or report filed in connection with his tax or to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the legal representatives of the city of the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding under this local law has been recommended by the administrator. Reports and returns shall be preserved for three years and thereafter until the administrator orders them to be destroyed. Any violation of the provisions of this section shall be punished by a fine not exceeding one thousand dollars or by imprisonment not exceeding one year, or both, at the discretion of the court, and if the offender be the administrator or any other officer or employee of the city, he shall be dismissed from office and be incapable of holding any public office in the city or the state for a period of five years thereafter.

PART VI

MISCELLANEOUS

§ 90. Deposit and disposition of revenues by administrator.--All taxes, penalties and interest imposed under this local law which are paid to or collected by the administrator shall be deposited by the administrator in the general fund of the city imposing such tax.

§ 91. Effect of invalidity in part; inconsistencies with other laws.--(a) If any clause, sentence, paragraph, subdivision, section, provision or other portion of this local law or the application thereof to any person or circumstances shall be held to be invalid, such holding shall not affect, impair or invalidate the remainder of this local law or the application of such portion held invalid, to any other person or circumstances, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, provision or other portion thereof directly involved in such holding or to the person and circumstances therein involved.

(b) If any provision of this local law is inconsistent with, in conflict with, or contrary to any other provision of law, such provision of this local law shall prevail over such other provision and such other provision shall be deemed to have been amended, superseded or repealed to the extent of such inconsistency, conflict or contrariety.

§ 25-b. Credits against tax.-- (a) Specific credit for individuals.-- For taxable years beginning on or after July first, nineteen hundred sixty-seven, a local law imposing a tax on the personal income of residents as authorized by this article may provide for the allowance of the following credits:

(1) A credit not in excess of two dollars and fifty cents for an individual who is not married and is not the head of a household and is not a surviving spouse;

(2) A credit not in excess of six dollars and fifty cents for husband and wife, provided that if their taxes are separately computed (whether or not on a single form), the credit allowable to each shall be three dollars and twenty-five cents; and

(3) A credit not in excess of six dollars and fifty cents for the head of a household or for a surviving spouse.

(b) Marital or other status.-- A taxpayer's marital or other status under this section shall be the same as his marital or other status for purposes of establishing the applicable federal income tax rates.

§ 25-c. Administrative provisions.-- Any local law adopted pursuant to this article may also contain, in addition to the provisions set forth in section twenty-five-a of this chapter, and to the extent consistent with this article, other provisions necessary and appropriate for the imposition, collection and administration of the tax herein authorized, including a provision substantially the same as the following:

Whenever there is made a sale, transfer or assignment in bulk of any part or the whole of a stock of merchandise or of fixtures, or merchandise and of fixtures pertaining to the conducting of the business of the seller, transferrer or assignor, otherwise than in the ordinary course of trade and in the regular prosecution of said business, the puchaser, transferee or assignee shall at least ten days before taking possession of such merchandise, fixtures, or merchandise and fixtures, or paying therefor, notify the administrator by registered mail of the proposed sale and of the price, terms and conditions thereof, whether or not the seller, transferrer or assignor, has represented to, or informed the purchaser, transferee or assignee, that it owes any tax pursuant to this local law, whether or not the purchaser, transferee or assignee has knowledge that such taxes are owing, and whether or not any such taxes are in fact owing.

Whenever the purchaser, transferee or assignee shall fail to give the notice to the administrator required by the preceding paragraph, or whenever the administrator shall inform the purchaser, transferee or assignee that a possible claim for such tax or taxes exists, any sums of money, property or choses in action, or other consideration, which the purchaser, transferee or assignee is required to transfer over to the seller, transferrer or assignor shall be subject to a first priority right and lien for any such taxes theretofore or thereafter determined to be due from the seller, transferrer or assignor to the city, and the purchaser, transferee or assignee is forbidden to transfer to the seller, transferrer or assignor any such sums of money, property or choses in action to the extent of the amount of the city's claim. For failure to comply with the provisions of this subdivision the purchaser, transferee or assignee, in addition to being subject to the liabilities and remedies imposed under the provisions of article six of the uniform commercial code, shall be personally liable for the payment to the city of any such taxes, theretofore or thereafter determined to be due to the city from the seller, transferrer or assignor and such liability may be assessed and enforced in the same manner as the liability for tax is imposed under this local law.

ARTICLE 2-F

REBATES OF CHARGES FOR ENERGY

§ 25-s. Definitions. As used in this article the following terms shall have the following meanings:

(a) "Eligible energy user". Any non-residential user of energy services, except a government agency, public benefit corporation, or instrumentality thereof, hotel, or retail vendor as defined in this section that:

(1) takes occupancy of non-residential premises after May third, nineteen hundred eighty-five, for which it has, after such date, entered into a written agreement to buy or lease, provided that such premises are located in an eligible area and that such premises are a replacement for premises previously occupied by such energy user for a continuous period of twenty-four months during the thirty month period immediately preceding such user's taking occupancy, which previously occupied premises were: (A) outside an eligible area, or (B) within a commercial development pressure area, provided that such replacement premises are not located in a commercial development pressure area; or

(2) occupies, operates or manages specially eligible premises as defined in this section.

Eligible energy users shall not include an occupant of premises contained within a commercial development pressure area that have been used principally for manufacturing activities at any time during the twelve-month period prior to such occupant's taking occupancy unless such occupant uses such premises principally for manufacturing activities or such user takes occupancy of such premises after June thirtieth, two thousand. In addition, an occupant of premises described in paragraph one or two of this subdivision shall not be an eligible energy user unless: (i) the energy services used and electricity and natural gas consumed by such occupant at such premises are individually and accurately metered and billed so as to enable a determination of the occupant's usage of energy services, natural gas and electricity; and (ii) for any occupant purchasing energy services, natural gas or electricity from a vendor of energy services, (A) the price charged by such vendor for such energy services, electricity and natural gas shall be no higher than the price that would have been charged such occupant directly by a utility pursuant to the applicable tariffs of the New York state public service commission or the federal energy regulatory commission, provided that an additional fee, not exceeding twelve percent of such price, may be charged by such vendor, and (B) the price, charges, fees (if any) and other terms and conditions for the sale of such energy services, electricity and natural gas to such occupant are clearly and separately set forth in a written contract or lease agreement between such occupant and such vendor, and such vendor shall separately state in each bill for such services, electricity and natural gas the price, charges and fees (if any) that are included in such bill and the amount of the special rebate made to such occupant or that no special rebate has been made.

(b) "Specially eligible premises". (1) non-residential premises that are wholly contained in property that is eligible to obtain benefits under title two-D or two-F of article four of the real property tax law, or would be eligible to receive benefits under such article except that such property is exempt from real property taxation and the requirements of paragraph (b) of subdivision seven of section four hundred eighty-nine-dddd of such title two-D, or the requirements of subparagraph (ii) of paragraph (b) of subdivision five of section four hundred eighty-nine-cccccc of such title two-F, whichever is applicable, have not been satisfied, provided that application for such benefits was made after May third, nineteen hundred eighty-five and prior to July first, two thousand twenty-seven, that construction or renovation of such premises was described in such application, that such premises have been substantially improved by such construction or renovation so described, that the minimum required expenditure as defined in such title two-D or two-F, whichever is applicable, has been made, and that such real property is located in an eligible area; or

(2) non-residential premises that are wholly contained in real property that has obtained approval after May third, nineteen hundred eighty-five and prior to November first, two thousand for financing by an industrial development agency established pursuant to article eighteen-A of the general municipal law, provided that such financing has been used in whole or in part to substantially improve such premises (by construction or renovation), and that expenditures have been made for improvements to such real property in excess of twenty per centum of

the value at which such real property was assessed for tax purposes for the tax year in which such improvements commenced, and that such real property is located in an eligible area; or

(3) non-residential premises that are wholly contained in real property that has obtained approval after October thirty-first, two thousand and prior to July first, two thousand twenty-seven for financing by an industrial development agency established pursuant to article eighteen-A of the general municipal law, provided that such financing has been used in whole or in part to substantially improve such premises (by construction or renovation), and that expenditures have been made for improvements to such real property in excess of ten per centum of the value at which such real property was assessed for tax purposes for the tax year in which such improvements commenced, that such expenditures have been made within thirty-six months after the earlier of (i) the issuance by such agency of bonds for such financing, or (ii) the conveyance of title to such property to such agency, and that such real property is located in an eligible area; or

(4) non-residential premises that are wholly contained in real property owned by such city or the New York state urban development corporation, or a subsidiary thereof, a lease for which was approved in accordance with the applicable provisions of the charter of such city, and such approval was obtained after May third, nineteen hundred eighty-five and prior to November first, two thousand, provided, however, that such premises were constructed or renovated subsequent to such approval, that expenditures have been made subsequent to such approval for improvements to such real property (by construction or renovation) in excess of twenty per centum of the value at which such real property was assessed for tax purposes for the tax year in which such improvements commenced, and that such real property is located in an eligible area; or

(5) non-residential premises that are wholly contained in real property owned by such city or the New York state urban development corporation, or a subsidiary thereof, a lease for which was approved in accordance with the applicable provisions of the charter of such city or by the board of directors of such corporation, and such approval was obtained after October thirty-first, two thousand and prior to July first, two thousand twenty-seven, provided, however, that such premises

were constructed or renovated subsequent to such approval, that expenditures have been made subsequent to such approval for improvements to such real property (by construction or renovation) in excess of ten per centum of the value at which such real property was assessed for tax purposes for the tax year in which such improvements commenced, that such expenditures have been made within thirty-six months after the effective date of such lease, and that such real property is located in an eligible area; or

(6) nonresidential premises contained in real property not located in an eligible area that otherwise meet the criteria of paragraph one, two, three, four or five of this subdivision, where such premises shall be used primarily for manufacturing activities and provided that such premises shall be improved as a result of expenditures in an amount in excess of ten per centum of the assessed value of such real property attributable to such premises at which such real property was assessed for tax purposes for the tax year in which such improvements commenced, except that the required expenditures for improvements to property eligible to obtain benefits under title two-F of article four of the real property tax law shall be the amount that an applicant must expend on construction work for a project in order to qualify for benefits as provided in such title. Attribution of value shall be made in accordance with the rules and regulations of the city agency designated in the local law enacted pursuant to section twenty-five-t of this article. Only expenditures for improvements that have been identified as part of the construction or reconstruction project meeting the requirements of paragraph one, two, three, four or five of this subdivision, whichever is applicable, shall qualify for purposes of satisfying the minimum expenditure requirements of this subdivision. Notwithstanding the foregoing, for purposes of applying the criteria of this subdivision, the reference to May third, nineteen hundred eighty-five contained in paragraphs one, two and four of this subdivision shall be deemed a reference to May first, nineteen hundred eighty-six.

Provided, however, that no such premises described in paragraph one, two, three, four, five or six of this subdivision, contained in a newly constructed structure or building, shall come within this definition unless such premises meet the requirements of the New York state energy conservation construction code promulgated pursuant to article eleven of the energy law or, if applicable, a municipal code authorized pursuant to such article.

(c) "Retail vendor". Any person, including any corporation or other business entity which is predominantly engaged in the sale, other than through the mail, of tangible personal property to any person, for any purpose unrelated to the trade or business of such person, or which is predominantly engaged in selling services to individuals which services generally involve the physical, mental and/or spiritual care of such individuals, or the physical care of the personal property of such person unrelated to the trade or business of such person, provided however, where such sale of tangible personal property or services is performed only by one or more operating units, divisions or subdivisions of any person, only such operating units, divisions or subdivisions shall come within the definition contained herein.

(d) "Discount". The amount of a reduction in a bill for energy services rendered to a vendor of energy services or a public utility service by a utility in accordance with the requirements of section twenty-five-t of this article, equal to the special rebates made by such vendor or public utility service to eligible energy users.

(e) "Hotel". A building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" includes an apartment hotel, a motel, boarding house or club, whether or not meals are served.

(f) "Commercial development pressure areas". Such portions of the following areas as may be designated by local law enacted pursuant to section twenty-five-t of this article experiencing or likely to experience shortages of space suitable for manufacturing activities but needing the benefits available under this article as an inducement to economic development:

In the city of New York, (1) the area delineated by a line beginning at the point of intersection of the Manhattan, Queens and Brooklyn borough lines and running easterly along the Queens borough line to the center line of Greenpoint Avenue; thence easterly along the center line of Greenpoint Avenue to the center line of Review Avenue; thence northerly along the center line of Review Avenue to the center line of

Borden Avenue; thence easterly along the center line of Borden Avenue to the center line of Van Dam Street; thence northerly along the center line of Van Dam Street to the center line of Skillman Avenue; thence easterly along the center line of Skillman Avenue to the center line of Honeywell Street; thence northerly along the center line of Honeywell Street to the center line of Northern Boulevard; thence southwesterly along the center line of Northern Boulevard to the center line of Fortieth Road; thence westerly along the center line of Fortieth Road to the center line of Twenty-ninth Street; thence southerly along the center line of Twenty-ninth Street to the center line of Forty-first Avenue; thence westerly along the center line of Forty-first Avenue to the Queens borough line; thence southerly along the Queens borough line to the point of beginning; and

(2) the area delineated by a line beginning at the point of intersection of the Brooklyn borough line and the center line of Fulton Street and running southerly along the center line of Fulton Street to the center line of Prospect Street; thence easterly along the center line of Prospect Street to the center line of Adams Street; thence southerly along the center line of Adams Street to the center line of Tillary Street; thence easterly along the center line of Tillary Street to the center line of Duffield Street; thence northerly along the center line of Duffield Street to the Brooklyn borough line; thence westerly along the Brooklyn borough line to the point of beginning.

(g) "Eligible areas". Areas of a city designated by local law enacted pursuant to section twenty-five-t of this article as needing the benefits available under this article as an inducement to economic development, provided that the area lying south of the center line of 96th Street, in the borough of Manhattan in the city of New York, shall not be so designated.

(h) "Manufacturing activity". An activity involving the assembly of goods to create a different article or the processing, fabrication or packaging of goods.

(i) "Special rebate". The amount of a reduction in a bill rendered by a utility, a public utility service or a vendor of energy services for energy services to an eligible energy user or a qualified eligible energy user, or an agent of either, or an on-site cogenerator or a clean on-site cogenerator, and calculated in accordance with the applicable provisions of section twenty-five-t of this article and the rules of the city agency designated by the local law enacted pursuant to such section.

(j) "Eligible charges", "eligible public utility service charges" and "eligible on-site cogenerator charges". (1)(i) Eligible charges are charges for energy services purchased from a utility or from a vendor of energy services at a rate or rates established pursuant to an order or rule of the New York state public service commission or the federal energy regulatory commission, other than charges for the purchase of the commodity of natural gas or electricity, and shall include applicable rate reductions for economic development or similar purposes, and all taxes payable thereon and shall exclude charges in accordance with paragraph two of this subdivision.

(ii) Eligible public utility service charges are actual charges for energy services made by a public utility service, and shall include all taxes payable thereon, and shall exclude charges in accordance with paragraph two of this subdivision, provided, however, that the commissioner of the agency designated by local law enacted pursuant to section twenty-five-t of this article may by rule adjust eligible public utility service charges for purposes of adjusting the special rebate based thereon to an amount that would be comparable to the special rebate available to a comparable customer of a utility as determined by such commissioner.

(iii) Except as otherwise provided in paragraph five of subdivision (a) of section twenty-five-t of this article with respect to on-site cogenerators certified before July first, two thousand three, and clean on-site cogenerators certified after June thirtieth, two thousand three, eligible on-site cogenerator charges are charges for energy services purchased from a utility related to the delivery of natural gas to an on-site cogenerator at rates established pursuant to an order or rule of the New York state public service commission or the federal energy regulatory commission, and shall include applicable rate reductions for economic development or similar purposes, and all taxes payable thereon and shall exclude charges in accordance with paragraph two of this subdivision.

(2) (i) Eligible charges, eligible public utility service charges, and, except as otherwise provided in paragraph five of subdivision (a)

of section twenty-five-t of this article with respect to eligible on-site cogenerators certified before July first, two thousand three, and clean on-site cogenerators certified after June thirtieth, two thousand three, eligible on-site cogenerator charges shall not include the following charges: (A) any special charges on bills relating to energy services, including, but not limited to, collection charges, late payment charges or excess distribution charges, or any additional fee charged by a vendor of energy services to an eligible energy user, qualified eligible energy user or on-site cogenerator for energy services, as authorized by subdivision (a) of this section; (B) charges for such energy services that are resold; and (C) charges for energy services used for heating the premises.

(ii) Eligible charges and eligible public utility service charges shall not include charges for energy services used in the production of electricity.

(iii) Eligible on-site cogenerator charges shall not include charges made by a utility for energy services relating to the sale or delivery of natural gas used by an on-site cogenerator to generate electricity used by any user not located on the same site as the on-site cogenerator or by any user for purposes of heating any premises.

(iv) Charges related to energy used for space heating, when not precisely ascertainable, shall be determined, for the purposes of this paragraph, in accordance with methods or formulas reasonably designed to approximate them that are devised by those designated by local law enacted pursuant to section twenty-five-t of this article.

(k) "Vendor of energy services". Any person, corporation or other entity not subject to the jurisdiction and general supervision of the New York state public service commission that furnishes or sells energy services to an eligible energy user, a qualified eligible energy user or an on-site cogenerator as an incident to leasing, subleasing, licensing or otherwise permitting such user to rent or occupy premises of such vendor.

(l) "Empowerment zone". Empowerment zone shall mean an area within a city having a population of one million or more that has been designated as an empowerment zone pursuant to the Omnibus Budget Reconciliation Act of 1993.

(m) "Public utility service". A service established by a city having a population of one million or more by local law pursuant to article fourteen-A of the general municipal law, including the New York city public utility service.

(n) "Empire zone". Empire zone shall mean an area within a city having a population of one million or more that has been designated as an empire zone pursuant to article eighteen-B of the general municipal law.

(o) "Utility". A person that provides energy services within a city having a population of one million or more and is subject to the jurisdiction and general supervision of the New York state public service commission and to a tax imposed by such city pursuant to subdivision (a) of section twelve hundred one of the tax law, except that the Long Island Power Authority, or its subsidiary, is a utility under this subdivision to the extent that it provides energy services within a city having a population of one million or more and makes a payment to such city that is equivalent to the tax imposed on utilities pursuant to such subdivision (a) of section twelve hundred one of the tax law.

(p) "Energy conservation measures". The construction, alteration, repair or improvement to a building or separate leased space within a building or to equipment affixed to, contained in, or on the grounds of a building, which reduces energy consumption.

(q) "Simple payback period". The number of years necessary to recoup the cost of an energy conservation measure through annual energy cost savings.

(r) "Qualified eligible energy user". (1) A user of energy services that would have qualified as an eligible energy user under paragraph one of subdivision (a) of this section if the reference to May third, nineteen hundred eighty-five were deemed a reference to December thirty-first, nineteen hundred ninety, and that (i) agrees to expand the number of its full-time employees, within two years from the date of certification, by fifty employees or ten percent of the number of its full-time employees as of January first, nineteen hundred ninety-one, whichever is greater; provided, however, that one economically disadvantaged or unemployed person hired as a full-time employee after the date of certification shall be counted as two full-time employees and two part-time employees shall be counted as one full-time employee; and provided, further, that the agency designated by local law enacted pursuant to section twenty-five-t of this article may define by rule full-time employees, part-time employees, unemployed persons, economically disadvantaged persons, and criteria for continued eligibility in relation to fluctuations in employment levels; or (ii) develops, implements, and maintains, in consultation with the New York city department of employment, a job training program which shall be certified and monitored by such department and which shall meet the standards for such programs as are established by the rules of the agency designated by local law enacted pursuant to section twenty-five-t of this article; or

(2) Any non-residential user of energy services, except a government agency, public benefit corporation, or instrumentality thereof, hotel, or retail vendor as defined in this section, that occupies, operates or manages targeted eligible premises.

An occupant of targeted eligible premises described in paragraph one or two of this subdivision shall not be a qualified eligible energy user unless the energy services used by such occupant at such premises are individually and accurately metered and billed so as to enable a determination of the occupant's usage of such energy services to be made.

(s) "Targeted eligible premises". (1) non-residential premises that are wholly contained in property that is eligible to obtain benefits under title two-D of article four of the real property tax law, or would be eligible to receive benefits under such article except that such property is exempt from real property taxation and the requirements of paragraph (b) of subdivision seven of section four hundred eighty-nine-dddd of such law have not been satisfied, provided that application for such benefits was made after December thirty-first, nineteen hundred ninety and prior to November first, two thousand, that construction or renovation of such premises was described in such application, that such premises have been substantially improved by such construction or renovation so described, that twice the minimum required expenditure as defined in such title has been made, and that such real property is located in an eligible area; or

(2) non-residential premises that are wholly contained in real property that has obtained approval after December thirty-first,

nineteen hundred ninety and prior to November first, two thousand for financing by an industrial development agency established pursuant to article eighteen-A of the general municipal law, provided that such financing has been used in whole or in part to substantially improve such premises by construction or renovation, and that expenditures have been made for improvements to such real property in excess of forty per centum of the value at which such real property was assessed for tax purposes for the tax year in which such improvements commenced, and that such real property is located in an eligible area; or

(3) non-residential premises that are wholly contained in real property owned by the city of New York or the New York state urban development corporation, or a subsidiary thereof, a lease for which was approved in accordance with the applicable provisions of the charter of such city, and such approval was obtained after December thirty-first, nineteen hundred ninety and prior to November first, two thousand, provided that such premises were constructed or renovated subsequent to such approval, that expenditures have been made subsequent to such approval for improvements to such real property by construction or renovation in excess of forty per centum of the value at which such real property was assessed for tax purposes for the tax year in which such improvements commenced, and that such real property is located in an eligible area; or

(4) non-residential premises contained in real property not located in an eligible area that otherwise meet the criteria of paragraph one, two or three of this subdivision, where such premises shall be used primarily for manufacturing activities and provided that such premises shall be improved as a result of expenditures in an amount in excess of twenty per centum of the assessed value of such real property attributable to such premises at which such real property was assessed for tax purposes for the tax year in which such improvements commenced. Attribution of value shall be made in accordance with the rules of the city agency designated in the local law enacted pursuant to section twenty-five-t of this article. Only expenditures for improvements that have been identified as part of the construction or renovation project meeting the requirements of paragraph one, two or three of this subdivision, whichever is applicable, shall qualify for purposes of satisfying the minimum expenditure requirements of this subdivision.

Provided, however, that no such premises described in paragraph one, two, three or four of this subdivision, contained in a newly constructed structure or building, shall come within this definition unless such premises meet the requirements of the New York state energy conservation construction code promulgated pursuant to article eleven of the energy law or, if applicable, a municipal code authorized pursuant to such article. And provided, further, that (i) the qualified eligible energy user shall submit on an annual basis proof that the heating and cooling systems within the premises continue to meet the performance standards specified in section 7813.21 of the energy conservation construction code, or such predecessor section to which the premises, when constructed or substantially renovated, were subject and (ii) to the extent that the cost of motors or lighting equipment described in sections 7813.52 and 7813.53 of the energy conservation construction code is included as part of the minimum expenditures required in paragraph one, two, three or four of this subdivision, the qualified eligible energy user shall certify that all such compatible equipment with a simple payback period of five years or less has been installed.

(t) "Energy services". The transmission and distribution of electricity or gas, and such other services that are associated with such transmission and distribution as shall be designated as energy services by rule of the commissioner of the agency designated by local law enacted pursuant to section twenty-five-t of this article as such commissioner deems necessary to promote economic development, provided that energy services shall not include the commodity of gas or electricity.

(u) "On-site cogenerator". A person, other than a utility, that owns an electric generating facility that simultaneously or sequentially produces electricity and useful thermal energy, provided that substantially all of such electricity shall be used by an eligible energy user that occupies the same site as such generating facility. An on-site cogenerator may be the same or a separate person as such eligible energy user.

(v) "Clean on-site cogenerator". An on-site cogenerator, the electricity generating facility of which has an emission rate for nitrous oxides of no more than three tenths of one pound per megawatt hour. The commissioner of the agency designated by local law enacted pursuant to section twenty-five-t of this article shall establish by rule a megawatt hour equivalent for any useful thermal energy produced by the cogenerator for purposes of determining benefits under this article.

§ 25-t. Authorization to require special rebates and discounts. (a) Any city having a population of one million or more is hereby authorized and empowered to adopt and amend local laws:

(1) Requiring utilities that provide energy services within such city to make special rebates to eligible energy users and on-site cogenerators certified after June thirtieth, two thousand three, other than clean on-site cogenerators, and to make discounts to vendors of energy services and public utility services as follows:

(i) a utility that sells energy services to an eligible energy user shall be required to make a special rebate to such eligible energy user equal to the product of the applicable percentage specified for special rebates in the schedule contained in paragraph four of this subdivision and the eligible charges for such energy services.

(ii) a utility that delivers natural gas to an on-site cogenerator, other than a clean on-site cogenerator, that uses such gas to produce electricity used by an eligible energy user, which cogenerator and user are certified after June thirtieth, two thousand three, shall be required to make a special rebate to such on-site cogenerator equal to the product of the applicable percentage specified for special rebates in the schedule contained in paragraph four of this subdivision and the eligible on-site cogenerator charges for the energy services related to such delivery of such gas.

(iii) a utility that sells energy services to a vendor of energy services shall be required to make a discount to such vendor of energy services in an amount equal to the sum of the special rebates certified to such utility by such vendor as having been made by such vendor to eligible energy users in accordance with subparagraphs (i) through (iii) of paragraph three of this subdivision.

(iv) a utility that sells energy services to a public utility service shall be required to make a discount to such public utility service equal to the sum of the special rebates and discounts certified to such utility by such public utility service as having been made by such public utility service in accordance with subparagraphs (i) through (iii) of paragraph two of this subdivision.

(2) Requiring a public utility service providing energy services within such city to make special rebates to eligible energy users and qualified eligible energy users and discounts to vendors of energy services as follows:

(i) where, pursuant to a written agreement between a public utility service and the power authority of the state of New York, such public utility service sells energy services to an eligible energy user that has been individually approved by such power authority and certified pursuant to subdivision (c) of this section prior to November first, two thousand, such special rebate shall be in the amount or amounts derived by calculating the full amount of the special rebate to which such eligible energy user would have been entitled pursuant to the schedule contained in paragraph four of this subdivision for eligible charges relating to the purchase of such energy services had such eligible energy user purchased such energy services directly from the utility and subtracting from such full amount the difference between the eligible charges relating to the purchase of such energy services had such eligible energy user purchased the energy services directly from the utility and the eligible public utility service charges relating to the purchase of such energy services actually charged to such eligible energy user by such public utility service for actual purchases of energy services from such public utility service; except that (A) in no event shall the amount of such special rebate exceed the amount of the special rebate to which such eligible energy user would have been entitled pursuant to the schedule contained in paragraph four of this subdivision had such eligible energy user purchased the energy services directly from the utility at the price charged by such utility, and (B) for any monthly billing period where the calculation of such special rebate results in a negative number, the amount of such special rebate shall be deemed to be zero.

(ii) where, pursuant to a written agreement between a public utility service and the power authority of the state of New York, such public utility service (A) sells energy services to an eligible energy user that has been individually approved by such power authority and certified pursuant to subdivision (c) of this section after October thirty-first, two thousand, or (B) sells energy services to a qualified eligible energy user that has been individually approved by such power authority and certified pursuant to subdivision (c) of this section prior to November first, two thousand, such special rebate shall be the product of the applicable percentage for special rebates specified in the schedule contained in paragraph four of this subdivision and the eligible public utility service charges relating to the purchase of such energy services.

(iii) a public utility service that sells energy services to a vendor of energy services shall be required to make a discount to such vendor of energy services equal to the sum of the special rebates certified to such public utility service by such vendor as having been made by such vendor to eligible energy users or qualified eligible energy users to which such vendor of energy services has resold such energy services in accordance with subparagraphs (i) through (iii) of paragraph three of this subdivision.

(3) Permitting vendors of energy services to elect to provide a special rebate against an eligible energy user's, qualified eligible energy user's or on-site cogenerator's bill for energy services as follows:

(i) in the case of a vendor of energy services that sells energy services provided by a utility to an eligible energy user, such special rebate shall be the product of the applicable percentage specified for a special rebate in the schedule contained in paragraph four of this subdivision and the eligible charges relating to such sales of energy services made by such vendor of energy services.

(ii) in the case of a vendor of energy services that delivers natural gas to an on-site cogenerator that is other than a clean on-site cogenerator and that uses such gas to produce electricity used by an eligible energy user, which cogenerator and user are certified after June thirtieth, two thousand three, such special rebate shall be equal to the product of the applicable percentage specified in the schedule contained in paragraph four of this subdivision and the eligible on-site cogenerator charges for the energy services related to such delivery of such gas.

(iii) in the case of a vendor of energy services that sells energy services provided by a public utility service to a qualified eligible energy user that was certified before November first, two thousand, or to an eligible energy user that was certified after October thirty-first, two thousand, such special rebate shall be the product of the applicable percentage specified for a special rebate in the schedule contained in paragraph four of this subdivision and the eligible public utility service charges for sales of energy services made by such vendor of energy services.

(4) For purposes of determining special rebates for sales of energy services under the provisions of this subdivision, the applicable percentages are as follows:

Months Following Certification	Applicable % for Natural Gas	Applicable % for Electricity
first through ninety-sixth	35%	45%
ninety-seventh through one hundred eighth	28%	36%
one hundred ninth through one hundred twentieth	21%	27%
one hundred twenty-first through one hundred thirty-second	14%	18%
one hundred thirty-third through one hundred forty-fourth	7%	9%

; provided, however, that the commissioner of the agency designated by local law enacted pursuant to this section may increase such percentages at the commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users.

(5) Requiring a utility that delivers natural gas to an on-site cogenerator that produces electricity for an eligible energy user which cogenerator and user are certified before July first, two thousand three, or to a clean on-site cogenerator that produces electricity for an eligible energy user and is certified after June thirtieth, two thousand three, to make a special rebate against the energy bill

rendered to such on-site cogenerator or clean on-site cogenerator by such utility for the sale or delivery, or both, of such gas in the amount or amounts derived by taking the product of a base adjustment multiplied by an eligibility factor, multiplied by the number of kilowatt hours of electricity produced by such on-site cogenerator or clean on-site cogenerator and used by such eligible energy user during the billing period, excluding charges for natural gas used to generate electricity used for heating any premises or by any energy user not located on the same site, any special charges on such bill, including but not limited to, collection charges, late payment charges, excess distribution charges, or any additional fee charged by a vendor of energy services as authorized by this subdivision, and charges for energy which is resold; where the base adjustment shall equal three cents increased by nine one-hundredths cent each January first occurring after December thirty-first, nineteen hundred eighty-seven and before June thirtieth, two thousand three, and the eligibility factor shall equal one hundred percent during the first eight years after initial certification as an eligible energy user as defined in paragraphs one and two of subdivision (a) of section twenty-five-s of this article, eighty percent during the ninth such year, sixty percent during the tenth such year, forty percent during the eleventh such year and twenty percent during the twelfth and final such year, such years to be calculated in accordance with the provisions of this section, provided that the number of kilowatt hours on which the total of the special rebates payable to a clean on-site cogenerator is based in any year pursuant to this paragraph shall not exceed thirteen million one hundred forty thousand.

(6) Any local law enacted pursuant to this section shall contain a provision or provisions allowing for a credit against the amount of such tax imposed pursuant to authority contained in subdivision (a) of section twelve hundred one of the tax law by such city upon such utilities in the amounts of the special rebates and discounts made by such utilities.

(7) Notwithstanding any provisions of this subdivision, the special rebates and discounts provided by the Long Island Power Authority, or its subsidiary, pursuant to this subdivision shall not exceed the amount of the payment made by or on behalf of such authority to such city as a

payment that is equivalent to the tax imposed by such city pursuant to this subdivision of section twelve hundred one of the tax law. Special rebates and discounts shall be reduced and/or allocated proportionate to the benefit they would otherwise be eligible for among eligible energy users, public utility services, vendors of energy services, and on-site cogenerators where necessary to comply with this paragraph pursuant to rules of the commissioner of the agency designated by local law enacted pursuant to this section.

(8) Notwithstanding any provisions of this subdivision, special rebates and discounts shall not exceed ten thousand dollars per year per employee or full-time equivalent with respect to applications submitted pursuant to this article after June thirtieth, two thousand three.

(b) Eligible energy users meeting the criteria contained in paragraph one of subdivision (a) of this section and qualified eligible energy users meeting the criteria contained in paragraph one of subdivision (r) of section twenty-five-s of this article shall be eligible for special rebates for a period not to exceed one hundred forty-four months calculated from the beginning of the month immediately following their date of certification of eligibility. Eligible energy users meeting the criteria contained in paragraph two of subdivision (a) of section twenty-five-s of this article shall be eligible for special rebates for a period calculated from the beginning of the month immediately following their date of certification for so long as they remain in occupancy in the specially eligible premises, but not beyond the period of one hundred forty-four months from the beginning of the month immediately following the date of certification of the first eligible energy user occupying such specially eligible premises. The amounts of rebates made to such an eligible energy user meeting the criteria contained in such paragraph two shall be determined in accordance with the schedule contained in paragraph four of subdivision (a) hereof as if such eligible energy user had been certified at the same time as such first eligible energy user was certified. A qualified eligible energy user that takes occupancy of targeted eligible premises shall be eligible for special rebates for a period calculated from the beginning of the month immediately following its date of certification as a qualified eligible energy user for so long as it remains in occupancy in the targeted eligible premises, but not beyond the period of one hundred forty-four months from the beginning of the month immediately following the date of certification of the first qualified eligible energy user occupying such targeted eligible premises. The amounts of rebates made to a qualified eligible energy user that takes occupancy of targeted eligible premises shall be determined in accordance with the schedule contained in paragraph four subdivision (a) of this section as if such qualified eligible energy user had been certified at the same time as such first qualified eligible energy user was certified. An on-site cogenerator or clean on-site cogenerator shall be eligible for special rebates for a period not to exceed the period during which the eligible energy user served by such on-site cogenerator or clean on-site cogenerator would have been eligible for a special rebate under the provisions of this subdivision had it purchased energy services directly from a utility.

(c) (1) The city agency designated in the local law enacted pursuant to this section may adopt such rules as the agency deems necessary to promote economic development and to effectuate the purposes of this article, including rules to determine the extent to which charges are eligible charges, eligible public utility service charges, eligible on-site cogenerator charges or special eligible charges and rules to provide for such administrative charges or fees as are necessary to defray expenses in administering the special rebates and discounts provided pursuant to this article.

(2) No eligible energy user, qualified eligible energy user, on-site cogenerator, or clean on-site cogenerator shall receive a rebate pursuant to this article until it has obtained a certification from the appropriate city agency in accordance with a local law enacted pursuant to this section. No such certification for a qualified eligible energy user shall be issued on or after November first, two thousand. No such certification of any other eligible energy user, on-site cogenerator, or clean on-site cogenerator shall be issued on or after July first, two thousand twenty-seven.

(3) A utility and a vendor of energy services shall keep records of all transactions subject to this article and make such records available to the agency of the city designated by local law enacted pursuant to this section.

(d) (1) Each utility shall reduce each bill for energy services or natural gas for each eligible energy user, vendor of energy services, on-site cogenerator or clean on-site cogenerator as follows:

(i) a bill for the sale and delivery of natural gas rendered to an on-site cogenerator or clean on-site cogenerator entitled to a special rebate pursuant to the provisions of paragraph five of subdivision (a) of this section shall be reduced by the full amount of the special rebate that shall have accrued for the period covered by each such bill;

(ii) a bill for energy services rendered to any other eligible energy user or on-site cogenerator shall be reduced by the full amount of the special rebate that shall have accrued for the period covered by each such bill;

(iii) a bill for energy services rendered to a vendor of energy services that has provided a special rebate to an eligible energy user or on-site cogenerator in accordance with paragraph three of subdivision (a) of this section shall be reduced by such utility by the aggregate amount of all such special rebates;

(iv) provided, however, such utility shall not be required to provide a special rebate or discount in an amount that exceeds the amount of such bill for the sale and delivery of natural gas rendered to an on-site cogenerator or clean on-site cogenerator entitled to a special rebate pursuant to the provisions of paragraph five of subdivision (a) of this section or, in the case of any other eligible energy user or on-site cogenerator, the amount of such bill for energy services, and provided, further, that no utility subject to the provisions of subdivision (a) of this section shall be required to carry forward on its books and records any special rebates or discounts not made in accordance with this sentence to such bills for subsequent periods. Such discount shall be made within four months from the time certification of special rebates is made in accordance with subparagraph (iii) or (iv) of paragraph one of subdivision (a) of this section. Such amount shall be separately stated and shown on such bills. The credit against the tax set forth in subdivision (a) of this section shall be used to reduce the monthly payments of such tax otherwise required by law.

(2) A public utility service that provides special rebates for eligible energy users or qualified eligible energy users shall reduce each bill rendered to each such user by the full amount of the special rebate that shall have accrued for the period covered by each such bill

in accordance with paragraph two of subdivision (a) of this section. Such amounts shall be separately stated and shown on such bills.

(3) Each such vendor of energy services that has elected to provide special rebates for eligible energy users, qualified eligible energy users or on-site cogenerators shall reduce each bill rendered to each such user or cogenerator by the full amount of the special rebate that shall have accrued for the period covered by each such bill in accordance with paragraph three of subdivision (a) of this section. Such amounts shall be separately stated and shown on such bills.

(e) The credit against the tax set forth in paragraph six of subdivision (a) of this section shall be used to reduce the monthly payments of such tax otherwise required by law.

§ 25-u. Construction. Nothing contained in this article shall be construed as reducing the amount of a receipt for sales tax purposes under any of the sales taxes imposed or authorized by article twenty-eight or twenty-nine of the tax law; or as reducing the gross receipts, the gross income or the gross operating income subject to tax pursuant to section one hundred eighty-six-a of the tax law or authorized to be subjected to tax by section twelve hundred one of the tax law. The burden of establishing eligibility to claim the benefits of this article shall rest with the party claiming such benefits.

ARTICLE 2-G

REBATE OF AMOUNT OF LOCAL SALES TAX PAID ON SALES OF ENERGY

§ 25-v. Definitions. As used in this article the following terms shall have the following meanings:

(a) "Vendor of energy services". Any person, corporation or other entity which is not a utility, except a public utility service operated by a city having a population of one million or more in accordance with a local law adopted pursuant to article fourteen-A of the general municipal law and the power authority of the state of New York, and which furnishes or sells electricity, gas or steam, whether or not such vendor produces such energy and regardless of whether such furnishing or selling constitutes the main activity of such person, corporation or other entity or is merely incidental thereto.

(b) "Electricity redistributor". Any landlord, tenant or agent thereof, who purchases electricity from a utility or any other person, corporation or other entity and on a metered or unmetered basis resells or otherwise redistributes for any consideration such electricity to a non-residential energy user.

(c) "Eligible vendor of energy services".

(1) Any electricity redistributor that sells or otherwise redistributes for any consideration electricity at a rate which: (i) on a metered or unmetered basis, does not exceed the amount charged by the utility or any other person, corporation or other entity to such electricity redistributor for electricity used or consumed by the non-residential energy user, except that a reasonable charge may be permitted for administrative and operating costs and (ii) provided, however, that no electricity redistributor shall come within this definition where such administrative and operating costs exceed a reasonable percentage mark-up of the amount charged by such utility or such other person, corporation or other entity for such electricity; or

(2) Any vendor of energy services which is not an electricity redistributor.

(d) "Rebate". The amount of a reduction in a non-residential energy user's energy bill, as specified in section twenty-five-w of this article, for the sales tax imposed pursuant to section eleven hundred seven of the tax law on the sale of electricity, gas or steam.

(e) "Discount". The amount of a reduction in an eligible vendor of energy services' energy bill, as specified in section twenty-five-w of this article, equal to the rebate made by such vendor to a non-residential energy user in accordance with this article.

(f) "Non-residential energy user". Any non-residential user of electricity, gas or steam, except a government agency or instrumentality thereof, public benefit corporation, or any entity that is exempt from the sales tax imposed pursuant to section eleven hundred seven of the tax law, provided that the term "non-residential energy user" shall not include an owner or operator of residential income producing property, except a hotel.

(g) "Utility". Any electric corporation, gas corporation or steam corporation subject to the jurisdiction and general supervision of the public service commission.

§ 25-w. Authorization to require and permit rebates for sales tax paid. (a) Any city having a population of one million or more is hereby authorized and empowered to adopt and amend local laws:

(1) Requiring utilities selling or otherwise delivering electricity, including electricity sold by a public utility service operated by such city in accordance with a local law adopted pursuant to article fourteen-A of the general municipal law, gas or steam within such city to: (i) make rebates to non-residential energy users as follows: for such sales made during the period commencing with the first billing cycle which begins on or after July first, nineteen hundred eighty-eight and ending with the last billing cycle which begins on or prior to June thirtieth, nineteen hundred eighty-nine in an amount equal to twenty-five per centum of the sales and compensating use taxes imposed pursuant to section eleven hundred seven of the tax law; for such sales made during the period commencing with the first billing cycle which begins on or after July first, nineteen hundred eighty-nine and ending with the last billing cycle which begins on or prior to June thirtieth, nineteen hundred ninety in an amount equal to fifty per centum of the taxes imposed pursuant to such section; for such sales made during the period commencing with the first billing cycle which begins on or after July first, nineteen hundred ninety and ending with the last billing cycle which begins on or prior to June thirtieth, nineteen hundred ninety-one in an amount equal to seventy-five per centum of the taxes imposed pursuant to such section; and for such sales made during the period commencing with the first billing cycle which begins on or after July first, nineteen hundred ninety-one and thereafter in an amount equal to one hundred per centum of the taxes imposed pursuant to such section; and/or (ii) make discounts to eligible vendors of energy

services in amounts equal to the rebates to be made by such eligible vendors to non-residential energy users, such amounts to be certified to such utilities by such eligible vendors to non-residential energy users, such amounts to be certified to such utilities by such eligible vendors, provided, however, that the mayor of such city or any agency designated by such mayor may by regulation require any or all classes of eligible vendors to certify that such rebates have been made as a condition of such utility being obligated to make discounts in accordance with this paragraph. For purposes of this paragraph, sales shall be deemed to include sales of delivery services consisting of transport and billing provided by a utility to a public utility service operated by such city in accordance with a local law adopted pursuant to article fourteen-A of the general municipal law. Any utility providing a discount to an eligible vendor making a rebate in accordance with paragraph three of this subdivision where such eligible vendor is certified in accordance with subdivision (b) of this section may rely upon the amount of rebates certified by such eligible vendor in accordance with this paragraph, unless such utility has knowledge that the amount so certified is incorrect; and/or

(2) Permitting eligible vendors of energy services, in instances where such eligible vendors sell electricity, gas or steam produced by such eligible vendors, to: (i) make rebates to non-residential energy users as follows: for such sales made during the period commencing with the first billing cycle which begins on or after July first, nineteen hundred eighty-eight and ending with the last billing cycle which begins on or prior to June thirtieth, nineteen hundred eighty-nine in an amount equal to twenty-five per centum of the sales and compensating use taxes imposed pursuant to section eleven hundred seven of the tax law; for such sales made during the period commencing with the first billing cycle which begins on or after July first, nineteen hundred eighty-nine and ending with the last billing cycle which begins on or prior to June thirtieth, nineteen hundred ninety in an amount equal to fifty per centum of the taxes imposed pursuant to such section; for such sales made during the period commencing with the first billing cycle which begins on or after July first, nineteen hundred ninety and ending with the last billing cycle which begins on or prior to June thirtieth, nineteen hundred ninety-one in an amount equal to seventy-five per

centum of the taxes imposed pursuant to such section; and for such sales made during the period commencing with the first billing cycle which begins on or after July first, nineteen hundred ninety-one and thereafter in an amount equal to one hundred per centum of the taxes imposed pursuant to such section; and/or (ii) make discounts to other eligible vendors in amounts equal to the rebates to be made by such other eligible vendors to non-residential energy users, such amounts to be certified to such eligible vendors making discounts by such other eligible vendors, provided, however, that the mayor of such city or any agency designated by such mayor may by regulation require any or all classes of such other eligible vendors to certify that such rebates have been made as a condition of eligibility for receiving discounts in accordance with this paragraph. Any eligible vendor providing a discount to another eligible vendor making a rebate in accordance with paragraph three of this subdivision where such other eligible vendor is certified in accordance with subdivision (b) of this section may rely upon the amount of rebates certified by such other eligible vendor in accordance with this paragraph, unless such eligible vendor providing a discount has knowledge that the amount so certified is incorrect; and/or

(3) Permitting eligible vendors of energy services, in instances where such eligible vendors sell electricity, gas or steam not produced by such eligible vendors, to make rebates to non-residential energy users as follows: for such sales made during the period commencing with the first billing cycle which begins on or after July first, nineteen hundred eighty-eight and ending with the last billing cycle which begins on or prior to June thirtieth, nineteen hundred eighty-nine in an amount equal to twenty-five per centum of the sales and compensating use taxes imposed pursuant to section eleven hundred seven of the tax law; for such sales made during the period commencing with the first billing cycle which begins on or after July first, nineteen hundred eighty-nine and ending with the last billing cycle which begins on or prior to June thirtieth, nineteen hundred ninety in an amount equal to fifty per centum of the taxes imposed pursuant to such section; for such sales made during the period commencing with the first billing cycle which begins on or after July first, nineteen hundred ninety and ending with the last billing cycle which begins on or prior to June thirtieth, nineteen hundred ninety-one in an amount equal to seventy-five per

centum of the taxes imposed pursuant to such section; and for such sales made during the period commencing with the first billing cycle which begins on or after July first, nineteen hundred ninety-one and thereafter in an amount equal to one hundred per centum of the taxes imposed pursuant to such section.

(4) Any local law or laws enacted pursuant to this section shall contain a provision or provisions allowing for a refundable credit to be taken by utilities or eligible vendors of energy services against the amount of the tax imposed pursuant to authority contained in subdivision (a) of section twelve hundred one of the tax law by such city upon such utilities and such eligible vendors in the amounts of rebates and discounts made by such utilities and such eligible vendors pursuant to paragraph one or two of this subdivision. If such credit exceeds the amount of such tax for any month, the excess credit shall be refunded. Such refundable credit shall be taken only after all other applicable credits are taken against such tax.

(b) No electricity redistributor shall be authorized to provide a rebate pursuant to any local law enacted pursuant to this article until it has obtained a certification of eligibility from the mayor of such city or any agency designated by such mayor. Such local law may provide for an application fee as determined by the mayor of such city or such agency.

(c) (1) Each utility shall reduce each utility bill for each non-residential energy user by the full amount of the rebate that shall have accrued as described in paragraph one of subdivision (a) of this section for the period covered by each such utility bill. Such amount shall be separately stated and shown on such bills. Each such utility shall provide a discount in accordance with such paragraph on energy bills for each eligible vendor of energy services which has certified that it shall provide or has provided a rebate to a non-residential energy user's energy bill in accordance with paragraph three of such subdivision in the aggregate amount of all applicable rebates. The refundable credit against the tax referred to in paragraph four of such subdivision shall be used to reduce the monthly payments of such tax otherwise required by law. If such credit exceeds the amount of such tax for any month, the excess credit shall be refunded as provided in paragraph four of such subdivision.

(2) Each eligible vendor of energy services which has elected to provide a rebate to non-residential energy users shall reduce each energy bill for each non-residential energy user by the full amount of the rebate that shall have accrued as described in paragraph two or three of subdivision (a) of this section for the period covered by each such energy bill. Such amount shall be separately stated and shown on such bills. Each eligible vendor of energy services as described in paragraph two of such subdivision which has elected to provide a discount in accordance with such paragraph on energy bills for each eligible vendor of energy services which has certified that it shall provide or has provided a rebate to a non-residential energy user's energy bill in accordance with paragraph three of such subdivision shall reduce such energy bills by the aggregate amount of all applicable rebates. The refundable credit against the tax referred to in paragraph four of such subdivision shall be used to reduce the monthly payments of such tax otherwise required by law. If such credit exceeds the amount of such tax for any month, the excess credit shall be refunded as provided in paragraph four of such subdivision.

(d) The mayor of such city or any agency designated by such mayor shall be authorized to promulgate:

(1) Rules and regulations setting forth criteria by which a determination may be made as to whether administrative costs exceed a reasonable percentage mark-up as set forth in paragraph one of subdivision (c) of section twenty-five-v of this article;

(2) Rules and regulations to determine the eligibility for benefits conferred by any local law enacted pursuant to this article in instances where energy is consumed in part by other than a non-residential energy user;

(3) Rules and regulations to limit or withhold, notwithstanding any inconsistent provisions of paragraphs one and two of subdivision (a) of this section, the eligibility for rebates by a utility or eligible vendor of energy services as described in paragraph two of subdivision (a) of this section made in accordance with any local law enacted pursuant to this article in instances where energy is consumed in part by an electricity redistributor in premises where such electricity redistributor is also a non-residential energy user and with respect to the electricity redistributed the mark-up for administrative costs

exceeds that permitted under regulations promulgated pursuant to paragraph one of this subdivision;

(4) Any other rules and regulations necessary to administer and assure compliance with the provisions of this article.

(e) The corporation counsel of such city may maintain an action in any court of competent jurisdiction to recover an amount equal to any benefits provided under the provisions of any local law or laws adopted pursuant to this article which are improperly obtained.

(f) Such local law may provide that a duplicate of any certification provided to a utility or to an eligible vendor of energy services as described in paragraph two of subdivision (a) of this section of the amount of a rebate made or to be made to a non-residential energy user be provided to the mayor of such city or any agency designated by such mayor and may further provide that such duplicate certification be deemed a written instrument for purposes of section 175.00 of the penal law.

§ 25-x. Construction. Nothing contained in this article shall be construed as reducing the amount of a receipt for sales tax purposes under any of the sales taxes imposed or authorized by article twenty-eight or twenty-nine of the tax law; or as reducing the gross receipts, the gross income or the gross operating income subject to tax pursuant to section one hundred eighty-six-a of the tax law or authorized to be subjected to tax by section twelve hundred one of the tax law. The burden of establishing eligibility to claim the benefits of this article shall rest with party claiming such benefits.

ARTICLE 2-H
RELOCATION AND EMPLOYMENT ASSISTANCE PROGRAM

§ 25-y. Definitions. As used in this article the following terms shall have the following meanings:

(a) "Eligible business" means any person subject to a tax imposed under a local law enacted pursuant to part two or three of section one, or section two, of chapter seven hundred seventy-two of the laws of nineteen hundred sixty-six or a gross receipts tax imposed under a local law enacted pursuant to subdivision (a) of section twelve hundred one of the tax law that: (1) has been conducting substantial business operations at one or more business locations outside an eligible area for the twenty-four consecutive months immediately preceding the taxable year during which such eligible business relocates as defined in subdivision (j) of this section; and (2) on or after May twenty-seventh, nineteen hundred eighty-seven relocates as defined in subdivision (j) of this section all or part of such business operations; and (3) either (i) on or after May twenty-seventh, nineteen hundred eighty-seven first enters into a contract to purchase or lease the premises to which it relocates as defined in subdivision (j) of this section, or a parcel on which will be constructed such premises, or (ii) as of May twenty-seventh, nineteen hundred eighty-seven owns such parcel or premises and has not prior to such date made application for benefits pursuant to a local law enacted in accordance with title two-D of article four of the real property tax law.

(b) "Person" means and includes any individual, partnership, association, joint-stock company, corporation, estate or trust, limited liability company, and any combination of the foregoing.

(c) "Retail activity" means any activity which consists predominantly of the sale, other than through the mail or by the telephone or by means of the internet, of tangible personal property to any person, for any purpose unrelated to the trade or business of such person, or which consists predominantly of the selling of services to individuals which generally involve the physical, mental and/or spiritual care of such individuals, or the physical care of the personal property of any person unrelated to the trade or business of such person, or which consists predominantly of the provision of retail banking services.

(d) "Hotel services" means any services which consist predominantly of the lodging of guests at a building or a portion thereof which is regularly used and kept open for such services. The term "hotel services" shall include the lodging of guests at an apartment hotel, a motel, boarding house or club, whether or not meals are served.

(e) "Eligible premises" means: (1) nonresidential premises which are wholly contained in real property which is certified as eligible to receive benefits pursuant to a local law enacted in accordance with title two-C or title two-D of article four of the real property tax law, provided that such premises have been improved by construction or renovation, that expenditures have been made for improvements to such real property in excess of fifty per centum or, in the case of industrial property, in excess of twenty-five per centum, of the value at which such real property was assessed for tax purposes for the tax year in which such improvements commenced and such expenditures have been made within thirty-six months or, in the case of expenditures for such improvements to such real property in excess of fifty million dollars within seventy-two months from such commencement and, provided further, that such real property is located in an eligible area;

(2) nonresidential premises which are: (i) wholly contained in or situated on real property which has been leased from an industrial development agency established pursuant to article eighteen-A of the general municipal law, provided that such premises were constructed or renovated subsequent to the approval of such construction or renovation by such agency, or (ii) wholly contained in or situated on real property owned by a city having a population of one million or more, a lease for which was approved in accordance with the applicable provisions of the charter of such city, provided that such premises were constructed or renovated subsequent to such approval, or (iii) wholly contained in or situated on real property which has been leased from the port authority of the state of New York and New Jersey or the New York state urban development corporation, or a subsidiary thereof, provided that such premises were constructed or renovated subsequent to the execution of such lease, or (iv) wholly contained in property which would be eligible to receive benefits pursuant to a local law enacted in accordance with title two-D of article four of the real property tax law except that such property is exempt from real property taxation; provided that expenditures have been made for improvements to such real property in excess of fifty per centum or, in the case of industrial property, in excess of twenty-five per centum, of the value at which such real property was assessed for tax purposes for the tax year in which such

improvements commenced and such expenditures have been made within thirty-six months or, in the case of expenditures for such improvements to such real property in excess of fifty million dollars within seventy-two months from the date of such commencement, and provided further that such real property is located in an eligible area; or

(3) in the case of a relocation, the date of which, as determined in subdivision (j) of this section, is on or after July first, two thousand three, nonresidential premises, located in an eligible area, for which a minimum expenditure has been made on or after July first, two thousand three, for improvements in excess of twenty-five dollars per square foot, provided, however, that if such premises are leased, such lease shall have a term that does not expire until at least three years after the later of the date of such relocation and the lease commencement date.

The determination of whether premises meet the requirements for eligibility set forth in this subdivision shall be made as of the effective date of the certification of eligibility issued pursuant to section twenty-five-z of this article. Notwithstanding the provisions of paragraphs one and two of this subdivision, if, subsequent to such date, the property in which such premises are contained ceases to meet the requirements of paragraph one or two of this subdivision, such premises shall nonetheless remain eligible premises, provided that the eligible business continues to occupy such premises; provided however that if, after such property ceases to meet the requirements of paragraph one or two, an eligible business first leases or purchases additional premises contained in such property, such additional premises shall not be considered eligible premises unless they meet the requirements of paragraph three of this subdivision.

(f) "Eligible area" means an area of a city having a population of one million or more, excluding the area lying south of the center line of 96th Street, in the borough of Manhattan in the city of New York.

(g) "Employment share" means for each employee, partner or sole proprietor of an eligible business, the sum of : (1) the number of full-time work weeks worked by such employee, partner or sole proprietor during the eligible business' taxable year divided by the number of weeks in the taxable year, and (2) the number of part-time work weeks worked by such employee, partner or sole proprietor during the eligible business' taxable year divided by an amount equal to twice the number of weeks in the taxable year. For purposes of this subdivision, "full-time work week" shall mean a week during which at least thirty-five hours of gainful work has been performed by such employee, partner or sole proprietor and "part-time work week" shall mean a week during which at least fifteen but less than thirty-five hours of gainful work has been performed by such employee, partner or sole proprietor.

(h) "Aggregate employment shares" means the sum of all employment shares maintained by an eligible business in a taxable year.

(i) "Eligible aggregate employment shares" means the amount, if any, by which the number of aggregate employment shares maintained by an eligible business in an eligible area in the taxable year in which such eligible business claims a credit pursuant to a local law enacted in accordance with section twenty-five-z of this article exceeds the number of aggregate employment shares maintained by an eligible business in an eligible area in the taxable year immediately preceding the taxable year during which such eligible business first relocates as defined in subdivision (j) of this section. Provided, however, that such amount shall not exceed the lesser of: (1) in the case of particular premises to which an eligible business relocates before July first, two thousand three, the highest number of aggregate employment shares maintained by such eligible business in such premises in the taxable year during which such eligible business relocates to such premises or in any of the three immediately succeeding taxable years, exclusive of any employment shares maintained by such eligible business in such premises in the taxable year immediately preceding the taxable year during which such eligible business relocates to such premises; or in the case of particular premises to which an eligible business relocates on or after July first, two thousand three, the highest number of aggregate employment shares maintained by such eligible business in such premises in the taxable year during which such eligible business relocates to such premises or in any of the five immediately succeeding taxable years, exclusive of any employment shares maintained by such eligible business in such premises in the taxable year immediately preceding the taxable year during which such eligible business relocates to such premises; or (2) the number of aggregate employment shares maintained by such eligible business in such premises in the taxable year in which such eligible business claims a credit pursuant to a local law enacted in accordance with section twenty-five-z of this article, exclusive of any employment shares maintained by such eligible business in such premises in the taxable year immediately preceding the taxable year during which such eligible business relocates to such premises; or (3) in the case of an eligible business that has relocated as determined pursuant to subdivision (j) of this section before July first, two thousand three, and has not relocated on or after July first, two thousand three, twice the number of aggregate employment shares maintained by such eligible business outside an eligible area in the taxable year immediately preceding the taxable year during which such eligible business first relocates or, in the case of an eligible business that has relocated as determined pursuant to subdivision (j) of this section on or after July first, two thousand three, the greater of one hundred aggregate employment shares or twice the number of aggregate employment shares maintained by such eligible business outside the eligible area in the taxable year immediately preceding the taxable year during which such eligible business first relocates. If an eligible business relocates to more than one particular premises, the amounts described in paragraphs one and two of this subdivision shall be determined separately with respect to each such particular premises, and in such case the total number of eligible aggregate employment shares for such eligible business shall not exceed the lesser of the amount determined pursuant to paragraph three of this subdivision or the sum of the lesser of the amounts determined pursuant to paragraphs one and two of this subdivision for each particular premises.

(j) "Relocate" means to transfer pre-existing business operations to premises that are or will become eligible premises in accordance with subdivision (e) of this section, or to establish new business operations at such premises, provided that an eligible business shall not be deemed to have relocated unless at least one employee, partner or sole proprietor of the eligible business is transferred to such premises from pre-existing business operations conducted outside the eligible area. The date of relocation to any particular premises shall be any date elected by the eligible business on which an employee, partner or sole proprietor of the eligible business is transferred to the particular premises from pre-existing business operations conducted outside the eligible area and begins work at such premises, provided that such date is subsequent to the date of commencement of improvements to such premises or the real property in which such premises are located, which improvements will meet the requirements of subdivision (e) of this section relating to expenditures for improvements, and provided further that such date of relocation is prior to the date of the issuance of a certification of eligibility pursuant to section twenty-five-z of this article. The year of relocation shall be the taxable year in which such date of relocation falls. The election provided for in this subdivision shall be made prior to the issuance of such certification of eligibility and shall be irrevocable. An eligible business may relocate only once to any particular premises.

(k) "Industrial construction work" means the construction of a new building or structure or the modernization, rehabilitation, expansion or improvement of an existing building or structure for use as industrial property.

(l) "Industrial property" means nonresidential real property containing or which will contain after the completion of industrial construction work a building or structure wherein at least seventy-five percent of the total net square footage is used or immediately available and held out for use for manufacturing activities involving the assembly of goods or the fabrication or processing of raw materials.

(m) "Tax year" and "taxable year" mean, for purposes of this article, insofar as it applies to a gross receipts tax imposed under a local law enacted pursuant to subdivision (a) of section twelve hundred one of the tax law, calendar year.

(n) "Revitalization area" means any area of a city having a population of one million or more, provided that in the city of New York a revitalization area shall mean any district that is zoned C4, C5, C6, M1, M2 or M3 in accordance with the zoning resolution of such city in any area such city except the area lying south of the center line of 96th Street in the borough of Manhattan.

(o) "Total attributed eligible aggregate employment shares" means, for any relocation, the sum of the number of eligible aggregate employment shares apportioned to such relocation pursuant to paragraph one of this subdivision, less any excess shares determined with respect to such relocation pursuant to paragraph two of this subdivision, plus any excess shares attributed to such relocation pursuant to paragraph three of this subdivision. Except as provided in paragraph four of this subdivision, any eligible aggregate employment shares that are attributed to a relocation to particular premises pursuant to paragraph three of this subdivision shall be treated as eligible aggregate employment shares that are maintained with respect to such premises and shall be subject to all provisions of this article and provisions for the credit against a tax imposed under a local law enacted pursuant to part two or three of section one, or section two, of chapter seven hundred seventy-two of the laws of nineteen hundred sixty-six or a gross receipts tax imposed under a local law enacted pursuant to subdivision (a) of section twelve hundred one of the tax law as such provisions pertain to such relocation.

(1) In the case of a business that has relocated once, all eligible aggregate employment shares are apportioned to the premises to which the single relocation took place. In the case of a business that has relocated more than once, eligible aggregate shares are apportioned as follows:

(i) If in a taxable year, the sum for all eligible premises of the lesser of the amounts determined pursuant to paragraphs one and two of subdivision (i) of this section for each particular eligible premises is equal to the total number of eligible aggregate employment shares determined pursuant to such subdivision (i), the number of shares apportioned to each particular eligible premises is the lesser of such amounts for each particular eligible premises;

(ii) If in a taxable year, the sum for all eligible premises of the lesser of the amounts determined pursuant to paragraphs one and two of subdivision (i) of this section for each particular eligible premises is greater than the total number of eligible aggregate employment shares determined pursuant to such subdivision (i), the number of shares apportioned to a particular eligible premises shall be such total number of eligible aggregate employment shares multiplied by a fraction the numerator of which is the lesser of the amounts determined pursuant to paragraphs one and two of subdivision (i) of this section for such premises and the denominator of which is such sum.

(2) "Excess shares" shall mean eligible aggregate employment shares

that are apportioned pursuant to paragraph one of this subdivision to a relocation in excess of the limitation amount defined in subparagraphs (i) and (ii) of this paragraph for such relocation.

(i) Subject to the provisions of subparagraph (ii) of this paragraph, for any taxable year in which an eligible business is claiming the credit authorized pursuant to section twenty-five-z of this article, the "limitation amount" shall mean:

(A) for one or more relocations in an eligible business' latest year of relocation as determined pursuant to subdivision (j) of this section, the amount, if any, by which the number of aggregate employment shares maintained by the eligible business in the eligible area in the taxable year in which it is claiming the credit authorized by this article exceeds the number of aggregate employment shares maintained by it in the eligible area in the taxable year immediately preceding such year of relocation; or

(B) for one or more relocations in a specified year of relocation that is not the latest such year of relocation by an eligible business, the amount, if any, by which the number of aggregate employment shares maintained by the eligible business in the eligible area in the taxable year in which it is claiming the credit authorized by this article exceeds the sum of (I) the number of total attributed eligible aggregate employment shares that are attributed in the taxable year in which the credit is claimed to relocations that took place in years of relocation later than the specified year of relocation and (II) the number of aggregate employment shares maintained by it in the eligible area in the taxable year immediately preceding such specified year of relocation.

(ii) In the case of an eligible business that has relocated more than once in the same taxable year, the limitation amount determined in accordance with subparagraph (i) of this paragraph shall be applied to such relocations in the same proportion as the eligible aggregate employment shares apportioned to such relocations pursuant to paragraph one of this subdivision.

(3)(i) In any taxable year in which there are excess shares, such excess shares, or a portion thereof, from a relocation or relocations that took place in a specified year of relocation shall be attributed in reverse chronological order to any relocations that took place in earlier years of relocation.

(ii) Notwithstanding subparagraph (i) of this paragraph:

(A) no excess shares may be attributed to a relocation unless the number of eligible aggregate employment shares apportioned pursuant to paragraph one of this subdivision to such relocation for the taxable year in which the credit is claimed is less than the highest number of total attributed eligible aggregate employment shares pertaining to such relocation in any taxable year prior to the taxable year in which the credit is claimed;

(B) the sum of the number of shares attributed to such relocation pursuant to subparagraph (i) of this paragraph and the eligible aggregate employment shares apportioned to any such relocation pursuant to paragraph one of this subdivision may not exceed such highest number of total attributed eligible aggregate employment shares; and

(C) such sum may not exceed the limitation amount for such relocation defined in paragraph two of this subdivision.

(4) Notwithstanding the provisions of other paragraphs of this subdivision, any excess shares that are apportioned pursuant to paragraph one of this subdivision to a relocation to particular eligible premises that are not located in a revitalization area as defined in subdivision (n) of this section, but are attributed pursuant to paragraph three of this subdivision to particular eligible premises that are located in such a revitalization area, shall be treated as if such premises to which they are attributed were not in such a revitalization area.

(p) "Particular premises" means all premises occupied by an eligible business within a single building. "Particular eligible premises" means the portion of such particular premises that meets the requirements for eligible premises specified in subdivision (e) of this section.

(q) "Designated additional or replacement premises" means nonresidential premises in the eligible area that (i) are owned or leased by an eligible business that has been certified pursuant to subdivision (b) of section twenty-five-z of this article to receive the credit provided for in this article, and (ii) with regard to which such eligible business obtains the certification provided for in subdivision (e) of section twenty-five-z of this article.

§ 25-z. Authorization to provide relocation and employment assistance credits. (a) Any city having a population of one million or more is hereby authorized and empowered to adopt and amend a local law allowing an eligible business that relocates as defined in subdivision (j) of section twenty-five-y of this article to receive a credit against a tax imposed under a local law enacted pursuant to part two or three of section one, or section two, of chapter seven hundred seventy-two of the laws of nineteen hundred sixty-six or a gross receipts tax imposed under a local law enacted pursuant to subdivision (a) of section twelve hundred one of the tax law. The amount of such credit shall be in an amount equal to five hundred dollars or, in the case of an eligible business that has obtained pursuant to subdivision (b) of this section a certification of eligibility dated on or after July first, nineteen hundred ninety-five, one thousand dollars or, in the case of eligible business that has obtained pursuant to subdivision (b) of this section a certification of eligibility dated on or after July first, two thousand, for a relocation to eligible premises located within a revitalization area defined in subdivision (n) of section twenty-five-y of this article, three thousand dollars, multiplied by the number of eligible aggregate employment shares, and may be taken, pursuant to the provisions of subdivision two of section four-h of part two of section one, or paragraph two of subdivision (j) of section one hundred one of section two of chapter seven hundred seventy-two of the laws of nineteen hundred sixty-six, or pursuant to the provisions of a local law enacted pursuant to subdivision (a) of section twelve hundred one of the tax law, for up to thirteen consecutive taxable years beginning with the taxable year in which the eligible business relocates as defined in subdivision (j) of section twenty-five-y of this article; provided, however, with respect to a relocation for which no application for a certificate of eligibility is submitted prior to July first, two thousand three, to eligible premises that are not within a revitalization area, if the date of such relocation as determined pursuant to subdivision (j) of section twenty-five-y of this article is before July first, nineteen hundred ninety-five, the amount to be multiplied by the number of eligible aggregate employment shares shall be five hundred dollars, and with respect to a relocation for which no application for a certificate of eligibility is submitted prior to July first, two thousand three, to eligible premises that are within a revitalization area, if the date of such relocation as determined pursuant to subdivision (j) of such section is before July first, nineteen hundred ninety-five, the amount to be multiplied by the number of eligible aggregate employment shares shall be five hundred dollars, and if the date of such relocation as determined pursuant to subdivision (j) of such section is on or after July first, nineteen hundred ninety-five, and before July first, two thousand, one thousand dollars; provided that no such credit shall be allowed for the relocation of any retail activity or hotel services; provided, notwithstanding any other provision of law to the contrary, that no such credit shall be allowed against a gross receipts tax imposed under a local law enacted pursuant to subdivision (a) of section twelve hundred one of the tax law for any relocation taking place prior to January first, nineteen hundred ninety-nine; and provided that in the case of an eligible business that has obtained pursuant to subdivision (b) of this section certifications of eligibility for more than one relocation as defined in subdivision (j) of section twenty-five-y of this article, the portion of the total amount of eligible aggregate employment shares to be multiplied by the dollar amount specified in this subdivision for each such certification of a relocation shall be the number of total attributed eligible aggregate employment shares determined with respect to such relocation pursuant to subdivision (o) of section twenty-five-y of this article.

(b) No eligible business shall be authorized to receive a credit under any local law enacted pursuant to this article until the premises with respect to which it is claiming the credit meet the requirements in the definition of eligible premises and until it has obtained a certification of eligibility from the mayor of such city or an agency designated by such mayor, and an annual certification from such mayor or an agency designated by such mayor as to the number of eligible aggregate employment shares maintained by such eligible business that may qualify for obtaining a tax credit for the eligible business's taxable year. Any written documentation submitted to such mayor or such agency or agencies in order to obtain any such certification shall be deemed a written instrument for purposes of section 175.00 of the penal law. Such local law may provide for application fees to be determined by such mayor or such agency or agencies. No such certification of eligibility shall be issued under any local law enacted pursuant to this article to an eligible business on or after July first, two thousand twenty-eight unless:

(1) prior to such date such business has purchased, leased or entered into a contract to purchase or lease particular premises or a parcel on which will be constructed such premises or already owned such premises or parcel;

(2) prior to such date improvements have been commenced on such premises or parcel, which improvements will meet the requirements of subdivision (e) of section twenty-five-y of this article relating to expenditures for improvements;

(3) prior to such date such business submits a preliminary application for a certification of eligibility to such mayor or such agency or agencies with respect to a proposed relocation to such particular premises; and

(4) such business relocates to such particular premises not later than thirty-six months or, in a case in which the expenditures made for the improvements specified in paragraph two of this subdivision are in excess of fifty million dollars within seventy-two months from the date of submission of such preliminary application.

(c) The mayor of such city or an agency or agencies designated by such mayor shall be authorized to promulgate rules and regulations to administer and assure compliance with the provisions of this article, including but not limited to rules and regulations to provide for alternative methods to measure employment shares in instances where an eligible business is not required by law to maintain weekly records of full-time work weeks and part-time work weeks of employees, partners or sole proprietors as defined in subdivision (g) of section twenty-five-y of this article.

(d) An eligible business other than a utility company subject to the supervision of the department of public service shall not be authorized to receive a credit under a local law enacted pursuant to this article against a gross receipts tax imposed under a local law enacted pursuant to subdivision (a) of section twelve hundred one of the tax law, unless such eligible business elects to take the credit authorized by this section against the tax imposed under such local law on an application filed with respect to the first relocation of such business that qualifies or will qualify under a local law enacted pursuant to this article, with the mayor of such city or the agency designated by such mayor pursuant to subdivision (b) of this section. The election authorized by this subdivision may not be withdrawn after the issuance of such certification of eligibility. No taxpayer that has previously received a certification of eligibility to receive the credit authorized by this section against any tax imposed under a local law enacted pursuant to part two or three of section one, or section two, of chapter seven hundred seventy-two of the laws of nineteen hundred sixty-six may make the election authorized by this subdivision. No taxpayer that makes the election provided in this subdivision shall be authorized to take such credit against any tax imposed under a local law enacted pursuant to part two or three of section one, or section two, of chapter seven hundred seventy-two of the laws of nineteen hundred sixty-six.

(e) Notwithstanding any other provisions of this article, an eligible business that has obtained pursuant to subdivision (b) of this section a certification of eligibility for a relocation to particular eligible premises may apply to the mayor of such city or an agency designated by such mayor to have premises in a building, other than the building in which such particular eligible premises are located, certified as designated additional or replacement premises as defined in subdivision (q) of section twenty-five-y of this article. After the certification provided for in this subdivision has been obtained, any aggregate employment shares maintained by the eligible business in such premises shall be treated as if such employment shares were maintained in the particular eligible premises to which the eligible business relocated. No such certification shall be issued after the end of the period provided for in subdivision (a) of this section during which the credit may be taken with regard to the relocation to such particular eligible premises, and the issuance of such certification shall not extend such period. Provided however, (i) no premises shall be certified as designated additional or replacement premises if the eligible business maintained employment shares in such premises prior to the application for certification provided for in this subdivision, (ii) no premises shall be certified as designated additional or replacement premises unless such premises meet the requirements for eligible premises in subdivision (e) of section twenty-five-y of this article, and (iii) if the particular premises to which the eligible business relocated are in a revitalization zone, no premises shall be certified as designated additional or replacement premises with regard to such relocation unless such designated additional or replacement premises are located in a revitalization zone.

(f)(1)(i) Notwithstanding the provisions of subdivision (i) of section twenty-five-y of this article, in the case of an eligible business meeting the criteria in subparagraphs (ii) and (iii) of this paragraph, the mayor or his or her designee, in his or her discretion, may for any taxable year in which such business is eligible to receive the credit provided for in this section, determine the number of eligible aggregate employment shares as provided in paragraph two of this subdivision, and such number shall be deemed to be the number of eligible aggregate employment shares determined pursuant to such subdivision (i) of section twenty-five-y for the purpose of attributing shares pursuant to subdivision (o) of section twenty-five-y of this article to relocations as defined in subdivision (j) of such section twenty-five-y occurring after July first, two thousand three:

(ii) in the case of a relocation before July first, two thousand five, in the taxable year prior to its first relocation after July first, two thousand three (such prior year being hereafter referred to as the "base year"), such eligible business maintained more than one hundred aggregate employment shares in the eligible Lower Manhattan area as defined in subdivision (f) of section twenty-five-dd of this chapter, provided that in the case of a relocation after June thirtieth, two thousand five, in the taxable year prior to its first relocation after such date (such prior year being hereafter referred to as the "base year"), such eligible business maintained one or more aggregate employment shares in such eligible Lower Manhattan area, and

(iii) in the case of a relocation before July first, two thousand five, in the taxable year subsequent to the base year for which the determination of eligible aggregate employment shares is being made, the number of aggregate employment shares in the eligible Lower Manhattan area maintained by the eligible business is less than the number of aggregate employment shares it maintained in such area in the base year reduced by one hundred, provided that in the case of a relocation after June thirtieth, two thousand five, in the taxable year subsequent to the base year for which the determination of eligible aggregate employment shares is being made, the number of aggregate employment shares in the eligible Lower Manhattan area maintained by the eligible business is less than the number of aggregate employment shares it maintained in such area in the base year.

(2) The number of eligible aggregate employment shares determined under this paragraph shall be the number of eligible aggregate employment shares determined pursuant to subdivision (i) of section twenty-five-y of this article without regard to paragraphs one and three of such subdivision (i), less the reduction amount provided for in paragraph three of this subdivision.

(3) For any taxable year, the reduction amount shall be the excess of (i) the number of aggregate employment shares maintained by the eligible business in the eligible Lower Manhattan area in the base year, over (ii) the number of aggregate employment shares maintained by the eligible business in the eligible Lower Manhattan area in the taxable year.

(4) Notwithstanding anything herein to the contrary, the number of eligible aggregate employment shares may be determined pursuant to paragraph two of this subdivision only if the number of such shares determined pursuant to such paragraph two is less than the number of such shares determined pursuant to subdivision (i) of section twenty-five-y of this article.

(5) The mayor, or his or her designee, shall exercise the discretion provided for in paragraph one of this subdivision if he or she determines it to be in the best interests of the city, taking into account whether the credit provided for in this section caused the reduction in the number of jobs maintained by the eligible business in the eligible Lower Manhattan area.

(g) For the duration of the benefit period, a recipient of a credit under any local law enacted pursuant to this article shall file annually, along with the aforementioned original and annual certificates of eligibility, the average wage and benefits offered to the applicable relocated employees used in determining eligible aggregate employment shares, pursuant to subdivision (i) of section twenty-five-y of this article. The department shall have the authority to require that statements filed under this subdivision be certified.

ARTICLE 2-I

REBATES OF CHARGES FOR ENERGY IN REVITALIZATION AREAS IN CITIES HAVING A POPULATION OF ONE MILLION OR MORE

§ 25-aa. Definitions. As used in this article the following terms shall have the following meanings:

(a) "Eligible building". A building or structure which is located in an eligible revitalization area and:

(1) is eligible to obtain benefits under title two-D or two-F of article four of the real property tax law, or would be eligible to receive benefits under such title except that such property is exempt from real property taxation and the requirements of paragraph (b) of subdivision seven of section four hundred eighty-nine-dddd of such title two-D, or the requirements of subparagraph (ii) of paragraph (b) of subdivision five of section four hundred eighty-nine-cccccc of such title two-F, whichever is applicable, of the real property tax law have not been satisfied, provided that application for such benefits was made after the thirtieth day of June, nineteen hundred ninety-five and before the first day of July, two thousand twenty-seven, that construction or renovation of such building or structure was described in such application, that such building or structure has been substantially improved by such construction or renovation, and (i) that the minimum required expenditure as defined in such title has been made, or (ii) where there is no applicable minimum required expenditure, the building was constructed within such period or periods of time established by title two-D or two-F, whichever is applicable, of article four of the real property tax law for construction of a new building or structure; or

(2) has obtained approval after the thirtieth day of June, nineteen hundred ninety-five and before the first day of July, two thousand twenty-seven, for financing by an industrial development agency

established pursuant to article eighteen-A of the general municipal law, provided that such financing has been used in whole or in part to substantially improve such building or structure by construction or renovation, that expenditures have been made for improvements to such real property in excess of twenty per centum of the value at which such real property was assessed for tax purposes for the tax year in which such improvements commenced, and that such expenditures have been made within thirty-six months after the earlier of (i) the issuance by such agency of bonds for such financing, or (ii) the conveyance of title to such building or structure to such agency; or

(3) is owned by the city of New York or the New York state urban development corporation, or a subsidiary corporation thereof, a lease for which was approved in accordance with the applicable provisions of the charter of such city or by the board of directors of such corporation, as the case may be, and such approval was obtained after the thirtieth day of June, nineteen hundred ninety-five and before the first day of July, two thousand twenty-seven, provided that expenditures have been made for improvements to such real property in excess of twenty per centum of the value at which such real property was assessed for tax purposes for the tax year in which such improvements commenced, and that such expenditures have been made within thirty-six months after the effective date of such lease; or

(4) is eligible to obtain benefits under title two-E of article four of the real property tax law, or would be eligible to receive benefits under such title except that such property is exempt from real property taxation and the requirements of paragraph (b) of subdivision ten of section four hundred eighty-nine-ccccc of the real property tax law have not been satisfied, provided that application for such benefits was made after the thirtieth day of June, nineteen hundred ninety-five and before the first day of July, two thousand three, that renovation of such building or structure was described in such application, that such building or structure has been substantially improved by such renovation, and that the minimum required expenditure as defined in such title has been made.

(b) "Eligible charges" and "eligible public utility service charges". (1)(i) Eligible charges are charges made by a private utility to an eligible redistributor of energy or a qualified eligible redistributor of energy for energy services purchased from such private utility at a rate or rates established pursuant to an order or rule of the New York state public service commission or the federal energy regulatory commission, other than charges for the purchase of the commodity of electricity, and shall include applicable rate reductions for economic development or similar purposes, and all taxes payable thereon and shall exclude charges in accordance with paragraph two of this subdivision.

(ii) Eligible public utility service charges are actual charges for energy services made by a public utility service, and shall include all taxes payable thereon, and shall exclude those charges excluded in accordance with paragraph two of this subdivision, provided, however, that the department of business services of a city having a population of one million or more may by rule adjust eligible public utility service charges for purposes of adjusting the special rebate based thereon to an amount that would be comparable to the special rebate available to a comparable customer of a private utility as determined by such department.

(2) Eligible charges and eligible public utility service charges shall not include charges related to: (i) energy services used by persons that are not eligible revitalization area energy users, and (ii) any special charges on bills relating to such energy services, including but not limited to collection charges, late payment charges, or excess distribution charges. Eligible charges and eligible public utility service charges shall include charges for energy services used for common areas, systems and facilities of an eligible building meeting the criteria of paragraph one, two or three of subdivision (a) of this section or a targeted eligible building meeting the criteria of paragraph one, two or three of subdivision (q) of this section to the extent such common areas, systems or facilities are used by eligible revitalization area energy users, except that charges attributable to other users, if minor and incidental, may be included in eligible charges and eligible public utility service charges for such common areas, systems and facilities. Eligible charges and eligible public utility service charges shall not include charges for energy services used for common areas, systems and facilities of an eligible building meeting the criteria of paragraph four of subdivision (a) of this section or a targeted eligible building meeting the criteria of

paragraph four of subdivision (q) of this section unless such common areas, systems and facilities are separate from the common areas, systems and facilities that serve that portion of the mixed-use property, as defined in title two-E of article four of the real property tax law, used for residential purposes and serve only that portion of such mixed-use property used for commercial purposes.

(c) "Eligible redistributor of energy". A person that owns or leases an eligible building, or a portion thereof, and that purchases energy services on a metered basis from a private utility or public utility service, and (i) resells or otherwise redistributes such energy services to one or more eligible revitalization area energy users that occupy such building or structure or (ii) consumes or uses such energy services itself and qualifies as an eligible revitalization area energy user as defined in subdivision (e) of this section, provided, however, that a person that owns or leases any portion of an eligible building meeting the criteria of paragraph four of subdivision (a) of this section shall not be an eligible redistributor of energy unless that portion of such mixed-use property, as defined in title two-E of article four of the real property tax law, used for commercial purposes is metered directly and separately from other portions of such mixed-use property.

(d) "Eligible revitalization area". Any area of a city having a population of one million or more, provided that in the city of New York the eligible revitalization area shall be the area in the borough of Manhattan bounded by Murray Street on the north starting at the intersection of West Street and Murray Street; running easterly along the center line of Murray Street; connecting through City Hall Park with the center line of Frankfort Street and running easterly along the center lines of Frankfort and Dover Streets to the intersection of Dover Street and South Street; running southerly along the center line of South Street to Peter Minuit Plaza; connecting through Peter Minuit Plaza to the center line of State Street and running northwesterly along the center line of State Street to the intersection of State Street and Battery Place; running westerly along the center line of Battery Place to the intersection of Battery Place and West Street; and running northerly along the center line of West Street to the intersection of West Street and Murray Street. Any tax lot which is partly located inside the eligible revitalization area shall be deemed to be entirely located inside such area.

(e) "Eligible revitalization area energy user". Any person that purchases or otherwise receives energy services for its own use and that occupies, operates or manages premises in an eligible building or targeted eligible building, provided such premises are metered or submetered as required in the last sentence of this subdivision, but such term shall not include a person that (i) occupies residential space; (ii) is engaged primarily in manufacturing activity in such building; (iii) is a hospital; (iv) is a hotel; or (v) occupies retail space. An eligible redistributor of energy or a qualified eligible redistributor of energy is an eligible revitalization area energy user with respect to (i) vacant premises within an eligible building or targeted eligible building, which premises have been constructed or renovated by such redistributor for occupancy by an eligible revitalization area energy user other than such redistributor, provided such vacant premises are metered or submetered in accordance with rules of such department of business services; and (ii) common areas, systems and facilities to the extent such common areas, systems and facilities are used by eligible revitalization area energy users. Notwithstanding the foregoing provisions of this subdivision, a person shall not be an eligible revitalization area energy user if the premises occupied, operated or managed by such person (i) exceed the lesser of ten thousand contiguous square feet in area or the entire floor of a building and are not individually and accurately metered or submetered to determine the occupant's usage of energy services, or (ii) are located in that portion of mixed-use property, as defined in title two-E of article four of the real property tax law, used for commercial purposes, and such portion is not metered directly and separately from other portions of such mixed-use property.

(f) "Energy services bill". A bill rendered for energy services, which shall include a bill for rent or similar charges for the occupancy of premises where such rent or similar charges include the use of energy services.

(g) "Hotel". A building, or a portion thereof, which is regularly used and kept open as such for the lodging of guests. The term "hotel" includes, but is not limited to, an apartment hotel, a motel, boarding house or club, whether or not meals are served.

(h) "Hospital". A hospital as defined in section twenty-eight hundred one of the public health law.

(i) "Manufacturing activity". An activity involving the assembly of goods to create a different article or the processing, fabrication or packaging of goods.

(j) "Person". Any individual, partnership, association, corporation, limited liability company, agency of the state or federal government, public benefit corporation or instrumentality of such agency or corporation, estate or trust, and any combination of the foregoing.

(k) "Private utility". A utility that provides energy services within any city having a population of one million or more, that is subject to the general jurisdiction and supervision of the New York state public service commission, and that is subject to a gross receipts tax imposed pursuant to the authority contained in subdivision (a) of section twelve hundred one of the tax law.

(l) "Public utility service". A service established pursuant to article fourteen-A of the general municipal law by a city having a population of one million or more.

(m) "Qualified eligible redistributor of energy". A person that owns or leases a targeted eligible building, or a portion thereof, and that purchases energy services on a metered basis from a public utility service, and (i) resells or otherwise redistributes such energy services to one or more eligible revitalization area energy users that occupy such building or structure or (ii) consumes or uses such energy services itself and qualifies as an eligible revitalization area energy user as defined in subdivision (e) of this section, provided, however, that a person that owns or leases any portion of a targeted eligible building meeting the criteria of paragraph four of subdivision (q) of this section shall not be a qualified eligible redistributor of energy unless that portion of such mixed-use property, as defined in title two-E of article four of the real property tax law, used for commercial purposes is metered directly and separately from other portions of such mixed-use property.

(n) "Retail space". Retail space other than space occupied by a banker, insurance broker, real estate broker, stockbroker, lawyer, doctor, accountant, or any licensed professional designated by rule of such department of business services.

(o) "Special rebate". The amount of a reduction in an energy services bill rendered by a private utility or public utility service to an eligible redistributor of energy or a qualified eligible redistributor of energy, or an agent of either, and calculated as a percentage of eligible charges or eligible public utility service charges as specified in section twenty-five-bb of this article.

(p) "Simple payback period". The number of years necessary to recoup the cost of an energy conservation measure through annual energy cost savings.

(q) "Targeted eligible building". A building or structure which is located in an eligible revitalization area and:

(1) is eligible to obtain benefits under title two-D of article four of the real property tax law, or would be eligible to receive benefits under such title except that such property is exempt from real property taxation and the requirements of paragraph (b) of subdivision seven of section four hundred eighty-nine-dddd of the real property tax law have not been satisfied, provided that application for such benefits was made after the thirtieth day of June, nineteen hundred ninety-five and before the first day of July, two thousand three, that construction or renovation of such building or structure was described in such application, that such building or structure has been substantially improved by such construction or renovation, and (i) that twice the minimum required expenditure as defined in such title has been made, or (ii) where there is no applicable minimum required expenditure, expenditures have been made for improvements to such real property in excess of forty per centum of the value at which such real property was assessed for tax purposes for the tax year in which such improvements commenced and the building has been constructed within such period or periods of time established by title two-D of article four of the real property tax law for construction of a new building or structure; or

(2) has obtained approval after the thirtieth day of June, nineteen hundred ninety-five and before the first day of July, two thousand three, for financing by an industrial development agency established pursuant to article eighteen-A of the general municipal law, provided that such financing has been used in whole or in part to substantially improve such building or structure by construction or renovation, that expenditures have been made for improvements to such real property in

excess of forty per centum of the value at which such real property was assessed for tax purposes for the tax year in which such improvements commenced, and that such expenditures have been made within thirty-six months after the earlier of (i) the issuance by such agency of bonds for such financing, or (ii) the conveyance of title to such building or structure to such agency; or

(3) is owned by the city of New York or the New York state urban development corporation, or a subsidiary corporation thereof, a lease for which was approved in accordance with the applicable provisions of the charter of such city or by the board of directors of such corporation, as the case may be, and such approval was obtained after the thirtieth day of June, nineteen hundred ninety-five and before the first day of July, two thousand three, provided that expenditures have been made for improvements to such real property in excess of forty per centum of the value at which such real property was assessed for tax purposes for the tax year in which such improvements commenced, and that such expenditures have been made within thirty-six months after the effective date of such lease; or

(4) is eligible to obtain benefits under title two-E of article four of the real property tax law, or would be eligible to receive benefits under such title except that such property is exempt from real property taxation and the requirements of paragraph (b) of subdivision ten of section four hundred eighty-nine-ccccc of the real property tax law have not been satisfied, provided that application for such benefits was made after the thirtieth day of June, nineteen hundred ninety-five and before the first day of July, two thousand three, that renovation of such building or structure was described in such application, that such building or structure has been substantially improved by such renovation, and that twice the minimum required expenditure as defined in such title has been made.

(r) "Energy services". The transmission and distribution of electricity, and such other services that are associated with such transmission and distribution, as shall be designated as energy services by rule of the department of business services of a city having a population of one million or more as such department deems necessary to promote economic development, provided that energy services shall not include the commodity of electricity.

§ 25-bb. Special rebates. (a) Amount of special rebates. Special rebates shall be made to eligible redistributors of energy or qualified eligible redistributors of energy, and discounts shall be made to a public utility service, pursuant to paragraph one or two of this subdivision, whichever is applicable:

(1) A private utility shall make a special rebate to an eligible redistributor of energy equal to the following percentages of eligible charges:

Months During Benefit Period Defined in Subdivision (e)	Applicable % of Eligible Charges or Eligible Public Utility Service Charges
first through ninety-sixth	45%
ninety-seventh through one hundred eighth	36%
one hundred ninth through one hundred twentieth	27%
one hundred twenty-first through one hundred thirty-second	18%
one hundred thirty-third through one hundred forty-fourth	9%

; provided, however, that a private utility shall make a special rebate to an eligible redistributor of energy that owns or leases an eligible building that, in accordance with procedures set forth in local law, was designated as a landmark before the issuance of a certificate of eligibility pursuant to subdivision (f) of this section, equal to the following percentages of eligible charges:

Months During Benefit Period Defined in	Applicable % of Eligible Charges or Eligible Public Utility Service Charges

Subdivision (e) first through one hundred eighth	45%
one hundred ninth through one hundred twentieth	36%
one hundred twenty-first through one hundred thirty-second	27%
one hundred thirty-third through one hundred forty-fourth	18%
one hundred forty-fifth through one hundred fifty-sixth	9%

; or provided, however, that the department of business services of a city having a population of one million or more may increase such percentages at its discretion in order to maintain the special rebate at levels comparable to those historically provided under the program, pursuant to rules that are generally applicable to distinct classes of energy users.

(2) Where, pursuant to a written agreement between such public utility service and the power authority of the state of New York, such public utility service sells energy services to a qualified eligible redistributor of energy that has been individually approved by such power authority and certified pursuant to subdivision (f) of this section before November first, two thousand, or to an eligible redistributor of energy that has been individually approved by such power authority and certified pursuant to subdivision (f) of this section after October thirty-first, two thousand, and such energy services have been provided by a private utility, such private utility shall make a discount to such public utility service and such public utility service shall make a special rebate to such qualified eligible redistributor of energy or such eligible redistributor of energy, which discount and special rebate shall be the product of the eligible public utility service charges to such qualified eligible redistributor of energy and the applicable percentage for a special rebate for energy

services in the applicable schedule contained in paragraph one of this subdivision.

(b) Implementation by private utility and public utility service. Each private utility or public utility service that is required to make a special rebate to an eligible redistributor of energy or qualified eligible redistributor of energy by subdivision (a) of this section shall reduce each energy services bill for such redistributor by the full amount of the special rebate or rebates that shall have accrued for the period covered by each such bill. Such utility or utility service shall cease to make such reductions in such energy services bills upon receipt of notification from the department of small business services of a city having a population of one million or more that the certification issued pursuant to subdivision (f) of this section has been suspended or terminated, and such utility or utility service shall change the amount of such reduction in accordance with such notification from such department. Notwithstanding the provisions of this subdivision, a private utility or public utility service shall not be required to provide a special rebate in an amount that exceeds the amount of such energy services bill.

(c) Implementation by redistributor. An eligible redistributor of energy or a qualified eligible redistributor of energy shall implement the following:

(1) An eligible redistributor of energy or a qualified eligible redistributor of energy shall reduce the energy services bills rendered by such redistributor to eligible revitalization area energy users occupying, operating or managing premises in eligible buildings or targeted eligible buildings owned or leased by such redistributor by an amount equal, in the aggregate, to one hundred per centum of each special rebate received by such redistributor.

(2) Each eligible redistributor of energy or qualified eligible redistributor of energy shall allocate the reductions required by paragraph one of this subdivision in accordance with each such eligible revitalization area energy user's use of energy services as follows: (i) if the premises of such user are submetered, such use shall be determined by such submeter; (ii) if the premises of such user are not submetered, such use shall be determined by rules of such department of small business services; and (iii) if an eligible redistributor of

energy or qualified eligible redistributor of energy charges amounts to eligible revitalization area energy users that vary annually or more frequently with the costs incurred by such redistributor for the operation of common areas, systems or facilities, such redistributor shall reduce such charges by the portion of the special rebates attributable thereto.

(3) Each eligible redistributor of energy or qualified eligible redistributor of energy shall individually and accurately submeter the energy services sold or otherwise redistributed by such redistributor to each such eligible revitalization area energy user or other occupant of eligible buildings or targeted eligible buildings owned or leased by such redistributor so as to enable a determination of each such user's or occupant's usage of energy services, provided such user or occupant occupies, operates or manages premises that equal or exceed the lesser of ten thousand contiguous square feet in area or the entire floor of a building.

(4) Each eligible redistributor of energy or qualified eligible redistributor of energy shall limit charges to those eligible revitalization area energy users that are submetered in accordance with this section to a price for the purchase of energy services that shall be no higher than the price paid by such redistributor, provided that an additional fee, not exceeding twelve per centum of such price, may be charged by such redistributor for energy services sold to such eligible revitalization area energy users.

(5) Each eligible redistributor of energy or qualified eligible redistributor of energy shall separately state in all energy services bills rendered by such redistributor to an eligible revitalization area energy user for sales of energy services the amount of the reduction in charges for energy services representing the share of the special rebate allocated to such user, or that no reduction has been made. All such bills for energy services shall state substantially the following: "You may be entitled to share a rebate that your landlord has received for charges for energy pursuant to the revitalization area energy rebate program. The amount is separately stated and identified in this bill."

(6) Each eligible redistributor of energy or qualified eligible redistributor of energy shall keep records verifying compliance with the provisions of this article and ensure that such department of small

business services and other appropriate city agency or agencies, as determined by rule of such department, have access to such records.

(7) Each eligible redistributor of energy or qualified eligible redistributor of energy shall provide access to eligible buildings and targeted eligible buildings by such department of small business services and other appropriate city agency or agencies, as determined by rule of such department, for the purpose of inspecting meters and other equipment and verifying the accuracy of any application or supplement thereto filed with such agency pursuant to this article.

(d) Additional obligations of qualified eligible redistributors of energy. A qualified eligible redistributor of energy shall (i) submit to such department of small business services on an annual basis proof that the heating and cooling systems within the targeted eligible building continue to meet the performance standards specified in former section 7813.21 of the New York state energy conservation construction code promulgated pursuant to article eleven of the energy law, or if applicable, a municipal code authorized pursuant to such article, or such predecessor section to which such building, when constructed or substantially renovated, was subject, and (ii) to the extent that the cost of motors or lighting equipment described in former sections 7813.52 and 7813.53 of the energy conservation construction code is included as part of the expenditures required in subdivision (q) of section twenty-five-aa of this article, the qualified redistributor of energy shall certify to such agency that all such compatible equipment with a simple payback period of five years or less has been installed.

(e) Benefit period. An eligible redistributor of energy or a qualified eligible redistributor of energy shall be eligible for special rebates for a benefit period which begins on the first day of the first billing cycle which commences after the certification is issued pursuant to subdivision (f) of this section; such period, unless sooner ended due to a termination of such certification, shall end one hundred forty-four months after the beginning of such period, provided, however, that if such redistributor owns or leases an eligible building that, in accordance with procedures set forth in local law, was designated as a landmark before the issuance of such certification, then such period shall end one hundred fifty-six months after the beginning of such period.

(f) Application and certification. An owner or lessee of a building or structure located in an eligible revitalization area, or an agent of such owner or lessee, may apply to such department of small business services for certification that such building or structure is an eligible building or targeted eligible building meeting the criteria of subdivision (a) or (q) of section twenty-five-aa of this article. Application for such certification must be filed after the thirtieth day of June, nineteen hundred ninety-five and before a building permit is issued for the construction or renovation required by such subdivisions and before the first day of July, two thousand twenty-seven, provided that no certification for a targeted eligible building shall be issued after October thirty-first, two thousand. Such application shall identify expenditures to be made that will affect eligibility under such subdivision (a) or (q). Upon completion of such expenditures, an applicant shall supplement such application to provide information (i) establishing that the criteria of such subdivision (a) or (q) have been met; (ii) establishing a basis for determining the amount of special rebates, including a basis for an allocation of the special rebate among eligible revitalization area energy users purchasing or otherwise receiving energy services from an eligible redistributor of energy or a qualified eligible redistributor of energy; and (iii) supporting an allocation of charges for energy services between eligible charges and other charges. Such department shall certify a building or structure as an eligible building or targeted eligible building after receipt and review of such information and upon a determination that such information establishes that the building or structure qualifies as an eligible building or targeted eligible building. Such department shall mail such certification or notice thereof to the applicant upon issuance. Such certification shall remain in effect provided the eligible redistributor of energy or qualified eligible redistributor of energy reports any changes that materially affect the amount of the special rebates to which it is entitled or the amount of reduction required by subdivision (c) of this section in an energy services bill of an eligible revitalization area energy user and otherwise complies with the requirements of this article. Such department shall notify the private utility or public utility service required to make a special rebate to such redistributor of the amount of such special rebate established at the time of certification and any changes in such amount and any suspension or termination by such department of certification under this subdivision. Such department may require some or all of the information required as part of an application or other report be provided by a licensed engineer.

(g) Rules. Such department of business services may promulgate rules to carry out the purposes of this article, including but not limited to rules that:

(i) prescribe methods for determining the amount of special rebates and the allocations of reductions in energy services bills among eligible revitalization area energy users as required by this article, including allocations of charges between eligible charges, eligible public utility service charges and other charges and formulas and methods for such allocations where usage of energy services for a particular purpose or a particular occupant is not metered or submetered or cannot be precisely ascertained for any other reason;

(ii) require that eligible revitalization area energy users and other users that are not eligible revitalization area energy users purchase energy services directly from a private utility or public utility service if the direct purchase from such a utility or service would facilitate the determination of the amount of special rebates and the allocations of reductions in energy services bills among eligible revitalization area energy users;

(iii) require eligible redistributors of energy and qualified eligible redistributors of energy to include statements in new leases, contracts and other agreements with eligible revitalization area energy users and other occupants, and to disclose to such users and other occupants the terms and conditions for the sale of energy services to such users and other occupants and the availability of reductions in energy services bills pursuant to this article, and rules that require such redistributors to make written assurances or undertakings to eligible revitalization area energy users that appropriate reductions in energy services bills will be made pursuant to this article, and rules that prescribe forms for such statements, disclosures, assurances, and undertakings;

(iv) require any eligible redistributor of energy, qualified eligible redistributor of energy, eligible revitalization area energy user, private utility or other person selling energy services within such city to keep records of all transactions subject to this article and to make such records available to appropriate city agencies;

(v) require that statements in connection with the application and any amendments thereof be made under oath;

(vi) prescribe requirements for reports to be made annually and at other times to such department by an eligible redistributor of energy or a qualified eligible redistributor of energy during the duration of the benefit period defined in subdivision (e) of this section; and

(vii) provide for such administrative charges or fees as are necessary to defray expenses in administering the special rebates provided pursuant to this article, including, but not limited to the cost of a survey conducted on behalf of such department to determine exclusions from eligible charges and eligible public utility service charges or allocations between eligible revitalization area energy users and other persons.

(h) Enforcement. Such department of business services may deny an application for a certificate of eligibility or suspend or terminate a certificate of eligibility issued pursuant this article whenever: (i) an eligible redistributor of energy or a qualified eligible redistributor of energy fails to comply with the requirements of this article or the rules promulgated hereunder; or (ii) an application, certificate, amendment, supplement, annual report or other document submitted by an applicant pursuant to this article or such rules contains a false or misleading statement as to a material fact or omits to state any material fact necessary in order to make the statements therein not false or misleading; or (iii) any real property tax or water or sewer charge due and payable with respect to an eligible building or targeted eligible building shall remain unpaid for at least one year following the date upon which such tax or charge became due and payable, unless within thirty days from the mailing of a notice of termination by such department satisfactory proof is presented to such department that any and all delinquent taxes and charges owing with respect to such building as of the date of such notice have been paid in full or are currently being paid in timely installments pursuant to a written agreement with the appropriate agency of such city; or (iv) any payment in lieu of taxes payable with respect to such buildings shall remain unpaid for at least one year following the date upon which such payment became due and payable. Such department shall terminate a certificate of eligibility in the event an eligible redistributor of energy or qualified eligible redistributor of energy fails at any time within the first five years of the benefit period to submeter any premises as required by paragraph three of subdivision (c) of this section. Such city may maintain a civil action or proceeding to recover an amount equal to any benefits improperly obtained.

§ 25-cc. Construction. Nothing contained in this article shall be construed as reducing the amount of a receipt for sales tax purposes under any of the sales taxes imposed or authorized by article twenty-eight or twenty-nine of the tax law; or as reducing the gross receipts, the gross income or the gross operating income subject to tax pursuant to section one hundred eighty-six or one hundred eighty-six-a of the tax law or authorized to be subjected to tax by section twelve hundred one of the tax law. The burden of establishing initial and continuing eligibility to claim the benefits of this article shall rest with the party claiming such benefits.

ARTICLE 2-J

LOWER MANHATTAN RELOCATION AND EMPLOYMENT ASSISTANCE PROGRAM

§ 25-dd. Definitions. When used in this article, the following terms shall have the following meanings:

(a) "Eligible business" means any person subject to a tax imposed under a local law enacted pursuant to part two or three of section one, or section two, of chapter seven hundred seventy-two of the laws of nineteen hundred sixty-six or a gross receipts tax imposed under a local law enacted pursuant to subdivision (a) of section twelve hundred one of the tax law, that: (1) has been conducting substantial business operations at one or more business locations outside the city of New York for the twenty-four consecutive months immediately preceding the taxable year during which such eligible business relocates as defined in subdivision (j) of this section but has not maintained employment shares at premises in the city of New York at any time during the period beginning January first, two thousand two and ending on the date it enters into a lease or a contract to purchase the premises that will qualify as eligible premises pursuant to this article; and (2) on or after July first, two thousand three relocates as defined in subdivision (j) of this section all or part of such business operations.

(b) "Person" includes any individual, partnership, association, joint-stock company, corporation, estate or trust, limited liability company, and any combination of the foregoing.

(c) "Retail activity" means any activity which consists predominately of the sale, other than through the mail, or by the telephone or by means of the internet, of tangible personal property to any person, for any purpose unrelated to the trade or business of such person, or which consists predominately of the selling of services to individuals which generally involve the physical, mental and/or spiritual care of such individuals, or the physical care of the personal property of any person unrelated to the trade or business of such person, or which consists predominately of the provision of retail banking services.

(d) "Hotel services" means any services which consist predominately of the lodging of guests at a building or a portion thereof which is regularly used and kept open for such services. The term "hotel services" shall include the lodging of guests at an apartment hotel, a motel, boarding house or club, whether or not meals are served.

(e) "Eligible premises" means: (1) nonresidential premises which are wholly contained in real property which is certified as eligible to receive benefits pursuant to a local law enacted in accordance with title two-C or title two-D of article four of the real property tax law, provided that such premises have been improved by construction or renovation, that expenditures have been made after June thirtieth, two thousand three, or in the case of a relocation by a special eligible business, after June thirtieth, two thousand five, for improvements to such real property in excess of fifty per centum or, in the case of industrial property, in excess of twenty-five per centum, of the value at which such real property was assessed for tax purposes for the tax year in which such improvements commenced and such expenditures have been made within thirty-six months or, in the case of expenditures for such improvements to such real property in excess of fifty million dollars within seventy-two months from such commencement and, provided further, that such real property is located in the eligible Lower Manhattan area, and provided further, that in the case of a special eligible business, a lease or contract to purchase such premises is first entered into by the special eligible business after June thirtieth, two thousand five;

(2) nonresidential premises which are: (i) wholly contained in or situated on real property which has been leased from an industrial development agency established pursuant to article eighteen-A of the general municipal law, provided that such premises were constructed or renovated subsequent to the approval of such construction or renovation by such agency, or (ii) wholly contained in or situated on real property owned by a city having a population of one million or more, a lease for which was approved in accordance with the applicable provisions of the charter of such city, provided that such premises were constructed or renovated subsequent to such approval, or (iii) wholly contained in or situated on real property which has been leased from the port authority of the state of New York and New Jersey or the New York state urban development corporation, or a subsidiary thereof, provided that such premises were constructed or renovated subsequent to the execution of such lease, or (iv) wholly contained in property which would be eligible to receive benefits pursuant to a local law enacted in accordance with title two-D of article four of the real property tax law except that such property is exempt from real property taxation; provided that expenditures have been made after June thirtieth, two thousand three, or in the case of a relocation by a special eligible business, after June thirtieth, two thousand five, for improvements to such real property in excess of fifty per centum or, in the case of industrial property, in excess of twenty-five per centum, of the value at which such real property was assessed for tax purposes for the tax year in which such improvements commenced and such expenditures have been made within thirty-six months or, in the case of expenditures for such improvements

to such real property in excess of fifty million dollars within seventy-two months from the date of such commencement, and provided further that such real property is located in the eligible Lower Manhattan area, and provided further, that in the case of a special eligible business, a lease or contract to purchase such premises is first entered into by the special eligible business after June thirtieth, two thousand five; or

(3) in the case of an eligible business, nonresidential premises which are located in the eligible Lower Manhattan area, for which a lease or a contract to purchase is first entered into by an eligible business on or after July first, two thousand three and for which a minimum expenditure has been made on or after such date, for improvements in excess of twenty-five dollars per square foot, or in the case of a special eligible business, non-residential premises that are located in the eligible Lower Manhattan area for which a lease or a contract to purchase is first entered into by the eligible business after June thirtieth, two thousand five, and for which a minimum expenditure has been made after such date for improvements in excess of twenty-five dollars per square foot, provided, however, that, in either case, if such premises are leased, such lease shall have a term that does not expire until at least three years after the later of the date of relocation and the lease commencement date.

Notwithstanding the provisions of paragraphs one and two of this subdivision, if, subsequent to date of certification, the property in which such premises are contained ceases to meet the requirements of paragraph one or two of this subdivision, such premises shall nonetheless remain eligible premises, provided that the eligible business or special eligible business continues to occupy such premises; provided however that if, after such property ceases to meet the requirements of such paragraph one or two, an eligible business or special eligible business first leases or purchases additional premises contained in such property, such additional premises shall not be considered eligible premises unless they meet the requirements of paragraph three of this subdivision.

(f) "Eligible Lower Manhattan area" means the area in the city of New York in the borough of Manhattan lying south of a line running from the intersection of the Hudson River with the Holland Tunnel and running thence north along West Street to the intersection of Clarkson Street, then running east along the centerline of Clarkson Street to the intersection of Washington Street, then running south along the centerline of Washington Street to the intersection of West Houston Street, then east along the centerline of West Houston Street, then at the intersection of the Avenue of the Americas continuing east along the centerline of East Houston Street to the easterly bank of the East River.

(g) "Employment share" means, for each employee, partner or sole proprietor of an eligible business or special eligible business, the sum of: (1) the number of full-time work weeks worked by such employee, partner or sole proprietor during the eligible business' or special eligible business' taxable year divided by the number of weeks in the taxable year, and (2) the number of part-time work weeks worked by such employee, partner or sole proprietor during the eligible business' or special eligible business' taxable year divided by an amount equal to twice the number of weeks in the taxable year. For purposes of this subdivision, "full-time work week" shall mean a week during which at least thirty-five hours of gainful work has been performed by such employee, partner or sole proprietor and "part-time work week" shall mean a week during which at least fifteen but less than thirty-five hours of gainful work has been performed by such employee, partner or sole proprietor. For purposes of this section, employment shares shall not be based upon work weeks attributable to employees, partners or sole proprietors acquired by an eligible business or special eligible business as a result of a merger with, acquisition of another person, or a transaction having a comparable effect, that occurs after June thirtieth, two thousand five, and before the end of the taxable year in which a credit is claimed by such eligible business pursuant to this section, or to successors, if any, to those employees, partners or sole proprietors.

(h) "Aggregate employment shares" means the sum of all employment shares maintained by an eligible business or special eligible business in a taxable year.

(i) "Eligible aggregate employment shares" means (1) in the case of an eligible business, the amount, if any, of aggregate employment shares maintained by an eligible business in eligible premises in the eligible Lower Manhattan area in the taxable year in which such eligible business claims a credit pursuant to a local law enacted in accordance with section twenty-five-ee of this article. Provided, however, that such amount shall not exceed the lesser of: (i) the highest number of aggregate employment shares maintained by such eligible business in eligible premises in the taxable year during which such eligible business relocates or in any of the five immediately succeeding taxable years; or (ii) the greater of one hundred aggregate employment shares and twice the number of aggregate employment shares maintained by such eligible business outside the city of New York in the taxable year immediately preceding the taxable year during which such eligible business relocates. In determining eligible aggregate employment shares, work weeks at premises prior to the later of the date of relocation and the date such premises meet the requirements of subdivision (e) of this section shall not be taken into account.

(2) In the case of a special eligible business, "eligible aggregate employment shares" means: the amount of aggregate employment shares determined in subparagraph (i) of this paragraph, provided, however, such amount shall not exceed the lowest of the amounts determined in subparagraphs (ii), (iii), (iv) and (v) of this paragraph.

(i) the amount determined in this subparagraph is the number of aggregate employment shares maintained by a special eligible business in eligible premises in the eligible Lower Manhattan area in the taxable year in which such special eligible business claims a credit pursuant to a local law enacted in accordance with section twenty-five-ee of this article less the number of aggregate employment shares maintained by such business in such premises in the taxable year prior to the year of relocation.

(ii) the amount determined in this subparagraph is the amount, if any, by which the number of aggregate employment shares maintained by a special eligible business in the taxable year in the city of New York exceeds the number of New York city base shares.

(iii) the amount determined in this subparagraph is the amount, if any, by which number of aggregate employment shares maintained by a special eligible business in the taxable year in the eligible Lower Manhattan area exceeds the number of Lower Manhattan base shares.

(iv) the amount determined in this subparagraph is the greater of one hundred and twice the number of aggregate employment shares maintained by the special eligible business outside the city of New York in the year prior to the year of relocation.

(v) the amount determined in this subparagraph is:

(A) for the year of relocation, the number of full time work weeks worked by relocated employees in eligible premises after the date of relocation divided by the number of weeks in such taxable year, plus the number of part-time work weeks worked by such employees in such premises after the date of relocation, divided by twice the number of weeks in the taxable year of relocation;

(B) for taxable years after the taxable year of relocation, the lesser of:

(I) the number of relocated employee base shares plus the product of (a) the excess, if any, of the number of aggregate employment shares determined in subparagraph (i) of this paragraph over the number of relocated employee base shares and (b) a fraction, the numerator of which is the number of relocated employee base shares and the denominator of which is the sum of relocated employee base shares and New York city base shares; and

(II) the highest number of eligible aggregate employment shares maintained by the special eligible business in eligible premises during the year of relocation and the five immediately succeeding taxable years.

(j) In the case of an eligible business, "relocate" means to transfer pre-existing business operations to one or more premises which are or will become eligible premises in accordance with subdivision (e) of this section, or to establish new business operations at such premises, provided that an eligible business shall not be deemed to have relocated unless at least one employee, partner or sole proprietor of the eligible business is transferred to such premises from pre-existing business operations conducted outside the city of New York. The date of relocation shall be the later of: (1) the first day on which the individual so transferred commences work at premises that are or will become eligible premises, and (2) the date of completion of sufficient improvements to the eligible premises at which such individual has commenced work, to meet the requirements of subdivision (e) of this section relating to expenditures for improvements. The taxable year of relocation shall be the taxable year in which the date of relocation occurs. For purposes of this article, an eligible business may relocate only once but may add or substitute other eligible premises throughout the period during which it is authorized pursuant to subdivision (a) of section twenty-five-ee of this article to receive the credit allowed by such section.

(k) "Tax year" and "taxable year" mean, for purposes of this article, in the case of taxpayers authorized to receive the credit allowed by section twenty-five-ee of this article against the tax imposed under a local law enacted pursuant to subdivision (a) of section twelve hundred one of the tax law, calendar year.

(l) "Special eligible business" means any person subject to a tax imposed under a local law enacted pursuant to part two or three of section one, or section two, of chapter seven hundred seventy-two of the laws of nineteen hundred sixty-six or a gross receipts tax imposed under a local law enacted pursuant to subdivision (a) of section twelve hundred one of the tax law, that: (1) has been conducting substantial business operations at one or more business locations outside the city of New York for the twenty-four consecutive months immediately preceding the taxable year during which such eligible business relocates as defined in subdivision (m) of this section, (2) maintained employment shares at premises in Manhattan in the city of New York at some time during the period beginning January first, two thousand two, and ending on the date it enters into a lease or a contract to purchase the premises that will qualify as eligible premises pursuant to this section, and (3) on or after June thirtieth, two thousand five, relocates as defined in subdivision (m) of this section all or part of such business operations.

(m) In the case of a special eligible business, "relocate" means to transfer pre-existing business operations and employees from one or more qualifying business locations outside the city of New York to one or more premises which are or will become eligible premises in accordance with subdivision (e) of this section. The date of relocation shall be the later of: (1) the first day on which the first individual so transferred commences work at premises that are or will become eligible premises, and (2) the date of completion of sufficient improvements to the eligible premises at which such individual has commenced work to meet the requirements of subdivision (e) of this section relating to expenditures for improvements. The taxable year of relocation shall be the taxable year in which the date of relocation occurs. For purposes of this chapter, a special eligible business may relocate only once but may add additional eligible premises throughout the period during which it is authorized pursuant to subdivision (a) of section twenty-five-ee of this article to receive the credit allowed by such section.

(n) "Relocated Employee" means an employee of a special eligible business who (1) has worked at a qualifying business location of the eligible business outside of the city of New York continuously, full-time or part-time, for the ten work weeks prior to the date of relocation and continuously from the date of relocation until the date of transfer to eligible premises, (2) is transferred to eligible premises, and (3) continues to work for the eligible business at the eligible premises for at least ten full work weeks after the date of transfer.

(o) "Relocated employee base shares" means the number of full-time work weeks worked by relocated employees in eligible premises during the twelve calendar months after the month of relocation, divided by the number of weeks in such twelve months, plus the number of part-time work weeks worked by such employees in such premises divided by twice the number of weeks in such months.

(p) "New York city base shares" means the number of aggregate employment shares maintained by the special eligible business in the city of New York in the year prior to the year of relocation.

(q) "Lower Manhattan base shares" means the number of aggregate employment shares maintained by the special eligible business in the eligible Lower Manhattan area in the year prior to the year of relocation.

(r) "Qualifying business location" means a business location of a special eligible business located outside the city of New York at which such business has been conducting substantial business operations for the twenty-four months immediately preceding the year of relocation.

§ 25-ee. Authorization to provide relocation and employment assistance

credits in Lower Manhattan. (a) Any city having a population of one million or more is hereby authorized and empowered to adopt and amend a local law allowing an eligible business that relocates as defined in subdivision (j) of section twenty-five-dd of this article or a special eligible business that relocates as defined in subdivision (m) of section twenty-five-dd of this article to receive a credit against a tax imposed under a local law enacted pursuant to part two or three of section one or section two of chapter seven hundred seventy-two of the laws of nineteen hundred sixty-six or a gross receipts tax imposed under a local law enacted pursuant to subdivision (a) of section twelve hundred one of the tax law. The amount of such credit shall be determined by multiplying three thousand dollars by the number of eligible aggregate employment shares maintained by the taxpayer during the taxable year with respect to eligible premises to which the taxpayer has relocated, and may be taken, pursuant to the provisions of section four-i of part two of section one, or paragraph two of subdivision (k) of section one hundred one of section two of chapter seven hundred seventy-two of the laws of nineteen hundred sixty-six, or pursuant to the provisions of a local law enacted pursuant to subdivision (a) of section twelve hundred one of the tax law, for up to thirteen consecutive taxable years beginning with the taxable year in which the eligible business relocates as defined in subdivision (j) of section twenty-five-dd of this article; provided that no such credit shall be allowed for the relocation of any retail activity or hotel services.

(b) No eligible business or special eligible business shall be authorized to receive a credit against tax under any local law enacted pursuant to this article until the premises with respect to which it is claiming the credit meet the requirements in the definition of eligible premises and until it has obtained a certification of eligibility from the mayor of such city or any agency designated by such mayor, and an annual certification from such mayor or an agency designated by such mayor as to the number of eligible aggregate employment shares maintained by such eligible business or such special eligible business that may qualify for obtaining a tax credit for the eligible business's taxable year. No special eligible business shall be authorized to receive a credit against tax under the provisions of this article unless the number of relocated employee base shares calculated pursuant to subdivision (o) of section twenty-five-dd of this article is equal to or greater than the lesser of twenty-five percent of the number of New York city base shares calculated pursuant to subdivision (p) of such section and two hundred fifty employment shares. Any written documentation submitted to such mayor or such agency or agencies in order to obtain any such certification shall be deemed a written instrument for purposes of section 175.00 of the penal law. Such local law may provide for application fees to be determined by such mayor or such agency or agencies. No certification of eligibility shall be issued under any local law enacted pursuant to this article to an eligible business on or after July first, two thousand twenty-eight unless:

(1) prior to such date such business has purchased, leased or entered into a contract to purchase or lease premises in the eligible Lower Manhattan area or a parcel on which will be constructed such premises;

(2) prior to such date improvements have been commenced on such premises or parcel, which improvements will meet the requirements of subdivision (e) of section twenty-five-dd of this article relating to expenditures for improvements;

(3) prior to such date such business submits a preliminary application for a certification of eligibility to such mayor or such agency or agencies with respect to a proposed relocation to such premises; and

(4) such business relocates to such premises as provided in subdivision (j) of section twenty-five-dd of this article not later than thirty-six months or, in a case in which the expenditures made for the improvements specified in paragraph two of this subdivision are in excess of fifty million dollars within seventy-two months from the date of submission of such preliminary application.

(c) Such mayor or any agency or agencies designated by such mayor shall be authorized to promulgate rules and regulations to administer and assure compliance with the provisions of this article, including but not limited to rules and regulations to provide for alternative methods to measure employment shares in instances where an eligible business is not required by law to maintain weekly records of full-time work weeks and part-time work weeks of employees, partners or sole proprietors as defined in subdivision (g) of section twenty-five-dd of this article.

(d) An eligible business, or a special eligible business, other than a utility company subject to the supervision of the department of public service shall not be authorized to receive a credit against a tax imposed pursuant to the provisions of a local law enacted pursuant to subdivision (a) of section twelve hundred one of the tax law unless such eligible business or special eligible business elects to take the credit authorized by this section against the tax imposed by such local law on its application filed with such mayor or the agency designated by such mayor pursuant to subdivision (b) of this section. The election authorized by this subdivision may not be withdrawn after the issuance of such certification of eligibility. No taxpayer that has previously received a certification of eligibility to receive such credit against any tax imposed under a local law enacted pursuant to part two or three of section one or section two of chapter seven hundred seventy-two of the laws of nineteen hundred sixty-six may make the election authorized by this subdivision. No taxpayer that makes the election provided in this subdivision shall be authorized to take such credit against any tax imposed under a local law enacted pursuant to part two or three of section one or section two of chapter seven hundred seventy-two of the laws of nineteen hundred sixty-six.

(e) For the duration of the benefit period, the recipient of benefits shall file annually, along with the aforementioned original and annual certificates of eligibility, the average wage and benefits offered to the applicable relocated employees used in determining eligible aggregate employment shares, pursuant to subdivision (i) of section twenty-five-y of this chapter. The department shall have the authority to require that statements filed under this subdivision be certified.

ARTICLE 2-K

RELOCATION ASSISTANCE CREDIT PER EMPLOYEE

§ 25-ff. Definitions. When used in this article, the following terms shall have the following meanings:

(a) "Aggregate employment shares" means the sum of all employment shares maintained by an eligible business in a taxable year.

(b) "Eligible aggregate employment shares" means, in the case of an eligible business, the amount, if any, of aggregate employment shares maintained by an eligible business in eligible premises in the taxable year in which such eligible business claims a credit pursuant to a local law enacted in accordance with section twenty-five-gg of this article; provided, however, that:

(1) such amount shall not exceed the lesser of:

(i) the number of aggregate employment shares maintained by such eligible business in eligible premises in the taxable year during which such eligible business relocates;

(ii) the maximum approved employment shares for such eligible business; or

(iii) an amount equal to the product of multiplying the aggregate employment shares and the linear scalar for such eligible business in such tax year; and

(2) a full-time work week or part-time work week at eligible premises prior to the date of relocation shall not be taken into account in determining eligible aggregate employment shares.

(c) "Eligible business" means any person subject to a tax imposed under a local law enacted pursuant to part two or three of section one, or section two of chapter seven hundred seventy-two of the laws of nineteen hundred sixty-six that:

(1) has been conducting substantial business operations at one or more business locations outside of New York state for the twenty-four consecutive months immediately preceding the taxable year during which such eligible business relocates but has not maintained employment shares at premises in New York state at any time during the period beginning January first, two thousand twenty-five and ending on the date such business enters into a lease or a contract to purchase the premises that will qualify as eligible premises pursuant to this article; and

(2) on or after July first, two thousand twenty-five relocates all or part of such business operations.

(d) "Eligible premises" means one or more non-residential premises that consist of at least ten thousand square feet that are:

(1) wholly contained in real property located in a city with a population of one million or more; and

(2) if contained in real property wholly located in the borough of

Manhattan, are premises for which final certificates of occupancy were issued prior to January first, two thousand.

(e) "Employment share" means, for each employee, partner or sole proprietor of an eligible business, the sum of: (1) the number of full-time work weeks worked by such employee, partner or sole proprietor during the eligible business's taxable year divided by the number of weeks in the taxable year; and (2) the number of part-time work weeks worked by such employee, partner or sole proprietor during the eligible business's taxable year divided by an amount equal to twice the number of weeks in the taxable year. Employment share shall not include full-time or part-time work weeks attributable to employees, partners or sole proprietors acquired by an eligible business as a result of a merger with, acquisition of another person, or a transaction having a comparable effect, that occurs after June thirtieth, two thousand twenty-five, and before the end of the taxable year in which a credit is claimed by such eligible business pursuant to a local law enacted in accordance with section twenty-five-gg of this article, or to successors, if any, to those employees, partners or sole proprietors.

(f) "Full-time work week" means a week during which at least thirty-five hours of gainful work has been performed by an employee, partner or sole proprietor.

(g) "Hotel services" means any services that consist predominately of the lodging of guests at a building or a portion thereof that is regularly used and kept open for such services. Hotel services shall include the lodging of guests at an apartment hotel, a motel, boarding house or club, whether or not meals are served.

(h) "Linear scalar" means, for an eligible business in a taxable year in which a credit is claimed pursuant to a local law enacted in accordance with section twenty-five-gg of this article, the quotient of dividing the total square footage of an eligible premises by the product of multiplying one hundred seventy-five by such business's aggregate employment shares.

(i) "Maximum approved employment shares" means a limitation on the aggregate employment shares that an eligible business may receive in any taxable year determined by the mayor pursuant to a local law enacted in accordance with section twenty-five-gg of this article based on documentation submitted by such business demonstrating such business's intention to relocate. The maximum approved employment shares is the number of aggregate employment shares such business intends to relocate as indicated by the mayor on the applicable initial certification of eligibility.

(j) "Mayor" means the mayor of a city having a population of one million or more, or an agency of such city as designated by such mayor.

(k) "Part-time work week" means a week during which at least fifteen but less than thirty-five hours of gainful work has been performed by an employee, partner or sole proprietor.

(l) "Person" includes any individual, partnership, association, joint-stock company, corporation, estate or trust, limited liability company, and any combination of the foregoing.

(m) "Program total" means the sum of maximum approved aggregate employment shares included in all initial certification of eligibility issued by the mayor.

(n) "Relocate" means, with respect to an eligible business, to transfer a pre-existing business operation to an eligible premises, or to establish a new business operation at such premises, provided that an eligible business shall not be deemed to have relocated unless at least one employee, partner or sole proprietor of the eligible business is transferred to such premises from a pre-existing business operation conducted outside the state of New York. The date of relocation shall be the first day on which the individual so transferred commences work at such eligible premises. The taxable year of relocation shall be the taxable year in which the date of relocation occurs. For purposes of this article, an eligible business may relocate only once but may add or substitute other eligible premises throughout such period.

(o) "Retail activity" means any activity which consists predominately of:

(1) the sale, other than through the mail or by the telephone or by means of the internet, of tangible personal property to a person, for any purpose unrelated to the trade or business of such person;

(2) the selling of a service to an individual which generally involves the physical, mental or spiritual care of such individual;

(3) the physical care of the personal property of any person unrelated to the trade or business of such person; or

(4) the provision of a retail banking service.

§ 25-gg. Relocation assistance credit per employee. (a) Any city having a population of one million or more is hereby authorized and empowered to adopt and amend a local law allowing an eligible business that relocates to receive a credit against a tax imposed under a local law enacted pursuant to part two or three of section one or section two of chapter seven hundred seventy-two of the laws of nineteen hundred sixty-six. The amount of such credit shall be determined by multiplying five thousand dollars by the number of eligible aggregate employment shares maintained by the taxpayer during the taxable year with respect to eligible premises to which the taxpayer has relocated, and may be taken, pursuant to the provisions of section four-j of part two of section one, or subdivision (l) of section one hundred one of section two of chapter seven hundred seventy-two of the laws of nineteen hundred sixty-six, for up to eleven consecutive taxable years beginning with the taxable year in which the eligible business relocates, provided that no such credit shall be allowed for the relocation of any retail activity or hotel services.

(b) No eligible business shall be authorized to receive a credit against tax under any local law enacted pursuant to this article unless the premises with respect to which it is claiming the credit are eligible premises and until it has obtained an initial certification of eligibility from the mayor of such city and an annual certification from such mayor as to the number of eligible aggregate employment shares maintained by such eligible business that may qualify for obtaining a tax credit for the eligible business's taxable year. Each initial certification of eligibility shall include the maximum approved employment shares for the eligible business, which shall not exceed five hundred employment shares. Any written documentation submitted to such mayor in order to obtain any such certification shall be deemed a written instrument for purposes of section 175.00 of the penal law. Such local law may provide for an application fee for such certification to be determined by such mayor. No initial certification of eligibility shall be issued under any local law enacted pursuant to this article to an eligible business on or after July first, two thousand twenty-eight unless:

(1) prior to such date, such business has purchased, leased or entered into a contract to purchase or lease eligible premises;

(2) prior to such date, such business submits a preliminary application for an initial certification of eligibility to such mayor with respect to a proposed relocation to such premises;

(3) such business enters into a lease or contract to purchase an eligible premises between the date that such business submits such preliminary application and three months thereafter; and

(4) such business relocates to such premises not later than thirty-six months from the date of submission of such preliminary application.

(c) Notwithstanding any provision of law to the contrary, such mayor shall not issue an initial certification of eligibility that would cause the program total to exceed three thousand maximum approved employment shares. Such mayor shall approve applications on a first-come, first-serve basis among eligible businesses in accordance with rules promulgated pursuant to a local law authorized by subdivision (d) of this section. Such mayor shall include on such mayor's website an indication regarding whether the program total has reached three thousand maximum approved employment shares.

(d) Such mayor shall be authorized to promulgate rules and regulations to administer and ensure compliance with the provisions of this article, including but not limited to rules and regulations to provide for alternative methods to measure employment shares in instances where an eligible business is not required by law to maintain weekly records of full-time work weeks and part-time work weeks of employees, partners or sole proprietors.

(e) For the duration of the benefit period, the recipient of a credit pursuant to a local law enacted in accordance with this article shall file an application for an annual certification each year demonstrating such recipient's eligibility for such credit and the average wage and benefits offered to the applicable relocated employees used in determining eligible aggregate employment shares. Such mayor shall have the authority to require that statements filed under this subdivision be filed electronically and that such statements be certified.

ARTICLE 3

§ 26. Official map, establishment. Every city by ordinance, local law or resolution of the legislative body which has the authority to lay out, adopt and establish streets, highways and parks may establish an official map of the city showing the streets, highways and parks theretofore laid out, adopted and established by law. Drainage systems may also be shown on this map. Such map is to be deemed to be final and conclusive with respect to the location and width of streets, highways, drainage systems and the location of parks shown thereon. Such official map is hereby declared to be established to conserve and promote the public health, safety and general welfare. Said ordinance, local law or resolution shall make it the duty of some appropriate official or employee of said city at once to file with the clerk or register of the county or counties in which said city is situated a certificate showing that the city has established an official map.

§ 27. Planning board, creation and appointment. 1. Authorization. The legislative body of each city, except a city having a population of more than one million, is hereby authorized by local law or ordinance to create a planning board consisting of five or seven members. Members and the chairperson of such planning board shall be appointed by the mayor or other duly authorized appointing authority. In the absence of a chairperson, the planning board may designate a member to serve as chairperson. Not more than a minority of the members of such board shall hold any other public office or position in such city.

2. Appropriation for planning board. The legislative body of each city is hereby authorized and empowered to make such appropriation as it may see fit for planning board expenses. The legislative body may, as part of the local law or ordinance creating such planning board, provide for the compensation of planning board members. The planning board shall have the power and authority to employ experts, clerks and a secretary, and to pay for their services, and to provide for such other expenses as may be necessary and proper, not exceeding in all the appropriation that may be made therefor by the city legislative body for such planning board; excepting and providing that in cities in which the general power and authority to fix salaries and prescribe positions is placed in some other board or officer the foregoing power and authority shall be in such other duly authorized board or officer.

3. Legislative body members ineligible. No person who is a member of the legislative body of a city to which the provisions of this section are applicable, shall be eligible for membership on such planning board.

4. Terms of members first appointed. The terms of the members of the planning board first appointed shall be so fixed that the term of one member shall expire at the end of the official year in which such members were initially appointed. The terms of the remaining members first appointed shall be so fixed that one term shall expire at the end of each official year thereafter. At the expiration of the term of each member first appointed, his or her successor shall be appointed for a term which shall be equal in years to the number of members of the

board.

5. Terms of members now in office. Members now holding office for terms which do not expire at the end of the official year shall, upon the expiration of their term, hold office until the end of the official year and their successors shall then be appointed for terms which shall be equal in years to the number of members of the planning board.

6. Increasing membership. Any legislative body of a city may, by local law or ordinance, increase a five member planning board to seven members. Additional members shall be first appointed for single terms in order that the terms of members shall expire in each of seven successive years and their successors shall thereafter be appointed for full terms of seven years. No such additional member shall take part in the consideration of any matter for which an application was on file with the planning board at the time of his or her appointment.

7. Decreasing membership. A legislative body of a city which has seven members on the planning board may by local law or ordinance, decrease the membership to five, to take effect upon the next two expirations of terms. However, no incumbent shall be removed from office except upon the expiration of his or her term, except as hereinafter provided.

7-a. Training and attendance requirements. a. Each member of the planning board of a city, except a city having a population of more than one million, shall complete, at a minimum, four hours of training each year designed to enable such members to more effectively carry out their duties. Training received by a member in excess of four hours in any one year may be carried over by the member into succeeding years in order to meet the requirements of this subdivision. Such training shall be approved by the legislative body and may include, but not be limited to, training provided by a municipality, regional or county planning office or commission, county planning federation, state agency, statewide municipal association, college or other similar entity. Training may be provided in a variety of formats, including but not limited to, electronic media, video, distance learning and traditional classroom training.

b. To be eligible for reappointment to such board, such member shall have completed the training promoted by the city pursuant to this subdivision.

c. The training required by this subdivision may be waived or modified by resolution of the legislative body of the city when, in the judgment of such legislative body, it is in the best interest of the city to do so.

d. No decision of a planning board shall be voided or declared invalid because of a failure to comply with this subdivision.

8. Vacancy in office. If a vacancy shall occur otherwise than by expiration of term, the mayor, or other duly authorized appointing authority, shall appoint the new member for the unexpired term.

9. Removal of members. The mayor, or other duly authorized appointing authority, shall have the power to remove, after public hearing, any member of the planning board for cause. Any planning board member may be removed for non-compliance with minimum requirements relating to meeting attendance and training as established by the city legislative body by local law or ordinance.

10. Compatibility of offices. The municipal officials or employees on such board shall not, by reason of membership thereon, forfeit their right to exercise the powers, perform the duties or receive the compensation of the municipal office or position held by them during such membership. No municipal officer or employee shall be appointed to the planning board in the event such officer or employee cannot carry out the duties of his or her position without a conflict in the performance of his or her duties as a member of the planning board.

11. Chairperson duties. All meetings of the planning board shall be held at the call of the chairperson and at such other times as such board may determine. Such chairperson, or in his or her absence, the acting chairperson, may administer oaths and compel the attendance of

witnesses.

12. Service on other planning boards. No person shall be disqualified from serving as a member of the city planning board by reason of serving as a member of a county planning board.

13. Rules and regulations. The planning board may recommend to the city legislative body regulations relating to any subject matter over which the planning board has jurisdiction under this article or any other statute, or under local law or ordinance of the city. Adoption of any such recommendations by the city legislative body shall be by local law or ordinance.

14. Report on referred matters; general reports. a. The legislative body of the city may by general or special rule provide for the reference of any matter or class of matters, other than those referred to in subdivision thirteen of this section, to the planning board before final action is taken thereon by the legislative body or other office or officer of said city having final authority over said matter. The legislative body may further stipulate that final action thereon shall not be taken until the planning board has submitted its report thereon, or has had a reasonable time, to be fixed by the legislative body in said rule, to submit the report.

b. The planning board may review and make recommendations on a proposed city comprehensive plan or amendment thereto. In addition, the planning board shall have the full power and authority to make investigations, maps, reports, and recommendations in connection therewith relating to the planning and development of the city as it deems desirable, providing the total expenditures of said board shall not exceed the appropriation provided therefor.

15. Planning commission. In any city in which there is a planning commission created under article twelve-A of the general municipal law, the legislative body of the city, instead of authorizing the appointment of a planning board under this article, may provide that the existing commission shall continue, the members thereof thereafter to be

appointed in accordance with the provisions of such article twelve-A, and to have the powers and duties as specified for a planning board appointed under this article, in addition to the powers and duties as specified in article twelve-A of the general municipal law, provided, however, that in any such city section two hundred thirty-eight of the general municipal law shall not be in force.

16. Alternate members. (a) The legislative body of each city except a city having a population of more than one million may, by local law or ordinance or as a part of the local law or ordinance creating the planning board, establish alternate planning board member positions for purposes of substituting for a member in the event such member is unable to participate because of a conflict of interest. Alternate members of the planning board shall be appointed by the mayor or other duly authorized appointing authority, for terms established by the legislative body of the city.

(b) The chairperson of the planning board may designate an alternate member to substitute for a member when such member is unable to participate because of a conflict of interest on an application or matter before the board. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the board. Such designation shall be entered into the minutes of the initial planning board meeting at which the substitution is made.

(c) All provisions of this section relating to planning board member training and continuing education, attendance, conflict of interest, compensation, eligibility, vacancy in office, removal, compatibility of office and service on other boards, shall also apply to alternate members.

17. Voting requirements. Every motion or resolution of a planning board shall require for its adoption the affirmative vote of a majority of all the members of the planning board. Where an action is the subject of a referral to the county planning agency or regional planning council the voting provisions of sections two hundred thirty-nine-m and two hundred thirty-nine-n of the general municipal law shall apply.

§ 27-a. Site plan review. 1. Definition of site plan. As used in this section the term "site plan" shall mean a rendering, drawing, or sketch prepared to specifications and containing necessary elements, as set forth in the applicable ordinance or local law, which shows the arrangement, layout and design of the proposed use of a single parcel of land as shown on said plan. Plats showing lots, blocks or sites which are subject to review pursuant to authority provided for the review of subdivisions under section thirty-two of this article shall continue to be subject to such review and shall not be subject to review as site plans under this section.

2. Approval of site plans. a. The legislative body of each city may, as part of a zoning ordinance or local law adopted pursuant to subdivisions twenty-four and twenty-five of section twenty of this chapter or by local law or ordinance adopted pursuant to other enabling law, authorize the planning board or such other administrative body that it shall so designate, to review and approve, approve with modifications or disapprove site plans, prepared to specifications set forth in the ordinance or local law and/or in regulations of such authorized board. Site plans shall show the arrangement, layout and design of the proposed use of the land on said plan. The ordinance or local law shall specify the land uses that require site plan approval and the elements to be included on plans submitted for approval. The required site plan elements which are included in the local law or ordinance may include, where appropriate, those related to parking, means of access, screening, signs, landscaping, architectural features, location and dimensions of buildings, adjacent land uses and physical features meant to protect adjacent land uses as well as any additional elements specified by the legislative body in such zoning ordinance or local law.

b. When an authorization to approve site plans is granted by the legislative body pursuant to this section, the terms thereof may condition the issuance of a building permit upon such approval.

3. Application for area variance. Notwithstanding any provisions of law to the contrary, where a proposed site plan contains one or more features which do not comply with the zoning regulations, application

may be made to the zoning board of appeals for an area variance pursuant to section eighty-one-b of article five-a of this chapter without the necessity of a decision or determination of an administration official charged with the enforcement of the zoning regulations.

4. Conditions attached to the approval of site plans. The authorized board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to a proposed site plan. Upon its approval of said site plan, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the city.

5. Waiver of requirements. The legislative body may further empower the authorized board to, when reasonable, waive any requirements for the approval, approval with modifications or disapproval of site plans submitted for approval. Any such waiver, which shall be subject to appropriate conditions set forth in the local law adopted pursuant to this section, may be exercised in the event any such requirements are found not to be requisite in the interest of the public health, safety and general welfare or inappropriate to a particular site plan.

6. Reservation of parkland on site plans containing residential units. a. Before such authorized board may approve a site plan containing residential units, such site plan shall also show, when required by such board, a park or parks suitably located for playground or other recreational purposes.

b. Land for park, playground or other recreational purposes may not be required until the authorized board has made a finding that a proper case exists for requiring that a park or parks be suitably located for playgrounds or other recreational purposes within the city. Such findings shall include an evaluation of the present and anticipated future needs for park and recreational facilities in the city based on projected population growth to which the particular site plan will contribute.

c. In the event the authorized board makes a finding pursuant to paragraph b of this subdivision that the proposed site plan presents a proper case for requiring a park or parks suitably located for playgrounds or other recreational purposes, but that a suitable park or parks of adequate size to meet the requirement cannot be properly located on such site plan, the authorized board may require a sum of money in lieu thereof to be established by the legislative body. In making such determination of suitability, the board shall assess the size and suitability of lands shown on the site plan which could be possible locations for park or recreational facilities, as well as practical factors including whether there is a need for additional facilities in the immediate neighborhood. Any monies required by the authorized board in lieu of land for park, playground or other recreational purposes, pursuant to the provisions of this section, shall be deposited into a trust fund to be used by the city exclusively for park, playground or other recreational purposes, including the acquisition of property.

d. Notwithstanding the foregoing provisions of this subdivision, if the land included in a site plan under review is a portion of a subdivision plat which has been reviewed and approved pursuant to section thirty-two of this article, the authorized board shall credit the applicant for any land set aside or money donated in lieu thereof under such subdivision plat approval. In the event of resubdivision of such plat, nothing shall preclude the additional reservation of parkland or money donated in lieu thereof.

7. Performance bond or other security. As an alternative to the installation of required infrastructure and improvements, prior to approval by the authorized board, a performance bond or other security sufficient to cover the full cost of the same, as estimated by the authorized board or a city department designated by the authorized board to make such estimate, where such departmental estimate is deemed acceptable by the authorized board, shall be furnished to the city by the owner. Such security shall be provided to the city pursuant to the provisions of subdivision eight of section thirty-three of this article.

8. Public hearing and decision on site plans. In the event a public

hearing is required by ordinance or local law adopted by the legislative body, the authorized board shall conduct a public hearing within sixty-two days from the day an application is received on any matter referred to it under this section. The authorized board shall mail notice of said hearing to the applicant at least ten days before said hearing and shall give public notice of said hearing in a newspaper of general circulation in the city at least five days prior to the date thereof and shall make a decision on the application within sixty-two days after such hearing, or after the day the application is received if no hearing has been held. The time within which the authorized board must render its decision may be extended by mutual consent of the applicant and such board. The decision of the authorized board shall be filed in the office of the city clerk within five business days after such decision is rendered, and a copy thereof mailed to the applicant. Nothing herein shall preclude the holding of a public hearing on any matter on which a public hearing is not so required.

9. Notice to county planning board or agency or regional planning council. At least ten days before such hearing, the authorized board shall mail notices thereof to the county planning board or agency or regional planning council, as required by section two hundred thirty-nine-m of the general municipal law, which notice shall be accompanied by a full statement of such proposed action, as defined in subdivision one of section two hundred thirty-nine-m of the general municipal law. In the event a public hearing is not required, such proposed action shall be referred before final action is taken thereon.

10. Compliance with state environmental quality review act. The authorized board shall comply with the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations.

11. Court review. Any person aggrieved by a decision of the authorized board or any officer, department, board or bureau of the city may apply to the supreme court for review by a proceeding under article seventy-eight of the civil practice law and rules. Such proceedings shall be instituted within thirty days after the filing of a decision by

such board in the office of the city clerk. The court may take evidence or appoint a referee to take such evidence as it may direct, and report the same, with findings of fact and conclusions of law, if it shall appear that testimony is necessary for the proper disposition of the matter. The court shall itself dispose of the matter on the merits, determining all questions which may be presented for determination.

12. Costs. Costs shall not be allowed against the authorized board unless it shall appear to the court that it acted with gross negligence, in bad faith, or with malice in making the decision appealed from.

13. Preference. All issues addressed by the court in any proceeding under this section shall have preference over all civil actions and proceedings.

14. Applicability. This section shall not apply to any city having a population of more than one million.

§ 27-b. Approval of special use permits. 1. Definition of special use permit. As used in this section the term "special use permit" shall mean an authorization of a particular land use which is permitted in a zoning ordinance or local law, subject to requirements imposed by such zoning ordinance or local law to assure that the proposed use is in harmony with such zoning ordinance or local law and will not adversely affect the neighborhood if such requirements are met.

2. Approval of special use permits. The legislative body may, as part of a zoning ordinance or local law, authorize the planning board or such other administrative body that it shall designate to grant special use permits as set forth in such zoning ordinance or local law.

3. Application for area variance. Notwithstanding any provision of law to the contrary, where a proposed special use permit contains one or more features which do not comply with the zoning regulations, application may be made to the zoning board of appeals for an area variance pursuant to section eighty-one-b of article five-a of this

chapter, without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations.

4. Conditions attached to the issuance of special use permits. The authorized board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed special use permit. Upon its granting of said special use permit, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the city.

5. Waiver of requirements. The legislative body may further empower the authorized board to, when reasonable, waive any requirements for the approval, approval with modifications or disapproval of special use permits submitted for approval. Any such waiver, which shall be subject to appropriate conditions set forth in the ordinance or local law adopted pursuant to this section, may be exercised in the event any such requirements are found not to be requisite in the interest of the public health, safety and general welfare or inappropriate to a particular special use permit.

6. Public hearing and decision on special use permits. The authorized board shall conduct a public hearing within sixty-two days from the day an application is received on any matter referred to it under this section. Public notice of said hearing shall be printed in a newspaper of general circulation in the city at least five days prior to the date thereof. The authorized board shall decide upon the application within sixty-two days after the hearing. The time within which the authorized board must render its decision may be extended by mutual consent of the applicant and the board. The decision of the authorized board on the application after the holding of the public hearing shall be filed in the office of the city clerk within five business days after such decision is rendered, and a copy thereof mailed to the applicant.

7. Notice to applicant and county planning board or agency and regional planning council. At least ten days before such hearing, the authorized board shall mail notices thereof to the applicant and to the

county planning board or agency and regional planning council, as required by section two hundred thirty-nine-m of the general municipal law, which notice shall be accompanied by a full statement of, such proposed action as defined in subdivision two of section two hundred thirty-nine-m of the general municipal law.

8. Compliance with state environmental quality review act. The authorized board shall comply with the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations.

9. Court review. Any person aggrieved by a decision of the planning board or such other designated body or any officer, department, board or bureau of the city may apply to the supreme court for review by a proceeding under article seventy-eight of the civil practice law and rules. Such proceedings shall be instituted within thirty days after the filing of a decision by such board in the office of the city clerk. The court may take evidence or appoint a referee to take such evidence as it may direct, and report the same, with findings of fact and conclusions of law, if it shall appear that testimony is necessary for the proper disposition of the matter. The court shall itself dispose of the matter on the merits, determining all questions which may be presented for determination.

10. Costs. Costs shall not be allowed against the planning board or other administrative body designated by the legislative body unless it shall appear to the court that it acted with gross negligence, in bad faith, or with malice in making the decision appealed from.

11. Preference. All issues addressed by the court in any proceeding under this section shall have preference over all civil actions and proceedings.

12. Applicability. This section shall not apply to any city having a population of more than one million.

§ 28-a. City comprehensive plan. 1. Application. This section shall not apply in a city having a population of more than one million.

2. Legislative findings and intent. The legislature hereby finds and determines that:

(a) Significant decisions and actions affecting the immediate and long-range protection, enhancement, growth and development of the state and its communities are made by local governments.

(b) Among the most important powers and duties granted by the legislature to a city government is the authority and responsibility to undertake city comprehensive planning and to regulate land use for the purpose of protecting the public health, safety and general welfare of its citizens.

(c) The development and enactment by the city government of a city comprehensive plan which can be readily identified, and is available for use by the public, is in the best interest of the people of each city.

(d) The great diversity of resources and conditions that exist within and among the cities of the state compels the consideration of such diversity in the development of each city comprehensive plan.

(e) The participation of citizens in an open, responsible and flexible planning process is essential to the designing of the optimum city comprehensive plan.

(f) The city comprehensive plan is a means to promote the health, safety and general welfare of the people of the city and to give due consideration to the needs of the people of the region of which the city is a part.

(g) The comprehensive plan fosters cooperation among governmental agencies planning and implementing capital projects and municipalities that may be directly affected thereby.

(h) It is the intent of the legislature to encourage, but not to require, the preparation and adoption of a comprehensive plan pursuant to this section. Nothing herein shall be deemed to affect the status or validity of existing master plans, comprehensive plans, or land use plans.

3. Definitions. As used in this section, the term: (a) "city comprehensive plan" means the materials, written and/or graphic,

including but not limited to maps, charts, studies, resolutions, reports and other descriptive material that identify the goals, objectives, principles, guidelines, policies, standards, devices and instruments for the immediate and long-range protection, enhancement, growth and development of the city.

(b) "land use regulation" means an ordinance or local law enacted by the city for the regulation of any aspect of land use and community resource protection and includes any zoning, subdivision, special use permit or site plan regulation or any other regulation which prescribes the appropriate use of property or the scale, location, and intensity of development.

(c) "special board" means a board consisting of one or more members of the planning board and such other members as are appointed by the legislative body of the city to prepare a proposed comprehensive plan and/or an amendment thereto.

4. Content of a city comprehensive plan. The city comprehensive plan may include the following topics at the level of detail adapted to the special requirements of the city:

(a) General statements of goals, objectives, principles, policies, and standards upon which proposals for the immediate and long-range enhancement, growth and development of the city are based.

(b) Consideration of regional needs and the official plans of other government units and agencies within the region.

(c) The existing and proposed location and intensity of land uses.

(d) Consideration of agricultural uses, historic and cultural resources, coastal and natural resources and sensitive environmental areas.

(e) Consideration of population, demographic and socio-economic trends and future projections.

(f) The location and types of transportation facilities.

(g) Existing and proposed general location of public and private utilities and infrastructure.

(h) Existing housing resources and future housing needs, including affordable housing.

(i) The present and future general location of educational and cultural facilities, historic sites, health facilities and facilities for emergency services.

(j) Existing and proposed recreation facilities and parkland.

(k) The present and potential future general location of commercial and industrial facilities.

(l) Specific policies and strategies for improving the local economy in coordination with other plan topics.

(m) Proposed measures, programs, devices, and instruments to implement the goals and objectives of the various topics within the comprehensive plan.

(n) All or part of the plan of another public agency.

(o) Any and all other items which are consistent with the orderly growth and development of the city.

5. Preparation. The legislative body of the city, or by resolution of such body, the planning board or a special board, may prepare a proposed city comprehensive plan and amendments thereto. In the event the planning board or special board is directed to prepare a proposed comprehensive plan or amendment thereto, such board shall, by resolution, recommend such proposed plan or amendment to the legislative body of the city.

6. Referrals. (a) Any proposed comprehensive plan or amendment thereto that is prepared by the legislative body of the city or a special board may be referred to the city planning board for review and recommendation before action by the legislative body of the city.

(b) The legislative body of the city shall, prior to adoption, refer the proposed comprehensive plan or any amendment thereto to the county planning board or agency or regional planning council for review and recommendation as required by section two hundred thirty-nine-m of the general municipal law. In the event the proposed plan or amendment thereto is prepared by the city planning board or a special board, such board may request comment on such proposed plan or amendment from the county planning board or agency or regional planning council.

7. Public hearings; notice. (a) In the event the legislative body of the city prepares a proposed city comprehensive plan or amendment thereto, the legislative body of the city shall hold one or more public

hearings and such other meetings as it deems necessary to assure full opportunity for citizen participation in the preparation of such proposed plan or amendment, and in addition, the legislative body of the city shall hold one or more public hearings prior to adoption of such proposed plan or amendment.

(b) In the event the legislative body of the city has directed the planning board or a special board to prepare a proposed comprehensive plan or amendment thereto, the board preparing the plan shall hold one or more public hearings and such other meetings as it deems necessary to assure full opportunity for citizen participation in the preparation of such proposed plan or amendment. The legislative body of the city shall, within ninety days of receiving the planning board or special board's recommendations on such proposed plan or amendment, and prior to adoption of such proposed plan or amendment, hold a public hearing on such proposed plan or amendment.

(c) Notice of a public hearing shall be published in a newspaper of general circulation in the city at least ten calendar days in advance of the hearing. The proposed comprehensive plan or amendment thereto shall be made available for public review during said period at the office of the city clerk and may be made available at any other place, including a public library.

8. Adoption. The legislative body of the city may adopt by resolution a city comprehensive plan or any amendment thereto.

9. Environmental review. A city comprehensive plan, and any amendment thereto, is subject to the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations. A city comprehensive plan may be designed to also serve as, or be accompanied by, a generic environmental impact statement pursuant to the state environmental quality review act statute and regulations. No further compliance with such law is required for subsequent site specific actions that are in conformance with the conditions and thresholds established for such actions in the generic environmental impact statement and its findings.

10. Agricultural review and coordination. A city comprehensive plan

and any amendments thereto, for a city containing all or part of an agricultural district or lands receiving agricultural assessments within its jurisdiction, shall continue to be subject to the provisions of article twenty-five-AA of the agriculture and markets law relating to the enactment and administration of local laws, ordinances, rules or regulations. A newly adopted or amended city comprehensive plan shall take into consideration applicable county agricultural and farmland protection plans as created under article twenty-five-AAA of the agriculture and markets law.

11. Periodic review. The legislative body of the city shall provide, as a component of such proposed comprehensive plan, the maximum intervals at which the adopted plan shall be reviewed.

12. Effect of adoption of the city comprehensive plan. (a) All city land use regulations must be in accordance with a comprehensive plan adopted pursuant to this section.

(b) All plans for capital projects of another governmental agency on land included in the city comprehensive plan adopted pursuant to this section shall take such plan into consideration.

13. Filing of city comprehensive plan. The adopted city comprehensive plan and any amendments thereto shall be filed in the office of the city clerk and a copy thereof shall be filed in the office of the county planning agency.

§ 29. Official map, changes. Such legislative body is authorized and empowered, whenever and as often as it may deem it for the public interest, to change or add to the official map of the city so as to lay out new streets, highways or parks, or to widen or close existing streets, highways or parks. Drainage systems may also be shown on this map. At least five days' notice of a public hearing on any proposed action with reference to such change in the official map shall be published at least once in an official publication of said city or in a newspaper of general circulation therein. No change in the official map shall be made for the lay out of a new street or the opening or widening of any street unless notice shall have been sent by registered mail, return receipt requested, to the person and address noted on the last preceding real property tax notice issued on the property which is to be included in such proposed layout, opening or widening of such streets. Before making such addition or change the matter shall be referred to the planning board for report thereon, but if the planning board shall not make its report within thirty days of such reference, it shall forfeit the right further to suspend action. Such additions and changes when adopted shall become a part of the official map of the city, and shall be deemed to be final and conclusive with respect to the location of the streets, highways and parks shown thereon.

The layout, widening or closing, or the approval of the layout, widening or closing of streets, highways or parks by the city under provisions of law other than those contained in this article shall be deemed to be a change or addition to the official map, and shall be subject to all the provisions of this article.

§ 31. Planning board, general reports. The planning board shall have full power and authority to make such investigations, maps and reports and recommendations in connection therewith relating to the planning and development of the city as to it seems desirable providing the total expenditures of said board shall not exceed the appropriation for its expenses.

§ 32. Subdivision review; approval of plats; development of filed plats. 1. Purpose. For the purpose of providing for the future growth and development of the city and affording adequate facilities for the housing, transportation, distribution, comfort, convenience, safety, health and welfare of its population, the legislative body of the city may by resolution, authorize and empower the planning board to approve preliminary and final plats of subdivisions showing lots, blocks or sites, with or without streets or highways.

2. Authorization for review of previously filed plats. For the same

purposes and under the same conditions, the legislative body of the city may, by resolution, authorize and empower the planning board to approve the development of plats, entirely or partially undeveloped, which were filed in the office of the clerk of the county in which such plat is located prior to the appointment of such planning board and grant to the board the power to approve such plats. The term "undeveloped" shall mean those plats where twenty percent or more of the lots within the plat are unimproved unless existing conditions, such as poor drainage, have prevented their development.

3. Filing of certificate. The clerk of every city which has authorized its planning board to approve plats as set forth herein shall immediately file a certificate of that fact with the clerk or register of the county in which such city is located.

4. Definitions. When used in this article the following terms shall have the respective meanings set forth herein except where the context shows otherwise:

(a) "Subdivision", means the division of any parcel of land into a number of lots, blocks or sites as specified in a law, rule or regulation, with or without streets or highways, for the purpose of sale, transfer of ownership, or development. The term "subdivision" may include any alteration of lot lines or dimensions of any lots or sites shown on a plat previously approved and filed in the office of the county clerk or register of the county in which such plat is located. Subdivisions may be defined and delineated by local regulation, as either "major" or "minor", with the review procedures and criteria for each set forth in such local regulations.

(b) "Preliminary plat", means a drawing prepared in a manner prescribed by local regulation showing the layout of a proposed subdivision including, but not restricted to, road and lot layout and approximate dimensions, key plan, topography and drainage, all proposed facilities unsized, including preliminary plans and profiles, at suitable scale and in such detail as local regulation may require.

(c) "Preliminary plat approval", means the approval of the layout of a proposed subdivision as set forth in a preliminary plat but subject to the approval of the plat in final form in accordance with the provisions of this section.

(d) "Final plat", means a drawing prepared in a manner prescribed by local regulation, that shows a proposed subdivision, containing in such additional detail as shall be provided by local regulation all information required to be shown on a preliminary plat and the modifications, if any, required by the planning board at the time of approval of the preliminary plat if such preliminary plat has been so approved.

(e) "Conditional approval of a final plat", means approval by a planning board of a final plat subject to conditions set forth by the planning board in a resolution conditionally approving such plat. Such conditional approval does not qualify a final plat for recording nor authorize issuance of any building permits prior to the signing of the plat by a duly authorized officer of the planning board and recording of the plat in the office of the county clerk or register as herein provided.

(f) "Final plat approval", means the signing of a plat in final form by a duly authorized officer of a planning board pursuant to a planning board resolution granting final approval to the plat, or after conditions specified in a resolution granting conditional approval of the plat are completed. Such final approval qualifies the plat for recording in the office of the county clerk or register, in the county in which such plat is located.

5. Approval of preliminary plats. (a) Submission of preliminary plats. All plats shall be submitted to the planning board for approval in final form provided, however, that where the planning board has been authorized to approve preliminary plats, the owner may submit or the planning board may require that the owner submit a preliminary plat for consideration. Such a preliminary plat shall be clearly marked "preliminary plat" and shall conform to the definition provided in this section.

(b) Coordination with the state environmental quality review act. The planning board shall comply with the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations.

(c) Receipt of a complete preliminary plat. A preliminary plat shall not be considered complete until a negative declaration has been filed or until a notice of completion of the draft environmental impact statement has been filed in accordance with the provisions of the state environmental quality review act. The time periods for review of a preliminary plat shall begin upon filing of such negative declaration or such notice of completion.

(d) Planning board as lead agency under the state environmental quality review act; public hearing; notice; decision.

(i) Public hearing on preliminary plats. The time within which the planning board shall hold a public hearing on the preliminary plat shall be coordinated with any hearings the planning board may schedule pursuant to the state environmental quality review act, as follows:

(1) If such board determines that the preparation of an environmental impact statement on the preliminary plat is not required, the public hearing on such plat shall be held within sixty-two days after the receipt of a complete preliminary plat by the clerk of the planning board; or

(2) If such board determines that an environmental impact statement is required, and a public hearing on the draft environmental impact statement is held, the public hearing on the preliminary plat and the draft environmental impact statement shall be held jointly within sixty-two days after the filing of the notice of completion of such draft environmental impact statement in accordance with the provisions of the state environmental quality review act. If no public hearing is held on the draft environmental impact statement, the public hearing on the preliminary plat shall be held within sixty-two days of filing the notice of completion.

(ii) Public hearing; notice, length. The hearing on the preliminary plat shall be advertised at least once in a newspaper of general circulation in the city at least five days before such hearing if no hearing is held on the draft environmental impact statement, or fourteen days before a hearing held jointly therewith. The planning board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such preliminary plat. The hearing on the preliminary plat shall be closed upon motion of the planning board within one hundred twenty days after it has been opened.

(iii) Decision. The planning board shall approve, with or without modification, or disapprove such preliminary plat as follows:

(1) If the planning board determines that the preparation of an environmental impact statement on the preliminary plat is not required such board shall make its decision within sixty-two days after the close of the public hearing; or

(2) If the planning board determines that an environmental impact statement is required, and a public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within forty-five days following the close of such public hearing in accordance with the provisions of the state environmental quality review act. If no public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within forty-five days following the close of the public hearing on the preliminary plat. Within thirty days of the filing of such final environmental impact statement, the planning board shall issue findings on the final environmental impact statement and make its decision on the preliminary plat.

(iv) Grounds for decision. The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the planning board. When so approving a preliminary plat, the planning board shall state in writing any modifications it deems necessary for submission of the plat in final form.

(e) Planning board not as lead agency under the state environmental quality review act; public hearing; notice; decision.

(i) Public hearing on preliminary plats. The planning board shall, with the agreement of the lead agency, hold the public hearing on the preliminary plat jointly with the lead agency's hearing on the draft environmental impact statement. Failing such agreement or if no public hearing is held on the draft environmental impact statement, the planning board shall hold the public hearing on the preliminary plat within sixty-two days after receipt of a complete preliminary plat by the clerk of the planning board.

(ii) Public hearing; notice, length. The hearing on the preliminary plat shall be advertised at least once in a newspaper of general circulation in the city at least five days before such hearing if held independently of the hearing on the draft environmental impact statement, or fourteen days before a hearing held jointly therewith. The planning board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such preliminary plat. The hearing on the preliminary plat shall be closed upon motion of the planning board within one hundred twenty days after it has been opened.

(iii) Decision. The planning board shall by resolution approve with or without modification or disapprove the preliminary plat as follows:

(1) If the preparation of an environmental impact statement on the preliminary plat is not required, the planning board shall make its decision within sixty-two days after the close of the public hearing on the preliminary plat.

(2) If an environmental impact statement is required, the planning board shall make its own findings and its decision on the preliminary plat within sixty-two days after the close of the public hearing on such preliminary plat or within thirty days of the adoption of findings by the lead agency, whichever period is longer.

(iv) Grounds for decision. The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the planning board. When so approving a preliminary plat, the planning board shall state in writing any modifications it deems necessary for submission of the plat in final form.

(f) Certification and filing of preliminary plat. Within five business days of the adoption of the resolution granting approval of such preliminary plat, such plat shall be certified by the clerk of the planning board as having been granted preliminary approval and a copy of the plat and resolution shall be filed in such clerk's office. A copy of the resolution shall be mailed to the owner.

(g) Filing of decision on preliminary plat. Within five business days from the date of the adoption of the resolution stating the decision of the board on the preliminary plat, the chairman or other duly authorized member of the planning board shall cause a copy of such resolution to be filed in the office of the city clerk.

(h) Revocation of approval of preliminary plat. Within six months of the approval of the preliminary plat the owner must submit the plat in final form. If the final plat is not submitted within six months, approval of the preliminary plat may be revoked by the planning board.

6. Approval of final plats. (a) Submission of final plats. Final plats shall conform to the definition provided by this section.

(b) Final plats which are in substantial agreement with approved preliminary plats. When a final plat is submitted which the planning board deems to be in substantial agreement with a preliminary plat approved pursuant to this section, the planning board shall by resolution conditionally approve with or without modification, disapprove, or grant final approval and authorize the signing of such plat, within sixty-two days of its receipt by the clerk of the planning board.

(c) Final plats when no preliminary plat is required to be submitted; receipt of complete final plat. When no preliminary plat is required to be submitted, a final plat shall not be considered complete until a negative declaration has been filed or until a notice of completion of the draft environmental impact statement has been filed in accordance with the provisions of the state environmental quality review act. The time periods for review of such plat shall begin upon filing of such negative declaration or such notice of completion.

(d) Final plats; not in substantial agreement with approved preliminary plats, or when no preliminary plat is required to be submitted. When a final plat is submitted which the planning board deems not to be in substantial agreement with a preliminary plat approved pursuant to this section, or when no preliminary plat is required to be submitted and a final plat clearly marked "final plat" is submitted conforming to the definition provided by this section the following shall apply:

(i) Planning board as lead agency; public hearing; notice; decision. (1) Public hearing on final plats. The time within which the planning board shall hold a public hearing on such final plat shall be coordinated with any hearings the planning board may schedule pursuant to the state environmental quality review act, as follows:

(a) if such board determines that the preparation of an environmental impact statement is not required, the public hearing on a final plat not in substantial agreement with a preliminary plat, or on a final plat when no preliminary plat is required to be submitted, shall be held within sixty-two days after the receipt of a complete final plat by the clerk of the planning board; or

(b) if such board determines that an environmental impact statement is required, and a public hearing on the draft environmental impact statement is held, the public hearing on the final plat and the draft environmental impact statement shall be held jointly within sixty-two days after the filing of the notice of completion of such draft environmental impact statement in accordance with the provisions of the state environmental quality review act. If no public hearing is held on the draft environmental impact statement, the public hearing on the final plat shall be held within sixty-two days following filing of the notice of completion.

(2) Public hearing; notice, length. The hearing on the final plat shall be advertised at least once in a newspaper of general circulation in the city at least five days before such hearing if no hearing is held on the draft environmental impact statement, or fourteen days before a hearing held jointly therewith. The planning board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such final plat. The hearing on the final plat shall be closed upon motion of the planning board within one hundred twenty days after it has been opened.

(3) Decision. The planning board shall make its decision on the final plat as follows:

(a) if such board determines that the preparation of an environmental impact statement on the final plat is not required, the planning board shall by resolution conditionally approve, with or without modification, disapprove, or grant final approval and authorize the signing of such plat within sixty-two days after the date of the public hearing; or

(b) if such board determined that an environmental impact statement is required, and a public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within forty-five days following the close of such public hearing in accordance with the provisions of the state environmental quality review act. If no public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within forty-five days following the close of the public hearing on the final plat. Within thirty days of the filing of the final environmental impact statement, the planning board shall issue findings on such final environmental impact statement and shall by resolution conditionally approve, with or without modification, disapprove, or grant final approval and authorize the signing of such plat.

(4) Grounds for decision. The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the planning board.

(ii) Planning board not as lead agency; public hearing; notice; decision.

(1) Public hearing. The planning board shall, with the agreement of the lead agency, hold the public hearing on the final plat jointly with the lead agency's hearing on the draft environmental impact statement. Failing such agreement or if no public hearing is held on the draft environmental impact statement, the planning board shall hold the public hearing on the plat within sixty-two days after the receipt of a complete final plat by the clerk of the planning board.

(2) Public hearing; notice, length. The hearing on the final plat shall be advertised at least once in a newspaper of general circulation in the city at least five days before such hearing if held independently of the hearing on the draft environmental impact statement, or fourteen days before a hearing held jointly therewith. The planning board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such final plat. The hearing on the final plat shall be closed upon motion of the planning board within one hundred twenty days after it has been opened.

(3) Decision. The planning board shall by resolution conditionally approve, with or without modification, disapprove, or grant final approval and authorize the signing of such plat as follows:

(a) If the preparation of an environmental impact statement on the final plat is not required, the planning board shall make its decision within sixty-two days after the close of the public hearing on such final plat.

(b) If an environmental impact statement is required, the planning board shall make its own findings and its decision on the final plat within sixty-two days after the close of the public hearing on such final plat or within thirty days of the adoption of findings by the lead agency, whichever period is longer. The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the planning board.

7. Approval and certification of final plats. (a) Certification of plat. Within five business days of the adoption of the resolution granting conditional or final approval of the final plat, such plat shall be certified by the clerk of the planning board as having been granted conditional or final approval and a copy of such resolution and plat shall be filed in such clerk's office. A copy of the resolution shall be mailed to the owner. In the case of a conditionally approved plat, such resolution shall include a statement of the requirements which when completed will authorize the signing thereof. Upon completion of such requirements the plat shall be signed by said duly authorized officer of the planning board and a copy of such signed plat shall be filed in the office of the clerk of the planning board or filed with the city clerk as determined by the legislative body of the city.

(b) Approval of plat in sections. In granting conditional or final approval of a plat in final form, the planning board may permit the plat to be subdivided and developed in two or more sections and may in its resolution granting conditional or final approval state that such requirements as it deems necessary to insure the orderly development of the plat be completed before said sections may be signed by the duly authorized officer of the planning board. Conditional or final approval of the sections of a final plat, may be granted concurrently with conditional or final approval of the entire plat, subject to any requirements imposed by the planning board.

(c) Duration of conditional approval of final plat. Conditional approval of the final plat shall expire within one hundred eighty days after the resolution granting such approval unless all requirements stated in such resolution have been certified as completed. The planning board may extend for periods of ninety days each the time in which a conditionally approved plat must be submitted for signature if, in the planning board's opinion, such extension is warranted by the particular circumstances.

8. Default approval of preliminary or final plat. The time periods prescribed herein within which a planning board must take action on a preliminary plat or a final plat are specifically intended to provide

the planning board and the public adequate time for review and to minimize delays in the processing of subdivision applications. Such periods may be extended only by mutual consent of the owner and the planning board. In the event a planning board fails to take action on a preliminary plat or a final plat within the time prescribed therefor after completion of all requirements under the state environmental quality review act, or within such extended period as may have been established by the mutual consent of the owner and the planning board, such preliminary or final plat shall be deemed granted approval. The certificate of the city clerk as to the date of submission of the preliminary or final plat and the failure of the planning board to take action within the prescribed time shall be issued on demand and shall be sufficient in lieu of written endorsement or other evidence of approval herein required.

9. Filing of decision on final plat. Within five business days from the date of the adoption of the resolution stating the decision of the board on the final plat, the chairman or other duly authorized member of the planning board shall cause a copy of such resolution to be filed in the office of the city clerk.

10. Notice to county planning board or agency or regional planning council. When a county planning board or agency or a regional planning council has been authorized to review subdivision plats pursuant to section two hundred thirty-nine-n of the general municipal law, the clerk of the planning board shall refer all applicable preliminary and final plats to such county planning board or agency or regional planning council as provided in that section.

11. Filing of final plat; expiration of approval. The owner shall file in the office of the county clerk or register such approved final plat or a section of such plat within sixty-two days from the date of final approval or such approval shall expire. The following shall constitute final approval: the signature of the duly authorized officer of the planning board constituting final approval by the planning board of a plat as herein provided; or the approval by such board of the development of a plat or plats already filed in the office of the county

clerk or register of the county in which such plat or plats are located if such plats are entirely or partially undeveloped; or the certificate of the city clerk as to the date of the submission of the final plat and the failure of the planning board to take action within the time herein provided. In the event the owner shall file only a section of such approved plat in the office of the county clerk or register, the entire approved plat shall be filed within thirty days of the filing of such section with the city clerk in each city in which any portion of the land described in the plat is situated. Such section shall encompass at least ten percent of the total number of lots contained in the approved plat and the approval of the remaining sections of the approved plat shall expire unless said sections are filed before the expiration of the exemption period to which such plat is entitled under the provisions of section eighty-three-a of this chapter.

12. Subdivision abandonment. The owner of an approved subdivision may abandon such subdivision pursuant to the provisions of section five hundred sixty of the real property tax law.

§ 33. Subdivision review; approval of plats; additional requisites. 1. Purpose. Before the approval by the planning board of a plat showing lots, blocks or sites, with or without streets or highways, or the approval of a plat already filed in the office of the clerk of the county wherein such plat is situated if the plat is entirely or partially undeveloped, the planning board shall require that the land shown on the plat be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood, drainage or other menace to neighboring properties or the public health, safety and welfare.

2. Additional requirements. The planning board shall also require that:

(a) the streets and highways be of sufficient width and suitable grade and shall be suitably located to accommodate the prospective traffic, to afford adequate light and air, to facilitate fire protection, and to provide access of firefighting equipment to buildings. If there be an official map or city comprehensive plan, such streets and highways shall be coordinated so as to compose a convenient system conforming to the official map and properly related to the proposals shown in the comprehensive plan of the city;

(b) suitable monuments be placed at block corners and other necessary points as may be required by the board and the location thereof is shown on the map of such plat;

(c) all streets and other public places shown on such plats be suitably graded and paved; street signs, sidewalks, street lighting standards, curbs, gutters, street trees, water mains, fire alarm signal devices (including necessary ducts and cables or other connecting facilities), sanitary sewers and storm drains be installed all in accordance with standards, specifications and procedures acceptable to the appropriate city departments except as hereinafter provided, or alternatively that a performance bond or other security be furnished to the city as hereinafter provided.

3. Compliance with zoning regulations. Where a zoning ordinance or local law has been adopted by the city, the plots shown on said plat shall at least comply with the requirements thereof subject, however, to the provisions of section thirty-seven of this article.

4. Reservation of parkland on subdivision plats containing residential units. (a) Before the planning board may approve a subdivision plat containing residential units, such subdivision plat shall also show, when required by such board, a park or parks suitably located for playground or other recreational purposes.

(b) Land for park, playground or other recreational purposes may not be required until the planning board has made a finding that a proper case exists for requiring that a park or parks be suitably located for playgrounds or other recreational purposes within the city. Such findings shall include an evaluation of the present and anticipated future needs for park and recreational facilities in the city based on projected population growth to which the particular subdivision plat will contribute.

(c) In the event the planning board makes a finding pursuant to paragraph (b) of this subdivision that the proposed subdivision plat presents a proper case for requiring a park or parks suitably located for playgrounds or other recreational purposes, but that a suitable park or parks of adequate size to meet the requirement cannot be properly located on such subdivision plat, the planning board may require a sum of money in lieu thereof, in an amount to be established by the legislative body of the city. In making such determination of suitability, the board shall assess the size and suitability of land shown on the subdivision plat which could be possible locations for park or recreational facilities, as well as practical factors including whether there is a need for additional facilities in the immediate neighborhood. Any money required by the planning board in lieu of land for park, playground or other recreational purposes, pursuant to the provisions of this section, shall be deposited into a trust fund to be used by the city exclusively for park, playground or other recreational purposes, including the acquisition of property.

5. Character of the development. In making such determination regarding streets, highways, parks and required improvements, the planning board shall take into consideration the prospective character of the development, whether dense residence, open residence, business or industrial.

6. Application for area variance. Notwithstanding any provision of law to the contrary, where a plat contains one or more lots which do not comply with the zoning local law or ordinance, application may be made to the zoning board of appeals for an area variance pursuant to section eighty-one-b of this chapter, without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations. In reviewing such application the zoning board of appeals shall request the planning board to provide a written recommendation concerning the proposed variance.

7. Waiver of requirements. The planning board may waive, when reasonable, any requirements or improvements for the approval, approval with modifications or disapproval of subdivisions submitted for its approval. Any such waiver, which shall be subject to appropriate conditions, may be exercised in the event any such requirements or

improvements are found not to be requisite in the interest of the public health, safety, and general welfare or inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the subdivision.

8. Performance bond or other security. (a) Furnishing of performance bond or other security. As an alternative to the installation of infrastructure and improvements, as above provided, prior to planning board approval, a performance bond or other security sufficient to cover the full cost of the same, as estimated by the planning board or a city department designated by the planning board to make such estimate, where such departmental estimate is deemed acceptable by the planning board, shall be furnished to the city by the owner.

(b) Security where plat approved in sections. In the event that the owner shall be authorized to file the approved plat in sections, as provided in subdivision seven of section thirty-two of this article, approval of the plat may be granted upon the installation of the required improvements in the section of the plat filed in the office of the county clerk or register or the furnishing of security covering the costs of such improvements. The owner shall not be permitted to begin construction of buildings in any other section until such section has been filed in the office of the county clerk or register and the required improvements have been installed in such section or a security covering the cost of such improvements is provided.

(c) Form of security. Any such security must be provided pursuant to a written security agreement with the city, approved by the legislative body of the city and also approved by the city attorney as to form, sufficiency and manner of execution, and shall be limited to: (i) a performance bond issued by a bonding or surety company; (ii) the deposit of funds in, or a certificate of deposit issued by, a bank or trust company located and authorized to do business in this state; (iii) an irrevocable letter of credit from a bank located and authorized to do business in this state; (iv) obligations of the United States of America; or (v) any obligations fully guaranteed as to interest and principal by the United States of America, having a market value at least equal to the full cost of such improvements. If not delivered to the city, such security shall be held in a city account at a bank or trust company.

(d) Term of security agreement. Any such performance bond or security agreement shall run for a term to be fixed by the planning board, but in no case for a longer term than three years, provided, however, that the term of such performance bond or security agreement may be extended by the planning board with consent of the parties thereto. If the planning board shall decide at any time during the term of the performance bond or security agreement that the extent of building development that has taken place in the subdivision is not sufficient to warrant all the improvements covered by such security, or that the required improvements have been installed as provided in this section and by the planning board in sufficient amount to warrant reduction in the amount of said security, and upon approval by the legislative body of the city, the planning board may modify its requirements for any or all such improvements, and the amount of such security shall thereupon be reduced by an appropriate amount so that the new amount will cover the cost in full of the amended list of improvements required by the planning board.

(e) Default of security agreement. In the event that any required improvements have not been installed as provided in this section within the term of such security agreement, the legislative body of the city may thereupon declare the said performance bond or security agreement to be in default and collect the sum remaining payable thereunder; and upon the receipt of the proceeds thereof, the city shall install such improvements as are covered by such security and as commensurate with the extent of building development that has taken place in the subdivision but not exceeding in cost the amount of such proceeds.

§ 34. Subdivision review; record of plats. 1. Filing of plat with county clerk or register. (a) No plat of a subdivision of land showing lots, blocks or sites shall be filed or recorded in the office of the county clerk or register until it has been approved by a planning board which has been empowered to approve such plats. Further, such approval must be endorsed in writing on the plat in such manner as the planning board may designate.

(b) Such endorsement shall stipulate that the plat does not conflict with the county official map, where one exists, or in cases where plats do front on or have access to or are otherwise related to roads or drainage systems shown on the county official map, that such plat has been approved in the manner specified by subdivision two of section two hundred thirty-nine-f of the general municipal law.

2. Notification of filing. It shall be the duty of the county clerk or register to notify the planning board in writing within three days of the filing or recording of any plat approved by such planning board, identifying such plat by its title, date of filing or recording, and official file number.

3. Effect of filing. After such plat is approved and filed, the streets, highways and parks shown on such plat shall be and become a part of the official map or plan of the city.

4. Cession or dedication of streets, highways or parks. (a) All streets, highways or parks shown on a filed or recorded plat are offered for dedication to the public unless the owner of the affected land, or the owner's agent, makes a notation on the plat to the contrary prior to final plat approval. Any street, highway or park shown on a filed or recorded plat shall be deemed to be private until such time as it has been formally accepted by a resolution of the local legislative body, or until it has been condemned by the city for use as a public street, highway or park.

(b) In the event that such approved plat is not filed or recorded prior to the expiration date of the plat approval as provided in section thirty-two of this article, then such offer of dedication shall be deemed to be invalid, void and of no effect on and after such expiration date.

§ 35. Permits for building in bed of mapped streets. For the purpose of preserving the integrity of such official map or plan no permit shall hereafter be issued for any building in the bed of any street or highway shown or laid out on such map or plan, provided, however, that if the land within such mapped street or highway is not yielding a fair return on its value to the owner, the board of appeals or other similar board in any city which has established such a board having power to make variances or exception in zoning regulations shall have power in a specific case by the vote of a majority of its members to grant a permit for a building in such street or highway which will as little as practicable increase the cost of opening such street or highway, or tend to cause a change of such official map or plan, and such board may impose reasonable requirements as a condition of granting such permit, which requirements shall inure to the benefit of the city. Before taking any action authorized in this section, the board of appeals or similar board shall give a hearing at which parties in interest and others shall have an opportunity to be heard. At least fifteen days notice of the time and place of such hearing shall be published in an official publication of said city or in a newspaper of general circulation therein. Any such decision shall be subject to review by certiorari order issued out of a court of record in the same manner and pursuant to the same provisions as in appeals from the decisions of such board upon zoning regulations.

Where a proposed street widening or extension has been shown on such official map or plan for ten years or more and the city has not acquired title thereto, the city may, after a hearing on notice as hereinabove provided, grant a permit for a building and/or structure in such street or highway and shall impose such reasonable requirements as are necessary to protect the public interest as a condition of granting such permit, which requirements shall inure to the benefit of the city.

§ 35-a. Limitation of time for revocation of permit. An action or proceeding to revoke a building permit on the ground that the building erected pursuant thereto stands wholly or partly within the bed of any street or highway shown on the official map or plan of a city must be commenced within fifteen years from the time of the issuance of such permit; but if at the time this act takes effect more than fourteen years have elapsed since the time of the issuance of the permit, an action or proceeding to revoke the permit on such ground must be commenced within one year from the time this act takes effect. If no action or proceeding is commenced within the time limited, the permit shall be deemed as valid as if it had been issued pursuant to the provisions of section thirty-five of this chapter.

§ 36. Municipal improvements in streets, buildings not on mapped streets. 1. A city having a population of less than one million. No public municipal street utility or improvement shall be constructed by any city having a population of less than one million in any street or highway until it has become a public street or highway and is duly placed on the official map or plan. No permit for the erection of any building shall be issued unless a street or highway giving access to such proposed structure has been duly placed on the official map or plan, which street or highway shall have been suitably improved to the satisfaction of the planning board in accordance with standards and specifications approved by the appropriate city departments as adequate in respect to the public health, safety and general welfare for the special circumstances of the particular street or highway or alternately that a performance bond sufficient to cover the full cost of such improvement as estimated by such board shall be furnished to the city by the owner. Such performance bond shall be issued by a bonding or surety company approved by the corporation counsel of the city, or by the owner with security acceptable to the legislative body, and shall also be approved by such corporation counsel as to form, sufficiency and manner of execution. The term, manner of modification and method of enforcement of such bond shall be determined by the planning board in substantial conformity with section thirty-three of this article. The applicant for such a permit may appeal from the decision of the administrative officer having charge of the issue of permits to the board of appeals or other similar board, in any city which has established a board having the power to make variances or exceptions in zoning regulations for: (a) an exception if the circumstances of the case do not require the structure to be related to existing or proposed streets or highways and/or (b) an area variance pursuant to section eighty-one-b of this chapter, and the same provisions are hereby applied to such appeals and to such board as are provided in cases of appeals on zoning regulations. The board may in passing on such appeal make any reasonable exception and issue the permit subject to conditions that will protect any future street or highway layout. Any such decision shall be subject to review under the provisions of article seventy-eight of the civil practice law and rules.

2. A city having a population of one million or more. No public municipal street utility or improvement shall be constructed by any city having a population of one million or more in any street or highway until it has become a public street or highway and is duly placed on the official map or plan, with the exception that a city may construct improvements and provide services to any public way (mapped or unmapped) if the public way has been open and in use to the public for a minimum of ten years. The existence of the public way must be attested to by documents satisfactory to the municipality, such as reports of city agencies providing municipal services. No certificate of occupancy shall be issued in such city for any building unless a street or highway giving access to such structure has been duly placed on the official map or plan, which street or highway, and any other mapped street or highway abutting such building or structure shall have been suitably improved to the satisfaction of the department of transportation of the city in accordance with standards and specifications approved by such department as adequate in respect to the public health, safety and general welfare for the special circumstances of the particular street or highway, or, alternately, unless the owner has furnished to the department of transportation of such city a performance bond naming the city as obligee, approved by such department, to the full cost of such improvement as estimated by such department, or other security approved by such department, that such improvement will be completed within the time specified by such department. If such improvement has not been installed within the time specified by such department, such department may declare such performance bond or other security to be in default and shall collect, in the name of the city, the sum remaining payable thereunder. Upon receipt of the proceeds thereof, the city shall install such improvement. If the cost of such improvement exceeds the sum remaining payable under such bond or other security, the owner shall be liable for and shall pay to the city, the amount of such excess. Where the enforcement of the provisions of this section would entail practical difficulty or unnecessary hardship, and where the circumstances of the case do not require the structure to be related to existing or proposed

streets or highways, the applicant for such a certificate of occupancy may appeal from the decision of the administrative officer having charge of the issuance of certificates of occupancy to the board of standards and appeals or other similar board of such city having power to make variances or exceptions in zoning regulations, and the same provisions are hereby applied to such appeals and to such board as are provided in cases of appeals on zoning regulations. The board may in passing on such appeal make any reasonable exception and issue the certificate of occupancy subject to conditions that will protect any future street or highway layout. Any such decision shall be subject to review under the provisions of article seventy-eight of the civil practice law and rules. No permit shall be granted for the erection of any building or structure in such city unless the owner has furnished to the commissioner of transportation of such city a policy of liability insurance, marked paid, in such amounts as may be fixed by such department, insuring, indemnifying and saving the city harmless from any claims, suits, demands, causes of action and judgments by reason of personal injuries sustained by any person or persons, including death, and from any claims, suits, demands, causes of action and judgments for damages to property, occurring on any such street or highway giving access to or abutting such structure, up to the date of the issuance of the certificate of occupancy or up to the date of the completion of the improvement of such street or highway as required by or pursuant to this section, whichever is later. In the event that the owner is covered by such a policy of liability insurance, the department of transportation may accept a certificate of endorsement extending such policy to include and cover the city. Every permit issued for the erection of any such building or structure shall contain a statement that no certificate of occupancy will be issued with respect to such building or structure unless a street or highway giving access to such structure has been duly placed on the official map or plan, which street or highway and any other mapped street or highway abutting such building or structure shall have been suitably improved to the satisfaction of the department of transportation of the city in accordance with standards and specifications approved by such department as adequate in respect to the public health, safety and general welfare for the special circumstances of the particular street or highway or, alternately, unless the owner has furnished to the department of transportation a performance bond naming the city as obligee, approved by such department, sufficient to cover the full cost of such improvement as estimated by such department, or other security approved by such department, that such improvement will be completed within the time specified by such department.

3. Notwithstanding any provision of law, rule or regulation to the contrary, a certificate of occupancy for a one or two family residential dwelling which is otherwise in compliance with all applicable laws shall be issued by the department of buildings of the city of New York for any building abutting an unmapped street without a review by the board of standards and appeals in the following circumstances: (a) if the corporation counsel of the city of New York has issued an opinion determining that the public way has been open and in use to the public for a minimum of ten years and has been attested to by documents satisfactory to the municipality, that the unmapped street abutting such building or structure shall have been suitably improved to the satisfaction of the department of transportation of the city of New York in accordance with standards and specifications approved by such department as adequate in respect to the public health, safety and general welfare for the special circumstances of the particular unmapped street, and that such building or structure is equipped with an automatic fire sprinkler, or (b) if the department of buildings of the city of New York determines that such one or two family residential dwelling is located within the same block and fronting on the same unmapped street in question as another building or structure that successfully appealed to the board of standards and appeals and has been issued a certificate of occupancy and provided the unmapped street fronting such one or two family residential dwelling has been suitably improved to the standards and specifications of such department of transportation, and further provided that such one or two family residential dwelling is equipped with an automatic fire sprinkler system. Nothing contained in this subdivision shall limit the jurisdiction of the board of standards and appeals to determine the application of the zoning resolution.

§ 37. Subdivision review; approval of cluster development. 1. Definitions. As used in this section:

(a) "cluster development" shall mean a subdivision plat or plats, approved pursuant to this article, in which the applicable zoning ordinance or local law is modified to provide an alternative permitted method for the layout, configuration and design of lots, buildings and structures, roads, utility lines and other infrastructure, parks, and landscaping in order to preserve the natural and scenic qualities of open lands.

(b) "zoning districts" shall mean districts provided for in subdivisions twenty-four and twenty-five of section twenty of this chapter.

2. Authorization; purpose.

(a) The legislative body of the city may, by local law or ordinance, authorize the planning board to approve a cluster development simultaneously with the approval of a plat or plats pursuant to the provisions of this article. Approval of a cluster development shall be subject to the conditions set forth in this section and in such local law or ordinance. Such local law or ordinance shall also specify the zoning districts in which cluster development may be applicable.

(b) The purpose of a cluster development shall be to enable and encourage flexibility of design and development of land in such a manner as to preserve the natural and scenic qualities of open lands.

3. Conditions.

(a) This procedure may be followed at the discretion of the planning board if, in said board's judgment, its application would benefit the city. Provided, however, that in granting such authorization to the planning board, the legislative body of the city may also authorize the planning board to require the owner to submit an application for cluster development subject to criteria contained in the local law or ordinance authorizing cluster development.

(b) A cluster development shall result in a permitted number of building lots or dwelling units which shall in no case exceed the number which could be permitted, in the planning board's judgment, if the land were subdivided into lots conforming to the minimum lot size and density requirements of the zoning ordinance or local law applicable to the district or districts in which such land is situated and conforming to all other applicable requirements. Provided, however, that where the plat falls within two or more contiguous districts, the planning board may approve a cluster development representing the cumulative density as derived from the summing of all units allowed in all such districts, and may authorize any actual construction to take place in all or any portion of one or more of such districts.

(c) The planning board as a condition of plat approval may establish such conditions on the ownership, use, and maintenance of such open lands shown on the plat as it deems necessary to assure the preservation of the natural and scenic qualities of such open lands. The legislative body of the city may require that such conditions shall be approved by the legislative body of the city before the plat may be approved for filing.

(d) The plat showing such cluster development may include areas within which structures may be located, the height and spacing of buildings, open spaces and their landscaping, off-street open and enclosed parking spaces, streets, driveways, and any other features required by the planning board. In the case of a residential plat or plats, the dwelling units permitted may be, at the discretion of the planning board, in detached, semi-detached, attached, or multi-story structures.

4. Notice and public hearing. The proposed cluster development shall be subject to review at a public hearing or hearings held pursuant to section thirty-two of this article for the approval of plats.

5. Filing of plat. On the filing of the plat in the office of the county clerk or register, a copy shall be filed with the city clerk, who shall make appropriate notations and references thereto on the city zoning map.

6. Effect. The provisions of this section shall not be deemed to authorize a change in the permissible use of such lands as provided in the zoning ordinance or local law applicable to such lands.

§ 38. Court review. Any person or persons, jointly or severally aggrieved by any decision of the planning board concerning such plat or the changing of the zoning regulations of such land, or any officer, department, board or bureau of the city, may obtain a review in the manner provided by the civil practice law and rules provided the proceeding is commenced within thirty days after the filing of the decision in the office of the city clerk.

Commencement of the proceeding shall stay proceedings upon the decision appealed from.

The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Costs shall not be allowed against the planning board, unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

All issues in any proceeding under this section shall have preference over all other civil actions and proceedings.

§ 38-a. Removal of walls encroaching on streets. 1. If the front or other exterior wall of any building erected on or before the first day of January, nineteen hundred sixty, in any city encroaches not more than six inches upon any street or highway, no action or proceeding to compel the removal of such wall shall be instituted or maintained by or on behalf of the city, or by or on behalf of any person claiming an easement in or title to the portion of the street or highway on which such wall encroaches, unless such action or proceeding be commenced within the period of one year from the time this act takes effect, and unless within such period a notice of the pendency of such action or proceeding, describing the property on which said building stands and indexed against the owner thereof, be filed in the office of the clerk of the county in which the property lies.

2. If the front or other exterior wall of any building erected after

the first day of January, nineteen hundred sixty, in any city encroaches not more than six inches upon any street or highway, no action or proceeding to compel the removal of such wall shall be instituted or maintained by or on behalf of the city, or by or on behalf of any person claiming an easement in or title to the portion of the street or highway on which such wall encroaches, unless such action or proceeding be commenced within the period of one year from the time of the serving of a notice as hereinafter provided, and unless within such period a notice of the pendency of such action or proceeding, describing the property on which said building stands and indexed against the owner thereof, be filed in the office of the clerk of the county in which the property lies. Any person having any interest in the property on which such building stands may serve a notice on the corporation counsel of the city in which said property lies, setting forth a brief description of the property, his interest therein, and the existence of an encroachment on the street or highway. Such notice, together with proof or admission of service thereof, shall be filed in the office of the clerk of the county in which such property lies. The clerk shall index and record such notice as if it were a notice of the pendency of an action and shall collect the usual fees for recording and indexing a notice of the pendency of an action.

3. If no action be brought within the period hereby limited therefor the owners and encumbrancers of such property shall be deemed to have an easement for the maintenance of the encroaching wall so long as the said wall shall stand, and no longer.

4. If the front or other exterior wall of any building erected on or before the first day of January, one thousand nine hundred seventy-nine in any city encroaches not more than six inches upon any city street or city highway, the local legislative body of any city may authorize the maintenance of such encroachment by ordinance during the period of time the encroaching wall is in existence; provided, however, that such authorization shall not confer any right or claim to be asserted against such city or the state.

5. a. The owner of real property upon which the front or exterior wall

of any building thereon encroaches upon any city street or highway of cities with a population of less than one million, may submit a request, in writing, to the legislative body of such city for authorization to maintain such front or exterior wall during the time such wall is in existence.

b. Upon presentation of such request, notice thereof shall be given to the head of the city department responsible for the construction and maintenance of city streets and roads in the city, who shall recommend to the legislative body the proposed action on such request. Within thirty days of the presentation of such request, the legislative body of such city shall determine if the granting of such request shall adversely impact upon the users of the city street or highway. In the event a determination is made that such encroachment does adversely impact upon the use of the city street or highway, such request shall be denied. In the event a preliminary determination is made that such encroachment may have no adverse impact upon the use of the city street or highway, the legislative body of the city shall, within thirty days after the issuance of such preliminary finding, hold a public hearing upon such request, which public hearing shall be conducted upon not less than ten days notice to the public. In addition to such public notice, the owners of property, as determined from the last completed assessment roll, within five hundred feet of the property as measured from the intersections of the property lines with the city street or highway shall be given notice by certified mail of such public hearing.

6. If, upon the completion of the public hearing, such legislative body determines that such front or exterior wall does not interfere or impede the right of the public to use such city street or highway, the legislative body may grant to the owner of such property a license to continue to maintain such front or exterior wall during the period such wall is in existence; provided however, such city shall have the authority to revoke such license at any time in the event the legislative body of the city determines that such city street or highway will be improved and, as a result of such improvement, the front or exterior wall will then impede, interfere with or obstruct traffic or the use of the city street or highway; provided, further, that such

license shall not confirm any right or claim against such city. In such event, the owner of the property shall be given notice of the proposed action and shall within the time set forth in the notice, remove such front or exterior wall from the city street or highway.

7. Upon the abandonment of the building or in the event such building, because of a lack of care enters a state of disrepair, the owner thereof shall remove such front or exterior wall upon notice from the city.

8. The authority granted to a city pursuant to subdivisions five, six and seven of this section may, by local law, be assigned to any department or agency of the city.

§ 39. Separability clause. If any part or provision of this article or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this article or the application thereof to other persons or circumstances and the legislature hereby declares that it would have enacted this article or the remainder thereof had the invalidity of such provision or application thereof been apparent.

ARTICLE 4

PLUMBING AND DRAINAGE

§ 40. Definitions. When used in this article, the words "employing or master plumber" shall mean a person having a regular place of business and who, by himself or journeymen plumbers in his employ, performs plumbing work.

§ 40-a. Examining boards of plumbers in cities. The existing boards for the examination of plumbers in cities of this state are continued and each shall be known as the examining board of plumbers. Such board in each city shall continue to consist of five persons to be appointed by the mayor, of whom two shall be employing or master plumbers of not less than ten years' experience in the business of plumbing, and one shall be a journeyman plumber of like experience, and the other members of such board shall be the chief inspector of plumbing and drainage of such city, or officer performing the duties of such inspector, and the chief engineer having charge of sewers in such city, but in the event of there being no such officers in such city, then any two other officers having charge or supervision of the plumbing, drainage or sewerage, whom the mayor shall designate or appoint, or two members of the board of health of such city having like duties or acting in like capacities.

§ 41. Term of office; vacancies. The term of office of each member of such board shall be three years, from the first day of January following his appointment. Vacancies occurring by expiration of a term shall be filled by the mayor for a full term. Vacancies by death, removal, inability to act, resignation or removal from the city of any member shall be filled by him for the unexpired term. The chief inspector of plumbing and drainage and the engineer in charge of sewers or the officers holding equivalent positions or acting in like capacities designated or appointed by the mayor as herein provided, shall be ex officio members of such examining board, and when they shall cease to hold their offices by reason or on account of which they were so designated or appointed, their successors shall act on the examining board in their stead.

§ 42. Compensation of members of board. The master and journeymen plumbers serving as members of such board shall receive such compensation for their services as shall be determined by the board of estimate and apportionment or other similar body authorized by law to fix and determine the compensation of city officers and employees.

§ 43. Qualifications. All members of such board shall be citizens and actual residents of the cities in which they are appointed, except in the city of Niagara Falls where such members shall be citizens and actual residents of the county wherein the city is situated, the city of Middletown where such members shall either be citizens and actual residents of the county wherein the city is situated or anywhere within a twenty-five mile radius of such city within this state, and except in the city of Corning where such members shall be citizens and actual residents of the county wherein the city is situated or in an abutting or adjacent county, and except in the city of Rochester where such members shall be citizens and actual residents of the county wherein the city is situated, and except in the city of Watertown where such members shall be citizens and actual residents of the county wherein the city is situated. Provided however, in any city with a population of less than twenty-five thousand, or in any city which has less than four master plumbers, such members may be residents of the county or counties wherein the city is situated.

§ 44. Powers and duties. The several examining boards of plumbers shall have power and it shall be their duty:

1. To meet at stated intervals in their respective cities; they shall also meet whenever the board of health of such city or the mayor thereof shall in writing request them so to do.

2. To have jurisdiction over and to examine all persons desiring or intending to engage in the trade, business or calling of plumbing as employing plumbers in the city in which such board shall be appointed with the power of examining persons applying for certificates of competency as such employing or master plumbers or as inspectors of plumbing, to determine their fitness and qualifications for conducting the business of master plumbers or to act as inspector of plumbing, and to issue certificates of competency to all such persons who shall have passed a satisfactory examination before such board and shall be by it determined to be qualified for conducting the business as employing or master plumbers or competent to act as inspectors of plumbing.

3. To formulate in conjunction with the local board of health of the city or an officer, board or body performing the duties of a board of health a code of rules regulating the work of plumbing and drainage in such city, including the materials, workmanship and manner of executing such work and from time to time to add to, amend or alter the same, or in their discretion to adopt the standard plumbing code recommended by the state department of health.

4. To charge and collect from each person applying for examination the sum of ten dollars for each examination made by such board, and all moneys so collected shall be paid over by the board monthly to the chamberlain or treasurer of such city in which such board shall be appointed.

§ 45. Examinations; conducting business without certificate prohibited. A person desiring or intending to conduct the trade, business or calling of a plumber or of plumbing in a city of this state as employing or master plumber, shall be required to submit to an examination before such examining board of plumbers as to his experience and qualifications for such trade, business or calling, and it shall not be lawful in any city of this state for a person to conduct such trade, business or calling, unless he shall have first obtained a certificate of competency from such board of the city in which he conducts or proposes to conduct such business.

§ 45-a. Corporations may conduct business. A domestic corporation desiring or intending to conduct the trade, business or calling of a plumber or of plumbing in a city of this state, as employing or master plumber, may do so provided one or more officers of such corporation separately or aggregately actually hold and own at least fifty-one per centum of the issued and outstanding capital stock of said corporation, and provided that each of such officers holding such percentage of the stock is the holder of a certificate of competency of such board of the city in which it conducts or proposes to conduct such business as provided in section forty-five. In case one or more officers of a corporation engaged in such business shall die, being the holder of a certificate of competency, the corporation may continue the business during the time necessarily required for the administration of the estate of such deceased officer, not exceeding two years from the granting of letters, provided one or more officers of the corporation is the holder of a certificate of competency and together with the legal representatives of such deceased officer or officers, actually owns and holds at least fifty-one per centum of the issued and outstanding capital stock of the said corporation. Each and every member of said corporation holding a certificate of competency shall comply with all the rules and regulations applicable to master or employing plumbers in the locality in which the corporation is engaged in business. Such corporation shall register as provided in section forty-six of this chapter.

*** § 45-b. Further requirements relating to the business of plumbing.**
1. No person otherwise qualified shall engage in the trade, business or calling of a plumber or of plumbing in a city of this state as employing or master plumber until he has first procured from the board of health or the examining board of plumbers if so designated by local law in such city or, in the city of New York, from the department of health, a metal plate or sign appropriately lettered or marked "licensed plumber;" such plate or sign to be conspicuously posted in the window of the place where such business is conducted. Any person retiring, abandoning or not actually engaged in such trade, business or calling hereinbefore mentioned, shall surrender to the board of health or the examining board of plumbers if so designated by local law of the city, or, in the city of New York, to the department of health such metal plate or sign and shall not again engage in such trade, business or calling until he has again procured a metal sign as herein provided.

2. Within thirty days after this section takes effect, the board of health or the examining board of plumbers if so designated by local law in every city of this state and in the city of New York, the department of health, shall prepare metal plates or signs, at least fourteen inches wide and not less than twenty-two inches in length appropriately lettered or marked "licensed plumber," the lines of each letter to be four inches long and five-eighths of an inch wide; such plate or sign shall, on some part thereof, contain an identification number, which number together with the name and location of the place of business of the person to whom issued shall be recorded in the office of such board of health or the examining board of plumbers if so designated by local law, or such department of health in the city of New York. Every person

now actually engaged or about to engage in the trade, business or calling of a plumber or of plumbing as employing or master plumber, who has otherwise complied with the provisions of law relating to the conduct of such business upon the payment of five dollars to the board of health or the examining board of plumbers if so designated by local law of such city, or in the city of New York to the department of health, shall have issued to him a sign or plate hereinbefore described. In the city of New York a renewal fee of two dollars per annum shall be charged for each such plate or sign which shall be issued without reexamination, such fee to be paid by the holder of such plate or sign to the department of health annually during the month of January. Any person to whom such plate or sign has been issued who shall loan, rent, sell or transfer the same to another person whether such person be entitled to receive a similar plate or sign or not, or otherwise wilfully violates the provisions of this section shall be guilty of a misdemeanor punishable by a fine of not exceeding fifty dollars for the first offense, and not less than one hundred dollars nor more than five hundred dollars for a subsequent offense, and in addition thereto shall forfeit his license and certificate of qualifications.

The provisions of this section shall apply to all cities of the state, including the city of New York.

* NB There are 2 § 45-b's

*** § 45-b. Further requirements relating to the business of plumbing.**

1. No person otherwise qualified shall engage in the trade, business or calling of a plumber or of plumbing in a city of this state as employing or master plumber until he has first procured from the board of health or the examining board of plumbers if so designated by local law in such city a metal plate or sign appropriately lettered or marked "licensed plumber;" such plate or sign to be conspicuously posted in the window of the place where such business is conducted. Any person retiring, abandoning or not actually engaged in such trade, business or calling hereinbefore mentioned, shall surrender to the board of health or the examining board of plumbers if so designated by local law of the city such metal plate or sign and shall not again engage in such trade,

business or calling until he has again procured a metal sign as herein provided.

2. Within thirty days after this section takes effect, the board of health or the examining board of plumbers if so designated by local law in every city of this state shall prepare metal plates or signs, at least fourteen inches wide and not less than twenty-two inches in length appropriately lettered or marked "licensed plumber," the lines of each letter to be four inches long and five-eighths of an inch wide; such plate or sign shall, on some part thereof, contain an identification number, which number together with the name and location of the place of business of the person to whom issued shall be recorded in the office of such board of health or the examining board of plumbers if so designated by local law. Every person now actually engaged or about to engage in the trade, business or calling of a plumber or of plumbing as employing or master plumber, who has otherwise complied with the provisions of law relating to the conduct of such business upon the payment of five dollars to the board of health or the examining board of plumbers if so designated by local law of such city shall have issued to him a sign or plate hereinbefore described. Any person to whom such plate or sign has been issued who shall loan, rent, sell or transfer the same to another person whether such person be entitled to receive a similar plate or sign or not, or otherwise wilfully violates the provisions of this section shall be guilty of a misdemeanor punishable by a fine of not exceeding fifty dollars for the first offense, and not less than one hundred dollars nor more than five hundred dollars for a subsequent offense, and in addition thereto shall forfeit his license and certificate of qualifications.

The provisions of this section shall apply to all cities of the state, excluding the city of New York.

* NB There are 2 § 45-b's

§ 46. Registration; when required. Every employing or master plumber carrying on his trade, business or calling in any city of this state shall register his name and address at the office of the board of health or the examining board of plumbers if so designated by local law of the city in which he shall conduct such business, under such rules as the respective boards of health or the local board of examining plumbers, in conjunction with the board of health of each of the cities shall prescribe, and thereupon he shall be entitled to receive a certificate of such registration, provided, however, that such employing or master plumber shall at the time of applying for such registration hold a certificate of competency from an examining board of plumbers.

§ 47. Cancellation of registration; notice. Such registration may be cancelled by such board of health or the examining board of plumbers if so designated by local law for a violation of the rules and regulations for the plumbing and drainage of such city duly adopted and enforced therein, after a hearing had before such board of health or the examining board of plumbers if so designated by local law and upon a prior notice of not less than ten days stating the ground of complaint and served on the person charged with the violation, but such revocation shall not be operative unless concurred in by the local board of examiners. It shall not be lawful for any person to engage in or carry on the trade, business or calling of an employing or master plumber in any of the cities of this state, unless his name and address shall have been registered in the city in which he carries on or conducts such business.

§ 48. Inspectors; qualifications; notice. The local board of health or an official or board designated by local law of such city, as the case may be shall detail, designate or appoint an inspector or inspectors of plumbing, subject, however, to the provisions or limitations of law, regulating the appointment of such inspectors by such board of health or an official or board designated by local law of such city. All inspectors of plumbing who are detailed, designated or appointed shall be practical plumbers and shall not be engaged directly or indirectly in the business of plumbing, during the period of their appointment. They shall be citizens and actual residents of the city in which they are appointed; except in the cities of Cortland and Corning, where such inspectors shall be citizens and actual residents of the county or counties wherein the city is situated, or in an abutting or adjacent county; except in the city of Rochester, where such inspectors shall be citizens and actual residents of the county wherein the city is situated; except in the city of Watertown, where such inspectors shall be citizens and actual residents of the county wherein the city is situated except in the city of Middletown, where such inspectors shall be citizens and actual residents of the county wherein the city is situated, or within a twenty-five mile radius of the city of Middletown as long as such inspectors are citizens and actual residents of this state; except in the city of Jamestown, where such inspectors shall be citizens and actual residents of the county wherein the city is situated; except in the city of Tonawanda, where such inspectors shall be citizens and actual residents of the county wherein the city is situated, or in an abutting or adjacent county; except in any city with a population of less than twenty-five thousand, where such inspectors shall be citizens and actual residents of the county or counties wherein the city is situated. Before entering upon the discharge of their duties as such inspectors they shall each be required to obtain a certificate of competency from said examining board. They shall be entitled to receive compensation to be fixed by the officer, board, commission or department having power to fix salaries generally or, if there be no officer, board, commission or department thereof having such power, by the board of alderpersons or common council.

§ 49. Duties of inspectors; reports. The inspector or inspectors of plumbing appointed under the provisions of the preceding sections of this article, in addition to the duties prescribed by law or ordinance and those which may be enjoined or required by the appointing power of the city in which they shall be appointed, shall be to inspect the construction and alteration of all plumbing work performed in such city, and to report in writing the results of such inspection to such appointing power of their respective cities. They shall also report in like manner any person engaged in or carrying on the business of employing plumber, without having the certificate hereinbefore provided.

§ 50. Expiration and renewals of certificates and licenses. All certificates of registration issued under the provisions of the preceding sections of this article and all licenses authorizing connections with street sewers or water mains shall expire on the thirty-first day of December of the year in which they shall be issued, and may be renewed within thirty days preceding such expiration. Such renewals to be for one year from the first day of January in each year.

§ 51. Notice of violation of rules. Whenever any inspector or other person reports a violation of any such rules and regulations for plumbing and drainage, or a deviation from any officially approved plan or specification for plumbing and drainage filed with any board or department, the appointing power shall first serve a notice of the violation thereof upon the master plumber doing the work, if a registered plumber.

§ 52. Notice, how served; proceedings when violated not removed. Such notice may be served personally or by mail, and if by mail it may be addressed to such master plumber at the address registered by him, but the failure of a master plumber to register will relieve the official or board who or which appoints the plumbing inspector from the requirement of giving notice of violation. Unless the violation is removed within three days after the day of serving or mailing such notice, exclusive of the day of serving or mailing, the official or board who or which appoints the plumbing inspector may proceed according to law.

§ 53. Plumbing and drainage to be executed according to rules. The plumbing and drainage of all buildings, both public and private, in each of the cities of this state, shall be performed by persons authorized under the rules and regulations adopted by the local board of examining plumbers, in conjunction with the board of health for plumbing and drainage, and all plumbing and drainage work shall be executed in compliance with such rules and regulations. And all repairs and alterations in the plumbing and drainage of all buildings heretofore constructed shall also be performed and executed in accordance with such rules and regulations; but this section shall not be construed to repeal any existing provision of law requiring plans for the plumbing and drainage of new buildings to be filed with any local board of health and be previously approved in writing by such board of health and be executed in accordance therewith, except that in case of any conflict with such plans, rules and regulations of the board of examiners, the latter shall govern.

§ 54. Office room; expenses a city charge. Each of such examining boards of plumbers shall have power to procure suitable quarters for the transaction of business, to provide the necessary books and stationery and to employ a clerk to keep such books and record the transactions of such board. The board of estimate and apportionment or the common council of a city as the case may be shall annually insert in their tax levy a sufficient sum to meet all the expenditures incurred under the provisions of this article. The expenses incurred by the several examining boards of plumbers in the execution and performance of the duties imposed by this article shall be a charge on the respective cities and shall be audited, levied, collected and paid in the same manner as other city charges are audited, levied, collected and paid.

§ 55. Violations, how punished. Any person violating any of the provisions of this article, or any rules or regulations of the board of health or of the examining board of plumbers in any city regulating the plumbing and drainage of buildings in such city, shall be guilty of a misdemeanor, and on conviction, if a master plumber, shall in addition, forfeit any certificate of competency or registration, which he may hold under the provisions thereof.

§ 56. Issue of licenses to connect with sewers and water mains restricted. The commissioner of public works of any city, or the officer or officers acting in a like capacity in any of the cities of this state, and having charge of the sewers and water mains therein, shall not issue a license to any one to connect with the sewers or with the water mains of such cities, unless such person has obtained and shall produce a certificate of competency from the examining board of such city.

§ 56-a. Use by the state, individuals and corporations outside corporate limits. 1. Any city having a population of fifty thousand or less may sell to a public or private corporation, or to an individual, the right to make connection with its sewer system for the purpose of discharging sewage therein from outside the city limits, and fix the term, consideration and conditions therefor. The board shall not sell nor permit the use of its sewer system under this section if thereby such sewer system will be rendered inadequate for the city or its inhabitants. The term "public corporation" shall mean a public corporation as defined in section three of the general corporation law.

2. Any city having a population of fifty thousand or less may contract with the state of New York or with the state authority having control and supervision of any state institution, and the state of New York or the state authority having control and supervision of any state institution may contract with the board of sewer commissioners of any such city, to provide sewerage and sewage disposal facilities for the conveyance, treatment and disposal of the sewage of such state or state institution either within or without the corporate limit of said city on such conditions and conveying such powers to the state or such state authority and for such consideration and such period of time as said sewer commissioners and the state of New York or such state authority may agree.

3. Any city having a population of fifty thousand or less may contract with the United States of America or with the federal agency, administration or authority having control and supervision of any federal institution or installation to provide sewerage and sewage disposal facilities for the conveyance, treatment and disposal of the sewage of such federal institution or installation either within or

without the corporate limits of the city on such conditions, for such consideration and for such period of time as said sewer commissioners and the United States of America or such federal agency, administration or authority may agree.

§ 57. Article limited. 1. This article shall not apply to any of the following cities: New York, Binghamton, Schenectady, Elmira, Hornell, Olean, Poughkeepsie and Cortland.

2. This article, with the exception of section fifty-six-a thereof, shall not apply to the city of Glens Falls, the city of Middletown and the city of Beacon.

ARTICLE 4-a.

SUPERVISION AND REGULATION OF PLASTERING

§ 60. Supervision of plastering by building department. The building department of every city of the first class shall have jurisdiction over all plastering except where it conflicts with the duties of any other department or conflicts with any law conferring on any other department supervision of any portion of plastering. For such purpose there shall be appointed in each building department in a city of the first class by the head thereof a sufficient number of inspectors to perform such work as is necessary in the enforcement of this article who, in addition to such qualifications as may be required by the civil service law, shall be competent plasterers of at least ten years' practical experience.

§ 61. Three coat work required on lath. All plastering in tenements, apartments, hospitals, schools and other public buildings when on lath shall be known as three coat work, namely, scratch coat, brown coat and finish.

§ 62. Key space. All ceilings, stud partitions and furred walls in tenements, apartments, hospitals, schools, and other public buildings where plastered with lime on wood lath shall have not less than three-eighths space between lath. All grounds and jambs shall mean not less than seven-eighths from the stud.

§ 63. First coat or scratch coat. First or scratch coat shall be of first quality to be scratched thoroughly to make a key to retain second coat; and shall be thoroughly dry or set before applying second coat.

§ 64. Second coat. Second coat or brown mortar shall be of first quality. All browning must be straight, true with no unevenness or irregularity of surface.

§ 65. Finishing. When white mortar, or any other material of a like character is used for finish coat, it shall be laid on regular and troweled to a smooth surface showing neither deficiencies or brush marks.

§ 66. Cornices or coves. All cornices or coves shall be run straight, true and smooth.

§ 67. Patent plasters. When patent plasters, such as ivory, acme, windsor, et cetera, are used, lathing, if of wood lath, shall not be less than one-quarter inch key space. First coat shall be thoroughly scratched to make key to retain second coat, and shall be set before second coat is applied.

§ 68. Nothing in this article contained shall affect the multiple dwelling law and the enforcement of the provisions thereof by the city of New York.

ARTICLE 5-A

BUILDINGS AND USE DISTRICTS

§ 81. Zoning board of appeals. 1. Appointment of members. The mayor or in a city having a city manager, the city manager of any city to which subdivisions twenty-four and twenty-five of section twenty of this chapter are applicable, shall appoint a board of appeals consisting of three or five members as shall be determined by local law or ordinance and shall designate the chairperson thereof. In the absence of the chairperson the board of appeals may designate a member to serve as acting chairperson. The legislative body may provide for compensation to be paid to experts, clerks and a secretary and provide for such other expenses as may be necessary and proper, not exceeding the appropriation made for such purpose.

2. Legislative body members ineligible. No person who is a member of the legislative body of the city shall be eligible for membership on such board of appeals.

3. Terms of members first appointed. In the creation of a new board of appeals, or the reestablishment of terms of an existing board, the appointment of members to the board shall be for terms so fixed that one member's term shall expire at the end of the official year in which such members were initially appointed. The remaining members' terms shall be so fixed that one member's term shall expire at the end of each official year thereafter. At the expiration of each original member's appointment, the replacement member shall be appointed for a term which shall be equal in years to the number of members of the board.

4. Terms of members now in office. Members now holding office for terms which do not expire at the end of the official year shall, upon the expiration of their term, hold office until the end of the official year and their successors shall then be appointed for terms which shall be equal in years to the number of members of the board.

5. Increasing membership. The legislative body may, by local law or ordinance, increase a three member board of appeals to five members. Additional members shall be first appointed for single terms in order that the terms of members shall expire in each of five successive years and their successors shall thereafter be appointed for full terms of five years. No such additional member shall take part in the consideration of any matter for which an application was on file with the board of appeals at the time of his or her appointment.

6. Decreasing membership. A legislative body which has increased the number of members of the board of appeals to five may, by local law or ordinance, decrease the number of members of the board of appeals to three to take effect upon the next two expirations of terms. Any board of appeals which, upon the effective date of this section has seven members, may continue to act as a duly constituted zoning board of appeals until the legislative body, by local law or ordinance, reduces such membership to three or five. However, no incumbent shall be removed

from office except upon the expiration of his or her term.

7. Vacancy in office. If a vacancy shall occur otherwise than by expiration of term, the mayor or in a city having a city manager, the city manager shall appoint the new member for the unexpired term.

7-a. Training and attendance requirements. (a) Each member of the board of appeals in a city, except a city having a population of more than one million, shall complete, at a minimum, four hours of training each year designed to enable such members to more effectively carry out their duties. Training received by a member in excess of four hours in any one year may be carried over by the member into succeeding years in order to meet the requirements of this subdivision. Such training shall be approved by the legislative body and may include, but not be limited to, training provided by a municipality, regional or county planning office or commission, county planning federation, state agency, statewide municipal association, college or other similar entity. Training may be provided in a variety of formats, including but not limited to, electronic media, video, distance learning and traditional classroom training.

(b) To be eligible for reappointment to such board, such member shall have completed the training promoted by the city pursuant to this subdivision.

(c) The training required by this subdivision may be waived or modified by resolution of the legislative body of the city when, in the judgement of such legislative body, it is in the best interest of the city to do so.

(d) No decision of a board of appeals shall be voided or declared invalid because of a failure to comply with this subdivision.

8. Removal of members. The mayor or in a city having a city manager, the city manager shall have the power to remove, after public hearing, any member of the zoning board of appeals for cause. Any zoning board of appeals member may be removed for non-compliance with any minimum requirements relating to meeting attendance and training as established by the legislative body by local law or ordinance.

9. Compatibility of offices. The municipal officials or employees on such board shall not, by reason of membership thereon, forfeit their right to exercise the powers, perform the duties or receive the compensation of the municipal office or position held by them during such membership. No municipal officer or employee shall be appointed to the zoning board of appeals in the event such officer or employee cannot carry out the duties of his or her position without a conflict in the performance of his or her duties as a member of the zoning board of appeals.

10. Chairperson duties. All meetings of the board of appeals shall be held at the call of the chairperson and at such other times as such board may determine. Such chairperson, or in his or her absence, the acting chairperson, may administer oaths and compel the attendance of witnesses.

11. Alternate members. (a) The legislative body of each city except a city having a population of more than one million may, by local law or ordinance, or as part of the local law or ordinance creating the zoning board of appeals, establish alternate zoning board of appeals member positions for purposes of substituting for a member in the event such member is unable to participate because of a conflict of interest. Alternate members of the zoning board of appeals shall be appointed by the mayor or other duly authorized appointing authority, for terms established by the legislative body of the city.

(b) The chairperson of the zoning board of appeals may designate an alternate member to substitute for a member when such member is unable to participate because of a conflict of interest on an application or matter before the board. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the board. Such designation shall be entered into the minutes of the initial zoning board of appeals meeting at which the substitution is made.

(c) All provisions of this section relating to zoning board of appeals member training and continuing education, attendance, conflict of interest, compensation, eligibility, vacancy in office, removal, compatibility of office and service on other boards, shall also apply to alternate members.

§ 81-a. Board of appeals procedure. 1. Meetings, minutes, records. Meetings of such board of appeals shall be open to the public to the extent provided in article seven of the public officers law. Such board of appeals 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 actions.

2. Filing requirements. Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the board of appeals shall be filed in the office of the city clerk within five business days and shall be a public record.

3. Assistance to the board of appeals. Such board shall have the authority to call upon any department, agency or employee of the city for such assistance as shall be deemed necessary and as shall be authorized by the legislative body. Such department, agency or employee may be reimbursed for any expenses incurred as a result of such assistance.

4. Hearing appeals. Unless otherwise provided by local law or ordinance, the jurisdiction of the board of appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination, made by the administrative official charged with the enforcement of any ordinance or local law adopted pursuant to this article. Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the city.

5. Filing of administrative decision and time of appeal. (a) Each order, requirement, decision, interpretation or determination of the administrative official charged with the enforcement of the zoning local law or ordinance shall be filed in the office of such administrative official within five business days from the day it is rendered, and shall be a public record. Alternately, the legislative body of the city

may, by resolution, require that such filings instead be made in the city clerk's office.

(b) An appeal shall be taken within sixty days after the filing of any order, requirement, decision, interpretation or determination of the administrative official, by filing with such administrative official and with the board of appeals a notice of appeal, specifying the grounds thereof and the relief sought. The administrative official from whom the appeal is taken shall forthwith transmit to the board of appeals all the papers constituting the record upon which the action appealed from was taken.

6. Stay upon appeal. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the administrative official charged with the enforcement of such ordinance or local law, from whom the appeal is taken, certifies to the board of appeals, after the notice of appeal shall have been filed with the administrative official, that by reason of facts stated in the certificate a stay would, in his or her 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 of appeals or by a court of record on application, on notice to the administrative official from whom the appeal is taken and on due cause shown.

7. Hearing on appeal. The board of appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it and give public notice of such hearing by publication in a paper of general circulation in the city at least five days prior to the date thereof. The cost of sending or publishing any notices relating to such appeal, or a reasonable fee relating thereto, shall be borne by the appealing party and shall be paid to the board prior to the hearing of such appeal. Upon the hearing, any party may appear in person, or by agent or attorney.

8. Time of decision. The board of appeals shall decide upon the appeal within sixty-two days after the conduct of said hearing. The time within which the board of appeals must render its decision may be extended by mutual consent of the applicant and the board.

9. Filing of decision and notice. The decision of the board of appeals on the appeal shall be filed in the office of the city clerk or the zoning office if such office has been established, within five business days after the day such decision is rendered, and a copy thereof mailed to the applicant.

10. Notice to park commission and county planning board or agency or regional planning council. At least five days before such hearing, the board of appeals shall mail notices thereof to the parties; to the regional state park commission having jurisdiction over any state park or parkway within five hundred feet of the property affected by such appeal; and to the county planning board or agency or regional planning council, as required by section two hundred thirty-nine-m of the general municipal law, which notice shall be accompanied by a full statement of such proposed action, as defined in subdivision one of section two hundred thirty-nine-m of the general municipal law.

11. Compliance with state environmental quality review act. The board of appeals shall comply with the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations.

12. Rehearing. A motion for the zoning board of appeals to hold a rehearing to review any order, decision or determination of the board not previously reheard may be made by any member of the board. A unanimous vote of all members of the board then present is required for such rehearing to occur. Such rehearing is subject to the same notice provisions as an original hearing. Upon such rehearing the board may reverse, modify or annul its original order, decision or determination upon the unanimous vote of all members then present, provided the board finds that the rights vested in persons acting in good faith in reliance upon the reheard order, decision or determination will not be prejudiced thereby.

13. Voting requirements. (a) Decision of the board. Except as otherwise provided in subdivision twelve of this section, every motion

or resolution of a board of appeals shall require for its adoption the affirmative vote of a majority of all the members of the board of appeals as fully constituted regardless of vacancies or absences. Where an action is the subject of a referral to the county planning agency or regional planning council the voting provisions of section two hundred thirty-nine-m of the general municipal law shall apply.

(b) Default denial of appeal. In exercising its appellate jurisdiction only, if an affirmative vote of a majority of all members of the board is not attained on a motion or resolution to grant a variance or reverse any order, requirement, decision or determination of the enforcement official within the time allowed by subdivision eight of this section, the appeal is denied. The board may amend the failed motion or resolution and vote on the amended motion or resolution within the time allowed without being subject to the rehearing process as set forth in subdivision twelve of this section.

§ 81-b. Permitted action by board of appeals. 1. Definitions. As used in this section:

(a) "Use variance" shall mean the authorization by the zoning board of appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations.

(b) "Area variance" shall mean the authorization by the zoning board of appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations.

2. Orders, requirements, decisions, interpretations, determinations. The board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of such ordinance or local law and to that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken.

3. Use variances. (a) The board of appeals, on appeal from the decision or determination of the administrative official charged with the enforcement of such ordinance or local law, shall have the power to grant use variances, as defined herein.

(b) No such use variance shall be granted by a board of appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located:

(i) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;

(ii) the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;

(iii) the requested use variance, if granted, will not alter the essential character of the neighborhood; and

(iv) the alleged hardship has not been self-created.

(c) The board of appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

4. Area variances. (a) The zoning board of appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such ordinance or local law, to grant area variances as defined herein.

(b) In making its determination, the zoning board of appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider:

(i) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;

(ii) whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance;

(iii) whether the requested area variance is substantial;

(iv) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

(v) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

(c) The board of appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

5. Imposition of conditions. The board of appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of the zoning ordinance or local law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

§ 81-c. Article seventy-eight proceeding. 1. Application to supreme court by aggrieved persons. Any person or persons, jointly or severally aggrieved by any decision of the board of appeals or any officer, department, board or bureau of the city, may apply to the supreme court for review by a proceeding under article seventy-eight of the civil practice law and rules. Such proceeding shall be instituted within thirty days after the filing of a decision of the board in the office of the city clerk.

2. Costs of appeal. Costs shall not be allowed against the board of appeals unless it shall appear to the court that it acted with gross

negligence or in bad faith or with malice in making the decision appealed from.

3. Preference of appeal to court. All issues in any proceeding under this section shall have preference over all other civil actions and proceedings.

4. Power of court. If upon the hearing by the supreme court, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his or her findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review determining all questions which may be presented for determination.

§ 81-d. Incentive zoning; definitions, purposes, conditions, procedures. 1. Definitions. As used in this section:

(a) "Incentives or bonuses" shall mean adjustments to the permissible population density, area, height, open space, use, or other provisions of a zoning ordinance, local law, or regulation for a specific purpose authorized by the legislative body of a city.

(b) "Community benefits or amenities" shall mean open space, housing for persons of low or moderate income, parks, elder care, day care, or other specific physical, social, or cultural amenities, or cash in lieu thereof, of benefit to the residents of the community authorized by the legislative body of a city.

(c) "Incentive zoning" shall mean the system by which specific incentives or bonuses are granted, pursuant to this section, on condition that specific physical, social, or cultural benefits or amenities would inure to the community.

2. Authority and purposes. In addition to existing powers and authorities to regulate by planning or zoning, including authorization to provide for the granting of incentives, or bonuses pursuant to other

enabling law, a legislative body of a city is hereby empowered, as part of a zoning ordinance, local law or regulation, to provide for a system of zoning incentives, or bonuses, as the legislative body deems necessary and appropriate, consistent with the purposes and conditions set forth in this section. The purpose of the system of incentive or bonus zoning shall be to advance the city's specific physical, cultural and social policies in accordance with the city's comprehensive plan and in coordination with other community planning mechanisms or land use techniques. The system of zoning incentives or bonuses shall be in accordance with a locally-adopted comprehensive plan.

3. Implementation. A system of zoning incentives or bonuses may be provided subject to the conditions hereinafter set forth. (a) The legislative body of a city shall provide for the system of zoning incentives or bonuses pursuant to this section as part of the zoning ordinance, local law, or regulations. In providing for such system, the legislative body shall follow the procedure for adopting and amending its zoning ordinance, local law, or regulations, including all provisions for notice and public hearing applicable for changes or amendments to such ordinances, laws, or regulations.

(b) Each zoning district in which incentives or bonuses may be awarded under this section shall be designated in the city zoning ordinance, local law or regulations, or amendment thereto.

(c) Each zoning district in which incentives or bonuses may be authorized shall have been found by the legislative body of a city, after evaluating the effects of any potential incentives which are possible by virtue of the provision of community amenities, to contain adequate resources, environmental quality and public facilities, including adequate transportation, water supply, waste disposal and fire protection. Further, the legislative body of a city shall, in designating such districts, determine that there will be no significant environmentally damaging consequences and that such incentives or bonuses are compatible with the development otherwise permitted.

(d) A generic environmental impact statement pursuant to article eight of the environmental conservation law and regulations adopted by the department of environmental conservation shall be prepared by the legislative body of a city for any zoning district in which the granting of incentives or bonuses have a significant effect on the environment before any such district is designated, and such statement shall be supplemented from time to time by the legislative body of a city if there are material changes in circumstances that may result in significant adverse impacts. Any zoning ordinance, local law, or regulation enacted pursuant to this section shall provide that any applicant for incentives or bonuses shall pay a proportionate share of the cost of preparing such environmental impact statement, and that such charge shall be added to any site-specific charge made pursuant to the provisions of section 8-0109 of the environmental conservation law.

(e) The legislative body of a city shall set forth the procedure by which incentives may be provided to specific lands. Such procedure shall describe:

(i) the incentives, or bonuses, which may be granted by the city to the applicant;

(ii) the community benefits or amenities which may be accepted from the applicant by the city;

(iii) criteria for approval, including methods required for determining the adequacy of community amenities to be accepted from the applicant in exchange for the particular bonus or incentive to be granted to the applicant by the city;

(iv) the procedure for obtaining bonuses, including applications and the review process, and the imposition of terms and conditions attached to any approval; and

(v) provision for a public hearing, if such public hearing is required as part of a zoning ordinance, local law, or regulation adopted pursuant to this section, and give public notice thereof by the publication in the official newspaper of such hearing at least five days prior to the date thereof.

(f) All other requirements of article eight of the environmental conservation law shall be complied with by project sponsors for actions in areas for which a generic environmental impact statement has been prepared, including preparation of an environmental assessment form and a supplemental environmental impact statement, if necessary.

(g) Prior to the adoption or amendment of the zoning ordinance, local law, or regulation, pursuant to this section to establish a system of zoning incentives or bonuses, the legislative body of a city shall evaluate the impact of the provision of such system of zoning incentives or bonuses upon the potential development of affordable housing gained by the provision of any such incentive or bonus afforded to an applicant or lost in the provision by an applicant of any community amenity to the city. Further, the legislative body of a city shall determine that there is approximate equivalence between potential affordable housing lost or gained or that the city has or will take reasonable action to compensate for any negative impact upon the availability or potential development of affordable housing caused by the provisions of this section.

(h) If the legislative body of a city determines that a suitable community benefit or amenity is not immediately feasible, or otherwise not practical, the legislative body may require, in lieu thereof, a payment to the city of a sum determined by the legislative body. If cash is accepted in lieu of other community benefit or amenity, provision shall be made for such sum to be deposited in a trust fund to be used by the legislative body of the city exclusively for specific community benefits authorized by such legislative body.

4. Invalidations. Nothing in this section shall be construed to invalidate any provision for incentives or bonuses heretofore adopted by any city legislative body.

§ 81-e. Article not applicable to certain cities. The provisions of this article shall not apply to any city having a population in excess of one million except that any such city may by local law provide that this article or any section thereof may apply to such city.

§ 81-f. Planned unit development zoning districts. A city legislative body, except in a city having a population of more than one million persons, is hereby authorized to enact, as part of its zoning local law or ordinance, procedures and requirements for the establishment and mapping of planned unit development zoning districts. Planned unit development district regulations are intended to provide for residential, commercial, industrial or other land uses, or a mix thereof, in which economies of scale, creative architectural or planning concepts and open space preservation may be achieved by a developer in furtherance of the city comprehensive plan and zoning local law or ordinance.

§ 83. Amendments, alterations and changes in district lines. 1. The common council may from time to time on its own motion or on petition, after public notice and hearing, which hearing may be held by the council or by a committee of the council or by the planning board, amend the regulations and districts established under any ordinance or local law adopted pursuant to paragraphs twenty-four and twenty-five of section twenty of this chapter. Wherever the owners of fifty per centum or more of the frontage in any district or part thereof shall present a petition duly signed and acknowledged, to the common council, requesting an amendment, supplement, change or repeal of the regulations prescribed for such district or part thereof, it shall be the duty of the council to vote upon said petition within ninety days after the filing of the same by the petitioners with the secretary of the council.

2. An amendment shall be effected by a simple majority vote of the council, except that an amendment shall require the approval of at least three-fourths of the members of the council in the event such amendment is the subject of a written protest, presented to the council and signed by:

(a) the owners of twenty percent or more of the area of land included in such proposed change; or

(b) the owners of twenty percent or more of the area of land immediately adjacent to that land included in such proposed change, extending one hundred feet therefrom; or

(c) the owners of twenty percent or more of the area of land directly opposite thereto, extending one hundred feet from the street frontage of such opposite land.

§ 83-a. Exemption of lots shown on approved subdivision plats. 1. Notwithstanding any inconsistent provision of this chapter or of any general, special or local law, the provisions of a zoning ordinance or local law hereafter adopted, or of a change or amendment thereto, which provisions:

(a) establish or increase lot areas or lot dimensions which are in excess of the areas or dimensions of the lots shown and delineated on a residential subdivision plat which has been duly approved by the planning board, or other board or officer vested with authority to approve subdivision plats, if any, of the city in which the land shown on said plat is situate and duly filed in the office of the recording officer of the county in which the land shown on said subdivision plat is situate; or

(b) establish or increase side, rear or front yard or set back requirements in excess of those applicable to lots under the provision of the zoning ordinance or local law, if any, in force and effect at the time of the filing of the said duly approved residential subdivision plat or first section thereof;

shall not, for the period of time prescribed in subdivision two of this section, be applicable to or in any way affect any of the lots shown and delineated on such subdivision plat.

2. If at the time of the filing of the subdivision plat or first section thereof referred to in subdivision one of this section there was in the city:

(a) both a zoning ordinance or local law and a planning board vested with authority to approve subdivision plats, then the exemption provided for in subdivision one of this section shall apply for a period of three years after the filing of the approved subdivision plat or first section thereof; or

(b) a zoning ordinance or local law in effect in the city but there was no planning board in said city vested with authority to approve subdivision plats, then the exemption provided for in subdivision one of this section shall apply for a period of two years after the filing of the approved subdivision plat or first section thereof; or

(c) no zoning ordinance or local law in the city but there was a planning board vested with authority to approve subdivision plats, then the exemption provided for in subdivision one of this section shall apply for a period of two years after the filing of the approved subdivision plat or first section thereof; or

(d) no zoning ordinance or local law in the city and no planning board vested with authority to approve subdivision plats, then the exemption provided for in subdivision one of this section shall apply for a period of one year after the filing of the subdivision plat or first section thereof.

ARTICLE 6

POLICE MATRONS

§ 90. Police station houses for the detention of women; how designated. The mayor of every city containing a population of twenty-five thousand shall and the mayor of every other city when authorized by a resolution of the common council may designate one or more station houses within his city for the detention and confinement of all women under arrest in such city. Such mayor or board of commissioners of police may at any time designate for such purpose any additional station house or houses, or may revoke the designation of any station house or houses theretofore designated, provided that at least one such station house shall at all times be so designated for such purpose in each city.

§ 93. When police matrons to reside at station houses. When only one police matron is attached to a police station, she shall reside there, or within a reasonable distance therefrom, and shall hold herself in readiness to respond to any call therefrom at any hour of the day or night, and each matron shall, during such hours as may be fixed by the head of the police department, remain in such station and hold herself in readiness to respond to any call therefrom. So long as any woman is detained or held under arrest in a police station to which a police matron is attached, it shall be the duty of such matron to remain constantly thereat, ready for service; or if there be more than one matron attached to such station, then one of them shall be constantly ready for service. A police matron shall, subject to the officer in charge of such station house, have the immediate care and charge of all women held under arrest in the station to which she is attached, and she may at any time call upon the officer in charge of such station for assistance. She shall be subject to the authority of the board of police, or if there be no such board, then to the chief of police in the city where she may be appointed, and to the rules prescribed by such authority, but at a station where she may be on duty she shall be subject only to the authority of the officer in charge thereof.

§ 94. Women under arrest to have separate accommodations. It shall be the duty of the boards of commissioners of police in every city, or if there be no board of police, then of the mayor of such city, to provide sufficient accommodations for women held under arrest to keep them separate and apart from the cells, corridors and apartments provided for males under arrest, and to so arrange each station house that no communication can be had between the men and women therein confined, except with the consent of the matrons and officers in charge of such station house.

§ 95. Proceeding in case of arrest of women. Whenever a woman is arrested and taken to a police station, to which a matron is attached, it shall be the duty of the officer in charge of the station to cause such matron to be summoned forthwith, and whenever, in any city in which a police matron has been appointed, a woman is arrested and taken to a station house to which no matron is attached, it shall be the duty of such officer to cause such woman to be removed as soon as possible to the nearest station house within such city to which a police matron is attached. No such separate confinement nor any such removal of any woman shall operate to take from any court any jurisdiction it has.

§ 96. Woman defined. The term "woman" as used in this article shall not include any female either actually or apparently under the age sixteen years, whose care is assumed by any incorporated society for the prevention of cruelty to children; but every such female upon being taken to a station house shall be at once transferred therefrom by the officer in charge to the custody of such society.

§ 97. Appropriations under article, how made. The proper local authorities of each city in which a police matron has been appointed shall appropriate annually such sum as may be needed for the separate care and confinement in station houses of any women arrested in such city, and for the appointment, salary and maintenance of police matrons for the purposes of this article.

ARTICLE 7
ISSUANCE AND VALIDATION OF BONDS

§ 116. Certificates of deposit. The legislative body of a city may authorize and empower its chief fiscal officer, in his discretion, to issue certificates of deposit, each in the sum of ten dollars, or any multiple thereof, and at such a rate of interest, if any, as he shall prescribe and to sell the same for not less than their face value at private sale, in such manner and at such times as he deems best for the public interest so to do. The proceeds of such sales shall be used only for the purpose for which such certificates of deposit are issued. The certificates so sold as aforesaid may be used only by the holders thereof for the payment of taxes and/or assessments levied by the city when such taxes and/or assessments are or shall become due and payable, and such certificates shall be taken by the treasurer of such city for the payment of such taxes and/or assessments at the par value thereof and any accrued interest thereon, provided, however, that each such certificate shall cease to bear interest after the expiration of two years from the date thereof.

ARTICLE 8

DRUG CONTROL AUTHORITIES

§ 120. Creation; board; employees. The governing body of each city having a population of fifty thousand or more is hereby authorized to create a city drug control authority. Such authority shall consist of not less than five nor more than nine members who shall be appointed by the governing body of the city, at least one of whom shall be a physician licensed to practice medicine in this state. Any person serving as a member of a city narcotic guidance council, community board narcotic guidance council in the city of New York, drug abuse commission or mental health board shall be eligible to serve as a member of the board of a city drug authority created pursuant to this article. The chairman of the board shall be designated by the governing body of the city from among the members so appointed. The compensation of the members shall be fixed by the governing body of the city within the amount available therefor by appropriation. The board shall appoint a counsel, an administrative officer and such other officers, employees, agents and consultants as may be necessary, prescribe their duties, fix their compensation and provide for payment of their expenses, all within amounts appropriated therefor by the city.

§ 121. Powers of the authority. The authority, by and through its board, shall have the following functions, powers and duties:

1. To coordinate and assist in activities in the city relating to drug

control;

2. To establish in-patient and out-patient treatment facilities for persons with substance use disorders. Such facilities shall include, but shall not be limited to:

a. detoxification centers and clinics for the out-patient treatment of persons with substance use disorders;

b. a treatment center where persons with substance use disorders may obtain professional counseling from physicians, psychologists, psychiatrists and where possible, other persons with substance use disorders;

c. half-way houses to provide continuing treatment for persons with substance use disorders.

3. To create a referral program whereby persons with substance use disorders and persons and agencies concerned with their treatment will make use of the aforementioned treatment facilities;

4. To encourage and, when so requested, assist cooperative efforts among state and city agencies in developing solutions to the drug problem;

5. To establish one or more treatment districts within the city based on geography and population density; and to employ a referral counselor in each treatment district;

6. To encourage and foster, if possible, the use of former drug abusers and persons formerly addicted to drugs as staff personnel;

7. To develop preventative educational programs and in the city of New York, to assist narcotic guidance councils of community boards in the development of such programs;

8. Outside the city of New York, to act as agent for the city in

accepting any public or private funds which may be made available to the city to combat the problems of drug abuse;

9. To make a continuing evaluation of the preventative educational techniques and pharmacological and psychiatric treatment procedures used in the city;

10. To utilize former drug abusers and ex-addicts in educational counseling and make periodic evaluations of their effectiveness;

11. To establish youth centers to provide individual and group therapy and develop constructive work habits;

12. To develop a program designed to educate and enlighten parents on detection, prevention and treatment of problems relating to drug use and in the city of New York to assist narcotic guidance councils of community boards in the development of such programs.

§ 122. Reports of the authority. The authority shall make an annual report to the governing body of the city. When it deems advisable, the authority may make interim reports to the governing body of the city with its recommendations, in order to afford the governing body of the city an opportunity to take immediate action thereon.

§ 123. Acquisition of real property; financing of expenditures. Real property required for any of the purposes set forth in this article shall be acquired by the governing body of the city on behalf of the authority.

Nothing contained in this article shall be construed to prevent the financing, in whole or in part, pursuant to the local finance law of any expenditure made to carry out the purposes of this article.

ARTICLE 9

CONTRACTS FOR SUPPLY OF GAS

§ 130. Contracts with corporations for supply of gas. The municipal officers authorized by law to contract in behalf of any city of the first class, for the lighting of its streets may, from time to time, in the manner, upon the terms and with the conditions hereinafter provided contract in behalf of such city with any corporation or corporations then supplying gas therein for a supply of gas to such city, for and during such specified period not exceeding fifteen years as shall by such municipal officers be deemed to be for the best interests of such city and of the inhabitants thereof.

§ 131. Letting of contract to be public. Every such contract shall be let at public letting as required by law, and as a consideration for the execution and performance thereof, shall expressly provide for and secure to such city, prices lower than any now prescribed therein by law, and a progressive reduction in such price for each year during the continued performance of such contract and also adequate assurance of the continuing mutual performance of such contract according to the conditions thereof, with proper indemnity to either party to such contract against any possible violation, impairment, abrogation or supersession thereof, within the term specified.

§ 132. Contract to provide for reduction of price. Every such contract shall also provide and require that during the term therein specified the corporation party thereto may and shall supply gas to the inhabitants of such city at prices lower than those now or then charged therein by such corporation party thereto and progressively lower for each year of such term; any company or corporation bidding for such contract shall specify such several prices and reductions of price for the several classes and terms of gas supply, and the same shall be considered in the award of any such contract to the bidders or bidder therefor, and the corporation receiving any such contract shall be entitled to charge and collect the prices therein specified during the continuance thereof. Nothing in this article contained is intended or shall be construed to affect or impair any existing right or contract except with the consent of the parties to any such contract.

ARTICLE 10

HOSPITALS FOR TREATMENT OF PULMONARY TUBERCULOSIS

§ 140. Establishment of hospitals. A city of the first class shall have power whenever its board of health shall deem it necessary for the promotion of the health of its inhabitants, to establish, equip and maintain, outside of its corporate limits, and not within the limits of any other city or any village, a hospital or hospitals for the regular treatment of the disease known as pulmonary tuberculosis.

§ 141. Selection of site. Whenever a city having a population of more than three hundred thousand inhabitants shall desire to exercise the power conferred by this article it shall through its board of health, select such locality outside of its corporate limits, but within the state, and not within the corporate limits of any other city or any village, as it may consider best adapted by reason of climatic and other conditions for the treatment of such disease, and shall make application to the department of health for the approval of the site so selected. Upon such approval being given the city may acquire title to such lands as its board of health may designate, within the limits of the locality submitted to and approved by the state department of health. The provisions of law relating to the acquiring of private property for public purposes are hereby made applicable as far as may be necessary to the acquiring of title to such lands.

§ 142. Jurisdiction of local board of health. All hospitals or institutions now or hereafter established or maintained by any city of the first class for the regular or special treatment of persons suffering from the disease known as pulmonary tuberculosis shall be subject to the approval of the local board of health; special wards or pavilions for the treatment of cases of pulmonary tuberculosis in existing hospitals shall be provided with separate nurses, cooking utensils, washing and plumbing facilities.

ARTICLE 11

PROTECTION OF PURCHASERS OF COAL

§ 161. Bills of lading; penalty for altering. A person guilty of altering with intent to defraud, any original bill of lading issued by the person, firm or corporation by whom the coal was loaded into the vessel in which such coal is transported to any city of the first or second class, in this state, or of uttering any such bill of lading so altered, or who is guilty of making, preparing or subscribing or uttering a false or fraudulent manifest, invoice or bill of lading thereof, or removing any part of such cargo of coal without having the amount thereof certified to in writing on such original bill of lading, by the person, firm or corporation receiving the coal so removed, and by the captain of the vessel containing such cargo, is punishable by imprisonment in a state prison, not exceeding three years, or by a fine not exceeding one thousand dollars, or both, and the delivery of any fraudulent bill of lading to any purchaser of coal shall be presumptive evidence of uttering the same with criminal intent.

ARTICLE 12

LAWS REPEALED; WHEN TO

TAKE EFFECT

§ 170. Laws repealed. Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

§ 171. When to take effect. This chapter shall take effect immediately.